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WORKING GROUP ON INDIGENOUS POPULATIONS

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EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

OBSERVER DELEGATION OF CANADA

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Madame Chairman,

I would like to address certain remarks to the agenda item relating to standard setting, particularly with respect to the right of self-government, autonomy and self-determination.

In my previous statement, which discussed developments in Canada, I made reference to the process of our recent constitutional discussions, which considered the issue of a constitutional entrenchment of a right to self-government, as well as the non-constitutional initiatives relating to aboriginal self-government which have been, and continue to be, pursued by the Government of Canada.

The Government of Canada remains fully committed to the realization of the objective of self-government and greater levels of autonomy over local affairs for its aboriginal peoples* within the context of the Canadian federation.

Although the process of constitutional discussions with aboriginal peoples has not, to date, produced agreement on a constitutional amendment relating to self-government, the Government of Canada remains committed to a constitutional amendment on aboriginal self-government. In the meantime, the Community negotiations process to which I referred in my previous statement has made important strides toward the realization of aboriginal self-government

* It should be noted that references made to Canada's aboriginal "peoples" are consistent with the terminology of the Canadian Constitution with respect to Canada's domestic situation. They should not be interpreted as supportive of the notion that Canada's aboriginal groups are "peoples" in the sense of having the right to self-determination under international law. This understanding is further explained below.

within existing constitutional arrangements. Within this process, the Sechelt Indian Band Self-Government Act is a concrete example of how arrangements may be worked out between jurisdictions in order to allow aboriginal peoples greater control over their own affairs. This Act permits the Sechelt Indian Band to exercise law-making authority in a number of areas such as taxation and the management of their lands in accordance with the terms of its own band constitution.

The development of the Sechelt legislation and the Cree-Naskapi of Quebec Act, of which you are also aware, reflect certain underlying principles which are important not only with respect to Canada's aboriginal peoples, but also to indigenous people generally. First and foremost this legislation was developed in close cooperation with the representatives of the aboriginal people concerned and designed to meet the particular needs and circumstances of that group. They do not purport to be models for other communities.

Canada's aboriginal peoples find themselves in diverse circumstances, as do the indigenous populations of the world, which may require differing types of self-government arrangements in order to effectively meet their needs. For example, the Sechelt arrangement differs materially from that concluded with the Crees and Naskapi of the James Bay Territory pursuant to the James Bay and Northern Quebec Agreement and the Northeastern Quebec Agreement which in turn differs from the self-government arrangements currently under discussion in Canada's North.

The second important principle which characterizes the self-government legislative arrangements currently in effect in Canada is the cooperative relationship of the different jurisdictions involved. Both in the case of Sechelt and the Cree-Naskapi Act, a legislative scheme was developed which will involve the interaction of three levels of government (federal, provincial, Sechelt Band) in a harmonious fashion. If indigenous populations are to obtain rights of self-government and autonomy, it is essential that those arrangements be developed in an atmosphere which ensures cooperation between indigenous governmental bodies and those of other surrounding jurisdictions.

Madame Chairman, with respect to the question of self-determination, it is an undeniable fact that this right is stated in the Charter of the United Nations and in article 1 of both of the International

Covenants on Human rights. However, the meaning of self-determination, not as a political aspiration, but as an international legal obligation is neither clear nor generally accepted. Furthermore, the word "peoples" in this context is subject to diverging interpretations. Canada considers that "peoples" in the context of self-determination should not be confused with other entities, such as ethnic, religious, or linguistic minorities or, indeed, indigenous populations.

The 1970 U.N. Declaration on Friendly Relations and Cooperation among States attempted to provide some elaboration of the content of the right of peoples to self-determination in stating:

> "Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour. Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country."

I have quoted from the Friendly Relations Declaration because it illustrates a basic premise. If the right of peoples to self-determination were interpreted so broadly that many smaller groups within a democratic and independent state were entitled to establish unilaterally a separate political system, then both the political unity and perhaps the territorial integrity of many non-colonial, democratic and independent States members of the United Nations would be in jeopardy.

