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# International Indian Treaty Council (IITC)

A Statement of Concerns of the Chiefs of Alberta  
to be Conveyed to the United Nations Sub-Commission  
on Prevention of Discrimination and Protection of Minorities  
Working Group of Indigenous Populations  
August 9 - 13, 1982  
GENEVA, SWITZERLAND

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In summary, the concerns of the Chiefs of Alberta include:

1. That the Chiefs of Alberta desire that Indigenous Peoples be recognized as a group and that the terms of the International Covenant on the Rights of Indigenous Peoples will not disunite. That the issue that unites all Indigenous Peoples be a source of strength in overcoming division of opinion to prevent undermining common goals.
2. That the Working Group determine and promote procedures which will aid Indigenous populations in attaining de facto equality in their respective homelands. That those procedures support the diverse cultural and traditional values but at the same time aid in attaining unity.
3. That the efforts of groups pursuing prevention of violations, such as exploitation, aggression, and humiliation of Indigenous Peoples, unite to attain greater strength and voice in seeking to establish an international procedure for adjudicating and ensuing fulfillment of the Rights stated in the Covenant.
4. That the Working Group strive to facilitate recognition and adoption of common principles which create moral support, understanding and respect which is required if intersupportive needs are to be met. International unity of indigenous efforts does not require homogeneity consequently the guiding principles are expected to be wide in scope.
5. It is however, the concern of the Chiefs of Alberta that the efforts of the Working Group be wide in scope, without prejudice to the efforts of organizations, groups or peoples whose efforts do not encompass global indigenous concerns.
6. It is also the concern of the Chiefs of Alberta that large groups funded by the Federal Government not be among those recognized, that only those recognized by the Indigenous Community be within the meaning of Article 6 of the Covenant, be given recognition.
7. It is the concern of the Chiefs of Alberta that the Working Group promote a wide definition of Indigenous Peoples and Groups so as to accommodate the common goals of Indigenous Peoples throughout the world. For example, in Brazil, Indians are minors at law; in Columbia,

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Indians are categorized into three groups and in Canada, there exists approximately thirteen categories into which an Indigenous Person might be designated. It is the concern of the Chiefs of Alberta that such artificially imposed categories be overcome in order that Indigenous Peoples can bind together in a common effort to satisfy their particular needs including social, economic and political development. That artificial division of Indigenous Peoples into categories must be ignored and mutual concerns be centred on in order to present those common goals in one united front. Such singular efforts cannot help but effect attitude and political efforts.

8. It is therefore the desire of the Chiefs of Alberta that the issues of concern promoted by this organization not be to the detriment of other indigenous groups. Regional concerns are therefore to be put forward in an international context. Because the member states of the United Nations may prevent enquiry into violations by claiming an issue is merely domestic in nature, this essential weakness of the existing International Rights Covenant must be overcome. It is consequently the desire of the Chiefs of Alberta that attention be directed toward existing procedures and that alternative procedures to obtain an international voice be investigated and set out in a step by step format for the information and use of organizations of groups and individuals.

9. In addition, it is the desire of the Chiefs of Alberta that the Working Group investigate the existing Civil and Political Rights Protocol to determine whether that forum has demonstrated impact on governments in violation of human rights. For example, has their investigation and finding with regard to section 12(1)(b) of the Indian Act, Revised Statutes of Canada, Chap. 1-5, 1970 resulted in any changes in legislation, policy or public attitudes? Has the adverse publicity about the Canadian Government been sufficient to overcome the United Nations Human Rights Commission's inability to sanction signatories to that protocol?

10. It is also the concern of the Chiefs of Alberta that the two major human rights covenants took twenty-two years to be brought into force and their basic enforcement is annual reports submitted to the United Nations, demonstrating how law is being brought into conformity with the principles.

11. The Working Groups is therefore asked to consider and report on the following concerns:

- (1) Treaties and other agreements signed between the Indian Nations and the British and Canadian

Governments have been abrogated in whole or in part by judicial pronouncements and municipal legislation, resulting in the denial of land, resources and the basic means of subsistence, and the denial of the inalienable right to conserve, determine and put into place in their respective territories the laws, rights, obligations and judicial categories inspired by their traditions. International laws and principles must apply to these agreements to safeguard the aboriginal rights of the Indigenous Peoples.<sup>1</sup>

Treaties have been abrogated by domestic Courts to the point of non-existence - "mere promises and agreements"<sup>2</sup>;

- (2) Canadian Indigenous Peoples being left out of the Constitutional forum when patriation of the British North America Act was considered;<sup>3&4</sup> The Principles of "classical" International law existing at the time the British and French colonisers arrived in Canada and first dealt with the Indian Nation, as reinterpreted and reapplied in the light of more contemporary International law doctrine, including the concept of Inter-temporal law as authoritatively developed by the World Court in its recent jurisprudence and also the "new" International law and especially the new, Imperative Principles (*jus cogens*) that have emerged since World War II applied to municipal (constitutional) law in Canada establish the right of the Indian People to take part, on a basis of full equality with all other participants, in any constituent process directed towards innovation of the British North America Act of 1867. They also confirm the right of the Indian People to be recognized, in any new or revised Canadian Constitution, as a Founding Nation on a basis not legally inferior to that of other claimed Founding Nation on a basis not legally inferior to that of other claimed Founding Nations, and with the appropriate institutional and other substantive legal consequences flowing from that status.<sup>5</sup>

