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LA THÈSE A ÉTÉ
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This Land is Whose Land?
Aboriginal Territories, Aboriginal Development
and the Canadian State

Andrew John Chapeskie, B.Mus., LL.B.

A thesis submitted to the Faculty of
Graduate Studies and Research in partial
fulfilment of the requirements for the degree of
Master of Arts
in International Affairs

The Norman Paterson School of International Affairs
Carleton University
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The undersigned hereby recommend to the Faculty of Graduate Studies and Research acceptance of this thesis, submitted by Andrew Chapeskie, in partial fulfilment of the requirements for the degree of Master of Arts.

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Abstract

Aboriginal peoples in Canada have not yet been able to alter significantly a pervasive Eurocentrism in the Canadian legal system to the point where that system would recognize them as distinct peoples with aspirations to determine the ongoing development of their territories. Given the relatively recent evolution of collective rights norms in the international legal system and the long tradition of the assertion of the right by aboriginal peoples to self-determination, it is natural that international fora are being made a focus of increasing activity by those peoples to achieve recognition of their status as subjects of international law. The contributions by aboriginal peoples in Canada to the evolution of international human rights concepts have been notable and any possibility of further long term significant change in the international system will depend upon their increasing involvement in the process.

Table of Contents

	<u>Page</u>
Abstract	111
Table of Contents	iv
Chapter I: An Introductory Background to the Rights Asserted	1
A. - Introduction	2
B. The Politics of Territorial Rights	3
C. The Relevance of Aboriginal Territoriality	8
D. Statement of Intent	15
Chapter II: The Rights of Indigenous Peoples in Euro-Canadian Law	21
A. Introduction: Euro-centrism Versus International Law	22
B. The Canadian Context: The Early History	35
C. Aboriginal Territorial Rights in Canadian Law	37
D. The Impact of Canadian Law on Indigenous Development	43
E. Conclusions	45
Chapter III: Rights Asserted: The Political Initiatives of Aboriginal Peoples in Canada	48
A. Non-Native Politics of Native Land Rights	49
B. The Aboriginal Focus on Self-Determination	56
C. Development Determined by Aboriginal Peoples	69
Chapter IV: International Trends in Aboriginal Territorial Rights Recognition	72
A. Prefatory Note	73
B. A Decline of Eurocentrism in International Law?	78
C. International Law and the Acquisition of Colonial Territories	84
D. The Decline of Eurocentrism in International Law: Implications for Aboriginal Peoples	91
E. The Contribution of Indigenous Peoples	106
F. Concluding Remarks	116
Epilogue: Setting the Context of Change	119
A. The Challenge of International Law and Politics	120

Table of Contents cont'd

	<u>Page</u>
Bibliography	126
Appendix I: Correspondence and Declaratory Materials on the Camperville Metis Government	144
Appendix II: Secret Memorandum to the Cabinet of the Government of Canada on "The Buffalo Jump of the 1980's Report	150
Appendix III: Declaration of First Nations' Principles on the Use of Indigenous Customary Law	187
Appendix IV: Indigenous Aboriginal Government as The First Order of Government in Canada (Part 1)	191
Appendix V: The Dene Declaration: Statement of Rights	232
Appendix VI: World Council of Indigenous Peoples International Covenant on the Rights of Indigenous Peoples (Draft, 1981)	234
Appendix VII: World Council of Indigenous Peoples 1984 Document on the Rights of Indigenous Peoples	242
Appendix VIII: Declaration of Principles	246

CHAPTER I

AN INTRODUCTORY BACKGROUND TO THE RIGHTS ASSERTED

A. Introduction

This essay attempts to show that aboriginal peoples in Canada have reached a watershed point with respect to their long-standing struggle to achieve greater recognition of their declared territorial rights. The historical tendency of Canadian domestic law has been to drastically limit the application of any general principles of international law that could have been utilized to strengthen the recognition of aboriginal territorial rights to a position of equality with those of the European colonizers. Aboriginal peoples in Canada maintain, with a high degree of consistency among themselves, that the cultural differences between them and the rest of European Canadians is such that any fundamental development which respects those differences will have to be carried out with a high degree of aboriginal control over aboriginal territories. The conclusion is that this process will be essentially a political one based on institutional relationships developed between cultures recognizing each other as equals.

By its very nature the political struggle for the greater recognition of aboriginal territorial rights will also have to be carried out in a context wider than the domestic one. That is, if aboriginal peoples in Canada are to achieve recognition of their status as distinct peoples from the rest of Euro-Canadians such a process automatically carries with it political implications international (i.e., between nations) in scope. Aboriginal peoples in Canada hold that they are culturally more different from Euro-Canadians than the latter are from their European "parents". Many of the differences even

among European nations which are reflected in the recognition of each others rights to political independence, are not as great as those that exist between Euro-Canadians and the aboriginal peoples of Canada. It is a natural outcome of this cultural matrix that aboriginal peoples in Canada are becoming ever more involved in promoting the recognition of their right to self-determination in international fora. In placing an emphasis on achieving international recognition of their distinct rights aboriginal peoples may well be setting the stage for dramatic long-term changes in the future political composition of Canada and of the international system itself.

B. The Politics of Territorial Rights

The natives are still restless - at least that is what we continue to hear and read in the Canadian media. Consider the following headline from the Globe and Mail, which appeared on April 14, 1984: "Manitoba Metis group declares independence" (1). The story concerned the small Metis community of Camperville, Manitoba. Just what was meant by independence, was not explained by the reporter but the wording in the first sentence did state that the community had "...declared independence [from] Canada" (2). Readers were informed, however, that the new Camperville administration would still "...accept both provincial and federal grants ("like any other government does") (3) on its self-

1. Tenzen, M. "Manitoba Metis group declares independence" in (Toronto) Globe and Mail, April 17, 1984, p. 8.

2. Ibid.

3. Ibid.

determined path to self sufficiency. The reported independence from Canada was obviously not an independence in the way the United States is independent of Canada (the author hopes that he is not being facetious here). More likely, the reporter typically did not understand what the community leaders were really seeking. In his correspondence with Prime Minister Trudeau, the leader of the Camperville Metis government, Ferdinance Guiboche (1), did not even mention independence:

We, the Metis from Camperville,...have decided to form a Metis Government through recognized democratic process which officially took place on April 9, 1984...(2)

A month later, Globe and Mail reporting reflected a more nuanced understanding of the events taking shape in Camperville. The article headline now read: "Self-proclaimed government taking form in Metis village" (3) and the relevant declaration was now a "declaration of self-government". What is being sought after in Camperville is much greater control by that Metis community over services and resources which it maintains it is entitled to. The trend toward a more activist aboriginal approach to development, as evidenced by the events in Camperville (whether Camperville itself is successful or not) could well be signalling a dramatic shift as to how all parties involved might re-conceptualize, and act to promote, the development of

1. See Appendix I.

2. Letter of Ferdinand Guiboche, leader Camperville Metis Government to Prime Minister Pierre E. Trudeau, April 16, 1984 (Camperville, Manitoba).

3. "Self-proclaimed government taking form in Metis village", in (Toronto) Globe and Mail, Monday, May 14, 1984, p. 2.

indigenous populations within Canada.

Native nations; First Nations; Nationhood. These are the terms which have been appropriated by Canada's indigenous peoples. They have been echoed by reporters, bureaucrats and elected officials. Consider another event that occurred subsequent to the Camperville Declaration which was also reported in the print media:

- The self-proclaimed Nuxalk sovereign nation of Bella Coola, has refused to turn a Norwegian fugitive over to Canadian authorities and warned the Federal Government not to interfere in its tribal customs. Hereditary Chief Lawrence Pootlass, made the declarations...to respond to a letter from [the then] Immigration Minister, John Roberts. Mr. Roberts advised fugitive Nils Somby and his family to report for an immigration hearing. Mr. Pootlass and Ed Moody, Chief Councillor of the Bella Coola Band, said Mr. Somby was adopted as a member of a sovereign nation (1).

Mr. Somby, an indigenous Sami from Norway and an aboriginal rights activist was being sought for alleged acts of "terrorism", in his own country. He was arrested by police several weeks later in Alberta. The Nuxalk Indians, in statements made by their lawyer, said that they would fight his case in the international arena if necessary. They lost their case in Canada and Mr. Somby returned to Norway; the Nuxalk then stated that they would be taking their complaint to the United Nations.

At the base of these conflicts is the question of territory, who controls it and, ultimately, to what use it is put. On March 27, 1985, the Court of Appeals of British Columbia, recognizing that aboriginal rights to land were intimately connected to the natural wealth it contained (in this case, timber), issued an injunction against logging on Meares Island, until Indian land

1. "B.C. Indians grant haven to Norwegian fugitive" in (Toronto) Globe and Mail, August 16, 1984, p. 8.

claims respecting it could be heard. Judge Seaton noted that:

[t]he proposal (by the Canadian Forest Products Company, MacMillan Bloedel) is to clear the area. Almost nothing will be left. I cannot think of any native rights that could be exercised on lands that recently have been logged (1).

At the same time, Mr. Justice Seaton severely chastized the Ahousaht and Clayoquot Bands, both members of the Nuw-Chah-Nulth Tribal Council, for the "unlawful conduct [in attempting to block the logging],...of some Indians which had almost reached the point that the court should not have heard the case or not decided in the Indians' favour" (2). Such activities on the part of Indians, however, can be read as representing a different conviction on their part. "Official institutions" or "public reassurances" on matters of vital significance to an indigenous society are based on a political order whose priorities, connected as they are, to current global geopolitics (3), are clearly at odds with aboriginal aspirations. As a consequence, the manifestation of conscience in concrete deeds can become "critically significant for raising political consciousness" (4).

Mr. Justice Seaton, in the Meares Island case also "described as [a sham] the recent canoe-making and other

1. Gory, Brian, "Appeal Court Prohibits Meares Island Logging", in (Toronto) Globe and Mail, March 28, 1984, p. 2.

2. Ibid., pp. 1-2.

3. R. Falk, The End of World Order (New York: Holmes and Meier, 1983), p. 32.

4. Ibid., p. 319.

activities in the contested...logging area". "There was no one in [the area] when the decision [to log it] was made" (1).

Professor J. Prattis has explained the problem faced by aboriginal people in finding the resources and expertise to engage in the broader field of political activities:

Politics, particularly with respect to land claims, is almost a precondition for the emergence of a collective identity. Yet, this political consciousness can scarcely emerge without an economic base. So the difficulty is that while consciousness and identity are preconditions for political action, they can hardly be sustained without the first issue - economic autonomy - being resolved. This presents a conundrum of process and structure, in that the maintenance of identity and culture requires first of all a measure of economic control, whereas political activity to gain such control requires consciousness and collective identity, as the base from which political action must grow (2).

We should, therefore, analyse the aboriginal rights activism of indigenous peoples in Canada as having to be conducted from a position of not being able to rely on supporting autonomous social, cultural, and economic structures and territorial bases. Were these in place, they would serve to support, in a concrete manner, the maintenance of the distinct identities of aboriginal peoples. Politicians and courts pre-suppose that aboriginal peoples have the same rights of access to the legal/political decision making structures in Canada; this is done without taking into consideration fundamental differences of indigenous cultures from Euro-Canadian culture and the extra

1. Supra, p. 6, note 1.

2. J.I. Prattis, "The Political Economy of Native Land Claims in the Canadian North" (Carleton University, Ottawa: Unpublished Paper, 1982), p. 1.

effort that indigenous peoples must put into working within the Euro-Canadian system. That the aboriginal peoples living within Canada have achieved the recognition of their problems that has been accorded them thus far, is a testament to the strength of their diverse cultures. The enduring relationship between aboriginal peoples, their culture and their lands should - and we must hope will - be duly recognized in time. This recognition has all the potential to provide a unique and vital aboriginal contribution to more equitable political arrangements between culturally diverse peoples in Canada.

C. The Relevance of Aboriginal Territoriality

It appears that the efforts of aboriginal peoples in Canada to secure greater rights over their territories will not go away. Partly as a result of the claims of aboriginal peoples living within Canada to self-determination on their lands, scholars have begun to seek theories which "...explain why there has been a recent resurgence of ethnic regionalisms" (1). In Canada this resurgence has been represented by strong undercurrents of social opinion among aboriginal peoples advocating greater autonomy on a more regional or local "life-space" territorial scale. We can view a territory, in this sense, "...as space to which identity is attached [e.g., by a certain aboriginal people] who...covet that territory and who

1. D.B. Knight, "Geographical Perspectives on Self-Determination", in P.J. Taylor and John House (eds.), Political Geography: Recent Advances and Future Directions, (London: Croom, Helm, 1984), p. 168.

desire to have full control over it for the peoples' benefit"

(1). In this light, it is preferable that we understand territory not only as "...a very substantial, material, measurable and concrete entity, [but also] the product and indeed the expression of the psychological features of human groups". In geographical terms the territory of a particular people reflects their unique identity through the particularities of resource use (e.g., West Coast Indians cutting lumber out of live trees without felling them), settlement patterns, the physical characteristics of communities themselves and much more (2).

Aboriginal peoples in Canada have continued often deeply symbolic relationships with their lands which have their roots in thousands of years of history before the arrival of Europeans. It is only natural that we should expect that aboriginal territoriality - that is, the expressed relationships between aboriginal peoples and their lands - is, in critical ways, fundamentally different from that of Euro-Canadians. Furthermore, from the span of time of these relationships between aboriginal peoples and their territories, we could expect both conscious and unconscious resistance to the internalization of many non-aboriginal modalities of territorialial use.

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1. D.B. Knight, "Identity and Territory: Geographical Perspectives on Nationalism and Regionalism" in Annals of The Association of American Geographers, 514, p. 526.
 2. J. Gottmann, The Significance of Territory (Charlottesville: University of Virginia Press, 1973), p. 15.

It is not hard to notice that aboriginal peoples and their physical space have formed unique interactive evolutionary relationships. In spite of several hundreds of years of "contact" with Europeans, this relationship still supports the psychological and, therefore, the socio-political aspirations to greater territorial independence. For aboriginal peoples in Canada, the natural physical spaces of the Canadian "hinterland" or "periphery" are central; therefore, their priorities are often different from the "opposed" or "metropolitan" urban concentrations of political and economic power in Canada. The authority and efficacy of centralized state control has inevitably conflicted with the wishes of aboriginal peoples; the extent of artificially imposed boundaries - both political and economic - is increasingly being questioned by them.

The Dene Indians of the Northwest Territories, for example, declared in 1976 that they "...have the right to recognition, self-determination, and on-going growth as a People and as a Nation" (1). To this end, the Dene (2) and aboriginal peoples in Canada generally, as well as internationally, have begun to mobilize public opinion in all spheres from the local "life-space" level to international organizations, such as the

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1. The Dene, Land and Unity for the Native People of the Mackenzie Valley (A Statement of Rights), (Yellowknife, N.W.T.: The Dene of the N.W.T., 1976), p. 11.
 2. Ibid.

United Nations (1). Terms like "self-determination" that are being appropriated by aboriginal peoples can be seen as part of a wider process which could fundamentally alter the current politico-economic regulation of territory in Canada based on a system of sovereign equality among States as they have evolved from their Eurocentric cultural, political and economic origins. Aboriginal peoples are arguing that this system facilitated the domination and impoverishment by the colonial powers of the peoples it was, according to its "Eurocentric bias, supposed to "liberate" into "development". Though this writer accepts this argument, this paper will make no attempt to verify it. Many volumes of literature fill our libraries on these matters which have been written by scholars from the "European" tradition-both the left and right. The question is as much a moral or ethical one as anything else and perhaps we shall have to wait for our Eurocentric biases to recede before a clearer resolution of it can be made.

But the issue of the disruption of the relationship between aboriginal peoples and their lands should be further clarified. Colonialist expansion and subsequent contraction at the political level, displaced the previous aboriginal territorial "maps" of the regions it affected. It ultimately led to the superimposition of an externally derived territorial demarcation of bounded states which bore little correlation politically,

1. Note, for example, the communication of grievances of the Mikmaq Nation (in Canada) to the U.N. Human Rights Committee (Communication R. 19/78, G/50, 215/51 (ana. (18))). The U.N. Secretary General has classified the document confidential.

sociologically, anthropologically, economically or otherwise to what had existed before. As already mentioned, the question of just how much this process did or did not underdevelop these regions is still disputed. That displacement occurred, cannot be denied; the examples of the epidemiological history of any of these regions verifies this (1). The critical point in this regard, however, is that people in the peripheries who are at the "base" (i.e., the politically and economically disadvantaged) in developing regions, whether in developed countries or not, are faced with a situation where there is little room for local "life-space" to serve as the most relevant context for them to become integrated into territorially and participatory based modes of development.

The trend toward state consolidation of power and control has paralleled a situation where development efforts in any given periphery, whether internationally funded or not, have generally not succeeded in serving as a catalyst to positive development. With respect to Canadian Indians, a revealing example of this process has been recorded by Paul Driben and Robert S. Trudeau (2).

1. ~~With respect to aboriginal peoples in Canada, Rene Fumoleau in As Long as This Land Shall Last (Toronto: McClelland and Stewart, 1973) tabled major events of contact with Europeans. The record is replete with the disastrous effects of epidemics caused by diseases introduced through European contact.~~
2. Paul Driven and Robert S. Trudeau, When Freedom is Lost: The Dark Side of the Relationship between Government and the Fort Hope Band (Toronto: University of Toronto Press, 1983). For a statement on the African context see D.R.F. Taylor, "Rural Development Space in Africa" in Our Geographic Mosaic, David B. Knight (ed.), (Ottawa: Carleton University Press, 1985), pp. 33-48. (The author of this thesis can confirm the conclusions of Driben and Trudeau based on of work with the Ojibwaw of northwestern Ontario.

In many instances where improvement of development indices in peripheral regions occupied by aboriginal peoples would indicate some success with traditional approaches to creating "development", they have been the result of state welfarist approaches to developmental problems and have not gone to the issues of structural change. In Canada, indigenous peoples have more often than not been obstinate in "...refusing to adjust to or digest externally induced changes or stress" (1). At the same time, they have felt victims of the welfarist approaches which have characterized the policies of the Canadian state (2). This paper also points out in a later chapter, however, that where aboriginal peoples have been most vocal in pursuing recognition of their rights, there have been interesting developments in aboriginal political and economic structures (3).

Aboriginal peoples in Canada are not alone in claiming that the European model of the more centralized apparatus of state power embodies within it notions of territorial control which can have negative effects because it so often does not conform to the needs of the peoples with different territorial group identities within the superimposed boundaries of the state. For instance,

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1. Y.G. Lithman, The Practice of Underdevelopment and the Theory of Development: The Canadian Indian Case (Stockholm: University of Stockholm, 1982), p. 133.
 2. One of hundreds of examples of this in the testimony given by aboriginal people to the Special Committee on Indian Government is in: Canadian House of Commons, Special Committee on Self-Government, Minutes of Proceedings and Evidence (Issue 18) (12, April 1983), p. 57.
 3. See text in Chapter 4, between notes 42 and 46.

scholars of Africa have been growing toward a greater consensus that development must be "...seen as an essentially indigenous process in which concepts of self-reliance and popular participation loom large" (1). G. Hyden has noted a pattern in Africa where rural peoples on the continent have resisted assimilation into either capitalist or socialist formations clinging instead to an "economy of affection" (2). Africanist Paul Richards has also made a strong case pointing out the "...dangers inherent in a universalistic approach and the corresponding importance of local knowledge...[with respect to the] agricultural ecology [in Africa]" (3). Traditional approaches in this regard, are seen by Richards to reflect at least in part, "...a Eurocentric preoccupation" (4). He goes further in arguing the case with respect to Africa by stating "that the disproportionately favoured status of formal academic knowledge is one of the issues most urgently requiring attention in the struggle for beneficial ecological change" (5). The same thing could be said with respect to the forests of Canada, perhaps not the same sense of immediate urgency but no less important in the long run, that it carries in the African case.

1. D.R.F. Taylor, supra, p. 12, note 2. p. 33.

2. G. Hyden, Beyond Ujamaa in Tanzania (Berkeley: University of California Press, 1980).

3. Paul Richards, "Ecological Change and the Politics of African Land Use" in 26(2) African Studies Review 1, p. 2.

4. Ibid., p. 3.

5. Ibid., p. 2.

D. Statement of Intent

It often appears that most Canadians have not yet discovered the developmental malaise which has occurred in Canada with respect to aboriginal peoples within the country; the fact that those peoples have remained stubborn in their own territorial attachments to their lands and have refused to be fully administratively incorporated into the mainstream of Canadian economic life remains. A continued state of impoverishment relative to the rest of Canada has also been an enduring aspect of this relationship (1). There is, however, an emerging consensus of the failure of the entrenched structures governing the relationships between the governments of Canada and the aboriginal peoples within their boundaries. The recent Special Committee on Indian Self-Government of the federal government recognized this fact. It strongly recommended "...that the programs of the Department of Indian Affairs and Northern Development related to Indian people be phased out" (2) with their resources being transferred to the Indian people of Canada to be run by them (3) so that the diversity among those peoples and between them and the Government of Canada might be accommodated (4). For the first time, under the rubric

1. See Indian Conditions: A Survey (Ottawa: Supply and Services Canada, 1980).
2. Indian Self-Government in Canada, Canadian House of Commons. Special Committee on Indian Self-Government. Minutes of Proceedings and Evidence, Issue No. 40 (1983), p. 135.
3. Ibid., p. 135.
4. Ibid., p. 65.

of minority rights, however, a committee appointed by the federal government of Canada has opened the possibility of allowing the native territorial sense of "life-space" to determine to an unprecedented degree the development priorities which would apply to aboriginal peoples (1).

For aboriginal peoples who derive from the Indian, Inuit and Metis in Canada, current non-native proposals, though an improvement over previous policies of assimilation of native people (2) still leave much room for aboriginal cynicism. This is because although there is talk of "self-government" in terms of minority rights for native peoples in Canada, there is much less dialogue about aboriginal government in terms of international legal rights to self-determination which is being promoted by most aboriginal peoples in the country. At the same time, among aboriginal peoples in Canada there is very little talk about secession from the Canadian state. What aboriginal people in Canada want Canada to be is a political entity which encompasses recognition of the value of self-determined and fully participating aboriginal governments in Canada at the very minimum. Aboriginal peoples in Canada are, in effect, calling for a politico-territorial restructuring of the country and the provision for their "...free determination...to associate their territory and institutions (with Canada) in a manner involving free association, regional autonomy, home rule or associate

1. Ibid.

2. Ibid., p. 20.

statehood as self-governing units" (1).

An exciting situation is developing in those post-colonial states with the longest political independence from their European "parents". Unlike many of their more newly independent African counterparts, for example, states like Canada containing aboriginal populations of demographic significance now find those peoples among the most vocal in raising, through innovative proposals, new issues in the area of international rights of peoples to territorial self-determination. There is an effort underway to diminish the centripetal tendency of the modern state to retain a high degree of centralized authority across racial and/or ethnic territorial boundaries.

This paper accepts that these aspirations of aboriginal peoples represent a legitimate struggle on their part to achieve the recognition of their rights as peoples as they are becoming more clearly articulated in international law. An attempt is made to point out that the Canadian state must come to accept its obligation to recognize these rights. The formulae of negotiation which are to be used in delineating the new relations between aboriginal peoples and Canadian governments are to be based on normative international standards of human rights as they are becoming ever more clearly articulated. The process is not to be one whereby the governments of Canada claim to hold the power and as a consequence will decide the basis from which the new rights will be defined. This represents an

1. World Council of Indigenous Peoples, International Covenant on the Rights of Indigenous Peoples, (Draft) 28, April 1981.

improper ethnocentric approach and only leaves the door open for discriminatory and dangerous abuses of imposed power, which has been the historic pattern to date. Either Canada's aboriginal peoples are distinct peoples and therefore, possess rights to self-determination under international legal norms or they are not. In other words, the normative approach which is to be used as a basis for defining the new relationship between aboriginal peoples and Canada must be viewed as being external to Euro-Canadian governments, to the extent that it recognizes the applicability of international collective human rights norms in the definitional process. This is the best way to avoid an ethnocentric imposition of power; furthermore, even this approach can only be successful if aboriginal peoples contribute ever more fully to the clarification of these international norms themselves. To support these conclusions, chapter II of this essay traces the development of relations between Europeans, the Euro-Canadian state and aboriginal peoples in Canada through the evolution of non-aboriginal Canadian law which was built on extremely discriminatory notions of "superior civilization" (1). As previously mentioned, the scope of this essay cannot be extended to show that these laws, and the attitudes which gave rise to them, were part of an inherent systemic structure of political economy whose purpose was to extract as much economic surplus from aboriginal territories

1. See especially: A.H. Snow, The Question of the Aborigines in the Law and Practice of Nations (Washington, D.C.: U.S. State Dept., 1919), p. 108.

as possible. It is hoped that these chapters will serve as an assistance for readers to draw more informed inferences about this history (1). Chapter II also proposes a necessary precondition of Euro-Canadian legal and political change required to facilitate aboriginal-controlled development. The corollary is the necessity for aboriginal peoples themselves to generate the political will to create change on the part of Euro-Canadians.

Chapters III and IV illustrate the political will of aboriginal peoples to secure greater control over the development of their territories. Chapter III surveys the political positions and convictions of aboriginal peoples in Canada. By contrasting these positions with those of Euro-Canadian governments, it becomes clear just how critical the perseverance of aboriginal peoples will be in this process. The same can be said for the continuing refinement and development of universal human rights norms in the international field. Chapter IV also illustrates the extent to which these norms have been developed since the advent of the United Nations, how they can be used to support the aspirations of aboriginal nations in Canada to limit Eurocentric control over their cultural and territorial development and the potential impact they could have on Canadian domestic law. This paper will also point out that aboriginal peoples are already beginning to have an impact on the very evolution of these

1. The work of Rene Fumuleau, especially As Long As This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939, is recommended in this regard (see: p. 12 note 1).

international human rights norms. This impact has the potential over the next several decades to generate profound changes in the international relations among diverse peoples.

The concluding epilogue attempts to put these arguments into a realistic time frame of change. This essay accepts that fundamental changes in the behaviour of many states are necessary in order to give adequate protection for individual and collective human rights. We must, however, look soberly to the current state of international affairs to determine which positions on the matter of change are possible but which still carry within them the necessary innovations required to ensure the survival of aboriginal cultures. This must be done taking into account the present status of international law with its potential to effect change and the possibility of a beneficial enhancement of that status. The final personal conclusion is that if aboriginal peoples in Canada and elsewhere do not achieve the recognition of their rights to contribute in international legal and institutional change through their unique cultures and traditions, it represents part of an inter-related state of world affairs that leaves a much diminished chance for the survival of human cultural diversity into a post-nuclear age.

CHAPTER II

THE RIGHTS OF INDIGENOUS PEOPLES IN EURO-CANADIAN LAW

A. Introduction: Euro-centrism Versus International Law

Europe (and European colonial successors whose populations are dominated by peoples of European descent have) an old tradition, like most other cultures, of ethnocentrism, of the belief in one's own cultural superiority. Eurocentrism differs from some other forms of ethnocentrism because of its expansionist approach from the 15th century to 1945 (and sometimes beyond), while other societies used ethnocentrism in a defensive way to preserve their identity and resist foreign penetration (China, Native America in particular). Eurocentrism is accompanied by a claim to universalism: European values must be valid in all other parts of the world (1). Thus, much of the humanistic thinking of the past was deeply ethnocentric (2).

Chapter II is an attempt to highlight some of the origins of the Eurocentric view of aboriginal territorial rights, its importation into the aboriginal rights law of Canada and its impact on aboriginal peoples in Canada. The foundations of this established Eurocentrism have their roots in antiquity. The Renaissance Spaniard Juan Jines de Sepulveda (a contemporary of Bartolome de Las Casas who became renowned for his defense of Indians in the New World) "...believed (relying on Aristotle's Politics) that some races are inferior to others, that some men are born to slavery. By this reasoning, the Europeans, a superior race, were justified in subjugating the Indians, an inferior race" (3).

1. See Roy Preiswerk and Dominique Perrot, Ethnocentrism and History: Africa, Asia, and Indian America in Western Textbooks (New York - Lagos: NOK Publishers, 1978).
2. Johan Galtung, Roy Preiswerk and Monica Wamegah, "A Concept of Development Centered on the Human Being: Some Western European Perspectives", 2(1) Can. J. Dev. Studies 135, p. 135.
3. T. Berger, Indigenous Peoples and the Industrial System: The Canadian Experience (Address to the Conference: Native Resource Control and the Multinational Corporate Challenge), p. 2.

Aristotle - whose students included the Greek empire builder Alexander the Great - had written on the characteristics of different peoples:

[The Europeans are] full of spirit but wanting in intelligence and skill...and incapable of ruling others. [Asians accept subjugation and slavery because, though] intelligent and inventive, [they are] wanting in spirit. But the Hellenic race, which is situated [geographically] between them, is likewise intermediate in character, being high spirited and also intelligent. Hence, it continues free, and is the best-governed of any nation, and if it could be formed into one state would be able to rule the world.(1).

Medieval and Renaissance Europeans accepted classical ideas of universalism but Aristotle's comment on the intellectual inferiority of Europeans did not seem to instruct many Europeans as to how they themselves might be cautious in defining non-Europeans.

Francisco de Vitoria, one of the first great publicists of international law, relied partly on the authority of Aristotle whose writings on natural law were synthesized with Christian hierarchical theology by Thomas Aquinas. Yet, he could still forcefully argue in the sixteenth century that Indigenous peoples of the "New World" were imbued with not only humanity but with social, economic, political and cultural traditions which meant that they could assert rights to sovereignty under the Law of Nations equal to any European sovereign power (2).

(text resumes on p. 25)

1. Aristotle, Politics, Bk. VII (1327 6). Quoted in: Jean Gottmann, The Significance of Territory, Charlottesville: University of Virginia Press, 1973), p. 4.

2. Douglas Sanders ("Indigenous Questions in International Law", 2 Can. Hum. Rights Yearbook 3, pp. 4-5).

Footnote 2 (p. 23) cont'd.

and R.A. Williams (p. 90; see following note) have accepted that Vitoria lent legitimacy to the rights and indeed responsibility, of Europe to assume control over the Indians of the Americas. The evidence does not bear this assumption out. Vitoria wrote on the possibility of establishing title over the indigenous peoples in America based on their supposedly "uncivilized" nature that

there is another title which can indeed not be asserted [emphasis added - here is the first clue given as to what Vitoria thinks of the alleged "uncivilized" nature of the Indians], but brought up for discussion and some think it a lawful one. I dare not affirm it nor do I entirely condemn it. It is this: [What follows is what others were arguing, not Vitoria]. Although the aborigines are...not wholly unintelligent, yet they are unfit to found or administer a lawful state up to the minimum standards required by human and civil claims. Accordingly, they have no proper laws nor magistrates and are not even capable of controlling family affairs; they are without any literature or arts, not only the liberal arts, but the mechanical arts also; they have no careful agriculture and no artisans...It might therefore, be maintained that in their own interests the sovereigns of Spain might undertake the administration of their country, providing them with prefects and governors for their towns, and might even give them new lords, so long as this was clearly for their benefit. [Now Vitoria begins to offer a response.] I would say there would be some force in this concentration; for if [emphasis added] they were all wanting in intelligence, there is no doubt that this would not only be a permissible, but also a highly proper, course to take; nay, our sovereigns would be bound to take it, just as if the natives were infants (F. de Vitoria, De Indis et de Jure Belli Reflectiones (E. Nys, ed.) (Washington: The Carnegie Institution of Washington, 1917), 1st Relictio, 3rd Section, tit. 2, pp. 160-161).

Vitoria clearly stated that such a principle could not be asserted as a principle of the Law of Nations (*ibid.*) and that if Spain were to apply it to the Indians of the New World as an act of "charity", those Indians would have to be of such defective intelligence as to be incapable of managing their own affairs.

But for Vitoria the question was a moot one. He dealt with it because it was being advanced by those Spaniards who were seeking some justification for domination of the lands and peoples of the new world. His own response to the question

International law worked to place certain obligations on indigenous peoples because he accepted those peoples as nations. But these obligations of indigenous nations had not been arrived at with their free consent and participation. Indigenous peoples at that time had no input into the creation of international legal principles respecting issues such as the trading rights of nations to which they were nonetheless still subject (1).

(text resumes on p. 27)

Footnote 2 (p. 23) cont'd.

is constructed in a close parallelism to the allegations that he noted above. Vitoria declared that the doctrine of wardship could not have any relevance for the Indians

from the fact that the true state of the case is that they are not of unsound mind, but have, according to their kind, the use of reason. This is clear because there is a certain [i.e., distinct] politics which are orderly arranged and they have definite marriage and magistrates, overlords, laws and workshops and a system of exchange, all of which call for the use of reason; they also have a kind of religion. Further, they make no error in matters which are self-evident to others; this is witness of their use of reason (*ibid.*, 1st Relictio, 3rd section, tit. 23, p. 127).

Vitoria had already concluded:

[The upshot of all of the preceding is, then, that the aborigines undoubtedly had true dominion in both public and private matters, just like Christians, and that neither their princes nor private persons could be despoiled of their property on the ground of their being not true owners (*ibid.*, tit. 21, p. 127).

1. For analysis on the roots of this Eurocentrism see: R.A. Williams Jr., "The Medieval and Renaissance Origins of the Status of the American Indian in Western Legal Thought", 57(1) Southern Calif. L. Rev. 1. According to the Law of Nations (*jus gentium*), Vitoria held that the Spaniards could travel and sojourn there provided that no harm was done to the natives (*Supra*, note 2, The First Relictio, section 3, tit. 1, p. 151. "...[I]t would not be lawful for the French to prevent the Spanish from travelling or even living in France, or vice versa, provided this in no way enured to their hurt and the visitors did no injury". [Thus the Spaniards could freely proselytize if they did no harm to

Footnote 1 (p. 25) cont'd.

the Indians but the Indians were not bound in any way to accept their teachings. The Spaniards also had the right to freely trade with the Indians [as with any other country and vice versa] "...so long as no harm is done to their [the Indian's] country" (*ibid.*, tit. 1, p. 152). If after exhausting all peaceful means of diplomacy and negotiation, the Indian rulers refused them their rights of access and propose to use force to do so, the Spaniards could under the Law of Nations "...enforce against them all the rights of war, despoiling them of their goods, reducing them to captivity, deposing their former lords and setting up new ones" (*ibid.*, tit. 1, p. 155). But if, because of timidity and fear, the Indians felt compelled (i.e., were justified in being afraid due to their innocence) to use force to drive out the Spaniards, the Spaniards in turn could only defend themselves within the limits of self-protection and would not be entitled to the normal "spoils" of war (*ibid.*, tit. 1, p. 154.)

Another right the Spaniards could enforce against the Indians was access to communally held resources:

If there are among the Indians any things which are treated as common both to citizen and to strangers [emphasis added], the Indians may not prevent the Spaniards from a communication and participation in them. If, for example, other foreigners [emphasis added] are allowed to dig for gold...or to fish for pearls...the natives cannot prevent the Spaniards from doing this...so long as the citizens and indigenous populations are not hurt thereby (*ibid.*, tit. 1, p. 153).

The Law of Nations also imposed the duty on indigenous peoples in the new world to permit "...the propagation of Christianity" (*ibid.*, tit. 1, p. 156) though there could be no coercion on the part of the Spaniards to force acceptance of Christianity by them.

According to Vitoria, because the Indians of the New World were nations they were subject to the universal character of the Law of Nations. That law was "...clearly capable of conferring rights and creating obligations [when reached through the] consensus of the greater part of the whole world [emphasis added], especially on behalf of the common good of all" (*ibid.*, tit. 1, p. 153). The problem here is that Vitoria's Law of Nations had not been reached through the consensus of the greater part of the whole world but was derived through observing the practices of the greater part of the European world!

However, the tradition of accepting the sovereign territorial rights of aboriginal peoples found a general continuity in the publicists who came after Vitoria (1). It was not so much any imposed obligations of the Law of Nations on indigenous peoples that were used to assert European domination over aboriginal peoples in Canada and elsewhere; rather, it was an even more profound and active Eurocentrism that saw indigenous peoples as being politically, culturally, socially and economically inferior which was to give rise to this domination. It would appear that Europeans were generally welcomed by aboriginal peoples, as were dealings with them, provided these did not interfere with indigenous traditions and culture; many

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1. See for example: E. Dumbald, The Life and Legal Writings of Hugo Grotius (Norman: The University of Oklahoma Press, 1969), pp. 57-82, for a qualified view of aboriginal territorial rights in North America. De Vattel though recognizing the right of a nation to sovereignty added that "Every nation...is...obliged by the law of nations to cultivate the land that has fallen to its share....There are others, who to avoid labour, choose to live only by hunting and their flocks. Those who still pursue this idle mode of life...have...no reason to complain, if other nations, more industrious and too closely confined, come to take possession of a part of those lands. Thus, though the conquest of the civilized empires of Peru and Mexico were a notorious usurpation, the establishment of many colonies on the continent of North America might, on their confining themselves within just bounds, be extremely lawful" (De Vattel, bk. 1 81, pp. 35-6). Expressing the law of nations in such cultural terms, that is recognizing sovereignty in some aboriginal peoples and not in others allowed Vattel to be consistent with European designs of empire which later came to be embedded in the American themes of 'manifest destiny'. It must be noted, however, that comparing the various opinions of the publicists on this matter, the conclusions of Vattel were not consistent with the preponderance of international juristic opinion of his time (M.F. Lindley, The Acquisition of Backward Territory in International Law (New York: Negro Universities Press, 1969, c. 1926), p. 20).

indigenous peoples, therefore, did not feel threatened by free and open economic and political discourse with the Europeans

(1).

