

SPECIAL MEETING OF THE WORKING GROUP TO  
PREPARE THE PROPOSED AMERICAN DECLARATION  
ON THE RIGHTS OF INDIGENOUS PEOPLES

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Comments by the Delegation of Canada on articles VII through XVIII and on  
the issue of self-determination in the Proposed American Declaration on  
the Rights of Indigenous Peoples

(Presented on Thursday, March 14, 2002)

## COMMENTS ON ARTICLE 7

### Right to cultural integrity

#### Talking Points:

The UNESCO Declaration on Cultural Diversity, adopted last fall, recognizes that cultural rights are an integral part of human rights, which are universal, indivisible and interdependent. Human rights are acknowledged as a critical tool for guaranteeing cultural diversity. The full implementation of cultural rights will enable cultural diversity to flourish. The UNESCO Declaration also noted the need for commitment to human and fundamental freedoms, in particular, the rights of indigenous peoples.

Canada recognizes that, as stated in the UNESCO Declaration, “culture should be regarded as the set of distinctive spiritual, material, intellectual and emotional features of a society or collectivity”. In our view, culture has both tangible and intangible elements. It encompasses art, literature, lifestyles, ways of living together, value systems, traditions and beliefs.

Through mechanisms such as international human rights instruments, and domestic instruments, such as Canada’s *Charter of Rights and Freedoms*, Canada and other countries have acknowledged their pluricultural heritage. The Canadian *Charter of Rights and Freedoms* includes an interpretive provision that requires that the *Charter of Rights and Freedoms* be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians. The Canadian *Charter of Rights and Freedoms* also contains a provision that the guarantee of certain rights and freedoms in the *Charter* shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights and freedoms that pertain to the Aboriginal peoples of Canada.

In the *Canadian Multiculturalism Act, 1985*, Canada adopted a multiculturalism policy that included: recognizing and promoting the understanding that multiculturalism reflects the cultural and racial diversity of Canadian society and acknowledges the freedom of all members of Canadian society to preserve, enhance and share their cultural heritage; that multiculturalism is a fundamental characteristic of the Canadian heritage and identity, and that it is an invaluable resource; and of promoting the full and equitable participation of individuals and communities of all origins, in the continuing evolution and shaping of all aspects of Canadian society.

It is within this framework of recognition and promotion of cultural rights that we are providing our comments on Section 3, Cultural Development.

The Juridical Committee, in its paper “Observations and Recommendations of the Inter-American Juridical Committee on the Proposed American Declaration on the Rights of Indigenous Peoples” published in January, 1999, in paragraph 3.2 noted that States are obliged to protect and guarantee any individual or collective rights. The Juridical Committee noted three types of obligations: first, the obligation of the State may have to do with results, that is the State may be responsible for guaranteeing a given result, and may be liable if such result is not effectively achieved; second, the State may have an obligation to act diligently and spare no reasonable efforts as the means of achieving an end, in which case if the end is not achieved, the state may not be liable if it has fully complied with the foregoing obligation; and third, in some instances the State may be obliged to

spare no reasonable efforts to find fair solutions when the existence of conflicting laws and interests do not allow the establishment, a priori, of drastic solutions.

### **Article 7(1)**

In relation to Article 7(1), we question the use of the term “right to their cultural integrity”, which is not a recognized right in international law. Furthermore, at international law where there is a right, there is a consequent obligation. The obligation flowing from a right to cultural integrity is unknown.

We would submit that “cultural integrity” is not a right in and of itself, but it is an objective, that other rights addressed within the Proposed Declaration are intended to promote –i.e. rights relating to language, religion, education, religious freedom and freedom of association. These are all rights that have the objective of promoting the cultural integrity of a group. Each of these rights carries obligations on states. If member states wish to retain the term “cultural integrity”, it should be stated as an objective, not a right.

### **Article 7(2)**

Canada is willing to consider further the Chair’s proposed text here. However, we understand the effect of Declarations to be prospective, and believe this could be more clearly expressed in this paragraph.

For example:

Indigenous peoples are entitled to the restitution of property that is part of that heritage, and of which they are wrongfully dispossessed, or when that is not possible, to fair compensation.

We note that cultural heritage is generally understood to have two elements, tangible and intangible heritage or property. Intangible cultural heritage, is described by UNESCO as including, inter alia, oral traditions, customs languages, music, dance, rituals, festivities, traditional medicine and pharmacopoeia, culinary arts and special skills connected with the material aspects of culture, such as tools and the habitat. Arguably the existing language is broad enough to include these intangible elements of culture. This should be carefully considered. What would be the obligation of states in such an instance?