In practice, the United Nations has invariably applied the principle of self-determination to dependent or colonial territories. It has never been, nor should it be, utilized to support individual secessionist or separatist groups within democratic

and independent states, nor to permit groups unilaterally to establish their own governments within a particular state.

In fairness to some indigenous groups which I have heard during this session I would observe that they do not appear to be using the term "self-determination" in either the sense of a right to secede or a right to unilaterally establish their own political systems in complete independence of the surrounding jurisdiction. Theirs is perhaps a different concept of self-determination than that which presently exists in international instruments.

Notwithstanding this possible difference in intention the possibility of confusion still exists and for this reason the Government of Canada considers that it would be more productive to engage in discussions on the right to self-government than on the right to self-determination in the context of a draft declaration on indigenous populations.

I would strongly emphasize that Canada's position on the right of self-determination must not be interpreted as detracting from its commitment to the realization of self-government and greater political autonomy for aboriginal peoples within the Canadian federal system. While the process of change in our country is often slow because of the many different interests involved, we firmly believe that we have taken important strides in the creation of an atmosphere which will foster the growth and development of aboriginal governments. In future years, we will hopefully have many more concrete examples of such progress to report to this group in order to assist you in your efforts to develop international standards.

Madame Chairman, at the outset of this meeting you also asked for comments on the three draft principles developed at the NGO-sponsored workshop held in September, 1986. I would now like to address some brief remarks to this subject.

While the drafting of these principles may leave open certain important questions with respect to their precise meaning and scope, there is, I believe, much in the general intent of these three proposed standards which is consistent with the Canadian situation.

With reference to draft principle 8, at past sessions of this Working Group the Government of Canada delegation has emphasized the increasing involvement of

aboriginal people in the planning and implementation of social and economic programs which are destined for them in order to better reflect their own priorities and to permit a greater degree of local autonomy. In Canada, service delivery is shared among band, federal and provincial agencies. Fifty-nine per cent (by dollar value) of the programs of the federal Department of Indian Affairs and Northern Development are administered directly by the Indian bands.

While indigenous people in Canada are becoming increasingly responsible for the determination, planning, and implementation of services destined for them, the Government of Canada would note that it also must ensure that it is accountable for the administration and financial management of such programs to the general population. This self-administration of programs, which for many communities is an important step toward the goal of self-government, has the objective of enhancing accountability to electors of the communities themselves. We are confident, however, that the Canadian experience,which is still relatively new, will demonstrate that the principles of indigenous involvement and overall government responsibilities are not incompatible.

Turning to principle 9 regarding state measures, federal funding on programs for aboriginal peoples has grown steadily for the past decade and the government has maintained an increase in expenditures during recent period of fiscal restraint.The Prime Minister's commitment of April 1985 to ensure that federal spending did not drop below current levels has been honoured. It has continued to increase moderately on an annual basis. In fact, over the last decade federal expenditures on aboriginal programs have grown faster than in any other program area. In a comparative perspective, total federal spending on native programs has increased from $768 million in 1975-76 for $2,863 million in 1985-86, an increase of 76% in constant dollars. In addition, aboriginal people benefit from universal access programs such as old age pensions, family allowances and free medical and hospital care.

We have also noted, Madame Chairman, that draft principles 8 and 9 have referred to state programs or measures in terms of "rights". In this

connection, the Working Group might be well advised to take a cue from the drafters of the International Covenant on Economic, Social and Cultural Rights. In that instrument, rights are framed in terms of the objective which is being sought, for example, "the right of everyone to an adequate standard of living". State responsibilities to institute programmes or measures in pursuit of these objectives are explicitly defined as such. It is, after all, the achievement of the economic, social and cultural rights of indigenous people that lies at the heart of the Working Group's mandate, and state intervention is a means to achieve that end, rather than an end in itself.

Finally, with respect to traditional rights which are referred to in draft principle 10, Canada has taken measures to protect the aboriginal and treaty rights of aboriginal people in its Constitution by the inclusion of section 35 of the Constitution Act, 1982. This has raised many difficult issues which our courts are now dealing with in order to determine a balance between the rights of aboriginal people, governments and third parties.

Madame Chairman, this concludes my remarks on standard setting. I thank you for permitting me the opportunity to make this intervention.