

4 August 1988

STATEMENT OF PROFESSOR DAVID WEISSBRODT TO THE WORKING GROUP ON
INDIGENOUS POPULATIONS

Madame Chair, as this is my first presentation to this session of the Working Group, I should like to congratulate you on your election to the Sub-Commission and on your continuing leadership of the Working Group.

I would like to make a few comments on two aspects of the working paper which you prepared for a universal declaration on indigenous rights. U.N. Doc. E/CN.4/Sub.2/1988/25. The working paper obviously attempts to strike a balance between the legitimate aspirations of indigenous peoples for the recognition of their collective rights and what member states will approve in such a universal declaration.

The preparation of your working paper represents an important and major step in the development of standard setting, which is a crucial part of the United Nations efforts to give overdue recognition to indigenous rights.

I join other speakers in supporting your use of "indigenous peoples" in the draft Universal Declaration of Indigenous Rights. I note that for the last few sessions the Commission on Human Rights has at times used the term "peoples", as well as nations and communities. See e.g. 1988/48.

Madame Chair,
I have not had time to study your draft declaration with the care it deserves and with a comparative eye to the incomplete draft declaration of 22 Principles proposed by the Preparatory Meeting of Indigenous Peoples in 1987 and the

comprehensive Analytical Summary prepared by the Secretariat.

I am sure that many participants will want to study the working paper in the hope that the Universal Declaration can be adopted as early as possible by the Working Group and higher U.N. bodies.

I wanted, however, to draw attention to two specific aspects of the working paper's draft declaration.

First, in paragraph 3, the declaration guarantees the collective right to exist and to be protected against genocide, as well as the ~~rights to~~ rights to life, physical integrity, liberty and security of person. This provision is very important and deserves to be included in the Universal Declaration of Indigenous Rights. Unfortunately, the fundamental rights assured by this draft provision are violated in various parts of the world. In this regard, I should mention the Aboriginal deaths in custody, which have been the subject of discussion here in the Working Group by the National Aboriginal and Islander Legal Services Secretariat in their oral and written statements, the Anti-Slavery Society, and by the leader of the Australian Observer Delegation. The Government of Australia has established a Royal

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Commission to investigate the 107 Aboriginal deaths in custody. Unfortunately, these deaths are continuing even as the Royal Commission is engaged in its investigation. The Minnesota Lawyers International Human Rights Committee sent two representatives to Australia and has prepared an independent, impartial analysis of the Royal Commission and its inquiry. I have a limited number of copies of this study which I would be happy to distribute at the end of the Working Group session this afternoon.

The second aspect of the Working Paper about which I wish to comment is found in paragraph 28. Paragraph 28 guarantees the individual and collective right to mutually acceptable and fair procedures for resolving conflicts or disputes between States and indigenous peoples. These procedures are necessary because it is impossible for the Universal Declaration of Indigenous Rights to resolve all the difficulties facing the highly diverse indigenous peoples throughout the world. Paragraph 28 will enable the Universal Declaration on Indigenous Rights to provide an international minimum standard of indigenous rights and at the same time to afford protection for future problems as they arise. I would underline the views of the previous speaker for the National Indian Youth Council who stressed the importance of negotiation and the need to obtain informed consent of indigenous peoples.

Indeed, the subject of indigenous treaties, which will be the subject of further study, may deal with this aspect of involving indigenous peoples directly in decisions affecting their communities.

In closing, let me say that I am very grateful for this opportunity to contribute to the deliberations of the Working Group in this important standard-setting effort. Thank you.