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File No. Dossier 45-CDA-13-1-3 LUBICON LAKE BAND

Volume 4 From-De 86-06-01 To-A 86-08-31

VOLS ACCESSION NO. 43664



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45-CDA-13-1-3-LUBICON LAKE
Vol 4

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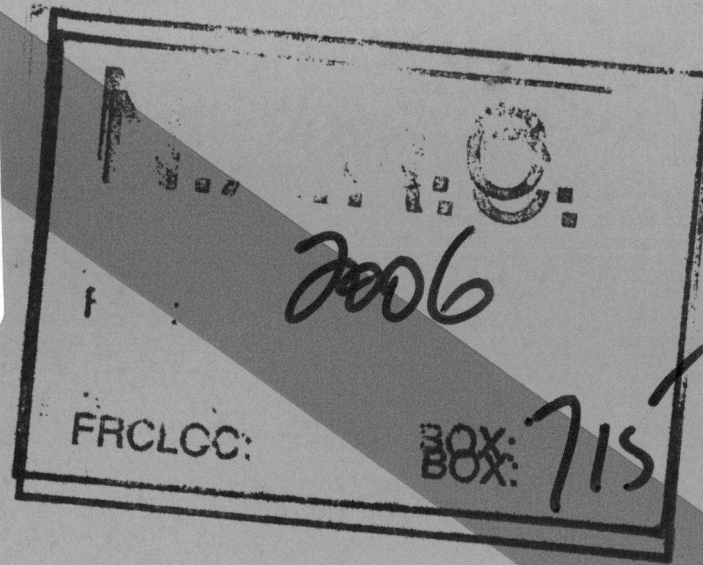
TITLE—TITRE:

SOCIAL AFFAIRS
HUMAN RIGHTS
POLICY AND PLANS
CANADA
COMPLAINTS TO UNITED NATIONS ABOUT VIOLATIONS IN
CANADA—
LUBICON LAKE BAND

AFFAIRES SOCIALES
DROITS DE L'HOMME
PRICIPES ET PROJETS
PLAINTES AUX NATIONS UNIES AU SUJET DES VIOLATIONS
AU CANADA
LUBICON LAKE BAND

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EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

File

TO
A The Permanent Mission of Canada
to the United Nations, GENEV

FROM
Do The Under-Secretary of State for
External Affairs, OTTAWA (JLO)

REFERENCE
Référence JLO numbered letter 1128, 23 June 1986

SECURITY UNCLASSIFIED
Sécurité

DATE August 12, 1986

NUMBER JLO - 1419
Numéro

SUBJECT
Sujet Human Rights Committee: Optional Protocol:
Communication No. 167/1984: Lubicon Lake

FILE	DOSSIER
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ENCLOSURES
Annexes

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Attached are two copies of the French translation
of the observations of the Canadian government provided
in English to you under cover of the numbered letter
under reference.

We would be grateful if you would provide one
copy to the Centre for Human Rights for their records
under cover of a diplomatic note which should refer
to your earlier note by which the English version of
these observations was provided to the Centre.

[Signature]
Under-Secretary of State
for External Affairs

RÉPONSE ULTÉRIEURE DU GOUVERNEMENT DU CANADA QUANT À LA
RECEVABILITÉ DE LA COMMUNICATION DU CHEF BERNARD OMINAYAK
ET DE LA BANDE DE LUBICON LAKE

I. Généralités

Le Secrétaire général des Nations Unies, dans sa note No. GSO 215/51 CANA (38) 167/1984, demandait au gouvernement du Canada d'informer le Comité des droits de l'homme, au plus tard le 2 juillet 1986, de l'issue de l'examen de l'envoyé spécial et de ses recommandations, ainsi que de toute mesure que le gouvernement du Canada a prise ou aurait eu l'intention de prendre à cet égard. En outre, le Secrétaire général a transmis, au gouvernement du Canada, la communication ultérieure du plaignant, datée du 2 juillet 1986.

II. Le processus de règlement négocié

Le gouvernement du Canada signalait, dans ses observations du 31 mai 1985 (à la p. 10), qu'en ce qui concerne la question d'avoir épuisé les recours internes, des recours autres que des procédures administratives et juridiques devraient également être envisagés. À cet égard, on fait remarquer (à la page 12) que M. E. Davie Fulton a été nommé à titre d'envoyé spécial par le ministre des Affaires indiennes et du Nord, en mars 1985, pour rencontrer les représentants de la bande, d'autres communautés autochtones et la province de l'Alberta, afin de revoir la

-2-

situation dans son ensemble et de formuler des recommandations. M. Fulton a remis son rapport au gouvernement le 29 novembre 1985, et un addendum, le 10 février 1986. Une copie du rapport et de l'addendum se trouve ci-jointe à titre d'Annexe I.

La bande mentionne, à la p. 9 du Supplément No. 2, que dans les quelques jours suivant le dépôt du rapport de M. Fulton, les gouvernements fédéral et provincial ont retiré leur appui aux procédures, que l'enquête a été close, et que M. Fulton a été réaffecté à un tout autre poste. En réponse, le gouvernement du Canada souligne que M. Fulton avait été nommé de façon temporaire dans le but de recueillir des faits, qu'on n'avait jamais eu l'intention de le nommer de façon permanente et que la négociation ne faisait pas partie de son mandat. Toutes les parties en cause dans l'enquête Fulton connaissaient dès le début ces conditions. De plus, peu après le dépôt du rapport de M. Fulton, le gouvernement du Canada, sur la foi des renseignements contenus dans le rapport, a nommé M. Roger Tassé pour agir à titre de négociateur, selon les particularités exposées ci-après. En aucun moment, le gouvernement du Canada ne s'est retiré du processus de négociation ni ne l'a abandonné.

Le 20 décembre 1985, peu après la réception du rapport de M. Fulton, un représentant du gouvernement fédéral a rencontré les représentants de la bande pour discuter des façons d'entreprendre des négociations complètes en vue d'en arriver à un règlement définitif. À ce moment-là, la bande a demandé que M. Fulton entreprenne une autre série de consultations afin de clarifier

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plusieurs points de son rapport. Le gouvernement a accepté et, en conséquence, M. Fulton a déposé un addendum et des correctifs le 10 février 1986.

En outre, lors de la réunion du 20 décembre 1985, le gouvernement du Canada a proposé les modalités ci-après aux fins de négociations:

- (1) que les parties entreprennent des négociations intensives pendant deux mois à compter de mars 1986;
- (2) que, durant cette période, toutes les parties évitent de "négocier dans la presse"; et
- (3) que la province de l'Alberta soit présente aux négociations à titre d'observatrice.

Le 24 décembre 1985, la bande a avisé le gouvernement du Canada de son acceptation des modalités précitées. En outre, le 8 janvier 1986, le gouvernement fédéral a payé, à la bande, une somme de 1,5 million de dollars pour couvrir les frais juridiques et autres frais liés à la présentation de sa revendication.

Le 18 mars 1986, après avoir été avisée que la structure des négociations était en place, la bande a demandé la tenue d'une réunion préliminaire avec les représentants du gouvernement fédéral et M. Tassé. Lors de cette réunion, qui a eu lieu le 27 mars 1986, la bande a laissé savoir qu'elle n'était pas disposée

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à ce que l'Alberta participe aux négociations en quelque qualité que ce soit, contrairement aux modalités qu'elle avait antérieurement acceptées.

Le gouvernement fédéral est d'avis qu'il serait extrêmement important de penser à un mécanisme qui mettrait en cause la province de l'Alberta, pour que l'on puisse vraiment réussir à résoudre les revendications de la bande de Lubicon Lake. En effet, les terres que la bande revendique sont des terres de la Couronne qui appartiennent à la province, et certaines parties de ces terres sont assujetties à des permis d'exploitation des ressources décernés sous le régime du droit provincial. De plus, beaucoup d'autres éléments de la revendication, comme la croissance économique, l'emploi et l'éducation, relèvent de la compétence provinciale.

Néanmoins, le gouvernement du Canada a accédé à la demande de la bande, et, le 28 mai 1986, il a consenti à la tenue de négociations bilatérales entre la bande et le gouvernement fédéral, où M. Tassé agirait comme négociateur. Le 3 juin 1986, les échanges se sont amorcés entre les parties, et le 30 août 1986 a été fixé comme date cible pour parvenir à une entente. Au même moment, M. Tassé mènera des entretiens parallèles avec l'Alberta, dans l'espoir que des négociations tripartites deviennnent possibles une fois que le processus bilatéral aura connu un progrès significatif.

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Le gouvernement du Canada soutient que ses démarches, comme on le mentionne précédemment, prouvent que des mesures expéditives et substantielles sont prises en vue du règlement des revendications de la bande de Lubicon Lake et que le gouvernement fédéral est, et continue d'être, sincèrement disposé à trouver une solution. De plus, le gouvernement du Canada soutient qu'il a fait tous les efforts raisonnables pour répondre aux désirs de la bande dans le processus de négociation.

III. Commentaires sur la communication ultérieure du plaignant en date du 9 avril 1986

(i) Les contestations judiciaires

La bande allègue, à la page 3 du Supplément No. 2, que ses deux causes portées devant les tribunaux se sont achoppées à des questions de procédure et que c'est seulement maintenant que le procès pourra avoir lieu. En ce qui a trait aux précisions des contestations judiciaires, nous nous référons aux observations du Canada du 31 mai 1985. Ces observations laissent entendre que tout délai judiciaire a été causé par les procédures provisoires amorcées par la bande, et par le fait que cette dernière contestait des questions de droit procédural clairement établies. Le gouvernement du Canada réitère que la bande de Lubicon Lake n'a pas achevé les véritables recours internes dont elle dispose, et qu'il n'est responsable d'aucun délai quant à l'exercice de tels recours.

(ii) Fausse représentations

Dans ses communications antérieures, la bande de Lubicon Lake a fait des allégations non fondées, qui attaquent l'intégrité et l'honnêteté du gouvernement et de la magistrature du Canada.

Dans les observations antérieures du gouvernement, ces allégations sont mentionnées et niées (aux pages 20-22). Des fausses représentations semblables ont été faites dans le Supplément No. 2 de la bande. Voici les plus sérieuses d'entre elles:

- (1) À la p. 3, on dit que la demande d'injonction provisoire a été entendue et rejetée par un juge qui est clairement lié aux sociétés d'exploitation de l'énergie dans la région, enlevant ainsi à la bande tout recours efficace qu'elle pouvait exercer selon le système juridique interne. Il s'agit là d'une affirmation non prouvée, dirigée contre un juge dont l'indépendance n'est pas mise en doute.
- (2) Toujours à la p. 3, on dit que plusieurs incendies de forêt majeurs sont survenus dans la région, et qu'on les a laissés se poursuivre jusqu'à la limite, détruisant ainsi tout le gibier qui restait. L'allégation voulant qu'on ait laissé brûler des forêts intentionnellement est non fondée.

Le gouvernement du Canada s'en remet à ses observations antérieures du 31 mai 1985 et réitère que le fait de soumettre des allégations aussi graves et non fondées constitue un abus du

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droit de présenter une communication en vertu du Protocole facultatif, et que la communication devrait être rejetée pour ces motifs, conformément à l'article 3 du Protocole.

(iii) Divers

La bande soutient, dans le Supplément No. 2, qu'elle est victime d'un génocide, allégation que le gouvernement du Canada rejette totalement. Si le Comité des droits de l'homme juge nécessaire de se pencher sur cette allégation, le gouvernement du Canada se réserve le droit de présenter des arguments sur cette question à une date ultérieure.

IV. Conclusion

Pour les motifs susmentionnés, outre les motifs que renferment nos observations du 31 mai 1985, le gouvernement du Canada soutient que le Comité devrait déclarer irrecevable la communication présentée par le chef Ominayak en vertu du Protocole facultatif.

6 août 1986

JLO/C.SWORDS

Department of External Affairs



Ministère des Affaires extérieures

Canada

OTTAWA, ONTARIO
K1A 0G2

JLO-1394

August 8, 1986

CONFIDENTIAL

Mr. R. Coulter
Policy Branch-Land, Revenue and Trusts
Indian and Northern Affairs Canada
Les Terrasses de la Chaudière
10 Wellington Street
16th Floor, Room 1659
North Tower
Hull, Quebec

DATE	
ACC	459351
REF	
FILE	45-CDA-13-1-3-LUBICON LAKE BAND
BY HAND	PAR PORTEUR
ATTN:	

Dear Mr. Coulter:

Re: Lubicon Lake Band

At the meeting held on July 25, 1986 to review the status of the complaint of the Lubicon Lake Band, you requested our views on the international aspects of this claim for inclusion in a risk assessment you are preparing with respect to the option of returning to negotiations or allowing the matter to proceed through the Canadian courts.

First, we would suggest that your assessment should indicate that the international dimension of the Band's claim, while certainly significant, and high profile is not the primary thrust of its claim. International action appears to be an extra bargaining tool that the Band is using to advance its claim domestically. The Band will not achieve its goal of obtaining land and monetary or land compensation for past wrongs through international fora. But it can, and is, using international fora to put increased pressure on the government to satisfy its demands.

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One of these bargaining tools is their complaint submitted in 1984, to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). In this complaint, the Band is alleging, inter alia, that they have been denied the right of peoples to self-determination under article 1 of the ICCPR. Self-determination is a concept that has not been clearly elaborated upon in a definitive fashion under international law, though it is frequently used in connection, for example with the rights of the Palestinians to a homeland or the right of states under colonial rule to establish their own state.

The Human Rights Committee has not yet made a ruling in any case on self-determination under the ICCPR. Thus, any ruling on substance would constitute a major precedent on article 1 that might have far reaching implications. In the worst case scenario, if the Human Rights Committee ruled that the Band was the victim of a violation of article 1, it might have serious implications for the nature of self-government for all Indian bands in Canada and could conceivably result in Canada renouncing the Optional Protocol to prevent any further rulings of this significance against us. This is, of course a worst case scenario, and it is not entirely clear that the Human Rights Committee would be prepared to make such a ruling.

Proceedings before the Human Rights Committee are generally dealt with in two stages: the admissibility stage and the merits stage. The complaint of the Lubicon Lake Band is still in the admissibility stage where the primary issue is whether the band has exhausted all available domestic remedies. The Canadian government has argued that (i) the band has not pursued domestic judicial remedies to completion and (ii) continuing attempts to reach a negotiated settlement constitute a domestic remedy that should be considered in addition to judicial remedies, (iii) one Indian band is not a "people" within the meaning of article 1 of the ICCPR, and (iv) that the Optional Protocol is a complaint procedure for individuals and should not be invoked to support collective rights such as that in article 1.

At its meeting that concluded on July 25, 1986, the Committee did not make a ruling on admissibility. We understand that the Committee is split on the issue raised in (iv) above. In addition, the Band filed more comments

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dated 30 June repeating their arguments on the futility of exhausting domestic judicial remedies, mentioning the Dutch European parliamentarian, Van Tilburg's, condemnatory conclusions and referring to the negotiations headed by Mr. Tassé suggesting that his mandate is to give the Band as little as possible.

In our opinion, if the Band recommences its court action, the Human Rights Committee would be hard pressed to make a ruling that the complaint was admissible and should be considered on the merits since the Band itself would be pursuing domestic remedies. Should a negotiated settlement be reached in a reasonable period of time, it is unlikely that the Committee would attempt to take up such a controversial legal issue as self-determination as a matter of principle. In short, whether negotiations or court proceedings are chosen it is unlikely that the Human Rights Committee would make a ruling on admissibility, although a negotiated settlement would likely result in the complaint being ruled inadmissible sooner. From the point of view of timing, we would note that the Human Rights Committee meets in March, July, and November each year. Thus its deliberations tend to take some time as there is little activity on complaints in the interim period between meetings. Due to financial constraints, the November session of the Human Rights Committee has been cancelled for 1986.

With respect to the possibility of a resolution, to be introduced by a Dutch member of the European Parliament, van Tilburg, which might condemn Canada for its treatment of the Lubicon Lake Band and perhaps call for an olympic boycott by European states, we are attempting to obtain further information on this possibility from our embassy in Brussels that is responsible for following the European parliament. Such an action would undoubtedly be embarrassing, but could be replied to, if not prevented, if it was clear that the Canadian government was doing its utmost to rectify a past wrong and had indeed offered a significant parcel of land and compensation. This position would undoubtedly be easier to argue if the negotiation route was pursued to a successful conclusion.

From a public relations perspective, there are several other international fora to which Lubicon Lake might take its plight. Human rights issues are discussed by governments at the UN General Assembly in the autumn of

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each year, at the Commission on Human Rights which meets for 6 weeks in Feb-March each year and at a follow up meeting in Vienna of the Conference on Security and Cooperation in Europe (CSCE), a major East-West fora scheduled to start in November. Canada generally utilizes each of these bodies to make comments on the human rights situation that prevails in certain other countries. In response, some countries, particularly those from the Eastern bloc, have attacked Canada in areas where they consider we are vulnerable, frequently in our treatment of our indigenous populations. The Lubicon Lake Band might well attempt to feed into such attacks. While it is of course possible to exercise a right of reply to explain that a negotiated settlement or court proceedings are being pursued, such allegations against Canada internationally are clearly embarrassing and undermine to some extent our credibility in objecting to human rights abuses in other countries. Such embarrassment would be minimized, if not eliminated, if an early settlement were reached at the domestic level.

We trust this provides sufficient information for your risk assessment.

Yours sincerely,



Howard Strauss
Acting Director
Legal Operations Division

c.c. IMH
JUSTOTT/Weiser

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Subject : Human Rights Committee :
Lubicon Lake

Our telegram YTGR5653 of
August 6, 1986

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to in reftel.

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LUBICON LAKE BAND GRIEVANCES

<u>ISSUE</u>	<u>BAND CLAIM</u>	<u>FULTON POSITION*</u>	<u>ALBERTA POSITION TO DATE</u>	<u>FEDERAL OFFER</u>
1. Entitlement to a reserve				
a) 1940 reserve	<ul style="list-style-type: none"> . 25.4 sq miles . Full mineral rights 	<ul style="list-style-type: none"> . Supports claim 	<ul style="list-style-type: none"> . Supports claim but: <ul style="list-style-type: none"> - Band must drop suit - 3rd party interests to be resolved . Land to be provided at no cost 	<ul style="list-style-type: none"> . Supports claim <ul style="list-style-type: none"> - not conditional on dropping suit - 3rd party interests to be resolved
b) additional land	<ul style="list-style-type: none"> . 40-50 sq. miles . 128 a/person x current band population (350-400) . Mineral rights 	<ul style="list-style-type: none"> . Supports band claim subject to verification of valid band pop. . Questions validity of band pop. claims . Mineral rights 	<ul style="list-style-type: none"> . Admits no legal liability to provide further land . Additional land may be available at fair market value 	<ul style="list-style-type: none"> . offer based on 196 Indians presently registered with the Band . Canada has some flexibility on quantum of land . Mineral rights
2. Wildlife and Environmental Protection	<ul style="list-style-type: none"> . Management authority over traditional area 	<ul style="list-style-type: none"> . Supports Band involvement in management within a framework acknowledging the interests of other parties 	<ul style="list-style-type: none"> . Does not accept Band authority as aboriginal right . Willing to discuss Band involvement as a policy matter 	<ul style="list-style-type: none"> . Concurs with Alberta position . Area of prov. jurisdiction

* Mr. Fulton has not issued formal recommendations. The positions outlined here are based on material contained in the Discussion Paper written by Mr. Fulton as well as discussions with him.