If the intent is to restrict the application of this provision to tangible cultural heritage, this should be stated in the provision.

These issues are closely linked to the current discussions in UNESCO and WIPO on traditional knowledge and folklore, and with the provisions in this Proposed Declaration on customary laws, and intellectual property rights. Canada will come back to this language when we have benefited further from those discussions.

Canada recognizes that an equally important but quite different issue is that of past acts. With respect to past acts, Canada believes that states should make best efforts, in accordance with

applicable international and domestic law, to facilitate the return to indigenous people of their cultural property.

### **Article 7(3)**

Canada believes that clarification of the objective of this paragraph is necessary, and hence examination of the terms "recognize" and "respect" is required in the context of this article. We note that the Juridical Committee in its analysis called for clarification of the legal scope of these terms. It is important that this be done.

## **COMMENTS ON ARTICLE 8**

### **Concepts and language**

#### **Article 8(1)**

Canada notes the improvements in the text to Article 8(1) offered by the Chair. This language reflects the existing right at international law, that is the right not to be denied the right to use one's language rather than a right to a language. We understand that the collective right to use language is part of the means of maintaining the objective of cultural integrity.

#### **Article 8(2)**

Canada believes that it is important for indigenous culture and languages to be reflected in public media, and from a policy perspective in Canada the "effective measures" called for are essentially in place. However, an obligation to ensure the broadcasting of radio and television programs in indigenous languages, and to "support" the creation of indigenous radio stations and other media could place a substantial burden on states, particularly where there are many indigenous languages, if "financial support" is intended.

We query whether support would also mean incentives, quicker regulatory approvals etc.

We appreciate the effort of the chair and find his language an improvement over the original text, however we think the term "support" may need to be clarified.

#### **Article 8(3)**

Canada supports the principle that indigenous individuals may rely on the use of interpretation, or other appropriate means, to enable them to understand and be understood in political, legal and administrative procedures. We note that Article 14 of the *International Covenant on Civil and Political Rights* obliges states to provide interpretation to individuals for criminal proceedings. Currently this paragraph goes well beyond Article 14, and the practical and policy implications must be carefully examined.

If the "effective measures" referred to here include translation of all administrative, legal and political rules, it would prove problematic in those countries with many indigenous languages

(Canada has more than 52).

With respect to the obligation on states to have indigenous languages established as official languages in places where such languages are predominate, under Canadian law status as a national official language carries a number of obligations relating to translation, labeling all products in the official languages etc. Our understanding of this requirement would pose serious financial and practical problems for states which have numerous indigenous languages and legal consequences that flow from official language status.

Rather than using a term that may have consequence in some states, we would suggest identification of the purpose. What is the actual objective sought, what is the obligation of the state? Must states recognize a right to use, promote, and maintain indigenous languages? Are there obligations on states to actively support this; or to achieve certain benefits?

#### **Article 8(4)**

Canada supports the use of indigenous names by indigenous peoples. Clarification is required with respect to what is required for a state to "recognize" such names.

### **COMMENTS ON ARTICLE 9**

#### **Education**

Education is a subject where it is important to recognize the rights of individuals to an education. This has been the long-standing approach in international human rights law, as evidenced by Article 13 of the International Covenant on Economic, Social and Cultural Rights. Canada proposes that Article 9 begin with an expression of a right to education for indigenous individuals, with special reference to indigenous children, as follows:

Indigenous individuals, particularly children, have the right to all levels and forms of education of the State on the same basis as other members of the society.

The collective role of indigenous peoples is recognized in many arrangements within Canada, such as policies for indigenous education, legislation establishing indigenous education authorities, and self-government arrangements. Canada continues to support the principle that indigenous peoples should have the ability to conduct their education systems in their own languages and incorporate indigenous content.

Nevertheless, we need to take account of international and domestic obligations concerning minimum standards for education which need to be respected. Canada is pleased to note that the proposed text of the Chair moves in this direction. In many States, such education standards are established at the sub-national level and this should be understood in interpreting the text. In addition, we remain unsure of the meaning of the phrase: "equal education and teaching opportunities for the general population."

Canada will consider the Chair's proposed text for Article 9(3) since it promotes broader

understanding of indigenous cultures within the education system. It also provides a reasonable standard for the education of indigenous children living outside their communities.

