

2001  
ARCFIX

WGIP PP/NAM.CAN/9

United Nations  
Working Group on Indigenous Populations  
Sixth Session, August 1988  
Geneva

Treaties and the Study of Treaties

Statement submitted by the Treaty Six Chiefs

Madame Chairperson:

We are pleased to be able to speak today on the issues concerning Treaties. Our Chiefs signed Treaty with the British Crown in 1876. [Our relationship with the non-Indigenous Peoples is based upon the laws contained within those Treaties. The Treaty set out our rights in relation to the land, our government, our legal system, resource rights, education, health, social development, housing, language rights etc.] There has been a consistent and continual denial by the Government of Canada to recognize the spirit and intention of our Treaty. Rather, the Indigenous Peoples are placed in a reverse onus of proof when discussing any issue arising out of Treaty disputes. This concept needs to change. There needs to be some mechanism to deal with Treaty disputes.

When the Treaty Six Chiefs first appeared before the working group in 1982, we were concerned about our land and treaty rights. We are still concerned.

The failure to resolve this question of Indigenous Treaty issues created a a situation where the federal state of Canada claims sovereignty over all territory within its boundaries, while indigenous nations claim independent sovereignty over our territories, ~~while indigenous nations claim independent sovereignty over our territories~~ scattered over Canada. These competing claims of sovereignty only serves as a basis for future confrontations. In some instances, these conflicts are already occurring with the raid by the Royal Canadian Mounted Police upon the Kanawake community on June 1, 1988. In another area related to land issues, the Chief of the Lubicon Lake Cree who have an unresolved land dispute more than eighty-nine years old has stated recently that his land claim may lead to a more physical assertion of their ownership of their traditional territories. In this case, the Federal Government of Canada is using their legal system to frustrate the legitimate claims of the Lubicon Indians. In a related case, the Lucky Man band negotiated a land settlement of 7,680 acres as an initial settlement but to date no land has been transferred to them. Chief Andrew King, of the remaining 67 persons out of a band of 872 persons in 1876, asks what do they need to do in order to have their land base. With only 67 persons remaining they face the future of being completely eliminated without having a land settlement. [The Indigenous Peoples received the non-Indigenous Peoples into our territories and shared the land with them to give

a home, but we find ourselves without a homeland..

In other cases, there have been numerous road blockades and direct confrontation with authorities of the Government over rights in our traditional territories and the rights of our traditional governments to control our territories. [Indigenous Peoples who signed Treaty undertook to maintain the peaceful co-existence between Indigenous and Non-indigenous Peoples. In light of adverse treaty and human violations, Indigenous Peoples are losing patience.]

[It is clearly in the best interests of everyone that Indigenous Peoples' national political aspirations be won by peaceful means. The Treaty forms a base for bi-lateral discussions. As two equal partners at the time of the Treaty signing, we negotiated the Treaty in good faith with the Crown. We had our own legal system. We had entered into different types of Treaties with other Indigenous peoples prior to the arrival of the non-Indigenous Peoples. In the case of the non-Indigenous Peoples we had a clear understanding of their request. They wanted to share the land. In exchange they would provide certain obligations to us. We have upheld our portion of the Treaty by sharing the land through peaceful means, what about their obligations? They still benefit from the land so their treaty right is still intact. We often forget that there are always two beneficiaries to Treaties and thus obligations to be fulfilled by both parties.]

[They came asking for only six inches of land, in order for their settlers to grow crops. It was not a treaty to sell, surrender or cede up the land or its natural resources.] Our version of the Treaty is clear, the treaty commissioners' notes on the negotiations reflect our understanding and yet the Federal Government's version contained in their legal language that the Indians ceded, surrendered and forever gave up title to the land. This is completely false without any base in reality. Thus, a need for a resolution of the Treaty making process. Principles of International Law and standards should be examined in light of the conflicting view of the Treaty.

Indigenous legal systems could be reviewed in light of International law. Indigenous Peoples are not afraid to have our legal system studied. We have along and historical relationship based upon our legal system which can only promote the formation of standards and principles in the area of human rights.

*ind.* [The term "aboriginal" or "indigenous" is used to describe claims set up by Indigenous Nations based upon our use and occupation of Traditional lands and legal practises since time immorial. This set indigenous claims apart from claims of minority groups such as the French of Quebec, Canada or other minority groups within a nation state. It is upon this indigenous base that the relevant treaty principles such as title rests. To conceive the notion of Indigenous Peoples' rights is to see such rights as resting upon a unique relationship between the Crown and Indigenous Peoples. It is the duty of the Crown to recognize, accomodate and protect the customary rights and practises of Indigenous Peoples.]

The term sovereignty is most often used in one of two ways. Dicey distinguishes between "legal and political sovereignty". Legal sovereignty may best be described as an extension and exercise of power of government in the legislative, executive and judicial field. On the other hand, "political" sovereignty describes a consensual relationship between the government and the governed by which the later places themselves under and defers to the former's exercise of the powers of government by CONSENT. This two-fold distinction is part of the theory of the British Constitutional law but it is important to note the two can be distinguished. Our political sovereignty is based upon consent. Any subjection of the Indigenous Peoples, the argument continues, /be legitimate must be founded and governed by the terms of the indigenous peoples' freely given CONSENT; The stress which we place upon the element of consent is in our formulation of sovereignty indicates it to be a form of political sovereignty or political sovereignty by our assertion.

It maybe useful for the draft outline on Treaties to include a section to indicate that there will be a comparison of the legal and political sovereignty by looking at the Treaty making, implementation and future development of the laws on Treaty.

There should come a time in the future and perhaps the Treaty study will lead to the happy conclusion that the dated positivist notion that all rights in relation to land are not sovereign-derived. This, in turn, leads to all the old infertile arguments as to whether a country was acquired by the Crown by right of conquest, cession or settlement. The rule of law should be that the indigenous inhabitants of a territory whether acquired subsequently continues to enjoy the continuity of our traditional laws and land rights which are inapplicable to the settler colonizer or to other minority peoples. Let us define and examine future relations in this new light by using the Treaty instruments as a base.

In conclusion, we fully support and endorse the work on an outline for a treaty study. The position taken by the United Nations Working Group may seem new but our elders and chiefs have been saying the same thing for the last hundred years. We are pleased to know our words are reaching many ears. We realize that new ground is being covered. As we did at the time of the Treaty signing, we are prepared to share our minds and hearts to help with the work on Treaties to build a strong future for our children. Indigenous Peoples and our treaties are unique and to reflect our uniqueness, we must be creative in establishing new principles and standards. We encourage the respective governments to share in the same spirit. We shall endeavor to everything possible to help Mr. Martinez in his work.

Thank-you.