L.L. - Land Claim

- 2 -

<u>ISSUE</u>	<u>BAND CLAIM</u>	<u>FULTON POSITION*</u>	<u>ALBERTA POSITION TO DATE</u>	<u>FEDERAL OFFY</u>
3. Employment opportunities and job training	. Comprehensive program of job training and preferential hiring	. Supports provincial/federal action to promote Band employment & training	. Prepared to discuss application of existing programs to assist Band	. Primarily provincial responsibility . Appropriate federal programs to be coordinated with prov. programs
4. Compensation for past losses on 25.4 sq. miles (i) Oil & gas (ii) Treaty Benefits (iii) Programs and Services	. Compensation for all oil & gas revenues received by Alberta Compensation for lost benefits (e.g. agricultural implements & livestock Compensation for all programs and services lost since 1899	. Supports claim . Suggest Canada should pay because of failure to estb. reserve Supports claim Supports subject to verification of real net loss incurred	. Does not accept liability Federal responsibility Federal responsibility	. Supports compensation in principle . Responsibility for payment to be negotiated between Canada and Alberta Supports reasonable compensation consistent with similar past claims Possible compensation for net loss since 1948 . To be considered in conjunction with "catch-up" program
5. Compensation for past losses on "traditional area" (i) Trapping & Hunting	. Compensation for loss resulting from disruption of traditional pursuits . Claim based on unextinguished title	. Questions validity of title as a basis of claim . Supports appropriate compensation as a remedial measure	. Rejects aboriginal title as basis of claim . Will consider compensation to assist trappers	. Rejects aboriginal title . Supports application of provincial programs.

<u>ISSUE</u>	<u>BAND CLAIM</u>	<u>FULTON POSITION*</u>	<u>ALBERTA POSITION TO DATE</u>	<u>FEDERAL OFFER</u>
(ii) Oil & Gas	. Claims all oil & gas revenue derived from traditional area based on unextinguished aboriginal title	. Questions validity of title as a basis of claim	. Rejects aboriginal title claim . No compensation due	. Supports Alberta position
6. Compensation for future losses in the traditional area				
(i) Hunting & Fishing	. Compensation for future losses resulting from development . Based on title claim	. Questions validity of title argument	. No claim based on title . Existing compensation programs to be applied	. No claim based on title . And will control access to future reserve lands
..... (ii) Oil & Gas revenues All future revenues from traditional area unextinguished based on title Questions validity of title argument No claim based on title No claim based on title
7. Compensation for Band costs to date	. All costs incurred in pursuing claim	. Supports reasonable compensation	. Assumes no liability	. \$1.5M ex gratia payment (January 8, 1986) . Will consider other costs as part of negotiations
8. Catch-up program	. Comprehensive program to establish community programs and facilities comparable to other bands	. Supports in principle	. Federal responsibility	. Full services and infrastructural to be provided over reasonable period
9. Self-government & membership	. Right to self-government & control over membership	. Supports	. Federal responsibility	. Band eligible under existing policies & legislation

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CENTRE POUR LES DROITS DE L'HOMME



UNITED NATIONS OFFICE AT GENEVA

CENTRE FOR HUMAN RIGHTS

Télégrammes : UNATIONS, GENÈVE

Télex : 28 96 96

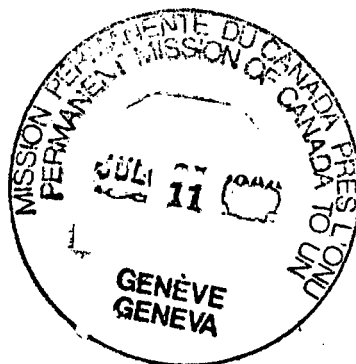
Téléphone : 34 60 11 31 02 11

RÉF. N°: G/SO 215/51 CANA (38)

(à rappeler dans la réponse) 167/1984

Palais des Nations

CH - 1211 GENÈVE 10



The Secretariat of the United Nations (Centre for Human Rights) presents its compliments to the Permanent Mission of Canada to the United Nations Office at Geneva and has the honour to acknowledge the receipt of the Permanent Mission's note No. 141, dated 1 July 1986, enclosing the response of the Government of Canada, dated 23 June 1986, to the Human Rights Committee's interim decision of 10 April 1986 in case No. 167/1984 under the Optional Protocol to the International Covenant on Civil and Political Rights.

For information and to complete the files of the State party, copies of the author's response, dated 30 June 1986, to the Committee's interim decision are enclosed herewith.

9 July 1986

VAN NESS, FELDMAN, SUTCLIFFE & CURTIS

A PROFESSIONAL CORPORATION

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HOWARD ELIOT SHAPIRO

June 30, 1986

Jakob Th. Moller
Chief,
Communications Unit
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Palais des Nations
CH-1211 Geneve 10
Switzerland

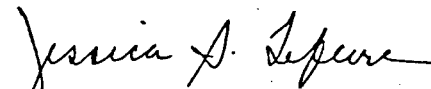
RE: Communication No. 167/1984

Dear Mr. Moller:

Thank you for your letter of May 2, 1986, and the accompanying interim decision of the Human Rights Committee. This letter and the enclosed Supplement are submitted in compliance with operative paragraph 2 of the Committee's April 10, 1986 interim decision.

We are grateful for the Committee's consideration and assistance in this matter.

Sincerely,


Jessica S. Lefevre

SUPPLEMENT TO COMMUNICATION NO. 167/1984

SUBMITTED BY CHIEF BERNARD OMINAYAK

AND THE LUBICON LAKE BAND OF ALBERTA, CANADA

June 30, 1986

On February 14, 1984, Chief Bernard Ominayak and the Lubicon Lake Band, with the assistance of Jessica S. Lefevre, submitted Communication No. 167/1984 ("Communication") to the Human Rights Committee ("Committee") for its consideration. Subsequently, two additional supplements, dated March 27, 1985, and April 9, 1986, were submitted. The present Supplement to the Communication is submitted for the purpose of informing the Committee of events occurring since the submission of the April 9, 1986, Supplement.

The Committee may wish to note three points with regard to recent events concerning the situation of the Lubicon Lake Band. First, there has been no substantive progress in any of the court proceedings since the Band's submission of its March 27, 1985, Supplement. As reported at that time, the Band's request for an interim injunction to halt the oil development which has destroyed the subsistence livelihood of its people, was denied and the Supreme Court of Canada refused to grant leave to appeal the denial. (See March 27, 1985 Supplement, pg. 6-8). The development and the destruction, therefore, continue unabated. The Band's attorney is continuing to pursue the claims through the courts despite the

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fact that the Band is unable to provide financial support for the effort and that there is no possible hope of resolution for the next several years. Therefore, the Band has no basis for altering its previous conclusion that, for all practical purposes, its domestic judicial remedies have been exhausted.

Second, the April 9, 1986 Supplement presented a description of attempts at a negotiated settlement to the Lubicon Lake issues. At the time that Supplement was transmitted to the Committee, Mr. E. Davie Fulton, the Federal Government's special investigator, had recently been relieved of his responsibilities with regard to the Lubicon Lake situation, following the submission of his "Discussion Paper" to the Federal Government of Canada. In the Discussion Paper, which was to have provided a starting point for the negotiations, Mr. Fulton reached much the same conclusion as the Band itself; that the Canadian Government must bear the blame for the situation at Lubicon Lake and that the resolution of the problem is up to the the Federal Government. His report also suggested a land settlement based on the Band's current population and recognized the importance of providing the Band with wildlife management authority throughout its hunting and trapping territory. The land settlement proposed by Mr. Fulton, which would result in a reserve significantly larger than the 25 square mile reserve the Band was promised in 1940, is consistent with the position of the Band with regard

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to this issue and conforms to the terms of Treaty 8.^{1/}
Mr. Fulton also recommended that Alberta compensate the Band for damage caused by the unrestricted oil and gas development for which it has issued leases within the Band's territory. In addition to relieving Mr. Fulton of his responsibility in the matter, the Federal Government, to date, has refused to make his Discussion Paper public.

Negotiations concerning the Lubicon Lake situation did not actually commence until June 3, 1986. Roger Tasse, a Toronto based lawyer, was appointed to succeed Mr. Fulton as the Federal Government's negotiator. Mr. Fulton's Discussion Paper, which was originally intended for use in the negotiations, is no longer part of the agenda. Mr. Tasse has been instructed to offer the Band no more than 25 square miles as a reserve, a substantially smaller area than the Band requires, given the present size of its population, and to which it would be entitled under Treaty 8. It appears that Mr. Tasse's mandate is to give the Lubicon Lake people as little as possible, and to close the books on this issue as quickly as possible, regardless of the fairness of the ultimate resolution.

Finally, we wish to inform the Committee that three weeks ago, John Van Tilborg, a member of the European Parliament from

^{1/} Treaty 8 covers this area of Canada. The Lubicon Lake Band was excluded from the Treaty when it was originally enacted due to an oversight by the Federal Government.

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the Netherlands, visited the area. Prior to his visit, Mr. Van Tilborg was briefed on the Lubicon Lake issue. He also read the World Council of Churches report on the situation of the Lubicon Lake Band, which states that the current development policies and activities being pursued by the Provincial Government of Alberta and the energy corporations are resulting in the genocide of the people of Lubicon Lake. During his visit, Mr. Van Tilborg flew over the area in a small plane and spent several days visiting with the people. Upon concluding his tour, Mr. Van Tilborg reported that in spite of having followed the issue for over a year and having read the reports of genocide, he was totally unprepared for the devastating reality which he encountered. He concluded that even the strong language of the World Council of Churches report is wholly inadequate to describe what is actually being done to the Lubicon Lake Band.

In conclusion, we would like to respectfully suggest to the Committee that the adequacy of a State Government's attempts to redress issues such as those presented by the situation of the Lubicon Lake Band should be assessed not only in procedural terms - i.e., the availability of domestic fora - but also in terms of the Government's manifest intent in making such fora available. We are all aware that procedural mechanisms may be employed for the purpose of delaying or even thwarting substantive outcomes, just as easily as they are

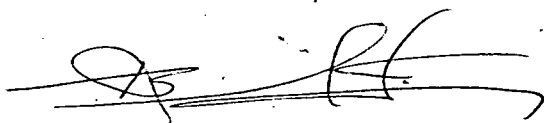
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employed for the solution of substantive issues. Moreover, we might expect that a State Government which, in its international relations, espouses the highest ideals of human rights, would ensure that its domestic fora provide its people just and expedited solutions to human rights issues within its own borders.

In the present circumstances, citizens of Canada, a special investigator appointed by the Federal Government of Canada, and two highly respected, independent international observers have all offered public testimony regarding the appalling abuse of human rights and human life presently being suffered by the Lubicon Lake people in Alberta, Canada. Yet the clear intent of the Federal Government of Canada in addressing this situation is to utilize its own domestic fora, as well as the international sphere to which the Lubicon Lake Band has appealed, to obfuscate the real human issues by focusing on procedural technicalities and to thereby delay indefinitely any consideration of the substantive issues presented. Rather than seeking a solution consistent with its espoused position on human rights, Canada apparently intends to continue "addressing" the problem in this manner until all issues have been mooted by the ultimate destruction of the Lubicon Lake Band.

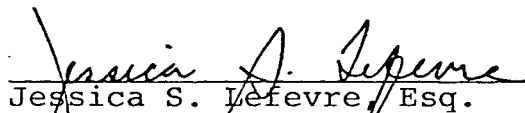
The author of this communication is prepared to provide further information or clarification which may be desired, and reserves the right under Provisional Rule 93(3) to submit additional information and observations after receiving the reply of the government of Canada.

Submitted by:



Bernard Ominayak
Chief of the Lubicon Lake Band
Little Buffalo Lake
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Prepared with the assistance of:



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SANTEIOI MAOAIOMI MIKMAOEI

» GRAND COUNCIL MIKMAQ NATION «

23 February 1986

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Jakob Th. Moller
Chief, Communications Unit
Centre for Human Rights
United Nations Office at Geneva
Palais des Nations
CH-1211 Geneva 10

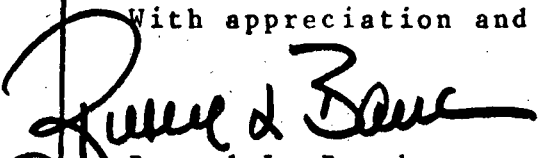
Dear Mr. Moller:

I have the honour to place before the Human Rights Committee the attached communication under the Optional Protocol to the Covenant on Civil and Political Rights. Signed certifications by officers of the Grand Council are contained in the body of the document.

This communication raises a new concern that has arisen since the Committee's 1984 action in *Alexander Denny v. Canada*, R.19/78, but much of the factual and legal background remains the same. We have restated this background in the new document, and also referred to the State Party's Rule 91 replies of 21 July 1981 and 10 June 1982, which we trust will be considered as included in this new case.

I will have an opportunity to visit your office later this month to verify the registration number of this new communication for our records.

With appreciation and best wishes,


Russel L. Barsh
Agent

() / foreign affairs

31 / REPLY TO:

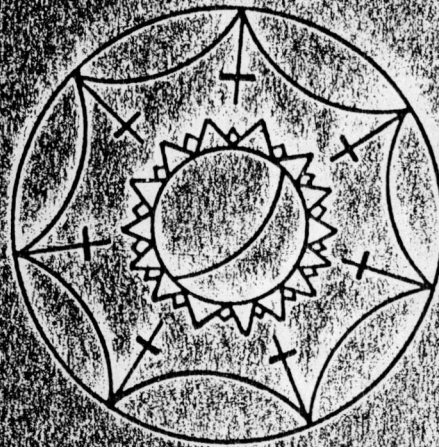
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SANTEIOI MAOAIOI MIKMAOEI

COMMUNICATION
under the
OPTIONAL PROTOCOL
regarding the right to
SELF-DETERMINATION



T. 17-86 Restricted

COMMUNICATION OF THE SANTE' MAWI'OMI wjit MIKMAQ
UNDER THE OPTIONAL PROTOCOL TO THE
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Me taleyn:

1. Since before human memory, Mikmaqs have been a separate and distinct people enjoying their own written language, and customarily living by hunting, fishing, and farming. Having learned the art of sailing centuries before the arrival of Europeans, we explored the North American seacoast from the Gulf of Mexico and Florida to the frozen ocean beyond Newfoundland. Until weakened by Europeans' invasions, colonisation and diseases, we were caretakers of a country of 13 million hectares and as many as 100,000 persons (Map).

2. Mikmakik was long recognized as an independent, federal state through the negotiation of treaties and alliances with its national council, the Sante' Mawi'omi or Grand Council. In addition to commercial and defensive arrangements with France and the United Kingdom extending over more than two centuries, Mikmakik established Catholicism under concordat with the Holy See, and became the first state to recognize the independence of the United States of America under a military-assistance treaty of 1776.

3. For more than a hundred years, Mikmaq territorial and political rights have been in dispute with the Government of Canada, which has claimed an absolute sovereignty over Mikmakik by virtue of its independence, since 1867, from our common parent the United Kingdom. In Canada's view, unambiguously argued in its 21 July 1981 and 10 June 1982 replies under Rule 91 to our previous communication (Denny v. Canada, R.19/78), the United Kingdom gave Canada plenary legislative authority over the race of "Indians" in North America. In our view, Mikmakik was never part of Europe's American colonies; enjoyed, by treaty, the status of a separate and distinct commonwealth under the British Crown; and could not lose its right to self-determination as

result of dealings between Canada and the Crown to which we were never parties.

4. Recognizing past injustices, Canada in 1982 amended its constitution to "recognize and affirm" the "existing aboriginal and treaty rights" of indigenous peoples (Enclosure G). Under the constitution the specification of these "existing" rights must be negotiated with indigenous representatives "invited" for this purpose by the Prime Minister of Canada. Our request to participate has been denied, on the extraordinary grounds that direct discussions with Mikmaqs are not "practical," and other "Indians" can negotiate our future political status for us (Enclosure H). This racist position, viz. that any members of the "Indian" race can exercise the Mikmaq people's right to self-determination, is the basis of this communication.

Facts and circumstances

5. In the beginning Niskam, the Creator, brought down Nakuset, the sun, from the Milky Way to light the earth. Nakuset's rays created all living things, which at first shared a common language and plan. People across the Great Sea displeased the Creator, however, and the first world was destroyed by earthquakes and floods. When the land finally dried, people could no longer understand one another. The people of Mikmakik, which Europeans later called Acadia, Nova Scotia or New Brunswick, discovered themselves joined together by a single tongue and spirit. This was thousands of years ago.

6. One time during a terrible famine Nakuset's spirit descended on an old man. In the darkness of sleep, this old man was approached by a young man bearing three crosses. One of the crosses, the young man said, would protect the Mikmaqs in times of conflict and hunger. The second would safeguard them through long sea voyages and among strange peoples. The third would give them wisdom in council, and in anticipating the future. When the old man awoke, he drew these three crosses on birchbark and explained them to all the people.

7. The famine ended, but Mikmakik was invaded from the west. As Europeans reckon time, this was six hundred years ago. Led by the

beat Kaktugu under the symbol of the three crosses, Mikmaq troops reclaimed the western provinces and forced a treaty of peace with the Haudenosaunee, the Six Nations of Iroquois.

8. With peace restored, the nation reorganized itself under a new constitution, proclaimed at Miramichi in what is now known as New Brunswick. All Mikmakik was divided into seven great sakamowti or districts, and each was divided in turn among many clans (wikamow), each with sakamow (chiefs) and sa'ya to guide them. Sakamow and the leaders of the militia (keptin or "captains") all together formed one national council, the Sante' Mawi'omi ("holy gathering," or grand council) to advise the people and defend the country. The ancient symbol of this union, which still may be seen carved in the rocks around Kejimikujik Lake (Kespokoitik sakamowti), is a ring of seven hills (the sakamowti) and seven crosses (the seven sakamow or chiefs), and in the middle are the sun (Nakuset) and the moon, who together represent Niskam, the Creator.

9. The officers of the grand council are three: the Kjisakamow (grand chief) is the ceremonial head-of-state, the Kjikeptin (grand captain) is the executive of the council, and the Putus (wisdom) is keeper of the constitution and rememberer of treaties. From early times Mikmakik has formed alliances (lakamanen) with other nations based on the idea of national kinship, and, like the Haudenosaunee, recorded these relationships symbolically in woven belts of shell beads known to Europeans as wampum, or in Mikmaq ulnapskok.

10. One night about five centuries ago a Mikmaq woman dreamed of a small island floating towards Mikmakik. At first the island seemed to be covered with white rabbit skins, but as it drew closer she saw it was covered with bare trees and black bears were sitting in the branches. She told this dream to the elders but none could interpret it. Many years later, a sailing-ship full of black-bearded Europeans landed in Mikmakik. They planted a cross of wood on the shore, and when Mikmaqs saw that they, too, belonged to the cross, they welcomed them.

11. Those first Europeans may have been in the company of John Cabot, who explored Newfoundland, Labrador and possibly the Gaspé (Kespikiok sakamowti) region of Mikmakik in 1498. By 1504, many

Gasque fishermen were summering among us in Cape Breton (Unamaki sakamowti), and Jacques Cartier stopped to trade with us in Baie des Chaleurs (Kespikiok) in 1534. The French seigneur de Monts left some men among us at Port Royal in 1605, and from them we began to understand more of the Catholic religion. Some of us also returned to France to see the strangers' country with their own eyes. The Europeans in those days called us Souriquois, a word they learned from our northern neighbours in Labrador, the Innu (Montagnais).

