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ON THE MATTERS PERTAINING TO THE RIGHTS

OF INDIGENOUS PEOPLES

CONCERNING STANDARD SETTING ON THE DEVELOPMENT OF

A

UNIVERSAL DECLARATION OF RIGHTS FOR INDIGENOUS PEOPLES

CONCERNING BORDER-CROSSING RIGHTS

July, 1991

Geneva, Switzerland

Introduction:

The Dakota Tipi Reservation of the Dakota Nation, an indigenous nation which occupies its aboriginal territory now divided by the international border between Canada and the United States, places before this international indigenous working group of the United Nations issues and concerns affecting our people and other indigenous peoples-nations caused by the imposition of an international boundary.

In May of 1991, the Dakota Tipi Reservation hosted an international border crossing rights conference. That Conference passed the following declaration:

DECLARATION
INTERNATIONAL BORDER RIGHTS CONFERENCE
DAKOTA TIPI FIRST NATION

RECOGNIZING the supremacy of the CREATOR, who put our people on this land, giving responsibility to our people to carry forth the teachings and ways shown to our people;

ACKNOWLEDGING the autonomy of the various FIRST NATIONS and their respective Governments;

RECOGNIZING that the existence of unilaterally imposed borders continues to interfere with the exercise of spiritual, cultural, political, economic and other fundamental inherent rights of the FIRST PEOPLES of North America;

RECOGNIZING that the FIRST NATIONS' laws and jurisdictions have been suppressed by the laws of Canada, United States and Mexico;

IT IS HEREBY DECLARED by this Assembly that the U.S. - Canada borders and the U.S. - Mexico borders are contrary to the CREATOR'S teachings, resulting in interference with the use, enjoyment, and custody of the land;

THAT the borders have affected the lawful and continued existence of FIRST NATIONS, their relationships, be those spiritual, cultural, political, economic and social.

THAT in view of these truths this Assembly hereby directs and urges FIRST NATIONS in North America as well as the governments of U.S. and Canada to examine their respective histories and laws so as to give effect to various FIRST NATIONS' inherent rights of FIRST NATIONS CITIZENS to cross and re-cross the U.S. - Canada and U.S. - Mexico borders without restrictions on the exercise of aboriginal rights but subject only to FIRST NATIONS' laws.

May 9, 1991

Observations and Recommendations:

Members of the Working Group, in another presentation to this body pertaining to matters concerning the promotion and protection of human rights and fundamental freedoms of indigenous peoples, we presented the detailed evidence of border crossing problems and concerns; problems that affect not only our people, but all indigenous peoples of Canada-United States and Mexico-United States. As well as other parts of the world.

The problems and issues discussed in that presentation are no doubt representative of the problems and issues that face other indigenous peoples where their territory has been severed by imposed nation-state borders as well as indigenous peoples where ever nation-state borders have been drawn through indigenous nations territories and where those borders directly interferes with the affairs of indigenous peoples.

But a couple of observations needs to be made at this time when one considers standard setting for the development of an international declaration of the rights of indigenous peoples.

One, that the draft declaration that has been developed over the past nine or ten years is weak on the issues related to international borders and their impact on indigenous peoples and two, no remedies or processes have been directly stated to deal with international borders and indigenous peoples, their lands and territories, rights of movement, trade and cultural protection and development.

On the first issue, a copy of the draft declaration under Part V paragraph 26 states:

The right to maintain and develop traditional contacts and cooperation, including cultural and social exchanges and trade, with their own kith and kin across state boundaries and the obligations of the state to adopt measures to facilitate such contacts.

Members of the Working Group, we would like to make two recommendations concerning the draft statement on nation-state boundaries. Those two recommendations are:

1. to amend line three and add the phrase after the word "trade" to include the words, "and the free movement of persons and goods" with their own kith and kin, etc. and,
2. that the 4th and 5th line be changed to read, "and the obligations of the state to adopt measures and processes to facilitate such contacts shall be made with the involvement

and consent of the indigenous peoples concerned and with due respect to the aboriginal territory through which the nation-state boundary exists".

