Commission on Human Rights
Sub-Commission on Prevention of
Discrimination and Protection
Minorities
Working Group on Indigenous Peoples
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Item 9
Sharon Venne

WGIP 98/NAM.CAN/23

Agenda item 9 - Working paper on Indigenous Peoples and their relationship to land

~~Oral statement~~ by Sharon H. Venne - Joseph Bighead Cree, Valley River First Nation, Akaitcho Territory Government, Deh Cho First Nations and Hupacasath First Nation

Madam Daes: I would like to briefly address your working paper on land. You have correctly pointed out that Eurocentrism continues to be evident in legal theory. I would like to draw your attention to two related developments in this matter. In December 1996, the Supreme Court of Canada handed down a decision known as the Gitskan case. Without going into too many details about the case, it started out as a case related to the ownership of lands within the Gitskan and Wetsuntun areas of British Columbia. There are no treaties in these areas. By the time the case reached the Supreme Court of Canada, the issue was aboriginal title. I have to draw your attention to the fact that aboriginal title is not Indigenous title. Aboriginal title is at the pleasure of the Crown. In the recent case, the Supreme Court of Canada said that our land rights crystallized in the Crown at the time of contact. Madam Daes, this is completely contrary to international legal principles related to rights of Indigenous Peoples as determined by the International Court of Justice in the Western Sahara and other cases. It is completely contrary to the Commonwealth and British legal system which underpins the colonial state of Canada. Madam Daes, our rights were crystallized in the Crown is a perversion of the doctrine of discovery. Whereas the doctrine of discovery was meant to apply between European powers in their colonial period, the colonial courts have determined that the doctrine will apply to Indigenous lands and territories without our consent. With this kind of attitude, it makes it very difficult for Indigenous Peoples to engage in constructive dialogue with states. If they are claiming our lands, what is the legal basis? In your conclusions, you wrote that states cannot freeze Indigenous Peoples in time. Madam Chair, we are not merely frozen we are crystallized.

In a related matter, the issue of extinguishment must be dealt with. Various states including Canada and Australia have taken to using the word: certainty in relation to our lands. Madam Daes, certainty is just another word for extinguishment. State governments are still expecting Indigenous Peoples to relinquish our rights to our lands. Indigenous Peoples have been pushing in the state of Canada to have this word removed from the policies. Canada continues to have the word in its official policy but has been it says moving towards the word certainty. But on careful analysis of the word and its application, it is extinguishment. So, Madam Daes, various Indigenous Peoples have attempted to find solutions to this difficulty. We are prepared to share with you the various options that have been proposed and perhaps your future work will include such alternatives. In that regard, Madam Daes, the Deh Cho Peoples have asked me to extend an invitation to you to visit their 200,000 square mile territory in the northern part of Canada where the Deh Cho Peoples are the major of the Peoples within their territory. They are opposed to the concept of extinguishment and have made several attempts to place alternatives before the state of Canada.

Thank-you

31 July 1998

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