At the beginning of settlement in North America the de facto situation of superior aboriginal strength necessitated European respect for aboriginal peoples. The first Europeans who settled in North America accepted the fact that the continent was inhabited by native peoples and that the tribes and bands had, through cooperative practise and agreement, recognized each others' primary or exclusive use over certain territories (2). There is also little doubt that, at least for many centuries, indigenous North American peoples had permanent populations (3) and constituted a separated racial group (4), which was divided into distinct political groups each with its own law. In addition many aboriginal peoples possessed laws governing the federations to which they belonged (5). Although boundaries between tribes were often not clear, precisely delineated boundaries were never a pre-requisite for sovereign status under

1. See for example: The Journal of Christopher Columbus (C. Markham, trans.) (Bert Franklin Pub.: New York, 1963), esp. pp. 126-136.
2. C. Wessler, Indians of the United States (Garden City, N.Y.: Doubleday) (rev. ed. 1966).
3. United States v. Mackenzie (1975), 419 U.S. 544.
4. W. Bodmer and L. Cavalli-Sforza, Genetics, Evolution and Man (San Francisco: W.H. Freeman Co., 1976).
5. Worcester v. Georgia 1832, 3 U.S. (6 Peters) 515, p. 559; Santa Clara Pueblo v. Martinez 436 U.S. 49, pp. 55-60.

under international law (1). International law requires control over the population and territory; in other words effective government is a requirement of sovereignty (2). The courts of the United States have always accepted the fact that North American tribal populations had (3) and still have the capacity (4) for self-government. The ability of indigenous peoples to carry on foreign relations is a historical fact in international affairs (5). Britain and France often sought the aid of aboriginal communities to retain control of their respective new colonies (6). The British Colonies on the Eastern seaboard were established through treaties and in many instances survived only through the assistance given by Indians (7). The sovereignty of indigenous peoples in the United States, at first confirmed and

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1. I. Brownlie, Principles of International Law (2nd 3d.), (Oxford: The Clarendon Press, 1973), p. 74. A group can be recognized as sovereign if frontiers are not precisely defined so long as it controls an area of land.
 2. Ibid.
 3. Cherokee Nation v. Georgia, Infra 86, p. 15. Benjamin Franklin found it incredible that the Iroquois Confederacy "...should be capable of forming such a Scheme for such a Union, and be able to execute it in such a manner, as that it has subsisted Ages, and appears indissolable" (L. Labaree and W. Bell, Jr. (eds.), The Papers of Benjamin Franklin, Vol. 4, New Haven: Yale University Press, 1959), p. 119.
 4. Fisher v. District Court, (1976), 424 U.S. 352.
 5. S. Rosenne, The Law of Treaties: A Guide to the Legislative History of the Vienna Convention (Leyden: Sijthoff, 1970), p. 109.
 6. R. Billington, America's Frontier Heritage (New York: Holt, Rinehart and Winston, Inc., 1970c. 1966).
 7. Ibid. See also: Worcester v. Georgia, Supra p. 28, note 5, p. 549.

accepted through the importation of some of the content international law, came to incorporate a Eurocentric patchwork of "...ad hoc, self-serving" (1) qualifications and limitations on those sovereignty rights in the United States. Later in Canada, those qualifications and limitations were to become the basis of non-indigenous law affecting indigenous peoples.

In the first half of the nineteenth century a series of court cases on aboriginal territorial title was decided by the Supreme Court of the United States under Chief Justice John Marshall which would subjugate that title in U.S. law to the one held by the Euro-American State. Indian land tenure would be formulated in terms of an occupancy right which

...until it be legally extinguished, is not such as to be absolutely repugnant to the *seisin* in fee [i.e., the underlying superior title] on the part of the state (2).

In the landmark case of Johnson v. McIntosh, the Supreme Court held that non-aboriginal title to North American lands was based upon European discovery:

The principle was, that discovery gave title to the government by whose subjects, or by whose authority, it was made, against all other European Governments, which title might be consummated by possession.

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1. H. Berman, "The Concept of Aboriginal Rights in the Early Legal History of the United States", 27 Buffalo L. Rev. 637, p. 637.
 2. Fletcher v. Peck (1810, 10 U.S. (6 Cranch) 87, pp. 142-142.

The exclusion of all other Europeans necessarily gave to the nation making the discovery the sole right of acquiring the soil from the natives, and establishing settlements upon it...It was a right which all asserted for themselves. The rights thus acquired being exclusive, no other power could interpose between them.

In the establishment of these relations, the rights of the original inhabitants were, in no instance, entirely disregarded; but were necessarily, to a considerable extent, impaired. They were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion; but their rights to complete sovereignty, as independent nations, were necessarily diminished; and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it (1).

This finding of the United States Supreme Court was to become critical in the Canadian aboriginal territorial rights context because; not only did it form the basis of nineteenth century Canadian jurisprudence on aboriginal title but, except for the first sentence, these were the exact words quoted by the Supreme Court of Canada in an important 1984 definition of aboriginal rights in the Musqueam case (2).

Professor Howard Berman of Harvard University has noted that the Johnson case stands as a "centrepiece for the judicial

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1. Johnson v. McIntosh (1823), 21 U.S. (8 Wheat) 543, pp. 573-574.
 2. Guerin et al. v. The Queen and National Indian Brotherhood (1985), 1 C.N.L.R. 120, p. 133. See also: Reg. v. Sec. State for Foreign and Commonwealth Affairs, Ex Parte Indian Assoc. of Alberta, (1982) 2 W.L.R. 641, pp. 650-653 for a recent application of the same principle by Lord Denning of the Court of Appeal in England.

diminution...of native rights" (1). The U.S. Supreme Court in the case must have been aware that no doctrine of discovery could be applied under international law to the 'discovery' (sic) of inhabited territories because lawyers in the case used the writings of Grotius, Pufendorf, de Vattel and others arguing the validity of Indian sovereignty (2). Describing aboriginal title in these terms clearly reflected the Eurocentric bias of the court:

[The court's] formulation of Indian land tenure in terms of "occupancy," rights was conceptually identical to [John] Locke's description of land holding in the state of nature as a "tenancy in common". The implication of Locke's phrase is that the actual property right is inchoate and only arises at the point at which individual possession with a right of exclusion is acknowledged. The reality of a nation or community inhabiting territory cooperatively, with land usages rooted in principles other than exclusivity [i.e., private property], was apparently beyond the scope of 17th century English thought. The result is an anglophone legal system with an inherent cultural bias that attributes an anomalous and inferior status to non-European forms of land tenure (3).

The U.S. Supreme Court, in the Johnson case, said that it did not want "...to enter into the controversy, whether

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1. H. Berman, "The Concept of Aboriginal Rights in the Early Legal History of the United States", 27 Buffalo L. Rev. 637, p. 644.
 2. Johnson v. McIntosh, Supra p. 31, note 1, pp. 567-568.
 3. Berman, Supra 1. See J. Locke, The Second Treatise of Government (P. Laslett ed.) (1st edition, 1690) (London: Cambridge Univ. Press), Ch. 1.

agriculturalists, merchants, and manufacturers have a right, on abstract principles, to expel hunters from the territory they possess, or to contract their limits" (1). But immediately after stating that it was not deciding the issues involved on any basis of cultural superiority, the court ~~asserted~~ asserted that it was obligated to ratify the 'political process' no matter what its ideological origins were (2).

A few years later Chief Justice Marshall must have viewed with frustration and a sense of alarm the increasing intrusions of non-aboriginal governments onto Indian lands in violation of the occupancy rights that his court had granted to Indians living on them. The state of Georgia was coveting Cherokee lands and was becoming anxious to take control of them by force if necessary. In an attempt to deal with this situation the court began to articulate a strengthening of aboriginal territorial title to the maximum extent possible while still retaining a diluted form of the concept of "discovery". The court in the case of Cherokee Nation v. Georgia concluded that "...much of the argument which was intended to prove the character of the Cherokees as a state,

1. Johnson v. McIntosh, Supra p. 31, note 1, p. 588.

2. Ibid. Note the similar comment of the court in the recent Canadian aboriginal territorial rights case: A.G. Ont. v. Bear Island Foundation et. al., Infra, p. 40, note 1.

as a distinct political society, separated from others, capable of managing its own affairs and governing itself, has...been entirely successful" (1).. In reconsidering the claim of the United States under the right of 'discovery' the court found in Worcester v. Georgia that it was

...difficult to comprehend the proposition that the inhabitants of either quarter of the globe (America,... inhabited [by aboriginal peoples] and independent...of the rest of the world, [or]...Europe) could have the rightful original claims of dominion over the inhabitants of the other, or that the discovery of either by the other should give the discoverer rights in the country discovered, which annulled the pre-existing rights of its ancient predecessors (2).

The principle of discovery, though it should not have even been applied in this sense under the rules of international law, could, according to the court in the Worcester case, only serve to give the U.S. the exclusive right to lawfully obtain the lands occupied by aboriginal peoples in that country. Though this meant that Indian nations in the U.S. could still not be regarded as foreign states having an absolute sovereign right to their territories, they were, for all other purposes to be treated as a separate state. It should be borne in mind that the Worcester case was heard subsequent to Johnson but Canadian courts, in rushing to apply the Eurocentric Johnson reasoning

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1. Cherokee Nation v. Georgia (1831), 30 U.S. (5 Peters) 1, p. 16.
 2. Worcester v. Georgia (1832), 31 U.S. (6 Peters) 515, pp. 542-543.

vis-a-vis aboriginal title (1), have ignored the former even though under U.S. law it carried a greater precedential value than the latter. But even in the U.S., political events quickly overran the sovereignty that the Marshall court had identified as being vested in the Cherokees in the State of Georgia. Georgia did not accept the power of the Supreme Court to strike down its Indian laws. The then President Andrew Jackson did nothing to enforce the ruling. The Cherokees were removed by force from lands subsequently occupied by Georgia and during that expulsion westward along what became known as the "Trail of Tears" thousands of Indians died.

B. The Canadian Context: The Early History

There is one fundamental factor which permeates all of the non-indigenous law in Canada which has been constructed to date to define aboriginal territorial rights; there has been an apparent inability or unwillingness of courts to recognize the aspirations of aboriginal peoples to achieve recognition as peoples with international legal rights to self-determination and sovereignty. It was this same inability which had compelled the Supreme Court in the United States, under Chief Justice John Marshall, in the first half of the 19th century to lay down its basis for the non-aboriginal definitions of aboriginal rights. Aboriginal peoples possessed what was believed to be inferior land tenure systems by the very fact

1. See the next section of this chapter.

of the communal nature of these systems. The territorial rights of aboriginal peoples could thus be made subject to European legal categories of private property. Attempts to analogize aboriginal territorial rights to European private property concepts rather than to the more fundamental legal concepts of sovereignty reinforced the Eurocentric biases vis a vis aboriginal peoples. This has held true in the political sphere as well; its history has long been entrenched in Canadian politics.

In 1763, the British Crown, through the promulgation of a Royal Proclamation, declared that the Indians then "connected" to and "living under British protection"

should not be molested or disturbed in the possession [emphasis added] of such parts of Our [emphasis added] Dominions and Territories as, not having been ceded to, or purchased by Us, are reserved [emphasis added] to them, or any of them, as their Hunting Grounds (1).

The Royal Proclamation did treat the Indians as distinct from British subjects, but in expressly claiming sovereignty over their lands it represented a quantum movement away from the recognition of aboriginal sovereignty espoused by Francisco di Vitoria in his writings on the territorial rights of aboriginal peoples in the "new" world. The Royal Proclamation itself had been issued to quiet hostilities of Indians against British settlements in the North American colonies. As such it represented a de facto continuing recognition of the extent of aboriginal strength in North America; the British had to accede to Indian demands to be left alone in order to avoid major conflict in the region. But

1. Quoted in: B. Morse (ed.), Aboriginal Peoples and the Law: Indian, Metis and Inuit Rights in Canada (Ottawa: Carleton University Press, 1985), pp. 52-54.

the non-Indian wording with which this was accomplished prefigured the status of aboriginal peoples which would be developed by courts in Canada both as to their territorial rights and the requirements to be met for their "extinguishment". Chief Justice John Marshall of the United States Supreme Court had emphasized the de facto strength of Indian nations in North America at the time of the promulgation of the Royal Proclamation (1) but no such reasoning was applied to any analysis of the document by courts in Canada.

C. Aboriginal Territorial Rights in Canadian Law

By the time of Canadian Confederation settlement of Canada was proceeding apace. Provincial boundaries were being established and federal-provincial jurisdictional questions arose. One in northwestern Ontario, in the 1880's, related to the question of aboriginal territorial rights. In R. v. St. Catherine's Milling and Lumber Company a non-aboriginal court expounded upon the nature of aboriginal territorial rights. None of the Indians affected by the case were present at the proceeding. At trial the court held that:

The relations between the Government and the Indians change upon the establishment of reserves. While in the nomadic state...[Indians] may or may not choose to treat with the Crown for the extinction of their primitive right of occupancy [emphasis added]. If they refuse...the government is not [emphasis added] hampered, but has perfect liberty to proceed with the settlement and development [emphasis added] of the country, and so, sooner or later, to depose them. If, however, [Indians] elect to treat they then become, in a special sense, wards of the State [emphasis added] and have their rights assured in perpetuity to the usual land reserve. In regard to this reserve the tribe enjoys

1. See text, *Supra* at pp. 33-34.

practically [emphasis added] all the advantages and safeguards of private resident proprietors...Before the appropriation of reserves the Indians have no claim except upon the bounty and benevolence of the Crown. After the appropriation, they become invested with a legally recognized tenure of defined lands (1).

The court went on to clarify the "primitive right of occupancy" of the Indians:

Underlying the whole there is an affirmance of the constitutional propositions that the claim of the Indians by virtue of their original occupation is not such as to give any title to the land itself, but only serves to commend them to the consideration and liberality of the Government upon their displacement; that the surrender to the Crown by the Indians of any territory adds nothing in law to the strength of the title paramount [of the Crown] (2).

When the case was appealed to the Privy Council in England the inferior status of aboriginal territorial rights was entrenched in the Canadian legal system:

The policy of these administrations has been all along the same in this respect, that the Indian inhabitants have been precluded from entering into any transaction with a subject [of the Crown] for the sale of their interest in the land, and have only been permitted to surrender their rights to the Crown by a formal contract [3] duly ratified in a meeting of their chiefs or headmen convened for the purpose. Whilst there have been changes in the administrative authority, there has been no change since the year 1763 in the character of the interest which its Indian inhabitants had in the lands [emphasis added] surrendered by the treaty. Their possession, such as it was, can only be ascribed to the general provisions made by the Royal Proclamation in favour of all tribes then living under the sovereignty and protection of the British Crown [emphasis added]. It was suggested in the course of the argument for the Dominion, that in as much as the Proclamation recites that the territories thereby reserved for Indians had never

1. R. v. St. Catherine's Milling and Lumber Company (1885), 10 O.R. 196, pp. 229-30.

2. Ibid., p. 234.

3. Here we have the court implying that treaties with Indians should be viewed as contracts even though they were stated to be treaties.

"been ceded to or repurchased by" the Crown, the entire property of the land remained with them [1]. That inference is, however, at variance with the terms of the [Royal Proclamation], which show that the tenure of the Indians was a personal and usufructory right, dependent upon the good will of the sovereign [emphasis added]. The lands reserved are expressly stated to be "parts of Our dominion and territories"; and it is declared to be the will and pleasure of the sovereign [emphasis added], that, "for the present", they shall be reserved for the use [emphasis added] of the Indians, as their hunting grounds, under his protection and dominion. There was a great deal of learned discussion at the Bar with respect to the precise quality of the Indian rights, but their Lordships do not consider it necessary to express any opinion on the point [2] [emphasis added]. It appears to them that there has been all along vested in the Crown a substantial and paramount estate, underlying the Indian title [emphasis added], which became a plenum dominion whenever that title was surrendered or otherwise extinguished [emphasis added].

The Crown has all along had a proprietary estate in the land, upon which the Indian title was a mere burden [emphasis added] (3).

In reaching its decision the Privy Council relied chiefly on the Johnson v. McIntosh (4) decision from the United States in which the U.S. Supreme Court of that country constructed the special application of the doctrines of conquest and discovery to aboriginal lands. The Privy Council ignored the later case of Worcester v. Georgia (5) which affirmed a much stronger concept of aboriginal sovereignty.

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1. Accepting this proposition would have been tantamount to accepting the validity of some form of Indian sovereignty. This the Privy Council was not willing to do.
 2. Leaving the definition of the precise extent of aboriginal rights open would clear the way for legitimating federal provincial and territorial legislative competence over aboriginal peoples in Canada.
 3. St. Catherine's Milling and Lumber Co. v. R. (1888), 14 App. Cas. 46, pp. 54-55, 58.
 4. Johnson v. McIntosh 21 U.S. (8 Wheat.) 543. See text at pp. 30-31.

5. See p. 34.

The St. Catherine's case proposition remains today the basis of the imposition of non-Indian title over Indian lands. In the "Bear Island" case heard in 1984, Mr. Justice Steele of the Ontario Supreme Court wrote that

as a result of conquest (emphasis added - Mr. Justice Steele implies in this part of the decision that conquest can result from the settlement of aboriginal lands), on Proclamation lands aboriginal title is personal and usufructory, and exists solely at the pleasure of the Crown (1).

Mr. Justice Steele held in the case that aboriginal title on non-Proclamation lands was the same as for Proclamation lands and that aboriginal rights are to be determined according to how the Indians used the lands at the coming of settlement (2). Any future distinct independently determined evolution of aboriginal societies has, therefore been ruled out as a possibility for aboriginal peoples in Canada after European settlement. Distinct Indian territorial rights can go no further than the lifestyles led at the time of settlement!

To conclude, in 1763, George III, with the advice of his United Kingdom ministers, did not grant ownership (how was - or is - it possible to think that the King of England had any ownership rights in aboriginal lands to grant?) of vast tracts of land to Indian bands subject to a limited right of repossession by repurchase, surrender or conquest when a war had just been fought (by the English with the French) to acquire those lands. At that time, Europeans did not consider Indians to an equal to themselves (emphasis added) and it is inconceivable that the King would have made such vast grants of lands to undefined lands, thus restricting his European subjects from occupying these lands in the future except at great expense (3).

1. A.G. Ont. v. Bear Island Foundation et al. (1985) 1 C.N.L.R. 7, p. 28.
2. Ibid., pp. 32-33.
3. Ibid., pp. 33-34.

Parallelling the U.S. Supreme Court in the Johnson v. McIntosh case, Mr. Justice Steele noted the desirability of legitimating the political process no matter what its intentions. He remarked on a report of Commissioners made to the Legislative Assembly of Canada in 1845:

In that report, reference was made to Vattel on the Law of Nations indicating that the Commissioners considered that Indians did not have any proprietary right in the lands [because they were said not to be practising settled agriculture - a false assumption in itself with respect to many Indian nations], that the Indian occupation could not be considered as a true and legal habitation, and that the Europeans were lawfully entitled to take possession of the land and to settle it with colonies [emphasis added]. Whether or not this was proper law or a proper view, it was the view in 1845 of persons in what is now Ontario, and it must be borne in mind in interpreting any legislation or contracts or treaties made at that time [emphasis added]. This view is consistent with my view of the meaning of the Royal Proclamation itself (1).

In 1984, the Musqueam case, decided by the Supreme Court of Canada, reaffirmed the "discovery" principle of Johnson v. McIntosh which gave the European "discovering" country the sole right to acquire aboriginal lands based on its superior underlying title (2). The court in stating that aboriginal title exists independently of the Royal Proclamation did not change the personal and usufructory nature of that title as "...a mere qualification of or burden on the radical or final title of the sovereign" (3). At least when aboriginal lands are temporarily

1. Ibid., p. 32. (The case has been appealed to the Ontario Court of Appeal).
2. Guerin et al. v. The Queen and National Indian Brotherhood [1985], 1 C.N.L.R. 120, p. 133. See text Supra at pp. 30-31).
3. Ibid., p. 134 (quoting: A.G. Que. v. A.G. Can., [1921] 1 A.C. 401, p. 403 (The Star Chrome case)).

surrendered to the Government of Canada without the title to them being extinguished - such as for leasing purposes - the Government of Canada is under a fiduciary obligation to deal with those lands for the benefit of the Indians. This is so because Indians can only alienate their lands - even on a temporary basis - through, and with the approval of the Government of Canada.

To sum up, aboriginal territorial rights in Canada can be stated as follows:

Indians have a legal right to occupy and possess certain lands, the ultimate title to which is in the Crown...The nature of the Indians' interest is therefore best characterized by its general inalienability [i.e., it can only be alienated to the Crown because the Crown has sovereign title to it], coupled with the fact that the Crown is under an obligation to deal with the land on the Indians behalf when the title is surrendered [but not extinguished] (1).

The Supreme Court was then careful to issue the following caveat:

Any description of Indian title which goes beyond these two features is both unnecessary and potentially misleading [emphasis added] (2).

Note that these are "Indian" rights. They do not even extend to non status Indian and Inuit people in Canada who have been made such through non-aboriginal Canadian legislation, or to the Metis. It appears that the door is closed to any further expansion of aboriginal title beyond the usufructory category of possessory or occupancy rights in Canadian courts.

1. Ibid., p. 136.

2. Ibid.

Yet, for most aboriginal peoples in Canada, the question is not whether their interests in their lands were and are usufructory, or even merely like a usufruct, but whether or not the interest in their lands to be recognized is a sovereign interest. The usufruct in European civil law, from where it was derived, is a full possessory right in the "property of others". The categorization and its basis in Eurocentric discrimination have left a bitter impression upon aboriginal peoples in Canada. It is also ironic that aboriginal peoples in Canada view themselves as having been the ones to grant occupancy rights to non-Indians on their territories (1).

D. The Impact of Canadian Law on Indigenous Development

It was commonly accepted by Europeans from the very beginning that aboriginal people should desire to adopt a European-derived developmental process. As Canadian aboriginal rights law developed any possibility for a distinct and mutually beneficial aboriginal development of economic, social and political relationships with Euro-Canadians based upon respect for the value and legitimacy of aboriginal cultural traditions was precluded. This was because aboriginal peoples in Canada were cut off from the lands, resources and jurisdictional powers required to undertake a process of adapting to twentieth century change according to their own distinct communal traditions. There have been "rights" recognized to adopt and "enjoy"

1. See Appendices III and VIII.

Euro-Canadian traditions of private property and capitalist social formations; in this sense aboriginal persons could enjoy all of the rights any Euro Canadian citizen was entitled to. As well, aboriginal persons in Canada whose status is recognized by the Canadian government have been viewed as having distinct additional rights to certain very limited uses of reserve, treaty, and unsurrendered aboriginal lands which has given them "citizen plus" status in the eyes of that government.

The conflict between this type of thinking and that of aboriginal peoples has been their refusal to accept Euro-Canadian economic social and political development modalities which clash with their distinct traditions. To enjoy the rights and privileges that Euro-Canadians enjoy means foregoing basic institutional structures that are deeply embedded in aboriginal culture; one of the most basic among these is the communal and cultural focus of aboriginal communities in Canada. Put simply, most members of distinct aboriginal communities do not, nor do they want to, think and behave as Euro-Canadians. But the Canadian institutional framework is overwhelmingly European in its composition.

Canadian law has made it nearly impossible for aboriginal peoples to successfully follow self-determined paths of development which spring from their distinct cultures. Aboriginal rights, however derived, are of the most limited nature as they pertain to territorial control. This applies both to the territories over which aboriginal peoples have some jurisdiction (e.g., reserves) and those lands (e.g., treaty

lands) to which there are very limited rights to carry on hunting, fishing, trapping and gathering activities. For aboriginal peoples such limited territorial rights negate the possibility for the expression of distinct native cultures and seen from this point of view it is understandable why native people feel that they are "citizens minus". They feel themselves to be persons who are denied the recognition of what they assert are basic rights to practice their own cultures through their own institutions on their own territories. The path to achieving such recognition and territorial control will be difficult and will have to be political in nature achieved through a long term nation to nation process of dialogue aimed at establishing new relationships with European Canadian governments.

E. Conclusions

Aboriginal territorial rights in Canada - those rights which Canadian courts have concluded that aboriginal peoples under Canadian law still might possess over their territories should be determined, according to the courts, with reference to the specific territories in question. This is because

...the essence of aboriginal rights is the right of Indians to continue to live on their lands as their forefathers lived [emphasis added]. It is nothing more or nothing less than that (1).

In the Bear Island case, Mr. Justice Steele held that aboriginal rights in the area of central Ontario under dispute were to be

1. Supra p. 40, note 1, p. 34.

the uses to which the relevant Indians put the land in 1762 - the year that the Royal Proclamation was held to have gained jurisdiction over these lands for the Crown. Had the Indians in this case been found not to have relinquished their aboriginal rights through treaty they would have still had the following rights today:

1. To hunt all animals for food, clothing and personal use and adornment;
2. to exclusively trap fur bearers, which right was enjoyed by the individual family, and to sell the furs;
3. to fish;
4. to use herbs, berries, roots, maple sugar and other natural products for foods, medicines and dyes;
5. to use ochre or vermillion for dyes;
6. to use chert, quartzite and stones for tools (e.g., arrowheads) and other implements (but not extensive mining) [emphasis added];
7. to use clay for pottery, pipes and ornaments;
8. to use trees, bark and furs for housing (but not lumbering) [emphasis added - i.e., poles can be used for teepee frames, etc.];
9. to use trees and bark for fires, canoes, sleighs and snowshoes.

All of the above are traditional uses for basic survival and personal ornamentation existing as of 1763 (1).

In the Temagami region of Ontario the Court found that even these territorial rights of the Indians with their "primitive right of occupancy" (sic) were extinguished for the more limited rights granted by the Crown to the Indians in the Robinson Huron Treaty

1, The Ontario Mining Co. v. Seybold (1899), 31 O.R. 386, p. 399, affirmed by the Supreme Court of Canada in 1901 (32 S.C.R. 1, p. 2.).

of 1850.

For aboriginal peoples seeking recognition of greater territorial rights to facilitate distinct aboriginal development, the Canadian legal system does not offer much. The refusal of Canadian courts to accept a status for aboriginal laws and social values equal to that of the dominant Euro-Canadian system has meant that, for the courts, ~~no problem~~ of sovereignty of aboriginal peoples or even of self-determination arises. The rights of aboriginal peoples have been frozen in time. Virtually no possible adaptation to twentieth century life in Canada is possible outside of the context of federal, and provincial Euro-Canadian institutions.

For aboriginal peoples in Canada this situation is simply not acceptable. To them it implies an entrenchment of their inferior socio-economic status within Canada unless they accept assimilation into Euro-Canada. That is why they are mounting increasing pressure in political fora nationally and internationally to have Canadian law recognize their full rights to self-determination. They view their future growth and survival as distinct peoples as depending upon the ultimate success of this struggle.

CHAPTER III
RIGHTS ASSERTED: THE POLITICAL INITIATIVES OF
1. ABORIGINAL PEOPLES IN CANADA

A. Non-Native Politics of Native Land Rights

Professor Mel Watkins, in an essay on the political activism of the Dene Indians of the Northwest Territories, has offered a concise explanation for the loss, by aboriginal peoples, of their authority to exercise their rights to self-determination:

Europeans encountered not "empty lands" but established aboriginal societies which made use of the land. Sovereignty was asserted over the land on behalf of staple producers for metropolitan markets. Such recognition as there was of aboriginal rights was flawed by the fact that they were asserted by the dominant white society on behalf of the aborigines and within the Europeans system of rights and laws, and not on the basis of the aboriginal "legal system". In some instances, the "establishment" of colonial sovereignty rested on conquest; or if not on actual conquest, then on occupation and the subsequent imposition of the dominant society's political institutions and legal system...The Indian concluded treaties at the risk of obtaining nothing. The prevailing mood was one of the inherent superiority of the white man, and certainly of his political institutions and economic way of life, institutionalized racism which legitimized the process of cultural and political genocide for the aboriginal people (1).

As colonial penetration of Canadian lands by the British proceeded, aboriginal peoples became less able to cope with it. In 1763, when the British obtained French holdings in Canada they soon formalized, through the Royal Proclamation (2), a formal process of "...land transactions in part to quell the discontent expressed by native groups because of [previous private

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1. M. Watkins, "Dene Nationalism" in 8(1) Canadian Review of Studies in Nationalism 101, p. 103.
 2. The text of the Royal Proclamation of 1763 can be found in: B. Morse (ed.), Aboriginal Peoples and the Law (Ottawa: Carleton University Press, 1985), pp. 52-54.

contracts of a "suspicious nature" over lands with them]" (1). For aboriginal peoples this process reflected their willingness to share the wealth of their lands provided this did not interfere with their autonomy. The strength of aboriginal peoples as against the relatively small size of the British colonies necessitated a de facto recognition of Indian demands to control their lands at that time. As Professor Brian Slattery stated:

[A]t the end of the 1763, Great Britain had laid claim to virtually all the territories encompassed by modern Canada, some 3,800,000 square miles, at a time when the total European population of the country numbered less than 100,000 and was concentrated on the shores of the St. Lawrence River and the coasts of old Nova Scotia and Newfoundland. Only a minute proportion of the total area claimed was actually farmed, while political control outside the few settled areas was at best minimal and in most cases non-existent (2).

Over time, however, the imposition of a Eurocentric political control over these territories was facilitated by a dramatic reduction in the populations of aboriginal peoples in them.

The number of indigenous people living in Canada in pre-European times is debated, with estimates ranging from the traditional figure of around 220,000 to more recent calculations yielding several millions. The matter is complicated by the fact that the native population entered upon a period of drastic decline with the advent of the Europeans. This was due in part to the effects of war, alcohol and similar factors, but primarily to the introduction of diseases such as smallpox and measles to which the [native peoples] had little immunity and succumbed in staggering numbers (3).

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1. M. Asch, Home and Native Land: Aboriginal Rights and the Canadian Constitution (Toronto: Methuen, 1984), p. 57.
 2. B. Slattery, The Land Rights of Indigenous Canadian Peoples as Affected by the Crown's Acquisition of Their Territories (Saskatoon: University of Saskatchewan, Native Law Centre, 1979), p. 3.
 3. Ibid., pp. 1-2.

The historian Rene Fumoleau has catalogued this catastrophe as the Indian Nations of Treaties 8 and 11 in Western and Northwestern Canada were affected by it. One smallpox epidemic between 1781-1784 "...decimated the Western Crees of the Plains and Chipewyans - an estimated 9/10 of the Chipewyan population died. The depopulation of this rich fur trading area forced the traders to look further north for furs" (1). Fifty years later, between 1835-1838, another smallpox epidemic in Western Canada once again wiped out one third of the Plains Indians (2). As colonial expansion into the rich fur lands of the Northwest Territories occurred, the same epidemiological pattern occurred. As late as 1928, an influenza epidemic through the Mackenzie District killed between ten and fifteen per cent of the Indian population of each village (3). When the epidemics are combined with the starvation which occurred in the Mackenzie district during this period (4) - at least partly the result of neglect of these peoples by the Government of Canada after the collapse of the fur trade (5) - it is a testament to the endurance of these northern aboriginal peoples that a boycott of Treaty #8 could have been held in Fort Resolution in

1. Rene Fumoleau, As Long as This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939 (Toronto: McLelland and Stewart, 1973), p. 320.

2. Ibid., p. 321.

3. Ibid., p. 335.

4. Ibid., p. 332.

5. Fumoleau has amply demonstrated, this behaviour in As Long As This Land Shall Last (Supra, note 1).

1920 (1). Given this history it is also remarkable that the Dene Nation of the Northwest Territories would come to be in the forefront in the struggle to seek changes in the Euro-Canadian political attitudes which formed the basis of the implementation of the treaties with Indian Nations.

Michael Asch has demonstrated how Eurocentric ideas as expressed in the government versions of Indian treaties were used to support the wholesale usurpation of aboriginal land rights and, therefore, rights to resources, at the political level. In addition to provisions respecting the surrender of lands and the protection of traditional hunting and fishing rights, clauses concerning education, sedentarization and agriculture reflected the attitudes that the Government of Canada held with respect to aboriginal peoples.

In part [these clauses] are included because government perceived that aboriginal society would become transformed by the influx of settlers who were to arrive. In part, they also reflected an ideological premise dominant at the time. This belief was founded on the assumption that aboriginal peoples were less advanced, not because of any inherent biological inferiority, but rather because of the inferiority of their "way of life". Therefore, once their "primitive" institutions and values had been replaced by "civilized" ones, their potential for equality would be realized (2). That is, as Morris suggests, beginning in the 1830's the object of British rule was "...to tackle the evils of slavery, ignorance and paganism at source, to teach the simpler people the benefits of steam, free trade and revealed religion, and to establish not a world empire in the Napoleonic sense but a moral empire of loftier interest" (3) [One should recall here the work of Fumuleau which

1. Supra, p. 51, note 1.

2. L.F.S. Upton, "The Origins of Canadian Indian Policy" in 8 Journal of Canadian Studies, 51-61.

3. James Morris, Heaven's Command: An Imperial Progress (London: Penguin Books, 1973), p. 39.

detailed government policies of allowing Indians to starve when game was scarce in the Northwest Territories] (1). Thus to some degree the provisions were based on the assumption that, once aboriginal peoples encountered the benefits of "civilization", they would self-destruct, and (their) members would become assimilated into the Canadian mainstream. It is an orientation to aboriginal policy that was applied in the Canadian colonies...and became adopted by the Canadian authorities after Confederation in 1867 (2).

As late as 1969, this policy had the support of the Trudeau Government in its White Paper on Indian Policy (3). Public outcry by aboriginal peoples in Canada and the results of the Calder case (4) put a brake on this deliberately assimilationist policy. The Department of Indian Affairs decided to recognize land claims which related "...to the loss of traditional use and occupancy [i.e., usufructory rights - themselves based on the Eurocentric notion of a superior title in the lands held by the Crown upon its "discovery" of them]" (5). This new policy, however, only applied to certain parts of Canada where Indian title was never extinguished by Treaty or superceded by law (6) (note in the following section of this chapter how aboriginal peoples in Canada reject this extremely limited

1. Supra, page 51, note 1.

2. M. Asch, Supra, p. 50, note 1, pp. 61-62.

3. Dept. of Indian Affairs and Northern Development, Statement of the Government of Canada on Indian Policy (Ottawa: Queen's Printer, 1969).

4. See text in Chapter II, Section C.

5. See Chapter II, Section B.

6. Dept. of Indian Affairs and Northern Development, Statement on Claims of Indian and Inuit People (Press Release, August 1973).

concept).

In spite of the progress made by aboriginal peoples in Canada towards educating Euro-Canadians about their rights, the eurocentric bias which wants to impose itself on aboriginal peoples remains a potent force in Canadian politics. For example, the Government of Quebec responded to the proposals of aboriginal peoples for autonomy at the 1983 Constitutional Conference on aboriginal rights in the following way:

1. Quebec recognizes that the aboriginal peoples of Quebec constitute distinct nations, entitled to their own culture, language, traditional customs as well as having the right to determine, by themselves, the development of their own identity [1].

Note the admission of nationality as a characteristic of different aboriginal peoples living in the Province of Quebec. Note also how close the words attempt to approximate the words "self-determination" but do not explicitly state them. Finally, note the absence of the mention of land and resources in the above clause; these are dealt with in the following manner:

2. (Quebec) also recognizes the right of aboriginal nations within the framework of Quebec legislation, to own and control the lands that are attributed to them [emphasis added] [2].

To ensure that aboriginal questions will be resolved in a manner which rules out any significant new political rebounding of the territorial jurisdiction of Quebec the following clause was

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1. Quebec, Quebec's Answers to Proposals by the Aboriginal Peoples, from: the First Ministers' Conference on Aboriginal and Constitutional Matters (Doc. 800-17/032) (Ottawa 15-16, March 1983).
 2. Ibid.

added:

6. The aboriginal nations have the rights, within the framework of existing legislation, to govern themselves on the lands allocated to them (emphasis added (1)).

Is it not paradoxical that the then government in Quebec should have been so convinced of the right of the French "nation" in the province to "self-determination", in the full sense of the term, with respect to its relationship with Canada and the rest of the world and yet not recognize the same right for the distinct indigenous peoples situated in that province. The descriptions as elaborated in the above clauses, have a striking tone which could potentially describe the relations between, for example, South Africa and its blacks in the "homelands" or bantustans. Do these clauses coincide with what native leaders mean when they talk of self-determination either within Canada or without? Further, do they coincide with the rights of peoples (and does this include aboriginal peoples?) to self-determination in international law? Either aboriginal peoples in Quebec and across Canada can have rights as peoples and nations under the terminology used by the Quebec government or else that terminology should be avoided by non-aboriginal governments in Canada. There is also a problem of non-aboriginal governments attempting to put forward a certain legitimacy to indigenous peoples and the international community by using terms describing aboriginal rights which have accepted meanings in the international community that they themselves do not want applied to those peoples. In any event, it should

1. Ibid.

be obvious to even the casual observer that these issues will not be resolved quickly; that indigenous peoples in Canada are committed to a long-term struggle for change, however, should not be in doubt.

B. The Aboriginal Focus on Self-Determination

(1) Assertion of Territorial Rights

There is not doubt among any aboriginal peoples in Canada about their inherent rights to self-determination. The Dene Indians as mentioned above, declared it in 1976 in no uncertain terms; the same was true with the declaration that they were still subject to colonial domination:

The Dene find themselves as part of a country. That country is Canada. But the Government of Canada is not the government of the Dene. The government of the Northwest Territories is not the government of the Dene. These governments were not the choice of the Dene, they were imposed upon the Dene (1).

