

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Peoples
Ninth Session
22 July - 2 August 1991
Items 5A, 6, and 7A

THE QUESTION OF THE OWNERSHIP AND CONTROL OF THE
CULTURAL PROPERTY OF INDIGENOUS PEOPLES

EXAMINATION OF THE REPORT OF THE SPECIAL RAPPORTEUR ON
THE ITEMS RELATED TO TREATIES, AGREEMENTS AND OTHER
CONSTRUCTIVE ARRANGEMENTS

INTERNATIONAL YEAR FOR INDIGENOUS PEOPLES

Oral Statement by: Sharon H. Venne
Joseph Bighead First Nation
Treaty Six Area of Canada

Thank-you, Madam Daes, for giving me the opportunity to address the Working Group regarding the reports which are presently before us. I would like to speak briefly on each item and submit to each rapporteur a more detailed examination of their work.

Concerning your report, Madam Daes, on cultural property: it is a welcome document to help further the discussion between ourselves and the United Nations bodies in the area of cultural rights. We know that you, Madam Daes, appreciate and understand our feelings about the spiritual significance our people give to cultural property, and the connection they have with it. I will make available to you during the Sub-Commission a more detailed review of the document for your future use.

A brief comment on Mrs. Mbonu's report concerning the International Year for Indigenous Peoples: We were pleased to hear concern voiced that the International Year be directed towards strengthening and educating Indigenous Communities.

In this regard, she mentioned the need to have a special co-ordinator to help mobilize and guide the work for Indigenous Peoples within the Communities. This is a welcome suggestion for us who have always stressed the need to have people in the communities involved in activities undertaken. In this regard, I would like to suggest that the United Nations make every effort to hire a co-ordinator who is an Indigenous Person. This would be the more necessary if the activities forseen are to be focused on Indigenous Communities. For the International Year to be successful, it is essential to appoint someone who knows and understands these communities. There will be a more complete report given to Mrs. Mbonu during the Sub-Commission.

In relation to the preliminary report submitted by Miguel Alfonso Martínez on Treaties, Agreements and other Constructive Arrangements concluded between Indigenous Peoples and States, I wish to underline the following.

I have a university education as a historian and a lawyer. I am also an Indigenous Person. There are a number of things that I have noticed since working in the area of Indigenous Treaties.

First of all, [there are no textbooks or manuals addressing specifically Indigenous Treaties. There is much material written by non-Indigenous persons on Indigenous Treaties. Such books are of little use since the analysis contained in them reflects a eurocentric view of the world. As Indigenous Peoples we have been battling the eurocentric perspective on Treaties. We have our own legal systems. What the Treaty study must reflect is an Indigenous Point of View. Our legal systems must be understood, appreciated and respected by the International Legal system; otherwise racism will continue unhindered.] I urge the Special Rapporteur to take as much time as is needed in order to grasp the significance of the Indigenous Legal Systems, for a better comprehension of our Treaties.

healy
study

[As Indigenous Peoples, we have waited a hundred and twenty-five years for the opportunity to have our Treaties assessed from the perspective of our own legal systems.]

According to the eurocentric view of the law, only written evidence of rights is acceptable in the legal systems of the states. There was, Madam Daes, a recent case in the Supreme Court of the Province of British Columbia concerning the issue of oral evidence of Indigenous Peoples in their attempt to have their aboriginal title to the lands and resources recognized in the courts of Canada.

In 1991, the Courts of Canada are still not prepared to accept oral evidence submitted by the Elders. The courts' decisions in this respect are based solely upon racist attitudes. The Supreme Court judge stated in his judgment that he could not accept the evidence of the Elders because their level of civilization was inferior to that of the Europeans. He mentioned three criteria for measuring civilization, namely beasts of burden, wheeled vehicles and a written language. This racist judicial view of a non-Treaty people in Canada would be of interest to the Special Rapporteur to assess what is happening to an Indigenous People without a Treaty Relationship in the state of Canada.

In relation to Paragraph 117 of the Report, I urge the Special Rapporteur to consider the Lubicon Cree of Canada. They are victims of the Government of Canada's attempt to force a settlement upon them, based upon the notion that the Lubicon must extinguish their aboriginal rights to lands and resources.

For fifty years, the Government of Canada has denied any genuine wish to settle the issues in relation to the Lubicon. Instead, the Government uses «jurisprudence of oppression» to force the Lubicon into a settlement.

extinguishment
[Allow me briefly to explain the notion of extinguishment according to our own legal system. For us willingly to extinguish our land and resource rights signifies terminating ourselves as a people. We do not possess the necessary legal authority under our legal system to extinguish the rights of the children yet unborn. We are far from predisposed to commit mass suicide.]

ind. legal system
[We urge the Special Rapporteur to continue considering the Indigenous Legal Systems as they can only be understood on the basis of a dialogue with Indigenous Peoples. Our legal systems do not figure in books, and most experts who claim knowledge about Indigenous Legal Systems only know how non-Indigenous laws apply to Indigenous Peoples. This isn't Indigenous Law, but a eurocentric view of law based upon the oppression of Indigenous Peoples.] We urge the Rapporteur to move away from this type of analysis.

There is only one other area which needs to be mentioned at this juncture. Madam Daes, this concerns your work on the Draft Declaration and the Treaty Study.

I was never under the impression that your work was tied to the Treaty Study. I had always understood those processes to be separate.

I am not concerned about the fact that the Declaration is going ahead. It should be dealt with independently of the Treaty Study. The passage of a larger number of internation-

al instruments protecting the rights of Indigenous Peoples can only benefit us.

In addition, the Declaration on the Rights of Indigenous Peoples deals with our human rights, while the Treaty Study addresses the issues related to our legal and political rights under International Law. There is a well developed body of International Law on Treaties. We do not view our Treaties as being any thing less than being international treaties.

The Declaration may refer to the place of treaties and their effect, but the Treaty Study will not only deal with Human Rights but also other areas which are of concern to us.

Thank-you for giving me this opportunity to address the Working Group.

2 August, 1991