

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities

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Working Group on Indigenous Populations
Fifth session
Geneva
3-7 August 1987
Item 5 of the provisional agenda

STANDARD-SETTING ACTIVITIES:
EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

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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.

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Norway

NORWAY

[Original: ENGLISH]
[6 July 1987]

Norway would like to express her satisfaction over the fact that the important efforts to ensure the rights of indigenous populations have made further decisive progress, as the Working Group has now presented a proposal for principles which can provide a basis for concrete discussions. In this connection it is gratifying to witness the broad and active participation of representatives of indigenous populations in the discussions on the substance of the principles. The establishment of the United Nations Voluntary Fund for Indigenous Populations is viewed as an important contribution to ensuring participation in the further efforts, and Norway has therefore actively supported and contributed to the Fund. In the light of the heavy and lasting pressure which indigenous populations are subject to in large parts of the world, it is absolutely necessary that the Group's work proceed according to plan, in spite of the economic cutbacks in the United Nations system.

In the efforts to protect the rights of indigenous populations, it is Norway's view that it is natural to take as a point of departure the need to preserve cultural identity. At the same time, as the members of these populations become more conscious of their background and heritage, there must be a reduction in the pressure towards cultural assimilation. It must be made clear that the cultures of indigenous populations are an inalienable part of the world's cultural heritage. Safeguarding the living conditions of these populations thus serves not only to protect their human rights, but also contributes to the cultural and social diversity necessary to the further development of mankind.

As evidenced in the above-mentioned viewpoints, the seven proposed principles presented by the Working Group in Annex II of its report from the fourth session (E/CN.4/Sub.2/1985/22) are an expression of the important rights which must be guaranteed for the indigenous populations. It may be noted that the Group's work has been based on consideration of the international instruments which already exist in this field, particularly the International Bill of Human Rights. Against this background it is important that, when formulating principles which express the rights of indigenous peoples, care is taken not to impair the protection which already exists. At the same time, an individual principle must not come into conflict with other fundamental rights as embodied in the International Bill of Human Rights.

Some of the decisions will necessarily seem like collective rights for the group. Protection of the group's existence is necessary in order to safeguard the individual's cultural rights, and is therefore a natural part of a declaration of this kind.

With a view to the right to education, the proposal of the Working Group appears to aim at genuine equality in the treatment of indigenous populations compared with other groups as regards education. This must be viewed as being extremely important when the goal is to give indigenous cultures the opportunity to endure and develop. Since the total resources available will vary considerably from State to State, we must consider whether it would be wise to place conditions on the distribution of these resources. Norway is of the opinion that an objective should also be included which deals with general education in the population's own language.

Norway is pleased that the Working Group has presented proposals which to a large extent seem to be generally applicable and which should lend themselves to winning universal support. With a view to future efforts as well, such a goal ought to result in a declaration which could actually improve the lives of indigenous populations.

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COMMISSION ON HUMAN RIGHTS

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Australia

AUSTRALIA

[Original: ENGLISH]
[17 July 1987]

UNITED NATIONS WORKING GROUP ON INDIGENOUS POPULATIONS: AUSTRALIAN
GOVERNMENT'S COMMENTS ON THE DRAFT PRINCIPLES

The Australian Government has consistently supported the activities of the Working Group on Indigenous Populations (WGIP) in reviewing developments relating to the promotion and protection of the human rights and fundamental freedoms of indigenous populations and in particular its role in the development of international standards concerning the rights of indigenous populations.

The Australian Government views the mandate of the Working Group to develop a set of standards on indigenous rights as being of particular interest. These standards should aim to harmonize with and build upon existing international instruments.

Australia welcomes the progress made on standard setting at the WGIP's Fourth Session in 1985 and its adoption of seven draft principles as contained in Annex II of its report. While Australia supports the overall thrust of the draft principles, there are some specific problems which arise in relation to certain terms and concepts they employ. Australia also notes the need for consistency in interpretation and suggests that the draft principles should be worded as closely as possible to the provisions of the international instruments on which they may be modelled. There is a need to include acknowledgement, in a number of the Principles, of the obligation to ensure that the practice of the rights they contain does not adversely influence the rights of others. There would be advantage in incorporating this in a preambular paragraph (whether in a Declaration or a Convention) which could also note that the rights involved should be consistent with international human rights instruments.

Australia provides the following specific comments on the seven draft principles developed at the Fourth Session of the WGIP.

Principle 1 confirms rights which are enshrined in existing international instruments including the United Nations Charter and the Universal Declaration of Human Rights. It is an underlying philosophy of the Australian Government that the Aboriginal and Torres Strait Islander people should have the same rights and obligations and enjoy the same standards of living as the wider Australian community. Therefore Australia could support this principle.

Principle 2 is also modelled on the language of major standard setting instruments which Australia has endorsed. However, the phrase "discrimination of any kind" would need to be clarified. It is presumably not intended to exclude programmes of positive discrimination for the advancement of indigenous populations. It is also presumed that discrimination of any kind on the ground of indigenous status is the target of this Principle. Australia would prefer that these points be expressly covered in Principle 2 and would propose: "adverse discrimination of any kind on the ground of indigenous status".

