

CANADA'S STATEMENT ON THE
DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

(NINTH SESSION OF THE WORKING GROUP
ON INDIGENOUS POPULATIONS)

MADAM CHAIRPERSON,

ON BEHALF OF THE CANADIAN DELEGATION I WISH TO JOIN PREVIOUS SPEAKERS IN CONGRATULATING YOU ON YOUR RE-ELECTION TO THE POSITION OF CHAIRPERSON/RAPPORTEUR OF THE WORKING GROUP. WE ARE CONFIDENT THAT UNDER YOUR DIRECTION, AND WITH THE OTHER DEDICATED MEMBERS OF THE WORKING GROUP, PROGRESS WILL BE MADE IN ACHIEVING OUR COMMON OBJECTIVES. WE ENCOURAGE YOU TO CONTINUE IN YOUR ENDEAVORS AND TO COMPLETE YOUR REPORT ON THE DRAFT DECLARATION BY 1993.

WE HAVE NOTED WITH KEEN INTEREST THE COMMENTS ON THE PREAMBLE THAT HAVE PREVIOUSLY BEEN EXPRESSED. WE WISH TO DIRECT OUR COMMENTS TO THE OPERATIONAL PARAGRAPHS THEMSELVES. OVER THE PAST YEAR THE GOVERNMENT OF CANADA REVIEWED THE 1989 DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES, PREPARED BY THE WORKING GROUP, AS WELL AS THE ANNEXES REPRESENTING THE WORK OF THE INFORMAL DRAFTING GROUPS THAT MET LAST SUMMER. IN ADDITION TO CONSIDERING THE PROPOSALS FROM THE PERSPECTIVE OF THE GOVERNMENT OF CANADA, PRIOR TO THIS SESSION WE MET WITH REPRESENTATIVES OF CANADA'S ABORIGINAL GROUPS AND SHARED

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WITH THEM OUR VIEWS ON THE DRAFT PRINCIPLES. FLOWING FROM THIS REVIEW THE GOVERNMENT OF CANADA HAS THE FOLLOWING GENERAL COMMENTS RELATING TO THE DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES. THESE COMMENTS ARE SUPPLEMENTARY TO THOSE SUBMITTED BY THE GOVERNMENT OF CANADA IN PREVIOUS YEARS.

MADAM CHAIRPERSON,

THE GOVERNMENT OF CANADA SUGGESTS THAT THE DECLARATION WOULD BENEFIT BY FOLLOWING A THEMATIC APPROACH. GROUPING TOGETHER ALL THOSE PROVISIONS RELATING TO, FOR EXAMPLE, CULTURE OR LAND RIGHTS, WOULD MINIMIZE DUPLICATION AND CLARIFY THE DOCUMENT AND ITS INTENT. CONFUSION RESULTS FROM DUPLICATION AND OVERLAPPING OF SIMILAR AND RELATED CONCEPTS. FOR EXAMPLE, DRAFT ARTICLE FOUR OF YOUR REVISED TEXT REFERS TO "THE RIGHT OF EACH INDIGENOUS PEOPLE TO PURSUE ITS OWN CULTURAL...DEVELOPMENT". THIS RIGHT IS REPEATED IN DRAFT ARTICLE 6, WHICH, ONCE AGAIN SPEAKS OF "THE RIGHT...TO PURSUE THEIR OWN CULTURAL DEVELOPMENT".

IN ADDITION, WE BELIEVE THAT THE USE OF STANDARDIZED TERMINOLOGY WOULD SERVE TO CLARIFY THE INTENT OF THE DRAFTERS, WHILE ENHANCING THE EFFECTIVENESS OF THE DECLARATION. ARTICLES "3" AND "5", FOR EXAMPLE, ADDRESS "GENOCIDE" AND "ETHNOCIDE" RESPECTIVELY. THE MEANING OF THE TERM "ETHNOCIDE" IS UNCLEAR. THE TERM "GENOCIDE",

HOWEVER, HAS A MEANING THAT IS RECOGNIZED AND ACCEPTED INTERNATIONALLY.