The Dene declaration of their right to self-determination aroused fears of "separatism" (2) even though it was expressly stated that the right would be exercised "within Canada" (3). The backlash which resulted in the non-aboriginal south did not, however, reverse the growth of Dene nationalism but led to

1. The Dene, Land and Unity for the Native People of the Mackenzie Valley (A Statement of Rights) (Yellowknife, N.W.T.: The Dene of the N.W.T., 1976). See also generally Watkins, Supra p. 2, note 1 and M. Watkins, Dene Nation: Colony Within (Toronto: University League for Social Reform, 1977). See also: Appendix V.

2. Ibid.

3. Ibid.

an insistence on the opinion advanced by Professor Richard Falk that the denial of the political autonomy sought might lead to the imposed genocide of the Dene (1).

Indigenous nationalism couched in the terminology of self-determination did not end with the Dene Declaration but has spread rapidly across aboriginal Canada. Partly resulting from the resurgence of aboriginal pride in indigenous culture the concept of self-determination is often being expressed with references to histories of distinct territorial cultural evolution. The Dene, as one example, have based their claim to self-determination on having existed on their lands "since time immemorial". This assertion reflects a psychological persistence of distinct spatial and temporal perceptions of their territory built up over thousands of years of hunting and gathering which have helped define the Dene "sense" of territoriality.

In the 1980s the aboriginal rights scene has witnessed continuing declarations by aboriginal peoples in Canada for a recognition of their rights for self-determination. Scholarship concerning independence struggles in the "Third World" (better called the "South" to avoid connotations of a hierarchy of socio-economic sophistication) has recognized the critical importance of the demand for self-determination. John Saul stated it in the following way:

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1. R. Falk, "Dene Rights and International Law", Brief on Behalf of the Dene: Address to the Mackenzie Valley Pipeline Inquiry (Yellowknife, N.W.T., 1976), p. 9.

The first point suggested by Third World experience is that a semantical exercise designed to define the "essence" of a nation or designed to measure any given people against such a criterion is besides the point. A nation is, quite simply, a group which demands to be treated as such. Of course, a common history, territory, culture and/or language are very important, as is a shared experience of oppression and exploitation. These common features can help give focus, meaning and strength to the efforts of the people involved. The presence of such attributes can also help to convince outsiders to accept the claim to nationhood which is being made. But in the Third World, it is the demand itself which has been of primary importance, and the success of previously subjugated peoples in having their demand accepted (see the Meares Island case discussion in Chapter 1) (1).

It would appear that this demand serves to inform and confirm to outsiders and distinct aboriginal peoples themselves that they and their physical spaces form unique symbiotic evolutionary relationships which promote the underlying aspirations toward territorial sovereignty (2). It seems that thousands of years of distinct territoriality has left marked differences between aboriginal peoples and the recently arrived Euro-Canadians; their cultures are different and are likely to remain so into the future. These differences of aboriginal peoples from the "colonizers" are the basis of the call for self-determination in the first place. As already noted it is emphasized in the language in which the call for aboriginal self-determination is being expressed. Thus, the actualization of the aspirations of aboriginal peoples in Canada to self-determination will,

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1. J. Saul, "Nations and Nationalism in the Third World" in Address to the Mackenzie Valley Pipeline Inquiry (Yellowknife, N.W.T., 1976).
 2. J. Gottmann, The Significance of Territory (Charlottesville: The University of Virginia Press, 1971), p. 15.

if achieved, find expression, in no small measure, based on distinct historical and, therefore, psychological bonds of Canadian aboriginal peoples to their lands. This history of interaction between Canadian aboriginal peoples and their lands, when given a fuller self-determined expression, could help to facilitate a distinct and successful indigenous development.

(11) Aboriginal Territoriality and the Promotion of Self Determination

In its brief submitted to the federal Special Committee on Indian Self-Government the Sto:Lo (People of the River) Indian Nation of British Columbia presented the following declaration:

We, the people of the Sto:Lo, know the Creator put us here.

The Creator gave us laws that govern all our relationships to live in harmony with nature and mankind.

The Creator gave us our spiritual beliefs, our languages, our culture, and a place on mother Earth which provided us with all our needs.

The Creator had given us the right to govern ourselves and the right to self-determination.

The rights and responsibilities given to us by the Creator cannot be altered or taken away by any other nation (1).

Not least among the Sto:Lo priorities in seeking rights to self determination is the power to protect the sacred places of the Sto:Lo people and the right to practice their traditional "religions, cultures and languages" (2). The Sto:Lo example of

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1. Canadian House of Commons, Special Committee on Indian Self Government, Minutes of Proceedings and Evidence, Issue No. 6, pp. 68-69 (1983).
 2. Ibid., p. 79.

expressing aspirations to self-determination in terms of aboriginal spirituality which is centred on their old and still continuing attachments to their natural environments is still common among all aboriginal peoples in Canada.

The refusal of so many aboriginal people to migrate into the cultural and economic mainstream of Canada both from northern and southern regions attests to the persistence of distinct aboriginal "territorial" memory. Yngve Lithman has, for example, concluded that there will not be any Indian migration leading to reserve or northern territorial depopulation in the foreseeable future (1). Leaked confidential reports in April 1985, from the federal government, argued that federal funds allocated for Indian programs could and should be saved by implementing policies, in areas such as housing, which did not encourage Indians to stay on reserves (2). The report was informally labelled "The Buffalo Jump of the 1980's"; a reference to when the Indians used to run buffalo over bluffs as a means of obtaining food. The report analogized this to taking federal monies allocated for aboriginal peoples in Canada and diverting their flow thus running the Indians over the "buffalo jump" of assimilation (3). A storm of protest was raised by Indian organizations across the country and the government quickly dissociated itself from the report.

1. Lithman. See Chapter 1, p. 13, note 1.

2. K. Lapointe, "Drastic Cuts Proposed in Native Programs" in (Toronto) Globe and Mail (18/05/85), p. 1.

3. See Appendix II which is a Memorandum to the Cabinet of the Government of Canada summarizing the "Buffalo Jump of the 1980's" report, p. 5.

The upshot of this protest was that it reminded Euro-Canadians that natives are still, in the main, living by choice in a different physical territorial landscape (rural/reserve as opposed to urban), in socio-cultural modalities with distinct territorial development priorities. Consequently, conflicts between them and the majority of Euro-Canadians, who are urban and who have urban priorities with respect to the exploitation of what for them are the state hinterlands, are bound to occur. These demographic distinctions are part of the reason why, for example, the Attikamek-Montagnais of Quebec argue for recognition of their right to self-determination on lands currently occupied by them and not other Quebecois:

L'esprit de territoire, de l'occupation continue de celui-ci et de l'exploitation rationnelle des ressources, est l'élément de base à la sauvegarde de la culture, de la spiritualité, de la cohésion sociale et de la spécificité des modes de vie des Attikameks et des Montagnais (1) (See translation accompanying note).

This persistence of distinct modalities of territorial use and attachments to traditional territories exhibited by Canadian aboriginal peoples generally, reinforces the potential advantages to them of following a distinct path of implementing development priorities in modern society; that path appears destined to be more endogenously oriented in the future. Such a developmental path requires -- by definition -- jurisdictional control over

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1. Canadian House of Commons, Special Committee on Indian Self-Government, Minutes of Proceedings and Evidence, Issue No. 30 (1983), p. 12. Official translation: The idea of territory, of on-going occupation of the territory and the rational development of its resources is an element which is fundamental to the safeguard of culture, spirituality and the social cohesion and the unique aspects of the Attikamek and the Montagnais lifestyles.

lands and resources by aboriginal peoples in Canada required to sustain their cultures and traditions. Such jurisdiction will be recognized as accruing to aboriginal peoples by virtue of their distinct identities and the desirability of maintaining them as part of the cultural heritage of humanity.

(iii) Self Determination and Aboriginal Jurisdiction over Aboriginal Lands: Implications

Chief J. Isanni of the Federation of Saskatchewan Indian Nations (FSIN) was representative of most aboriginal peoples in Canada when he lamented the inability of those peoples to control development on lands occupied by them in a statement he made to the Special Committee on Indian Self-Government:

Regarding participation in mineral and resource development, since between 15 and 20 years ago, northern Saskatchewan has been the (site) of uranium exploration, and now mines are slowly being developed there. Our lands have been eroded by land cutters, geologists, drilling rigs, machinery, etc. The economy has been good for the federal and provincial governments, but the Indian people have been slowly pushed aside... Trappers and fishermen have been told to get out of the private properties which are being leased by the mining companies (1).

One of the chiefs of the Shuswap Tribal Council of British Columbia put it more succinctly:

They take our resources and hand back just welfare programs, creating a welfare dependency (2).

The declaration of the Tribal Council elaborates, in certain terms, the sought-after solution to such a dependency:

1. Canadian House of Commons, Special Committee on Indian Self-Government, Minutes of Proceedings and Evidence, Issue 11, (1983) pp. 43-44.
2. Canadian House of Commons, Special Committee on Indian Self-Government, Minutes of Proceedings and Evidence, Issue 18, (1983), p. 57.

Article number four. Adequate amounts of lands, waters, forests, minerals, oils, gas, wildlife, fish and financial resources [to offset the negative impact of Euro-Canadian economic developments on aboriginal lands] are to be made available to our Indian governments on a continuing basis and in quantities to ensure socio-economic self-determination for the peace, order and just government of Indian people (1).

As aboriginal territorial aspirations are elaborated to confirm the validity of aboriginal political institutions as equal to those of Euro-Canadians, there is an inevitable and increasing tendency among aboriginal peoples in Canada to articulate these aspirations with reference to international legal principles and terminology, thereby removing future negotiations beyond the purely domestic context in which the federal and provincial governments in Canada want to see aboriginal rights defined. This reflects a strong desire on the part of aboriginal peoples to be recognized as cultures and political entities equal to in status to those of non aboriginal peoples. At a National Indian Treat Conference held in 1983, a preliminary draft Convention for the Protection of Canadian Treaty Rights Under Principles of International Law was prepared for future consideration which reflected many of the views of the Indian delegates present:

1. Ibid., pp. 57-58.

CONVENTION FOR THE PROTECTION OF CANADIAN TREATY RIGHTS UNDER PRINCIPLES OF INTERNATIONAL LAW

THE PARTIES TO THE PRESENT COVENANT

Considering the condemnation of colonialism in all of its manifestations contained in U.N. General Assembly Resolution 1514 of 1960, Declaration on the Granting of Independence to Colonial Countries and Peoples,

Considering the rights of peoples to self-determination affirmed by Canada in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights,

And out of concern for honouring the rights guaranteed by treaties of Canadian Indian Nations to self-determination and internal sovereignty over their territory and members [here the emphasis on the special relationship of treaty Indians with Canada is confirmed], have agreed to conclude an agreement affirming the dignity of Canadian Indians' treaty rights under international law and to this effect have agreed upon the following:

ARTICLE I

By their compacts with each other and with the British Crown, Canadian Indian Nations demonstrated their authority and capacity to enter into treaty relations as subjects of international law.

ARTICLE II

Canadian Indian treaties are binding legal agreements between independent sovereigns.

ARTICLE III

Canadian Indian treaties constitute grants of rights from the Indian Nations whereby those powers not granted have been retained. Canadian Indian Nations continue to possess inherent sovereign powers over their territory, resources and people except as those that have been qualified or limited by treaty.

ARTICLE IV

Canadian Indian Nations [are] distinct independent political communities with rights to internal sovereignty guaranteed by treaty and constitute people[s] as opposed to minority group[s], entitled to the protection such entities are afforded under international law (1)....

1. National Indian Treaty Conference (Winnipeg, Manitoba) (Dec. 1983), Final documents.

At the same conference a Declaration of First Nations' Principles on the Use of Indigenous Customary Laws was circulated which contained the findings of representatives who had met at a Saskatchewan Indian Nations' Conference on Indian Justice that had been held in October of 1983. This document is also couched in principles of international law (1). In February, 1983, the Bella Coola District Council submitted a proposal to the Special Committee on Indian Self Government which contained a negotiating mechanism that would utilize internationally supervised discussions to reach an agreement on the implementation of their aboriginal rights. Such discussions would be guided in large part by applying principles of international law on self-determination (2). The Federation of Saskatchewan Indian Nations (the FSIN is composed of Bands of the Saulteaux, Assinibois, Dakota, Sioux, Dene-Chippewyan and Cree Nations (3)) is already moving ahead in the design and implementation of its own Indian government (4). The FSIN initiative is governed by the following principles:

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1. Ibid. See Appendix III.
 2. See Appendix IV, especially at pp. 12-14.
 3. Sol Sanderson, "Preparations for Indian Government in Saskatchewan" in Little Bear, Boldt and Long (eds.), Pathways to Self-Determination: Canadian Indians and the Canadian State (Toronto: University of Toronto Press, 1984), p. 152.
 4. Ibid., pp. 152-158.

Treaties: "Nations make Treaties, Treaties do not make Nations".

Government: Government is the machinery through which a nation exercise its sovereignty.

Indian Government: Indian Government is the machinery through which First Nations exercise their sovereignty.

Sovereignty: The highest political power coming from within a people (like First Nations).

Political Autonomy: Exercising Indian Government without external interference is Political Autonomy for First Nations.

Nation: A group of people with a common history, culture, language with a Territory and a Government.

Self-Determination: The International concept that a people have the right to determine their future.

Jurisdiction: The political power to exercise authority over certain subject matters.

Independence: The ability of a Nation to remain independent from the control and interference by another Nation.

Constitution: Basic Laws and practices that "govern" the operation of a Nation (Indian Government Nations).

Legislation: The Basic Laws of a Nation (unwritten/ written), ratified and enforced, like Indian or Canadian Laws (1).

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1. FSIN Indian Government, Charts and Statements of Principles (Prince Albert, Sask.: Federation of Saskatchewan Indian Nations, 1985).

The Assembly of First Nations as an umbrella organization of status Indian Bands in Canada has circulated among its member Bands a draft document of policy statements for discussion to assist in the development of Indian government in Canada. There are a series of statements on international principles as they are to guide the development of Indian government:

International Principles of First Nations Indian Government

Promote Recognition of Sovereignty

27. First Nations will promote the recognition and sovereignty of First Nations status, and ensure their Treaties and Conventions are respected by all Nations of the World.

Sovereignty based on Indigenous Rights

28. First Nations Indian Government and national sovereignty is based on the inherent right of indigenous peoples respected by the entire International Community of Nations.

International Status

29. First Nations have the right to determine their status in the international community of Nations, including the right of their desired degree of independence, and the right to decide the destiny of their peoples.

Jurisdiction and Extraterritoriality

30. Indigenous peoples in the International Community of Nations, including the First Nations of Canada have jurisdiction over their peoples, lands, resources and governments within their national lands, and will exercise extraterritorial jurisdiction within Canada.

Political Autonomy

31. As Sovereign peoples in the international community, First Nations have and will continue to develop domestic political systems which correspond to their political aspirations and objectives.

Participation in
World Community

32. First Nations will re-establish the Indian presence in the world community of nations.

Influence
International
Relationships

33. The First Nations will influence the development of conventions and international law so that they more adequately protect the rights of Indian Nations and those aboriginal peoples who constitute the First Nations.

Support For
Freedom

34. The First Nations will mobilize the moral and political influence of the international community against governments which do not fully recognize or which threaten to undermine the rights and freedoms of First Nations.

Trade and Commerce

35. The First Nations will encourage international trade and the exchange of skills and technologies between Indian First Nations and all other nations (1).

Aboriginal peoples are, then, busy making plans for the implementation of their own political and economic development. The drive for self-governed land bases by indigenous peoples in Canada represents a special opportunity in an important respect. The national demographic pattern of Canada is one which has left most of the Euro-Canadian population situated in the south of the country. In fact, most Canadian physical space is inhabited and largely utilized by aboriginal peoples (2) and much of the rest (e.g., forest lands in northern Ontario), though occupied by non-aboriginal people during any given period of resource exploitation, reverts back to aboriginal use usually after a relatively short time of non-aboriginal occupancy - all the while having been claimed by those aboriginal peoples under

1. Assembly of First Nations, Policy and Principles Respecting the Application of First Nations Government (Draft) (Ottawa: Assembly of First Nations, 1984), pp. 11-12.

2. American Academic Encyclopedia (1983), Vol. 14, p. 234.

rights of aboriginal self determination. Further, aboriginal peoples in Canada are generally enjoying a demographic renaissance - this combined with future downward population projections for Euro-Canadians. These facts alone will make the future of aboriginal peoples in Canada of notable importance.

2. Development Determined by Aboriginal Peoples

The proposals of aboriginal peoples on territorial rights indicate that both use of aboriginal lands and aboriginal institutional structures governing such use would allow for possibilities of a development deriving from a renewable resource economy based neither on corporate wage employment nor welfare (1). Many aboriginal peoples in Canada are currently attempting to work out new economic structures which will reflect their traditions of local communities controlling economic development to the greatest degree possible.

With respect to the development of non-renewable resources on aboriginal lands, aboriginal peoples want, at a minimum, the ability to collect economic rents when such resources are extracted. Such rents would be utilized to construct a capital base for a renewable resource economy. An aboriginal controlled renewable resource economy could be structured so as not to conflict with traditional pursuits on aboriginal lands. Aboriginal enterprises, owned or managed collectively or cooperatively, could then be made responsible to the

1. M. Watkins, Supra p. 49, note 1, p. 103.

communities concerned in a manner which builds on aboriginal territorial traditions. The drive for ownership based on aboriginal traditions of communitarianism is evidenced in the declared aspirations for such development and in projects already undertaken under aboriginal leadership such as the Inuit cooperatives - from artistic to socio economic - which have been organized in Nunavut and the communitarian structures of the Burns Lake Native Development Corporation in British Columbia.

But to initiate a broader scale development, aboriginal peoples in Canada maintain that they require recognition of their right to self-governed sustainable land bases. In the economic sphere Watkins, using the example of the Dene Indians, has argued that "Dene nationalism must be placed in the context of the world system. Undoubtedly, the growth of internal nationalism, of neo-nationalism, is a reaction to the disintegration of the larger nation-state and the imperative of transnational capital" (1). If economic activity is becoming increasingly transnationalized (e.g., pipelines being proposed on a transnational scale or forests and minerals being exploited which reflect global scale geo-political and economic interaction), is the local and participatory "life-space" oriented territorial response of aboriginal peoples in Canada an effective way to deal with it? Aboriginal peoples in Canada emphatically declare that it is. They recognize that the modern

1. Ibid., p.112.

technological advances are not likely to slow, or that current geo-political forces will radically change in the foreseeable future, but assert that the best responses to it will occur at the local "life-space" level. Given the internationalizing tendencies at work in so many of the economic sectors in the modern world it is only natural that aboriginal peoples in Canada in responding to this should seek out recognition of their desired status to maintain their community oriented developmental focus in international fora and, by extension, through international legal norms. Thus the possibility arises for aboriginal peoples to contribute to the evolution of international political organization itself.

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CHAPTER IV
INTERNATIONAL TRENDS IN ABORIGINAL TERRITORIAL RIGHTS
RECOGNITION

A. Prefatory Note

Chapter two of this essay has emphasized the eurocentric foundations from which the existing domestic Canadian law on aboriginal territorial rights has been formulated and implemented. In fact these eurocentric foundations gained common currency throughout the Euro-colonial and Euro-neo-colonial world. The "logic" was ultimately formulated on the supposed inferior status of aboriginal culture; how could the aborigines ever have had more than a personal usufructory right of occupancy to their lands subject to full rights of their "discoverer", or their Euro-colonial offspring, being that they were so far from being "civilized"? A.H. Snow, an international lawyer working for the U.S. State Department, could write the following prescription for the "problem" as late as 1919:

The guardianship of aboriginal tribes implies not merely protection, not merely a benevolence towards private missionary, charitable and educational effort, but a positive duty of direct legislative, executive and judicial domination [emphasis added] of aboriginals as minor wards of the nation [Snow might better have used the term "state" here as U.S. Indian nations have never felt part of any non-Indian nation forming the United States], and equally direct by legislative, executive and judicial tutelage of them for civilization, so that they may become in the shortest possible time civil and political adults participating on an equality in their own government [i.e., within the United States] under democratic and republican institutions (1).

The evolution of this doctrine of guardianship, had, and often still has, the effect of nurturing the stereotype of the inferiority of aboriginal title. Inferior aboriginal title itself was based on the notion of the uncivilized and barbaric

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1. A.H. Snow, The Question of Aborigines in the Law and Practice of Nations, (1919) (recent edition: Northbrook, Ill.: Metro Books, 1972), p. 108.

cultures of the aborigines. In spite of this Euro-centrism indigenous peoples in Canada and elsewhere have, even in international institutions, remained active in their constant pursuit to achieve recognition of their rights as distinct peoples. In fact, in the League of Nations period, an attempt had already been made by the Six Nations Iroquois Confederacy to have itself defined as a state. This would have enabled it to petition the League for redress for its grievances. It was Canadian diplomatic manoeuvring which prevented the efforts of the Netherlands, Ireland, Panama, Persia and Estonia to have the Six Nations cause considered (1). Even before the efforts of the Iroquois at the League, delegations from British Columbia had gone to England in 1906 in attempts to seek redress from the Crown on their rights (2).

Professor Maureen Davies has noted the debilitating effects of the doctrine of guardianship on indigenous peoples:

While the proposed aim of the doctrine was one of "protection", its effect was to deny the intrinsic worth and validity of indigenous societies and culture, undercutting the very elements that, from the point of view of European legal institutions, might have afforded some degree of actual protection. At the same time the doctrine largely failed to create any legally enforceable rights (3).

The doctrine of guardianship is based squarely on the premise that European civilization is superior and that there exists

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1. R. Veatch, Canada and the League of Nations, (Toronto: University of Toronto Press, 1975), pp. 91-100.
 2. G. Manuel and M. Poslums, The Fourth World: An Indian Reality, (Toronto: Collier-MacMillan Canada, 1974), pp. 81-82.
 3. Davies points this out through referring to the case Tito v. Waddell (No. 2), (1977) 2 WLR 496.

a recognizable - indeed, measurable - distinction between "civilized" and "uncivilized" peoples. The dearth of evidence to support this assumption is an indication of the extent to which it was considered to be self-evident.

It is clear that ultimately the doctrine worked to the disadvantage of indigenous populations, which given the underlying impetus for its development, is not surprising (1).

As a consequence of the doctrine of "discovery" from which the theory of guardianship gained added legitimacy, the British American Claims Tribunal could decide in the Cayuga Indians case of 1926 that

...a tribe is not a legal unit of international law. The American Indians have never been so regarded. From the time of discovery of America the Indian tribes have been treated as under the exclusive protection of the power which by discovery or conquest or cession held the land which they occupied... So far as an Indian tribe exists as a legal unit, it is by virtue of the domestic law of the sovereign nation within whose territory the tribe occupies the land, and so far only as that law recognizes it (2).

The inferior status given the treaties respecting the "surrender" of lands from indigenous peoples was based on the same reasoning in the Cayuga case. This has been recently re-expressed in a legal judgment concerning the treaties with Indians in Canada:

Although the relevant agreements with the Indian peoples are known as "treaties" they are not treaties in the sense of public international law. They were not treaties between sovereign states... [emphasis added] (3).

1. M. Davies, "Aspects of Aboriginal Rights in International Law" in B. Morse (ed.), Aboriginal Peoples and the Law: Indian, Metis and Inuit Rights in Canada, (Ottawa: Carleton University Press, 1985), p. 39.
2. Cayuga Indians Claim, (United States v. Great Britain), reported in 20 Am. J. Int'l. L. 574 (1926) (American and British Claims Arbitration Tribunal), pp. 590-591.
3. The Queen v. The Secretary of State for Foreign and Commonwealth Affairs (1982) 2 WLR 641.

The concept of "Superior Civilization" has remained implicitly entrenched in domestic legal systems, of which the Canadian example is no exception (1). Davies has used an apt illustration to show just how uncivilized the "Superior Civilization" could be towards indigenous peoples; it is an excerpt from a letter of Lord John Russel sent to Sir George Gipps, Governor of New South Wales, Australia in 1840:

...We, indeed, who come into contact with these various races, have one and the same duty to perform toward them all....

There appears to be great difficulty in making reserves of land for the natives which shall really be beneficial toward them. Two sources of mischief mar the most benevolent designs of this nature; the one arising from the inaptitude of the natives to change their desultory habits and learn those of settled industry; the other from the constant inroad of Europeans to rob, corrupt and destroy them. Between the native, who is weakened by intoxicating liquors, and the Europeans, who have all the strength of Superior Civilization and is free from its restraint (one presumes that Lord Russel is referring to alcohol here?) the unequal context is generally of no long duration, the natives decline, diminish and finally disappear (2).

The more subtle effects of Eurocentric bias are worth noting.

Firstly, Russel appears to equate his "Superior Civilization" to settled industry; the ability of Europeans to "rob, corrupt and destroy" the aborigines seems not to be a factor to take into account in assessing their civilization. The inadvertent parallel drawn by Lord Russell between civilization as "robbing, corrupting and destroying" aboriginal peoples is what strikes the reader as being a real illumination on the implicitly accepted biases of the aristocrat. Secondly, it is worthwhile for

1. See Chapter II generally.

2. Taken from A.H. Snow, Supra p. 73, note 1, p. 29.

development experts to carefully consider just how easily Lord Russell could assume his positions on these matters with respect to indigenous populations. To note that the same attitudinal pattern often continues to this day would not be an exaggeration by any means (1). In the legal characterization of the arrangements between indigenous peoples and non-indigenous governments, an excerpt by Russell Barsh and James Henderson on the treaty rights of indigenous nations is worth considering:

...a Country embarrasses itself by trying to define away tribes' treaty rights semantically. As Sir William Blackstone remarked "there are some oppressions so great that men will not be reasoned out of them". To what avail is it for... jurists to argue that Indian treaties really are not treaties; that treaties of peace and unity are really abject surrenders of all rights; or that reservations of absolute territoriality really are merely acknowledgements of a tenancy at will? No injustice was ever righted by calling

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1. One need only to note the outright genocidal practices inflicted upon Indians throughout Latin America. Extreme forms of discriminatory actions occur in both right wing, more fascist states such as Paraguay (see: R. Arens, Genocide in Paraguay, Philadelphia: Temple University Press, 1976) and in states whose governments seek to develop a centralized bureaucratic socialist state such as Nicaragua (see: Penny Lernoux, "Sandinista Treatment of Miskitos, a Betrayal of Revolution Ideals" in 21(26) National Catholic Reporter 14 (April 25, 1985, Kansas City, Mo.). Penny Lernoux, a well known writer on Latin American affairs, summed up the problem indigenous peoples face throughout the region: "Traditionally, the Latin American left has proved as blind as the right on the issue of Indian cultures, possibly because racism runs deeper than ideology. [Brooklyn] Rivera's explanation is that the Miskito struggle is too revolutionary for the Sandinistas, who feel threatened by the Indian problem" Rivera said. "[Marx] developed his theory in a European setting without Indians, so they never took Indians into account. And the Sandinistas want to go by the book". ...As to the contras, he describes them as far worse than the Sandinistas. "All the contras...are dedicated to dirty manipulation against us. They are trying to destroy us" he said. "...In fact the Indians [know] perfectly well what they [want], and have always fought for - the right to preserve their culture, which, in turn, is dependent upon ownership of communal land".

it just. We recall the words of Levi General, then Deskaheh (Speaker) of the Six Nations, in 1925:

"If this must go on to the bitter end, we would rather that you come with your guns and poison gases and get rid of us that way. Do it openly and aboveboard. Do away with the pretence that you have the right to subjugate us to your will" (1).

B. A Decline of Eurocentrism in International Law?

We are left with the quandry: there is the fact of the subjugation of indigenous nations. Furthermore, domestic or state jurisprudence has often lent legitimacy to this process. If we are to continue with the present legal status quo we must accept legitimating the continuation of the imposition of a profoundly destructive Eurocentrism onto indigenous peoples. It also closes the door to any effective re-evaluation of the fact that indigenous peoples, in not being treated as peoples with a fundamental equality with Europeans, were the victims of a legalized Eurocentrism which treated them as inferiors. Even if there were official recognition of this, unless concrete corresponding political and legal changes were made accepting aboriginal territorial rights as having the same nature as that of the "civilized" European "discoverers", the effective situation is to continue to deny distinct peoples their rights as such. In short, a declaratory political renunciation of the Eurocentric bias in domestic law must be accompanied by a parallel de-jure and de-facto change in the situation or else the actual discrimination denounced by aboriginal people continues (2).

1. R. Barsh and J. Henderson, "Aboriginal Rights, Treaty Rights and Human Rights: Tribes and Constitutional Renewal", in 17(2) J. Can. Studies 55, pp. 68-69.

2. See Manuel and Poslums, Supra, p. 74, note 2.

This, of course, would not apply after the point where indigenous nations ceased to be distinct as such, having finally collapsed under ethnocidal or outright genocidal state practices.

It should also be stressed at this point that Eurocentric legal definitions of aboriginal rights have been rejected often enough, especially in international law, to form a persuasive alternative upon which domestic courts could act even now. This tradition has its roots in the very foundations of modern international law as has been pointed out in Chapter II. But one must be very optimistic indeed to see real change coming about in domestic jurisdictions in this regard over the short and medium terms. However, strong undercurrents promoting change are being generated in the international field whose effects could profoundly affect this aspect of international social life over the longer term. We should, therefore, look at the struggle for aboriginal territorial rights within a dynamic of transformation. Furthermore, there is room to consider that, given the inadequacy of existing international structures to deal with the pressing world order issues of our day, we may be approaching the turning point into a much more rapid period of change in international social life than the evolutionary movement which has occurred to date (1).

Be that as it may, it is worth contrasting the division in opinions on the relevance and content of aboriginal territorial rights in international law and then putting this discussion into

1. See Falk, Infra, p.120, note 1.

a historical frame of dynamic change. Consider the following statement by legal scholar Russel Barsh concerning the rights of indigenous peoples in the United States vis a vis international law:

The evolving international law of human rights is really quite simple. States acquire nothing by force. Every people has a right to exist, to be left alone, to be a state. The complex fictions and endless exceptions of federal Indian law are, by comparison, a cruel parody of reasoning and justice (1).

Barsh supports this statement with a reference to the relatively recent Namibia (South West Africa) (1971) case heard by the International Court of Justice:

Sovereignty...is inherent in every people, just as liberty is inherent in every human being (2).

Contrast the statement of Barsh with another made by L.C. Green in a recent article published in the Canadian Bar Review:

International law has never directly referred to the rights of aboriginal or native peoples. In fact, the tendency has been to deny such peoples any status from the standpoint of that system. Perhaps one of the clearest examples of this is to be found in the statement of the Permanent Court of International Justice concerning the Legal Status of Eastern Greenland (3).

The Legal Status of Eastern Greenland case concerned a claim to sovereignty over the island and its Inuit people put forward by Denmark against Norway. Note that the case was heard in 1933. A

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1. R.L. Barsh, "Indigenous North America and Contemporary International Law", 62 Oregon L. Review 73, p. 124.
 2. Namibia (South West Africa) 1971 I.C.J. 68 (Advisory Opinion) (separate opinion of Vice President Ammoun).
 3. L.C. Green, "Aboriginal Peoples, International Law and the Canadian Charter of Rights and Freedoms", 6 Can. Bar Rev. 339.

key issue was whether or not the destruction of Danish settlements by the Inuit ended any claim to title which the Danes had. This would open the door for a claim by Norway (note the conspicuous lack of advocacy on behalf of the Inuit; the case itself concerned the competing claim of Norway and Denmark to the island). The Permanent Court of International Justice (P.C.I.J.) held that:

The word "conquest" [as far as the Inuit were concerned] is not an appropriate phrase, even if it is assumed that it was fighting with the Eskimos which led to the downfall of the settlements. Conquest only operates as a loss of sovereignty when there is war between two States [i.e., cast in the Eurocentric mold] and by reason of the defeat of one of them sovereignty over the territory passes from the loser to the victorious State. The principle does not apply in the case where a settlement has been established in a distant country and its inhabitants are massacred by the aboriginal population (1).

When there is war between a State and an aboriginal people, the latter could not force a loss of sovereignty of a European colonial power over one of its colonies through a massacre of the colonial inhabitants because aboriginal peoples could not be viewed as having the sovereign power to effect such a loss (2). By the very status assigned to them, aboriginal peoples could never make use of the doctrine of physical conquest over Europeans; only the states cast in the Eurocentric mould could make use of the doctrine against aboriginal peoples through subduing them. Indigenous peoples generally reject this lack

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1. Legal Status of Eastern Greenland (193), P.C.I.J. series A/B, No. 53, 3 Hudson, World Ct. Rep. 151, p. 171.
 2. Davies, Supra p. 75, note 1, p. 40.

of status or sovereignty argument (1) and find the conquest concept as repugnant to the right of distinct peoples to survival.

Professor Green then goes on to draw the following inference from the above passage from the Status of Eastern Greenland judgement:

While it maybe argued that such a view is representative of a western and imperialist-oriented view [would it not be even more appropriately termed racist?] of international law and of sovereign rights, it must nevertheless be recognized that international law and any claim to enjoy rights thereunder is a composite of rules that have in fact so developed (2).

Does this statement by Professor Green mean that "international law and any claim to enjoy rights thereunder is a composite of rules that in fact [have stopped developing?]" (3). In contrast, Russell Barsh argues that the development of international legal norms affecting aboriginal peoples must be viewed in an evolutionary context

...from the 'dark ages' of competition among colonial powers for control of Africa a century ago to the relative enlightenment of United Nations instruments and policies of the 1980's (4).

It has already been mentioned that the international law which is cited against the full recognition of aboriginal territorial rights is not as monolithic as one might expect. In fact as Professor Davies has noted "...a consistent thread of

1. See text in Chapter III, Section C.

2. Supra p. 80, note 3, p. 340.

3. Ibid.

4. Supra p. 80, note 1, p. 73.

recognition [of aboriginal territorial rights in international law] has always existed" (1). Several scholars including Clinebell and Thomson (2), Andress and Falkowski (3), Anderson (4), and Davies (5) have written on the retention of sovereignty by indigenous peoples according to international legal norms. The next section of this chapter provides a very brief summary of these arguments.

If States like Canada and Australia are imposing restrictions on the rights of indigenous peoples which violate international law "such restrictions do not change the rights which (aboriginal peoples) are entitled to exercise under that law" (6)

The right of a people to physical existence, to self-determination, and to use natural resources are examples of "jus cogens", in other words, they are unabridgeable. Moreover, treaties inconsistent with these human rights have no effect [7].

In short, human rights are collective prerogatives with a permanent place in international jurisprudence the respect for which every state is accountable (8).

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1. Supra p. 75, note 1, p. 17.
 2. J. Clinebell and J. Thomson, "Sovereignty and Self-Determination: The Rights of Native Americans Under International Law", 27 Buffalo Law Rev. 617.
 3. J. Andress and J. Falkowski, "Self-Determination: Indians and the United Nations - The Anomalous Status of America's Domestic Dependent Nations", 8 Am. Indian Law Rev. 97.
 4. E. Anderson, "The Saskatchewan Indians and Canada's New Constitution", 36 Columbia Journal of International Affairs 125 (1982).
 5. Supra p. 75, note 1.
 6. Clinebell and Thomson, Supra p. 83, note 2, p. 671.
 7. Vienna Convention on the Law of Treaties, Art. 64, U.N. Doc. A/CONF. 39/27 (1969).
 8. Anderson, Supra p. 83, note 4, p. 126.

If the Government of Canada is to live up to its international legal commitments on human rights vis a vis indigenous peoples living within its borders, then the existing rights of those peoples that will have to be recognized are substantially greater than those admitted to under Canadian law up to the time when the relevant sections of the new Canadian Constitution took effect.

C. International Law and the Acquisition of Colonial Territories

Professor Douglas Sanders has proposed that the literature on indigenous peoples and international law, which analyzes the bases for the acquisition of colonial territory, has

...a peculiarly dated character. Modern decolonization has not been based on an analysis of whether the original acquisition of territories was valid, but on a recognition of the right of peoples to end colonial domination. It is only for indigenous enclave populations where the right of self-determination is denied, that the esoteric lore about discovery conquest and cession is preserved and re-argued (1).

There are several problems in dismissing the "esoteric lore" of established international law on questions of sovereignty regarding indigenous peoples in this manner. Lawmakers - those in Canada being no exception - have believed and accepted the notion that the original "acquisition" of territories from indigenous peoples was valid. Therefore, they cannot even see that any issue of ending colonial domination of indigenous peoples should arise. They have accepted notions of "discovery" as valid when they had a troubled existence in international

1. Douglas Sanders, "The Re-Emergence of Indigenous Questions in International Law", 2 Can. Hum. Rights Yearbook 3, pp. 26-27.

law at best. Their ultimate basis is rather in Eurocentrism - a Eurocentrism which, in its attempts to negate the inherent rights of indigenous peoples, has resulted in such permutations of the law that it would now "...require almost an archeology to restore the historical and cultural context [in which the domestic law was formulated....This] is almost universally ignored in legal writing" (1). If colonial domination over indigenous peoples is to be ended, therefore, its pseudo-legal foundations are wisely exposed. Finally, it is to be hoped that those who read Professor Sanders do not conclude that there is no chance that enclave indigenous populations - presumably he is talking about aboriginal peoples like those in the United States and in Southern Canada - will ever be able to exercise rights of self-determination.

