



CANADA

The Permanent Mission of Canada
to the United Nations
at Geneva

La Mission Permanente du Canada
auprès des Nations Unies
à Genève

Statement by the
Canadian Observer Delegation
to the Fourth Session of the
U.N. Working Group on Indigenous Populations

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I intend, very briefly, to give some account of recent developments in Canada likely to be of interest to the Working Group and then, after a few words on the main subject of our agenda, culture and education, to make a few comments upon the development of international principles or standards in the field of aboriginal rights.

It is perhaps a happy coincidence, Madame Chairman, that at a time when the United Nations is working toward international standards, in Canada we are engaged in negotiations aimed at identifying, defining and including in the Constitution the rights of Canada's aboriginal peoples. May I stress at once that these rights are additional to the rights enjoyed by all the peoples of Canada, including our aboriginal peoples, as set forth in our Constitution, and particularly in the Charter of Rights and Freedoms. I will return very briefly to this point when speaking of international standards. I should also emphasize that our Constitution as it stands now recognizes and affirms existing aboriginal and treaty rights and offers the Indians, Inuit and Métis in addition certain special protections which they alone enjoy.

The highlights of our constitutional negotiations are the meetings of First Ministers at which the Prime Minister chairs a Conference of all the Premiers of Canada's ten provinces and leaders of the territorial governments in which the leaders of the aboriginal peoples, Indian First Nations, Inuit and Métis take part on a basis of equality in discussions.

The last of these took place in April of this year and dealt mainly with the question of aboriginal self-government. Although no new constitutional amendment was achieved, all the participants felt that some very real progress had been made in the policy thinking that must precede such amendment.

The fact that amendment was not achieved does not mean that there have been no developments in the field of aboriginal self-government.

The Parliament of Canada has enacted the Cree-Naskapi (of Québec) Act in fulfillment of its obligation under two land claims agreements, the James Bay and Northern Québec Agreement and the Northeastern Québec Agreement. This legislation put into effect a comprehensive scheme of local government and land administration for the Crees and Naskapis of the James Bay region. The Act confers broad legislative and administrative powers on the Cree and Naskapi Bands for government of their own affairs as well as complete control over disposition of interests in the lands which have been set aside for them.

The Inuit of Québec, who are also signatories to the James Bay and the Northern Québec Agreement, exercise self-government powers on a local and regional basis, by means of provincial law enacted pursuant to the Agreement. These governments have powers which are virtually identical to those of similar governments in non-aboriginal communities in the province.

The legislature of the province of Alberta has recently passed a resolution committing the government to revisions to the Métis Betterment Act which would enlarge the jurisdiction of the Métis people over their lands. The legislature has also committed itself to the passage of a resolution which would amend the Canadian Constitution, in respect of the province of Alberta, in order to grant fee simple title in Métis lands to Métis controlled entities.

While the constitutional deliberations continue at the national level the Minister of Indian Affairs is actively engaged in discussions with Indian First Nations communities aimed at establishing self-government structures at the local level. We hope that discussions of a similar nature will soon be undertaken in respect of Métis communities.

In the case of the Inuit the Canadian government has accepted in principle their proposal to divide the Northwest Territories so as to set up a public government in that part of the Territories where Inuit make up some 95% of the population. The government in contemplation would provide special protection for the Inuit majority.

At a more general level, during the last two decades, the government has transferred to Indian band management approximately 53% of the dollar value of the Departmental Indian Affairs Program, an amount now estimated at \$1.4 billion. This compares with 1971 when only 17% of Departmental programs were administered by bands. The government is currently developing a system for block funding of Indian governments which should lead to further increases in the percentage of funds administered by bands, as well as giving bands much more flexibility in their management. While falling far short of self-government these developments do allow to the bands an ever-increasing control over their own affairs.

On June 28, 1985 the Parliament of Canada gave final approval to Bill C-31, An Act to Amend the Indian Act. The Bill brings into law important changes in the Indian Act. Sexually discriminatory provisions of the Indian Act which deprived Indian women and their children of Indian status and band membership on marriage to a non-Indian have been removed. Bands are now able, if they wish, to determine their band membership in accordance with their own rules and customs. People who lost or were denied status and membership in the past as a result of discriminatory provisions of the Act are now entitled to be registered as Indians, and, in most cases, to have their band membership restored.

These changes bring the Indian Act into accord with the United Nations Covenant on Civil and Political Rights and with the Canadian Charter of Rights and Freedoms. In drafting the changes to the Indian Act the Government of Canada was faced with a problem familiar to the members of the Working Group: how to balance legitimate concern for the protection and enhancement of individual rights with the equally important need to ensure that collective interests are protected. In the opinion of Canada, the final Bill,

which was the product of long debate both inside and outside Parliament, strikes a fair and reasonable balance between these two important interests.

No Act of Parliament, however carefully drafted, can respond to all the aspirations of all those who will be affected by it and this Act is no exception to the rule. It does, however, require the Minister to report to Parliament at the end of two years upon its implementation. The Act further directs that the Minister's report be laid before a Parliamentary Committee, providing all concerned with an opportunity to comment upon its fairness and effects.