12. On 24 June 1610, our Kjisakamow Membertou was baptized as a Catholic, and a covenant was made to protect the priests of the Church, and the French who brought the priests among us. A great wampum belt two metres in length records this concordat (Enclosure A), and has ever since then been kept at the Collegio di Propaganda Fide in Rome. Its meaning is plain. On its left are the symbols of Catholicism--the crossed keys of the Holy See, a church, and a line of text from the Gospels written in our own language. On the right are symbols of the power of the grand council--crossed lances, an armed keptin, a pipe and arrow, and seven hills representing the seven sakamowti. At centre, a priest and sakamow hold a cross, and in the hand of the sakamow is the holy book. Over the course of the 17th century the whole Mikmaq people became Catholics and took St. Ann as their patron.

13. Although we loved the French for living peacefully and usefully among us, learned their language and shared their religion, we did not wish to become part of their country. They found this strange. "Ils s'estiment plus vaillans, que nous," one of our first priests, l'Abbe Biard, complained of us, "meilleurs que nous, plus ingenieux que nous, et, chose difficile a croire, plus riches que nous!" But one of our Gaspesian sa'ya spoke well in 1690, when he told the French visitors, "if France, as thou sayest, is a little terrestrial paradise, art thou sensible to leave it?"

Why risk thy life and thy property every year to the storms and tempests of the sea in order to come to a strange and barbarous country which thou considerest the poorest and least fortunate of the world? Besides, since we are wholly convinced of the contrary, we scarcely take the trouble to go to France, because we fear, with good reason, lest we find little satisfaction there, seeing, in our own experience, that those who are natives thereof leave it every year in order to enrich themselves on our shores.

14. In 1689 war was declared between Great Britain and France, and the following year the French at Port Royal in Mikmakik surrendered to British forces. Neither Mikmakik nor France's other indigenous allies recognized British sovereignty, however, and we continued the war until 1699. We believed it was a matter of religious as well as political freedom, for such was our ignorance of Europeans that we believed that the English were pagans. It was many years later, in 1761, that Kjisakamow Toma Denny told this to the British. "I long doubted whether you was of this [Christian] Faith," he said, "I declare moreover that I did not believe you was baptized; but at present I know you much better than I did formerly."

15. By the Treaty of Utrecht (1713), France ceded all of Acadia except Cape Breton to Britain, temporarily settling the two powers' quarrel in North America. By Article XV of this treaty (Enclosure G) Britain promised not to disturb any of the indigenous allies of France. Mikmakik retained its alliance with France, however, and continued to destroy British settlements and ships in the Gulf of Maine. Much of the war was fought at sea, our people having learned to sail European ships as early as 1606. In 1722 alone, Mikmakik took 22 British ships.

16. In 1719, while hostilities continued, Great Britain appointed a governor for Acadia, henceforth to be known as "Nova Scotia," and instructed him to engage our "friendship and good correspondence" by treaty. He was governor only in name, however, for there were no British settlements in our country, and he kept his office at Boston a thousand kilometres away. Never having been subjects of France, we did not consider ourselves bound by the Treaty of Utrecht, nor that it had passed dominion over any of our lands.

17. Mikmakik and its southern indigenous allies, the Penobscots, Passamaquoddies and Malecites made their peace with the British at Boston in 1725. While they accepted nominal British sovereignty, they refused to surrender any of their lands and agreed merely not to disturb existing British settlements (Enclosure B). Indeed, we continued to meet annually with France on Ile St. Jean (now Prince Edward Island, Epikoitik sakamowti) to renew our engagements with

that nation, and France retained its naval base at Louisburg in our Unamaki sakamowti.

18. The war resumed in 1743, ending with the defeat of the French fortress at Louisburg two years later. In 1749 the Crown appointed Lord Cornwallis to govern Nova Scotia and directed him to make peace with us. That same year, a royal commission of inquiry into the legal rights of the indigenous nations of North America concluded that "[t]he Indians, though living amongst the king's subjects in these countries, are a separate and distinct people from them, they are treated as such, they have a policy of their own, [and] they make peace and war with any nations of Indians when they think fit, without control from the English."

19. Mikmakik continued to deny British authority, and the grand chief declared war again on 24 September 1749 in these terms:

[C]ette terre dont tu veux presentement te rendre maître absolu, cette terre m'appartient, j'en suis certes sorti comme l'herbe, c'est le propre lieu de ma naissance et de ma résidence, c'est ma terre a moy sauvage; oui, je le jure, c'est Dieu qui me l'a donnée pur être mon pais a perpetuité.

20. A definitive treaty of peace was concluded at Halifax in 1752 (Enclosure C). Grand Chief Cope renewed the Treaty of Boston and promised to seek accessions from each Mikmaq sakamowti and Mikmaqs' allied nations. While the Halifax Treaty acknowledges Mikmaqs as British subjects, it also confirms their separate national identity and rights of hunting, fishing and trading throughout Nova Scotia. Mikmaqs again agreed not to "molest" existing British settlements, but did not consent to any new ones. The symbol of this treaty, in our traditions, is an eight-pointed star representing the original seven sakamowti and the British Crown, with the Union Jack at its centre. Despite another outbreak of hostilities in 1755 over Great Britain's expulsion of our French-Acadian neighbours, the Treaty of Halifax was restored and renewed by the grand council in 1761.

21. Similar arrangements were negotiated with the other indigenous nations and peoples of the Atlantic regions of North America so as to consolidate a single "covenant chain" or confederation with the British Crown. This cycle of alliances was described eloquently in 1775 by Sir William Johnson, Britain's superintendent for indigenous

fairs, as a "Silver Chain fix't to the immovable Mountains," and in 1793 Lord Simcoe explained that these treaties

prove that no King of Great Britain ever claimed absolute power or sovereignty over any of your lands or territories that were not fairly sold or bestowed by your Ancestors at Public Treaties. They will prove that your natural Independency has ever been preserved by your predecessors, and will establish that the rights resulting from such independency have been reciprocally and constantly acknowledge in the Treaties between the Kings of France formerly possessors of parts of this continent, and the Crown of Great Britain.

The meaning of this was always clear to us: a confederation of many peoples under one Crown, but each completely distinct like the links of a chain. In our language this is called elikawake. As recently as the 1840s, our sakamow and keptin were receiving commissions in the name of the Crown, the same as the governors of the provinces.

22. King George III implemented all of these treaties shortly after he ascended the throne in 1761, forbidding the governors of his American colonies to grant any land or permit any new settlement without first obtaining his approval, and ordered the removal of any settlements already made on Indian land, emphasizing the Crown's "determin[ation] to support and protect the said Indians in their just Rights and possessions and to keep inviolable the Treaties and Compacts which have been entered into with them." On 4 May 1762, these instructions were proclaimed in Nova Scotia by the British Governor, Jonathan Belcher (Enclosure D).

23. Belcher's Proclamation explicitly identified and reserved the territories still occupied and claimed by Mikmakik, including the sea-coasts of the Unamaki, Epikoitik, Piktokiok, Sikiniktiok and Gaspekiok sakamowti--altogether about two-thirds of the Province. British subjects were forbidden to "molest" us within these reserved territories, at least until further instructions were received from the Crown. No contrary Crown instructions ever were received, but the Provincial Government was repeatedly reminded to respect Mikmaq rights.

24. The intent of the Halifax Treaty appears more clearly from the record of discussions between Governor Belcher and Kjisakamow Toma Denny at Halifax in 1761, a month following Belcher's proclamation of the King's instructions. "The Laws will be like a great Hedge

"about your Rights and properties," Belcher assured the Mikmaqs, "if any break this Hedge to hurt and injure you, the heavy weight of the Laws will fall upon them and furnish their disobedience." In his reply, Kjisakamow Denny acknowledged his role as "friend and Ally, faithful and obedient to the Crown." In the Mikmaq view, the 1752 compact left Mikmakik and Britain two states sharing one Crown--a Crown pledged to preserve and defend Mikmaq rights against settlers as well as foreign enemies.

25. A definitive peace between Britain and France was achieved in the Treaty of Paris (10 February 1763). France ceded its remaining North American interests, and by Article II the Treaty of Utrecht, with its guarantee of indigenous rights, was renewed. This led the King to reiterate his 1761 instructions in an Imperial Proclamation of 1763 (Enclosure F) extending to all Indian nations "with whom we are connected, and who live under our protection," directing that Indian land be acquired only under treaties made with the Crown. This guarantee of all uncaded Indian lands is now incorporated in the Canadian constitution, section 25 (Enclosure G).

26. Great Britain did not keep its promises. While France had come among us only to trade, Britain planned to colonize. There were no permanent French settlements in Mikmakik before 1605, and as late as 1686 the European population of Acadia was scarcely 900. Britain established its first major colony in our territory in 1749, and within two decades Europeans outnumbered us in our own country. France had been a guest which never asserted any control over our affairs; Britain at once seized our land. Britain also broke its promise to let us retain our own Catholic religion, expelling all of our priests, and forcing us to rely on the French at the island of St. Pierre near Newfoundland for religious books. Our own captains assumed the role of priests for many years after.

27. At the outbreak of hostilities between the American colonies and Great Britain, General George Washington, commander-in-chief of the revolutionary Army, wrote to the chiefs and captains of Mikmakik requesting military assistance, and on 17 July 1776 a mutual-defence treaty was concluded at Watertown (Enclosure E). Mikmakik thus became the first nation to acknowledge the independence of the United

States, proclaimed just two weeks earlier at Philadelphia. In the course of the negotiations the U.S. plenipotentiary, James Bowdoin, declared, "The United States now form a long and Strong Chain, and it is made longer and Stronger by our Brethren of the St. John's and Mickmac Tribes joining with us; and may Almighty God never suffer this Chain to be broken." The symbol of this treaty, on a silver medal engraved for the occasion, is a Mikmaq seated at the pillar of peace, with thirteen hands extended to the pillar for aid.

28. We restored relations with Great Britain after the American victory left us on the British side of the new border. A meeting of the grand council at Piktokiok in 1779 renewed the Halifax Treaty (Enclosure E), but the American war had left Britain with only one naval base in North America, Halifax. To strengthen its strategic position, Britain intensified its colonization of Mikmakik, trying to restrict and centralize us. British settlements disrupted our fisheries and farms, and by the 1790s our people were starving.

29. Great Britain and the United States continued to recognize the special status of Mikmakik and other allied indigenous nations for a number of years, however. The first commercial treaty between the two states, in 1794, guaranteed indigenous peoples' right to cross and trade along the international border, and the treaty concluding the final Anglo-American war in 1814 guaranteed the restoration of all the rights and privileges we previously enjoyed (Enclosure F).

30. Uncertain whether they could legally sell our land to settlers under the 1762 and 1763 proclamations, provincial officials issued trespassers "licenses of occupation" which were only good against other settlers. Some licenses were also issued to Mikmaq wigamow in the hope that we would be satisfied to be granted back a portion of our own country. British settlers "were accustomed to squatting where they pleased on crown lands and making their peace with the authorities sooner or, preferably, later," explains the Canadian historian L.F.S. Upton. "They saw no reason to treat Indian lands any differently and assumed the government would take an equally indulgent view of their presence on them." At least in dealing with provincial-level officials, Upton admits, "generally speaking, the squatters were right."

31. Other views prevailed for a time in London, however. After receiving an 1841 petition from Kjisakamow Peminawit, the Colonial Office reminded provincial officials that we had "an undeniable Claim to the Protection of the Government as British Subjects," and should be compensated for any losses. The province of Nova Scotia responded by authorizing the setting aside of 50,000 hectares of land as "Indian Reservations" for our use in 1842. Well aware that it had no authority to force us to abandon our existing settlements, the province told London it would "invite" our chiefs "to cooperate in the permanent resettlement and instruction of their people." We continued to live where we could, refusing to be confined to these places.

32. Only half the promised Reservation land was set aside, and by the 1850s even this small remainder of our country was being settled illegally by Europeans, leading to hunger, starvation, and a great decrease in our numbers. Instead of expelling the squatters as it was required by the 1762 and 1763 proclamations, and by its own 1842 legislation, the province in 1859 ordered the squatters to pay for the land they had taken. Few ever did. Our grand council wrote to the governor of Nova Scotia, challenging the constitutionality of "this extraordinary proposal to deprive them of th[eir] rights by entering into a compromise with the violators of them," but it was not heard. What wildlife we had was hunted out by settlers, our few farms were stolen, and we were reduced to living as itinerant woodcutters and peddlars of handicrafts.

33. We suffered similarly in Prince Edward Island and New Brunswick, which became separate provinces in 1769 and 1784, respectively. New Brunswick began selling lands we still reserved or occupied in 1844, while in Prince Edward Island only one small island was left for our use in 1838. None of these actions was authorized by Imperial legislation as required by the proclamation of 7 October 1763. "Colonial governments affected the Micmacs differently in matters of policy, but the people themselves retained their identity regardless of political boundaries," professor Upton has concluded. "One people, albeit under three jurisdictions, remained one people."

34. Throughout the years Mikmaqs "retained their tribal authority, with its structure of chiefs and captains chosen by election." We retained our own language and, in the face of an overwhelmingly Protestant settler majority, our Catholic religion, continuing to meet annually as a whole people on St. Ann's day (26 July) at Potoloteq (Chapel Island on Cape Breton). On the whole, we continued to live in our own communities, although their number decreased as our land was seized by settlers or sold by government officials.

35. The British North America Act, 1867, united all of Britain's North American provinces into a single federal government, Canada, and entrusted this new government with responsibility for "Indians, and land reserved for the Indians." Canada has used this authority not to protect us from further encroachments, but to further reduce our settlements as part of a "centralization" programme from 1941 to 1953, and in 1960 to order us divided into twelve separate "Indian bands" instead of one nation and people (P.C. 1960-261). With its approval of Canada's Constitution Act, 1982, the United Kingdom now considers it has transferred all of its remaining obligations under our treaties to the government of Canada.

36. Sections 25 and 35 of the Constitution Act recognize, at long last, our rights as an "aboriginal people" under the Halifax Treaty and the proclamations implementing it, but only to the extent they still "existed" in 1982 (Enclosure G). The specification of rights entrenched by the Act was left, by section 37(2), to be negotiated with "representatives of those [aboriginal] peoples" at meetings of Canada's Prime Minister and Provincial Premiers. Such meetings were held in 1984 and 1985, and the final meeting is to be held in March 1986. Mikmaq representatives have not been invited to participate, and a direct request to participate has been denied (Enclosure H). Canada invoked sections 35 and 37 of the Constitution Act in reply to our previous communication--and now ironically refuses to allow us the benefit of these provisions.

licable law

37. From all of the foregoing it clearly appears that the Mikmaqs always were, and continue to be a separate and distinct people, and were long recognized as such, and as a state capable of engaging in international relations. Mikmaqs' right to self-determination was never formally surrendered; on the contrary, Mikmakik must still be considered a non-self-governing territory within the meaning of the Charter of the United Nations.

38. Article 1(2) of the Charter, Article 1(1) of the International Covenant on Civil and Political Rights, and (among others) General Assembly Resolutions 1514(XV) of 14 December 1960 and 2625(XXV) of 24 October 1970, guarantee all peoples' right to self-determination, i.e., their right to "freely determine their political status and freely pursue their economic, social and cultural development." At a minimum this includes the choice of independence, some degree of association or federation with an existing state, or integration with an existing state, General Assembly Resolution 1541(XV) of 15 December 1960.

39. Changes in the political status of a non-self-governing territory must be based on the "freely expressed wishes of the people involved," General Assembly Resolutions 1541(XV) and 2525(XXV). The General Assembly has generally been satisfied with multiple-option plebiscites as in the cases of Togoland, British Cameroons, Ruanda, Western Samoa, Spanish Sahara and Alaska, and has refused to recognize changes, short of full independence, unless United Nations observation was permitted, as in the cases of French Somaliland, Antigua, Grenada and St. Kitts. The administering state must not try to influence the process, other than assuring that the people are "acting with full knowledge" of their options, General Assembly Resolution 1541(XV), Principle IX.

40. General Assembly Resolution 1541(XV), Principle IV, defines as a non-self-governing territory anyplace that is "geographically separate and distinct ethnically and/or culturally from the country administering it," and which is subject to "elements of an administrative, political, juridical, economic or historical nature which

bitrarily place [it] in a position or status of subordination." Professor Dinstein interprets this as "an ethnic group linked by a common history and the will to live together and continue common traditions," carefully including groups partly dispersed by the aggression of the colonizer. It bears repeating that Canada refers to the indigenous nations of North America as "peoples" in sections 25, 35 and 37 of its Constitution Act, 1982.

41. Self-determination is not available to disrupt the national unity and territorial integrity of 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 colour," General Assembly Resolution 2625(XXV). In other words, states which have respected their constituent peoples' right to self-determination presumably have evolved genuinely representative forms of government.

42. The reverse is not also true, however: a state that allows everyone to vote has not necessarily respected their right to self-determination, nor does it necessarily represent them all equally. A small people would not likely choose freely to integrate itself with a very large state, precisely because it would have no real influence on national-level democratic processes. They would more likely insist upon some measure of local autonomy. Hence the fact that a small people has in fact been absorbed by a large state, and enjoys the right to vote, scarcely settles whether they chose this status voluntarily.

43. In his report to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Special Rapporteur, H. Gros Espiell, stressed that

It is necessary . . . to specify that if the national unity claimed and territorial integrity invoked are merely legal fictions which cloak real colonial and alien domination, resulting from actual disregard of the principles of self-determination, the subject people or peoples are entitled to exercise, with all the consequences thereof, their right to self-determination.

"The Right to Self-Determination: Implementation of United Nations Resolutions," U.N. Doc. E/CN.4/Sub.2/405/Rev.1 (1980), ¶90. If a

Culturally-distinct territory was, in actual fact, annexed without its consent, its geographical incorporation within the boundaries of another state is no bar to the exercise of self-determination.

44. It is likewise important to distinguish self-determination from the right to popular participation found in Article 25 of the Covenant. Self-determination is a people's choice of a state and a framework of government, and for this reason has been described as "an essential condition or prerequisite, although not necessarily excluding other conditions, for the genuine existence of the other human rights and freedoms" enumerated in the Covenant, U.N. Doc. E/CN.4/Sub.2/405/Rev.1, ¶59. Popular participation is the right of individuals, subsequent to the exercise of self-determination, to participate freely and effectively in the state and form of government chosen. Study by the Secretary-General, "Popular Participation in Its Various Forms as an Important Factor in the Full Realization of Human Rights," U.N. Doc. E/CN.4/1985/10, ¶¶62-72.

45. Self-determination is a progressive norm not restricted by the principle of inter-temporal law, and thus applies to contemporary manifestations of political arrangements that arose in pre-Charter times. Namibia Advisory Opinion, 1971 I.C.J. Reports, p. 16, at 31, and Western Sahara Advisory Opinion, 1975 I.C.J. Reports, p. 12, at 32-33, 110, 121-122. A contemporary state therefore cannot shield "a systematic denial within its territory of certain civil and political rights" behind an appeal to historical circumstances, as professor Fawcett explains in relation to United Nations resolutions on the former racist regime in Rhodesia.