It is well worthwhile for lawyers and other "technicians" (e.g., historians) involved in the aboriginal rights struggle to be aware of the critique of current domestic laws on aboriginal territorial rights as measured against international legal principles which have a bearing on these rights. Sanders has summarized the material:

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1. H. Berman, "The Concept of Aboriginal Rights in the Early Legal History of the United States", 27 Buffalo Law Rev. 637, p. 671. The author of this thesis has had personal experiences, where even lawyers and other "technicians" working for aboriginal peoples have accepted that notions about aboriginal title, which have their real basis in Eurocentrism and not in international law, are settled and final. See also Chapter II of this thesis.

(a) Prior Discovery. Discovery alone does not give rights in international law [1].

(b) Religious or Civilizing Mission. While these concepts were important ideological justifications for colonialism, they are not acceptable bases in modern international law [1]. It is very arguable that they never were. Even the papal grant of 1493 was rejected as a basis for the acquisition of territories by Francisco de Vitoria in the early 16th century. Concepts of trusteeship and protection have often been used as justification for colonialism but they fail on legal grounds [1].

1. Discovery was rejected by Francisco de Vitoria and other publicists who followed him (see Chapter II). Though domestic courts, for the sake of expediency, have given it precedence since then (see Chapter II) the concept of discovery was also rejected as an international legal concept by the Permanent Court of Arbitration in the Island of Palmas Case (United States v. Netherlands (1928), reported in 22 Am. J. Int'l. Law 867): "An inchoate title...cannot prevail over a definite title founded on a continuous and peaceful display of sovereignty" (p. 867). A former U.S. Secretary of State declared that "(t)he discovery of lands unknown to civilization, even when coupled with a formal taking of possession, does not support a valid claim of sovereignty unless discovery is followed by an actual settlement of the discovered country" (G. Hackworth, Digest of International Law (Washington, U.S. Government Printing Office, 1940), p. 47). Who today would state that the indigenous nations of the United States had no civilization when the Europeans arrived? Aboriginal territories in various countries, whether enclave or not, are still occupied by peoples who have never stopped claiming their rights to sovereignty. Even the minority viewpoint of Emmerich de Vattel that productive lands only "marginally" used by aboriginal peoples could be taken to feed other more numerous populations is easily met with the fact that aboriginal peoples in North America have always been willing to share their resources (A. Brown, The First Republic in America (New York: Russel and Russel, 1969 (1st ed. 1898), pp. 41-72). Conflict occurred when there was encroachment upon Indian lands which those peoples required to maintain their own societies: "From their first contact with Europeans, natives sought an accommodation that would allow each group the land and resources it needed asking only to be left to maintain their own ways of life" (Clinebell and Thomson, Supra p. 83, note 2, p. 687).
2. See text on pages 73 to 79 of this chapter. See also text infra at pp. 89-90.

(c) Conquest. [1] Conquest is only legally valid in the case of a just war. As well, under the modern law of war, conquest is not a basis for continuing possession of territory.

(d) Cession. The acquisition of populated territories is not colonialism when it is the result of the exercise of the right to self-determination by the population. The decision to become part of another state can take the form of a formal treaty of cession or informal acquiescence. It is very difficult to argue that the various indigenous enclave populations gave free consent to the colonial powers. [2].

1. It was the United States Supreme Court in Johnson v. McIntosh that in the nineteenth century performed a "nimble transmutation" of equating discovery to conquest. (See text Chapter II). Even if conquest were valid under international law, many indigenous peoples were never subdued by force (Davies, Supra p. 75, note 1, p. 40); many treaties of friendship and alliance were entered into with aboriginal peoples when they had superior force (Worcester v. Georgia (1832), 31 U.S. (6 Peters) 515, p. 550) and even when they did not.
2. As de Vattel wrote: "We ought, therefore, to account as sovereign states those which have united themselves to another more powerful by an unusual alliance....[P]rovided the inferior ally reserve to itself the sovereignty, or the right of governing its own body, it ought to be considered as an independent state that keeps up an intercourse with others under the authority of the law of nations" (E. de Vattel, The Law of Nations (J. Chitty trans., 1852) (Philadelphia: T. and J.W. Johnson, Law Booksellers, 1852), bk 1, 5). Chief Justice Marshall partly recognized the applicability of this principle to Indians in the United States. "To construe the expression "managing all their affairs" into a surrender of self-government, would be, we think, a perversion of their necessary meaning and a departure from the construction which has been uniformly put on them...The very fact of repeated treaties with [Indian tribes] recognises [the Indians right to self-government]; and the settled doctrine of the law of nations is that a weaker power does not surrender its independence - its right to self-government - by associating with a stronger and taking its protection" (Worcester v. Georgia, pp. 560-561).

With respect to the status of treaties with indigenous peoples, Davies has noted that "the word "treaty" is an international legal term meaning "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation" (Vienna Convention on the Law of Treaties, 1969, U.N. Doc. 81 LM.). [However, as Davies goes on to note,] the question as to whether agreements made between Aboriginal Peoples and European or "civilizing" powers constitute treaties in this sense is one which has been the subject of a great deal of litigation" (p. 29).

(e) Occupation and Settlement. By this view indigenous peoples lacked any system of law and for that reason, posed no barrier to European colonialism. The lands could be treated as unoccupied. This ethno-centric analysis was common in practice, but is no longer acceptable. Specifically, it is in conflict with the advisory opinion on the Western Sahara [1] (2).

Other arguments also used to buttress limitations on the sovereignty rights of aboriginal peoples such as the concept of "acquisitive prescription" (3) and, changed

1. Davies connotes this as the "discovery plus" argument: "The doctrine of occupation also requires that the lands so occupied be 'terra nullius'. The definition of 'terra nullius', however, has created certain practical difficulties. Claims were often advanced that lands occupied by certain tribal populations properly fell within the scope of the term. Judgements of this kind were based on the supposed inferiority of such societies and their inability or unwillingness to exploit the land in a "civilized" way" (Supra 5, pp. 335-36). As the International Court of Justice held in Western Sahara Case [1975] I.C.J. Rep. 122): "The presence of nomadic tribes with a degree of political and social organization precluded the territory from being regarded as 'terra nullius'. Whatever differences of opinion there may have been among jurists, the State practice of the relevant period indicates that territories inhabited by tribes or peoples having a social and political organization were not regarded as 'terra nullius'".
2. Sanders, Supra p. 84, note 1, p. 27.
3. Like the concept of adverse possession in common law, it is argued that a State may cure a defect in title through an uninterrupted period of control over a territory provided there is acquiescence on the part of others with sovereign rights to it (see R. Jennings, The Acquisition of Territory in International Law (Manchester: Manchester University Press, 1963), pp. 23-24). However, it would not be valid to hold that protests by indigenous peoples have not been strong enough against control by another state of their territory: "It is quite clear from the circumstances related in this affidavit that however much the Mexicans may have desired to [re]-take physical possession of the district, the result of any attempt to do so would have provoked scenes of violence and the Republic of Mexico cannot be blamed for the milder forms of protest contained in its diplomatic correspondence (Chamizal Arbitration (United States v. Mexico), reported in 5 Am. J. Int'l L. (1911) (Int'l Boundary Commission), p. 807).

circumstances' (1) either have no historical basis in international law or do not stand up to modern international legal norms.

One basis for re-defining the territorial rights of aboriginal peoples can be found in the emerging international legal doctrine of intertemporal law. The Eurocentric doctrine of "discovery", developed as a supposedly legitimate international legal construct in its application to the aboriginal and treaty rights of indigenous peoples, is now an obsolete legal concept even if it once had legitimacy. It was employed by colonizing powers in an attempt to justify the denial of aboriginal territorial rights. The "international law" referred to by those attempting to retain the doctrine of discovery as it was applied to indigenous peoples has been replaced by the new peremptory international legal concept of self-determination of peoples. The territorial rights categories imposed by Europeans on aboriginal peoples under the doctrine of discovery were based on the underlying notion of the superior civilization of Europeans compared to

1. The principle in changed circumstances is that if an aboriginal people (e.g., the Inuit in Canada) have not explicitly surrendered their sovereignty new historical, social and economic realities have rendered that sovereignty unrealistic; in other words there has been historical consolidation (see: Jennings, Supra 37, pp. 23-27). Yet, Jennings has pointed out that the doctrine "...has never been, as it were, spelled out as a doctrine by any court: (p. 27). For the doctrine to be valid it would have to be mutually acceptable to both parties. Policies, whether imposed legislatively, judicially or physically on aboriginal peoples which result in continuing violations of international legal principles cannot be maintained by virtue of the dominant States' superior technology, strength or numbers. It is fundamental to international law that illegal acts can never become a source of legal rights for the wrongdoer (Jennings,

such as Canada and many of its aboriginal peoples. If there were de facto national unity then why the struggle for the recognition of rights to self-determination on the part of Canadian aboriginal peoples? As to the territorial integrity aspect of the Declaration, Barsh notes that the

...defense of territorial integrity is extremely difficult to apply, since it begs the question of whether a particular population is part of an existing state, a "minority", or still an identifiable people entitled to...[self-determination]. Whether a group is located "inside" or "outside" [though in domestic law still annexed to the state in question] depends on the lawfulness of any pretended annexation [emphasis added]. If not, territorial integrity can be used to ratify lawless aggressions [both in the present and in the past] against neighbouring territories [e.g., the government of a country annexing an indigenous people and their territory which lie within their borders but who desire self-determination], and to limit decolonization to lands separated by "blue water" from the frontiers of administering states (1).

The United Nations General Assembly was obviously having difficulty with who should be required to de-colonize while at the same time trying to avoid legitimizing potential acts of aggression against peoples seeking self-determination. The 1965 Declaration on the Non-Intervention in the Affairs of States, in trying to reconcile self-determination with non-intervention, confirms "...the right of self-determination and independence of peoples and nations", and calls for the end of racial discrimination. It adds that

[the use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and the principles of non-intervention.

[However the declaration also states that] "Every State [emphasis added] has the inalienable right of self-

1. Barsh, Supra p. 80, note 1, p. 87.

that of aboriginal peoples. According to the doctrine of inter-temporal law the rights created under one legal system (i.e., the doctrine of "discovery") can no longer be claimed when that system disappears (1). Therefore, rights of discovery, which were used to impose non-indigenous control over aboriginal lands and are claimed as valid by Canadian courts, were in actual fact never valid. Under the "discovery" principle non-aboriginal governments did not have to recognize aboriginal peoples as sovereign equals. However, now the rights of aboriginal peoples in Canada to their lands must be contextualized within their basic right to self-determination as distinct peoples from the rest of Euro-Canadians.

...[A] State, as a person of international law should possess a permanent population, a defined territory, a government and the capacity to enter into relations with other States. If we understand by capacity full capacity, then those four qualities may be said to make up the conception of the sovereign State in international law (2).

This is how indigenous peoples view their capacity as subjects (i.e., as peoples with international status) of international law (2). It should be mentioned once again that aboriginal peoples in Canada desirous of obtaining this recognition are not seeking to break with the Canadian State.

Yet, as we have seen, Canadian courts seem unable to extricate themselves from a legal tradition built on Eurocentric notions of the nature of aboriginal cultures and the effect they have had on the Euro-Canadian definition of aboriginal

1. U.N. Doc. E/CN.4/Sub. 2/405 Rev. 1, p. 18.

2. M. Sorenson (ed.), Manual of Public International Law (New York: St. Martin's Press, 1968), p. 250.

3. See generally, Chapter III, Section C.

territorial rights. This is partly why aboriginal peoples are increasing their efforts in the international system on the issue of their territorial rights. If they can achieve a measure of success, there the Canadian legal system could be reoriented to a more appreciative understanding of aboriginal territorial rights and the effects of such a reorientation could be profound. Many people working in the field are not optimistic about such a possible turnaround given the general dismissal by Canadian courts of the relevance of international law to any issues let alone aboriginal rights; if change is to come we are probably wisely advised to orient ourselves toward the long term.

2. The Revival of Eurocentrism in International Law: Implications for Aboriginal Peoples

2.1 The League of Nations Period: Concepts in Competition

A review of the evolution of legal norms from the League of Nations period through to the present phase of United Nations activity will illustrate the evolution in human rights norms which have positive potential applications for aboriginal territorial rights. The Final Act of the 1889-1890 "Brussels Conference" - the second of the conferences predating the founding of the League of Nations - stated that, with respect to the obligations of colonial powers towards "aboriginal" populations international legal duties were imposed "...to diminish intestine wars between tribes by means of arbitration; to initiate them in agricultural labour and in the industrial arts so as to increase their welfare; to raise them to

civilization and bring about the extinction of barbarous customs, such as cannibalism, and human sacrifice [and to encourage the work of missionaries]" (1). From this type of statement A.H. Snow could analogize the relationship between the colonial powers and indigenous peoples to the relationship of "...patron and apprentice [or] guardian and wards[or] parent and child" (2).

Barsh has noted that the Covenant of the League of Nations did not recognize popular self-determination (3). But United States President Woodrow Wilson, though he did not use the term, stated the principle of self-determination in his Fourteen Points Address when he said: "Every people has a right to choose the sovereignty under which they live" (4). The U.S. Secretary of State at the time raised the concern that Wilson's phrase

...will raise hopes which can never be realized. It will, I fear, cost thousands of lives. In the end it is bound to be discredited, to be called the dream of an idealist who failed to realize the danger until too late to check those who attempt to put the principle in force. What a calamity that the phrase was ever uttered! What misery it will cause (5).

But as Professor David Knight has noted:

What Wilson...and others described as a principle, others were to claim as a right, thus tremendous pressures for recognition developed [emphasis added (6)]. Indeed,

1. Quoted in Barsh, Supra p. 80, note 1, p. 75.
2. A.H. Snow, Supra p. 73, note 1, p. 109.
3. Supra p. 80, note 1, p. 76.
4. Quoted in: M. Pomerance, "The United States and Self-Determination: Perspectives on the Wilsonian conception", 70 Am. J. Int'l. Law 1, p. 2 (1976).
5. Quoted in R. Lansing, The Peace Negotiations: A Personal Narrative (Boston: Houghton Mifflin, 1921), pp. 103-104.
6. See generally Chapter III on the necessity of indigenous nations declarations on such rights.

wilson himself eventually questioned the principle because, as he put it, nationalities began appearing everywhere (1).

The principle of self determination, having been placed on the international agenda and accepted by States like France, Belgium, Italy and Britain-(2) would not be turned back. It should also be remembered that the "indigenous peoples" even before this time did not accept the concept that they were simply a "domestic" issue" (3). As mentioned previously, the six Nations Confederacy had been active in seeking international status at beginning of the League of Nations period and delegations of Maori had travelled to England as early as 1888 (4).

No provisions on popular self-determination found their way into the Covenant of the League of Nations. Indeed, the concepts of guardianship were confirmed in the Covenant through Article 22 which provided:

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization [emphasis added] and that securities for the performance of this trust should be embodied in this covenant (5).

1. David B. Knight, "Territory and People and People and Territory: Thoughts on Postcolonial Self-Determination", 6(2) Int'l. Pol. Sci. Rev. 248, p. 255.
2. A. Cobban, The Nation State and National Self-Determination (New York: Thomas Y. Crowell, 1970), pp. 57-58.
3. Sanders, Supra p. 84, note 1.
4. See G.W. Ruden, Aureretanga: Groans of the Maoris (London: William Rodgeway, 1888).
5. League of Nations Covenant, Art. 22.

This non-recognition of self-determination by the League of Nations reflected the dominant role of the colonial empires in the international organization (1) though a resolution was passed by the League that approved the "Stinson Doctrine" and "...forbade recognition of any situation, treaty or agreement brought about by coercion" (2). In the spirit of the times international tribunals refused to arbitrate in favour of finding aboriginal peoples as possessing international legal status (3).

(i) The United Nations Era: Self-Determination is Affirmed

The United Nations era initiated a significant new evolution in international legal norms concerning the recognition of the right of "self-determination of peoples". Article 1 of the United Nations Charter lists the following as a purpose of the United Nations:

To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples....(4).

Davies has noted that "[r]eference to "respect for the principles of equal rights and self-determination of peoples" is

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1. Barsh, Supra p. 80, note 1, p. 76.
 2. Ibid., p. 77.
 3. See the Legal Status of Eastern Greenland case, Supra p. 81, note 1.
 4. United Nations Charter, Chapter 1, Purposes and Principles, (Art. 1, para. 2).

an important precursor to similar provisions in the International Bill of Rights (1). She quotes Bentwich who states that the inclusion of self determination of Article 1 in the Charter reflects the principle that

territorial changes ought to accord with the freely expressed wishes of the peoples concerned to choose the form of government under which they will live (2).

Chapter 11 of the Charter places obligations upon those State members who "...have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self government [to assist them]

to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement (3).

Several constraining problems have arisen as to what should be the breadth of application of these principles to aboriginal peoples. One concerns the definition of the terms used. What is a people? What is a nation? What is a State? Defining a people is important because that is the term used in the U.N. Charter in its references to self-determination. The International Court of Justice has stated a broad definition of a "people":

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1. M. Davies, "Aboriginal Rights in International Law: Human Rights" in B. Morse (ed.), Aboriginal Peoples and the Law: Indian, Metis and Inuit Rights in Canada (Ottawa: Carleton University Press, 1985), p. 747.
 2. M.N. Bentwich, A Commentary on the Charter of the United Nations (New York: Routledge and Kegan Paul Ltd., 1969), p. 7.
 3. United Nations Charter, Chapter 11, Art. 73.

A group of persons living in a given locality, having a race, religion, language and tradition of their own and united by the identity of race, religion, language and tradition in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other (1).

The International Commission of Jurists has proposed criteria for defining a people which are in some aspects more precise than those of the World Court:

- (1) a common history
- (2) racial or ethnic ties (a good inclusion (2))
- (3) cultural or linguistic ties
- (4) religious or ideological ties
- (5) a common territory or geographical location
- (6) a common economic base and
- (7) a sufficient number of people (3).

The Grand Council of the Mikmaq Nation has submitted its own definition of a people to the U.N. Commission on Human Rights:

If a people exercise their right to self-determination by incorporating themselves freely into another people by immigration or voluntary cession - they surrender their separate status and become one, politically, with the host State. The right to self-determination persists, but ever after must be exercised in common with the host as one people with one voice. As a minority they may justly demand both non-discriminatory treatment under the host's laws, and freedom to preserve and develop their culture within its general framework of laws and responsibilities.

The situation is different where no voluntary incorporation of peoples has occurred, and there has been no free

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1. The Greco-Bulgarian case (1970) P.C.I.J. Ser. B., No. 17, p. 21.
 2. For an authoritative description of ethnicity see W.S. Farnopolosky, Discrimination and the Law in Canada (Toronto: Richard de Boo, 1982), Chapter V.
 3. Quoted in: Indian Rights - Human Rights: Handbook for Indians on International Human Rights Complaint Procedures (Washington, D.C.: Indian Law Resource Center, 1984), p. 14.

consolidation of two peoples' political rights. A people lawlessly annexed or taken from their country by force do not thereby lose their separate voice or choice of destiny, but retain it until given an unrestrained opportunity for its exercise. They do not become, by force of seizure, colonization or enslavement, a minority, but remain a people still.

The distinction therefore between a minority and a people, in our conception flows from the quality of consent. A people can become a minority, if it chooses. Minorities cannot be made by violence or oppression, however (1).

The basic criteria of statehood have been expressed in Article 1 of the 1933 Montevideo Convention:

The State as a person of international law should possess the following qualifications: (a) permanent population; (b) a defined territory; (c) government and; (d) capacity to enter into relations with other states (2).

It is probably fair to expect that the United Nations will itself in time draft its own criteria for these concepts.

A second constraining problem in applying the principle of self-determination to indigenous peoples is the Blue Water Thesis. The idea was that the principle of self-determination

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1. Quoted in F. Caporioni, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, U.N. Doc. E/CN. 4/Sub. 2/384/Rev. 1, at para. 28-29 (1979). The words "ever-after" are too historically deterministic in the opinion of the author of this essay. History is more fluid than this. Peoples merge and peoples emerge over time. What must be recognized is their right to move in history in a way that is non-coercive.
 2. League of Nations Treaty Series, Vol. 165, at p. 19. There are no stipulated minimums to the standard; e.g., the population of the Western Sahara over an area of 266,000 square kilometers was only 75,000 in 1975 (Report of the United Nations Visiting Mission to the Spanish Sahara in the Report to the Special Committee (U.N. Doc. A/10023/Add.5, Annex 26-27 (1975)). The size of Western Samoa is 1,130 square miles and Maritius is 720 square miles. The requirement for government has been stated that the group must provide legal order and a stable political community for its social and political structure (Brownlie, Principles of International Law, (1966)).

should be restricted to "...instances of overseas colonization"

(1). In meetings of the General Assembly

the Latin (American) states suggested that overseas possessions be distinguished carefully from internal fusions of indigenous and immigrant populations, otherwise no state in the world would be immune from dismemberment (2).

There is mounting evidence, however, which "...suggests that the United Nations can, and will, overcome the Blue Water bias in its future actions" (3). One can trace this evolution by carefully examining two key United Nations General Assembly resolutions. The First is the Declaration on the Granting of Independence to Colonial Countries and Peoples passed by the General Assembly in 1960. It advocated the speedy and unconditional end to colonization and defines colonialism as "...alien subjugation, domination and exploitation. (At the same time it stated quite bluntly that:)

Any attempt at the partial or total dismemberment of the national unit and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations (4).

The national unity aspect of the Declaration vis a vis aboriginal peoples in many states might be responded to by pointing out the national disunity that has always existed between a State

1. Barsh, Supra p. 80, note 1, p. 85.

2. Ibid. See U.N. GAOR C. 4 (275th mtg.) (U.N. Doc. A/2301 (1952)), at p. 55, where the delegation from Ecuador maintained that "[t]he Indian population of Ecuador formed an integral part of the nation".

3. Ibid., p. 90.

4. Declaration on the Granting of Independence to Colonial Countries and Peoples, U.N.G.A. Res. 1514, 15 U.N. GAOR. SUPP. No. 16, U.N. Doc. A/L323 (Add. 1-6) (1960), pp. 66-67.

such as Canada and many of its aboriginal peoples. If there were de facto national unity then why the struggle for the recognition of rights to self-determination on the part of Canadian aboriginal peoples? As to the territorial integrity aspect of the Declaration, Barsh notes that the

...defense of territorial integrity is extremely difficult to apply, since it begs the question of whether a particular population is part of an existing state, a "minority", or still an identifiable people entitled to...[self-determination]. Whether a group is located "inside" or "outside" [though in domestic law still annexed to the state in question] depends on the lawfulness of any pretended annexation [emphasis added]. If not, territorial integrity can be used to ratify lawless aggressions [both in the present and in the past] against neighbouring territories [e.g., the government of a country annexing an indigenous people and their territory which lie within their borders but who desire self-determination], and to limit decolonization to lands separated by "blue water" from the frontiers of administering states (1).

The United Nations General Assembly was obviously having difficulty with who should be required to de-colonize while at the same time trying to avoid legitimizing potential acts of aggression against peoples seeking self-determination. The 1965 Declaration on the Non-Intervention in the Affairs of States, in trying to reconcile self-determination with non-intervention, confirms "...the right of self-determination and independence of peoples and nations", and calls for the end of racial discrimination. It adds that

[t]he use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and the principles of non-intervention.

[However the declaration also states that] "Every State [emphasis added] has the inalienable right of self-

1. Barsh, Supra p. 80, note 1, p. 87.

determination" (1). Barsh notes that the use of the word State "...is confusing, since the 1950 declaration used the phrase "all peoples". While the 1965 declaration could be read to limit the right of self government to existing states, there is no evidence of such an intention....Decolonization does not create states, but merely restores statehood to peoples" (2).

In 1970, the General Assembly once again passed a territoriality resolution restating the defense of territorial integrity of states but this time in a more nuanced fashion:

...nothing [in this Declaration] shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples...and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color [Emphasis added] (3).

As Barsh notes "[t]o assert the territorial [integrity] defense [stated in the resolution]...a state must first demonstrate that its territory was lawfully acquired. This qualification may be particularly difficult to overcome for states in the Americas" (4).

Professor Knight has summed up the position of international

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1. Declaration on the Admissibility of Intervention in the Domestic Affairs of States, U.N.G.A. Res. 2131, 20 U.N. GAOR, Supp. No. 14, U.N. Doc. A/6620 (1965), p. 11.
 2. Barsh, Supra p. 80, note 1, pp. 87-88.
 3. Declaration on the Principles of International Law Concerning Friendly Relations Among States, U.N.G.A. Res. 2625, 25 U.N. GAOR, Supp. No. 28, U.N. Doc. A/8082.
 4. Barsh, Supra p. 80, note 1, p. 88.

law that

...it is not legitimate for people who form a minority within a national territory to seek self-determination... that would "dismember or impair, totally or in part" the existing state....The only currently acknowledged exception to the colonial limitation relates to those populations that are now subject to rule by a minority who govern by an apartheid philosophy or to those "people of a sovereign state living under foreign domination, whether this domination results from annexation of territory [the legal acquisition of territory argument stressed by Barsh] or from direct or indirect military hegemony (1).

Knight uses the word exception but he lists three exceptions in this passage and as stated in the preceding paragraph the lawless annexation limitation on the territorial integrity principle has a wide potential application with respect to the territories of aboriginal peoples. It should also be noted that the even more recent and authoritative

statement of the rights to self-determination of peoples in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights makes no reference to the territorial integrity principles (2).

The emphasis in the Covenant is on the right of the self-determination of peoples without the qualifications contained in U.N. General Assembly resolutions on the matter. If we are to accept that self-determination has relevance only where "foreign" overseas domination is the issue we must, as Knight notes, accept that "...[i]n short colonially derived

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1. Knight, Supra p. 93, note 1, pp. 259-260. (Knight refers the reader to A. Cassese, "The Self-Determination of Peoples" in L. Henkin (ed.), The International Bill of Rights: The Covenant on Civil and Political Rights (New York: Columbia University Press, 1981).
 2. Sanders, Supra p. 84, note 1, p. 28.

international boundaries are now sacred!" (1). The continued legitimacy of the Blue Water thesis still awaits a definitive testing but history will probably show that the static, non-dynamic determinism which it implies means that it will not be able to stand the test of time.

A third constraining problem with respect to the promotion of the rights of indigenous peoples to self-determination has been the presumption that, in politically encircled aboriginal territories, all indigenous peoples will inevitably be assimilated into modern society (2). The 1959 Convention 107 of the International Labour Organization (ILO) accepted these ideas together with the doctrines of "wardship" and "conquest" with respect to aboriginal peoples (3). The persistence of indigenous cultures, perhaps made so strong because of their thousands of years old attachment to and relationship with their territories, is not to be overestimated. The ILO Convention 107 is already an anachronism and efforts are underway by the ILO to update it. Its future success as far as aboriginal peoples are concerned remains to be seen.

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1. Knight, Supra p. 93, note 1, pp. 260-261.
 2. Barsh, Supra p. 80, note 1, pp. 80-81.
 3. International Labour Organization, Convention (No. 107) Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, 238 U.N.T.S. 252.

(11) More Recent Developments

The two U.N. human rights covenants (1966) (1) together with the Universal Declaration of Human Rights (2) form the "International Bill of Rights". Many experts consider that the Universal Declaration of Human Rights has achieved the status of customary international law. The two covenants confirm the right of "all peoples" to self-determination. As well, the Covenant on Civil and Political Rights declares that in

...those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, to use their own language (3).

Therefore, even though international law may not have as yet explicitly established that indigenous peoples are peoples with the right to self-determination, there are certain protections against discrimination and for the protection of the cultures of minorities of States which exist in all of the documents in the International Bill of Rights. These limited minority rights, however, while they have limited usefulness to aboriginal peoples in Canada in the present political status quo, must be carefully distinguished from the stated goal of self-determination for aboriginal peoples.

There are also procedures within the United Nations which can be utilized at the present time by aboriginal peoples in their

1. United Nations Covenant on Civil and Political Rights, U.N.G.A. Res. 2200A, 21 U.N. GAOR (Supp. No. 16), U.N. Doc. A/6556. United Nations Covenant on Economic, Social, and Cultural Rights (*ibid.*).
2. Universal Declaration of Human Rights, U.N.G.A. Res. 217A, U.N. Doc. 74-75.
3. Supra p. 103, note 1, art. 27.

struggle to achieve further recognition of their territorial rights. The U.N. Covenant on Civil and Political Rights under its Optional Protocol allows for complaints to be brought before the Committee on Human Rights upon exhaustion of domestic remedies. Further, there are procedures (e.g., the 1235 and 1503 complaints procedures) which allow, in certain circumstances, non-State parties to submit complaints on human rights abuses to the U.N.

Petitions submitted so far have generally indicated the importance aboriginal peoples place on the right to self-determination over minority rights. However, the problems of definition and application remain.

The [indigenous] effort to establish [recognition] of this right will likely be very difficult. As recently as May 1984, the [Organization of American States'] Inter-American Commission on Human Rights issued a report which concluded that "the current status of international law" does not recognize the right of self-determination for the Indians of Nicaragua. The Commission defined the Miskito Indians as a Nicaraguan ethnic group (1).

The U.N. Subcommission on the Prevention of Discrimination and Protection of Minorities has been engaged in the process of drafting academic reports to address these problems. The Subcommission is considering the submissions of indigenous people on this matter. Equally important, there are at least two formal proceedings pending before U.N. human rights agencies, sponsored by indigenous peoples, which are raising these questions of definition. These are discussed in the following section of this chapter.

1. Supra p. 96 note 3, p.14.

It should be noted that there are international legal scholars who believe that the concept of self-determination has acquired a universality of application that would include aboriginal peoples:

...it seems to me, that the original impulse of the doctrine of self-determination, what led to its formation as a principle, has to do with a basic affirmation of respect for the inherent dignity of individuals and groups, and that fundamentally the internal application of the doctrine of self-determination is a human rights claim, a human rights claim that can draw on a number of sources... (1)

Professor Davies has noted the significant recent development of the doctrine of self-determination in the Helsinki Final Act. Principle VIII, Equal Rights and Self-Determination of Peoples, states, after referring to the U.N. human rights covenants, that:

...By virtue of the principle of equal rights and self-determination of peoples, all peoples always have (emphasis added) the right, in full freedom, to determine, when and as they wish, their internal and external (emphasis added) political status, without external interference... (2).

Davies notes that, because Principle VIII of the Final Act explicitly allows for internal and external self-determination, the reference to the U.N. covenants and Charter "...provides an authoritative interpretation of the concept for self-determination as contained in them]. Therefore, whatever the exact legal status of the Final Act itself may be, the clarification of the concept of self-determination acknowledged by states signatories to the Final Act might be applicable to

1. R. Falk and T. Berger, The Report of the Mackenzie Valley Pipeline Inquiry, 6 UNCIO Doc. 396.
2. Helsinki Final Act, Conference on Security and Cooperation in Europe (Aug. 1, 1975) 73 U.S. Dept. of State Bull. 325 (Pt. 1, Principle VII).

the concepts set out in the covenants which are legally binding" (1).

In addition Principle VIII [indicated] emphatically that the right to self-determination is a continuing one. There is no clear indication in the text as to whether the right extends to minority groups within the sovereign state, but [it] appears that minorities were not envisaged as possessing this right. Nevertheless, a strong argument may be made that a number of indigenous peoples do not fall within this traditional "minority" category, since as peoples, they have never voluntarily given up their original status and do not identify themselves with the nation state within whose borders they may live [emphasis added] (2).

The indigenous peoples of the "Fourth world" are now mounting a concentrated effort to ensure that a wider interpretation of self-determination is accepted internationally which rids itself of biases which have their origins in Eurocentrism.

E. The Contribution of Indigenous Peoples

There was a dramatic expansion both in the number and in the activities of aboriginal organizations throughout Canada, especially after 1969, the year which the federal government of Canada released its White Paper advocating the assimilation of Indians into Euro-Canadian society. While organizing this domestic drive to halt Canadian efforts aimed at assimilation, aboriginal organizations maintained links with the international community. In the 1960's and 1970's these activities were

1. Davies, Supra p. 95, note 1, pp. 778-79. Davies refers to A. Cassese, "The Helsinki Declaration and Self Determination", in T. Bergström, Human Rights, International Law and the Helsinki Accord (New York: Landmark Studies, 1977), p. 91.

2. Ibid., p. 778.

transformed into a groundswell. In 1975, the first conference of the World Council of Indigenous Peoples (WCIP) - founded by the then President of the National Indian Brotherhood, George Manuel - was held in Vancouver (1). The WCIP is recognized as being one of the most credible of the aboriginal Non-Governmental Organizations (NGOs) which have consultative status with the United Nations. This is perhaps because of its broad international scope (it is organized in five international regions: North America, Central America, South America, the South Pacific and Northern Europe) and in its ability to remain neutral in international superpower geopolitics. The WCIP serves as the major springboard for aboriginal peoples in Canada into the international arena. The WCIP and other aboriginal NGOs such as the Indian Law Resource Centre in the United States and the Inuit Circumpolar Conference serve to "lobby" the causes of the aboriginal peoples they represent at the U.N. Aboriginal peoples also directly table their own submissions to U.N. organs through these NGO's.

Barsh has noted that

[p]articular attention must be given to the changing status of indigenous populations [in the international community] and the role indigenous groups have themselves played in stimulating change since 1977 (2).

The contribution to this change from aboriginal peoples in Canada has been vital. By the mid-seventies a fairly clear and

1. D. Sanders, The Formation of the World Council of Indigenous Peoples (International Work Group for Indigenous Affairs, 1977).

2. Barsh, Supra p. 80, note 1, pp. 73-74.

pervasive position on the advocacy of aboriginal sovereignty and nationhood had developed among aboriginal peoples in Canada. The Dene Declaration, affirming the rights to self-determination of the Dene Nation, was proclaimed in 1978 (1). In 1982, Chief Sol Sanderson of the Federation of Saskatchewan Indian Nations has succinctly summed up the position taken by most aboriginal peoples in Canada:

By our own efforts, over the last decade, we have successfully reasserted our sovereignty as Indian Nations in our homelands and have begun to re-establish our international personality in the courts and political assemblies of the world (2).

It has been upon the foundation of the assertion of rights to sovereignty and self-determination that the positions of the Indian, Inuit and Metis peoples in Canada regarding their territorial rights have been built (3).

Activity on the part of international aboriginal non-governmental organizations (NGOs) has been hectic over the last number of years. This is in part due to the results of the 1977 Conference on Discrimination Against Indigenous Populations in the Americas. The conference resulted in the landmark Declaration of Principles for the Defence of Indigenous Nations and Peoples of the Western Hemisphere (4). That Declaration

1. See Appendix V.

2. Chief S. Sanderson (Federation of Saskatchewan Indian Nations' Chief's Council), "The International Rights of Indian Nations in Delta Opekokew", The First Nations: Indian Governments in the Community of Man (Prince Albert: Federation of Saskatchewan Indian Nations, 1982).

3. See Chapter III.

4. International NGO Conference on Discrimination Against Indigenous Populations in the Americas (Geneva, 20-24 Sept. 1977), Statement and Final Documents 4, 5 (1978).

calls for the recognition and treatment of indigenous peoples as having the same inherent sovereignty as nation-states accorded status under the Vienna Convention on the Law of Treaties. A follow-up conference in 1981, "Indigenous Peoples and the Land" gathered aboriginal representatives from all five continents and formally adopted the 1977 Declaration as applying to all peoples. The Declaration is reproduced below and when examined will give the reader a greater understanding of just how indigenous peoples view themselves as an integral part of the international community.

DECLARATION OF PRINCIPLES FOR THE DEFENSE OF THE INDIGENOUS NATIONS AND PEOPLES OF THE WESTERN HEMISPHERE (September 1977)

PREAMBLE:

Having considered the problems relating to the activities of the United Nations for the promotion and encouragement of respect for human rights and fundamental freedoms.

Noting that the Universal Declaration of Human Rights and related international covenants have the individual as their primary concern, and

Recognizing that individuals are the foundation of cultures, societies, and nations, and

Whereas, it is a fundamental right of any individual to practice and perpetuate the cultures, societies and nations into which they are born, and

Recognizing that conditions are imposed upon peoples that suppress, deny, or destroy the cultures, societies, or nations in which they believe or of which they are members,

Be it affirmed, that,

1. RECOGNITION OF INDIGENOUS NATIONS

Indigenous peoples shall be accorded recognition as nations, and proper subjects of international law, provided the people concerned desire to be recognized as a nation and meet the fundamental requirements of nationhood, namely:

- a. Having a permanent population
- b. Having a defined territory
- c. Having a government
- d. Having the ability to enter into relations with other states.

2. SUBJECTS OF INTERNATIONAL LAW

Indigenous groups not meeting the requirements of nationhood are hereby declared to be subjects of international law and are entitled to the protection of this Declaration, provided they are identifiable groups having bonds of language, heritage, tradition, or other common identity.

3. GUARANTEE OF RIGHTS

No indigenous nation or group shall be deemed to have fewer rights, or lesser status for the sole reason that the nation or group has not entered into recorded treaties or agreements with any state.

4. ACCORDANCE OF INDEPENDENCE

Indigenous nations or groups shall be accorded such degree of independence as they may desire in accordance with international law.

5. TREATIES AND AGREEMENTS

Treaties and other agreements entered into by indigenous nations or groups with other states, whether denominated as treaties or otherwise, shall be recognized and applied in the same manner and according to the same international laws and principles as the treaties and agreements entered into by other states.

