

Working Paper No.1/Addendum 2

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities

Working Group on Indigenous Populations
Fifth session

Geneva

3-7 August 1987

Item 5 of the provisional agenda

E/CN.4/Sub.2/AC.4/1987/WP.1/Add.2
26 June 1987

Original: ENGLISH



WGIP 87 GOV/NAH.CAN/3

STANDARD-SETTING ACTIVITIES:

EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

Material received from Governments

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Canada

COMMENTS OF THE GOVERNMENT OF CANADA
ON THE DRAFT PRINCIPLES CONTAINED IN
THE REPORT OF THE FOURTH SESSION OF
THE WORKING GROUP ON INDIGENOUS POPULATIONS

Canada wishes to thank the members of the Working Group on Indigenous Populations (WGIP) for the work undertaken in developing the seven draft principles set out in Annex II of the Report of the Working Group's Fourth Session (UN Document No. E/CN.4/Sub.2/1985/22). Canada's supplement to the "Analytical Compilation of Existing Legal Instruments and Proposed Draft Standards Relating to Indigenous Rights", prepared by the Secretariat in accordance with Sub-Commission Resolution 1985/22, has been transmitted directly to the Secretariat.

In general, Canada considers that the Draft Principles formulated by the Working Group at its Fourth Session represent a positive step toward the development of international standards relating to indigenous populations. The continued efforts of the Working Group in the area of developing standards are encouraged.

The Government of Canada wishes to express its hope that the WGIP will consider how the principles might address the very real problem of indigenous populations

or tribal groups that live in States that refuse to recognize their very existence. The impact of the principles will be considerably diminished if their applicability can be negated simply by a State asserting that it has no indigenous populations or tribal groups within its territory.

With respect to the seven principles in question, Canada offers the following general and specific observations. The first is that the Working Group may, at some stage, wish to give consideration to the drafting of a preamble to any eventual draft body of principles in order to enunciate clearly the objectives which are sought to be achieved. This would also be of assistance in interpreting any detailed principles which may eventually be adopted. In this respect, consideration should perhaps be given to determining whether the objective of the draft declaration is to adapt existing international standards to meet the unique requirements of the indigenous populations, to create new standards to deal specifically with these requirements, or some combination of both.

Canada would also note that any final draft declaration would have to clearly indicate where specific rights accrue to the indigenous collectivity

or to indigenous individuals. As the focus of the Working Group is on the human rights of indigenous persons, Canada anticipates that the draft instrument being prepared will concentrate on rights of the individual, albeit that some of these rights will have a collective aspect. Draft Principles No. 3 and 6 raise this possible distinction between individual and collective rights.

As a further general observation, Canada would encourage the Working Group, where it develops a draft principle modelled on a provision of an existing legal instrument, to parallel the drafting of that existing instrument as closely as possible. This should foster consistency of interpretation, particularly where similar or identical effects are intended.

Canada would also note that most human rights are subject to certain limitations under national laws which are justifiable in the circumstances without compromising the basic content of these rights. Further, a balance must be struck between the rights of indigenous persons and the rights of others inhabiting the same territory. Principles No. 4 and 6, in particular, highlight these two issues with respect to cultural and religious rights.

With respect to Principles No. 1 and 2, Canada's position is that indigenous persons have the same rights under international instruments to which Canada is a party as any other Canadian citizen. This being the case, Canada has no fundamental difficulty with the formulation of Principles No. 1 and 2 save perhaps to suggest that Principle No. 1 could be re-stated as a preambular provision.

With respect to Principle No. 5 in relation to education, Canada would observe that there are current international standards with respect to education. It feels that standards developed for indigenous populations in this regard should be as close as possible to existing norms, so as to present governments and indigenous populations with objectives which are reasonable, achievable, and designed to meet needs of indigenous populations. Educational rights must also take into account demands on resources, particularly in view of diversity of languages and cultures which may exist within a nation. In Canada, for example, there are 53 different aboriginal languages.

This concludes Canada's comments on the Draft Principles. Canada's report on recent national developments relating to indigenous populations, will, as in the past, be submitted to the Working Group at

some point during its session Augst 3-7, 1987, as
will Canada's observations on the three agenda items
scheduled for consideration by the Working Group
during its Fifth Session.