Canada could support the Chair's proposal for Article 9(4). The manner in which the Proposed Declaration addresses the issue of resources in this context and others will need to be considered further.

## **COMMENTS ON ARTICLE 10**

### **Spiritual and religious freedom**

#### **Article 10(2)**

Canadian law protects freedom of religion and freedom from religion. There are also criminal laws that address kidnapping, and civil remedies for certain acts that might be captured here.

We understand this paragraph might be intended, however, to require states to adopt criminal laws prohibiting the acts addressed here. This would be problematic for Canada. Perhaps other language can be used to achieve the objective, rather than use of the term "prohibit".

#### **Article 10(3)**

In Article 10(3), Canada generally supports the language proposed by the Chair, which more clearly states the objectives of the Article, and the consequent duties of states.

#### **Article 10(4)**

In Article 10(4) of the Chair's proposed text, we suggest the onus on states should be to "promote" rather than "ensure".

## **COMMENTS ON ARTICLE 11**

### **Family relations and family ties**

#### **Article 11(1)**

Canada supports the statement on the important role played by the family in indigenous societies. We consider, however, that the scope of this paragraph requires some clarification, in particular, the content of the state obligation to "recognize" and "respect" indigenous family structures, marriages, family names and filiation.

#### **Article 11(2)**

In considering matters relating to the adoption of children, reliance must be placed on Article 3 of the Convention on the Rights of the Child, which provides that in all actions concerning children, the best interests of the child shall be a primary consideration. In the context of Article 11(2), regarding the determination of the best interests of the child in matters relating to the adoption of indigenous

children, Canada agrees that consideration should be given to the views of the appropriate indigenous community, particularly the child's family.

## **COMMENTS ON ARTICLE 12**

### **Health and well-being**

Canada is of the view that it is important to recognize the rights of all individuals, indigenous or otherwise, to the highest attainable standards of physical and mental health. Canada also supports the principle that indigenous individuals should have access to health care services on the same basis as other members of the general population.

Canada therefore proposes the addition of a new Article 12(1), which would incorporate what is now the latter portion of Article 12(3), as follows:

Indigenous individuals have the right to access health institutions and services and medical care on the same basis as other members of the general population.

Canada supports the recognition of the importance of traditional health practices to indigenous peoples, noting, however, that this must be subject to public safety and to the protection of the best interests of the child and other vulnerable persons.

At present, the current paragraphs 1 and 2 of Article 12 are rather broad and difficult to implement. In the original text of Article 12(1) clarification is required as to the meaning of "legal recognition" of traditional medicines. It is unclear whether this is meant to include protection under intellectual property regimes, a requirement for special legislation, or if it is understood to be a "right to use"?

The Chair's proposed paragraph 2 goes some distance towards rectifying this, although we note that "traditional territories" is an undefined term.

Canada supports the right of every individual to the enjoyment of the highest attainable standard of physical and mental health, to be achieved in a flexible and progressive manner.

Canada supports the principle that, where health care conditions in indigenous communities fall below the standards accepted for the general population that measures must be taken to elevate these standards so that they meet the accepted norms for the general population.

## **COMMENTS ON ARTICLE 13**

### **The right to environmental protection**

#### **Talking points:**

Canada recognizes the importance of the subject matter addressed in this provision to indigenous peoples, in light of the close link between environment and culture for indigenous peoples.

In general, Canada will wish to revisit this Article after a common understanding has been reached about the meaning of the terms “lands”, “territories”, “indigenous areas” “conservation area”, “protected area” and “resources”. As well, it will be important to revisit this Article after we have discussed other Articles that address land rights, to ensure consistency and complementarity between the provisions.

#### **Article 13(1)**

There is not a “right to a safe and healthy environment” recognized in international law. However, a number of environmental considerations are addressed by fundamental human rights such as: the right to life; the right to an adequate standard of living including adequate food, clothing and housing, and the continuous improvement of living conditions; and the right to the enjoyment of the highest attainable level of physical and mental health.

Recently, pursuant to CHR resolution 2001/111, a seminar of experts was held in Geneva to “review and assess progress achieved” since the Rio Summit in “promoting and protecting human rights in relation to environmental questions and in the framework of Agenda 21”. We think it necessary to further our understanding of such linkages. We are not convinced that it is advisable to consider the creation of a new stand-alone human right on the environment. This would raise complex issues which we believe require further and careful consideration. The work being done in other international fora will need to be taken account of in our deliberations on this Proposed Declaration.