6. ABROGATION OF TREATIES AND OTHER RIGHTS

Treaties and agreements with indigenous nations or groups shall not be subject to unilateral abrogation. In no event may the municipal law of any state serve as a defense to the failure to adhere to and perform the terms of treaties and agreements made with indigenous nations or groups. Nor shall any state refuse to recognize and adhere to treaties or other agreements due to changed circumstances where the change in circumstances has been substantially caused by the state asserting that such change has occurred.

7. JURISDICTION

No state shall assert or claim or exercise any right or jurisdiction over any indigenous nation or group or the territory of such indigenous nation or group unless pursuant to a valid treaty or other agreement freely made with the lawful representatives of the indigenous nation or group concerned. All actions on the part of any state which derogate from the indigenous nations' or groups' rights to exercise self-determination shall be the proper concern of existing international bodies.

8. CLAIMS TO TERRITORY

No state shall claim or ~~retain~~, by right of discovery or otherwise, the territories of an indigenous nation or group, except such lands as may have been lawfully acquired by valid treaty or other cession freely made.

9. SETTLEMENT OF DISPUTES

All states in the Western Hemisphere shall establish through negotiations or other appropriate means procedures for the binding settlement of disputes, claims, or other matters relating to indigenous nations or groups. Such procedures shall be mutually acceptable to the parties, fundamentally fair, and consistent with international law. All procedures presently in existence which do not have the endorsement of the indigenous nations or groups concerned shall be ended, and new procedures shall be instituted consistent with this Declaration.

10. NATIONAL AND CULTURAL INTEGRITY

It shall be unlawful for any state to take or permit any action or course of conduct with respect to an indigenous nation or group which will directly or indirectly result in the destruction or disintegration of such indigenous nation or group or otherwise threaten the national or cultural integrity of such nation or group, including, but not limited to the imposition and support of illegitimate governments and the introduction of non-indigenous religions to indigenous peoples by non-indigenous missionaries.

11. ENVIRONMENTAL PROTECTION

It shall be unlawful for any state to make or permit any action or course of conduct with respect to the territories of an indigenous nation or group which will directly or indirectly result in the destruction or disintegration of an indigenous nation or group through the effects of pollution of earth, air, water, or which in any way depletes, displaces or destroys any natural resource or other resources under the domination of, or vital to, the livelihood of an indigenous nation or group.

12. INDIGENOUS MEMBERSHIP

No state, through legislation, regulation, or other means, shall take actions that interfere with the sovereign power of an indigenous nation or group to determine its own membership.

All rights and obligations declared herein shall be in addition to all rights and obligations existing under international law.

In further recognition of the political element involved in the struggle to achieve recognition of the rights of indigenous peoples to self-determination, the World Council of Indigenous Peoples released a draft International Covenant on the Rights of Indigenous Peoples in 1981 (1). Such documents allow non-aboriginal governments the possibility of learning about the efforts of aboriginal peoples in the international system. These documents are being utilized by indigenous peoples as part of the struggle to ensure that United Nations Conventions, those previously discussed, as well as others such as the Convention on the Prevention and Punishment of the Crime of Genocide (2) and the International Convention on the Elimination of all Forms of Racial Discrimination (3), are utilized in the defense of aboriginal rights (4).

Besides the results the NGO Conferences of 1977 and 1981 achieved in themselves, they also catalysed the formation of the Working Group on Indigenous Populations by the U.N. Economic and Social Council (5). Support for the formation of the Working Group came from western Europe. Neither Canada, the U.S., Australia,

1. International Covenant on the Rights of Indigenous Peoples, World Council of Indigenous Peoples, Melbourne, Australia, April 1981 (Draft). This document is reproduced as Appendix VI.
2. Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the U.N. General Assembly, 9 Dec. 1948. Entered into force, 12 Jan. 1961. 78 U.N.T.S. 277.
3. International Convention on the Elimination of all Forms of Racial Discrimination, Opened for signature 7 March 1966. Entered into force 4 Jan. 1969, 660 U.N.T.S. 195.
4. See Davies, Supra p. 95, note 1, pp. 781-784.
5. ECOSOC Res. 1982/34, 7 May 1982.

nor New Zealand objected; Brazil, the Soviet bloc and Cuba vigorously opposed its formation. The Subcommission on the Prevention of Discrimination and Protection of Minorities praised the first report of the Working Group while emphasising that urgent action be undertaken with respect to the genocide and ethnocide of indigenous populations. Whether the Working Group pursues its mandate in a vigorous fashion remains to be seen. It must ultimately report to the Human Rights Commission

a U.N. organ controlled by states (e.g., Canada) which are still "enthralled" by the Blue Water Thesis and have thus far not formally admitted to its discriminatory effects on aboriginal peoples. It has been pressure from indigenous peoples which has led to the creation of the Working Group; it will be their continued political pressure together with that of their political allies which keeps it healthy.

In 1984 the Sub-Commission on the Prevention of Discrimination and Protection of Minorities mandated the Working Groups to begin consideration, at its 1985 session, of a draft body of principles or declaration of rights of indigenous peoples (1). At a pre-sessional strategy meeting organized by several indigenous NGO's and held in Geneva on July 22-26, 1985, aboriginal representatives seized the opportunity to prepare a draft set of principles of their own which would be presented to, and thus have to be considered, by the Working Group in its deliberations. The Declaration of Principles reached by the aboriginal representatives reflected a broad consensus from

1. Resolution 1984/35 (B), paras. 6-8.

virtually all regions of the world from which the representatives came. The document was formulated using previous aboriginal declarations of principles of the international protection of aboriginal rights including a new document released by the World Council of Indigenous Peoples at its Fourth General Assembly held in Panama in 1984 (1). The Declaration of Principles is far reaching in its implication for the right of self determination for indigenous peoples (2). The aboriginal representatives who attended the pre sessional strategy meeting accepted the fact that the lobbying effort to achieve a satisfactory U.N. General Assembly declaration on the rights of indigenous peoples is going to have to be intense over the next five to ten years and perhaps longer.

Outside of the more politically oriented processes used by indigenous peoples to further the recognition of their territorial rights in the international system there have been actions taken of a more strictly legal nature at the United Nations. In 1980, a petition was brought before the U.N. Commission on Human Rights and its Subcommittee on the Prevention of Discrimination and the Protection of Minorities. It was advanced under the "1503 Procedure" which allows these organs to deal with "particular situations which reveal a consistent pattern of gross and reliably attested violations

1. U.N. Doc. E/CN.4/Sub.2/AC.4/1985/WP. 4, pp. 10-12 (See Appendix VII).

2. It is reproduced as Appendix VIII and is worth careful attention and study. See: U.N. Doc. E/CN.4/Sub. 2/1995/22; Annex IV.

of human rights". This petition, submitted by the Houdenousinee, Sisseton, Western Dakota, Lakota Nations and Mikmaq peoples seeks "...strong condemnation of United States' land surrenders and management policies which are repugnant to fundamental human rights" (1). Canada has signed the Optional Protocol to the International Covenant on Civil and Political Rights. Petitions against human rights violations under the Covenant can be brought directly to the U.N. Human Rights Committee. The Committee, in turn, under the Human Rights Commission, consists of independent experts who formulate recommendations on the basis of the reports of human rights monitors. The Mikmaq nation has submitted its petition against Canada to the Committee (2).

Canada treats itself as a dependency in the accepted international sense, of the United Kingdom under a 1752 treaty, and giving it status to that of Canada or Australia within the British Commonwealth. Canada's legislative and administrative efforts to involuntarily relocate, reorganize and reeducate Mikmaq are challenged as infringements of their rights as a separate state, tantamount to lawless annexation. For relief, the Commission suggests findings that Mikmaq is a state freely associated with the United Kingdom and that Canada has no jurisdiction or authority territory within territory bounded and reserved by the 1752 treaty.

Canada's 1981 response relies almost entirely on territorial integrity and accuses Mikmaq of secessionism. In an exceptionally candid passage, Canada also contends that (3)

International, American and Canadian law do not recognize treaties with North American Native People as international documents confirming the existence of

1. Barsh, Supra p. 80, note 1, p. 96.
2. Communication R 19/78, G/50 215/51 (ana. [18]). The document has been classified as confidential by the U.N. Secretary General. Professor Barsh is the official agent of the document.
3. Barsh, Supra p. 80, note 1, pp. 96-97.

these tribal societies as independent and sovereign states. These treaties are merely considered to be nothing more than contracts between a sovereign and a group of its subjects (1).

The implication of the inferiority of the status of tribal peoples is pervasive in the response of Canada. We must ask ourselves how long it will take before this situation will change.

F. Concluding Remarks

The petition submitted by the Mikmaq nation is part of a larger process which raises a series of implications of a fundamental nature on the problem of aboriginal territorial rights which will be affected in one way or another by its outcome. Does the doctrine of discovery have legitimate force in international law with respect to territories which were and still are populated by indigenous peoples? This would mean at least impliedly accepting the idea that indigenous societies were of such an inherent nature as to mean that, for all intents and purposes, the lands were "unoccupied". Still the requirement of the "terra nullius" doctrine would not have been met. Canada implies in its response to the petition that, even before any treaty, the Mikmaqs were the subjects of the British Crown. In other words, the Crown had full sovereign title to the lands and the Indians' title of occupancy is derivation from the non-Indian European system of private

1. Ibid. The petition has run up against procedural obstacles at the U.N. As a consequence, it may never have its substantive merits decided upon.

property was subject to it. Therefore, it leads us again to the question of "civilized" versus "primitive" or "uncivilized" societies and whether the former had the right to assert jurisdiction over the latter. Were the injustices of the past recognized and conceded would it be possible to say that it is now impossible to rectify the situation the way the Mikmaq want it. This would continue, in their view the oppressions of the past for they still view themselves as a distinct people - in fact a nation. The same concepts are tied to the interpretation of the treaty - drafted, as it was, by non Mikmaq. The Mikmaq position is that they have never had any intention of giving up their rights as a nation. If the Mikmaq Nation is to be viewed as having rights to national sovereignty upon their "discovery" by their "discoverers" the question of the Blue Water Thesis is irrelevant if they never voluntarily gave up that sovereignty to the Crown which they maintain is the case. Even if this were not the case what should be the status accorded to the Blue Water Thesis?

These questions bear down on fundamental notions of equity among different peoples. Indigenous peoples are forcing a response to them. Canadian courts and legislatures have to date (at least implicitly) refused to view indigenous societies as having the same intrinsic cultural and political value as "European" societies. To re-phrase the point of Chief Justice Marshall in the Worcester v. Georgia case: it has been in the interest of all of the colonizers not to acknowledge the really fundamental issues of equality in question.

But indigenous peoples are not going to let these issues die. As peoples and nations they are attempting to use international law to achieve the recognition of the rights that are theirs where domestic law will not. If indigenous peoples are entitled to full international legal status as distinct peoples who have retained their sovereignty, it is only natural that the process occur in the international arena. Anything else appears to have been proven unacceptable. Relations between indigenous and non indigenous societies must be carried out on a nation to nation basis; that is what international relations are all about. The new international relations will hopefully seek effective accommodation and not division and animosity or the explicit or implicit acceptance of the raw "might is right" concept. They will then serve as the foundation for creating a new and innovative development for indigenous peoples who live within Canada. At that time indigenous priorities of communally held property and community responsibility and control will cease to be viewed as obstacles to development.

EPILOGUE: SETTING THE CONTEXT OF CHANGE

A. The Challenge of International Law and Politics

For those who have believed that international law and the United Nations could contribute to an ever-strengthening prospect of benign world order, it is especially necessary to be tough minded at this time about the limitations of law and international organization, and to acknowledge that we are, I believe, at one of the weakest points in the experience of our century in trying to come to terms with the fundamental challenge in international life. This is not the moment to celebrate the achievements of international law. It is a time to acknowledge that international law is declining in relevance with respect to the great world order issues of the day. Such an assessment is bleaker still when it is acknowledged that international law has never been a truly effective force in relation to these issues, and so a process of decline represents a shift from "weak" to "weaker" (1).

Professor Richard Falk addressed these words to a Canadian conference on international law in 1980 and went on to support his statement by drawing attention to international political apathy that has characterized the Iran-Iraq war. Five years later little has happened to change a situation which began with a clear act of aggression.

Clearly, taking advantage of any positive evolutionary trends in international law presents indigenous peoples with a problem. Not only do many states not accept that the principle of self-determination applies to indigenous peoples but even when principles of international law are widely accepted they are often easily ignored by states. In fact, some scholars have noted how, in an age of modernity, states have, as a result of the separation of the rational formulation of state policy from subjective and humane considerations of its implementation,

1. R. Falk, "The Decline and Future Prospects of International Law", 2(1) Canadian Journal of Development Studies 164, p. 164.

created superfluous peoples to be dealt with in any manner which is most convenient in facilitating such policy implementation. This process finds ready examples with respect to indigenous peoples worldwide (1) though in recent years the general public are more familiar with the more notoriously brutal examples such as the genocide of three million Kampuchéans by a "radical" government (2).

Many scholars in international law and politics accept that we are at a watershed point in world history. But if part of our most pressing need today is "the avoidance of catastrophe" (3), (the other side of the same coin is the promotion of human "degency" on a global scale), then

it is here...that we encounter a colossal failure on the part of international law and the organized international community. The degree to which nuclear weapons have been accepted without being subjected to any serious scrutiny from even an academic point of view suggests an astounding degree of complacency within professional circles (4).

The pressing need to develop solutions to this international crisis can be approached from different angles. We can accept that the present state system is here to stay and that human rights problems will have to be solved - or left unresolved - within the present system of territorial competition among states. Others hold that the state system is undergoing a

1. Survival International, Annual Review 1985 (London: Survival International, 1985).

2. R.L. Rubenstein, The Age of Triage (Boston, Mass.: Beacon Press, 1983).

3. Falk, Supra, p. 120, note 1, p. 171.

4. Ibid.

process of evolutionary change which will eventually lead to a diminution of its worst features. Here indigenous peoples could play a limited but definite role in helping to stimulate positive change in the implementation of international human rights norms. A third view of global change has been emphasized by Professor Falk under the typology of "the Grotian moment" the reference being to the fact that the international legal scholar Hugo Grotius postulated a theory of international law as the relations among states during a period of fundamental change when the state system was emerging in the 1600's.

The third view assumes that, and perhaps I put it too dramatically, we are at a Grotian moment. That is, we are at a time when an old system of world order is essentially unable to operate successfully in relation to the challenges that are being posed for it, as feudalism and medievalism were unable to deal with the problems of Europe from the fourteenth to the seventeenth centuries. A new kind of order is trying to emerge and the seizing of the Grotian moment, so to speak, is a matter of synthesizing the old that is dying with the new that is emerging in a way that goes beyond evolutionary statism and sees the formation of a political community and a political framework that rests in its fundamental foundation on the human interest and on the possibility of a politics that is planetary in scope and scale. This does not mean that such a transformation will happen in the 1980's or the 1990's, but that the positive direction of development, the way out of the addictive patterns of international behavior that I referred to at the beginning, is toward a different set of beliefs, attitudes, and values that have to do with a less materialist, less territorial (in the sense of statism), less militarist view of what security is about, and that really interprets our situation, societally and civilizationally, as at a turning point. In this period, there can either be a breakdown or a breakthrough, and it will require a great mobilization of courage and strength at this stage to not merely participate as passive spectators in the fundamental destructive dynamic now unfolding (1).

1. Ibid.

If we are approaching or are at the point of time where this "Grotrian moment" typology¹ is of relevance this is where indigenous peoples might well have the opportunity to make a truly substantial contribution in developing a future world order paradigm. In grounding thinkings of future possibilities of international social life in traditional indigenous decentralist social and political arrangements, without "romanticizing" them, it appears possible to derive some attainable dimensions of a revitalized and relevant international law and politics while avoiding the creation of facile utopographies (1). To develop dimensions of future world order possibilities from the traditions of indigenous peoples will require major efforts of innovative analysis and is clearly beyond the scope of this essay. But it should be noted that preliminary work has already begun in applying the relevance of indigenous traditions in this regard (2).

Professor Falk has noted that the "Grotrian quest" for a new international political order

offers no easy solace or spectacular outcomes. Yet, it remains constructive in our situation, because it is normatively grounded and future oriented, synthesizes old and new, and cherishes continuities while welcoming discontinuities. Our political life is now so bureaucratized that it is doubtful whether anyone who listens to the voice of conscience could long remain influential [within the mainstream of the political decision making process] (3).

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1. S. Falk, The End of World Order (New York: Holmes and Meier, 1983), pp. 322-325.
 2. J.E. Brown, The Spiritual Legacy of the American Indian (New York: Crossroads, 1982).
 3. Supra, p. 123, note 1, p. 31.

This is why, if Falk's "Grotian moment" typology turns out to be accurate, indigenous peoples might figure prominently in its design process of a new international relations; creative contributions can only come from the "outside" where there is the willingness to engage in a process of structural and mental change. Therefore, the decision of indigenous peoples to be more actively involved in world order issues in light of the current weakness of international law may prove to have beneficial consequences far beyond what can be perceived at the present time. But even if the current state system proves to endure in its overall present structure the evolutionary changes made to the acceptance and implementation of indigenous territorial political aspirations could prove to be significant.

This thesis has attempted to show the extremely limited legal and political successes that indigenous peoples in Canada have had in creating a social, economic and political reality which would allow them the opportunity to continue to exist as truly distinct peoples. The result has been an increased effort on their part to work in the international arena to achieve recognition of their rights to self-determination as distinct peoples with differing world views that embody concepts they see as necessary to facilitate sustainable adaptations of all people to their environments in the 21st century. To become involved internationally in this effort is a natural consequence of the distinctness and fundamental equality of aboriginal peoples in Canada with Euro-Canadians and their desire to remain such. Further, the natural outcome of that distinctness leads

to the proposal for an adequate decentralization of power to determine territorial development away from the inevitably different Euro-Canadian state to aboriginal peoples. While pursuing the pragmatic goal of indigenous territorial control through attempting to further enhance the international acceptance of aboriginal territorial rights, indigenous peoples may also be helping to set the stage for a fundamental and positive shift in international social life.

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APPENDIX I
CORRESPONDENCE AND DECLARATORY MATERIALS ON THE
CAMPERVILLE METIS GOVERNMENT

Camperville Metis
Government

Leader of Government

Camperville, Manitoba

Le Gouvernement Metis
De Camperville

Chef Du Gouvernement

April 16, 1984

Rt. Hon. Pierre E. Trudeau,
Prime Minister of Canada,
Room 309 - S,
House of Commons,
Ottawa, Ontario
K1A 0A6

Dear Prime Minister Trudeau:

This letter is intended to serve notice to the leader of the elected party in power governing the country we call Canada.

We, the Metis from Camperville, situated on the west side of Lake Winnipegosis, in the Province of Manitoba have decided to form a Metis Government through recognized democratic process which officially took place on April 9, 1984 at 10:40 a.m..

Our reason for setting-up our government should be obvious to you. The collective will of the Canada Government and Provincial governments is just not there; the aboriginal peoples desire for our own governments is obviously not a priority on your part; therefore, you are being served notice that we will not tolerate lip service any longer.

We intend to govern ourselves along similiar lines of a Provincial government. We intend to enforce our mandate to the full letter of our laws. Our position is Metis self-controlled government on our designated land base. We view the transfer of land to our Metis government coming from the provincial Manitoba government. The Government of Canada is expected to finance our Metis Government. We expect our rightful share of finance resources immediately. We expect action on the Government of Canada's part. We are not bloody well fooling around and under no circumstances should you take us lightly !!!

Under separate cover, the Government of Manitoba has been served notice. The next step is in your hands.

Govern yourself wisely !!!

Ferdinand Guiboche, Leader.
Camperville Metis Government.

c.c. Hon. Mark MacGuigan, Minister of Justice.
Clem Chartier, President, Metis National Council.
Don McIvor, President, Manitoba Metis Federation.

GOVERNMENT LEADER

Ferdinand Guiboche

SECRETARY FOR INTERNAL GOVERNMENT AFFAIRS

Solange Guiboche

SECRETARY OF THE TREASURY

Stanley Pangman

SECRETARY FOR ECONOMIC DEVELOPMENT

Ron Richard

SECRETARY OF EDUCATION

Sophie Ledoux

SECRETARY FOR HOUSING & RELOCATION

Norman Chartrand

SECRETARY FOR JUSTICE & SECURITY

Joseph Klyne (Sonny)

SECRETARY FOR HEALTH CARE

Maureen Lavallee

SECRETARY FOR INCOME SECURITY & CHILD CARE

Maureen Penner

SECRETARY FOR WILDLIFE & THE ENVIRONMENT

Adele Lafreniere

SECRETARY FOR ELDERS

Eva Lafreniere

SECRETARY FOR WOMEN

Martha Bone

SECRETARY FOR YOUTH

Nelson Beauchamp (Physical Development)

CAMPERVILLE METIS GOVERNMENT CONT'DSECRETARY FOR GOVERNMENT CONFERENCE'S & MEETINGS

Helen Guiboche

SECRETARY FOR CULTURE & COMMUNICATIONS

Keiron Guiboche

SECRETARY FOR RECREATION

Philip Flamand

SECRETARY FOR SPECIAL/SOCIAL EVENTS

Allen Chartrand

SECRETARY FOR YOUTH

Dwayne Flamand (Metis Development)

CONSTITUTIONAL SECRETARIATE

Ferdinand Guiboche - Chairperson
Sonny Klyne
Maureen Lavallee
Maureen Penner
Stanley Pangman
Ron Richard
Norman Chartrand

HEALTH CARE SECRETARIATE

Maureen Lavallee - Chairperson
Eva Lafreniere
Martha Bone
Norman Chartrand
Solange Guiboche
Helen Guiboche
Nelson Beauchamp

EDUCATION SECRETARIATE

Sophie Ledoux - Chairperson
Ron Richard
Maureen Penner
Adele Lafreniere
Sonny Klyne
Philip Flamand
Allen Chartrand
Keiron Guiboche

INCOME/SECURITY & CHILD CARE SECRETARIATE

Maureen Penner - Chairperson
Sonny Klyne
Solange Guiboche
Adele Lafreniere
Martha Bone
Allen Chartrand
Norman Chartrand
Dwayne Flamand

YOUTH SECRETARIATE

Nelson Beauchamp - Chairperson
Dwayne Flamand
Keiron Guiboche
Philip Flamand

ELDERS SECRETARIATE

Eva Lafreniere - Chairperson
Lena Chartrand
Solange Guiboche

WOMEN'S SECRETARIATE

Martha Bone - Chairperson
Sophie Ledoux
Helen Guiboche
Adele Lafreniere
Maureen Penner
Maureen Lavallee
Eva Lafreniere

ECONOMIC DEV. SECRETARIATE

Ron Richard - Chairperson
C.D.C. Board

Camperville Metis
Government

Camperville, Manitoba

Le Gouvernement Metis
De Camperville

OATH OF ALLEGIANCE

I,
do solemnly swear allegiance to the Metis Nation, to develop our own cultural identity, lifestyle and political consciousness and to assert our Right through the formation of Metis Government and to up-hold the declaration of the Metis Nation.

1. The right to a Metis land and resource base owned and controlled by our people.
2. The right to self-government with such degree of self-government as desired by our people.
3. The right to determine our membership.

OATH OF OFFICE

I,
Do solemnly swear that I will duly, faithfully and to the best of knowledge and ability perform and fulfil the duties and requirements of the office of

THE ABOVE OATHS WERE TAKEN AND SUBSCRIBED BEFORE ME AT _____

in the Province of Manitoba this day of

A.D.

Madame Justice

Leader
Camperville Metis Government

STATEMENT AND INTENT

IT IS WITH HONOUR & DIGNITY THAT WE ACCEPT OUR RESPONSIBILITIES AND DUTIES AS ELECTED MEMBERS OF THE CAMPERVILLE METIS GOVERNMENT. WE KNOW OF, AND ARE DETERMINED TO EXERCISE OUR HEAVY RESPONSIBILITIES FOR THE FIRST MODERN DAY METIS GOVERNMENT ON THE NORTH AMERICAN CONTINENT. WE CONTINUE THE METIS STRUGGLE STARTED MANY YEARS AGO BY THE METIS OF THE NORTH-WEST. WE ARE DETERMINED TO ACHIEVE THEIR STATED GOALS WHICH ARE: A METIS LAND BASE AND METIS SELF-GOVERNMENT.

DURING RECENT CONSTITUTIONAL TALKS BETWEEN THE GOVERNMENT OF CANADA AND THE PROVINCES, THE METIS HAVE BEEN RECOGNIZED AS EQUAL PARTNERS IN THE ABORIGINAL CONTEXT. CANADA AND THE PROVINCES ALONG WITH THE GOVERNMENT CONTROLLED ABORIGINAL ORGANIZATIONS HAVE MET, ARE MEETING AND CONTINUE TO DISCUSS THE DEFINITION & RIGHTS OF THE METIS PEOPLE.

MANY INJUSTICES HAVE BEEN COMMITTED AGAINST OUR METIS NATION. A DAY OF RECKONING TO DETERMINE THE UNSETTLED METIS QUESTION "MUST BE DEALT WITH AND WILL BE A PRIORITY OF OUR GOVERNMENT. THE QUESTION OF ADEQUATE COMPENSATION FOR THE UNJUST DISPERSAL WILL BE DEALT WITH. WE RECONGNIZE INJUSTICE AND WE ACKNOWLEDGE THE CANADIAN GOVERNMENT'S CORRECTION OF THE WRONGS AGAINST JAPANESE CANADIANS. AN APOLOGY AND ADEQUATE COMPENSATION IN OUR OPINON IS LONG OVER-DUE. WE WONDER WHEN THE CANADIAN GOVERNMENT WILL DO LIKEWISE FOR THE METIS? WE URGE THEM TO ACT ON ITS MORAL AND LEGAL OBLIGATIONS. WE ARE PREPARED TO PROD THE GOVERNMENT IF NECESSARY.

...../2

THE MANITOBA GOVERNMENT ALSO HAS A VITAL ROLE. THEY SHOULD DO SO EXPEDITIOUSLY AND CLEARLY STATE THEIR POSITION. FIRST THEY CREATED EXPECTATIONS AND ANXIETY AMONG THE METIS PEOPLE THEN, THEY BACKED-OFF. WE ARE STILL CITIZENS OF CANADA. WE SEEK TO REMAIN WITHIN THE CANADIAN FEDERAL SYSTEM. WITHIN THAT SYSTEM WE EXPECT A METIS LAND BASE AND SELF-GOVERNMENT CONTROLLED BY OUR CAMPERVILLE METIS GOVERNMENT. OUR ENERGIES SHOULD NOT BE WASTED ON USELESS DEBATES. OUR PATIENCE IS LIMITED. WE SEEK A FINAL AND JUST SOLUTION TO THE "METIS QUESTION."

WE WELCOME AND EXTEND AN INVITATION TO THE CANADIAN AND MANITOBA GOVERNMENTS WITHOUT COMPROMISSING THE FIRST MINISTER'S CONFERENCES ON THE ABORIGINAL QUESTION. IT SHOULD NOT BE EXPECTED OF THE CAMPERVILLE METIS GOVERNMENT REPRESENTING OUR METIS MEMBERS TO BE BY-STANDERS IN THIS PROCESS. OUR INTENTIONS OVER THE NEXT FOUR (4) YEARS ARE IMMENSE. THEY ARE HEAVY BECAUSE WE HAVE BEEN, BY DELIBERATE DESIGN, LEFT ON THE SIDE-LINES IN NON-PARTICIPATING ROLES. WITNESS THE NORTHERN AFFAIRS ACT UNDER THE MANITOBA GOVERNMENT. NO CHANGE IN THE ACT SINCE ITS INCEPTION IN 1968. A TYPICAL COLONIAL ACT THAT SPEAKS FOR ITSELF. WE MAKE IT CLEAR THAT IS NO LONGER ACCEPTABLE BY THE CAMPERVILLE METIS GOVERNMENT.

OUR GOVERNMENT FOR THE NEXT FIVE (5) MONTHS WILL PLAN AND DESIGN OUR OPERATIONS, STRUCTURE INCLUDING THE MEANS FOR IMPLEMENTING OUR POLICY, THE DAY TO DAY OPERATIONS ETC. TO FACILITATE THIS WE HAVE SET UP THE FOLLOWING SECRETARIATES. (SEE ATTACHED). THE CO-ORDINATION OF OUR EXECUTIVE COUNCIL, THE DRAFTING OF ACTS TO GOVERN OURSELVES WILL BE INITIATED THROUGH INTERNAL GOVERNMENT AFFAIRS ALONG WITH THE APPROPRIATE MINISTRY. RE: THE INCOME TAX ACT AND THE INVESTMENT ACT WILL BE CO-ORDINATED ALONG WITH THE SECRETARY OF THE TREASURY. WITH RESPECT TO ECONOMIC DEVELOPMENT, THE SECRETARIATE WILL INITIATE A THOROUGH EXAMINATION OF ALL OUR RESOURCES AND PRESENT TO CABINET A PLAN OF ACTION.

...../2

WITH RESPECT TO EDUCATION, AS YOU ARE AWARE, WE ARE PRESENTLY STRUGGLING THROUGH THE MANITOBA GOVERNMENT COURT SYSTEM TO SECURE A BEGINNING AND MEASURE OF CONTROL. EVENTUALLY IT IS ANTICIPATED THAT WE WILL HAVE ALL GRADES BETWEEN KINDERGARDEN AND 12.

INCLUDED WILL ALSO BE PLANS FOR A METIS COLLEGE WITH DIRECT TIES TO EXISTING CANADIAN COLLEGES AND UNIVERSITYIES.

WITH RESPECT TO HOUSING AND RELOCATION, IT IS ANTICIPATED THAT BY THE YEAR 2000, CAMPERVILLE'S POPULATION WILL GROW TO 2500. THERE WILL BE A NEED FOR APPROX. 25 to 30 UNITS PER YEAR FOR THE NEXT 15 YEARS. THE BUILDING AND MANAGEMENT PROGRAM THROUGH NEGOTIATIONS WITH C.M.H.C. & M.H.R.C. IS EXPECTED TO FINANCE THE THE HOUSING NEEDS. SHOULD THEY FIND ALONG WITH THEIR GOVERNMENTS THAT THEY WILL NOT FINANCE US, IT IS EXPECTED THAT THEY WOULD HAVE NO OBJECTIONS OF THE CAMPERVILLE METIS GOVERNMENT FINDING THE FUNDS OUTSIDE THE COUNTRY.

NO GROUP OF PEOPLE OR NATION CAN BE EXPECTED TO GROW IN AN ORDERLY MANNER WITHOUT CONTROL OF AN ADEQUEATE JUSTICE AND SECURITY SYSTEM. OUR PLANS ARE TO INCLUDE A POLICE FORCE, JUDICIAL SYSTEM AND CORRECTIONAL FACILITIES INCLUDING A PREVENTION OPERATION.

THE MATTER OF HEALTH CARE WE WILL DEVELOP WITH ASPECTS OF THE TRADITIONAL WAYS OF OUR METIS ANCESTORS. IT IS ANTICIPATED TO COVER FROM BABIES TO OUR ELDERS. WE WILL UTILIZE ASPECTS OF MODERN MEDICINE INCLUDING NATURAL WAYS AND WE WILL EMBRACE METHODS THAT CLOSELY MEET OUR TRADITIONAL METIS CONCEPTS. WE NOW HAVE ELDERS AMONG US WHO POSSES KNOWLEDGE TO SOME OF OUR AILMENTS. A PROGRAM OF SELECTION AND TRAINING WILL BE PART OF THE PLANNING PHASE.

...../4

WITH RESPECT TO INCOME SECURITY AND CHILD CARE WE HAVE WITNESSED SOME DEVELOPMENT IN THE LAST YEAR OR SO. IT DOES NOT MEET OUR NEEDS OR OUR EXPECTATIONS. OUR INTENTION IS TO HAVE COMPLETE CONTROL OVER OUR CHILDREN. WITH RESPECT TO INCOME SECURITY WE INTEND TO SEPARATE INCOME ADMINISTRATION AND PROFESSIONAL GUIDANCE. THERE IS AN OBVIOUS NEED FOR MUCH MORE DISCUSSION. THE SECRETARIATE SHALL CARRY ON THIS WORK.

WITH RESPECT TO WILDLIFE AND THE ENVIRONMENT, IT IS EXPECTED THAT THE RIGHT TO HUNT FOR THE METIS WILL IMMEDIATELY DETERMINE THE NEED TO MEET WITH CONSERVATIONISTS FOR THE PROPER MANAGEMENT AND CONTROL. THE ENVIRONMENT WILL BE CLOSELY MONITORED. WE LIVE IN AN AGE OF TOXIC CHEMICALS. WE EXPECT STRICT AND RIGID GUIDELINES FROM THE APPROPRIATE SECRETARIATE.

WITH RESPECT TO OUR YOUTH, WOMEN AND ELDERS, SPECIAL EFFORTS WILL BE MADE TO INSTILL PRIDE IN OUR YOUTH. IT IS EXPECTED THAT THEY WILL BE ENCOURAGED TO PARTICIPATE AND TELL US EXACTLY HOW THEY PERCEIVE THEIR INVOLVEMENT. WOMEN WILL CONTROL THEIR LIVES AND ISSUES THAT AFFECT THEM DIRECTLY AND INDIRECTLY WITHOUT GOVERNMENT INTERFERENCE, THEIR WELL-BEING AND THEIR FUTURE ARE IN THEIR HANDS. OUR ELDERS WILL ONCE AGAIN BE ENCOURAGED TO ASSUME THE ROLE OF GUIDING THE METIS NATION WITH THEIR EXPERIENCE, WISDOM AND FAIR JUDGMENT.

WITH RESPECT TO THE CO-ORDINATION OF MEETING AND SPECIAL EVENTS WE EXPECT TO CARRY OUT THESE FUNCTIONS ON TIME WITH COMMITMENTS AND AN ASSURANCE OF DECENT FACILITIES, COMFORTABLE ENVIRONMENT IF WE ARE EXPECTED TO DISCUSS VITAL ISSUES WE MUST HAVE THE PROPER ENVIRONMENT. WE ARE PLEASED WITH THE APPOINTED MINISTRIES TO THESE POSITIONS

WITH RESPECT TO RECREATION, IT IS EXPECTED THAT A THOROUGH APPRAISAL BE IMPLEMENTED BY THE APPROPRIATE SECRETARIATE TO MEET AT ONCE WITH EXISTING GROUPS SO IT CAN BE DETERMINED WHERE OUR RECREATION NEEDS CAN BE BEST MET.

WITH RESPECT TO CULTURE AND COMMUNICATIONS OUR CULTURE WILL BE RECORDED AND PRACTICED EVENTUALLY IN A TRADITIONAL, SYMBOLIC WAY. NEW FEELINGS AND NEW EXPRESSIONS WILL BE ENCOURAGED. ART WILL RECEIVE SPECIAL ATTENTION & ENCOURAGEMENT FOR PROPER EXPRESSION AND DEVELOPMENT.

WITH RESPECT TO COMMUNICATIONS OUR MEMBERS WILL BE INFORMED ON A REGULAR BASIS. COMMUNICATIONS IS A NECESSARY TOOL IN ANY DEMOCRACY. ADEQUATE COMMUNICATIONS ON OUR PART WILL BE ENSURED.

SECRETARY'S, MEMBERS, WE HAVE A LONG TOUGH ROAD AHEAD. WE ACCEPT THE CHALLENGE OF BEING THE FORE-RUNNERS FOR THE METIS CAUSE.

APPENDIX II

SECRET MEMORANDUM TO THE CABINET OF THE GOVERNMENT
OF CANADA ON "THE BUFFALO JUMP OF THE 1980S" REPORT

MEMORANDUM TO CABINET

Report of the Ministerial
Task Force on Native
Programs

April 12, 1985

Deputy Prime Minister

MEMOIRE AU CABINET

Rapport du groupe de
travail ministériel
chargé de l'examen
des programmes des
Autochtones

le 12 avril 1985

Vice-premier ministre

ISSUE

Whether Ministers wish to approve recommendations of the Ministerial Task Force on Program Review emanating from its study on Indian and Native Programs.

RECOMMENDATION

1. Recommendations are set out in Annex 1 under general headings such as "Reserves and Trusts", "Economic Development", "Native Claims", "Health Services", etc. Within each heading the recommendations are grouped according to the following: "Priority Change" i.e. those proposals which can be acted on immediately or in the near future: "Further Review (including phased change)" i.e. those which involve a decision in principle now but which would be implemented only after further Cabinet or other review, legislative amendments, etc.; and "No Change", i.e., those programs which at this time should be left alone, although in some cases internal refinement may be noted for later ministerial consideration. Recommendations are also made regarding general principles which have guided the study, proposed federal provincial memoranda of understanding (further described in Annex II) and implementation mechanisms. Annex I provides details on all programs which are the subject of a recommendation.

RATIONALE

2. The Task Force's study of Indian and Native programs is part of an overall review of government programs undertaken to increase efficiency and reduce duplication. However, it has become apparent that, unlike other Task Force studies, the objective for the Indian and native study should not be immediate expenditure reductions but the reduction over time of the rapidly escalating trend in federal expenditures. This long-term objective can be achieved through the encouragement of greater Indian and native self reliance and entrepreneurship.

3. The study was undertaken in an environment dominated by other events and processes which should be taken into account when discussing these recommendations. The first of these is the potential fundamental change in the relationship between government and Canada's aboriginal peoples as contemplated by discussions at the recently held First Ministers' Conference. Secondly, the process towards Indian self-government will dominate the debate for the foreseeable future, and certain recommendations will have a direct effect on this process. Lastly, but not least, the federal government's need to reduce expenditures was an important consideration in the Task Force's work.