45. Indigenous populations have been described as "those which, having a historical continuity with pre-invasion and pre-colonial societies that developed in their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories or parts of them," U.N.Doc.E/CN.4/Sub.2/AC.4/1983/CRP.2, also Article 1(1)(b) of International Labour Organisation Convention 107. Thus defined, indigenous populations are non-self-governing peoples in countries where colonists became a majority, as opposed to the situation in most of Africa and Asia where an indigenous majority survived.

46. In his report to the Sub-Commission, the Special Rapporteur on indigenous populations, J. Martinez Cobo, emphasized their right to self-determination, noting that while this did "not necessarily include the right to secede from the State in which they live," did comprehend "the exercise of free choice" among "various forms of autonomy."

It must be recognized that indigenous populations have their own identity rooted in historical factors which outweigh the phenomena of mere solidarity in the face of discrimination and exploitation, and that, by virtue of their very existence, they have a natural and original right to live freely on their own lands.

"Study of the Problem of Discrimination Against Indigenous Populations," U.N. Doc. E/CN.4/Sub.2/1983/21/Add.8, ¶¶578-581.

46. In so far as section 37 of the Constitution Act leaves to a plenary conference of Canadian ministers and invited "Indians" the specification of aboriginal peoples' civil and political rights, it purports to give non-Mikmaqs authority to exercise Mikmaqs' right to self-determination on their behalf. If, as proposed by a House of Commons Special Committee on Indian Self-Government in 1983 and discussed at the 1985 conference, the result will be a constitutional amendment establishing a "third order of government" within Canada to secure limited autonomy for aboriginal peoples, Mikmaqs have an undeniable and inalienable right to be consulted directly.

Competence and admissibility

47. This matter arises under Article 1(1) of the International Covenant on Civil and Political Rights. Canada is a State Party to the Covenant and to its Optional Protocol, which provides, inter alia, that the Human Rights Committee is competent "to receive and consider communications from individuals who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant."

48. The authors are members of the traditional national council of Mikmakik, and their interest in this matter is twofold: as victims

themselves, and as trustees for the welfare and rights of the people as a whole. As explained by the Special Rapporteur, H. Gros-Espiehl, the right to self-determination is both individual and collective in nature.

[I]t is important likewise to try to conceptualize the right to self-determination as a right of the individual. The Commission on Human Rights has repeatedly invoked it as such, without giving a precise reason for that conception and without distinguishing self-determination as a right of the individual from self-determination as a condition or prerequisite for the effective exercise of the other rights and freedoms.

"Self-Determination," U.N. Doc. E/CN.4/Sub.2/405/Rev.1, ¶58.

49. Participation in the negotiation of indigenous peoples' political status is entrusted by the Constitution Act to the discretion of the Prime Minister of Canada, and Canadian law affords no means of challenging his decision other than by appealing to him personally. This we have done, unsuccessfully.

Remedies

50. We seek a declaration that the future political status of the Mikmaq people, in relation to Canada, must be based on the freely-expressed wishes of the Mikmaq people themselves, either through the consultative framework established by section 37 of the Constitution Act 1982, or through negotiations and/or plebiscites independently arranged for this purpose.

CERTIFICATION

In our personal capacity and as officers of the Sante' Mawi'omi wjit Mikmaq, we have authorized and directed the communication of the foregoing circumstances, and appointed Russel Barsh our agent and representative in the matter as further to his commission of 3 August 1983.

DONE the 30th day of January, 1986.

Na nike kespiatoksiek aq wikatieken kakayaq. Let us not perish.

Kjisakamow Donald Marshall: *Donald Marshall*

Kjikeptin Alexander Denny: *Alexander Denny*

Putus Simon Marshall: *Simon Marshall*

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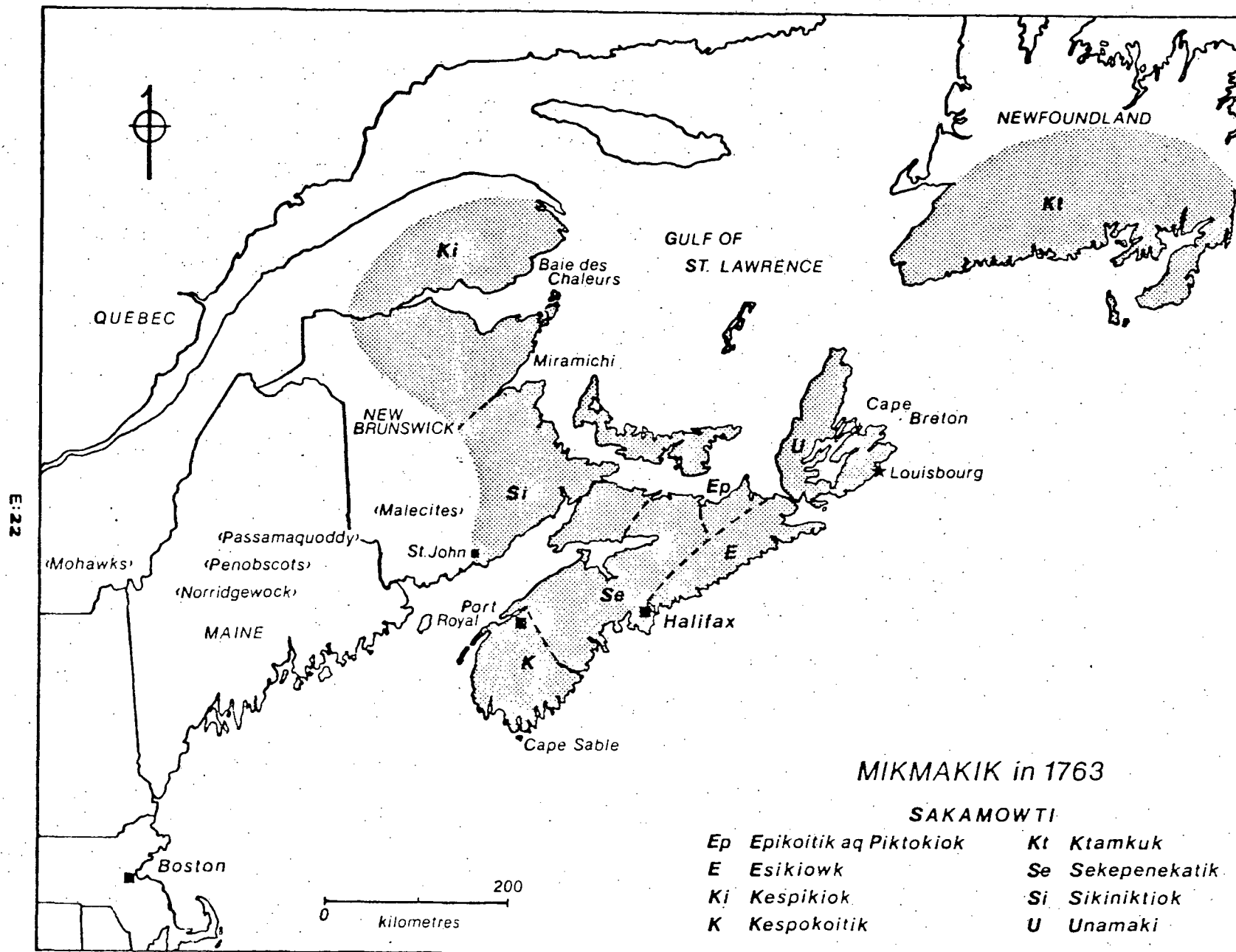
[References are to paragraph numbers. Historical sources are Clark 1968, Reid 1981, Trudel 1973 and Upton 1979 unless otherwise indicated.]

8. See, generally, Biard (1858) for a description of our government in the 17th century.
12. The baptism is detailed in Lescarbot (1611), the belt depicted in D.I. Bushnell Jr., "Native Cemeteries and Forms of Burial East of the Mississippi," Bureau of American Ethnology Bulletin No. 71 (1920), Plate 1.
13. Trudel (1973); LeClercq (1691).
14. Provincial Archives of Nova Scotia Manuscript Documents, vol. 37, No. 14.
15. Lescarbot (1611); Trudel (1973); Upton (1981).
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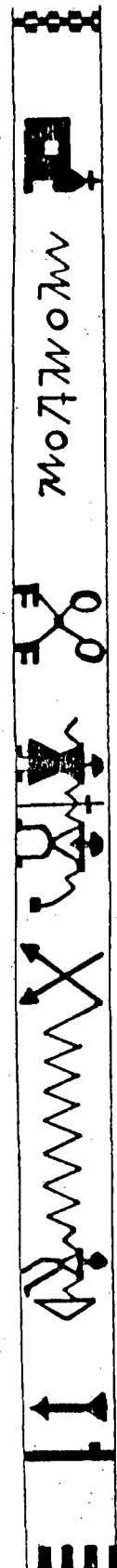
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ENCLOSURES

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ENCLOSURE A
THE CONCORDAT BELT (1611)



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ENCLOSURE B

TREATY OF BOSTON (1725)

ARTICLES OF SUBMISSION AND AGREEMENT made at Boston, in New England, by Sanquaaram alias Loron Arexus, Francois Xavier and Meganumbe, delegates from Penobscot, Naridgwack, St. Johns, Cape Sables and other tribes inhabiting within His Majesty's territories of Nova Scotia or New England.

Whereas His Majesty King George by concession of the Most Christian King, made at the Treaty of Utrecht, is become the right-ful possessor of the Province of Nova Scotia or Acadia according to its ancient boundaries: We, the said Sanquaaram alias Loron Arexis, Francois Xavier and Meganumber, delegates from the said tribes of Penobscott, Naridgwack, St. Johns, Cape Sables and other tribes inhabiting within His Majesty's said territories of Nova Scotia or Acadia and New England, do, in the name and behalf of the said tribes we represent, acknowledge His said Majesty King George's jurisdiction and dominion over the territories of the said Province of Nova Scotia or Acadia, and make our submission to His said Majesty in as ample a manner as we have formerly done to the Most Christian King.

And we further promise on behalf if the said tribes we represent that the Indians shall not molest any of His Majestie's subjects or their dependants in their settlements already made or lawfully to be made, or in their carrying on their traffick and other affairs within the said Province.

That is there happens any robbery or outrage committed by any of the Indians, the tribe or tribes they belong to shall cause satisfaction and restitution to be made to the parties injured.

That the Indians shall not help to convey away any soldiers belonging to His Majestie's forts, but on the contrary shall bring back any soldier they shall find endeavouring to run away.

That in the case of any misunderstanding, quarrel or injury between the English and the Indians no private revenge shall be taken, but application shall be made for redress according to His Majestie's laws.

That if the Indians have made any prisoners belonging to the Government of Nova Scotia or Acadia during the course of the war they shall be released at or before the ratification of this treaty.

That this treaty shall be ratified at Annapolis Royal.

Dated at the Council Chamber in Boston, New England, this fifteenth day of December, Anno Domini one thousand seven hundred and twenty-five, Annoq. Regni Regis Georgii, Magnae Britanniae, &c., Duodecimo.

[Ratified at Annapolis Royal, 30 May 1728]

ENCLOSURE C

TREATY OF HALIFAX 1752 AND ACCESSIONS

Treaty of Halifax (22 November 1752)*

Articles of Peace and Friendship renewed between His Excellency Peregrine Thomas Hopson Esquire Captain General and Governor in Chief in and over His Majesty's Province of Nova Scotia or Acadie Vice Admiral of the same & Colonel of One of His Majesty's Regiments of Foot, and His Majesty's Council on behalf of His Majesty, and Major Jean Baptiste Cope, chief Sachem of the Tribe of Mick Mack Indians, Inhabiting the Eastern Coast of the said Province, and Andrew Hadley Martin, Gabriel Martin and Francis Jeremiah members & Delegates of the said tribe, for themselves and their said Tribe their heirs and the heirs of their heirs forever. Begun made and Concluded in the manner form & Tenor following, viz.

1. It is agreed that the Articles of Submission & Agreements made at Boston in New England by the Delegates of the Penobscot Norridgework and St. John's Indians in the year 1725 Ratified and Confirmed by all the Nova Scotia Tribes at Annapolis Royal in the Month of June 1726 and lately Renewed with Governor Cornwallis at Halifax and Ratified at St. John's River, now read over and Explained & Interpreted shall be and are hereby from this time forward renewed, reiterated and forever Confirmed by them and their Tribe, and the said Indians for themselves and their Tribe, and their Heirs aforesaid do make and renew the same Solemn Submissions and promises for the strict Observance of all the Articles therein Contained as at any time heretofore hath been done.

2. That all Transactions during the late War shall by both sides be buried in Oblivion with the Hatchet, And that the said Indians shall have all favour, Friendship & Protection shewn them from this His Majesty's Government.

3. That the said Tribe shall use their utmost Endeavours to bring in the other Indians to Renew and Ratify this Peace, and shall discover and make known any attempts or designs of any other Indians or any enemy whatever against his Majesty's Subjects within this Province so soon as they shall know thereof and shall also hinder and Obstruct the same to the utmost of their power, and on the other hand if any of the Indians refusing to ratify this Peace shall make War upon the Tribe who have now Confirmed the same, they shall upon Application have such aid and Assistance from the Government for their defence as the Case may require.

4. It is agreed that the said Tribe of Indians shall not be hindered from, but have free liberty of hunting and Fishing as usual and that if they shall think a Truck house needful at the River Chibenaccadie, or any other place of their resort they shall have the same built and proper Merchandize, lodged therein to be exchanged for what the Indians shall have to dispose of and that in the mean time the Indians shall have free liberty to bring to Sale to Halifax or any other Settlement within this Province, Skins, feathers, fowl, fish or any other thing they shall have to sell, where they shall have liberty to dispose thereof to the best Advantage.

5. That a Quantity of bread, flour, and such other Provisions, as can be procured, necessary for the Familys and proportionable to the Numbers of the said Indians, shall be given them half Yearly for the

*Original published at Halifax in English and French, both equally authoritative.

me to come; and the same regard shall be had to the other Tribes that shall hereafter Agree to Renew and Ratify the Peace upon the Terms and Conditions now Stipulated.

6. That to Cherish a good harmony and mutual Correspondence between the said Indians and this Government His Excellency Peregrine Thomas Hopson Esq. Capt. General & Governor in Chief in & over His Majesty's Province of Nova Scotia or Accadie Vice Admiral of the same & Colonel of One of His Majesty's Regiments of Foot hereby promises on the part of His Majesty that the said Indians shall Continue in Friendship, Receive Presents of Blankets, Tobacco, some Powder & Shott, and the said Indians promise once every year, upon the first of October, to come by themselves or their Delegates and Receive the said Presents and Renew their Friendship and Submissions.

7. That the Indians shall use their best Endeavours to Save the Lives & Goods of any People Shipwrecked on this Coast where they resort and shall Conduct the People saved to Halifax with their Goods, and a Reward adequate to the Salvage shall be given to them.

8. That all Disputes whatsoever that may happen to arise between the Indians now at Peace and others His Majesty's Subjects in this Province shall be tryed in His Majesty's Courts of Civil Judicature, where the Indians shall have the same benefits, Advantages & Privileges as any others of His Majesty's Subjects.

Accession of Sikiniktiok sakamaoti (10 March 1760)

I, Michael Augustine, for myself and the tribe of Richebuctou Indians of which I am Chief do acknowledge the jurisdiction and dominion of His Majesty King George, Second over the territories of Nova Scotia or Acadia and we do make submission to His Majesty in the most perfect and solemn manner.

And I do promise for myself and my tribe, that I nor they shall not molest any of His Majesty's subjects in their settlements as already made, or that may be hereafter made or in carrying on their commerce or in anything whatever within this the said Province of His said Majesty or elsewhere.

And for the more effective security of the due performance of this Treaty, and for every part thereof I do promise and enagage that a certain number of persons of my tribe, which shall not be less in number than two, shall, on or before the 24th day of June next reside as hostages at Fort Cumberland, or at such other place in the Province of Nova Scotia or Acadia, as shall be appointed for that purpose by His Majesty's Governor of the said Province which hostages shall be exchanged for a like number of my tribe when requested

And all of the foregoing Articles and every one of them, made with His Excellency Chas. Lawrence Esq., His Majesty's Governor of the said Province, I do promise for myself and on behalf of my tribe that we will most strictly keep and observe in the most solemn manner.

In witness whereof I have hereunto put my mark and seal at Halifax in Nova Scotia this tenth day of March, One Thousand Seven Hundred and Sixty in the Thirty Third year of His Majesty's reign.

Accessions of Unamaki and Epikoitik sakamowti, and renewal by Sikiniktiok sakamowti (25 June 1761)

Treaty of Peace and Friendship concluded by the Honorable Jonathan Belcher Esqr. President of His Majesty's Council and Commander-in-Chief oin and over His Majesty's Province of Nova Scotia or Acadia with Claude Stonash Chief of the Iedaick Tribe of Indians at Halifax in the Province of Nova Scotia or Acadia.

I, Claude Stonash for myself and the Tribe of Iedaick Indians of which I am Chief, do acknowledge the jurisdiction and dominion of His Majesty King George the Third, over the Territories of Nova Scotia or Acadia, and we do make submission to His Majesty in the most perfect, ample, and solemn manner.

And I do promise for myself and my Tribe that I nor they shall not molest any of His Majesty's Subjects or their dependents in their Settlements already made, or in carrying on their Commerce, or in any thing whatever within this the Province of his said Majesty, or elsewhere.

And if any Insult, Robbery or Outrage shall happen to be committed by any of my Tribe, satisfaction and restitution shall be made to the person or persons injured.

That neither I nor my Tribe shall in any manner entice any of his said Majesty's Troops or Soldiers to desert, nor in any manner assist in conveying them away, but on the contrary will do our utmost endeavours to bring them back to the Company, Regiment, Fort or Garrison to which they shall belong.

That is any quarrel or misunderstanding shall happen betwixt myself and the English, or between them and any of my tribe, neither I nor they shall take any private satisfaction or Revenge, but we will apply for redress according to the Laws established in his said Majesty's Dominions.

That all English Prisoners made by myself or my Tribe, shall be set at Liberty and that we will use our utmost endeavours to prevail on the other Tribes to do the same if any prisoners shall happen to be in their Hands.

And I do further promise for myself and my Tribe, that we will not either directly nor indirectly assist any of the Enemies of His Most Sacred Majesty King George the third, his heirs or successors, nor hold any manner of Commerce, Traffic, nor intercourse with them, but on the contrary will as much as may be in our power discover and make known to His Majesty's governor any ill designs which may be formed or contrived against His Majesty's Subjects. And I do further engage, that we will not Traffic, Barter or Exchange any commodities in any manner but with such persons, or the managers of such Truck-houses as shall be appointed or established by His Majesty's governor at Fort Cumberland or elsewhere in Nova Scotia or Acadia.

And for the more effectual security of the due performance of this Treaty and every part thereof, I do promise and engage that a certain number of Persons of my Tribe which shall not be less in number than Two persons shall on or before the thirtieth day of September reside as Hostages at Fort Cumberland or at such other place or places in this Province of Nova Scotia or Acadia as shall be appointed for that purpose by His Majesty's Governor of said Province, which Hostages shall be exchanged for a like number of my Tribe when requested.

And all these foregoing Articles and every one of them made with the Honorable Jonathan Belcher Esquire President of His Majesty's Council and Commander in Chief of His Majesty's Province of Nova Scotia or Acadia, I do promise for myself and in behalf of my Tribe that we will most strictly keep and observe in the most solemn manner. In witness whereof I have hereunto put my mark at Halifax in Nova Scotia this Twenty-fifth day of June One Thousand Seven Hundred and Sixty one, and in the First year of His Majesty's Reign.