#### **Article 13(2)**

Indigenous individuals and collectivities should have access, equal to that of others, to information about actions and decisions affecting the environment to facilitate their effective participation in those actions and policies. As well, under Canadian law indigenous communities have a right to be consulted in the development of actions, programs and policies that will infringe their constitutionally recognized aboriginal and treaty rights.

#### **Article 13(3)**

Indigenous peoples should be entitled to take measures to conserve, restore and protect their environment and the productive capacity of their lands and resources, consistent with international law and applicable national environmental standards. Article 18(3) covers similar subject-matter and should be considered with this article.

#### **Article 13(4)**

Canada supports the principle that indigenous peoples should be involved in the development of government policies and programs specifically directed at the conservation of their lands, and to participate in the delivery of those policies and programs.

**Article 13(5)**

Canada agrees that indigenous peoples should be entitled to appropriate and available assistance from states for environmental protection, on the same basis as other members of the national community.

**Article 13(6)**

Canada agrees that the storage or disposal of radioactive or other hazardous materials in contravention of legislation or regulation, or without the prior and informed consent of the indigenous peoples affected should be prohibited.

**Article 13(7)**

Canada supports, in general, the principle of this paragraph that conservation areas over which indigenous peoples have title shall not be subject to any natural resource development without the appropriate participation of the peoples concerned. However, in the case of lands and territories claimed by indigenous peoples (or in which they may potentially claim an interest) we are concerned that the wording of this paragraph may give indigenous peoples a veto over development, which Canada does not support.

Although we cannot agree with a veto, our policy is to take into account their views and interests in the assessment of proposed natural resource development. Furthermore, we suggest that what is required is language in the Proposed Declaration that calls for effective domestic processes to address unresolved claims in a timely fashion.

**COMMENTS ON ARTICLE 14**

**The rights of association, assembly, freedom of expression and freedom of thought**

**Article 14(1)**

Canada notes the proposal of the Chair to change the term “pursuant to” with “according to” has clarified the text. Canada supports the internationally recognized right to “freedom of association, and expression, and the right to peaceful assembly”.

**Article 14(2)**

Canada welcomes the proposal of the Chair on this paragraph. No rights are absolute, and sometimes it is necessary to clearly state that a specific right must be exercised in a manner that respects the rights of others. The reference to third party rights reflects the reality in our country, and we welcome its addition.

While many states, such as Canada, wish to facilitate cross border contact between indigenous people of the same community or nation living on two sides of an international border, the reality is that border restrictions and controls are a necessary part of our lives. Reflecting this in the Proposed

Declaration is a useful reflection of considerations that affect us all.

## **COMMENTS ON ARTICLE 15**

### **The right to self-government**

#### **Article 15(1)**

In Canada's view, Article 15 is one of the core articles in the Proposed Declaration. This Article is an enumeration of many of the elements necessary for effective self-government by indigenous communities. If such a right is combined with recognition of a right of self-determination for indigenous peoples, the two will be read together and will be the lens through which we examine the entire Proposed Declaration.

Domestically, the Government of Canada recognizes the inherent right of self-government of indigenous peoples. Recognition of the inherent right is based on the view that the indigenous peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and their resources.

Canada notes that the exercise of self-government must be harmonized with the exercise of jurisdiction by other levels of government within that state. In certain areas, for example environmental standards, the harmonization of these policies and practices is especially important. Therefore, the exercise of self-government should be accomplished through negotiations between the appropriate level of government and indigenous communities.

#### **Article 15(2)**

This paragraph essentially addressed three issues: participation in decision-making, means of participation, and the establishment of indigenous decision-making institutions.

In relation to the first, Canada supports the principle that indigenous individuals have the right to participate in the general political processes of the state in which they live without discrimination, consistent with international standards. As well, there may be special arrangements to allow participation in decisions of the state which directly affect certain areas of specific concern to indigenous peoples. Canada supports the role of the collective in this context.

In relation to means of participation, Canada supports participation without discrimination in the democratic process. As well, we recognize that indigenous peoples may select representatives in accordance with traditional practices for their purposes.

In relation to indigenous decision-making institutions, Canada recognizes that indigenous peoples may develop their own decision-making institutions in accordance with general human rights principles.

## **COMMENTS ON ARTICLE 16**

### **Indigenous law**

#### **Article 16**

Article 16 raises significant issues for us. We also note these paragraphs are closely linked to Article 15 and the right of self-government.

Within the context of negotiated self-government agreements applying to a defined geographic territory, Canada supports the negotiation of jurisdictions and law-making powers and administration and enforcement of indigenous laws.