4. The Task Force has concluded that, if all recommendations are accepted, moderate savings (see Annex III) could be achieved from annual Indian and native expenditures and that overall expenditures, on programs can be effectively contained at the 1985-86 level with the exception of inflation and education costs resulting from demographic pressures; through implementation of the following measures in combination:

- (1)* development of specialty services from DIAND to specialist departments (e.g. all economic development to be managed by DRIE);
- (2) improved federal-provincial coordination of program delivery to improve effectiveness and eliminate duplication and overlap;
- (3) establishment of an Indian owned national trust company to manage funds held in trust for Indians for their own development; and
- (4) turning the problem back on itself through negotiation of local community priorities and implementation plans funded on a multi-year block basis to reflect local needs and discourage the present series of applications to get the most out of each and every program of government.

BACKGROUND

5. Aside from transfers to the Governments of Yukon and the Northwest Territories, which are largely comparable to equalization payments to provincial governments, 25% of federal expenditures for Indian and Native people are to meet legal obligations of the federal government, 40% pay what would normally be provincial (largely statutory) programs due to the federal responsibility for "Indians and lands reserved for the Indians" (Sec. 91(24) Constitution Act, 1982) and the remaining 35% is discretionary, based on social policy decisions over time. Nonetheless, it is noted that all program expenditures, over time, have come to be regarded, particularly by Status Indians, as "rights".

6. The plight of Canada's native peoples has been studied in depth and a summary of the most important conclusions are summarized in the Memorandum to Cabinet (p. 9). Experience has shown that these problems cannot be solved by the application of money alone.

SECRETCONCLUSIONS

7. The continuing dilemma of high government expenditures and native programming initiatives demands not only significant adjustments to government policies and programs but also structural changes. The Task Force recommends that it continue to oversee the development of federal-provincial memoranda of understanding to coordinate all federal initiatives for Indian and native people; to manage the implementation of these decisions; and to advise Priorities and Planning on the overall implications, both policy and financial, of proposals from individual departments.

DEPARTMENT POSITIONS

8. The following Departments are in general agreement with the recommendations: Transport, CMHC, DRIE, Fisheries and Oceans, Solicitor General, RCMP, Justice, Secretary of State, and Employment and Immigration. Finance officials also agree but emphasize the necessity of careful planning, analyses and phasing. Health and Welfare officials are also in agreement, however, Mr. Epp has concerns about the means suggested to control costs of non-insured medical benefits, which will require further review. The Public Service Commission agrees in general but points to the need for increased resources. The findings are acceptable to DIAND officials but they have concerns about the anticipated adverse reaction from native people toward any changes in the program.

POLITICAL CONSULTATIONS:

9. Caucus: A presentation will be made to members of caucus following Cabinet approval.

COMMUNICATIONS:

10. A detailed Communications Strategy and Plan is attached to page 51.

Deputy Prime Minister
Vice-premier ministre

SECRET

Object

1. The purpose of this Memorandum is to ask Ministers to approve recommendations of the Ministerial Task Force on Program Review emanating from its Study of Indian and Native Programs.

Background

2. The recommendations touch eleven federal departments and agencies which, taken together, spent an estimated \$2.8 billion in the fiscal year just ended, and which propose expenditures in 1985-86 of some \$3.0 billion. The analysis was carried out by a mixed study team, with input from program managers, federal economic development co-ordinators, deputy heads, and the Private Sector Advisory Committee to the Task Force. Additional input came from limited consultations with selected client groups and with senior deputies in selected provincial governments. The Study Team report, a 395 page document informally referred to as "The Buffalo Jump of the 1980's", is available to any Ministry wishing further background.

The Task Force has reviewed all recommendations and made modifications where appropriate.

Considerations

3. Native people in Canada include Status Indians (350,000 in 579 bands in 1984), Non-Status Indians and Metis (75,000 and 100,000 respectively as self-identified in the 1981 Census) and Inuit (27,000). The majority live in Ontario and the four western provinces (78.5%). Despite the best efforts of governments, the relative deprivation of most native communities continues to be a persistent feature of Canadian life. The net impact of government stewardship over the social and economic development of native people has been marginal. Such social and economic indicators as birth and death rates continue to be recorded well above the overall Canadian average; participation rates in employment are low and unemployment remains consistently high. Suicide, particularly for younger people, is six times the comparable national rate, and hospital admissions several fold higher for "environmental" related diseases (e.g. respiratory and gastro-intestinal diseases). Incarceration rates are high - seven

times the national rate. The disproportionate number of younger people (52% under age 20) will result in significant numbers of new native entrants to the labour force in the near future. In fact, by 1991 it is estimated that one out of two new entrants to the Manitoba and Saskatchewan labour force will be of native ancestry.

4. Records of expenditures by federal departments are not generally held in a form so that those geared toward native people are easily identified. To gain some appreciation of the historical expenditure trends, those of Indian Affairs were used. In 1973-74, some \$1.4 billion were expended by that Department. This rose to \$1.8 billion by 1983-84 with the total for all federal native expenditures amounting to an estimated \$2.42 billion for that year. Cost increases will not stop there. The projection of 1985-86 is \$3 billion (exclusive of the effects of eliminating discrimination from the Indian Act), which by maintaining only existing programs, is projected to rise to \$5.05 billion by 1990-91 (\$5.6 billion in DIAND). In addition, it is noted that the backlog in Indian reserve housing alone would cost at least \$500 million in today's dollars to catch up to where current annual expenditures could keep up with demand. These figures are exclusive of land claims, both specific and comprehensive (except for some specific claims in an advanced stage of negotiation), which on the basis of average settlements to date could add another \$8 billion to total expenditures over the next 5-20 years.
5. Notwithstanding these large expenditures, the Task Force has found that, apart from transfers to the Governments of Yukon and the Northwest Territories, which are comparable to equalization payments to provincial governments, 25% of these amounts are to meet strictly legal obligations towards Indian and native people, 40% pay for what would normally be provincial and municipal services (largely statutory), due to the federal responsibility for "Indians and lands reserved for the Indians" (sec. 91 (24) Constitution Act, 1982), and the remaining 35% is discretionary, based on incremental social policy decisions. Nonetheless, it is noted that all program expenditures, over time, have come to be regarded, particularly by Status Indians, as "rights".
6. The Task Force believes that neither the deplorable social and economic circumstances for native people, nor the rapid escalation of costs associated with native programs, are acceptable. Before discussing any specific recommendations, however, the following sub-paragraphs present a summary of the various themes that emerged from

the program evaluation by the mixed study team of private and public sector specialists. More detailed program amendments are presented in Annex 1.

- (1) The study team observed first of all that anything having to do with natives, especially Indians and Inuit, is commonly seen as a federal matter and within the federal government as a DIAND matter. As a consequence, a department has evolved over time that is a microcosm of many responsibilities normally found in a wide range of federal, provincial and municipal departments. Yet this department by itself cannot be expected to have the depth of capacity to manage programs to meet all the needs of Indian and Inuit people.
- (2) Programs have evolved, one-by-one over time, to meet specific needs. As a result, taken together they now target largely on the adult population even though over 50% of native people are under 20 years of age and have special needs not addressed through these programs.
- (3) A "national" approach to dealing with highly varied local circumstances is not workable, yet this appears to be the basis for much that is done through DIAND and through marginal adaptations of programs of other departments (e.g. CEIC). Programs designed for local and regional conditions, not on a universal national basis, are required.
- (4) In a similar vein, design standards for infrastructure and housing need to take local needs and realities into account.
- (5) Private sector involvement is almost non-existent in most native communities. The private sector has not been active with native communities except for some recent major resource developments, yet it is this sector that represents the employment and investment capacity so necessary to turn the problem around. This is particularly so in urban centres which are recent recipients of substantial migration of native people. As well, the native people generally are not active in private sector type activities, even though in some cases they have substantial wealth of their own, currently managed in trust by the Minister of Indian Affairs and Northern Development.
- (6) Priority setting at the local level is essential. The present array of programs encourages communities to apply for as much as they can get from each one, without determining their real needs and

SECRET

priorities in a time-frame which will bring greater rationale to community programs and greater responsibility at the local level to plan and deliver these services. This is consistent with the general thrust of discussions on self-government at the recent First Ministers' Conference on Aboriginal Rights.

- (7) Provincial governments have an interest in native programming for two reasons - native people are also provincial citizens and often depend on provincial natural resources; and the native migration to urban centres requires increased provincial expenditures. The debate over which government has financial responsibility would diminish if the social and economic circumstances of native people, and the cost associated with these circumstances, were comparable to the national average. There is good reason for both the federal and provincial governments to work together in their approach to this situation.
- (8) Finally, it is important to distinguish between what is being done on the basis of legal obligation of the federal government and programs grown up over time for social policy reasons so that discretionary expenditures can be evaluated against real need, not regarded as a "right" that must be provided.

Conclusions

7. The Task Force has taken the above themes into account and concluded that a fresh approach is required to deal more adequately with growing needs and native aspirations for more local control while curtailing the unbridled growth of more ad hoc social policy programs. The essence of this approach lies in the conclusion of the Task Force that the focus of decision-making should move closer to real needs as experienced and described by the native people; that program delivery can be improved and overlap reduced through closer federal-provincial cooperation; that private sector activity involving native people can be increased and that better coordination and prioritization of federal policies, programs, and services will produce more effective results.
8. The Task Force has concluded that modest savings can be found in annual expenditures, but more importantly the growth of overall expenditures on Indian and native programs can be more effectively contained (with the exception of demographic pressures on education, and inflation), through the following strategic measures in combination:

SECRET

- (1) Devolution of specialty services from DIAND to specialist departments (e.g. all economic development to be managed by DRIE; employment programs by CEIC; policing services by the Solicitor General);
 - (2) Devolution of financial responsibilities for monies held in trust by the Minister of Indian Affairs and Northern Development for native people by creating an Indian owned national trust company to manage these funds which are now in excess of \$1 billion and increasing at a rate of several hundreds of million per year;
 - (3) Devolution of native problems to native communities from the federal government for resolution through negotiation of local community plans based on community priorities and funded on a multi-year block basis; and
 - (4) Increased federal-provincial co-ordination of program delivery to improve effectiveness and eliminate duplication and overlap.
9. The Task Force will wish to oversee the development of an action plan for redefining the relationship between the federal government and bands; development of federal-provincial memoranda of understanding more fully explained in Annex II; coordination of all federal initiatives for Indian and native people; management of the implementation of decisions flowing from this memoranda; and advise Priorities and Planning on the overall implications, both policy and financial, of proposals from individual departments.
10. The Prime Minister has been consulted regarding his prerogatives on mandates.

Financial Considerations

11. The financial consequences of accepting all the recommendations are not known in detail, but the best estimates of the Study Team are provided in Annex III and show that potential savings in the current year are modest, but take into account the negotiation and payout of the recommended cash settlement on the Canada-Manitoba Northern Flood Agreement. Estimated savings from current projections in subsequent years are \$188.9 million in 1986-87 and \$178.4 million in 1987-88. The important financial aspect of these recommendations, however, is to contain the rapid escalation of future costs that would derive from leaving existing programs unchecked.

SECRET

Communications

12. Although responsibility for communications on each of the programs in this new approach rests with the policy ministers concerned, it will be important to have an approach that is consistent with the overall exercise of program review and an overall theme that can be used as a context for communications on this subject. With this in mind, a communications strategy has been drafted and is appended to this Memorandum.

Recommendations

A. GENERAL

It is recommended that:

1. the following general strategic measures be approved:
 - (1) specialty services of the Department of Indian Affairs and Northern Development be devolved to specialist departments (e.g. all economic development to be managed by DRIE; employment programs by CEIC; policing services by the Solicitor-General;
 - (2) the financial responsibilities for monies held in trust by the Minister of Indian Affairs and Northern Development for native people be devolved by creating an Indian owned national trust company to manage funds (now in excess of \$1 billion).
 - (3) native problems be devolved to native communities from the federal government for resolution through negotiation of local community plans based on community priorities and funded on a multi-year block basis; and
 - (4) federal-provincial co-ordination of program delivery be increased to improve effectiveness and eliminate duplication and overlap.

B. MECHANISMS

2. It is recommended that the Ministerial Task Force on Program Review oversee the development of an action plan for redefining the relationship between the Government and Indian bands; development of federal-provincial coordination of all federal initiatives for Indian and native people;

SECRET

management of the implementation of decisions flowing from this Memorandum; and advise Priorities and Planning on the overall implications both policy and financial, of proposals from individual departments.

C. FEDERAL PROVINCIAL

3. It is recommended that a Minister appointed by the Prime Minister, be authorized to negotiate with the provinces on an ad referendum basis, Memoranda of Understanding (MOU) (along the lines of p. ...ANNEX II) as a device for defining a comprehensive agreement which would be custom tailored to address the particular needs of each province and territory and which would encompass all original native programs of both levels of government. These agreements would be renegotiated periodically and would provide a forum within which a common strategy and a streamlined and coordinated administrative approach can be worked out and refined (see Process Chart and Principles in Annex II).

D. RESERVES AND TRUSTS*

Priority Changes

It is recommended that:

4. The Minister of Indian Affairs and Northern Development take measures to increase professional expertise in negotiating natural resource development agreements to ensure that maximum benefits accrue to Indian people (p. 3).
5. The Minister of Indian Affairs and Northern Development take measure to strengthen the Crown's capacity to assess exposure for past actions and alleged improprieties, including the ability to procure outside legal expertise (p. 7).

Further Review (Phased Change)

It is recommended that:

6. The Minister of Indian Affairs and Northern Development bring forward proposals to the Task Force in three months, after consultation with the Ministers of Finance and Justice and the President of the Treasury

* Page references at the end of each recommendation hereafter refer to the corresponding summary page in Annex I.

- 21 -

SECRET

Board, which would allow bands to transfer the Trustee's responsibility for administering individual trust and estate monies and natural resources revenues to an independent, national Indian trust company to ensure that Indian people receive maximum economic benefits from those funds, and have greater authority over how they are managed (pp. 355).

7. The Minister of Indian Affairs and Northern Development, in consultation with the Minister of Justice, review the practice of funding Indian groups to clarify points of law, in view of possible contravention of the Charter of Rights by funding only select groups (p. 7).

No Change

8. It is recommended that there be no changes to the following programs:
 1. Institutions and Treaty Management Program (p. 6); and
 2. Lands, Estates and Membership Programs in respect of the maintenance of existing registry systems for lands and memberships (p. 5).

E. ECONOMIC DEVELOPMENTPriority Changes

It is recommended that:

9. The Minister of Indian Affairs and Northern Development in consultation with the President of the Treasury Board, Minister of Regional Industrial Expansion, and with the concurrence of the Prime Minister as appropriate, transfer all DIAND business development support and loans and loan guarantee activities to DRIE. The Minister of Finance be asked to consider making an appropriate adjustment to envelope allocations in the fiscal framework (p. 4).
10. The Minister of Indian Affairs and Northern Development, in consultation with the Minister of Regional Industrial Expansion,
 - (1) determine whether significant social objectives override economic criteria in continuing support for certain non-viable economic projects which should remain within DIAND;

SECRET

- (2) retain some support capability for administering these community development projects; and
 - (3) establish new accountability procedures for administering these projects where important social objectives are being met (p. 8).
- 11. The Minister of Regional Industrial Expansion continue existing Special ARDA arrangements and extend special ARDA-type federal-provincial agreements for native people to other provinces (p.11).
 - 12. The Minister of Regional Industrial Expansion, in consultation with the President of the Treasury Board and the Minister of Indian Affairs and Northern Development and with the concurrence of the Prime Minister as appropriate, terminate the separate Native Economic Development Program (NEDP) delivery mechanism and establish a new capacity for DRIE to administer all federal native economic development programs, with the exception of loans and guarantees, through DRIE's regular operations while maintaining a distinct native focus (p. 10).
 - 13. The Minister of Regional Industrial Expansion
 - (1) terminate support to non-viable native economic institutions and administer native economic development programs using standard business criteria;
 - (2) strengthen the business expertise of members on the NEDP Advisory Board to advise DRIE on large projects;
 - (3) decline requests for support for third party native financial or economic institutions in view of the preferred proposal to establish an independent, national native trust company; and
 - (4) ensure greater federal-provincial coordination of support for native economic development (p. 10).

Further Review (Phased Change)

It is recommended that:

- 14. The Minister of Regional Industrial Expansion review native loan fund operations with a view to transferring them to the Federal Business Development Bank or to the proposed national Indian trust fund and bring forward an implementation proposal for Task Force consideration within three months (p. 10).

SECRET

F. TRAINING AND SHORT-TERM JOB CREATION

Priority Changes

It is recommended that:

15. The Minister of Indian Affairs and Northern Development maintain the Indian and Inuit Employability program but prepare to transfer it to the Minister of Employment and Immigration as soon as a capacity is in place in CEIC to manage the program with a clear focus on native needs (p. 13).
16. The Minister of Indian Affairs and Northern Development in consultation with the President of the Treasury Board and Chairman of the Public Service Commission, transfer the public sector training-on-the-job section of the Indian and Inuit Employability Development Program to the Public Service Commission (p. 12).
17. The Minister of Indian Affairs and Northern Development maintain the Indian and Inuit Employment program but shift its emphasis to long-term employment and support for capital projects (p. 12).
18. The Minister of Indian and Northern Development, in consultation with the President of the Treasury Board and the Chairman of the Public Service Commission, transfer the public service portion of the Training and Employment (Northern) program to the administration of the Public Service Commission (p. 14).
19. The Minister of Employment and Immigration maintain the Youth Training Option for the balance of the experiment, but increase the target for greater participation by native youth (p.22).
20. The Minister of Employment and Immigration, in consultation with the Minister of Indian Affairs and Northern Development, improve the responsiveness of the Institutional Training Program to the training needs of native clients at the regional level (p.17).
21. The Minister of Employment and Immigration in consultation with the Minister of Indian Affairs and Northern Development review the General Industrial Training Component of the Industrial Training Program and consolidate the Program with the Job Corps and Career Access Programs and improve responsiveness to native clients at the regional level (p.25).

22. The Minister of Employment and Immigration consolidate the Career Access, Job Corps and General Industrial Training Programs into one program focussed on employment of disadvantaged people and insofar as possible ensure that this consolidated program is harmonized with provincial programs targeted on similar clientele (p.21).
23. The Minister of Employment and Immigration implement an improved job creation and training program targeted at the longer-term unemployed and based on a much greater emphasis on job creation in the private sector, and on generating productive output from projects; a priority towards encouraging job in the small business and service sectors; joint federal/provincial agreements combining both job creation and training; and longer-term funding arrangements up to three years (p.23).
24. Funding for the Skills Growth Fund be allowed to lapse at the end of 1984/85 (p.24).

Further Review (Phased Change)

It is recommended that:

25. The Minister of Indian Affairs and Northern Development, in consultation with the Minister of Employment and Immigration and the President of the Treasury Board, develop an implementation plan to transfer the private sector portion of the Training and Employment Northern program to the CEIC on a phased basis in concert with CEIC's development of native programming (p.14).
26. The Minister of Indian and Northern Affairs, in consultation with the Chairman of the Public Service Commission and the President of the Treasury Board, review the Affirmative Action (Indigenous people) program with a view to expanding the program to include entry-level training on a national basis and transfer DIAND's public sector training programs to the Public Service Commission (p.15).
27. The Minister of Employment and Immigration review the Outreach program to determine the impact of the program on the employability of its clients, including natives, and report back to the Ministerial Task Force by July 1985, for subsequent consideration by the Cabinet Committee on Priorities and Planning.

No Change

28. It is recommended that there be no change to the following programs:

- (1) Native Internship Program (p.14);
- (2) Options North (p.29); and
- (3) Affirmative Action Program (General) - Federal Contracts Program (p.19).

G. REGIONAL DEVELOPMENT AGREEMENTSPriority Change

It is recommended that:

29. The Minister of Indian Affairs and Northern Development continue to implement the Canada/Newfoundland Agreement while negotiating improvements which take provincial views into account (p.27).

Further Review (Phased Change)

It is recommended that:

- 30. The Prime Minister be asked to consider transferring the responsibility for the administration of the Canada/Northwest Territories Financial Agreement to the Minister of Finance at the conclusion of its current term (p.29).
- 31. The Prime Minister be asked to consider transferring the responsibility for the administration of the Canada/Yukon Financial Agreement to the Minister of Finance at the conclusion of its current term (p.28).
- 32. The Minister of Regional Industrial Expansion, in consultation with the Minister of Indian Affairs and Northern Development and Minister of Employment and Immigration, review the existing Canada Manitoba Northern Development Agreement to take into account recent economic activity in the Limestone project (p.26).
- 33. The Minister of Regional Industrial Expansion review management structures relating to implementation of the Canada Manitoba Northern Development Agreement with a view to simplifying structures (p.26).

No Change

34. It is recommended that there be no changes to the following programs:

- (1) Canada/Northwest Territories Economic Development Agreement (p.31);
- (2) Canada/Manitoba Winnipeg Core Agreement (p.32) (i.e. allow program to run its course); and
- (3) Canada/Saskatchewan Northern Economic Development Agreement (p.30).

H. MAJOR RESOURCE DEVELOPMENTPriority Change

It is recommended that:

35. The Minister of Indian Affairs and Northern Development consolidate the Resource Development Impact Program with the Northern Participation in Public Reviews program and focus the combined program on fewer projects and longterm significant opportunities (pp.14 & 15).

Further Review (Phased Change)

It is recommended that:

36. The Minister of Indian Affairs and Northern Development develop proposals for further Task Force consideration within six months which would discharge federal obligations under the Canada-Manitoba Northern Flood Agreement through a negotiated cash transfer settlement, and satisfy the Minister that completion of the land transfers with the Province of Manitoba will occur expeditiously (p.33).

No Change

37. It is recommended that there be no change to the Norman Wells Impacts Program (p.36).

I. NATURAL RESOURCES AGREEMENTSNo Change

38. It is recommended that there be no changes to the following programs:

- (1) Resource Development Agreement with Ontario (p.39);

- (2) Canada/Northwest Territories Sub-Agreement on Natural Resource Development (p.41);
- (3) Salmonid Enhancement Program (p.41);
- (4) Federal Provincial Forestry Sub-Agreements (p.37); and
- (5) Canada/Manitoba/Saskatchewan/Northwest Territories/ Caribou Management Agreement (p.38).

J. NATIVE CLAIMS

Further Review (Phase Change)

It is recommended that:

- 39. The Minister of Indian Affairs and Northern Development present proposals to the Task Force within three months which would accelerate the negotiation of specific claims and defer the negotiation of comprehensive claims until the Government position on native self-government and control is determined (p.42a).
- 40. The Minister of Indian Affairs and Northern Development review the Claims Negotiation program in the light of a new emphasis to accelerate settlement of specific claims; (p.43).
- 41. The Minister of Indian Affairs and Northern Development continue the Claimant Research and Negotiation program as is while reviewing it in the context of the new emphasis on the acceleration of specific claims negotiations (p.44).

K. LOCAL GOVERNMENT

Priority Changes

It is recommended that:

- 42. The Minister of Indian Affairs and Northern Development channel those Consultation Policy Development funds, now expended on Indian political associations, directly to bands (p.45).
- 43. The Minister of Indian Affairs and Northern Development allow the program for funding of band management development plans to lapse since program objectives are largely achieved (p.45).

Further Review (Phased Change)

It is recommended that:

44. The Minister of Indian Affairs and Northern Development develop proposals for Task Force consideration within three months which would use existing Local Government Support programs funds and negotiated comprehensive community-based plans as a base for further development of new financing arrangements for Indian bands (p.45).

L. INFRASTRUCTUREPriority Change

45. The Minister of Indian Affairs and Northern Development continue the Infrastructure Assets and Facilities program and consult with the Minister of Public Works and the President of the Treasury Board, as appropriate, on the establishment of targeted minimum standards for reserve infrastructure and a "user-pay" approach for operations maintenance and upgrading of services (p.46).

No Change

46. It is recommended that there be no changes to the following programs:
 - (1) Coastal Labrador Airstrip Program (p.47); and
 - (2) Northern Quebec Air Transportation Infrastructure (p.48).

M. HOUSINGFurther Review (Phased Change)

It is recommended that:

47. The Minister of Indian Affairs and Northern Development and the Minister responsible for the Canada Mortgage and Housing Corporation maintain existing native housing targets while undertaking fundamental reviews of on-and-off-reserve housing, utilising outside experts to assist in the review and report back to the Task Force within six months. The review to ensure that:
 - (1) programs apply equally on and off reserves in order to eliminate any incentive through housing assistance to remain in areas of high unemployment;

- (2) overlaps are eliminated in on-reserve housing assistance;
- (3) programs are based on need; and
- (4) new approaches to attract private capital, and new technologies are incorporated into future housing programs (pp.49 & 50).

N. INDIAN AND INUIT HEALTH SERVICES

Priority Change

It is recommended that:

- 48. The Minister of National Health and Welfare, in respect of Indian and Northern Health Services;
 - (1) reduce the costs of providing non-insured health benefits through deterrents;
 - (2) review payments to the Governments of the Northwest Territories and Yukon for possible double-funding;
 - (3) close certain Indian hospitals;
 - (4) seek agreement on recognition of native paraprofessionals;
 - (5) encourage coordination between the Departments of Indian Affairs and Northern Development and National Health and Welfare on policies and programs relating to self-administration by Indian communities; and
 - (6) and terminate consultation funding to native political associations (pp.51 & 52).

Further Review (Phased Change)

It is recommended that:

- 49. The Minister of National Health and Welfare undertake a review to assess the federal government's responsibility for providing support for medical and hospital services for Indians and Inuit in Yukon and the Northwest Territories, with a view to eliminating any "double-funding" of health care programs (p.52).

O. INDIAN AND INUIT EDUCATIONPriority Change

It is recommended that:

50. The Minister of Indian Affairs and Northern Development, in respect of the Indian and Inuit Elementary/Secondary/Education program:

- (1) terminate federal operation of schools on reserves by turning over this responsibility to local Indian authorities;
- (2) terminate the operation of Indian student residences on reserves;
- (3) change the instructional methods used in isolated communities by using modern "remote technologies";
- (4) develop the concept of "community learning centres" in remote communities; and
- (5) and review the possible use of travelling classrooms on road-accessible reserves (pp.56 & 57).

51. The Minister of Indian Affairs and Northern Development revise the methods and levels of post-secondary education student assistance programs, eliminate the guidance and counselling program and review support to Indian-controlled provincially-accredited post-secondary institutions (pp.58 & 59).

Further Review (Phased Change)

It is recommended that:

52. The Minister of Indian Affairs and Northern Development, the Minister of Finance and the Secretary of State review options for consideration by Task Force Ministers to eliminate double funding under the Indian and Inuit Post-Secondary Education and Established Programs Financing (pp.58 & 59)

53. The Minister of Indian Affairs and Northern Development, in consultation as necessary with the Minister of Public Works and the President of the Treasury Board, review federal policy on financing of school construction with a view to providing some type of debenture repayments; review the need for fire insurance for Indian schools; and extend educational capital authority to cover provision of "community learning centres" in remote locations, and travelling vocational/laboratory classroom facilities for road-accessible reserves (pp.54 & 55)

P. SOCIAL ASSISTANCE AND WELFAREPriority Change

It is recommended that:

54. The Minister of Indian Affairs and Northern Development examine the need for the community Social Services program and integrate any essential element into other appropriate social service delivery areas. (p.60).
55. The Minister of Indian Affairs and Northern Development undertake negotiations with provinces to revise existing, or enter into, new agreements governing delivery of child welfare services on reserves, for delivery primarily through competent Indian authorities (p.64).
56. The Prime Minister be asked to consider transferring the responsibility for adult care services to the Minister of National Health and Welfare (p.62).

Further Review (Phased Change)

It is recommended that:

57. The Minister of Indian Affairs and Northern Development, in consultation as necessary with the Minister of National Health and Welfare, undertake Federal/provincial negotiations to conclude administrative agreements for the provision of social assistance programs to Indians by local Indian authorities, under established provincial regimes and guidelines; and give immediate consideration to the extension of "Workare" programs under the CAP guidelines. (p.).
58. The Minister of National Health and Welfare undertake negotiations with the provinces to establish formal administrative arrangements for the provision of adult Indian care services and consider authorizing Indian communities to undertake the financing of adult care institutions on reserves, to be leased back to the level of government responsible (.62.).
59. The Minister of Indian Affairs and Northern Development assess the need for the Indian and Inuit individual and family care welfare services and consider possible integration of these services with other programs such as the Child Welfare or Adult Care Service (p.61.).

Further Review (Phased Change)

It is recommended that:

67. The Secretary of State review federal funding policy to native representative organizations with the Minister of Indian Affairs and Northern Development and other affected Ministers to reduce duplication and ensure greater interdepartmental coordination and report to Task Force Ministers in three months with proposals to harmonize federal support activities (P.70).
68. The Secretary of State continue the Northern Broadcast Access programs, but review prospects for its commercialization and report back to Ministers before expiry of its existing mandate in March 1987 (p.72).

No Change

69. It is recommended that there be no changes to the following programs:
 - (1) Constitutional Support (p.78):
 - (2) Aboriginal Women's Program (p.75):
 - (3) Native Social and Cultural Development (p. 76): and
 - (4) Native Friendship Centres (p. 74).

R. ADMINISTRATION OF JUSTICEPriority Change

It is recommended that:

70. The Minister of Indian Affairs and Northern Development after consultation with the President of the Treasury Board and with the concurrence of the Prime Minister as appropriate, transfer the Policing program to the Solicitor General to administer in the context of the overall administration of justice system (p.77).
71. The Solicitor General establish appropriate consultation mechanisms to achieve maximum effectiveness of federal and provincial dollars expended on natives in conflict with the justice system (p.77).

Further Review (Phased Change)

It is recommended that:

72. The Solicitor General review the Aboriginal Initiatives Program, the Consultation Centre, the Native Justice Research Program in the context of new policing and federal coordination responsibilities assigned to him, including: whether to defer Indian self-government research and development modelling pending clarification of federal policy; whether native policy and program activities within the Solicitor General can be combined; and including joint federal-provincial data collection methods on natives in conflict with the justice system (p.78).

No Change

73. It is recommended that there is no changes to the following programs:

- (1) Native Law Students Program (p.80).
- (2) Native Court Workers Program (p.79).

TASK FORCE ON PROGRAM REVIEW:

INDIAN AND NATIVE PROGRAM: COMMUNICATIONS STRATEGY

Objective

1. To encourage understanding among Canadians, especially those with an interest in Indian and Native Affairs, of the purposes of the Study Team's review and of the Government's resulting decisions, within the framework of the overall Task Forces communications strategy.
2. To plan for the ongoing accessibility of information to the public on federal programs and services for Indians and other native people.

Public Environment

3. Within the context of a general public priority on effective management of the public purse, native issues have maintained a relatively high profile compared to other aspects of social policy; this visibility has been constant for several years and has been largely sustained by locally-based news covering: native issues have maintained their high profile independently of the focus on constitutional development on periodic emerged issues. For the large majority of Canadians, what they know about native affairs is what they read in the newspapers.
4. News coverage has routinely been sympathetic and supportive of native concerns and aspirations. Conversely, the limited polling that has occurred (1983) suggests that while sympathetic to the economic hardship of native people and their struggle for cultural identity, most Canadians are not entirely persuaded by arguments for special rights. The reticence can be expected to increase as knowledge of the costs associated with new definitions of rights is brought into focus. coverage of recent developments to eliminate sexual discrimination from the Indian Act and establish a membership basis for Indian self-government has featured these cost considerations.
5. What Canadians have been told repeatedly in recent years about the management of native programs has not inspired their confidence. From the Auditor General to the Special Parliamentary Committee on Indian Self-Government and from Native people themselves, the message has been persistently critical; and it has not been countered publicly with a strong defence of either the role, the interpretation of jurisdiction or the administration of native affairs on the whole or of Indian Affairs in particular.

expressing of native support for the themes of this review (e.g. resumption of local responsibility; localized priorities; a national commitment to joint solutions).

13. Ideally, no announcements of specific native program changes would occur before the budget is unveiled on May 20, allowing time for the impact of changes in other sectors to register. Assuming the overall strategy prevails, with no announcements of specific action occurring until budget time, it may be advisable to withhold news of specific native programming until June; this would allow the Ministerial meeting called by the Prime Minister at the close of the First Ministers Conference on Aboriginal Rights to occur in the fourth week of May without the added complication of adverse native reaction to program changes.
14. Any new definition of the role and responsibilities of federal departments arising from this review should be accompanied by the clearest possible assertions of the provisions, either existing or new, that will govern this transition. This information should be revealed at the earliest opportunity, once a conclusion has been reached on how any displaced public servants will be dealt with clarification may not entirely reassess those who may be disrupted will help to quell (tears among others who will not and who will be expected to implement the changes. DIAND should consider engaging specialists in organizational change to guide managers in the layoff process if major numbers are involved.

Target Audiences

15. These will be the same as for the overall strategy with the addition of native media and organizations, band councils and communities, Northern media and territorial governments, special interest groups.

Themes

16. The final choice of themes will necessarily reflect government decisions on the recommendations of the foregoing Memorandum. In addition to the broad themes to be conveyed in the Deputy Prime Minister's pre-budget "management package", those which are unique to this review include:

The complex and overlapping pattern of programs examined by the Task Force would yield an unacceptable spiral of additional ad hoc programs and costs if left unchecked; more than three billion dollars would have been spent by the Federal Government alone in 1985-86 without decisive action.

SECRET

- . Substantial energy and resources have been consumed unnecessarily in both the management and the accessing by Native people of the 116 programs under study; action is designed to yield efficiencies, and improve access, not merely to identify out;
- . The continuing contradiction of high government spending and socio-economic inertia is being dealt with by capping expenditures and turning the responsibility back on Native communities to resolve their problems for themselves;
- . A national commitment is being mobilized to create an environment in which native people can help themselves through their own individual and collective actions; this will involve enhanced federal-provincial arrangements;
- . This strategy is not an attempt to artificially stimulate the assimilation of an unwilling native population; it recognizes the reality that already exists in the migration of Indian and other native people to urban population centres, particularly in the West; it also acknowledges the existence of a large number of federal-provincial mechanisms, many developed with the direct participation of Native people, that have evolved in recent years;
- . The special federal responsibility for Status Indians rooted in the Constitution Act, 1867 remains intact.
- . Programs and services have been provided far beyond the federal government's constitutional and legislative responsibility for Indians and Inuit; this has resulted in a department of the federal government (DIAND) which has attempted to provide a full array of federal, provincial and municipal-style services to Status Indians.
- . Many native people have reacted by choosing to live in virtual quarantine in communities which have no real economic base and, in a number of instances, a disintegrating social and cultural fabric.

Plans for Announcements

- 17.a) At budget time: Except for an acknowledgement that the native program review has been completed, no detailed reference would be made to resulting action at the time of release of the pre-budget "management package", but, there will be an exposition on themes. While the Minister of Finance may make reference to native programs in the Budget Speech or other documentation, Ministers whose portfolios are directly affected by the changes would be provided with briefings.

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18. Consistent with the overall strategy, the Deputy Prime Minister would take the lead in explaining the Status of the Task Force on Budget night and may do so during the subsequent debate. Ministers with a direct interest in native program changes should be prepared to participate in the Budget debate; they will require briefing to field questions from the media and others in the days that follow the budget, whether or not it contains a direct reference.

As soon as the information is available, budget contents relating to native programs should be telexed to regional offices at Indian and Northern Affairs to be followed by air freight shipment of quantities for secondary distribution.

Ministers should be provided with a list of key opinion leaders to be contacted personally with an explanation of the government's reasons for various actions.

- b) Following the budget: At the time of announcement, activities of Ministers with a direct interest in native program change should be coordinated. Announcements will be made by the Ministers affected of initiatives falling within their own mandates, with the minister who is receiving any new responsibilities releasing the news. The Minister of Indian Affairs and Northern Development would describe the changes to an appropriate "National" Indian Forum as soon thereafter as is practical. The Minister and/or Deputy Minister of Indian Affairs could meet a representative cross-section of DIAND employees to discuss the changes.

In other respect, post-budget activities would center on the overall strategy.

Interdepartmental Coordination

19. Refer to overall communications strategy.

Follow-up

20. There will be a requirement to document the revised programs and services for Indians and other Native people concurrently with the implementation phase. As a minimum a single core publication should be produced describing all federal programs and services for native people, using the approved list, adjusted to reflect final decisions. Departments should use that publication as the basis for material to be produced in fact sheet or pamphlet form to reflect the programs they deliver.

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Appropriate audio-visual adaptations of the written material should also be developed by departments for briefing and orientation purposes. Regions should be provided with ample quantities of both print and audio-visual materials.

21. In addition, other technological and promotional initiatives should be explored with the relevant ~~Implementation~~ body to ensure widespread accessibility and knowledge that informational material is available down to the local level in Indian and other largely native communities.
22. DIAND should revise its own internal communications strategy to reflect the action plan and to deal with employees' concerns. Unions and professional organizations representing DIAND employees should be informed of any anticipated effects and measures to cushion the impact on individuals.
23. Implementation planning should include a work plan for various communications products and actions, as agreed among the appropriate departmental authorities. Production of materials and promotional activities should be subject to the same reporting requirements as other aspects of implementation.

Budget

24. Material required for the initial announcement and early follow-up can be produced within existing budgets. Some supplement to information budgets may be required to accomplish the longer-term aspects of overall implementation but those specifically related to native programs will not likely be beyond the resources of individual departments.

