

FOUR DIRECTIONS COUNCIL

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
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STRENGTHENING THE WORKING GROUP'S STANDARD-SETTING ROLE

Greetings from the Grand Council of the Mikmaq Nation in North America, to the distinguished members of the Working Group, observer governments, indigenous representatives from the four continents, and to the nations with whom we have treaties of friendship and alliance--the Haudenosaunee, the United Kingdom, the United States, France, and the Holy See. Greetings especially to you, Mme Chair, from the officers and captains of the Grand Council.

As you know, we have spoken at every session of the Working Group since its establishment in 1982. We did not take the floor earlier in this session out of respect for the shortness of time and the great number of deserving indigenous speakers, many of whom had not previously had the opportunity we have enjoyed to address our concerns to the Working Group. This statement will be confined to what we consider the most challenging task before the Working Group--the development of basic universal norms which we believe, as Mr Turk suggested yesterday, will break new ground not only for indigenous peoples, but for the law of human rights generally.

We join with several previous speakers in commending you on the working paper contained in document 1988/25. The fact that some participants feel your text goes too far, and other, not far enough, is perhaps the best evidence that it is a judicious and balanced product, which can serve as the starting-point for our future deliberations. Of course, in adopting this working paper as the framework for the drafting of a declaration, neither the Working Group nor the observers are committed to any specific wording. It is customary here in the United Nations to begin a serious drafting exercise with a text proposed by a government or, in the Sub-Commission, an individual expert. Typically the final product--after some years of discussion and negotiation--is quite different from the original. With time and deliberation we can be more precise and close gaps. But to make progress we must agree on a point of departure and, in our view, the Working Group now has one.

While it is probably premature to discuss specific proposals to strengthen this text, we believe it is important to agree on how the Working Group will proceed to build on it. There is a great deal to digest here, and indigenous organizations as well as governments will want to give this document the most thorough consideration at home. We suggest that it be circulated as soon as possible, with a view toward having a very concrete, point-by-point discussion next year. Following that more focussed review, the Working Group could entrust its chairman-rapporteur to revise the text as a whole to reflect those proposals which enjoy wide

support and which, in the view of the members of the Working Group, can improve the draft. That will bring us much closer to a document we can send on for approval to the political levels of the United Nations.

An important related matter is the relationship between the declaration we are drafting and the convention which is now being revised by the I.L.O.

The I.L.O. convention and our work here should be seen as complementary rather than competitive. The I.L.O. convention, if adopted as planned next year, can provide a short-term, stop-gap minimum guarantee of rights for urgently-threatened indigenous peoples in many parts of the world. Because it will be prepared and implemented so quickly, however, the I.L.O. convention will necessarily be limited by the current political realities and resources of States. It can thus only serve as a jumping-off point for future developments in the law of indigenous rights.

By comparison, our draft declaration should be a programme of aspirations and goals for the next century. Realistically, it will take several more years for us to reach consensus on a text, and we should make use of that time to be more forward-looking and innovative.

In this regard, while we promised to reserve specific drafting proposals for next year, permit me to make an observation of a general nature on the legal character of our draft declaration. A distinction is drawn in several articles between individual and collective rights. We know some governments have philosophical difficulties with the idea of collective rights, perhaps because such rights imply that groupings other than the State itself have legal standing as subjects of international law. On the other hand we find that the African Charter, which recently came into force, is framed in terms of a complementarity of individual and collective rights. With this African perspective we fully agree.

It is fundamental to our work here to recognize that *all* indigenous rights have both a collective and individual aspect. It is through collective action--such as electing representatives to the national government or by exercising internal autonomy--that indigenous peoples can best promote the full development of all indigenous persons, as individuals. In exercising such collective rights however, peoples must also respect the freedom and dignity of individuals.

It is here that we will be breaking important new ground in the draft declaration, and in this regard we endorse the recommendation you have made, Mme Chair, in your new study on the status of the individual and contemporary international law (E/CN.4/Sub.2/1988/33), for further consideration of the legal personality of indigenous peoples.

Now we would like to turn to a few activities which we think will aid the Working Group in its standard-setting task.

First, we draw the Working Group's attention to two special United Nations meetings on indigenous rights which were recently approved: the seminar on economic and social relations between indigenous peoples and states, scheduled for April 1989, and the meeting of experts on forms of internal self-government, planned for the following year.

Both of these meetings will produce technical reports, which could prove extremely useful to the Working Group by supplementing the information on national experiences discussed here. For

these meetings to be productive and critical, however, they must involve balanced representation of governmental and indigenous experts. Unfortunately we understand that there is a possibility that only governments will be invited. This would deprive these meetings of credibility or utility, and we hope the Working Group will ask the Sub-Commission and Commission to insist on balanced participation.

Secondly, we note that the Commission has called for a world public information campaign on human rights, as a basic tool for implementing existing human rights instruments. The Commission has moreover repeatedly called for the widest possible dissemination of information about the work of this Working Group, but no special measures have yet been taken by the Secretariat. The fact is, that indigenous peoples are the least likely to enjoy access to even the most basic information about their human rights under existing instruments—much less information on what we are doing to develop new norms. How, within the limited resources of the United Nations, can we close this dangerous information gap?

We propose that the United Nations programme of advisory services in the field of human rights be directly accessible to indigenous communities, for field projects involving basic human rights education and training, and that, initially, the Voluntary Fund for Advisory Services accept contributions of professional educational services from non-governmental organizations for this purpose. Some clarification of the legal authority of the advisory services programme may be necessary, which the Sub-Commission and Commission would certainly consider if the Working Group so recommends. In the event this is possible, we and other members of the Four Directions Council are prepared to arrange for a substantial contribution of services to the Fund.

Our third recommendation in aid of standard-setting relates to the study of treaties. We reiterate what we said also year— that the study of past treaties will lead to an understanding of the role that future treaties and agreements could play in adjusting the political relations between indigenous peoples and states—and thus could form an important element of the implementation strategy for any declaration of indigenous rights. We hope our discussions tomorrow will provide a basis for proceeding with this study, which should not be longer delayed.

We hope the members of the Working Group will agree with us that balanced technical meetings, an indigenous subprogramme in advisory services, and completion of the treaty study, can add to the quality and effectiveness of our work.

In concluding, Mme Chair, we wish to endorse what others have said, that the time has come for a change in the name of this Working Group. Like the Sub-Commission's other working group—which last year changed its name—this body needs to reflect contemporary realities and sensitivities. While it may take many more years to work out the legal content of indigenous rights, we have the opportunity now to take a step for the self-esteem and dignity of indigenous peoples by using the name they choose for themselves.