A very critical issue, however, is the relationship of laws. In other words, the question of which law will take priority in the event of a conflict between an indigenous law, and a law of the state. In the Canadian experience, this can vary depending on the subject matter of the laws in question. In the event of a conflict between indigenous laws and national laws, in some instances the indigenous laws will prevail, and in other cases the laws of the state will prevail. It is Canada's practical experience in these areas, which make us seek greater clarity when such rights are stated in a fairly general manner.

It is unclear as to what is included in the term "indigenous laws". Is it restricted to laws passed by indigenous communities or does it include customary indigenous law - ie a custom, practice or tradition?

Canada does not support a separate legal system for indigenous peoples as this would be contrary to the right of all persons to be equal before the courts and tribunals and would be contrary to Article 14 of the ICCPR.

## **COMMENTS ON ARTICLE 17**

### **National incorporation of indigenous legal and organizational systems**

#### **Article 17(1)**

Canada supports the objective that indigenous values be reflected, with the values of other citizens of the states, in the development of national organizational structures.

#### **Article 17(2)**

Canada agrees that states should endeavor to reflect and reinforce the indigenous identity, culture and organization in state institutions designed specifically to serve indigenous people or that operate in areas or in communities that are predominantly indigenous. The intent should be the progressive realization of this objective.

## **COMMENTS ON ARTICLE 18**

### **Traditional forms of ownership and cultural survival** **Rights to land, territories and resources**

For Canada, it is imperative that terms such as “lands” and “territories” be defined. This is necessary because of the central importance of land to indigenous peoples, and the need for states to have clarity with regard to the extent of their obligations in relation to the lands and natural resources of indigenous peoples.

As in past meetings of the Special Working Group, Canada proposes the following definitions:

“Lands” are understood to mean those areas of land, which indigenous peoples may own or have exclusive use of.

“Territories” are understood to be those areas which indigenous peoples do not own and do not have exclusive use of, but where they may conduct their traditional lifestyles, in accordance with domestic law or agreement.

In relation to the text of Article 18, Canada thinks the proposals of the Chair do a good job of clarifying and focusing some very complex concepts. Therefore, our comments refer to the proposals of the Chair.

#### **Article 18(1)**

We understand Article 18(1) addresses the issues of indigenous collective ownership of lands, and indigenous land tenure. Canada recognizes the collective ownership of land by indigenous peoples, and the role of the collectivity in allocating lands, and in determining land use and land tenure. We believe, however, that the full exercise of such rights apply to the lands of indigenous peoples rather than the territories of indigenous peoples, over which their rights may be more limited.

Rights to control and enjoy lands or territories may also be subject to certain state and international regulation, for example, those, which relate to environmental protection. This is necessary if states are to fulfill international obligations relating to improving environmental protection standards.

It is Canada’s understanding that “property” refers to real property, that is, land, and does not include personal property.

#### **Article 18(2)**

Article 18(2) is very broad and would appear to apply to all lands and territories in Canada that were occupied by indigenous peoples in the past without taking account of historical or modern treaties or agreements entered into to enable indigenous peoples, governments and third parties to have certainty regarding land rights and development.

Canada believes that, in general, provisions relating to lands and territories should set out general principles that will guide future action, but be flexible enough to allow for negotiated agreements

between indigenous peoples and states. Canada is committed to resolving outstanding domestic claims issues through an effective negotiation process. As well, of course, indigenous peoples have access to domestic courts to address unresolved claims.

Canada supports the principle that indigenous peoples have a right to recognition of their property and ownership rights in relation to lands they own or occupy to the exclusion of others or which have been set aside for their exclusive use. As well, Canada recognizes that indigenous peoples may have rights to use territories, to which they have historically had access for their traditional activities and livelihood, in accordance with domestic laws. As noted earlier, aboriginal and treaty rights, which often include rights to hunt and fish or gather on territories which they do not own or have exclusive use of, are recognized within Canada's constitution.

We note that, with other provisions of this Proposed Declaration, the attribution of ownership or use of property in accordance with customs, traditions, uses and traditional practices of indigenous peoples may be subject to international human rights standards.

#### **Article 18(3)**

It is Canada's view that Article 18(3) should refer to lands over which indigenous peoples now have property and user rights recognized under domestic law. Canada's constitutional protection of existing aboriginal and treaty rights achieves the objective sought here. Even these constitutional rights are not absolute, however, and there may be justifiable infringement for conservation and resource management purposes, after consultation with affected indigenous communities.