The right of indigenous populations to develop their culture, traditions, languages, and way of life, including the right to freedom of religion and the right to education, are to be a major theme of this year's discussions. The Government of Canada is committed to ensuring that Canada's indigenous peoples are able to preserve, and enhance their traditional cultures, languages and religions, and that education for indigenous people is appropriate to their culture and responsive to their needs.

The Constitution of Canada entrenches the principle of religious freedom, recognizes Canada as a multi-cultural society and further recognizes the special aboriginal rights and freedoms of Canada's indigenous populations.

Canada has taken special measures in the settlement of land claims, and in the provision of programs and services to foster cultural and linguistic survival and enhancement.

The James Bay and Northern Québec Agreement specifically provides for measures to help preserve traditional hunting and trapping economies and to ensure culturally appropriate education systems.

The Department of Indian Affairs and Northern Development finances or delivers education services to approximately 84,000 Indian and Inuit students at all levels. A major goal of the education program is to ensure that it is locally controlled and culturally and linguistically appropriate. Much remains to be done to fully realize these goals and the government, in

consultation with the indigenous people, is now beginning a major review of this issue. Children of aboriginal ancestry not only share in a universal right to education, Canadian law requires that they be educated just as every Canadian child must.

The Government of Canada also funds special programs in the areas of native communication and broadcasting, with a strong emphasis on native language broadcasting, cultural centres, social and cultural development programs and programs for aboriginal women. Provincial and territorial governments fund similar programs with the aim of ensuring cultural and linguistic preservation and enhancement.

Increasingly, economic development programs are being focussed on developing economic opportunities which are culturally appropriate to indigenous populations. Preservation of traditional social and economic structures is a major theme of this thrust. Recent incentives to help preserve the northern fur trapping economy against unwarranted attack from certain environmental groups are typical of this approach.

Our statement has concentrated on developments within Canada in the past year in an attempt to provide some factual background material for the ongoing review of developments by this working group. We will, of course, be listening with interest to the comments of other governments and organizations represented here with a view to understanding better the situation with respect to indigenous populations in other parts of the world.

Madame Chairman,

With respect to the question of a possible international instrument, the government of Canada has followed with considerable interest the deliberations of the working group in pursuance of its mandate to "give special attention to the evolution of standards concerning the rights of indigenous populations, taking account of both the similarities and the differences in the situations and aspiration of indigenous populations throughout the world".

Canada firmly believes in the importance of setting international standards in the field of human rights and to this end has participated actively in a

number of standard setting exercises in the United Nations system.

On the international plane, we recognize that there is merit in developing international standards directed at the special needs and rights of indigenous populations. As Mr. Cobo noted in his conclusions, existing instruments are not entirely adequate (or perhaps a better phrase would be "not entirely adapted") to the situation of indigenous populations.

Aboriginal rights are a difficult concept to express in standards that would be flexible enough to cover all the diverse groups and interests concerned, having regard to differing historical backgrounds and differing relationships with governments. Nevertheless, we believe that an international instrument in the form of a declaration or body of principles should be pursued. There is no ready formula for the contents of such an instrument, although it might be expected to cover a number of the issues identified in the Cobo report.

Before concluding we would sound a note of caution. There are a number of potential pitfalls in the process of elaborating such an international instrument, not the least of which is determining which groups it will cover. If it is to be a truly international instrument, it must have relevance to all indigenous groups throughout the world. It must, therefore, deal primarily with the most fundamental rights. Specific demands are better dealt with at the national level and within national frameworks, and Canada is continuing to do its utmost to meet the specific concerns of our aboriginal peoples.

As I said earlier, in Canada we see aboriginal rights as something extra that our aboriginal peoples enjoy flowing from original occupancy. They also enjoy all the rights that flow from Canadian citizenship. Just as we expect our aboriginal peoples to look as do all our people to the Canadian Constitution for protection of rights held in common so do we expect that on the international plane, the general body of rights of all people can be protected by the fundamental instruments on human rights, looking to the proposed standards to deal specifically with the special rights of aboriginal peoples.

I am pleased, Madam Chairman, to have been able to report some modest progress in the matter of the

rights of the Indian, Inuit and Métis peoples of Canada and some recent developments in the field of aboriginal self-government. It would be remiss of me, however, to suggest that all is well with the aboriginal peoples of Canada. Far too many of them live in conditions of severe social and economic deprivation. These problems have proved to be intractable in nature for more than 100 years.

The Government of Canada will continue to work with the aboriginal peoples themselves in a continuing attempt to find the answers that have so far eluded us. Rights may be of dubious advantage to those who for socio-economic reasons have limited access to them.

In the course of the constitutional negotiations now underway, the leaders of our aboriginal peoples and of the governments in Canada have come to a better understanding of the problems and constraints we all face.

It is hoped, Madame Chairman, that this better understanding will enhance our joint efforts to overcome the economic difficulties that continue to limit so severely the full flowering of the Indian, Inuit and Métis cultures in Canada.