[Identical instruments were executed by representatives of "the Tribes of the Mickmack Indians called Mirimichi, Iediack, Pogmouch, and Cape Breton Tribes."]

Renewal by Kespikiok sakamowti (22 September 1779)

Be it known to all men that we, John Julien, Chief; Antoine Arceneau Captain; Francis Julien and Thomas Demagonisbe Councillors of Miramichy and also representatives of and authorized by the Indians of Pagimousche and Restigouche Augustine Michel Chief. Louis Augustine Cobaise, Francis Joseph Arimpf, Captains Antoine and Gamaliel Gabelier Councillors of Richibucto and Thomas James Son and representative of the Chief of Tedyae do for ourselves and on behalf of the several tribes of Mickmack Indians before mentioned and all others residing between Cape Tormentine and the Bay de Chaleurs in the Gulf of St. Lawrence inclusive. Solemnly Promise and Engage to and with Michael Franklin, Esq., the Kings Superintendent of Indian Affairs in Nova Scotia.

That we will behave Quietly and Peaceably toward all His Majesty King George's good subjects treating them upon every occasion in an honest friendly and brotherly manner.

That we will at the hazard of our Lives defend and Protect to the utmost of our power the Traders and Inhabitants and their Merchandise and effects who are or may be settled on the Rivers, Bays and Sea Coasts within the forementioned District against all the Enemies of His Majesty King George whether French, Rebels or Indians.

That we will not hold any correspondence or intercourse with John Allen or any other Rebel or Enemy to King George, let his Nation or Country be what it will.

And we do also by these presents for ourselves and in behalf of our several constituents hereby Renew, Ratify and Confirm all former Treatys, entered into by us, or those heretofore with the late Governors Lawrence and others His Majesty King George's Governors who have succeeded him the command of this Province.

In consideration of the true performance of the foregoing Articles on the part of the Indians, the Said Michel Franklin as the King's Superintendent of Indian Affairs doth hereby Promise in behalf of the Government.

That the said Indians and their constituents shall remain in the Districts before mentioned, Quiet and Free from any molestation of any of His Majestys Troops or other good subjects in their Hunting and Fishing.

That immediate measures shall be taken to cause Traders to supply them with ammunition, clothing and other necessary stores in exchange for their furs and other commoditys.

In witness where of the above mentioned have Inter changeably set our Hands and Seals at Windsor in Nova Scotia this Twenty second day of September 1779.

Renewal by Sikiniktiok sakamowti (17 June 1794)

The Treaty made with the Micmac Indians and the representative of King George III of England on June 17, 1794.

Thus was agreed between the two Kings*--The English King George III and the Indian King John Julian in the presence of the Governor, William Milan of New Brunswick, and Francis Julian (Governor), the brother of said John Julian, on board His Majesty's ship, that henceforth to have no quarrel between them.

* The only extant copy of this instrument indicates it was translated into English from Mikmaq. "King" was probably sakamow in the original.

And the English King said to the Indian King "Henceforth you will teach your children to maintain peace and I give you this paper upon which are written many promises which will never be effaced."

Then the Indian King, John Julian with his brother Francis Julian begged his Majesty to grant them a portion of land for their own use and for the future generations. His Majesty granted their request.

A distance of six miles was granted from Little South West on both sides and six miles at North West on both sides of the rivers. Then His Majesty promised King John Julian and his brother Francis Julian "Henceforth I will provide for you and for the future generation so long as the sun rises and river flows."

ENCLOSURE D
PROCLAMATIONS IMPLEMENTING THE HALIFAX TREATY

Royal Instructions of 9 December 1761

WHEREAS the peace and security of Our Colonies and Plantations upon the Continent of North America does greatly depend upon the Amity and Alliance of the several Nations or Tribes of Indians bordering upon the said Colonies and upon a just and faithful Observance of those Treaties and Compacts which have been heretofore solemnly entered into with the said Indians by Our Royall Predecessors Kings and Queens of this Realm,

And whereas notwithstanding the repeated Instructions which have been from time to time given by Our Royal Grandfather to the Governors of Our several Colonies upon this head the said Indians have made and do still continue to make great complaints that Settlements have been made and possession taken of lands, the property of which they have by Treaties reserved to themselves by persons claiming the said lands under pretence of deeds of Sale and Conveyances illegally, fraudulently and surreptitiously obtained of the said Indians;

And whereas it has likewise been represented unto Us that some of Our Governors or other Chief Officers of Our said Colonies of the Duty they owe to Us and of the Welfare and Security of our Colonies have countenanced such unjust claims and pretensions by passing Grants of the Lands so pretended to have been purchased of the Indians.

We therefor taking this matter into Our Royal Consideration, as also the fatal Effects which would attend a discontent amongst the Indians, in the present situation of affairs, and being determined upon all occasions to support and protect the said Indians in their just Rights and Possessions and to keep inviolable the Treaties and Compacts which have been entered into with them,

Do hereby strictly enjoyn & command that neither yourself nor any Lieutenant Governor, President of the Council or Commander in Chief of Our said [Province of Nova Scotia] do upon any pretence whatever upon pain of Our highest Displeasure and of being forthwith removed from your or his office, pass any Grant or Grants to any persons whatever of any lands within or adjacent to the Territories possessed or occupied by the said Indians or the Property Possession of which has at any time been reserved to or claimed by them.

And it is Our further Will and Pleasure that you do publish a proclamation in Our Name strictly enjoining and requiring all persons whatever who may either willfully or inadvertently have seated themselves on any lands so reserved to or claimed by the said Indians without any lawfull Authority for so doing forthwith to remove therefrom

And in case you shall find upon strict enquiry to be made for the purpose that any person or persons do claim to hold or possess any lands within Our said Province upon pretence of purchases made of the said Indians without a proper licence first had and obtained either from Us or any of Our Royal Predecessors or any person acting under Our or their Authority you are forthwith to cause a prosecution to be carried on against such person or persons who shall have made such fraudulent purchases to the end that the land may be recovered by due Course of Law

And whereas the wholesome Laws that have at different times been passed in several of Our said Colonies and the instructions which have been given by Our Royal Predecessors for restraining persons from purchasing lands of the Indians without a Licence for the purpose and for regulating the proceedings upon such purposes have not been duly observed,

It is therefore Our express Will and Pleasure that when any application shall be made to you for licence to purchase lands of the Indians you do forebear to grant such Licence untill you shall have first transmitted to Us by Our Commissioners for Trade and Plantations the particulars of such applications as well as in respect to the situation as the extent of the lands so proposed to be purchased and shall have received Our further directions therein;

And it is Our further Will and Pleasure that you do forthwith casue this Our said Instruction to you to be made Publick not only within all parts of your said Province inhabited by Our Subjects, but also amongst the several Tribes of Indians living within the same to the end that Our Royal Will and Pleasure in the Premises may be known and that the Indians may be apprized of Our determin'd Resolution to support them in their just Rights, and inviolably to observe Our Engagements with them.

*[Identical copies transmitted to Nova Scotia, New Hampshire, New York, Virginia, North Carolina, South Carolina and Georgia.]

Governor Jonathan Belcher's Proclamation (4 May 1762)

His Majesty by His Royal Instruction, Given at the Court of St. James, the 9th day of December, 1761, having been pleased to Signify,

THAT the Indians have made, and still do continue to make great Complaints, that Settlements have been made, and Possessions taken, of Lands, the Property of which they have by Treaties reserved to themselves, by Persons claiming the said Lands, under Pretence of Deeds of Sale & Conveyance, illegally, Fraudulently, and surreptitiously obtained of said Indians.

AND THAT His Majesty had taken this Matter into His Royal Consideration, as also the fatal Effects which would attend a Discontent among the Indians in the Present Situation of Affairs.

AND BEING determined upon all Occasions to support and protect the Indians in their just Rights and Possessions and to keep inviolable the treaties and Compacts which have been entered into with them, was pleased to declare His Majesty's further Royal Will and Pleasure, that His Governor or Commander in Chief in this Province should publish a Proclamation in His Majesty's Name, for this special purpose;

WHEREFORE in dutiful Obedience to His Majesty's Royal Orders I do accordingly publish this proclamation in His Majesty's Royal Name, strictly injoining and requiring all Persons what ever, who may either willfully or inadvertently have seated themselves upon any Lands so reserved to or claimed by the said Indians, without any lawful Authority for so doing, forthwith to remove therefrom.

AND, WHEREAS Claims have been laid before me in behalf of the Indians for Fronsac Passage and thence to Nartigonneich, and from Nartigonneich to Piktouk, and from thence to Cape Jeanne, from thence to Emchich, from thence to Ragi Pontouch, from thence to Tedueck, from thence to Cape Rommentin, from thence to Miramichy, and from thence to Bay des Chaleurs, and the environs of Canso. From thence to Mushkoodabwet, and so along the coast, as the Claims and Possessions of the said Indians, for the more special purpose of hunting, fowling and fishing, I do hereby strictly injoin and caution all persons to avoid all molestation of the said Indians in their said claims, till His Majesty's pleasure in this behalf shall be signified.

AND if any person or persons have possessed themselves of any part of the same to the prejudice of the said Indians in their Claims before specified or without lawful Authority, they are hereby required forthwith to remove, as they will otherwise be prosecuted with the utmost Rigour of the Law.

Given under my Hand and Seal at Halifax this Fourth Day of May, 62, and in the Second Year of His Majesty's Reign.

Royal Proclamation of 7 October 1763 [Excerpt]

And whereas it is just and reasonable, and essential to our Interest, and the security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them or any of them, as their Hunting Grounds —

We do therefore, with the Advice of our Privy Council, declare it to be our Royal Will and Pleasure, that no Governor or Commander in Chief in any of our Colonies or Quebec, East Florida, or West Florida, do presume, upon any Pretence whatever, to grant Warrants of Survey, or pass any Patents for Lands beyond the Bounds of their respective Governments, as described in their Commissions; as also that no Governor or Commander in Chief in any of our other Colonies or Plantations in America do presume for the present, and until our further Pleasure be Known, to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West and North West, or upon any Lands whatever, which, not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them.

And We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included within the Limits of Our Said Three New Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid;

And We do hereby strictly forbid, on Pain of our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial leave and Licence for the Purpose first obtained.

And, We do further strictly enjoin and require all Persons whatever who have either willfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements.

And Whereas Great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the Great Prejudice of our Interests, and to the Great Dissatisfaction of the said Indians; In order, therefore, to prevent such Irregularities for the future, and to the End that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advice of our Privy Council strictly enjoin and require, that no private Person do presume to make any Purchase from the said Indians of any Lands reserved to the said Indians, within those parts of our Colonies where, We have thought proper to allow Settlement; but that, if at any Time any of the said Indians should be inclined to dispose of the said Lands, the same shall be purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for the Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie; and in case they shall lie within the limits of any Proprietary Government, they shall be purchased only for the Use and in the name of such Proprietaries, conformable to such Directions and Instructions as We or they shall think proper to give for the Purpose;

And We do, by the Advice of our Privy Council, declare and enjoin, that the Trade with the said Indians shall be free and open to all our Subjects whatever, provided that every Person who may incline to Trade with the said Indians do take out a Licence for carrying on such Trade from the Governor or Commander in Chief of any of our Colonies respectively where such Person shall reside, and also give Security to observe such Regulations as We shall at any Time think fit, by ourselves or by our Commissaries to be appointed for this Purpose, to direct and appoint for the Benefit of the said Trade:

And We do hereby authorize, enjoin, and require the Governors and Commanders in Chief of all our Colonies respectively, as well those under Our immediate Government as those under the Government and Direction of Proprietaries, to grant such Licences without Fee or Regard, taking especial care to insert therein a Condition, that such Licence shall be void, and the Security forfeited in case the Person to whom the same is granted shall refuse or neglect to observe such Regulations as We shall think proper to prescribe as aforesaid.

And We do further expressly enjoin and require all Officers whatever, as well Military as those employed in the Management and Direction of Indian Affairs, within the Territories reserved as aforesaid for the Use of the said Indians, to seize and apprehend all Persons whatever, who standing charged with Treason, Misprisions of Treason, Murders, or other Felonies or Misdemeanors, shall fly from Justice and take Refuge in the said Territory, and to send them under a proper Guard to the Colony where the Crime was committed of which they stand accused, in order to take their Trial for the same.

Given at our Court at St. James's the 7th Day of October 1763, in the Third Year of our Reign. GOD SAVE THE KING.

ENCLOSURE E

TREATY OF WATERTOWN (1776)

A Treaty of Alliance and Friendship entered into and concluded by and between the Governors of the State of Massachusetts Bay, and the Delegates of the St. John's & Mickmac Tribes of Indians.

Whereas the United States of America in General Congress Assembled have in the name, and by the Authority of the Good people of these Colonies Solemnly published and declared, that these united Colonies are, and of Right ought to be free and Independent States; that they are absolved from all Allegiance to the British Crown; and that all political connection between them, and the State of Great Britain is and ought to be dissolved; and that as Free and Independent States they have full power to Levy War, conclude Peace, contract Alliances establish Commerce, and to do all other Acts and things which Independent States may of Right do;

We the Governors of the State of Massachusetts Bay do by virtue hereof, and by the powers vested in us enter into and conclude the following Treaty of Friendship and Alliance, viz.,

1st. We the Governors of the said State of Massachusetts Bay in behalf of said States, and the other United States of America on the one part, and Ambrose Var, Newell Wallis, and Francis, Delegates of the St. John's Tribe, John Denaguara, Charles, Mattahu Ontrane, Nicholas, John Battis, Peter Andre, and Sabbatis Netobcobwit Delegates of the Mickmac Tribes of Indians, inhabiting within the Province of Nova Scotia for themselves, and in behalf of the said Tribes on the other part do solemnly agree that the people of the said State of Massachusetts Bay and of the other United States of America, and of the said Tribes of Indians shall hence forth be at peace with each other and be considered as Friends and Brothers united and allied together for their mutual defence Safety and Happiness.

2nd. That each party to this Treaty shall, and will consider the Enemies of the other as Enemies to themselves, and do hereby solemnly promise and engage to, and with each other that when called upon for that purpose, they shall, and will to the utmost of their abilities, aid and assist each other against their public Enemies; and particularly, that the people of the said Tribes of Indians shall and will afford, and give to the people of the said State of Massachusetts Bay and the people of the other United States of America during their present War with the King of Britain, all the aid and assistance within their power. And that they the people of said Tribes of Indians shall not, and will not directly or indirectly give any aid, or assistance to the Troops or Subjects of the said King of Great Britain, or others adhering to him or hold any correspondence or carry on any Commerce with them during the present War.

3rd. That if any Robbery, or Outrage happens to be committed by any of the Subjects of said State of Massachusetts Bay, or of any other of the United States of America upon any of the people of said Tribes, the said State shall upon proper application being made, cause satisfaction and restitution speedily to be made to the party injured.

4th. That if any Robbery or outrage happens to be committed by any of the said Tribes of Indians upon any of the Subjects of said State or of any other of the United States of America the Tribe to which the Offender or Offenders shall belong, shall upon proper application being made, cause satisfaction and Restitution speedily to be made to the Party injured.

5th. That in case any Misunderstanding, Quarrel, or injury shall happen between the said State of Massachusetts Bay, or of any other of the United States of America and the said Tribes of Indians, or either of them, no private revenge shall be taken but a peaceable application shall be made for Redress.

6th. That the said Tribes of Indians shall and will furnish and supply 600 Strong Men out of the said Tribes, or as many as may be, who shall without delay proceed from their several homes up to the Town of Boston within this State, and from thence shall march to join the Army of the United States of America now at New York under the immediate command of his Excellency General Washington, there to take his Orders.

7th. That each of the Indians who shall by their respective Tribes be appointed to join the Army of the United States of America shall bring with him a good Gun, and shall be allowed one Dollar for the use of it; and in case the Gun shall be lost in the service shall be paid the Value of it. And the pay of each Man shall begin from the time they sail from Machias for Boston, and they shall be supplied with provisions and a Vessel or Vessels for their passage up to Boston. Each private Man shall receive the like pay as is given to our own private Men. The Indians shall be formed into Companies when they arrive at Boston, and shall engage, or enlist for so long a time as General Washington shall want them, not exceeding the term of three years, unless General Washington and they shall agree for a longer time. And as Joseph Denaquara, Peter Andre, and Sabbatis Netobcobwit have manfully and Generously offered to enter immediately into the War they shall be sent as soon as may be to Gen. Washington to join the Army, and shall be considered as entering into our pay at the time of arrival at New York.

8th. The Delegates above named, who may return to their Homes, do promise and engage, to use their utmost influence with the Passamaquoddy, and other Neighbouring Tribes of Indians to persuade them to furnish, and supply for the said service as many strong men of their respective Tribes as possible, and that they come along with those of the Tribes of St. John's [and] Mickmac. And the said Governor of the said State of Massachusetts Bay do hereby engage to give to such of the Passamaquoddy or other Neighbouring Indians, who shall enter into the Service of the United States of America, the same pay and encouragement, in every particular, as is above agreed to be given to the St. John's, or Mickmac Indians, and to consider them as our friends, and Brothers.

9th. That the said State of Massachusetts Bay shall, and will furnish their Truckmaster at Machias as soon as may be with proper articles for the purpose of supplying the Indians of said Tribes with the necessities and conveniences of life.

10th. And the said Delegates do hereby annul and make void all former Treaties by them or by others in behalf of their respective Tribes made with any other power, State or person so far forth as the same shall be repugnant to any of the Articles contained in this Treaty.

In Faith & Testimony whereof we the said Governors of the said State of Massachusetts Bay have signed these presents, and caused the Seal of said State to be hereunto affixed, and the said Ambrose Var, Newell Wallis and Francis, Delegates of the St. John's Tribe, Joseph Denaquara, Charles, Mattahu Ontrane, Nicholas, John Battis, Peter Andre, and Sabbatis Netobcobwit, Delegates of the Mickmac Tribes of Indians have hereunto put their Marks, and Seals in the Council Chamber at Watertown in the State aforesaid the Nineteenth day July In the year of our Lord One thousand and seven Hundred, and seventy six.

ENCLOSURE F

EXCERPTS FROM RELEVANT THIRD-PARTY TREATIES

Treaty of Peace and Friendship between France and Great Britain
(Utrecht, 11 April 1713)

XV. Les habitans du Canada & autres Sujets de la France, ne molesteront point à l'avenir les cinq Nations ou Cantons des Indiens soumis à la G.B. ni les autres Nations de l'Amérique, amies de cette Couronne. Pareillement les Sujets de la G.B. se comporteront pacifiquement envers les Américains Sujets ou amis de la France, & les uns & les autres jouiront d'une pleine liberté de se fréquenter pour le bien du Commerce, & avec la même liberté les habitans de ces Regions pourront visiter les Colonies Francoises & Britanniques pour l'avantage réciproque du Commerce sans aucune molestation, ni empêchement de part, ni d'autre. Au surplus, les Commissaires régleront exactement & distinctement, quels seront ceux qui feront ou devront être censez Sujets & amis de la France, ou de la G.B.