On the second issue pertaining to processes for the resolution of problems and concerns due to the imposition of state boundaries through aboriginal territories, it is noted that the present draft declaration under Part VI, paragraph 28 provides that:

The individual and collective right to access to and prompt decision by mutually acceptable and fair procedures for resolving conflicts or disputes and any infringement, public or private, between states and indigenous peoples, groups or individuals. These procedures should include, as appropriate, negotiations, mediation, arbitration, national courts and international and regional human rights review and complaints mechanisms.

While it is believed that such an inclusive statement is desirable and acceptable as a general statement, it proves, under closer examination, to be elusive as to details both in terms of the form of mechanisms proposed and the mandate obligations of the nation-states to engage in appropriate processes dealing with complaints related, in this instance, with international border concerns and problems of indigenous peoples.

This is due in part because, obviously, international borders involves at a minimum two nation states. What obligations are imposed or expected by the proposed international declaration of rights of indigenous peoples when more than one nation-state has obligations to indigenous peoples impacted by international boundary? The draft declaration is silent on such matters.

In other words, how does one employ more than one nation-state to obligate themselves to mutual resolution of border problems involving indigenous peoples? This is precisely the issue between, for example, Canada and the United States. As has been pointed out in the fundamental freedoms and protection paper, while the United States has no merits to be gained in its treatment of indigenous people along its northern border with Canada, Canada's position and policies are not only archaic, discriminatory and in outright violations of international treaties, its policies and the administration of such are both arrogant, bigoted and downright insulting to indigenous peoples.

Yet Canada remains intransigent on any changes, resolutions and improvements. Harassments continue, insults and downright personal assaults are the order of the day toward our indigenous peoples crossing into Canada.

It is therefore fitting and proper that we bring to this Working Group in this presentation specific recommendations for not only your consideration, but we seek your support and that of other indigenous nations in this conference chamber whose rights are violated every day by border crossing polices, administrations and officials.

Therefore, to add substance to the above noted process provisions in the resolution of disputes in the draft declaration, we specifically recommended the following forum for the resolution of Canada-U.S. Indian border disputes.

1. The establishment of a Canada-United States-Indian Border Commission,
 - a. Members/Parties
 - (1) composed of representatives from the federal governments of Canada and the United States, First Nations Governments both in Canada and in the United States.
 - b. Powers
 - (1) attendance, swearing and examining witnesses
 - (2) production and inspection of documents
 - (3) enforcement of orders and other matters necessary or proper for the exercise of its jurisdiction
 - (4) all such powers and duties ancillary to the exercise of items (1) - (3).
 - c. Duties
 - (1) conduct inquiries
 - (2) consider complaints
 - (3) hear, determine and deal with Indian trans-border disputes
 - (4) exercise other duties consistent with (1)-(3).
2. The objectives of the Canada-United States-Indian Border Commission would be to:
 - a. coordinate policy and monitor trade, immigration, movement of persons and goods, etc.
 - b. enhance treaty and aboriginal rights
 - c. enhance the movement of goods, resources, persons and other aspects of aboriginal peoples as originally was carried out and recognized prior to the imposition of international nation-state borders.

Members of the Working Group, we have presented to you in summary form observations, recommendations and suggestions for the (1) strengthening of the draft declaration of the rights of Indigenous peoples and (2), we have also made specific recommendations concerning a mechanism that we believe should be developed and

installed as a working forum to resolve disputes between the indigenous peoples of Canada, the United States and Mexico and the Governments of those countries.

While indigenous peoples from Mexico and the United States will no doubt make their own recommendations concerning nation-state border issues and how those issues impact upon their people, we, the indigenous peoples as represented by the Dakota Tipi Reservation of the Dakota Nation and the Association of Manitoba Chiefs, strongly condemn Canada's immigration and customs laws, policies and administration.

At this international Working Group, we call upon Canada to join with our indigenous nations and their leaders to establish a mechanism as proposed in this presentation to resolve issues, problems and concerns of the indigenous peoples of Canada and in particular those indigenous peoples whose aboriginal territories extent into and cover areas now under the jurisdiction of both Canada and the United States.

Surely, the Government of Canada cannot deny us our rightful place in our own aboriginal territory and at the same time commit the Government of Canada to the principles and obligations to an international declaration of the rights of indigenous peoples.

Thank you.