3 OF 3 DE 3

MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS
STANDARD REFERENCE MATERIAL 1010a
(ANSI and ISO TEST CHART No. 2)

APPENDIX III

DECLARATION OF FIRST NATIONS' PRINCIPLES ON THE
USE OF INDIGENOUS CUSTOMARY LAW

DECLARATION OF FIRST NATIONS' PRINCIPLES ON THE USE OF INDIGENOUS CUSTOMARY LAW

Preamble

The representatives of Indian Nations gathered at the Federation of Saskatchewan Indian Nations' Conference on Indian Justice on October 11- 13, 1983 in Saskatoon, Saskatchewan, made these findings:

1. NOTING that the right of First Nations to enjoy and exercise their own culture and the right to use their customs and traditions as law is guaranteed by international law; and
2. CONFIRMING that the Creator gave us laws that govern all our relationships to live in harmony with nature and mankind.
3. CONFIRMING that the First Nations' rights are inherent and are fundamental to our survival.
4. AFFIRMING that the First Nations have the right of self-determination.
5. RECOGNIZING that the virtue of that right, the First Nations have the right to their own institutions.
6. BELIEVING that the judicial branch of the right of self-government is a priority.
7. REAFFIRMING the Assembly of First Nations' Declaration of the First Nations and the Treaty and Aboriginal Rights Principles.
8. NOTING that Article II of Part II of the Draft Charter of the World Council of Indigenous Peoples states that "Each Indigenous" People (First Nation) has the right to determine the form, structure and authority of its institutions of self-determination", and that "those institutions, their decisions and the customs and practices of the Indigenous Peoples shall be recognized by domestic and international law on a basis of equality and non-discrimination", and
9. NOTING that the World Assembly of First Nations meeting in Regina, Saskatchewan, on July 18 - 25, 1982, in its resolutions was in full accord with the principles declared in the above draft charter; and

Principles of Indigenous Customary Law (cont'd)

10. NOTING that the domestic law of Canada and the United States recognize the customary law of North American First Nations, the Canadian Constitution explicitly affirming First Nations' treaty and aboriginal rights, of which such customary law is an integral part; and
11. OBSERVING the work of the United Nations, the Australian Law Commission, the Commission on Folk Law and Legal Pluralism and other organizations throughout the world which are developing mechanisms for the identification and use of Indigenous customary law, but also observing that such organizations are not directed or controlled by or responsible to First Nations; and
12. FEARING that unless the First Nations of the world, particularly those of North and South America, make strong statements of principle regarding the use of their customs and traditions as law, alien systems for such use may be imposed on them; and
13. RECOGNIZING that efforts are being made by various First Nations of North America to study, recommend and implement methods of utilizing their customs and traditions as law; and
14. DESIRING as members and representatives of First Nations to affirm our commitment to the restoration and continuation of the utilization of customary and traditional law by First Nations;
15. ASSERTING that no recommendations as to the use of Indigenous custom law by anybody which is not directed, controlled by and/or responsible to First Nations should be recognized by such Nations; and
16. DECLARING that since it is the expressed sovereign wish of First Nations as well as in accord with the principles of international law that the customs and traditions of First Nations be asserted as law, First Nations alone should make any final decisions as to methods or regimes for the use of their customs and traditions as law;

Principles of Indigenous Customary Law (cont'd)

NOW THEREFORE, THE REPRESENTATIVES OF INDIAN FIRST NATIONS GATHERED AT SASKATOON, SASKATCHEWAN, ON THE THIRTEENTH DAY OF SEPTEMBER, 1983, HEREBY DECLARE:

That the principles for the use of indigenous custom and traditional law which are appended hereto are hereby adopted and declared to guide the work of First Nations engaged in the development and use of such law.

SIGNATORIES:

(Organizational affiliations are
show for identification only)

APPENDIX IV
INDIGENOUS ABORIGINAL GOVERNMENT AS THE FIRST ORDER-OF
GOVERNMENT IN CANADA (PART 1)

SUBMITTED TO THE SPECIAL COMMITTEE ON INDIAN
SELF-GOVERNMENT (CANADIAN HOUSE OF COMMONS) BY;
BELLA COOLA DISTRICT COUNCIL

INDIGENOUS ABORIGINAL GOVERNMENTS AS
THE FIRST ORDER OF GOVERNMENT IN CANADA

Part I

BRIEF

FEBRUARY, 1983

TO BE SUBMITTED TO:

Special Committee on
Indian Self-Government

Standing Committee on
Indian Affairs and
Northern Development

PREPARED BY:

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TABLE OF CONTENTS

1. Introduction.
2. Aboriginal Title and Rights Position.
3. Today's Perspective: Looking Again at Aboriginal Title and Rights.
4. Towards a Resolution: International Working Principles.
5. Proposed Resolution Mechanism for our Aboriginal Title and Rights.
6. The Powers of Indigenous Aboriginal Governments as the First Order of Government in Canada.
7. Financial Arrangements Arising from Covenant.
8. Representation to the Institutions of the Central Canadian Government.
9. Conclusions and Recommendations.

- 3 -

1. INTRODUCTION.

On behalf of the Bella Coola District Council I would like to welcome the Special Committee on Indian Self-Government to British Columbia and thank you for this opportunity to appear before you.

Our presentation to you today has two parts: a brief, which I will present to you in a moment, and two background papers, Parts II and III, which because of their length, we wish to submit along with our brief to be entered into the Minutes and Proceedings of the Special Committee's hearings. Mr..Chairman, is this arrangement acceptable to the Committee?

* * * * *

We present this submission to you today on behalf of all of our indigenous aboriginal Nations in the spirit of optimism, dignity, co-operation and strength.

Through the sovereign powers vested in our indigenous aboriginal Peoples by the Creator our inherent aboriginal title and rights to our land and resources have remained with our Nations from time immemorial. Our aboriginal title and rights are the foundation upon which we, the Indigenous aboriginal peoples, will secure our survival for the future.

Traditionally, as indigenous aboriginal Nations, we held absolute sovereign powers over our tribal territories, our resources and our lives. Through our indigenous aboriginal Governments we held aboriginal title and possessed the right to govern ourselves, to make and enforce laws, to decide citizenship, to wage war or make peace and to manage our lands, resources and institutions. We had our own political, legal, social, religious and economic systems.

The goals of our indigenous aboriginal Peoples from the past through to the present and to those yet unborn, provide us with a framework for further developing, strengthening and entrenching our indigenous aboriginal Governments as the first order of Government in Canada.

2. ABORIGINAL TITLE AND RIGHTS POSITION.

We see the first step toward realizing our political goals as the recognition and effective implementation of our aboriginal title and rights. This is the foundation upon which all future relations between our indigenous aboriginal governments and the government of Canada must be based. With this in mind, we wish to state clearly to you today the position taken by our hereditary Chiefs on our aboriginal title and rights.

We, the indigenous aboriginal peoples, are the original people of this land and have the absolute right to self-determination which we exercise through our indigenous aboriginal Governments -- the first order of Government in Canada.

Our aboriginal title and right to self-determination are confirmed, strengthened and expanded, by the sovereign powers vested in our indigenous aboriginal Peoples by the Creator.

Our tribal territories and the resources they contain were given to our indigenous aboriginal Nations by the Creator to provide for the essential needs of our people.

-5-

Adequate amounts of land, water, timber, minerals, oil, gas, wildlife, fish and other resources were made available to our indigenous aboriginal Nations by the Creator in perpetuity to ensure socio-economic development and the peace, order and just government of our people.

Our indigenous aboriginal Governments, through the sovereign powers vested in them by the Creator, have exclusive jurisdiction to make laws affecting the lives and well-being of our people. Without limiting the scope of the possible areas under the jurisdiction of our indigenous aboriginal Governments, our Governments have the authority to:

--Develop a constitution for our indigenous aboriginal Nations and to make amendments, which from time to time, may be necessary;

--Define and regulate who shall be a citizen or member of our indigenous aboriginal Nations under the jurisdiction of our indigenous aboriginal Governments;

--Control and manage all our Nations' tribal lands, including all tribal lands or resource areas that will, from time to time, be established under the jurisdiction of our indigenous aboriginal Governments;

--Control, manage and regulate all water ways and bodies of water within the boundaries of our aboriginal tribal lands, including water rights and foreshore rights;

--Control, manage and regulate all air space above our aboriginal tribal lands;

--Control, manage and regulate the use of all forests that are located on aboriginal tribal lands, including all tribal forest resource-areas that may be established in future;

--Control, manage and regulate the development of all mineral resources located under and within the boundaries of all aboriginal tribal lands, waters and resource-areas;

--Control, manage and regulate the development of all oil and gas resources located within the boundaries of our aboriginal tribal lands and within any additional tribal lands, waters, and resource-areas that may be established, from time to time;

--Manage the conservation of all migratory birds that pass through aboriginal tribal lands, including those migratory bird sanctuary lands that may be established, from time to time;

--Control, manage and regulate the use of all wildlife resources found within aboriginal tribal lands and all other wildlife resource-areas that may be established, from time to time;

--Control, manage and regulate the use of all fish resources in the waters that are defined as our aboriginal fisheries by our governments;

--Establish and implement conservation laws for all resources within the boundaries of our aboriginal tribal lands and waters;

--Productively manage the environment of all aboriginal tribal lands, and waters;

-7-

--Manage the economy of our indigenous aboriginal Nations through the development, implementation and enforcement of regulations for taxation, trade, and commerce;

--Control and manage all aspects of education for the people of our aboriginal Nations;

--Maintain social order within our indigenous aboriginal Nations;

--Regulate all matters pertaining to the proper health, welfare and care of our indigenous aboriginal Peoples;

--Solemnize and dissolve marriages within the institutions of our traditional indigenous aboriginal religions.

--Protect all of our peoples' sacred places and their right to practice our traditional religions, cultures and languages;

--Develop effective communication systems for our indigenous aboriginal Nations; and

--Administer Justice for our people, including maintaining aboriginal tribal Courts and imposing penalties for the violation of laws established by our indigenous aboriginal Governments.

-8-

In presenting our Aboriginal title and rights position we reaffirm our existence and the responsibilities given to all Indigenous Aboriginal Nations on this continent. These rights and responsibilities held us together as Indigenous Aboriginal Nations for thousands of years and we celebrate our survival and the beauty of our land. We now share our land with others. Both our people and the Euro-Canadian people can draw strength from each other. We seek the unity and strength of Canada in the same way that we seek the unity and strength of our People.

3. TODAY'S PERSPECTIVE: LOOKING AGAIN AT ABORIGINAL TITLE AND RIGHTS

Our Nations view Aboriginal Title as the territorial aspect of our human right to exist as a People. We are one of the many Nations of the World. We see Aboriginal Title as our link with the Creator. We see it as the link to Canada and the World through which we, as distinct Peoples, can share our Nations' knowledge and experience.

However, Canada relies on an interpretation of Aboriginal Title and rights that only justifies its colonialistic policies. Canada says that upon the Crown's "discovery" of our territories, the Crown may claim our land if the lands are "unoccupied" or if the lands are populated by Indigenous populations considered by the Crown to be "uncivilized." Canada says that it can pass laws which have the force to deny us our rights of territorial possession.

-This interpretation of aboriginal rights denies our worth and dignity as Indian Peoples. Canada persists in advancing this position notwithstanding the fact that the world community is committed to the elimination of colonialism in all its forms. We find it ironic that Prime Minister Trudeau himself openly criticized those who opposed patriation as being proponents of colonialism. Yet the Prime Minister, through patriation, was himself perpetuating Canada's colonial relationship with our Indian Nations.

We say that Canada must look again at how it has defined aboriginal title and rights. We say that the doctrine which Canada continues to use is racist, self-serving and colonialistic. Canada must change its position -- for the dignity of Canada itself.

Aboriginal title and rights as defined by our Indigenous Aboriginal Nations, must be the territorial foundation of Canada, forever. Canada must recognize and respect our Aboriginal title, our Peoples, our Creator and our Governments as the first order of Government in Canada and British Columbia. We will be pleased to recognize and respect Canada's legitimate claims in return.

4. TOWARDS A RESOLUTION: INTERNATIONAL WORKING PRINCIPLES

Two principles are basic to the position of the Indigenous Aboriginal Peoples in British Columbia. The first is the principle of the self-determination of peoples. This is a principle of international law, restated most recently in the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Canada has signed both covenants. Both provide as their first article that:

"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

The principle of the self-determination of peoples is a basic political and legal concept. To be effective it must exist with a second principle, that of the equality of peoples. For self-determination to have meaning, there must be a basic respect between political communities.

-10-

The British North America Act of 1867 sets Indigenous Aboriginal Nations apart, recognizing our uniqueness within Canada. Canadian Governments have undercut that fact by deliberately minimizing the significance of this constitutional provision. Indigenous Aboriginal Governments are treated instead as no more than Municipal Governments. Our communities are unique in coming under Canadian Government Federal Jurisdiction, yet we have not been given full recognition as a distinct order of Government within Canada. This can change. Canada can fulfill the promise of the British North America Act and take a leading role internationally in applying the principles of self-determination and equality to our Indigenous Aboriginal Peoples.

Our Aboriginal Title and our right to self-determination are rights we have not and will not surrender. The Canadian Government will have to accept that Indigenous Aboriginal Peoples will not simply disappear.

In our quest for self-determination, we should not be called separatists. The tensions between the English and the French have led Governments to refuse to even listen to our position. We are committed to a strengthening of Canada for we have more at stake in this country than anyone else,

Serious discussion on models of self-determination has begun in Canada. There has been considerable interest in the Inuit's achievement of home-rule in Greenland. The Inuit now have an elected Parliament and an increased jurisdiction over all matters affecting their Island. Greenland remains a part of Denmark but is a politically distinct part. For example, Greenland may withdraw from the European Common Market though Denmark may remain a member.

-11-

The people of Canada have shown interest in other models of self-determination. For example:

- The "devolution" proposals of the United Kingdom, which offered Scotland and Wales regional Parliaments and a measure of home-rule.
- The Spanish Constitution of 1978 in which home-rule has become possible for a number of regions of Spain, and has become a reality in Catalonia and the Basque region.

While non-Indians have been slow to accept our ideas, there has been a dramatic change in the last few years. Judge Thomas Berger, in the report of the MacKenzie Valley Pipeline inquiry in 1977, discussed the concept of Indian self-determination and called for a "social contract" between the Indigenous Aboriginal Nations and the Political Institutions of Canada. Since then, the need for special constitutional provisions on Indigenous Aboriginal Rights has been recognized by the Canadian Bar Association in their report, "Towards a New Canada"; by the Pepin-Robarts task force on National Unity; by the Quebec Government's White Paper "Quebec-Canada: A New Deal"; and by the Quebec Liberal Party proposal "A New Canadian Federation." In February, 1979 the Prime Minister and the Provincial Premiers agreed that Indigenous Aboriginal Peoples had to be considered in the process of constitutional change. They agreed to add a new item to their agenda, Canada's Native Peoples and the Constitution". On September 28, 1979, Prime Minister Clark agreed that the National Indian Brotherhood would have a full, equal and on-going role in Federal-Provincial discussion on that agenda item. In March of this year a First Ministers' Conference will convene to discuss the definition of Indigenous

-12-

Aboriginal Nations' "Aboriginal and Treaty Rights."

We look to these events as a sign that Canada may finally be prepared to recognize and accept our Nations' definition of our Aboriginal Title and Rights.

5. PROPOSED RESOLUTION MECHANISM FOR ABORIGINAL TITLE AND RIGHTS

The position of our Indigenous Aboriginal Nations in British Columbia is that the authority of our Governments, as the first order of Government in Canada is not derived from the political institutions of those who came originally from somewhere else.

The proper way to define and establish relations between our Indigenous Aboriginal Governments and the rest of Canada is not through legislation or constitutional amendments, but by a basic political agreement, a covenant or social contract. A basic compact will respect the principle of the equality of peoples. It can be an integral part of the Canadian Constitution while it serves as a Constitution confederating Indigenous Aboriginal Nations in Canada. But as a social contract, it cannot be changed without the consent of both sides. As part of the constitutions of both parties, each side will be required, by Canadian law, by traditional Aboriginal Law and by International Law, to respect its terms.

It is our position that representatives of our Indian Nations, and Canada must now enter into internationally supervised discussions to:

1. Review and define the present roles and responsibilities of our Indian Nations and the Canadian Government.

-13-

2. Define in detail and agree upon the full area and boundaries of territories occupied and/or owned by our Indian Nations.

3. Define in detail the means by which existing and future conflicts may be resolved between Canada and our Indian Nations.

4. Define and determine the extent and amount of payments owed to our Indian Nations by the Canadian Government for lands and natural resources already confiscated or expropriated by the Canadian Government and/or its agents; and agree to the method and terms for payment.

5. Define the terms for political co-existence between our Indian Nations and the Canadian Government.

6. Define an equalization payment plan between the Canadian Government and our Indian Nations.

7. Define the alternatives for individual Indian citizenship in Canada in addition to our own traditional national citizenship.

8. Define and agree on the mechanisms needed to ensure that each Indian Nation can exercise full self-government within the Canadian Confederation.

9. Define the roles and authorities of our Indian governments and other matters related to fishing, wildlife, religious lands protection, water resource management and control, use and development of minerals, petroleum resources, timber, and other natural resources.

-14-

10. Negotiate the terms of a Treaty which will codify the agreements above, as well as define the measures necessary to settle unresolved territorial claims.

11. Agree upon the formulation of an International Indigenous Trust Council within the United Nations to oversee future relations between Indigenous Peoples and the countries with which they are associated.

Discussion shall proceed in accordance with the following principles:

(a) that the aboriginal Nations of Canada have the right to maintain and develop internal self-government, including the right to maintain and develop their cultures, languages, religion and traditions.

(b) that the aboriginal Nations of Canada own and have the right to control our tribal lands, waters and the natural resources thereon and therein.

Once agreements are concluded, they would be entrenched in the ~~Canadian Constitution and the Constitution of the Indigenous~~ Aboriginal Nations and could not be changed without the consent of either party.

6. THE POWERS OF INDIGENOUS ABORIGINAL GOVERNMENTS AS THE FIRST ORDER OF GOVERNMENT IN CANADA

On the basis of our Aboriginal title and rights and the covenant between our indigenous aboriginal nations and Canada, we further propose that the Canadian Government recognize within its constitutions an indigenous aboriginal Nations Assembly which will serve as a legislative body within Canadian federalism.

-15-

Our indigenous aboriginal Nations will design the structure of our legislative body in keeping with our traditional structures and laws. The proposed structure, which will be discussed and ratified by the indigenous aboriginal peoples, is outlined in the diagram entitled "Organizational Structure: Indigenous Aboriginal Governments as First Order of Government" appended to this brief.

7. FINANCIAL ARRANGEMENTS ARISING FROM THE COVENANT

As the first principle determining financial arrangements (to be confirmed by covenant) between our indigenous aboriginal Governments and the Canadian government, our Nations must retain aboriginal title and rights to tribal lands and resources. There can be an equitable sharing of the revenue created from those lands and resources.

Stable, workable, and fair financial arrangements are of fundamental importance. Historically Europeans confiscated our Nations' resources with little or no compensation, leaving an inadequate land and resource base for our present-day Governments. Moreover, the federal government has used funding as a method to manipulate and control our indigenous aboriginal Governments. Existing arrangements lock our people into a permanent welfare system which cannot produce any positive solutions. Controversies will continue endlessly unless basic changes are made in the financial arrangements which directly affect our communities. It is only when structures of dependence and welfare are removed, that equality and self-determination can be achieved. Four arrangements are essential to bring about the desired change.

Firstly, land and resource claims have never been satisfactorily resolved in British Columbia, a fact acknowledged by the federal government in its statement on aboriginal title and rights in 1973. This long-standing issue has to be dealt with honourably before financial arrangements can be finalized.

-16-

Secondly, indigenous aboriginal Governments, like Provincial Governments, must be able to qualify for equalization payments. We agree with the philosophy that there should be equal standards of public services in all parts of the country. The provinces are free to choose their own priorities. This is the kind of unconditional, predictable funding that indigenous aboriginal Governments seek. Funding based on need, not short-term politics, will be funding well-spent.

Thirdly, indigenous aboriginal Governments must be the vehicles for delivery of programs and services to our people. There now exists a large, costly, inefficient bureaucracy that delivers Indian services and programs. The Indian Affairs Department competes with our Governments for authority and, inevitably, maintains the colonial character of our relationship with the Canadian government. The recognition of indigenous aboriginal Governments as the first order of Government in Canada will allow us to assume the administrative responsibilities that are now the "white man's burden" of the Indian Affairs Department. The savings in administrative cost will be substantial and political responsibility for Indian programs will rest where it should, with our indigenous aboriginal governments as first order of Government.

Fourthly, our Governments must be the direct recipients of transfer payments from the federal government, whether they are equalization, revenue sharing or program monies. Transfers of funds will be handled in the same manner as transfers to Provincial and Territorial Governments. Reporting and accounting will be defined by agreements negotiated between our Governments and the federal government, and not by the Indian Affairs Department or any other government department. This will allow maximum flexibility and will also dramatically reduce the administrative costs involved.

-17-

8. REPRESENTATION TO THE INSTITUTION OF THE CENTRAL CANADIAN GOVERNMENT

The covenant, as part of the Constitutions of both Canada and our indigenous aboriginal Nations, will define the structure and powers of indigenous aboriginal Governments and their relationship to other Governments in Canada. Our indigenous aboriginal governments will be a recognized order of Government in Canada, parallel to Provincial Governments. The federal government will have exclusive jurisdiction over matters coming within its powers; our indigenous aboriginal Governments will have exclusive jurisdiction over matters affecting our aboriginal title and rights, and provincial governments will have jurisdiction over matters coming within their domain. Relations between our Governments and the other orders of Government in Canada will be altered only by mutual agreement, as is the case today between the provinces and the federal government.

In keeping with the lessons learned in other countries which have decolonized, we recommend that a process be established through the covenant that ensures the protection and progress of our indigenous aboriginal Governments in their journey toward the exercise of full self-government. Protection may be afforded through a number of institutions. A constitutional conference formally involving the three orders of government can be convened on an annual basis to review the progress of the new federalism and to upgrade the position of our indigenous aboriginal Governments on a yearly basis. Regional ombudsman's offices can be established made up of elected representatives from our aboriginal Governments and the Canadian governments, these offices would have the power to supervise legislation enacted by each of the orders of Government to maintain distinct jurisdictions without continual reference to the courts. The office of the Governor General can be enlarged to include a veto function where, in the opinion of the

-18-

Governor General, legislation enacted by Federal and Provincial Parliaments conflicts with Aboriginal Title and Rights. The office might further be expanded to include a representative of Her Majesty the Queen in Canada, in right of our Indigenous Aboriginal Governments. These are suggestions only. Through negotiations we can work out a model to provide the protection required for a stable decolonization.

We look forward to the day in the future when our indigenous aboriginal Governments are strong, when the spirit of cooperation between our governments and the Canadian government is firmly established, and Canadian federalism is strengthened as a result.

9. CONCLUSIONS AND RECOMMENDATIONS

We are born with our aboriginal title and rights. We pass these rights on to our children. That is what it means to be Indians. To date the Canadian government refuses to recognize our aboriginal title and rights. In effect, Canada refuses to recognize us, the original peoples of this land. The Government of Canada must not continue in this blindness. To do so will delay indefinitely all resolution of these issues. This would be a shameful legacy to leave to our Canadian and Indian children yet unborn.

We do not want a settlement of our Aboriginal Title and Rights which in any way reflects a policy of termination. Nor do we want a final cash-for-land settlement like the James Bay and Alaska agreements. We want recognition and acceptance of our indigenous aboriginal Governments as the first order of Government in Canada. Our Nations' self-determination will free both Indian and non-Indian peoples from the structures of colonialism and dependence. It will pour meaningful content into the principles of self-determination held high at the United Nations. Canada could

- 19 -

then offer an inspiring and realistic example to the international community.

We now recommend that the Special Committee on Indian self-government carry out the following:

1. Table the three parts of this position paper in the House of Commons before the March Section 37 Conference with the following recommendations to Members of Parliament and the government of Canada:

That our Aboriginal Title and Rights be recognized and accepted;

That there be established a Joint Secretariate comprised of representatives of our indigenous aboriginal Governments and the Canadian government to draft a political covenant recognizing and accepting our aboriginal title and rights as they are defined by our governments;

That the principles for a working relationship in this position paper be recognized, accepted and used as the basis for implementing the above recommendations.

2. Distribute this position paper to all our indigenous aboriginal Governments.

- 20 -

We have extended to the Government of Canada our firm and final offer to begin discussion with our Indian Government. Such discussions can only proceed if Canada accepts the following principles already stated;

(a) That the aboriginal Nations of Canada have the right to maintain and develop our cultures, languages, religion and traditions; and

(b) That the aboriginal Nations of Canada own and have the right to control our tribal lands, waters and natural resources thereon and therein.

We seek the response of Prime Minister Trudeau, representing Canada. Specifically we wish answered whether Canada accepts or rejects the above stated principle. If the principles cannot be accepted, we wish a written response as to the reasons. If the principles are acceptable we will be in a position to conclude an agreement in principle and discussions may begin forthwith.

We give Prime Minister Trudeau until March 10th, 1983 to respond. Failure to respond will be accepted by us as a refusal by Canada to accept us as the Original Peoples of this land with rights to our land and to our future as Indian Nations. Canada's refusal will leave us with no choice but to pursue our goals without reference to Canada.

Thank you for your attention. We would be happy to answer any questions that you may have at this time.

APPENDIX

ORGANIZATIONAL STRUCTURE:
INDIGENOUS ABORIGINAL GOVERNMENTS AS
THE FIRST ORDER OF GOVERNMENT IN CANADA

INDIGENOUS ABORIGINAL GOVERNMENTS AS
THE FIRST ORDER OF GOVERNMENT IN CANADA

Part II

BACKGROUND PAPER

To Be Submitted To:

Special Committee on Indian Self-Government
Standing Committee on
Indian and Northern Affairs

Prepared By:

Bella Coola District Council
Box 700, Bella Coola, B.C.
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February, 1983

PART IICONTENTS

1. HISTORICAL PERSPECTIVES:

- a) Settlement of Canada: Crown Obligations to our Indian Nations
- b) "The Sacred Trust of Civilization"

2. CANADIAN GOVERNMENT POLICY TOWARDS INDIGENOUS ABORIGINAL NATIONS.

1. HISTORIAL PERSPECTIVES:

(a) Settlement of Canada: Crown Obligations to our Indian Nations

Like so many of our Indigenous Brothers and Sisters the world over, our Nations have suffered the onslaught of self-serving European Nations asserting their domain over our People and our territory. Yet, in their attempts to acquire our land, first British and later Canadian colonizers, became subject and bound to respect agreements and obligations negotiated with us or forced upon the Crown. We rely upon these agreements and obligations in asserting our position to Canada today: that our Aboriginal Title and Rights must be respected in all of your dealings with us.

Canada was formed, not in 1867, but with the compacts concluded between the Crown and our Indian Nations. The first major compact was the Royal Proclamation of 1763. George III issued this Proclamation, formalizing political relations between the Crown and our Indian Nations on terms that satisfied the Indians and permitted settlement of Canada. The Proclamation itself was a statement of policy which had been developing for many years before 1763. But political urgency was generated by events which occurred in Canada during and immediately following the Seven Years War. During that war, the British and the French fought one another for supremacy in Canada. Our Indian Nations, for the most part, sided with the British because representatives of the British Crown repeatedly told the Indian Nations that the British Crown would give them protection against the French who had designs on Indian lands. When the war concluded, the British refused to remove their outposts from Indian territory and the Indian Nations moved against the British. The great campaign was led by Chief Pontiac. Between 1761 and 1763 seven of the ten British outposts were destroyed by the Indian fighters. The

British Crown felt the pressure to conclude a Constitutional arrangement acceptable to the Indian Nations. The Royal Proclamation of 1763 was the result.

The terms of the Royal Proclamation itself were negotiated with the Indian Nations concerned. By its terms, a general prohibition was placed on the settlement of unceded Indian lands, until the lands were yielded up to the Crown through the consent of our Indian Nations. The Royal Proclamation, in effect, recognized and confirmed the sovereignty of our Indian Nations. The Indians were described as "Nations" and it was only through a vote by our Nations in Assembly that our rights could be conferred on to the Crown. Similarly, land rights were recognized since our lands had to be "purchased" by the Crown. As a result of the Royal Proclamation, dealing in Indian land was placed beyond the authority of colonial governors.

Operating within the framework of the Royal Proclamation, treaties were concluded between various Indian Nations and the Crown. These treaties recognized the sovereignty of our Indian Nations as it was only with the consent of Indian Nations in assembly that they were concluded. The provisions of these treaties implicitly recognized the ongoing existence of Aboriginal title and rights. These treaties were designed as fundamental instruments which would endure the passing of time and governments. The durability of the agreements was articulated by the Crown's representatives:

The Queen has to think of what will come long after today. Therefore the promises we have to make to you are not for today only but for tomorrow, not only for you but for your children born and unborn and the promises we make will be carried out as long as the sun shines and the rivers flow in the ocean.

As a result of these compacts, the Provincial and Federal Governments of Canada were able to consolidate power

and authority under the British North America Act. An example of this is the petition of Marie Joseph Philebot to the Executive Council of Quebec on December 21, 1766, for a grant of 20,000 acres of land in the colony of Quebec. This land had not been ceded by the Indians pursuant to the Royal Proclamation; the land was not granted.

The Committee having taken the same into consideration are of the opinion the Lands so pray to be assigned are, or are claimed to be the property of the Indians, and as such by His Majesty's command as set forth in the Proclamation of 1763, not within their power to grant; the Committee are further of the Opinion that they are restrained by His Majesty's said Order from granting Lands but upon the Conditions therein contained. The same rule applied as various territories joined Confederation between 1867-1871.

In summary, Canada was formed ON THE BASIS of Crown obligations to the Indian Nations, obligations which recognized our sovereign rights and which stated clearly that the Aboriginal title and authority of Indian Nations would continue until they consented to surrendering their title and powers to the Crown.

In British Columbia we have never surrendered our title or any of our sovereign powers to the Crown. We continue to cherish our fundamental rights which have been recognized and confirmed by the Crown in its dealings with us. We ask for a proper process to clarify how we, as Nations, can profitably, comfortably, and honourably co-exist with Canada, while retaining our sovereign rights bestowed upon us by the Creator.

(b) Sacred Trust of Nations

The rules which bind the Crown in its dealings with

us derive in part, from international law and convention. The "sacred trust of nations" is one such rule. We, as indigenous aboriginal Nations, refer to the "sacred trust" imposed upon Britain and Canada in asserting our position that our Aboriginal title and rights must be recognized and respected.

In the 18th Century, the international law principle of the "sacred trust of civilization" was developed. In the League of Nations this principle was manifested in the mandate system, under which colonial territories were said to be administered "in trust for the people" under the control of a mandatory power.

However, the principle of the "sacred trust of civilization" did not have its origins in the League of Nations and the mandate system. The principle can be traced to Francisco De Vitoria (16th Century) and the era of the Spanish colonization of the new world. Most importantly, the principle defines the obligation of conquering powers to treat indigenous Peoples in a way which promotes their well-being and allows their self-determination.

The Berlin Conference of 1884-85 provides testimony to the tacit agreement of the European powers to this sacred trust. In November 1884 the European powers, including Great Britain, assembled in Berlin for a conference to discuss problems relating to the affairs of the African continent. The purpose was to avoid inter-European anarchy in the exploration of Africa. In the course of discussions it was made clear that the normal method of acquisition of territory by European powers was bilateral treaty and not discovery or unilateral occupation. Africa was not presumed to be "vacant territory" but a region ruled by a complex of political entities governed by sovereign rulers and Chiefs.

Debates at this conference concerned various conceptions in international law, the classic one being the Rule of Law of Nations, according to which the transfer of territory from original inhabitants to new rulers was only to be done by consent. This consent was sacrosanct. As was stated by John Kasson, the U.S. delegate:

Modern international law steadily follows the road which leads to the recognition of the right of native races...to dispose freely of themselves and of their hereditary soil...a principle looking to the voluntary consent of the natives of whose country possession was taken (by treaty) in all cases when they may not have provoked the act of aggression.

While this declaration ultimately was not ratified by the Berlin Conference, the principle of voluntary consent was "at least tacitly accepted by the Conference".

These statements concerning modern international law and indigenous aboriginal Peoples did not apply to Africa alone. Indeed, indigenous aboriginal law "originated, and can still be most clearly grasped, as a branch of international law".

Forty seven years prior to the Berlin Conference, in 1837, a Select Committee was appointed by the House of Commons to consider the measures to be adopted with regard to the native inhabitants of British - claimed territories. The Select Committee's report was published on June 26, 1837. On the basis of national interest (even narrowly conceived) and on the basis of morality, no encroachments on the territory or disregard of the rights of indigenous aboriginal Peoples were to be allowed. General regulations were set out in the report. The protection of the indigenous aboriginal Peoples was considered a duty:

Peculiarly belonging and appropriate to the executive government, as administered either in this country (Great Britain) or by the governors of their respective colonies. This is not a trust which could conveniently be confided to the local legislatures.

The obvious conflict of interest between the claims of the indigenous aboriginal Peoples and the local legislatures was acknowledged, and "whatever may be the legislative system of any colony, we therefore advise that, as far as possible, the aborigines be withdrawn from its control". No law which affected the original inhabitants would take effect against them unless expressly sanctioned by the Queen. Any acquisition of property from the original inhabitants by Her Majesty's subjects was declared illegal and void. The report also commented on the inherent inequality in the bargaining positions with respect to treaties between the Crown and our indigenous aboriginal Peoples.

Turning to the international covenants of the United Nations, we again find numerous references to the sacred obligation of Nations, references, we submit, which enshrine the trust defined prior to British colonization in Canada.

In the Charter of the United Nations (recognized by both Canada and Great Britain) Chapter XI contains the "Declaration Regarding Non-Self Governing Territories". This chapter provides that the members of the United Nations:

Accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present charter, the well-being of the inhabitants of territories whose people have not yet attained a full measure of self-government:

(A) To assure, with due respect for the culture of the peoples concerned, their political, economic, social and educational advancement, their just treatment and their protection against abuses;

- 7 -

(B) To develop self-government, to take due account of the political aspirations of the peoples and to assist them in the progressive development of their free circumstances of each territory and its peoples and their varying stages of development.

Similar provisions are contained in Chapter XII, which established the international trusteeship system.

In the Universal Declaration of Human Rights (adopted by both the United Kingdom and Canada) Article 17 states:

(2) no one shall be arbitrarily deprived of his property.

The Declaration of the Granting of Independence to Colonial Countries and Peoples was adopted by the United Nations General Assembly in Resolution 1514 (XV) December 14, 1960. This declaration affirms that:

The peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit and international law.

Therefore, it is declared that:

2. All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Furthermore, the declaration states that repressive measures of all kinds directed against dependent peoples shall cease. This covenant clearly seeks to protect the territorial integrity of the peoples whose self-determination is recognized.

The International Covenant on Economics, Social and Cultural Rights in Article 1 also affirms that all people have the right of self-determination. The ability of all people to freely dispose of their wealth and resources is also confirmed. Canada and the United Kingdom ratifies this covenant as of May 19, 1976.

Article XII states:

That the populations concerned shall not be removed without their free consent from their habitual territories except in accordance with national law and regulations for reasons relating to national security, or in the interest of national economic development or of the health of the said populations. When in such case removal of those populations is necessary as an exceptional measure, they shall be provided with lands occupied by them, suitable to provide for their present needs and future development.

It is interesting to note that the Canadian representative at the conference questioned the competence of the organization to consider these questions and abstained on the final vote.

In 1957, the International Labour Organization adopted a Convention Concerning the Protection and Integration of Indigenous and Other Tribal Semi-Tribal Populations in Independent Countries. Article XI of the Convention states:

The right of ownership, collective or individual, of the members of the population concerned over the lands which those populations traditionally occupy shall be recognized.

In the South-West African Cases, Ethiopia and Liberia commenced an action against South Africa for breach of obligations connected with its mandatory powers. While the International Court of Justice dismissed their claim, in doing so it specifically recognized the "sacred trust of civilization".

The sacred trust, it is said, is a "sacred trust of civilization." Hence, all civilized Nations have an interest in seeing that it is carried out. An interest, no doubt; but in order that this interest may take on a specifically legal character, the sacred trust itself must be or become something more than a moral or humanitarian ideal...

It is impossible to maintain, in light of the international commitments outlined above, that the mandate system is the only judicial expression of the sacred trust of civilization. The sacred trust was incorporated into and elaborated by Great Britain's colonial policies towards the Indians in the country now called Canada. The Royal Proclamation of 1763, treaty making, the special relationship between the Indigenous Aboriginal Peoples and the British Crown, are manifestations of a pre-existing sacred trust. As a member of the international community, Canada is bound to conduct its affairs in keeping with this trust.

International law has as its ultimate function the preservation of the rights of the inhabitants of one political community against the encroachments of another political community. The key is equity. All treaty arrangements and settlements must proceed on the basis of equitable assumptions.

International law, humanity and equity demand that Canada conclude a covenant with our Indigenous Aboriginal Nations, one which respects and recognizes our aboriginal title and rights.

2. CANADIAN GOVERNMENT POLICY TOWARDS INDIGENOUS ABORIGINAL NATIONS

On a visit to British Columbia in 1876 the Earl of Dufferin, Governor General of Canada, summarized the position of the Crown with respect to our Indigenous Aboriginal Peoples as follows:

- 10 -

...no government, whether Provincial or Central, has failed to acknowledge that the original title to the land existed in the Indian Tribes and communities which have hunted or wandered over them...and before we touch an acre we make a treaty with the Chiefs representing the Bands we are dealing with, having agreed upon and paid the stipulated price...we enter into possession.