[27 C.T.S. 475, at 484]

Treaty of Amity, Commerce and Navigation between Great Britain and the United States of America ("Jay Treaty," 19 November 1794)

III. It is agreed that it shall at all times be free to His Majesty's subjects, and to the citizens of the United States, and also to the Indians dwelling on either side of the said boundary line, freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties, on the continent of America (the country within the limits of the Hudson's bay Company only excepted) and to navigate all the lakes, rivers and waters thereof, and freely to carry on trade and commerce with each other. But it is understood, that this article does not extend to the admission of vessels of the United States into the sea-ports, harbours, bays, or creeks of his Majesty's said territories, . . . Nor to the admission of British vessels from the sea into the rivers of the United States, . . .

No duty of entry shall ever be levied by either party on peltries brought by land, or inland navigation into the said territories respectively, nor shall the Indians passing or repassing with their own proper goods and effects of whatever nature, pay for the same any impost or duty whatever. But goods in bales, or other large packages, unusual among Indians, shall not be considered as goods belonging bona fide to Indians.

[8 U.S.Stat.L. 116, at 117-118]

Treaty of Peace and Amity between Great Britain and the United States of America (Ghent, 24 December 1814)

IX. The United States of America engage to put an end, immediately after the ratification of the present treaty, to hostilities with all the tribes or nations of Indians with whom they may be at war at the time of such ratification; and forthwith to restore to such tribes or nations, respectively, all the possessions, rights, and privileges, which they may have enjoyed or been entitled to in one thousand eight hundred and eleven, previous to such hostilities: Provided always, That such tribes or nations shall agree to desist from all hostilities, against the United States of America, their citizens and subjects, upon the ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly. And his Britannic majesty engages, on his part, to put an end immediately after the ratification of the present treaty, to hostilities with all the nations or tribes of Indians with whom he

may be at war at the time of such ratification, and forthwith to restore to such tribes or nations, respectively, all the possessions, rights, and privileges, which they may have enjoyed or been entitled to, in one thousand eight hundred and eleven, previous to such hostilities: Provided always, That such tribes or nations shall agree to desist from all hostilities against his Britannic majesty, and his subjects, upon the ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly.

[8 U.S.Stat.L. 218, at 222-223]

ENCLOSURE C

RELEVANT PROVISIONS OF THE CONSTITUTION ACT, 1982

Part I. Canadian Charter of Rights and Freedoms

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty, or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and

(b) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement.

Part II. Rights of the Aboriginal Peoples of Canada

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada.

Part IV. Constitutional Conference

37. (1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada within one year after this Part comes into force.

(2) The conference convened under subsection (1) shall have included in its agenda an item respecting constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on that item.

ENCLOSURE H
REPLY OF THE PRIME MINISTER OF CANADA



PRIME MINISTER • PREMIER MINISTRE

Ottawa, K1A 0A2
April 27, 1985

Dear Mr. Denny:

Thank you for your letter of February 2, 1985 requesting that the Grand Council Mikmaq Nation be invited to participate in conferences on aboriginal constitutional matters.

As you are aware, the four national aboriginal associations (the Assembly of First Nations, the Inuit Committee on National Issues, the Métis National Council, and the Native Council of Canada) have represented Canada's aboriginal peoples in the First Ministers' Conferences on Aboriginal Constitutional Matters since 1983. Their participation in these conferences has led to a continuing and constructive dialogue with the federal government, as we work towards the resolution of aboriginal constitutional matters. In light of the practical limitations of representation, I believe it will be necessary to continue this arrangement.

Mr. Alexander Denny,
Grand Council Mikmaq Nation,
R.R. No. 2,
East Bay,
Eskasoni, Nova Scotia.
BOA 1H0

E:39

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While I regret that we cannot invite all aboriginal groups to participate formally in constitutional conferences, I have no doubt that the interests of all aboriginal peoples will continue to be adequately represented. In this regard I would encourage you to work out arrangements with the Assembly of First Nations so that your particular interests will be addressed.

I wish you success in your endeavours.

Yours sincerely,





INTERNATIONAL
COVENANT
ON CIVIL AND
POLITICAL RIGHTS



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HUMAN RIGHTS COMMITTEE
Fourteenth session

FACT SHEET

Communication No. R.19/78

Submitted by: Alexander Denny
Alleged victims: the people of the Mi'kmaq tribal society
State party concerned: Canada
Date of communication: 30 September 1980 (date of initial letter)
Documentation references: List - CCPR/C/CL/R.19, entry R.19/78
Prior fact sheets - ~~none~~ CCPR/C/FS/R.19/78
Decisions: 29 October 1980 (CCPR/C/DR(XI)/R.19/78)
9 April 1981 (CCPR/C/DR(XII)/R.19/78)

The present document contains (a) a description of the contents of communication No. R.19/78, as summarized in confidential list No. R.19, and (b) the text of the State party's submission under rule 91 of the Committee's provisional rules of procedure, dated 21 July 1981.

A copy of the State party's submission has been transmitted to the author of the communication with the request that any comments which he may wish to submit thereon should reach the Human Rights Committee not later than 16 September 1981.

The text of a further letter from the author of the communication, dated 26 June 1981, is reproduced in the Annex to the present document. A copy of this letter has been transmitted to the State party for information.

*/ All persons handling this document are requested to respect and observe its confidential nature.

GE.81-16816

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A. Summary of communication No. R.19/78, dated 30 September 1980

Communication dated 30 September ("before the leaves turn colors") 1980, submitted under the Optional Protocol to the International Covenant on Civil and Political Rights by Alexander Denny, the "Jigap'ten of Santeoi Mawa'iomí 1/ of the Mi'kmaq people" and co-signed by Sakej Henderson, on behalf of the Union of the Nova Scotia Indians, directed by the authors against the Government of Canada on behalf of the people of the Mi'kmaq tribal society, claiming de jure, by ancient title and dominion, all the territory which it possessed, governed, used and protected at the time it entered into the protection of Great Britain by Treaty in 1752, including, as the national territory of the "Mi'kmaq Nationimouw" (the Mi'kmaq tribal society), the lands today known as Nova Scotia, Prince Edward Island, and parts of Newfoundland, New Brunswick and the Gaspé peninsula of Quebec, alleging that the people of their tribal society are victims of violations of human rights and fundamental freedoms by the Government of Canada, which allegedly has denied and continues to deny them the right to self-determination, in violation of article 1 of the International Covenant on Civil and Political Rights. It is further alleged that Canada has and continues to confiscate the territory of the alleged victims; to deprive them of their means of subsistence and to enact and enforce laws and policies destructive of the family life of the Mi'kmaq tribal society and inimical to the proper education of the children of its members. The authors allege that, by virtue of its self-government from Great Britain, the Government of Canada claims not only to have succeeded the Crown in respect of the Treaty of 1752, but also to be at liberty to ignore that treaty at pleasure.

The authors state that the objective of their communication is to obtain:
(a) that the traditional Government of the Mi'kmaq tribal society (the Santeoi Mawa'iomí of the Mi'kmaq Nationimouw) be recognized, together with the powers vested in such authority; (b) that the Mi'kmaq Nationimouw be recognized as a State, under Treaty obligations entered into with the Crown of Great Britain in 1752, with vested interest and obligations subsequently conferred upon Canada, but unaffected by alleged unlawful acts perpetrated by Canada, and so to restore to the Mi'kmaq Nationimouw the right of national self-determination, allegedly usurped by the Government of Canada in respect of that tribal society; (c) that the right of the Mi'kmaq Nationimouw over all the territory reserved in the Treaty of 1752 be recognized; (d) that Canada be directed to execute fully its responsibilities of protection and defence in accordance with the Treaty of 1752 and to assist the Mi'kmaq nation in restoring its country to self-sufficiency and to a reasonable standard of health and education.

The communication, all in English, consists of the following: (a) cover letter, 2 pages; (b) main communication, 39 pages; (c) enclosures, 304 pages, consisting of: (i) text of applicable treaties, 22 pages; (ii) geographical charts, 3 pages; (iii) information concerning demographic, economic conditions, 2 pages; (iv) "Response of Canada to Land Claims", 30 pages; (v) information concerning educational status, 247 pages.

1/ The "Mawa'iomí" is referred to by the authors as the original Government of the Mi'kmaq tribal society, the "Mi'kmaq Nationimouw".

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B. State party's submission under rule 91, dated 21 July 1981

1. General

The Secretary-General of the United Nations in his note No. G/SO 215/51 CANA (18) reference R. 19/78, dated 22 May 1981, has requested from the Canadian Government, information and observations concerning a communication dated 30 September 1980 (date of initial letter) which was submitted by Alexander Denny to the Human Rights Committee. The communication was submitted under the Optional Protocol to the International Covenant on Civil and Political Rights and Canada was requested by the Committee to submit "information and observations relevant to the question of admissibility of the communication, particularly in so far as it may raise issues under article I of the Covenant".

In his communication, Mr. Alexander Denny alleges that:

"Canada has violated our rights as a State, as a people, and as individuals by depriving us of our territory, our destiny, and our families under colour of colonial laws (prior to 1867), Provincial legislation, and federal legislation such as the 'Indian Act'. Great Britain has violated our rights by failing to defend us from the unlawful actions of Canada, as provided by our Treaty of 1752." (p.21 of Mr. Denny's communication of 30 September 1980)

In the same communication, Mr. A. Denny is requesting the following remedies:

(a) Obtaining answers to questions supposedly not answered by Canada regarding their existence as a separate government, the possession by Canadian citizens of unceded territory, their deprivation of subsistence, educational opportunity, security of inalienable and essential rights to all peoples, and of remaking their children in a Canadian way without their consent.

(b) A declaration to the effect that their tribal society is a parallel State to Canada, because the two States have their own distinct treaty of protection with Great Britain. Nevertheless Canada could represent them in the arena of foreign affairs.

(c) A declaration to the effect that they are sole possessors of the lands not settled by British subjects prior to 1752 in conformity to a treaty passed with Great Britain in 1752.

(d) An order to be given to Canada for executing fully its responsibilities of protection and defense in respect of the treaty of 1752 as well as for assisting the tribal society to restore its self sufficiency and enjoy a reasonable standard of health and education, and/or that responsibility for their tribal society be transferred to the United Nations Trusteeship Council.

Mr. Alexander Denny alleges that Canada has violated article I of the International Covenant on Civil and Political Rights.

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2. Admissibility of Communication

On the question of admissibility, the Government of Canada submits that the communication from Alexander Denny is not admissible for the following reasons:

(a) Article I of the International Covenant on Civil and Political Rights cannot affect the national unity and territorial integrity of Canada.

Article I of the International Covenant on Civil and Political Rights recognizes the right of self-determination. In particular, the third paragraph of this article states that all States Parties to the Covenant "shall promote the realization of the right of self-determination and shall respect that right, in conformity with the provisions of the Charter of the United Nations".

In the Declaration on the granting of independence to colonial countries and peoples, General Assembly resolution 1514 (XV) of 14 December 1960, the General Assembly declared that:

"Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."

In the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, resolution 2625 (XXV) of 24 October 1970, the General Assembly stated under the principle of equal rights and self-determination of peoples that:

"Nothing in the foregoing paragraphs 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 as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour."

This right of self-determination was therefore not endorsed to support secessionist movements within individual sovereign states.

It is, therefore, clear that under article I, paragraph 3 of the Covenant, Mr. A. Denny cannot seek a declaration of independent nationhood for his tribal society that could affect the national unity and territorial integrity of Canada.

(b) International, American and Canadian law do not recognize treaties with North American Native People as international documents confirming the existence of these tribal societies as independent and sovereign States.

International, American and Canadian law do not recognize treaties with North American Native People as international documents confirming the existence of 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. The following jurisprudence will illustrate this legal concept:

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- (i) In the American case of Cherokee Nation v. Georgia, 30 United States (5 Pet) 1 (1831), Chief Justice Marshall at page 17 makes the following statement regarding Indian tribes:

"They look to our government for protection; rely upon its kindness and its power, appeal to it for relief to their wants; and address the president as their great father. They and their country are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and dominion of the United States, that any attempt to acquire their lands, or to form a political connexion with them, would be considered by all as an invasion of our territory, and an act of hostility."

Justice Johnson added at page 26:

"When this country was first appropriated or conquered by the crown of Great Britain, they certainly were not known as members of the community of nations; and if they had been, Great Britain from that time blotted them among the race of sovereigns. From that time Great Britain considered them as her subjects whenever she chose to claim their allegiance; and their country as hers, both in soil and sovereignty. All the forbearance exercised towards them was considered as voluntary; and as their trade was more valuable to her than their territory, for that reason, and not from any supposed want of right to extend her laws over them, did she abstain from doing so."

- (ii) Reference is also made to the matter of the Cayuga Indians who moved from the United States to Canada subsequently to their becoming a party to a treaty with the New York State between 1789 and 1795. An Arbitral Tribunal examined the effect of the said treaties: Cayuga Indians Claim (Great Britain v. United States), Arbitral Tribunal, 6 U.N.R.I.A.A.173 (1926).

At page 176 the Tribunal states that "the tribe had never constituted a unit under international law and had always been treated as under the protection of the power occupying its land".

At page 177 the Tribunal adds: "the Cayuga Nation with which the State of New York contracted in 1789, 1790 and 1795, so far as it was a legal unit, was a legal unit of New York law".

At page 187, it is said "that the 1789 treaty was made at a time when New York had authority to make it, as successor to the Colony of New York and to the British Crown".

The same reasoning was applied to the position of Canada:

"Canadian Cayugas were and are dependent upon Great Britain or later upon Canada, as the New York Cayugas were dependent on and were wards of New York". (p.177)

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It was decided by the Tribunal that "the treaty was in the nature of a contract between New York and the Cayugas and was within New York's competence". (p.189)

The case of the Legal Status of Eastern Greenland, (1933) P.C.I.J. ser. A/B No. 53 demonstrates clearly that these Native Peoples are not recognized as a sovereign State in the community of nations.

In this particular case, Eskimos (Inuit) had succeeded in exterminating settlers and in destroying settlements, but nevertheless the Court decided that this did not destroy the title of the settling power.

The Permanent Court of International Justice held that:

"Conquest only operates as a cause of loss of sovereignty when there is war between two States and by reason of the defeat of one of them sovereignty over territory passes from the loser to the victorious State. The principle does not apply in a case where a settlement has been established in a distant country and its inhabitants are massacred by the aboriginal population."(p.47)

- (iii) In Canadian law the treaty of 1752 was the subject of a judgement by a County Court of Nova Scotia in Rex v. Syliboy (1929) 1 D.L.R. 307.

Patterson (Acting) Co. Ct. J. states at p. 313 that:

"Treaties are unconstrained Acts of independent power. But the Indians were never regarded as an independent power ...

Indeed the very fact that certain Indians sought from the Governor the privilege or right to hunt in Nova Scotia as usual shows that they did not claim to be an independent nation owning or possessing their lands. If they were, why go to another nation asking this privilege or right and giving promise of good behaviour that they might obtain it? In my judgement the Treaty of 1752 is not a treaty at all and is not to be treated as such; it is at best a mere agreement made by the Governor and council with a handful of Indians giving them in return for good behaviour food, presents, and the right to hunt and fish as usual - an agreement that ... was very shortly after broken (by Indian raids)".

- (c) Representatives of the Indians, Inuit and Metis people are assured to be involved in the present constitutional review process.

Canada is a federal country composed of 11 governments, one federal and ten provincial and of two territories which are not autonomous governments but which come under the legislative jurisdiction of the Parliament of Canada. The federal government and the provinces have discussed, intermittently, constitutional reform over the years. On this point the Government of Canada would like to reiterate the position taken by its Ambassador and Permanent representative to the United Nations in Geneva, in a letter dated 9 April 1980 to the Director, Official Records Editing section, which must be considered as an integral part, i.e. paragraph 10 of document CCPR/C/SR.211 of 2 April 1980 and which contains the summary record of the intervention the Ambassador made before the Human Rights Committee on 28 March 1980. The following is an extract from this paragraph:

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"With respect to the possibilities of change in our system, Canada has a constitution which is now 113 years old and there is widespread feeling in the country that it needs modification. Processes exist by which elected representatives, federal and provincial, can bring about constitutional change. Discussions have been going on intermittently for many years for this purpose and constitutional change is at the moment a subject of widespread and lively debate. While the constitution makes provision for the addition or creation of new territories and provinces, it makes no provision for the severance of provinces, territories, or peoples from Canada or for major variations in their constitutional status. Such changes would have to be the subject of constitutional amendment. Thus, the system permits the free advocacy of any constitutional change, as long as it does not involve the use of unlawful force, and there are mechanisms by which freely elected governments can bring about such change." ...

In the paper entitled "A Time for Action", published in 1978, the Prime Minister of Canada gave a high priority to the involvement of Indian, Inuit and Metis representatives in the process of constitutional reform.

At the First Ministers Conference on the Constitution in February 1979, the Prime Minister of Canada succeeded in having placed on the agenda a discussion item entitled: "Natives and the Constitution". It was agreed that Native representatives would meet with the First Ministers on that subject.

The Conservative government carried forward that initiative by inviting Native representatives to a meeting in December 1979 of the Steering Committee of the Continuing Committee of Ministers on the Constitution.

On 29 April 1980, at a Native Conference of Indian Chiefs and Elders held in Ottawa, the Prime Minister of Canada reaffirmed that the Native representatives would continue to be involved in the discussion of constitutional changes which directly affect them. Copy of the press release issued at this occasion is attached as schedule "A". 2/

Again on 30 October 1980, in a letter to Mr. Del Riley, President, National Indian Brotherhood, (attached as schedule "B" 3/) the Prime Minister reiterated his commitment and that of the Government of Canada to working with the Native Peoples towards constitutional changes which will make Canada a better place for them and all Canadians. He then stated:

"In the 'Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada' you will note that under section 24 any rights or freedoms that pertain to the Native Peoples of Canada shall not be abrogated by the introduction of a guarantee in the 'Charter of Rights and Freedoms' of certain rights and freedoms for all Canadians. This section is meant to safeguard any special rights which Native Peoples may have and leaves open the possibility of future entrenchment of such rights in the Constitution."

2/ See Secretariat note on page 12.

3/ Ibid.

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Section 24 to which the Prime Minister referred to is now Section 25 of the proposed Constitutional Resolution tabled by the Minister of Justice in the House of Commons on 13 February 1981 with the amendments approved by the House of Commons on 24 April 1981. Copy of this Resolution is attached as schedule "C". 4/ The Resolution also contains the following sections 34, 36, 55(C) and 59.

34. (1) The aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
- (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada.
36. (1) Until Part VI comes into force, a constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once in every year.
- (2) A conference convened under subsection (1) shall have included in its agenda an item respecting constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on that item.
- (3) The Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of a conference convened under subsection (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories.
- 55(C) The text of which is to be found in schedule C (Attachment to our reply). 5/
59. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.
- (2) The Constitution of Canada includes:
- (a) the Canada Act;
- (b) the Acts and orders referred to in Schedule I; and
- (c) any amendment to any Act or order referred to in paragraph (a) or (b).
- (3) Amendments to the Constitution of Canada shall be made only in accordance with the authority contained in the Constitution of Canada.

4/ Ibid.

5/ Ibid.

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This Resolution is presently before the Supreme Court of Canada on a reference case. The decision of the Court is expected in the near future. The Government of Canada therefore cannot comment further on this matter.