#### **Article 18(4)**

Where states retain ownership of minerals or subsurface resources on lands owned by indigenous communities or set aside for their exclusive use, Canada agrees there should be a fair process established to consider whether exploiting those resources would adversely impact on indigenous lands and traditional activities.

Affected indigenous communities should be involved in any such process, and their views should be taken into account. In some land claims settlements, arrangements have been established for the co-management of sub-surface resources.

Where it is determined there will be a negative impact, indigenous communities should receive just compensation, in accordance with applicable domestic laws.

Canada thinks that states and developers should make best efforts to ensure indigenous communities have the opportunity to participate in the benefits of resource exploitation.

#### **Article 18(5)**

Canada supports the principle expressed in this Article 18(5). In the interest of continuity between different international processes relating to indigenous rights, however, we suggest the following wording which has also been discussed in the context of the United Nations Working Group on the *Draft Declaration on the Rights of Indigenous Peoples*:

Indigenous peoples and individuals shall not be arbitrarily removed from their lands. No relocation shall take place, except on at least the same basis as applies to other members of the national community, after consultation, and on the basis of just and fair compensation and shall take place, where possible, with the option of return.

Our understanding is that this paragraph would not preclude removal in emergency situations, such as natural disasters.

This wording addresses the need for appropriate procedures and the possibility of compensation other than land, in consultation with the indigenous community.

**Former paragraph dealing with “restitution”**

Canada supports the elimination of this paragraph, as per the Chair’s proposal, given our commitment to the fair resolution of land claims through a process of modern day treaty-making.

**Article 18(6)**

Canada supports that indigenous peoples should have access to civil remedies for trespass and adverse possession. In our view, this legal protection is adequate, and states do not need to adopt criminal sanctions. In addition, Canadian law prevents the surrender of reserve lands and lands under aboriginal title to anyone but the Crown.

**CANADA’S POSITION ON SELF-DETERMINATION  
IN THE PROPOSED AMERICAN DECLARATION ON THE RIGHTS OF INDIGENOUS  
PEOPLES**

Canada supports the inclusion of an Article on the right of self-determination in the United Nations and American Declarations on the Rights of Indigenous Peoples. In the context of the Working Groups at the United Nations and here at the Organization of American States, our goal will be to develop a common understanding, consistent with evolving international law, of how this right is to apply to indigenous collectivities, and what the content of the right to self-determination includes. Once achieved, this common understanding will have to be reflected in both Declarations.

In Canada’s view, the source of a right of self-determination that would be included in both Declarations is common Article 1 of the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights. A definition of self-determination, and the scope and content of that right, cannot be developed to be applicable only for indigenous peoples of the Americas. However, implementation of the right must take account of the situation in each state, recognizing common elements.

As a state party to the UN Charter and the Covenants, Canada is legally and morally committed to the observance and protection of the right of self-determination, enshrined in the Charter, and common Article 1 of the Covenants.

Canada recognizes that this right applies equally to all collectivities, indigenous and non-indigenous, that qualify as peoples under international law.

International law regarding the right to self-determination is evolving. The right can perhaps be understood if it is seen as a right on a continuum. Rather than as an absolute right, it is one that is context dependent.

On this basis, the right of self-determination for an indigenous people, in a democratic state, would include an “internal right” of self-determination, which would enable them to exercise control over aspects of their lives, as an indigenous peoples. As well, individuals could participate in the right of self-determination exercised by the nation state (e.g. Canada), on an equal basis with other citizens of that state.

The following is a Canadian attempt, for the purpose of both the UN and the OAS Working Groups, to outline how the right of self-determination could be implemented by indigenous collectivities living within states having a government representative of the whole people belonging to the territory without distinction as to race, creed or colour:

- This right of self-determination respects the political, constitutional, and territorial integrity of democratic states;
- Exercise of the right involves negotiations between states and the various indigenous peoples within those states on the means of pursuing the political, economic, social and cultural development of the indigenous peoples involved;
- These negotiations must reflect the jurisdictions and competence of existing governments and must take account of different needs, circumstances and aspirations of the indigenous peoples involved;
- This right of self-determination is intended to promote harmonious arrangements for indigenous self-government within sovereign and independent states; and;
- Consistent with international law, the right shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states, conducting themselves in compliance with the principle of equal rights and self-determination of peoples, and thus possessed of a government representative of the whole people belonging to the territory, without distinction as to race, creed or colour.