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PAPER SUBMITTED TO THE
WORKING GROUP ON
INDIGENOUS POPULATIONS

BY THE

COALITION OF FIRST NATIONS,

In Conjunction With the

INTERNATIONAL INDIAN TREATY COUNCIL

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The colonization of the Indian Nations and their territories by the Anglo-Canadian settlers has resulted in the dispossession of the Indigenous Indian Nations of their territories and their domination by an alien society. The Indian Nations share a common legacy with the Third World of dispossession and foreign control of natural resources, colonization, underdevelopment and poverty. The Indian Nations in Upper North America, like the Third World, have been involved in a struggle to decolonize their relations with the settler governments and to secure a fair share of the lands that have been taken from them. The issues have come into focus in terms of Canadian independence negotiations with Britain and legislative initiatives to finally disperse the Indian Nations. Canada's constitutional and legislative initiatives are a lesson to other states with unresolved Indigenous Peoples' issues on how not to remove a colonial legacy of betrayal and bitterness.

There are many Indian Nations that are represented in the Coalition of First Nations. Each Nation, from the Micmac and Mali'seet Nations on the East Coast to the Liluwat Nation on the West Coast has a long history of oppression and resistance. Each qualifies therefore as a 'people' as defined by the International Court of Justice in the Greco-Bulgarian case, (197O). The member citizens of our Indian Nations are "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, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other".

TRUSTEESHIP AND SELF-DETERMINATION

Aboriginal Rights as understood by our Indian People refer to our rights to self-government and lands as being inherent, derived from our people and supported by the land, not given to us or taken by conquest. Our treaties, where these were made, and various British proclamations recognized our original nationhood

and sovereignty. Our grandfathers and elders who maintain the sacred oral tradition of our Peoples have taught us that these British treaties were guarantees that the colonial powers would respect our sovereignty.

These aboriginal and treaty rights were in the Anglo-Canadian colonial period after 1867 undermined by the unilateral imposition of a debilitating trusteeship system on the Indian Nations without their consent.

This colonial trusteeship system was incorporated by the British Government into the 1867 Canadian 'Dominion' constitution. As Canada emerged as a self-governing dominion, formed from the English settlements and the conquered French colony of Quebec, the Indian nationalities were reduced to the position of being an internal colony of Canada. Colonial trusteeship was defined as public policy in the 1876 Indian Act, which dictated that the Indian Nations would be placed under the direct supervision of a central bureaucracy. The Indian Department's objectives: to assimilate and disperse the Indian Nations and separate them from their lands remain in 1984 as originally conceived. Trusteeship in essence has meant the imposition of a structured program of 'direct rule' and coercive assimilation. Trusteeship is, however, primarily a legal concept that serves as a justification for federal legislation and authority to exercise dictatorial authority over Indians and Indian lands, without consent or legal restraint.

Termination of our distinct political status and absorption of our territories remain Canadian objectives. These goals are both specific and implicit in Canadian constitutional dealings and legislation recently disclosed by the Canadian government an Indian Status and local government.

In this dilemma, the Indian Nations in Upper North America now seek confirmation and sanctions of their right to self-determination in a future non-colonial framework of International Law. The Working Group on Indigenous Populations must not permit the continuation of any form of colonialism by supporting the prevalent notions that self-determination is somehow limited to non-contiguous territory and/or inapplicable to Indigenous enclave populations. The fact that colonialism -- the subordination of a people to foreign and alien rule -- has been in the past seen as 'internal' by colonizing states does not make it more legitimate or acceptable. Self-determination has been authoritatively defined in the Helsinki Final Act as applicable to internal situations. Article VIII states:

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

Any initiative by Canada or any other country with Indige-

nous Peoples towards constitutional renovation or legislative reform must take into account the existence of the right of those Peoples to self-determination.

THE CANADA ACT OF 1982

Canada's new constitution, proclaimed into law in 1982 belongs to Canadian citizens, not the member citizens of the Indian Nations. NO independent Indian nation has ever agreed to submit to she colonizer's constitution, bills of rights, or any other enactment of the Canadian Parliament. The Indian Nations in Upper North America are not now nor have they ever been a part of Canada as citizens or minority populations. Determined to retain our distinct political status, the Indian Nations are involved in a campaign to replace colonial era systems and relationships with mutually acceptable terms of coexistence and cooperation.

