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ECONOMIC AND SOCIAL COUNCIL
Commission on Human Rights
Sub-Commission on Prevention of
Discrimination and Protection of
Minorities
Working Group on Indigenous Populations
First Meeting

Mikmak Nation

SUPPLEMENTAL STATEMENT OF THE SANTSIOI MAOAIOMI MIKMAOEI
REGARDING EXAMPLES OF VIOLATIONS OF EXISTING NORMS

In earlier interventions we suggested that some existing norms of international law should apply to indigenous groups, and should be implemented without delay. We feel that the Working Group's report should identify the characteristic—and well-documented—ways that these norms are being violated today. We feel there is no real dispute regarding the facts in these cases, and further study is unnecessary.

We think it essential that the requirement of consent to annexations or appropriations of land be given universal application, particularly in regard to so-called indigenous peoples. We urge the Working Group to refer to this principle in its first report.

We also think it clear that the requirement of consent has been ignored by many states in recent years, and offer some examples from our own experience.

In 1951 the Government of Canada amended its Indian Act to classify all lands occupied by native peoples—including lands secured by head-of-state treaties—as belonging to the Crown in right of Canada, and to assert power to remove the native occupants at pleasure, with or without compensation. The current legal term for this "supercession [of indigenous land rights] by law"—that is, by municipal legislation. Lands neither ceded nor seized are placed under the discretionary and unreviewable management of the Minister of Indian Affairs, moreover—the Minister has authority to determine the use and disposition of lands still occupied by indigenous groups.

Ministerial control of land use is justified as an exercise of protection, to prevent individual natives from dissipating their resources. Collective management of land under indigenous governments preserved these resources for thousands of years, however; protection would be better achieved by allowing native groups to regain effective collective sovereignty over their territories.

We note that Canada's newly-revised constitution (the Constitution Act, 1982) provides for the protection of "existing aboriginal and treaty rights." That is, it now protects any rights still unimpaired after a century of erosion, rather than restoring indigenous peoples to the full exercise of their human rights.

The most pressing instances of land encroachments may be found in the Arctic. Some two-thirds of the territory north of 60°N latitude has never been ceded or sold by its aboriginal inhabitants. The Government of Canada nonetheless has taken the position, in written exchanges with native leadership, that this territory belongs to Canada by mere assertion or discovery. The Government has offered to compensate Arctic natives for lands they still occupy, through negotiations, but does not await negotiations to begin settlement. In Labrador, for instance, the Government of Canada began to relocate the indigenous population in the 1960s to make way for regional mineral and hydroelectric projects—without any agreement, and with warnings that relocation would continue whether or not they agreed to negotiate compensation.

The Government of Canada has invited United States and western European firms to relocate in the eastern Arctic to take advantage of the region's unsurrendered resources, and has leased part of the territory to the Government of the Federal Republic of Germany for a military air target range. In a tragic parallel to the 19th-century destruction of buffalo, the subsistence for indigenous peoples of the central North American plains, the Government of Canada has dispersed the herds of caribou on which eastern Arctic peoples rely for food, and has arrested and often imprisoned hunters.

We think it indisputable that Canada's claim to this area, based on mere discovery and that Government's physical power to remove the inhabitants, is a violation of international law.

The Arctic offers only the most recent example of these problems: we direct the Working Group's attention to our own situation. Our Grand Council entered into a head-of-state treaty with the United Kingdom in 1752, establishing peaceable relations and a common defence. We surrendered none of our statehood or sovereignty, and sold no land. We have sold no land since. Yet in the 1940s the Government of Canada began to "centralise"—that is, to relocate—Mikmaq people into a few small areas, comprising less than 5 per cent of our territory and making no adequate provision for our subsistence. We have been informed in writing by the Government of Canada that they consider centralisation a proper exercise of their power.

We note further that in 1960, the Government of Canada divided our people, who had always lived under one government and spoken one language, into a number of administrative units, and thereafter refused to acknowledge our Grand Council. And within the past few years there have been armed confrontations over our efforts to catch fish, within our remaining few lands, for food.

In the United States (for comparison), we observe that it is the position of that Government, advocated successfully in its courts, that legal title to the entire country was vested by discovery, and is superior to the so-called right of occupancy retained by the original inhabitants. According to the United States' Supreme Court in recent decisions, the Government of the United States enjoys an absolute and exclusive power to remove the native inhabitants by purchase or, if it chooses, "by the sword." This is called "plenary power" by municipal lawyers.

The United States' theory of "trust responsibility"—a polite way of saying "the white man's burden"—is applied in legislation and in the courts to sustain a discretionary administrative power in the Secretary of the Interior to veto the use of land by indigenous groups, and in some instances to lease land out from under indigenous occupants without notice or consent.

Our colleagues from the Lakota Sioux nation earlier recalled how their religious homeland, the Black Hills, was confiscated in 1877 to make way for a gold rush. The Government of the United States has in the past few years conceded, in its courts, that this was an involuntary and uncompensated seizure, but has thus far successfully maintained the power to force Lakotas to accept nominal compensation for the area rather than regaining possession of some of the lands stolen.

It should be emphasized that the Lakota—and indeed many other peoples of the North American plains—regard this land as their holiest shrine and the foundation of their religion, and that they have tried to avail themselves of every opportunity under municipal law to regain access to it.

In several other cases involving, among others, the Shoshone and Six Nations, the Government of the United States has attempted to cure conceded confiscations by forcing the original inhabitants to accept nominal compensation. Many indigenous groups have refused to accept compensation—their claims cover about one-sixth of the United States' contiguous land area.

Hence in Canada today the Government is seizing new lands, with or without native consent, and in the United States efforts are being made to settle past wrongs—not by restoring some of the lands formerly seized, but through a program of involuntary partial compensation, amounting to less than one per cent of current economic value.

Neither programme, we think, comports with Article 1(2) of the International Covenant on Civil and Political Rights, or with the recent decision of the International Court of Justice in its Western Sahara Advisory Opinion that states' title to lands should be based on the consent of the original inhabitants. Practices of the United States and Canada involve aggression, disrespect for self-determination, and, in many instances, the violation of treaties.

We wish to underscore some of the common features of U.S. and Canadian policy: the claim of superior title to land through mere discovery, the physical occupation of land without native consent (often by naked aggression), and efforts to clear away subsequent legal objections by forcing native groups to accept nominal money compensation. We also note the common theory of protection or trusteeship, used to justify continuing arbitrary interference with indigenous groups' use of lands not yet sold or seized.

And of consequences, we can add little new to the contemporary statistical record of poverty, despair, disruption of social and cultural institutions, and disease attributable to loss of subsistence resources and overcrowding. We merely draw attention to the fact that while the present indigenous population of Central and South America—where the process of land confiscation is less advanced—is estimated at upwards of 30 million, the indigenous population of North America has fallen from an estimated pre-Columbian level of 5 to 15 million to less than 3 million. Land confiscation can be an effective form of genocide and ethnocide.

We are not suggesting that North American states are the only one that deserve criticism, nor that they are necessarily the worst offenders in this regard. We merely speak from experience and familiarity. These cases are well documented in the legal decisions, legislation, and state papers of the United States and Canada, and, if the Working Group desires, we would be happy to compile a documentary appendix verifying this intervention, including maps detailing which parts of North America were acquired without native consent.

The issue, common to these examples, is the right to a homeland, for religious, cultural, and economic purposes. No original territory in North America is a secure homeland for indigenous peoples, because none is free from arbitrary management and confiscation.

We would be satisfied to see these examples identified in the Working Group's report as illustrations of contemporary, continuing violations of indigenous populations' human rights under existing, binding norms of international law.