The language of Principle 3 is also drawn largely from the same instruments as Principle 2. The content of the collective right to exist may be difficult to determine. It may for example be more meaningful to express such a right as a right not to be deprived of collective existence by others, although such a right may be difficult to distinguish from the right to be protected against genocide. The use of the phrase "physical integrity" in this principle may also be unclear, since it is often used in a wide sense to cover all the rights referred to here. However, it is presumed that in this context it refers to freedom from torture and other physical ill-treatment.

Principle 4 follows closely the language of the same international instruments used in the previous principles. However, it introduces a right to "maintain, protect and have access to sites for these purposes". It should be noted that there is an equal obligation to ensure that the practice of any of the rights mentioned in the above principle does not infringe unduly upon the rights of others. Australia seeks to have legislation in place which will be fair and equitable, to take into account the concerns of a number of competing interests in land and resources.

In respect of Principle 5, the right to education appears in the Universal Declaration and the International Covenant on Civil and Political Rights. However, Principle 5 proposes the right to all forms of education, and a right of indigenous populations to be educated in their own languages and to have their own educational institutions. While the general objective of the principle could be supported, this would need to be reconciled with the need to uphold equality with the rest of the community.

The Australian Government encourages full access to Aboriginals and Torres Strait Islanders to all levels of education, and in a number of tradition-oriented Aboriginal communities has supported the establishment of bilingual education programmes. A number of independent Aboriginal schools have been established in Australia. These schools place heavy emphasis on community involvement and control and follow a curriculum which reflects traditional Aboriginal culture and teaching methods.

Principle 6 extends what is usually seen as a right to participate in cultural activities or enjoy one's own culture to a right to preserve a cultural identity and traditions. As in Principles 4 and 5, a reference such as "without prejudice to the rights and freedoms of others" is important and should be taken into account in the drafting of this Principle.

The Australian Government encourages the understanding by all Australians of the history and culture of Aboriginals and Torres Strait Islanders. The Government is also considering the report of the Australian Law Reform Commission on the recognition of Aboriginal Customary Law in the Australian legal system, which recommends that such customary law be recognized where possible. A significant trend among tradition-oriented Aboriginals in Australia during the past decade has been the voluntary movement from settled communities to their traditional tribal lands or "homelands".

Principle 7 expresses a right to seek, receive and impart information and ideas regardless of frontiers. It is within the rights set forth in the Universal Declaration and guaranteed in the International Covenant on Civil and Political Rights. The present wording could be supported, bearing in mind the obligation not to infringe upon the rights and freedoms of others.

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SPANISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
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Items 4 and 5 of the provisional agenda

REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION AND PROTECTION
OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS POPULATIONS

STANDARD-SETTING ACTIVITIES:
EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

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Introduction

1. In resolution 1982/34 of 7 May 1982, the Economic and Social Council authorized the Sub-Commission to establish annually a working group on indigenous populations to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually, and to give special attention to the evolution of standards concerning the rights of indigenous populations.
2. In resolution 1985/22 of 29 August 1985, the Sub-Commission requested the Secretary-General to circulate the Working Group's report and its annexes (E/CN.4/Sub.2/1985/22 and Add.1) to Governments, specialized agencies and United Nations bodies concerned, organizations of indigenous peoples and other interested non-governmental organizations for comments and suggestions, in anticipation of the fifth session of the Working Group.
3. In accordance with this resolution, appropriate communications requesting information, comments and suggestions were addressed by the Secretary-General to Governments and the organizations referred to.
4. By the same resolution, the Secretary-General was also requested to prepare an analytical compilation of the comments and suggestions received, and to make it available to members of the Working Group, Governments, organizations of indigenous peoples and other non-governmental organizations well in advance of the Working Group's fifth session. In this regard, the Secretary-General would like to point out that the very few substantive comments made did not afford the basis to prepare an analytical compilation thereof. The Secretary-General considered it appropriate, therefore, to compile the information received rather than to analyse it.
5. The present document contains replies received from Governments up to 20 April 1987. Additional replies, if any, will be included in addenda to this document.

BOLIVIA

[Original: Spanish]
[5 May 1986]

With reference to Economic and Social Council resolution 1982/34, entitled "Study of the problem of discrimination against indigenous populations", the Government of Bolivia states that it is in agreement with the Plan of Action, annex I, from 1986 onwards, the agenda for the fifth session and the list of preliminary priorities for the subsequent sessions of the Working Group. 1/

Regarding annex II and the matter of producing a draft declaration on indigenous rights, which may be proclaimed by the United Nations General Assembly in the near future, the Constitutional Government of Bolivia, in conformity with the Political Constitution of the State and other legislation, is in agreement with the seven paragraphs of the draft declaration.

[29 September 1986]

The Government has carefully studied the analytical compilation of existing legal instruments and proposed draft standards relating to indigenous rights prepared by the Secretariat in pursuance of paragraph 5 (c) of the resolution, 2/ and has found it to be a valuable contribution towards ensuring that indigenous populations enjoy all human rights and freedoms and do not suffer discrimination.