In spite of the Policy expressed by the Earl of Dufferin, and in spite of Crown obligations and its sacred trust, the Canadian Government's goal has been to deny the sovereignty of our Indigenous Aboriginal Nations and bring them fully under the domination of federal and provincial governments. This goal of Canadian Government Indian Policy has remained consistent for over one hundred years.

In 1947 a plan for liquidating Canada's Indian problem within 25 years was presented to the Parliamentary Joint Committee on Indian Affairs. The objective was:

To abolish, gradually but rapidly, the separate political and social status of the Indians (and Eskimos): to enfranchise them and merge them into the rest of the population on the equal footing. The realization of this plan should:

(A) Improve the Indians' social and economic position, now so depressed as to create "leprous" spots in many parts of the country;

(B) Abolish the permanent drain on the Federal Treasury of the millions of dollars yearly now spent on Indian Administration;

(C) Fulfill the almost forgotten pledge of the Government when it adopted the system of confining the Indians to special Reserves. The Plan contemplated the appointment of a Commission to "study the various Indian Reservations throughout the Dominion and to advise on the best means of abolishing them, of enfranchising the inhabitants".

In 1969 Prime Minister Trudeau and Indian Affairs Minister Jean Chretien presented their White Paper Policy. The Policy called for the elimination of Indigenous Aboriginal

- 11 -

Peoples and Indigenous Aboriginal Nation Tribal lands. Its main features were as follows:

- (A) The Constitution would be amended, eliminating all references to Indians.
- (B) The Indian Act, which guarantees a number of specific rights, would be repealed.
- (C) The Department of Indian Affairs and its special budgetary appropriation for Indians would disappear.
- (D) Indian Reserves would lose their protected status.
- (E) Full jurisdictional powers over Indians would be transferred to Provinces.

By 1973 our Indigenous Aboriginal Nations had prevented Prime Minister Trudeau from implementing the White Paper Policy. Our method was concerted political action and forcing the issue of Aboriginal Title and Rights through the Courts in the Case of Calder v. The Attorney General, (1973) 4W.W.R.1. In spite of the setback, the Canadian Government's goal remained constant. But it was not until the Constitution debate that the politics were ripe for a renewed approach. The Canadian Government's real agenda for the 1982 Constitutional debate with respect to our Indigenous Aboriginal Nations was stated by Indian Affairs Minister Jean Chretien in 1969:

The tradition of Federal responsibility for Indian matters inhibited the development of proper relationship between the Provinces and the Indian peoples as citizens.

The ultimate aim of removing the specific references to Indians from the Constitution may take some time, but it is a goal to be kept constantly in view.

In the long term, removal of the reference in the Constitution would be necessary to end the legal distinction between Indians and other Canadians.

Why has the Canadian Government been so determined to achieve this goal? The ultimate objective is legalizing

- 12 -

the acquisition of Indigenous Aboriginal Nations' Lands and resources, over which our Aboriginal Title and Rights continue to run. This point was illustrated during the Pipeline Debate in 1977. When the Canadian Government voiced its support for the Alcan Pipeline, the question arose of interference with development by the claims of Indigenous Aboriginal Peoples. A Canadian Government Internal Policy Document of November 20, 1977 reveals that Indian title would not be allowed to stand in the way of development:

A few things are clear. The Government of Canada is prepared to extinguish Native Land Claims if necessary by Legislation to support its international work and commitment...

In a confidential document prepared after October 1980, Briefing Material on Canada's Native Peoples and the Constitution, the Canadian Government's position on Indigenous Aboriginal Nations and the Constitution was unambiguously set out:

There is likely to be a major effort by Canada's Native Peoples to win National and International support (especially at Westminster) for their stand against patriation. If the Native Peoples press forward with their plans and if they succeed in gaining support and sympathy abroad, Canada's image will suffer considerably, because Canada's Native Peoples live, as a rule, in conditions which are very different from those of most other Canadians - as sample statistics set out below attest - there would be serious questions asked about whether the Native Peoples enjoy basic rights in Canada:

- Indians have a life expectancy ten years less than the Canadian average.
- Indians experience violent deaths at more than three times the National average.
- Approximately 60% of Indians in Canada receive social assistance.
- Only 32% of working age Indians are employed.

- 13 -

- Less than 50% of Indian Homes are properly serviced.
- In Canada as a whole, the Prison Population is about 9% Native, yet Native Peoples make up only 3% of Canada's population. In 1977, there were 280 Indians in jail per 100,000 population, compared to 40 of the National average".

The strategy of the Canadian Government was made clear, namely to promote formal discussion with the Indigenous Aboriginal Nations after patriation, knowing full well that to do so would preclude an effective settling of the issues. The offer of post-patriation discussion would be used as the reason why constitutional participation was unnecessary.

Native leaders realize that entrenching their rights will be enormously difficult after patriation, especially since a majority of the Provinces would have to agree to changes which might benefit Native Peoples at the expense of the Provincial power. They therefore demand an entrenchment of Native Rights before patriation."

On the question of entrenching rights in the Charter of Rights the document had this to say:

Constitutionalizing Treaty Rights, for example, which many Indian Leaders have called for, begs the question of how Treaty Rights should be interpreted. Additionally to constitutionalize treaty rights does nothing for the vast majority of Native Peoples in Canada, who either have not been party to Treaties or who have excluded themselves from the groups which did sign treaties.

In summary, from the Canadian Government's view the Indigenous Aboriginal Nations were to have no direct participation in Constitutional patriation. Rather, discussion with the leaders would be left to a post-patriation meeting where Indigenous Aboriginal Nations would face ten Provincial Governments and the Canadian Government, each jealously guarding their newly divided jurisdiction. On the question of entrenchment, the Canadian Government would entrench only

- 14 -

those rights which were politically required while preparing to exclude Aboriginal Title and Rights from the Constitution generally. This approach can be seen in the successive drafts of the Canada Bill and the Charter of Rights in which the clause safeguarding Aboriginal and Treaty Rights appeared and disappeared from draft to draft. The most dramatic event occurred in November 1981, when the Canadian Government decided to remove the Aboriginal and Treaty Clause in order to gain a broader provincial accord.

The constitutional debate showed Canada's real goal towards our Aboriginal Peoples, which is ultimately to expropriate our land. Throughout the debate our Indigenous Aboriginal Nations demonstrated our true goals. Even after patriation we asserted in Canada, in Britain and throughout the European community, through Parliaments, through the Courts and through assemblies of people, that we, the Indigenous Aboriginal Peoples, do not consent to a Canadian Constitution which denies us our basic aboriginal title and rights. We are our land and we are our Governments. The Canadian Government cannot change this fact through a man-made law which they call a Constitution which does not recognize our existence as it is in this country.

INDIGENOUS ABORIGINAL GOVERNMENTS AS
THE FIRST ORDER OF GOVERNMENT IN CANADA

Part III

MAIN POINTS OF DIFFERENCE

between

THE MINISTER OF INDIAN AFFAIRS

and

THE BELLA COOLA DISTRICT COUNCIL

FEBRUARY, 1983

MAIN POINTS /OF DIFFERENCE

between

MINISTER OF INDIAN AFFAIRS

BELLA COOLA DISTRICT COUNCIL

1. Sources of Authority:

- Parliament of Canada as the ultimate source of power.

2. Constitutional Relationships/
Status:

- Two orders of government, federal and provincial;
- Band governments established by the Indian Act.

3. Government Institutions:

- "Indian Band Governments" as instruments of DIA administration;
- Operate within framework of Canadian political institutions.

4. Jurisdiction of "Indian Band Governments":

- Unspecified;
- Will be decided by DIA/Canadian Government but process unspecified;
- Similar to limited powers of "local government" (municipal).

1. Source of Authority:

- The Creator.

2. Constitutional Relationships/
Status:

- Aboriginal governments as the first order of government in Canada;
- Status established through social contract.

3. Government Institutions:

- Indigenous aboriginal governments as basic autonomous units of parallel Indian government system.

4. Jurisdiction of indigenous aboriginal governments:

- Exclusive jurisdiction to make and enforce laws affecting Indian communities;
- Similar in extent to the provincial governments;
- To be defined by internationally supervised negotiations.

Page 2.

5. Territories:

- Unspecified;
- No increase in reserve land base anticipated.

6. Political Process:

- Devolution of band powers controlled by Canadian government;
- Indirect rule;
- Optional band participation under expanded legislation;
- Need to demonstrate "ability to manage own affairs".

7. Accountability:

- Dual accountability to bands and the Canadian government (DIA).

5. Territories:

- Traditional tribal lands held by aboriginal title;
- Boundaries established by indigenous aboriginal governments.

6. Political Process:

- Negotiated social contract between indigenous aboriginal governments and Canadian government as equals;
- Social contract to be entrenched in Canadian Constitution and Constitution of the Indigenous Aboriginal Nations.

7. Accountability:

- Direct accountability to the people of the indigenous aboriginal Nations.

APPENDIX V.

THE DENE DECLARATION: STATEMENT OF RIGHTS

APPENDIX Y

THE DENE DECLARATION- Statement of Rights

We the Dene of the N.W.T. insist on the right to be regarded by ourselves and the world as a nation.

Our struggle is for the recognition of the Dene Nation by the Government and people of Canada and the peoples and governments of the world.

As once Europe was the exclusive homeland of the European peoples, Africa the exclusive homeland of the African peoples, the New World, North and South America, was the exclusive homeland of Aboriginal peoples of the New World, the Amerindian and the Inuit.

The New World like other parts of the world has suffered the experience of colonialism and imperialism. Other peoples have occupied the land- often with force- and foreign governments have imposed themselves on our people. Ancient civilizations and ways of life have been destroyed.

Colonialism and imperialism is now dead or dying. Recent years have witnessed the birth of new nations or rebirth of old nations out of the ashes of colonialism.

As Europe is the place where you will find European countries with European governments for European peoples, now also you will find in Africa and Asia the existence of African and Asian countries with African and Asian governments for the African and Asian peoples.

The African and Asian peoples- the peoples of the Third World- have fought for and won the right to self-determination; the right to recognition as distinct peoples and the recognition of themselves as nations.

But in the New World the native peoples have not fared so well. Even in countries in South America where the Native peoples are the vast majority of the population there is not one country which has an Amerindian government for the Amerindian peoples.

Nowhere in the New World have the Native peoples won the right to self-determination and the right to recognition by the world as a distinct people and as Nations.

While the Native people of Canada are a minority in their homeland, the Native people of the N.W.T., the Dene and the Inuit, are a majority of the population of the N.W.T.

The Dene find themselves as part of a country. That country is Canada. But the Government of Canada is not the government of the Dene. These governments were not the choice of the Dene, they were imposed upon the Dene.

What we the Dene are struggling for is the recognition of the Dene Nation by the governments and peoples of the world.

And while there are realities we are forced to submit to, such as the existence of a country called Canada, we insist on the right to self-determination as a distinct people and the recognition of the Dene Nation.

We the Dene are part of the Fourth World. And as the peoples and Nations of the world have come to recognize the existence and rights of those peoples who make up the Third World the day must come and will come when the nations of the Fourth World will come to be recognized and respected. The challenge to the Dene and the world is to find the way for the recognition of the Dene Nation.

Our plea to the world is to help us in our struggle to find a place in the world community where we can exercise our right to self-determination as a distinct people and as a nation.

What we seek then is independence and self-determination within the country of Canada. This is what we mean when we call for a just land settlement for the Dene Nation.

APPENDIX VI
WORLD COUNCIL OF INDIGENOUS PEOPLES
INTERNATIONAL COVENANT ON THE RIGHTS OF
INDIGENOUS PEOPLES (Draft, 1981)

INTERNATIONAL COVENANT ON THE RIGHTS OF INDIGENOUS PEOPLES

PREAMBLE

The parties to the present covenant

Considering that the recognition of the inherent dignity and the equal and inalienable rights of individuals and of peoples is the foundation of freedom, justice and peace in the world, and considering that these principles are recognized and proclaimed in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the European Convention on Human Rights and the Inter-American Convention on Human Rights,

Conscious of the need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, and of universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recalling that Convention 107 and Recommendation 104 of the International Labour Organization, 5th June, 1957, recognized the need for the adoption of general international standards to govern the relations between Indigenous Peoples and states,

Recalling that the Declaration of the General Assembly on the Granting of Independence to Colonial Countries and Peoples, Resolution 1514 (xv), 14th December, 1960, recognized the ardent desire of the peoples of the world to end colonialism in all its manifestations,

Recalling that the inter-relationship of racial equality and decolonization was recognized in the Resolution of the General Assembly, Resolution 20166(xx) B, 15th December, 1965, associated with the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination,

Considering that colonialism and the consequences of colonialism have not been eradicated for Indigenous Peoples, and, in consequence, indigenous peoples are frequently denied their political, economic, social and cultural rights,

Recognizing that the rights of Indigenous Peoples to self-determination is accepted in international law and has been increasingly given effect in the domestic law of States, and

Recognizing the long struggle by Indigenous Peoples to have their rights recognized in international law,

agree upon the following articles:

PART I

SELF-DETERMINATION

Article 1. All peoples have the right to self-determination. By virtue of that right Indigenous Peoples may freely determine their political status and freely pursue their economic, social and cultural development.

Article 2. The term Indigenous People refers to a people
(a) who lived in a territory before the entry of a colonizing population, which colonizing population has created a new state or states or extended the jurisdiction of an existing state or states to include the territory, and
(b) who continue to live as a people in the territory and who do not control the national government of the state or states within which they live.

Article 3. One manner in which the right of self-determination can be realized is by the free determination of an Indigenous People to associate their territory and institutions with one or more states in a manner involving free association, regional autonomy, home rule or associate statehood as self-governing units. Indigenous People may freely determine to enter into such relationships and to alter those relationships after they have been established.

Article 4. Each state within which an Indigenous People lives shall recognize the population, territory and institutions of the Indigenous People. Disputes about the recognition of the population, territory and institutions of an Indigenous People shall initially be determined by the state and the Indigenous People. Failing agreement, such questions may be determined by the Commission of Indigenous Rights and the Tribunal of Indigenous Rights, as subsequently provided.

PART II

CIVIL AND POLITICAL RIGHTS

Article 1. Each Indigenous People has the right to determine the persons or groups of persons who are included within its population.

Article 2. Each Indigenous People has the right to determine the form, structure and authority of its institutions of self-determination. Those institutions, their decisions and the customs and practices of the Indigenous Peoples shall be recognized by domestic and international law on a basis of equality and non-discrimination.

Article 3. Where an Indigenous People exercise their right of self-determination within one or more states, and that state or states has some extent of jurisdiction over the Indigenous People or over individual members of the Indigenous People,

(a) the individual members of the Indigenous People are entitled to participate in the political life of the state or states on the basis of equality with citizens of the state or states,

(b) the Indigenous People is entitled to representation in the legislative and executive branches of government, the courts and civil service. The state is under an affirmative duty to promote that participation,

(c) it is recognized that it is desirable for the Indigenous People to have a national organization or organizations of their own choosing and structure, independent of the organs of the state, to represent their interests in dealing with the state. Where the poverty or dispersed character of the Indigenous People inhibit the development of such an organization or organizations, the state shall provide funding to the Indigenous People to facilitate the establishment and maintenance of such an organization or organizations.

PART III

ECONOMIC RIGHTS

Article 1. Indigenous Peoples are entitled to the lands they use and to the protection of the extent of use in areas where the use of land is shared in a compatible manner with others, and to those parts of their traditional lands which have never been transferred out of their control by a process involving their free consent.

Article 2. The need to protect the integrity of the lands of an Indigenous People is recognized. The land rights of an Indigenous People include surface and subsurface rights, full rights to interior and coastal waters and rights to adequate and exclusive coastal economic zones.

Article 3. All Indigenous Peoples may, for their own ends, freely use and dispose of their natural wealth and resources, without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit and international law. In no case may a people or a component unit of a people be deprived of its own means of subsistence.

Article 4. Where an Indigenous People have an economy reliant in whole or in part on hunting, fishing, herding, gathering or cultivation, they have the right to the territory and the waters used and needed for those pursuits. States are bound to respect such territories and waters and not act or authorize acts which could impair the ability of such lands and waters to continue in such use.

PART IV

SOCIAL AND CULTURAL RIGHTS

1. The cultures of the Indigenous Peoples are part of the cultural heritage of mankind. The shared beliefs of Indigenous People in co-operation and harmonious relations are recognized as a fundamental source of international law.
2. The primary responsibility for the protection and development of the cultures and religions of the Indigenous People lies with the Indigenous People. To this end the original rights to their material culture, including archeological sites, artifacts, designs, technology and works of art lie with the Indigenous People or members of the Indigenous People. Indigenous People have the right to reacquire possession of significant cultural artifacts presently in the possession of public or semi-public institutions, where possession of those artifacts was not obtained from the Indigenous People in a just and fair manner or where the artifacts are of major cultural or religious significance to the Indigenous People.
3. The Indigenous People have the right to fully control the care and education of their children, including the full right to determine the language or languages of instruction.
4. The Indigenous Peoples have the responsibility for the preservation and development of their languages. Their languages are to be respected by states in all dealings between the Indigenous People and a state on the basis of equality and non-discrimination.

PART V

RATIFICATION AND IMPLEMENTATION

Article 1. This Covenant shall be open to ratification by states and by Indigenous Peoples.

Article 2. To ensure the fulfillment of the provisions of this Covenant there shall be established a Commission of Indigenous Rights and a Tribunal of Indigenous Rights.

Article 3. The duties of the Commission of Indigenous Rights are:

- (a) to receive and assess the reports of the states and of the Indigenous Peoples who are parties to this Covenant.
- (b) to receive and assess petitions alleging the violation of the rights of Indigenous Peoples in contravention of the provisions of the present Covenant,
- (c) to determine the appropriate recognition of the population, territory and institutions of an Indigenous People by a state, in compliance with Part I, Article 4.

(d) to investigate any petitions alleging the violation of the rights of Indigenous Peoples, with the power to require documents from states parties, with a right to access to officials of the states parties and with access to Indigenous lands, institutions and people within a state.

(e) to attempt to achieve a peaceful settlement of disputes involving indigenous rights, by mutual agreement of the parties.

(f) to determine whether there has been a violation by any state or any Indigenous People of the provisions of the present Covenant.

(g) to conduct or commission research on matters of indigenous rights, to conduct or support educational programs and to publish any reports, studies or determinations.

(h) to determine, in cases of dispute, the groups that are Indigenous People with a right of self-determination, subject to an appeal to the Tribunal of Indigenous Rights as subsequently provided. The Commission shall review all ratifications of the present Convention by Indigenous People to determine whether the ratifying group is an Indigenous People with a right of self-determination.

Article 4. The Commission will be composed of no fewer than 6 and no more than 19 persons. Each commissioner will be an indigenous person of good moral character.

Article 5. Three persons will be nominated to the Commission from every state affected by the Covenant. A state is affected by the Covenant if

(a) it has ratified the Covenant, or

(b) an Indigenous People living wholly or partly within the state has ratified the Covenant.

Article 6. If a state has ratified the Covenant, or if an Indigenous People living wholly or partly within the state has ratified the Covenant, three indigenous persons will be nominated by the most representative indigenous organization or organizations in the state. The organization or organizations so qualified shall be designated by the Executive Council of the World Council of Indigenous Peoples. If sufficiently representative organizations do not exist, the Executive Council of the World Council of Indigenous Peoples shall designate an individual of the state to make all or some of the nominations.

Article 7. The members of the Commission shall be selected from the nominees by the Executive Council of the World Council of Indigenous Peoples, which shall also determine the number of Commissioners. Members shall serve terms of four years.

Article 8. The duties of the Tribunal of Indigenous Rights are to determine, after an investigation and determination by the Commission of Indigenous Rights:

- (a) the groups which are Indigenous Peoples with a right of self-determination,
- (b) any question of compliance with this covenant.

Article 9. A matter may be taken before the Commission by a state party, an Indigenous People party, the World Council of Indigenous Peoples or a person or persons affected by an alleged violation of the rights of an Indigenous People. A matter may be taken before the Tribunal, after the investigation and determination of the Commission of Indigenous Rights, by the Commission of Indigenous Rights.

Article 10. The Tribunal may request an advisory opinion from the International Court of Justice on any question of law arising in the course of its work.

Article 11. The Tribunal will hold public hearings and receive oral or written submissions. Parties may be represented by counsel. No rules of the Tribunal shall exclude any category of evidence.

Article 12. The Tribunal shall consist of up to 15 persons, 4 of whom will serve on a full-time basis. The members of the Tribunal may be indigenous or non-indigenous, shall be of good moral character and shall serve in their individual capacities.

Article 13. Each state party may nominate one candidate for the Tribunal. Each Indigenous People signatory to the present Covenant may nominate one candidate for the Tribunal. The members of the Tribunal shall be elected by secret ballot by the states and the Indigenous Peoples who have ratified the present Covenant. The elections will be conducted in a manner to ensure that a majority of the members of the Tribunal will be indigenous people.

Article 14. The costs of the institutions created pursuant to the present Covenant shall be borne by the United Nations Organization.

Article 15. Nothing in the present Covenant may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

Article 16. There shall be no restriction upon or derogation from any of the rights recognized or existing in any state party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

13. No technical, scientific or social investigations, including archeological excavations, shall take place in relation to indigenous nations or peoples, or their lands, without their prior authorization, and their continuing ownership and control.

14. The religious practices of indigenous nations and peoples shall be fully respected and protected by the laws of States and by international law. Indigenous nations and peoples shall always enjoy unrestricted access to, and enjoyment of sacred sites in accordance with their own laws and customs, including the right of privacy.

15. Indigenous nations and peoples are subjects of international law.

16. Treaties and other agreements freely made with indigenous nations or peoples shall be recognized and applied in the same manner and according to the same international laws and principles as treaties and agreements entered into with other States.

17. Disputes regarding the jurisdiction, territories and institutions of an indigenous nation or people are a proper concern of international law, and must be resolved by mutual agreement or valid treaty.

18. Indigenous nations and peoples may engage in self-defense against State actions in conflict with their right to self-determination.

19. Indigenous nations and peoples have the right freely to travel, and to maintain economic, social, cultural and religious relations with each other across State borders.

20. In addition to these rights, indigenous nations and peoples are entitled to the enjoyment of all the human rights and fundamental freedoms enumerated in the international Bill of Rights and other United Nations instruments. In no circumstances shall they be subjected to adverse discrimination.

declaración de principios

1. Las naciones y pueblos indígenas comparten con toda la humanidad el derecho a la vida, así como el derecho a estar libres de toda opresión, discriminación y agresión.

2. Todas las naciones y pueblos indígenas tienen derecho a la auto-determinación, en virtud del cual tienen derecho a elegir el grado de autonomía ó autogobierno que deseen. Todo ello incluye el derecho a determinar libremente su propia condición política y a proseguir libremente su propio desarrollo cultural, religioso, social y económico, así como el derecho a determinar su propia calidad de miembro y/o ciudadano, sin ninguna ingerencia externa.

3. Ningún Estado ejercerá jurisdicción alguna sobre una nación o pueblo indígena, o sobre el territorio de éstos, a menos que ello se haga de pleno acuerdo con los deseos libremente expresados, de la nación o pueblo pertinentes.

4. Las naciones y pueblos indígenas, tienen derecho a controlar y gozar permanentemente de los territorios ancestrales-históricos. Todo ello incluye el derecho al suelo y al subsuelo, a las aguas interiores y litorales, a los recursos tanto renovables como, no-renovables, y a las economías basadas en estos recursos.

5. Los derechos a compartir y utilizar la tierra, que obedecen al derecho inherente e inalienable de la nación o pueblo indígena, podrán concederse mediante su consentimiento libre y consciente, tal como quede estipulado por un tratado o acuerdo válido.

APPENDIX VII.

WORLD COUNCIL OF INDIGENOUS PEOPLES

1984 DOCUMENT ON THE RIGHTS OF INDIGENOUS PEOPLES

WORLD COUNCIL OF INDIGENOUS PEOPLES

[Original: English]

[19 October 1984]

The World Council of Indigenous Peoples has decided to establish a document containing the most basic rights of indigenous peoples.

A discussion has taken place on the preferable structure of such a document, and a draft covenant presented by the Sami delegation has formed the basis of the discussion.

The great merit of this draft covenant was appreciated by all participants. It was recognized that it contained elaboration of the essential rights, such as the right to self-determination, the right to land (and other economic rights), civil and political rights, and the right to maintain our own culture, religion and language.

It should be underlined that the enjoyment of these rights also requires recognition of respect for the customary laws of indigenous peoples, within the limits of internationally recognized human rights.

The adoption, by the Fourth General Assembly of WCIP, 5/ of the attached document does not imply that all participants subscribe to every detail of the document. It should rather be seen as an important working paper whose general outline has been endorsed by the WCIP. It will serve as a basis for further discussion, elaboration and modification by a commission delegated by the Fourth General Assembly. It will also be submitted to the Working Group on Indigenous Populations, and will hopefully guide the presentations by the representatives of the indigenous peoples to that working group.

5/ Other resolutions adopted by the Fourth General Assembly are available for consultation at the secretariat.

It has been found preferable, at the present stage, to present the document as a declaration. However, it is foreseen that it will be followed by a convention. This will require the incorporation of provisions concerning the supervision, the handling of complaints, and the process of ratification by States and by indigenous organizations:

- Principle 1. All indigenous peoples have the right of self-determination. By virtue of this right they may freely determine their political status and freely pursue their economic, social, religious and cultural development.
- Principle 2. All States within which an indigenous people lives shall recognize the population, territory and institutions of the indigenous people.
- Principle 3. The cultures of the indigenous peoples are part of the cultural heritage of mankind.
- Principle 4. The traditions and customs of indigenous people must be respected by the States, and recognized as a fundamental source of law.
- Principle 5. All indigenous peoples have the right to determine the person or group of persons who are included within its population.
- Principle 6. Each indigenous people has the right to determine the form, structure and authority of its institutions.
- Principle 7. The institutions of indigenous peoples and their decisions, like those of States, must be in conformity with internationally accepted human rights both collective and individual.
- Principle 8. Indigenous peoples and their members are entitled to participate in the political life of the State.
- Principle 9. Indigenous people shall have exclusive rights to their traditional lands and its resources, where the lands and resources of the indigenous peoples have been taken away without their free and informed consent such lands and resources shall be returned.
- Principle 10. The land rights of an indigenous people include surface and subsurface rights, full rights to interior and coastal waters and rights to adequate and exclusive coastal economic zones within the limits of international law.
- Principle 11. All indigenous peoples may, for their own needs, freely use their natural wealth and resources in accordance with Principles 9 and 10.
- Principle 12. No action or course of conduct may be undertaken which, directly or indirectly, may result in the destruction of land, air, water, sea ice, wildlife, habitat or natural resources without the free and informed consent of the indigenous peoples affected.
- Principle 13. The original rights to their material culture, including archeological sites, artifacts, designs, technology and works of art, lie with the indigenous people.

- Principle 14. The indigenous peoples have the right to receive education in their own language or to establish their own educational institutions. The languages of the indigenous peoples are to be respected by the States in all dealings between the indigenous people and the State on the basis of equality and non-discrimination.
- Principle 15. Indigenous peoples have the right, in accordance with their traditions, to move and conduct traditional activities and maintain friendship relations across international boundaries.
- Principle 16. The indigenous peoples and their authorities have the right to be previously consulted and to authorize the realization of all technological and scientific investigations to be conducted within their territories and to have full access to the results of the investigation.
- Principle 17. Treaties between indigenous nations or peoples and representatives of States freely entered into, shall be given full effect under national and international law.

These principles constitute the minimum standards which States shall respect and implement.

WORLD COUNCIL OF INDIGENOUS PEOPLES

[Original: English and Spanish]

[27 March 1985].

BOGOTA DECLARATION

The World Council of Indigenous Peoples (WCIP), an international organization have consultative status with the United Nations, along with its five regional non-governmental indigenous organizations consisting of the Regional Coordinator of Indian Peoples of Central America (CORPI) representative of indigenous organizations of the Central American Nation-States, the South American Indian Council (CISA) representative of indigenous organizations of the South American Nation-States, the Pacific Regional Council representative of indigenous organizations of the Pacific Nation-States, the Nordic Sami Council representative of indigenous organizations of the Samiland including Norway, Sweden and Finland and the North American Region representative of indigenous organizations from Canada and the United States of America.

Hereby makes this Declaration to the Government of Nicaragua, to the indigenous organization MISURASATA and to the governments, peoples and communication services throughout the world, that:

The principles upon which our Indigenous Peoples in the Americas and throughout the world are founded are principles upon which the WCIP are guided.

The Nation-States of Republics of the Americas which today exist are the products of invasions, occupation and colonization of our nations and original peoples. These Nation-States and Republics have institutionalized and systematized oppression upon our peoples, imposing models and systems inconsistent with the truth of the circumstances of our existence.

APPENDIX VIII

DECLARATION OF PRINCIPLES

(FROM THE 1985 PRE-SESSIONAL CONFERENCE OF INTERNATIONAL
INDIGENOUS NON-GOVERNMENTAL ORGANIZATIONS, GENEVA, AUG. 22-26,
1985)

declaration of principles

1. Indigenous nations and peoples have, in common with all humanity, the right to life, and to freedom from oppression, discrimination, and aggression.

2. All indigenous nations and peoples have the right to self-determination, by virtue of which they have the right to whatever degree of autonomy or self-government they choose. This includes the right to freely determine their political status, freely pursue their own economic, social, religious and cultural development, and determine their own membership and/or citizenship, without external interference.

3. No State shall assert any jurisdiction over an indigenous nation or people, or its territory, except in accordance with the freely expressed wishes of the nation or people concerned.

4. Indigenous nations and peoples are entitled to the permanent control and enjoyment of their ancestral-historical territories. This includes surface and subsurface rights, inland coastal waters, renewable and nonrenewable resources, and the economies based on these resources.

5. Rights to share and use land, subject to the underlying and inalienable title of the indigenous nation or people, may be granted by their free and informed consent, as evidenced in a valid treaty or agreement.

6. Discovery, conquest, settlement on a theory of terra nullius, and unilateral legislation are never legitimate bases for States to claim or retain the territories of indigenous nations or peoples.

7. In cases where lands taken in violation of these principles have already been settled, the indigenous nation or people concerned is entitled to immediate restitution, including compensation for the loss of use, without extinction of original title. Indigenous peoples' desire to regain possession and control of sacred sites must always be respected.

8. No State shall participate financially or militarily in the involuntary displacement of indigenous populations, or in the subsequent economic exploitation or military use of their territory.

9. The laws and customs of indigenous nations and peoples must be recognized by States' legislative, administrative and judicial institutions and, in case of conflicts with State laws, shall take precedence.

10. No State shall deny an indigenous nation, community, or people residing within its borders the right to participate in the life of the State in whatever manner and to whatever degree they may choose. This includes the right to participate in other forms of collective action and expression.

11. Indigenous nations and peoples continue to own and control their material culture, including archeological, historical and sacred sites, artifacts, designs, knowledge, and works of art. They have the right to regain items of major cultural significance and, in all cases, to the return of the human remains of their ancestors for burial in accordance with their traditions.

12. Indigenous nations and peoples have the right to be educated and conduct business with States in their own languages, and to establish their own educational institutions.

13. No technical, scientific or social investigations, including archeological excavations, shall take place in relation to indigenous nations or peoples, or their lands, without their prior authorization, and their continuing ownership and control.

14. The religious practices of indigenous nations and peoples shall be fully respected and protected by the laws of States and by international law. Indigenous nations and peoples shall always enjoy unrestricted access to, and enjoyment of sacred sites in accordance with their own laws and customs, including the right of privacy.

15. Indigenous nations and peoples are subjects of international law.

16. Treaties and other agreements freely made with indigenous nations or peoples shall be recognized and applied in the same manner and according to the same international laws and principles as treaties and agreements entered into with other States.

17. Disputes regarding the jurisdiction, territories and institutions of an indigenous nation or people are a proper concern of international law, and must be resolved by mutual agreement or valid treaty.

18. Indigenous nations and peoples may engage in self-defense against State actions in conflict with their right to self-determination.

19. Indigenous nations and peoples have the right freely to travel, and to maintain economic, social, cultural and religious relations with each other across State borders.

20. In addition to these rights, indigenous nations and peoples are entitled to the enjoyment of all the human rights and fundamental freedoms enumerated in the international Bill of Rights and other United Nations instruments. In no circumstances shall they be subjected to adverse discrimination.

declaración de principios

1. Las naciones y pueblos indígenas comparten con toda la humanidad el derecho a la vida, así como el derecho a estar libres de toda opresión, discriminación y agresión.

2. Todas las naciones y pueblos indígenas tienen derecho a la auto-determinación, en virtud del cual tienen derecho a elegir el grado de autonomía o autogobierno que deseen. Todo ello incluye el derecho a determinar libremente su propia condición política y a proseguir libremente su propio desarrollo cultural, religioso, social y económico, así como el derecho a determinar su propia calidad de miembro y/o ciudadano, sin ninguna ingerencia externa.

3. Ningún Estado ejercerá jurisdicción alguna sobre una nación o pueblo indígena, o sobre el territorio de éstos, a menos que ello se haga de pleno acuerdo con los deseos libremente expresados, de la nación o pueblo pertinentes.

4. Las naciones y pueblos indígenas, tienen derecho a controlar y gozar permanentemente de los territorios ancestrales-históricos. Todo ello incluye el derecho al suelo y al subsuelo, a las aguas interiores y litorales, a los recursos tanto renovables como no-renovables, y a las economías basadas en estos recursos.

5. Los derechos a compartir y utilizar la tierra, que obedecen al derecho inherente e inalienable de la nación o pueblo indígena, podrán concederse mediante su consentimiento libre y consciente, tal como quede estipulado por un tratado o acuerdo válido.

6. Descubrimiento, la conquista, y el asentamiento en base a una teoría de terra nullius, ó una legislación unilateral, nunca constituirán argumentos legítimos para los Estados que reivindicuen o mantengan en su posesión los territorios de las naciones o pueblos indígenas.

7. En los casos en que las tierras tomadas en violación de estos principios ya hayan sido ocupados, la naciones o pueblos indígenas pertinentes tendrán derecho a la restitución inmediata de tales tierras, así como a una indemnización por haber perdido la posibilidad de gozar de sus tierras, sin que por ello se termine el título original de la nación o pueblo. Siempre deberá respetarse el deseo de los pueblos indígenas de recuperar la posesión y el control de los lugares sagrados.

8. Ningún Estado deberá participar financiera o militarmente en el desplazamiento involuntario de las poblaciones indígenas, ni tampoco en las consecuente explotación económica y utilización con fines militares de su territorio.

9. Las prácticas y leyes de las naciones y pueblos indígenas deberán ser reconocidas por los Estados en las instituciones judiciales, administrativas y legislativas, y en caso de incompatibilidad con las leyes Estatales, prevalecerán las de los naciones y pueblos indígenas.

10. Ningún Estado denegará a una nación, comunidad o pueblo indígena que viva dentro de sus fronteras, el derecho a participar en la vida del Estado, tal y como de la nación, comunidad, o el pueblo indígena. Esto incluye el derecho a participar en otras formas de acción y expresión colectivas.

11. Las naciones y pueblos indígenas seguirán poseyendo y controlando su cultura material, incluyendo los lugares sagrados, históricos y arqueológicos, así como los artefactos, diseños, conocimientos y obras de arte. Estas naciones y pueblos tienen derecho a recuperar los artículos que revisten una gran importancia cultural, y en cualquier caso, a la devolución de los restos humanos de sus antepasados para que puedan volver a ser enterrados de acuerdo con sus tradiciones.

12. Las naciones y pueblos indígenas tienen derechos a recibir educación y a dialogar con los Estados en sus propias lenguas, así como a crear sus propias instituciones educativas.

13. No se llevará a cabo ninguna investigación social, científica o técnica, incluyendo excavaciones arqueológicas, relativas a los naciones o pueblos indígenas, o a sus tierras, sin la previa autorización de éstos, y su posesión y control continuado.

14. Las prácticas religiosas de las naciones y pueblos indígenas serán plenamente respetados y protegidos por las leyes de los Estados y por el derecho internacional. Las naciones y pueblos indígenas siempre podrán gozar de un acceso ilimitado a los lugares sagrados de acuerdo con sus propias leyes y costumbres, incluyendo el derecho a lo privado.

15. Las naciones y pueblos indígenas figuran en el ámbito del derecho internacional.

16. Los tratados y demás acuerdos libremente concluidos con las naciones y pueblos indígenas se reconocerán y aplicarán del mismo modo y de acuerdo con las mismas leyes y principios internacionales de los tratados y acuerdos concluidos con otros Estados.

17. Las controversias relativas a la jurisdicción, territorios e instituciones de una nación o pueblo indígena constituyen una tema pertinente del derecho internacional, y deberán solucionarse mediante acuerdo mutuo ó tratado válido.

18. Las naciones y pueblos indígenas pueden auto-defenderse de cualquier acción Estatal que no sea compatible con su derecho a la auto-determinación.

19. Las naciones y pueblos indígenas tienen derecho a viajar libremente, y a mantener relaciones económicas, sociales, culturales, y religiosas, los unos con los otros, a través de las fronteras estatales.

20. Además de estos derechos, las naciones y pueblos indígenas tienen derecho a gozar de todos los derechos humanos y libertades fundamentales estipuladas en la Carta Internacional de Derechos y demás instrumentos de las Naciones Unidas. Bajo ninguna circunstancia deberán ser objeto de discriminaciones adversos.

END / FIN

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