Our most reasonable and decent demands for a meaningfully negotiated and just political settlement of the outstanding self-government and land rights issues have not been heeded nor acted on.

Canada's 1982 constitution was approved by the British Parliament with no pre-independence agreement with the Indian Nations on the future of the colonial trusteeship system. Promises were made to certain native people that their rights would be dealt with after Canadian independence. The Coalition of First Nations was not deceived by these 'bogus' negotiations because there are no serious negotiations.

> The 1980 Fourth Russell Tribunal on the Rights of the Indians of the Americas dealt with the right of the Indian Nations in Upper North America to self-determination in the following terms: "As sovereign units of governance, Native Nations possess the inherent right of refusing any incorporation or of being authentically represented as a self-governing unit where their territory has been included in an area claimed by a state apparatus. In other words, a constitution and government cannot be imposed on Indian people without authentic participation and the right of refusal to be incorporated involuntarily is a precondition".

While it is being noted that the established deadline for the identification and definition of aboriginal and treaty rights to be included in Canada's constitution has been extended by the most recent Accord. We must point out that every lever of power in these constitutional conferences remains entrenched in non-Indian hands. In the final analysis, these conferences have been deliberately emasculated and structured as a programmed failure.

BILL C - 52

The most recent legislative development in relation to Indigenous Peoples was tabled last month in the Canadian Parliament, called Bill C-52, "An Act relating to self-government for the Indian Nations", are simply a continuation of internal colo-

nialism. The government of Canada is representing Bill C-52 and its successor as fulfilling a commitment to Indigenous Peoples' right to self-government. This is the most gross mis-representation of what this law actually sets out to do. Both general and specific measures proposed in Bill C-52 violate the rights of the Indian Nations to self-determination in many areas.

(a) Jurisdiction:

The Indian Nations have never agreed to the application of British or Canadian colonial law to their territories and their peoples. The imposition of colonial rule began when Indian lands were arbitrarily annexed by the British through the Royal proclamation of 1763, the Rupert's Land Transfer of 1870 and other British Acts. Trusteeship was thereafter unilaterally decreed over the inhabitants of these territories and they were considered to be subjects of the colonizer. The Indian Nations in 1984 find themselves limited to arguing their case for self-governing authority within the context of a colonial legal system which is not ours. Racist colonial era concepts and standards regarding treaties and trusteeship continue to be applied and amplified in political discussions on Indian self-government and legal decisions. A relevant context for negotiations on Indigenous Peoples' self-determination needs to be established, based on equal rights of peoples and self-determination. The Working Group on Indigenous Peoples can assist in not only creating an acceptable context, but can and ought to recommend how third party involvement in negotiations can be accomplished.

Bill C-52 not only maintains the trusteeship internal colony system but seeks to extend this and give the appearance of a grant of local self-government. The essential nature of the existing colonial relationship is not changed, but the bill attempts to make it appear as though the Indian Nations have the freedom to consent to Canadian jurisdiction. There is no choice, Indian Peoples must either choose to live under the existing Indian Act or under another new oppressive legal framework. In either case, they must live under a colonial regime.

Once the revised legal regime is approved by Parliament, the Indian Nations would be systematically coerced into an acceptance of the model. The Indian Nations will be starved into submission and cut off from development aid guaranteed by the treaties. The existing Indian Act and the proposed bill violate the right to self-government which must according to the Helsinki Final Act be exercised "in full freedom" and "without external influence".

(b) Inherent Rights Vs. Delegated Authority:

The political standing of the Indian Nations was recognized by the treaties between the British and the Indians, but these political compacts as understood by the Indigenous Peoples did not provide for the incorporation of our people or territory into the Anglo-Canadian settler society. Bill C-52 provides for a new scheme of 'approval' of local government charters by the Canadian constitutional system. (Section 6) The bill must be viewed in the context of the failure of the last two constitutional conferences.

It is deliberately designed to preempt and prejudge any negotiated political settlement on Indian self-government and territorial questions. Self-government and control of a resource base are synonymous. It is clear that Canadians are not willing to recognize Indian self-governing institutions and authorities in its constitution as some natives on colonial advisory councils have urged.

Bill C-52 does not recognize the inherent rights of the Indian Peoples but only describes a form of local administration which has a statutory basis. It is a well-established and uncontroversial principle of International Law that the laws of local inhabitants continue to have the force of law until they are specifically altered by the dominant power after conquest. Existing Canadian policy is based on the precept that the Indigenous Peoples were totally uncivilized, had no Indigenous polity and therefore Indian laws were not recognized. This colonist policy is strictly enforced and Indian laws rigorously suppressed so as to transform the 'native' into a carbon copy of the colonizer.

