

COMMISSION ON HUMAN RIGHTS  
Sub-Commission on Prevention of  
Discrimination and Protection  
of Minorities  
Working Group on Indigenous Peoples  
Eleventh session  
19-30 July 1993  
item 5

DISCRIMINATION AGAINST INDIGENOUS PEOPLES

Review of developments pertaining to the promotion and  
protection of human rights...

Statement by Ambassador Ted Moses of the Grand Council  
of the Crees, an organization in consultative status to  
ECOSOC

On behalf of the Grand Council of the Crees, I will  
briefly review developments in Canada which affect our  
rights, and which we believe have significance with  
regard to the mandate of the Working Group.

Before doing so, however, I would like to point out  
simply that the review of developments is the first and  
most fundamental mandate of the Working Group on  
Indigenous Peoples, and that we consider it to be of the  
utmost importance that the Working Group continue to  
carry out its mandate in this regard, at least until  
such time that another competent body is formed to take  
its place, or until the Working Group has been elevated  
and is assured of a permanent role in the protection of  
the rights of indigenous peoples.

We also want the Working Group to understand that we are  
providing this information in connection with its  
mandate to consider the question of discrimination  
against indigenous peoples, and that the information  
which follows is communicated in this spirit and does  
not constitute a complaint.

The failure of the constitutional agreement, known as  
the Charlottetown Accord, has placed the advancement of  
our rights in Canada in serious question. There have  
been absolutely no developments with regard to the  
recognition of our rights since the failure of this  
initiative; and the Government of Canada has reverted to  
its "business as usual" practice with regard to Indian  
rights and any improvement in the conditions which  
affect our communities.

Since that time, all of our offers to negotiate  
constitutional recognition of our rights have been  
spurned and rejected by the federal government, and in

consequence, our self-determination continues to be effectively denied while the government continues its all or nothing approach to a constitutional agreement. Canada refuses to negotiate the fundamental rights of aboriginal peoples until it has an agreement on all other constitutional issues. This has blocked all further progress toward a resolution of the crisis that confronts indigenous peoples in Canada. The indigenous peoples are caught between the warring factions of so-called "French" and "English" Canada. As usual the indigenous peoples are the hostages.

Meanwhile, our rights continue to be seriously threatened by developments in Quebec, where the political situation has become seriously unstable. The opposition separatist party appears poised to win the next provincial election, and has explicitly stated its intention to take the Province of Quebec unilaterally out of the Canadian Confederation shortly after it is elected.

This would affect our right to remain within Canada should that be our choice, would abrogate our treaty and undermine our treaty and aboriginal rights, and would unilaterally remove us from the present system of law in a federal State without our consent. It would also create a new international border between the indigenous peoples living in Quebec and the rest of Canada, separating us from our families, and removing us from the community of indigenous nations.

The current government of the province has stated in an official report that it would not guarantee continued respect of all of our rights after a declaration of independence. It specifically questions the continuation of the fiduciary relationship under an independent State.

We raised this matter forcefully with the Royal Commission on Aboriginal Rights (currently in session), and were told that the issue was "too hypothetical", and "not a priority". This would therefore appear to be a case where the international community may very well be required to act before serious injustice is permitted to occur, other legal recourses being quite limited.

We are most disconcerted by the failure of the Government of Canada to respond to our repeated requests to guarantee the rights of the aboriginal peoples who live in the present Province of Quebec if secession occurs. The failure of the fiduciary to respond to this

fundamental question is certainly ominous. Yet one federal government official said in Vienna that Canada opposed recognition of our right of self-determination because it would permit groups like the Crees to separate from Quebec if Quebec becomes a separate State.

This situation provides an explicit example for the need to recognize the indigenous peoples' right to self-determination. Our position remains clear: we do not seek to secede from Canada; but if Quebec becomes a separate State, we will insist on our right of self-determination, our right to choose which, if any State we determine to associate ourselves with, and we will insist through every available means upon the territorial integrity of our ancestral lands.

You may be interested to know that the New York International Law Review has published in its Winter 93 issue (just released) an abridged version of the brief the Grand Council of the Crees submitted last year to the United Nations Commission on Human Rights.

The Province of Quebec is still determined to build new hydro-electric mega-projects on Cree lands. Despite numerous court challenges to the government's plans, and the failure of both the federal and provincial governments to respect provisions in the James Bay Treaty, plans continue to flood more Cree land. We want the Working Group to be aware of this, because the governments continue to create the impression that all is going well. All may be going well--but not for the indigenous peoples.

Most recently, the federal and provincial governments have argued and convinced a federal appeals court to reverse a court ruling in our favour. Canada and the province argued that our treaty rights are non-binding on the governments. They have even questioned whether our treaty is a "treaty" within the meaning of section 35 of the Canadian Constitution. We have asked for leave to appeal this case to the Supreme Court of Canada. The governments continue to be our adversaries, although the Supreme Court has condemned this practise.

Elsewhere in Canada, the Lubicons continue to have their rights denied. We question how long this situation can continue without affecting the survival of the indigenous people. This situation, which has already been the subject of United Nations' concern, requires the intervention of higher United Nations bodies. Serious consideration should certainly be given to the

appointment of a Special Rapporteur to examine the situation of the Lubicon Crees.

In Manitoba, the federal government has reneged on a treaty known as the Manitoba Flood Agreement. Having failed to respect this treaty since its signing in the 1970s, Canada has now decided to offer to "buy out" its permanent treaty obligations, and to abrogate the treaty by agreement with its beneficiaries, who by cause of failure to implement the treaty, have been forced by poverty into submission.

The Special Rapporteur on the Treaty Study, Professor Alphonso Martinez, had the opportunity in Canada to meet one of the Chiefs who is under pressure to "sell out" his people's rights under this treaty. Professor Martinez has expressed his profound concern regarding these events, based on the information he personally received while in Canada. The Grand Council wants the Working Group to be aware of the terrible injustice which is being perpetrated by the government party, which stands in breach of its treaty obligations.

I should say that attempts to reach a similar "settlement" of treaty obligations with the Crees have been attempted by the government and have been definitively rejected by our members. This we believe constitutes a new and insidious development in treaty relations between States and indigenous peoples, who having been forced to surrender and have their aboriginal rights extinguished, are then placed under duress to surrender the treaty itself.

Finally, we would point out that the federal government continues to assist various provincial governments, and private, and crown corporations whenever they come into conflicts involving our rights.

The Government of Canada continues to work with and assist Hydro-Quebec and the Province of Quebec both in Europe and the United States in their efforts to promote the construction of massive hydro-electric works on our territory. Thus, both the federal and provincial governments officially deny that our rights are affected or that we have just cause for concern. This places the inexhaustible resources of governments against our very limited resources, and makes a mockery of Canada's fiduciary duty to aboriginal peoples and the impartiality of the administration of justice.

Grand Council of the Crees

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We hope that these attitudes will change, and that we will have more positive developments to report at next year's Working Group. Thank you.