As sovereign units of governance, Native Nations and Republics or Pueblos possess the inherent right of refusing any incorporation or of being authentically represented as a self-governing unit where their territory has been included in the area claimed by a state apparatus. In other words, a constitution and government cannot be imposed on Indian People without authentic participation and the right of refusal to be incorporated involuntarily is a precondition.<sup>6</sup>

The Canadian Charter of Rights and Freedoms passed by the Canadian and United Kingdom parliaments is in derogation of their International law responsibility and without the consent of the Aboriginal Nations, and moreover, is inconsistent with the International Civil and Political Rights Covenant,<sup>7</sup> among the issues are:

(i) The Insecurity of Indian Land Tenure whether in form of habitual settlement, license or ownership. Section 25 of the Charter of Rights does not protect Indian land from possible measures under Sections 49 and 50.

(ii) Rights and Privileges of the use of Indian Languages in Education is not secured by Section 22 of the Charter of Rights, as are granted to the English and French languages. Inconsistent with Article 27 of the covenant.

(iii) The Competence of the Legislatures. Federal or Provincial Governments under Section 33 to enact statutes, which may be expressly declared to be operative even though contrary to Section 2, 7 and 15, or 28 of the Charter, is a limitation upon it, directly contrary to Article 2(2) of the Covenant.

(iv) Legislation under Section 33 could affect the Mobility Right of Indians by extending restrictions upon them and Section 6(3) is discriminating and contrary to Articles 12(1) and 27 of the covenant.

(v) The word "Existing" in Section 35 gives Indian People uncertainty over the extent of their Rights, also their limited participation in a Constitutional Conference which is to define and identify their Rights.<sup>8</sup>

(3) A trust responsibility exists and the Crown in Right of Canada is obligated to fulfill in consequence of the special relationship which exists with the Indigenous Peoples of Canada. Unresolved questions as to the extent, nature and adequacy of the trust responsibility, exists, and result in the inability of Indigenous Nations to protect Indigenous Rights against Government and private interests in litigation. In addition, there are outstanding questions on the trust responsibility of the Department of Indian Affairs in relation to assets controlled by them and a conflict of interest within the Federal Government. For these reasons, Indigenous Peoples should have access to the Decolonization Committee.

(4) Determination of the issue of membership, whether Indigenous Groups or Peoples inability to control same is a violation of their rights. In the recent decision of the Human Rights Commission of Lovelace,<sup>9</sup> there is support for the idea that decisions on membership should be left to the band or tribe, and not some external system such as the Indian Act.<sup>10</sup>

12. That the Working Group consider challenging and obtaining a judgment regarding the matter of customary law as first recognized in Connelly vs. Woolrich and more recently in family law decisions in the Northwest Territories because of the implications regarding sovereignty of Indigenous People which arise from these Judgments.

13. However, in the event that Indigenous Peoples continue to be not recognized by the United Nations as a peoples with their homelands, and support cannot be obtained for a separate covenant and procedures to obtain international voice, the United Nations Covenant on Civil and Political Rights as well as Economic and Social Development and the Covenant on the Elimination of all Forms of Racial Discrimination appear to be the remaining United Nations avenues currently available. This being so, the Working Group may wish to consider putting forward amendments to those Covenants in order that Indigenous Peoples rights are specifically protected within those existing Covenants. For example, the term "special measures" in the Elimination of Discrimination Covenant be defined to the satisfaction of the parties.

14. The Commission on Indigenous Rights be mandated in emergency situations to examine on site the violations of the Rights of Indigenous Peoples, and that sessions be held in the geographical area concerned, other than Geneva.

1. Petition and Bill of Particulars on the Political Standing of the Indigenous Tribes and Bands under the protection of the British Government in the face of Impending Canadian Independence to the Secretary General of the United Nations by Indian Nations in Canada, December, 1980.
2. Treaty Law in Canada. A. Jacomy-Millette. University of Ottawa Press. 1975. pp. 256-8, 278-9, 283-4.
3. The Canadian Constitution and the Land Rights of the Indigenous People of Canada. NGO Conference, Geneva, Switzerland September 14-16, 1981. Indian Association of Alberta.
4. Press Statement, issued by the Indian Chiefs of Alberta. Commonwealth Heads of Government Meeting, Melbourne, Australia.
5. Participation in Constituent Process. Legal Opinion by Edward McWhinney, Q.C. Barrister & Solicitor; Professor Public Law; Member de l'Institut de Droit International. October 1, 1980.
6. Report of the Fourth Russell Tribunal on the Rights of the Indians of the Americas. Nov. 1980.
7. Fawcett, J.E.S. Opinion on the Nature and Value of the Proposed Charter of Rights inter alia. Nov. 12, 1981.  
Sanders, Prof D. Opinion on Indian, Aboriginal and Treaty rights as private property rights ; and whether Sec. 35 of the Canada Act involves preferential treatment of persons or groups who have rights or claim based on Aboriginal or treaty rights .
8. Mendes, E.P. The Future of Treaty Rights.
9. Lovelace case.
10. Sanders, Prof. D. Re: The Decision of the Human Rights Committee of the United Nations in the Lovelace Case. Dec. 11, 1981.