Conclusion

The Government of Canada submits that the communication dated 30 September 1980 (date of initial letter), of Mr. Alexander Denny to the Human Rights Committee should be considered inadmissible by the Committee since it cannot be the basis for a communication under article I of the International Covenant on Civil and Political Rights for the reasons given above.

Secretariat note: The enclosures referred to as Schedule "A" (15 pages), Schedule "B" (5 pages) and Schedule "C", (30 pages) are not reproduced in the present document. These texts are kept in the Secretariat files, together with the text of several other documents referred to by the State party (107 pages), namely, (i) the Cherokee Nation v. the State of Georgia (judgement of the Supreme Court of the United States, January term 1831 United States Reports, 30 Peters 5, REP-USA, R.41, V-30); (ii) Cayuga Indians (Great Britain) v. United States, Arbitral Tribunal (Reports of International Arbitral Rewards Vol. 6) 6 U.N.R.I.A.A. 183 (1926); (iii) Rex v. Syliboy, County Court of Nova Scotia (1929), Dominican Law Reports, (1929) 1 D.L.R.

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Annex

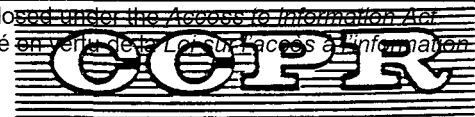
ANNEX

Author's further letter dated 26 June 1981

Please be advised of our receipt of the Human Rights Committee's decision and cover letter of 10 June. We stand ready to answer any issues raised by Canada.

The impact of the Human Rights Committee's decision, however, has been shattered by the issues of Canada against the Restigouche Band in the gespegeoaj district. This paramilitary operation with over 300 police officers began two days following receipt of this transmittal letter of 12 June and still continues. No violent acts or felonies have been committed by the Micmac people to date to warrant such action by the Federal Government.

We hope that the siege of the Restigouche Band are not reprisals for our communication to the Human Rights Committee but even if they are a source of intimidation, the Grand Council remains of the same kind and intent in regards to self-determination. Our hope is that the actions of Canada does not become more violent or causes a loss of any life or property. We are observing the situation and will make a more complete report at the end of this police riot.



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**INTERNATIONAL
COVENANT
ON CIVIL AND
POLITICAL RIGHTS**

HUMAN RIGHTS COMMITTEE
Sixteenth session

FACT SHEET

Communication No. R.19/78

Submitted by: Alexander Denny

Alleged victim: the people of the Mi'kmaq tribal society

State party concerned: Canada

Date of communication: 30 September 1980 (date of initial letter)

Documentation references: List - CCPR/C/CL/R.19, entry R.19/78
Prior fact sheets - CCPR/C/FS/R.19/78 and Add.1-3
Decisions: 29 October 1980 (CCPR/C/DR(XI)/R.19/78)
9 April 1981 (CCPR/C/DR(XII)/R.19/78)

Additional observations by State party

By a note dated 19 February 1982, the Permanent Mission of Canada to the United Nations Office at Geneva indicated that the State party intended to submit additional observations to the Human Rights Committee on the question of the admissibility of communication No. R.19/78. An earlier submission from the State party under rule 91 of the Committee's provisional rules of procedure (dated 21 July 1981) has been reproduced in document CCPR/C/FS/R.19/78/Add.1.

The present document contains the text of the State party's additional observations, dated 17 May 1982 (received under cover of a note dated 10 June 1982 from the Permanent Mission).

The text of the additional observations has been forwarded to the author's legal counsel with the request that any comments which he may wish to make thereon should reach the Human Rights Committee not later than 20 July 1982.

^{*}/ All persons handling this document are requested to respect and observe its confidential nature.

GE.82-16600

(ii)

Note from the Permanent Mission of Canada, dated 10 June 1982

The Permanent Mission of Canada to the Office of the United Nations at Geneva presents its compliments to the Secretariat of the United Nations and has the honour to refer to Secretary General's notes no. G/SO 215/51 CANA (30) of 13 October and November 25, 1981 concerning communication No. 19/78 (Alexander Denny) which is under consideration by the Human Rights Committee in conformity with the provisions of the Optional Protocol to the International Covenant on Civil and Political Rights.

The Permanent Mission has the honour to transmit to the Secretariat additional observations of the Government of Canada on the question of the admissibility of this Communication.

. . . .
. . . .

May 17, 1982

- 1 -

RESPONSE OF THE GOVERNMENT OF CANADA RESPECTING TWO FURTHER
COMMUNICATIONS DATED OCTOBER 3, 1981 AND NOVEMBER 11, 1981
FROM MR. ALEXANDER DENNY TO THE HUMAN RIGHTS COMMITTEE

I - GENERAL

The Secretary General of the United Nations, in his note No G/SO 215/51 CANA (18) R. 19/78 dated May 28, 1981, requested Canada's comments on a communication submitted on September 30, 1980 to the Human Rights Committee by Mr. Alexander Denny. In his communication, Mr. Denny alleged that Canada was in breach of Article 1, paragraph 1 of the International Covenant on Civil and Political Rights because of its alleged denial of the right of self-determination to the Mi'kmaq Indian tribe. Following Canada's response of July 21, 1981 in which the Government of Canada asked that the communication be found inadmissible, the Secretary General of the United Nations, in notes dated October 13 and November 25, 1981, sent Mr. Denny's October 3 and November 11, 1981 replies to Canada's response.

II - INADMISSIBILITY OF MR. DENNY'S COMMUNICATIONS

The communicant indicated in his reply of October 3, 1981 that the Government of Canada had limited its response to the question of self-determination and had not dealt with other issues raised in his complaint.^{1/} The Government of Canada notes that, in his original communication, Mr. Denny limited his claim to self-determination: "free association with an independent State ... is the basis of our Treaty of 1752 and of the grievances contained in this communication". In its decision of October 29, 1980, the Human Rights Committee asked Mr. Denny to clarify whether, besides Article 1 of the International Covenant on Civil and Political Rights, articles 23 or 27 or any other articles were allegedly violated. In his answering letter of December 9, 1980, the communicant indicated that: "No, Article 1 is our goal, our vision". Nevertheless, the Government of Canada considers it useful to deal with other issues raised by the communicant in his reply of October 3, 1981 and responds accordingly.

In his communication, Mr. Denny raised issues relating to the right of self-determination, to the right of self-government (including control over band membership and education) and to the right of property. Save for the part pertaining to the status of Indian women who have married non-Indians, the Government of Canada considers that the communication of Mr. Denny is inadmissible.

^{1/} Mr. Denny's letter of October 3, 1981, p. 6.

A. RIGHT TO SELF-DETERMINATION

The Government of Canada submits that Mr. Denny's communication, as it pertains to the right of self-determination, is inadmissible and this for three reasons. First, the right of self-determination, as recognized by Article 1 of the Covenant, is not applicable in the present case. The communication is, therefore, incompatible ratione materiae with the provisions of the Covenant and, therefore, should be found inadmissible under Article 3 of the Optional Protocol to the International Covenant on Civil and Political Rights which requires the Human Rights Committee to find inadmissible any communication incompatible with the provisions of the Covenant. Secondly, communications under the Optional Protocol can only be made by individuals and must relate to the breach of a right conferred on individuals. The present communication relating as it does to a collective right should, therefore, be found inadmissible because it is contrary to Articles 1 and 2 of the Protocol. Finally, the Committee, under the Protocol, can only give its views as to breaches of the rights protected by the Covenant. By asking it to pronounce itself on the statehood of the Mi'kmaq tribe, the communicant is asking the Committee to exceed its jurisdiction, something which it has no authority to do. For the communicant to make such a request constitutes an abuse of process which should result in his communication being found inadmissible, as regards allegations pertaining to a breach of the right to self-determination, under Article 3 of the Optional Protocol.

1. Incompatibility ratione materiae

The Government of Canada reiterates entirely the argument it made in its response of July 21, 1981 to the effect that the right of self-determination as recognized in Article 1 of the Covenant cannot be invoked to justify secession (or quasi-secession) from a sovereign non-colonial State.^{2/} The United Nations has invariably applied the right of self-determination to dependent or colonial territories. That right has never been endorsed in support of secessionist or separatist movements within individual sovereign States.^{3/} The Government of Canada is of the view that neither Article 1 of the Covenant nor the Declaration on the Granting of Independence to Colonial Countries and Peoples nor the Declaration

^{2/} Government of Canada, Reply of July 21, 1981, pp. 2-3.

^{3/} S.A. Williams and A.L.C. de Mestral, An Introduction to International Law, Toronto, 1979, Butterworths, pp. 48-49; J.F. Guilhaudis, Le droit des peuples à disposer d'eux-mêmes, Grenoble, 1976, Presse Universitaire de Grenoble, pp. 54-67 (in particular pp. 56, 66 and 67); Lee C. Buchheit, Secession: The legitimacy of Self-Determination, New Haven, Conn., 1978, Yale University Press, p. 87; R. Emerson, Self-Determination, (1971) 65 American Journal of International Law, pp. 462-464.

- 3 -

on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations ^{4/} justify an attack on the territorial integrity of a sovereign non-colonial State such as Canada.

In addition, the Government of Canada would like to stress three points:

- a) Recognition in the Covenant of the right of self-determination should not be seen as an encouragement to secessionist tendencies.

The Secretary General of the United Nations, in his "Annotation on the text of the draft International Covenant on Human Rights", indicated that the rights of minorities are dealt with in Article 25 (now 27) of the draft Covenant on Civil and Political Rights. During discussions on Articles 1 and 27 of the Covenant, it was stressed that these Articles could not justify attempts to undermine the national unity of any State. It was clearly understood that the aim of these Articles was not to encourage separatist or irredentist movements and bring about a multiplication of barriers and frontiers. ^{2/}

In addition, reference can be made to a statement by Secretary General U Thant when asked at a press conference on January 4, 1970 how he could reconcile the United Nations support for "self-determination" with its attitude towards the Biafran secession in Nigeria.

^{4/} Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly Resolution 2514 (XV) of December 14, 1960; Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, General Assembly Resolution 2625 (XXV) of October 24, 1970. In particular, see section 6 of the 1960 Declaration and paragraph 7 of the principle of equal rights and self-determination of people found in the 1970 Declaration which recognize the right to the territorial integrity of States.

^{5/} Secretary General of the United Nations, "Annotations on the text of the draft International Covenant on Human Rights" in United Nations General Assembly Official Records, Agenda Item 28 (Part II) Annexes, Tenth Session, New York, 1955, Document A/2929, page 15, paragraph 22. See also p. 63, paragraph 188.

.../4

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"The Secretary General's reply, which included a reference to the United Nations' successful effort to prevent Katanga's secession, affirmed that when a State joins the United Nations, there is an implied acceptance by the entire membership of its territorial integrity and sovereignty. He continued to say:

So, as far as the question of secession of a particular section of a Member State is concerned, the United Nations' attitude is unequivocal. As an international organization, the United Nations has never accepted and does not accept and I do not believe it will ever accept the principle of secession of a part of its Member States".^{6/}

Therefore, the Government of Canada is of the view that the principle of self-determination is not applicable to the case of ethnic, religious or linguistic minorities in non-colonial States. It is only applicable in a colonial situation. The protection of the rights of the minorities in non-colonial States, such as Canada, rests on other provisions of treaties or customary international law, such as Article 27 of the Covenant.

- b) Paragraph 7 of the principles of equal rights and self-determination of people in The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations recognizes the right of self-determination to peoples in States where the government does not represent all the people. In Canada, Indians, like other citizens, may avail themselves, at the federal and provincial levels, of the political rights recognized in Article 25 of the Covenant. They enjoy the same protection in respect of human rights as do all other citizens of Canada. In this respect, Canada now has in its Constitution an entrenched Charter of Rights and Freedoms which assures protection of human rights in Canada.^{7/}

^{6/} R. Emerson, op.cit., p. 464.

^{7/} Infra, pp. 14-15. For the Text of the Constitutional Amendment see Schedule I.

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Therefore, whether or not the principle of self-determination applies in non-colonial situations, (and in Canada's view it does not), the Government of Canada considers that since Canada is a "State possessed of a government representing the whole people belonging to (its) territory without distinction as to race, creed or colour and respectful of human rights,"^{8/} the Mi'kmaq cannot claim the right to self-determination or in any way seek to impair Canada's territorial integrity or sovereignty.

- c) In the present state of international law, a thinly scattered minority group living within the midst of a more numerous population grouping and occupying territory co-extensive with that grouping cannot claim self-determination. This principle has been acknowledged by authors commenting on the right of self-determination. Thus, Emerson indicates that:

"Where there is such intermingling, no form of self-determination, short of mass migration, can be invoked to satisfy such demands as the minority community may make for recognition of its separate identity".^{9/}

The number of Mi'kmaq registered under the Indian Act, R.S.C. 1970, c. 1-6, does not exceed 18,000 persons scattered throughout Nova Scotia, New Brunswick, Prince Edward Island and Quebec.^{10/} The area claimed by the Mi'kmaq is inhabited by more than 2,000,000 Canadian citizens including the Mi'kmaq. Even if otherwise applicable, the right of self-determination has, therefore, no application in such circumstances.

^{8/} Buckhert, op. cit., p. 94. For an example of how Canada protects human rights, see the Report of Canada on Implementation of the Provisions of the Covenant submitted to the Committee in 1979 (CCPR/C/1/Add.43).

^{9/} Emerson, op. cit., p. 472. See also, Jacques Brossard, L'Accession à la souveraineté et le cas du Québec, Montréal, 1976, Presses de l'Université de Montréal, p. 87

^{10/} The Mi'kmaq live in bands, each of which is politically independent from the others. Band membership is governed by the provisions of the Indian Act. The above quoted number of Mi'kmaq is that of registered Indians.

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Further, the Government of Canada considers that the Committee should not be put in a position where it can be seen as pronouncing itself on such a fundamental issue to States as their territorial integrity. This is a political matter better left to each sovereign State and to the decolonisation mechanisms created by the United Nations.

2. Inadmissibility resulting from communicant's incompetence to submit a communication relating to self-determination.

Article 1 of the Optional Protocol states that:

"A State Party to the Covenant that becomes a party to the present protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant."

Further, Article 2 of the Optional Protocol provides that:

"individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies" may complain to the Committee.

- a) State communications under the Optional Protocol.

Under Articles 1 and 2 of the Optional Protocol, only individuals, not States or non-governmental organizations, 11/ have a right to submit a communication. A communication made by or on behalf of a State would be inadmissible. It is, therefore, submitted that, under the provisions of the Protocol, a communication cannot be made on behalf of an "alleged Mi'kmaq State" 12/

If the Mi'kmaq society is and always has been a State, an allegation which the Government of Canada completely denies, then Mr. Denny is addressing himself to the wrong forum. The Committee does not have the mandate to hear disputes between States regarding the existence or the extent of their sovereignty. This is a question beyond its jurisdiction.

11/ Erik Möse and Torkel Ospahl, The Optional Protocol to the International Covenant on Civil and Political Rights, (1981) 21 Santa Clara Law Review, p. 299, 301, 302; M.E. Tardu, Human Rights, The International Petition System: Complaint Procedures of the United Nations Organization, Dobbs Ferry, N.Y., 1980, Oceana Publications Inc., Vol. 2, pp. 29-33.

12/ In paragraph 52 of his September 30, 1980 communication, Mr. Denny alleged that "the Mi'kmaq Nationimouw was a State in 1752 when it treated with Great Britain and remains a State today".

.../7

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The only section in the Covenant which allows a State to make a complaint against another State is Article 41. The "alleged Mi'kmaq State" is not a party to the Covenant and therefore cannot avail itself of this Article. The Government of Canada therefore, submits that the Human Rights Committee has no jurisdiction to consider Mr. Denny's communication if it is submitted on behalf of a "State".

b) Collective rights and individual communications under the Optional Protocol.

Article 1(1) of the Covenant recognizes that: "all peoples have the right of self-determination". The Government of Canada is of the view that an individual cannot invoke a breach of this collective right under the Optional Protocol. The Protocol relates to breaches of rights given to individuals, not to a collectivity. In the present case, Mr. Denny does not invoke a breach of an individual right. Rather, he claims that Canada is denying the Mi'kmaq the collective right of a people to self-determination. Since an individual is not a people and since the Optional Protocol only confers a right of communication on individuals for a breach of their rights, the Government of Canada submits that the Committee's jurisdiction, as defined by the Protocol, cannot be invoked by or on behalf of a people. Therefore, consideration of Mr. Denny's allegations pertaining to self-determination for the Mi'kmaq are not within the jurisdiction of the Committee as conferred by the Protocol.

3. Jurisdiction of the Committee to award remedy requested by the communicant.

The remedy which Mr. Denny is seeking from the Committee under the Optional Protocol is, in effect, a pronouncement that the Mi'kmaq society is a State. Such a remedy is beyond the jurisdiction of the Committee. Under the Optional Protocol, it can only ascertain if a State Party has violated any of the rights protected by the Covenant. It cannot pronounce itself, as Mr. Denny would like it to do, on whether the Mi'kmaq constitute a State. For the communicant to ask the Committee to exceed its jurisdiction can be considered an abuse of process which would render the communication, as it relates to self-determination, inadmissible under Article 3 of the Optional Protocol.

.../8

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B. RIGHT TO SELF-GOVERNMENT

Mr. Denny made a general claim to the right of self-government. He also makes specific claims to control over band membership and education, two issues which are related to the question of self-government. Save for the allegation pertaining to membership of Indian women who have married non-Indian men, the Government considers that these allegations should be found inadmissible.

1. Inadmissibility of Allegations Pertaining to Self-Government

The allegation made by Mr. Denny in his communication, namely that Canada is interfering "with ancient institutions of self-government", should be found incompatible ratione materiae under Article 3 of the Optional Protocol since it has no basis under the Covenant:

- a) For the reasons previously indicated, Article 1 of the Covenant has no application in the present case. The communicant cannot, therefore, claim on behalf of the Mi'kmaq one of the prerogatives of self-determination, i.e. the right to establish their own form of self-government outside the framework of Canadian institutions.
- b) No other provision of the Covenant confers upon minorities the right to establish their own form of government, including Article 27.^{13/}

The Government of Canada is of the view that each country should protect the interests of national minorities pursuant to the Covenant. In so doing, it must, if it is a party to the Covenant, ensure that its provisions will be respected. The Government of Canada has enacted legislation applying to status Indians, such as the Mi'kmaq.^{14/} This legislation provides for limited self-government by Indian bands, including the Mi'kmaq. Band government may be exercised by the band council or chief, according to band custom.

Only three out of the twenty-six Mi'kmaq bands have chosen to elect their council according to the custom of the band. The remaining twenty-three bands elect their council in conformity with the applicable provisions of the Indian Act.

^{13/} Secretary General of the United Nations, Annotations on the text of the draft International Covenants on Human Rights, op. cit., p. 63, paragraph 188. See also p.15, paragraph 22.

^{14/} Indian Act, R.S.C. 1970, C. 1-6.

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Mi'kmaq bands are now performing many of the functions falling within the jurisdiction of municipal governments. Band powers are principally those given by section 81 of the Indian Act.

Further, the Government of Canada considers that the arguments it previously made regarding the competence of the communicant to raise the question of self-determination apply mutatis mutandi as regard the issue of self-government since it is merely a modality of the right of self-determination.

2. Inadmissibility of allegation pertaining to control of band membership and education.

The Government of Canada does not contest the first part of the communicant's third allegation pertaining to band membership of an Indian woman who marries a non-Indian. It is aware of the Committee's views in Lovelace v. Canada and is taking steps to see that effect is given to that decision. Therefore, the Government of Canada considers this matter to have been already dealt with.