Existing Canadian policy on Indian Governments (called band councils under the Indian Act) is that these are mere extensions of the Federal Government. This unilaterally imposed legal and political status is elaborated in Bill C-52 wherein a 'legal entity' would be created and supervised by both Federal and Provincial legislatures. Bill C-52 is designed to create an avenue for terminating 'the' external political status of Indian Nations as a trade-off for delegated municipal-type powers and authority which can be rescinded at the pleasure of Canada.

(c) Colonial Rule:

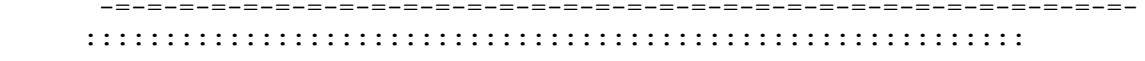
Implicit in colonial relations between settler and Indigenous people is the belief that the Indigenous Peoples must be taught how to best administer their affairs, according to non-Indigenous criteria. Bill C-52 prescribes standards for the respect of individual rights and accountability of Chiefs and Councils to members of Indian communities. These matters are essentially matters internal to the government of the Indian Nations over which no foreign and alien power can rule. If this principle is not respected there is no real self-government. The Indian Nations have been vigilant in preserving their internal autonomy despite 100 years of federal legislation designed to overturn Indian governments. The Indian Nations have maintained their internal structural integrity through an unceasing respect for the rights.of communities, families and individuals. As Peoples in International Law possessing self-determination, the Indian Nations do not disagree with the proposition that they are bound by International human rights, norms or standards. The interpretation of these norms and standards must be left to the Indian Nations, not to Canada. We realize that a great deal of the developments of Human Rights deals with individual rights but our rights as a people are collective. We realize this concept causes & great deal of difficulty with most members associated with the United Nations. Thus to give individual rights over collective rights is a death knoll to our community.

The question of accountability must be seen in a larger perspective. The Canadian Parliament is not elected by the Indian Peoples and does not represent them. Under trusteeship, with the program of coercive assimilation, the limited reserve land base has been greatly diminished. The taking of Indian Lands by whatever means is considered an act of state that the courts will not review. Bill C-52 provides for the continued control of Indian lands by the Federal Government. Such control is now used to disperse reservation lands. In addition, Chiefs and Councils are unable to get an accounting of their trust funds, derived from the sale of reservation lands. Under the doctrine of Crown immunity, the Government, Minister of Indian Affairs of the Indian Department bureaucracy cannot be held accountable for their actions as regards Indian resources in the courts. Annexation and the destruction of the reserves are unquestionably violations of the rights of the Indian Nations to permanent sovereignty over their natural resources, as provided for in General Assembly Resolution 1803. In addition, the denial of the "right to an effective remedy" for violations of fundamental rights is contrary to Article 8 of the Universal Declaration of Human Rights. (G.A. Res. 217 A III).

For these reasons, we would urge the Working Group to consider a recommendation to the Sub-Commission that the extension of the principles of the U.N. Trusteeship System cover Indigenous enclaves. The standards and obligations enunciated in the U.N. Charter on non-self-governing and trust territories, Chapter 11, Article 73 must apply to self-determining Indigenous People, especially the provisions regarding accountability to the international community. Only when there is some accountability of states will there be some protection of Indigenous Peoples' rights and territories against further annexations and encroachments.

Conclusion

The Indigenous nationalities in Upper North America are 'Peoples' possessing a right to self-determination. This right exists whether or not the country of Canada chooses to recognize and respect it. The Coalition of First Nations believes in and is acting on their rights to self-government and sovereignty. This means that the process of decolonization can be accomplished through dialogue and mutual respect, or through unproductive conflicts in response to unilateralism. It is clear that contrary to its claims before this forum and in others, Canadian public policy on trusteeship internal colonization has not been altered. Unilaterally initiated constitutional renovation and/or legislation is not an acceptable substitute for the achievement of self-determination by negotiation and agreement. The continuation of colonial era legal formulations as the basis for negotiations is unacceptable. Adequate provisions for the respect of basic principles, and the self-determination of peoples in an enforceable international framework remains a prerequisite to peaceful decolonization.



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