THE GOVERNMENT OF CANADA NOTES THAT INTERNATIONAL STANDARD SETTING INSTRUMENTS TYPICALLY RELATE TO THE ACTIONS OF STATES, NOT PRIVATE PARTIES, AS ARTICLE 28, FOR EXAMPLE, APPEARS TO DO IN ITS REFERENCE TO CONFLICT RESOLUTION. THE SCOPE OF THE DOCUMENT SHOULD BE LIMITED TO THOSE ACTS THAT ARE WITHIN THE REACH OF GOVERNMENTS.

THE GOVERNMENT OF CANADA REITERATES ITS CONCERN ABOUT THE FORMULATION OF RIGHTS AS COLLECTIVE RIGHTS. OFTEN COLLECTIVE RIGHTS CAN BE EXPRESSED AS A RIGHT OF THE INDIVIDUAL WHILE STILL ACHIEVING THEIR OBJECTIVE, ALTHOUGH WE RECOGNIZE THAT IT MAY SOMETIMES BE NECESSARY TO CHARACTERIZE RIGHTS AS COLLECTIVE. OUR INDIGENOUS PEOPLE, FOR EXAMPLE, HAVE SOME RIGHTS THAT ARE HELD COLLECTIVELY, SUCH AS RIGHTS RELATING TO LAND. HOWEVER, AS CLASSICAL HUMAN RIGHTS INSTRUMENTS TYPICALLY ARE FORMULATED IN TERMS OF INDIVIDUAL RIGHTS, WE BELIEVE THAT THE GENERAL EMPHASIS IN THIS DECLARATION SHOULD BE ON INDIVIDUAL RIGHTS.

MADAM CHAIRPERSON,

WE TRUST THAT THESE GENERAL COMMENTS WILL BE HELPFUL TO THE WORKING GROUP IN ITS DELIBERATIONS. WE WILL, OF COURSE, BE COMMENTING MORE SPECIFICALLY THROUGHOUT THE DISCUSSION ON BROAD SUBJECT AREAS COVERED BY THE

DECLARATION, AS WELL AS OFFERING ALTERNATIVE LANGUAGE ON A NUMBER OF ARTICLES.

MADAM CHAIRPERSON,

YOU HAVE EXPRESSED YOUR LAUDABLE YET AMBITIOUS INTENTION TO HAVE IN CIRCULATION AMONG MEMBERS OF THE COMMISSION ON HUMAN RIGHTS A DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLE IN TIME TO COINCIDE WITH 1993 - AN INTERNATIONAL YEAR FOR THE WORLD'S INDIGENOUS PEOPLE. I SAY "LAUDABLE" BECAUSE SO MANY INDIGENOUS COMMUNITIES NEED TO SEE THEIR SITUATIONS IMPROVED AND IN SOME CASES, THEIR PLIGHT RECOGNIZED. I SAY "AMBITIOUS" BECAUSE AS WE KNOW, THE PRINCIPLES THAT UNDERLIE DECLARATIONS OFTEN REQUIRE YEARS OF PATIENT EXCHANGE BEFORE GAINING UNIVERSAL ACCEPTANCE. THE CLARITY OF LANGUAGE WHICH OUGHT TO CHARACTERIZE ANY INTERNATIONAL DECLARATION CAN EASILY BE OVERTAKEN BY ATTEMPTS TO CAPTURE IN LEGAL LANGUAGE EVERY POSSIBLE APPLICATION. I URGE YOU AND ALL OTHER PARTIES IN THIS PROCESS TO BEAR IN MIND THE LANGUAGE OF EXISTING DECLARATIONS AND CONVENTIONS IN ORDER TO FACILITATE THE TASK OF THOSE WHO WILL EVENTUALLY HAVE TO NEGOTIATE A TEXT WITH OTHER STATES PARTIES.

THANK YOU, MADAM CHAIRPERSON.