I thank you for sending this document, and in view of its importance I shall transmit it to the Government.

CZECHOSLOVAKIA

[Original: English]
[4 August 1986]

The Czechoslovak Socialist Republic appreciates the fact that the international community is concerned with the problems of indigenous populations bearing in mind both the collective and individual rights of those populations and the preservation of their identity in the present world. In view of the great variety of ethnic groups, it must be carefully considered which rules of international law could contribute to the successful solution of the given problem in the interests of the indigenous populations as well as in the world-wide interests.

The deliberations of experts dealing with problems of indigenous populations as well as discussions in the Working Group of the Sub-Commission on Prevention of Discrimination and Protection of Minorities up to now testify to differences in views not only on the solution of the given problem but there also continues to be a lack of unity with regard to the content of the term "indigenous peoples". Czechoslovakia is of the view that it would not be right to put a mark of equality between the terms "indigenous populations" and "minorities". "Indigenous populations" have their specific features as compared with the term "minorities", which must be taken into account in the preparation of any international document relating to "indigenous populations".

All the more difficult it is to look for a uniform pattern for the status of ethnic groups living in greatly varying economic, social and cultural conditions. Generally shared must be the effort to make use of the current international law in the interests of protecting people referred to as indigenous populations and possibly, to agree on additional international documents that would truly serve the interests of such ethnic groups.

In view of the mentioned differences in the economic, political, social and cultural situation of indigenous populations in different parts of the world, it is difficult to find the answer to the question of how to implement in practice the right of indigenous populations to self-determination and how far indigenous populations are subjects of international law. In principle, however, the answer must be an affirmative one because the right to self-determination is the basic prerequisite for an individual, member of an ethnic group, to realize his or her human rights. However, the exercise of the right to self-determination will in some cases require specific features in view of the given situation of a specific group of population, i.e. economic situation, historical development of the given group, its customs, traditions, culture, etc.

The Czechoslovak Socialist Republic is firmly convinced that the objective to be striven for is for the indigenous populations to enjoy gradually all the rights mentioned in the existing basic international documents relating to human rights and adopted on a universal level, i.e. notably the Universal Declaration of Human Rights and the two Covenants on Human Rights. The primary objective is for the indigenous populations truly to enjoy the rights stipulated in the said documents, which means to create conditions for the implementation of these rights.

In connection with the need for the implementation of the rights of indigenous populations and the frequently difficult economic situation of the respective countries it is of particular urgency, in view of the interests of indigenous populations, to strive for international co-operation in the spirit of the United Nations Charter in promoting and strengthening the human rights of indigenous populations. The solution of the complex and difficult conditions in which indigenous populations live would frequently require considerable financial outlays for the implementation of projects benefiting the indigenous population of a certain area.

With reservation of what was said above about the differences in the situation of indigenous populations in different parts of the world, the principles 1-7 stated in the draft Declaration, formulated by the Working Group and summed up in Annex II of the Report on the fourth session (E/CN.4/Sub.2/2985/22), can be considered a suitable basis for further deliberations. These principles are in keeping with the content of valid international documents on human rights adopted on a universal level.

Czechoslovakia is of the view that due account commensurate with the actual situation could be taken also of the principles stated in the Declaration adopted at the Fourth General Assembly of the World Council for Indigenous Populations in Panama in September 1984 (*ibid.* Annex III). Of importance for the protection of the rights of indigenous populations are, in particular, principles 9 and 10 which basically recall Article 1, of the Covenant on Civil and Political Rights and Article 1 of the Covenant on Economic, Social and Cultural Rights.

At the present time of scientific and technological progress with its immense results and implications not only for peaceful production but also in the field of military technology, it is necessary in the interests of indigenous populations to take into account the important task of protecting the environment of indigenous populations and their right to survive which is with ever growing urgency claimed by the whole of mankind and, consequently, also by indigenous populations.

PARAGUAY

[Original: Spanish]
[11 July 1986]

In this connection, may I inform you that Paraguay has given very serious consideration to this matter, and indeed promulgated a law in 1981 for the protection of such communities, the text of which is attached. 3/

QATAR

[Original: Arabic]
[28 May 1986]

The Government of the State of Qatar stated that no change had been made in the legislation of Qatar concerning this subject and that, accordingly, reference should be made to the report previously submitted. (E/CN.4/Sub.2/AC.4/1984/2, pp.17-20).

VENEZUELA

[Original: Spanish]
[7 August 1986]

In this connection, may I inform you that the report sent to you together with our note ... of 25 April 1984 4/ contains the views of the Government of Venezuela concerning resolution 1982/34.

However, since the new request for information refers in particular to the Plan of Action from 1986 onwards and the draft principles on indigenous rights, this Office is considering the new elements with a view to making any additional comments which are called for.

Notes

- 1/ E/CN.4/Sub.2/1985/22.
- 2/ Sub-Commission resolution 1985/22.
- 3/ Available for consultation in Secretariat files.
- 4/ E/CN.4/Sub.2/AC.4/1985/WP.1/Add.1, pp.4-19.