



COMMISSION ON HUMAN RIGHTS

3 August 1988

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on
Indigenous Populations
Sixth session
Item 5

W6IP 88/NAM.CAN/5

STANDARD SETTING

Statement of the Grand Council of the Crees (of Quebec)
a non-governmental organization in consultative status (roster)

Thank you madam chairman.

The sixth session of the Working Group marks a turning point: this is the first occasion that we have before us a complete draft text of proposed standards for the protection of indigenous peoples. The excellent work you have done, Madam chairman, in respect of Sub-Commission resolution 1987/16, Commission on Human Rights resolution 1988/49, and Economic and Social Council resolution 1988/36, now provides us with the opportunity to advance the process of standard-setting, and move with dispatch toward the promulgation of a United Nations declaration in this urgent area of concern.

We intend to comment today on a few areas of critical concern which are of extreme importance because they determine the applicability and validity of any instrument that is eventually approved.

First, however, I would like to point out something which is so obvious that it is in danger of being overlooked: every standard under consideration here is based on a serious existing abuse of indigenous rights somewhere in the world. Each proposal is based on a "wrong".

The process we undertake here is the consideration of abuses against indigenous peoples. These examples of human rights abuses constitute our source material, from which we then derive standards to prevent these human rights violations in the future.] This may help to explain why there is so much pressure at these sessions to voice complaints. It is well understood that the Working Group is not a tribunal to hear complaints against governments. But [this room is full of sadness and often fear, because the standards we propose and so urgently need, require that we recall the wrongs and abuses which have brought us here to do this important work.]

We would therefore ask any government that disputes the need for these standards, or offers objections based on issues of jurisdiction or preeminence of domestic law, to propose constructive alternatives which will provide effective remedies to these abuses.

Dr. Daes, we refer to your working paper, E/CN.4/Sub.2/1988/25 of 21 June 1988.

We note with approval that the subjects of the proposed standards are "indigenous peoples". This terminology is accurate, appropriate, and consistent with United Nations usage. We agree with this terminology; and we insist that the designation "peoples" be preserved. It is the word "peoples" which attaches us to all of the international human rights instruments, and guarantees our claim to fall under the protection of those instruments.

I call your attention to document E/CN.4/Sub.2/AC.4/1988/3/Add.1 of 5 July 1988 which contains a communication from the International Labour Office on the 75th session of the International Labour Conference. At the ILO conference the Government of Canada introduced amendments opposing the use of the word "peoples". The ILO communication provides the following explanation:

"The fear was expressed by a number of government delegates that the use of the term "peoples" without qualifying language might lead to claims of the right to self-determination in the sense of separation from the countries in which these peoples live".

Indigenous peoples have a different fear. That governments will, through denial of their recognition as "peoples", deny indigenous peoples their collective rights to important existing United Nations protections. The Government of Canada gave credence to our concerns in a statement made to this working group during its fifth session. Canada said:

"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.....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."

But [if indigenous peoples are not considered "peoples" under international law, we are denied not only the right to self-determination, but a multitude of other fundamental rights as well.] Canada has already used this argument in proceedings before the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights, as reported in a discussion of admissibility in an intervention involving the rights of indigenous women in Canada.

[Denial of the recognition that a national community has collective rights, destroys a peoples' fundamental means of self-preservation. History provides a grim reminder. The Jewish people in France before the Second World War wanted recognition of their rights as a "people", not as individual members of an "ethnic and linguistic minority". The government was opposed to such recognition. Count Clermont-Tonnerre told the National Assembly:

"The Jews should be denied everything as a nation, but granted everything as individuals...It is intolerable that [they] should become a separate political formation or class in the country. Every one of them must individually become a citizen".]

This is a familiar and deadly argument.

The Canadian "Constitution Act, 1982" states:

PART II

RIGHTS OF THE ABORIGINAL PEOPLES OF CANADA

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada.

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired. [underline added]

Part I of the Constitution Act is known as the "Canadian Charter of Rights and Freedoms. It deals with individual rights. Indigenous peoples' rights were intentionally placed in a separate section. They are not part of the Charter; the intention is to guarantee the collective rights of the indigenous peoples.

The Grand Council of the Crees strongly defends the position that the rule of constitutional law should prevail, and that Canadian government officials must respect constitutional definitions. A constitution is, after all, the international "legal face" a State assumes.

For indigenous peoples throughout the world this is a matter of the most extreme importance, because the failure to recognize us as "peoples" invalidates any protections that may be embodied in the proclamation of indigenous standards. In this regard, there is serious consideration being given to the indigenous peoples' total repudiation of the International Labour Conference to revise Convention 107, if the earlier "integrationist" terminology is carried over to the revised convention. The same issue arises here. Will the proclamation of indigenous standards attack and weaken the existing collective rights of indigenous peoples?

Madam chairman, I want to be very precise regarding this issue. We noted earlier that every proposed standard is intended to remedy persistent and well recognized existing abuses of indigenous peoples' rights. Allow me to quote from Part I of the International Covenant on Economic, Social and Cultural Rights:

Article I

1. All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

Guarantees of these same rights appear again in Part I, Article I of the International Covenant on Civil and Political Rights.

Madam Chairman I ask: what are the most universally understood and best documented abuses of the rights of indigenous peoples? Our lands were invaded, our right to govern ourselves was denied, our natural wealth was stolen and squandered, and our means of subsistence was finally destroyed. Why is there so much sensitivity and objection from some States to the idea of proclaiming 1992 the "year of indigenous rights"? Because after 500 years this is not just history. The process of destruction continues.

It is these abuses which most characterize the history of the indigenous people. Yet it is the specific protections for these very abuses found in the above articles that will be denied to us if we are not considered "peoples" subject to these same United Nations instruments. Because Article I states that it is "by virtue" of the right of self-determination that we have the right to pursue our "economic, social and cultural development".

It is an undeniable fact that our economies have been destroyed, our societies have been corrupted, and our cultures have been eliminated. Is this not what these same standards were intended to prevent? Why is it that our collective identity is so easy to define when we are being attacked, yet when we seek access to fundamental rights, difficulties suddenly arise in acknowledging our collective identity?

Finally, it has been suggested by some States that the mandate given to the Working Group precludes the development of standards which will protect our collective rights. It is suggested that the framework provided by Article 27 of the International Covenant on Civil and Political Rights defines our objective here. The Working Group has carefully and repeatedly examined this question and has determined that indigenous peoples are not "ethnic, religious or linguistic minorities". Let that be clear.

Our objective is the proclamation of standards which will prevent in the future the further erosion of our societies, our economies, our cultures. The Universal Declaration of Human Rights is proclaimed "as a common standard of achievement for all peoples and all nations." It must be observed "both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction." This the Member States have pledged themselves to achieve.