As regards enfranchisement, the Government of Canada considers that Mr. Denny's allegations should be found inadmissible ratione temporis. It is aware that in the Lovelace case, one of the elements of the Committee's decision was that loss of Indian status for an Indian woman who had married a non-Indian before the coming into force of the Covenant in Canada had continuing effect resulting in a breach of Article 27. However, in the present case, the acts complained of would have taken place more than twenty years ago at the earliest. The right to vote was given to Indians who were members of the armed forces of Canada during the First World War by the Military Voters Act, S.C. 1917, c. 34, as well as to Indians who were members of the armed forces during World War II by An Act to Amend the Dominion Elections Act, S.C. 1950, c. 35, but there is nothing in those Acts concerning their enfranchisement for the purposes of the Indian Act. In addition, the Government of Canada found no provisions requiring enfranchisement of Indians taking temporary employment outside of their reserve of origin. Legal authority to enfranchise Indians can only derive from the provisions of the Indian Act. Since the turn of the century, there were two periods of time during which involuntary enfranchisement of Indians could have occurred. The first period is from 1919 to 1922, when section 3 of An Act to Amend the Indian Act, S.C. 1919-1920, c. 50, allowed such enfranchisement. This section is written in a permissive form rather than in an imperative one; it allows for the appointment by the Superintendent General of a Board to enquire and report as to fitness of Indians to be enfranchised. This provision

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was repealed by section 1 of An Act to Amend the Indian Act, S.C. 1922, c. 26. From 1932 to 1961, the Indian Act had a new provision allowing a Board of Enquiry to report as to the fitness of an Indian or Indians to be enfranchised without a request by the Indian if the enfranchisement "would not be made in violation of the terms of any treaty, agreement or undertaking that may have been entered into or made between or by the Crown and the Indians of the band in question".^{15/} Mr. Denny does not relate his general allegation to any specific case of compulsive enfranchisement of Indians. It is, therefore, impossible to ascertain if the Government of Canada actually enfranchised any Mi'kmaq Indians between 1919 and 1922 or between 1932 and 1961 under the "involuntary" enfranchisement procedure. In addition, the Government of Canada notes that at the time the acts of enfranchisement could have occurred, enfranchisement was considered a positive act benefiting the Indians by allowing their full participation in society. Therefore, the Government of Canada believes that the part of Mr. Denny's communication pertaining to enfranchisement should be found inadmissible because of its lack of specificity.

As regards the second element of this alleged violation, i.e. that the Mi'kmaq should control their education, the Government of Canada considers it inadmissible ratione materiae. The Covenant does not make any provision with respect to the right to education. Rights of children are protected under the Covenant by Article 24. However, this Article does not confer a right to education. Rather, it would seem to refer to the obligation of State parties to offer special protection to children who are neglected, ill-treated, abandoned or orphaned.^{16/} As for Article 27, it does recognize, as previously mentioned, certain rights of minorities. However, these rights do not imply that minorities in Canada must have control of the educational system. Rather, the State must not interfere with the exercise by minorities of the rights given them by Article 27.^{17/}

^{15/} It should be noted that the provisions pertaining to "involuntary" enfranchisement of Indians which were enacted by An Act to Amend the Indian Act, S.C. 1932-33, c.42, s. 7 (repealed by An Act to Amend the Indian Act, S.C. 1960-61, c.9) provided for an inquiry to be conducted by a superior or county court judge, an officer of the Department of Citizenship and Immigration and a member of the band selected by the band or, if it failed to do so, by the Superintendent General of Indian Affairs.

^{16/} "Document A/5655: Report of Third Committee in Official Records of the General Assembly of the United Nations, Agenda, item 48, Annexes, 18th session, New York, 1963, p. 20, paragraph 71.

^{17/} Secretary General of the United Nations, Annotation on the text of the draft International Covenant on Human Rights, op. cit., p. 15, paragraph 22 and p. 63, paragraph 188.

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Thus, a State party to the Covenant more than meets any obligation it might have under Article 27 if it provides a means by which members of a minority group can gain a knowledge of their language, culture and religion.

Although a right to education is recognized by Article 2 of the First Protocol to the European Convention on Human Rights and Fundamental Freedoms, the European Court of Human Rights in the Belgian Linguistic Case (No. 2) rejected allegations made by French speaking parents to the effect that certain provisions of the Belgian educational legislation were infringing their rights. In that case, the Court held that a right to education did not require the Contracting Parties to establish at their own expense nor to subsidize education of any particular type or at any particular level, but merely guaranteed a right of access to educational institutions existing at a given time as well as the right to obtain in conformity with the rules in force in each State, official recognition of the studies completed.^{18/}

Thus, even if the Covenant recognized a right to education (which it does not), responsibility for ensuring compliance with this right would rest with the States parties, not with individuals or groups of individuals such as the Mi'kmaq.^{19/} A State party would meet its obligations if it set up public schools or allowed individuals to attend unsubsidized private schools conforming to the minimum educational standards set by the State. Further, it would not be required to provide minorities instruction in their language. Examining the second sentence of Article 2 of the First Protocol to European Convention on Human Rights and Fundamental Freedoms which provides that:

"a State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions",

the European Court of Human Rights decided that such a provision did not require States to respect parents' linguistic preferences. The Court concluded that the aim of Article 2:

"was in no way to secure respect by the State of a right for parents to have education conducted in a language other than that of the country in question".^{20/}

^{18/} Belgian Linguistic Case (No. 2), (1980) 1 European Human Rights Report 252, at p. 281, paragraph 4.

^{19/} The Government of Canada possesses full sovereignty over its territories and, therefore, complete legislative authority over its inhabitants, including the Mi'kmaq.

^{20/} Belgian Linguistic Case, op. cit., p. 282, paragraph 6.

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Thus the Court denied the right of a parent or of a child to obtain instruction in a language of his choice "for it would be open to anyone to claim any language of instruction, in any of the territories of the Contracting Parties" ^{21/}

Even if, indirectly, the right of education were protected by Articles 24 or 27 or any other provision of the Covenant, the Government of Canada submits that the general principles enunciated in the Belgian Linguistic case ought to be applied by the Committee.

Nevertheless, the Government of Canada is aware of the need to protect the culture of Indian groups. ^{22/} To that end, its Indian education policy provides the Mi'kmaq students attending federal or band schools, whenever possible, a curriculum which includes Indian-related content relevant to the background of the Indian students.

As for the Mi'kmaq students attending provincial schools, they follow the curriculum provided by the province, but the Government of Canada endeavours to have the Provincial School Boards include, where possible, Indian-related curriculum content. Canada considers that this policy allows Indians to participate in Canadian society while at the same time it protects their language and culture.

Further, the Government of Canada states that a federal law which purported to restrict or prohibit the use by Indians of their religion, culture and language might well be found inoperative as being contrary to the provisions of the Canadian Bill of Rights guaranteeing freedom of religion, speech, association, assembly and press (sections 1 (c), (d), (e), (f) and 2). The Canadian Charter of Rights and Freedoms also enshrines such protections in the Constitution (sections 2(a), (b), (c) and (d), 24 (1) and 52 (1)). Section 25 applies more particularly to Indians:

"The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including:

^{21/} Ibid, p. 285, paragraph 11.

^{22/} In Canada, education is a provincial responsibility; however, because of its jurisdiction over Indians, the federal government is responsible for their education (British North America Act, 1867, 30 & 31 Vict., c. 3 (U.K.), sections 91(27) and 93). In the exercise of its jurisdiction, it has enacted various provisions governing their education (Indian Act, op. cit., sections 114-123).

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- a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
- b) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement."

C. RIGHT TO PROPERTY

The International Covenant on Civil and Political Rights does not make any provision for the right to property. Therefore, an individual cannot avail himself of such a right under the Optional Protocol. Any attempt to invoke this right would be incompatible ratione materiae with the provisions of the Covenant and must be found inadmissible under the provisions of Article 3 of the Protocol.

In addition, the Government of Canada considers that the communicant cannot avail himself of the right of self-determination to claim property on behalf of the Mi'kmaq tribe. As previously indicated, he cannot avail himself of Article 1 of the Covenant since the claim of the Mi'kmaq tribe does not fall within the ambit of this provision and because individuals cannot seek enforcement of collective rights under Article 1 and 2 of the Optional Protocol. In addition, since the Mi'kmaq claim to property as stated by Mr. Denny would entail the Committee recognizing the existence of a Mi'kmaq State, the Government of Canada considers that the communicant is requesting the Committee to pronounce itself on a matter other than an alleged breach of the right of self-determination, something which in its view constitutes an abuse of process prohibited under Article 3 of the Optional Protocol.

Further, the Government of Canada would like to emphasize that Indians, under Canadian law, can seek from the Courts recognition of Indian title to lands. For example, an Indian tribe can seek a declaration from the Courts recognizing the existence of an aboriginal title. Again, it can seek to file a caveat against land; this would prevent registration of patents, grants or similar interests on title in the area under caution until the caveator has the opportunity to oppose such registration. These remedies exist notwithstanding the fact that an Indian tribe is seeking or has sought recognition of its rights through the Office of Native Claims. Consequently, if the Mi'kmaq have any interest in the lands in question, they could and should have sought its recognition from the Courts. This they have not done. If the right of property had been recognized by the Covenant, this failure to exhaust local remedies would have rendered their communication inadmissible under Articles 2 and 5(2)(b) of the Optional Protocol.

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III - CANADA'S CONSTITUTION AND THE ADMISSIBILITY OF THE PRESENT COMMUNICATION

Mr. Denny's reply of November 11, 1981 is irrelevant because the three sections mentioned in Canada's response of July 1981, are still part of the Constitution Act, 1982. Section 34 is now section 35, although it has been amended to provide that "existing" rights would be protected. Section 36 is now section 37 and was amended in its form not in its substance.^{23/}

In The Queen v. The Secretary of State for Foreign and Commonwealth Affairs, Lord Denning commented on the provisions of the Canada Act, 1982 pertaining to Indians. He was of the view that:

"the Canada Bill itself does all that can be done to protect the rights and freedoms of the aboriginal peoples of Canada. It entrenches them as part of the Constitution so that they cannot be diminished or reduced except by the prescribed procedure and by the prescribed majorities. In addition, it provides for a conference at the highest level to be held so as to settle exactly what their rights are. That is most important, for they are very ill-defined at the moment."^{24/}

In its July 21, 1981 response, the Government of Canada referred to proposed amendments to the Canadian Constitution. These amendments have now been adopted and are in force. Nonetheless, the Government of Canada would like to clarify its reference to what was at the time only a proposal. The communicant claims that a State cannot invoke laws not yet enacted as a bar to the admissibility of a complaint under the Optional Protocol to the International Covenant on Civil and Political Rights.^{25/} The Government of Canada agrees with this argument. Rather, in its earlier response, it referred to proposed amendments to the Canadian Constitution, albeit perhaps not too clearly, in the light of its commitment to human rights. The above mentioned provisions of the Constitution Act, 1982 as well as sections 1 to 34 (Canadian Charter of Rights and Freedoms) of the Act must be considered in relation to its continued commitment to human rights. This commitment must be seen in light of paragraph 7 of the principle of equal rights and self-determination of people in the Declaration on Principles of

^{23/} For a copy of the text of the Constitution Act, 1982, see Schedule I.

^{24/} The Queen v. The Secretary of State for Foreign and Commonwealth Affairs, Court of Appeal of the United Kingdom, January 28, 1982, pp. 18-19.

^{25/} Mr. Denny. Letter of October 3, 1981, op.cit., p. 5.

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International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations^{26/} pertaining to the principle of equal rights and self-determination of people. This paragraph provides that:

"Nothing in the foregoing paragraphs 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 people as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour".

The amendments made to the Canadian Constitution are but one reason why the communicant's claim to self-determination for the Mi'kmaq must fail. The Government of Canada examined the impact of human rights protection on such a claim earlier in this text ^{27/}

IV - OTHER ISSUES RAISED BY MR. DENNY'S REPLY OF OCTOBER 3, 1981.

In his letter of October 3, 1981, Mr. Denny raised certain other issues or alleged issues to which Canada would like to reply, namely:

- a. Whether Canada is an independent State or merely a "creature" of the United Kingdom of Great Britain and Northern Ireland;
- b. whether the Mi'kmaq tribe's territory was ever lawfully incorporated into Canada; and
- c. whether treaties concluded with Indian tribes implied their recognition as States as understood in international law.

^{26/} General Assembly, Resolution 2625 (XXV) of October 24, 1970.

^{27/} Supra, pp. 2-6.

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The Government of Canada does not consider that the relationship between the United Kingdom or Indian tribes on one hand and Canada (or its predecessors in title, i.e. France, the United Kingdom and Newfoundland) on the other is a relevant issue in the context of the present communication. The independence of Canada, the extent of its territory and its sovereignty over it are matters which are accepted internationally. Since the part of Mr. Denny's communication relating to the right of the Mi'kmaq to self-determination is inadmissible, discussion of these questions is not relevant to the issue of the present case. As previously indicated, these questions are beyond the Committee's jurisdiction and as such are not pertinent to the matter in issue in the present case.

V - CONCLUSION

For the reasons mentioned above, as well as those mentioned in its response of July 21, 1981, the Government of Canada submits that Mr. Denny's communication as formulated in his letters of September 30, 1980, October 3, 1981 and November 11, 1981 should, with the exception of the part pertaining to membership in Indian bands of Indian women who marry non-Indians, be considered inadmissible by the Committee. As regards the question of band membership, the Government of Canada considers that the matter has been dealt with in the Lovelace case and it is presently discussing with Indian bands how best to give effect to the Committee's decision in that case. This being the case, the Government of Canada does not wish to contest the merits of that part of Mr. Denny's communication.

TRANSMITTAL AND RECEIPT NOTE / NOTE D'ENVOI ET DE RÉCEPTION

CONFIDENTIAL
WITHOUT ATTACHMENT(S) / SANS ANNEXE(S)TO
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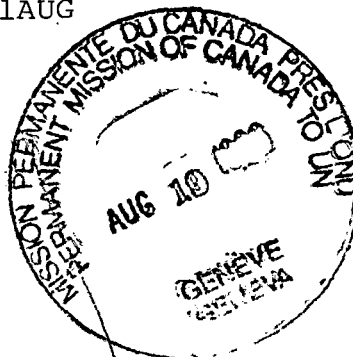
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ATTN:

C-7

RE: HUMAN RIGHTS COMMITTEE: COMPLAINT OF LUBICON LAKE BAND

ref: JLO tel 1353 01AUG



45-13-2 Lubicon Lake

	ACTION	INFO		ACTION	INFO
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RETURN TO / RETOURNER À

EXTOTT/C.SWORDS/LEGAL OPERATIONS
DIVISION

DATE

SIGNATURE

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FOR SIGNATURE AND RETURN TO ORIGINATOR - SIGNER ET RETOURNER AU BUREAU D'ORIGINE

External Affairs
Canada

Affaires extérieures
Canada

M. Cleary/IMH/992-2022/amm
FILE CIRC DIVN ORIG WF

• Mission of Canada to the EEC, BRUSSELS

DE • The Under-Secretary of State for
External Affairs (IMH) OTTAWA

REFERENCE • Our telegram No. 0814 of August 1, 1986
REFERENCE

SUBJECT • LUBICON LAKE INDIAN BAND
ET

Security/Sécurité
SECRET
Accession/Référence
File/Dossier
45-CDA-13-1-3-LUBICON LAKE BAND
Date
06 August 1986
Number/Numéro
IMH:0849

ENCLOSURES
ANNEXES

DISTRIBUTION

JLO

... Attached is background material on the Lubicon
Indian Band.

Peter.
*This is a good summary of what
may become happen people in fall. Wom*
Keating
Colman

Under Secretary of State
for External Affairs

RECEIVED - REÇU

AUG 6 1986

Legal Operations Division (JLO)
Direction des Opérations juridiques



Indian and Northern
Affairs Canada

Affaires indiennes
et du Nord Canada

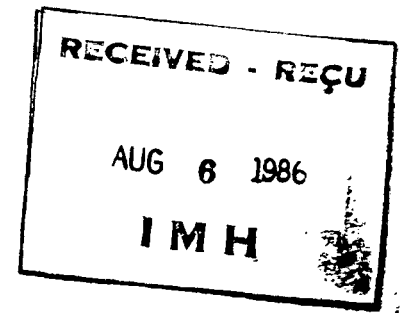
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AUG
AOUT - 5 1986

Your file Votre référence

Our file Notre référence

Mr. Michael Cleary,
Department of External Affairs,
Human Rights and
Social Affairs Division,
4th floor, Tower "A",
Lester B. Pearson Building,
125 Sussex Drive,
Ottawa, Ontario.



Dear Mr. Cleary:

Re Lubicon Lake Indian Band

Enclosed please find a briefing note on the above noted matter as requested. I have tried to capture the salient historical events vis-à-vis the Band's claim and to describe the current state of affairs. I have also included a number of "talking points" to which you may wish to add if you feel it is necessary. Please let me know if I can be of further assistance.

Yours sincerely,

Robert A. Coulter,
A/Director General,
Policy Branch,
Lands, Revenues and Trusts.

/pl

Canada

000848

SECRET

TOPIC: THE LUBICON LAKE BAND GRIEVANCES - ALBERTA

**ISSUE: Status of negotiations aimed at a settlement of the
Lubicon Lake Band grievances.**

BACKGROUND:

1. The Lubicon Lake Band is located 60 miles east of Peace River, Alberta. They were originally paid Treaty money as members of other bands but were granted separate band status in 1940. At that time, Alberta agreed to transfer 25.4 square miles of Crown land to Canada so that a reserve might be set aside. For many reasons, Canada never established the reserve.
2. In 1980 the Band filed a Statement of Claim in the Federal Court against both Canada and Alberta alleging "Indian title" to 8,500 square miles of Northern Alberta and seeking one (1) billion dollars compensation. The Band's case in the Federal Court is still active although the Band has not proceeded with its action in the hope of arriving at a negotiated settlement.
3. In 1983 the Band took action against Alberta and several oil companies seeking an injunction to halt exploration in a 2,300 square kilometer area. The Alberta Court and subsequently the Supreme Court of Canada rejected the application to hear the case.
4. Also in 1983, the Department urged Alberta to cooperate in settling the claim and made the following recommendations: 1) a land base of 25.4 square miles, including minerals, be set aside immediately; 2) a catch-up program of housing, community infrastructure and economic development be initiated; 3) Band members be given preferred hunting, fishing and trapping rights in a designated area. Alberta has indicated willingness to consider all the points noted above.

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SECRET

5. An exhaustive genealogical review of the Band's antecedents has been completed and indicated membership should be set at 347. Justice maintains that the 1940 Band population of 127 be used as the basis for calculating the land quantum, with a view to negotiating up to and including the present population as determined by the Registrar (197 in 1986). The Band membership would approach or exceed 400 if all the individuals named in the genealogical report were to apply for membership in the Band. The Band will not permit the release of the joint DIAND/Band genealogical study to the province and the province will not release its material unless Canada does the same.
6. Respecting land quantum owed to the Band, the Province is of the view that under the Natural Resources Transfer Agreement, it is obligated to assist Canada to fulfill its treaty obligation based on the population in 1899, the year of treaty. No one knows this figure.
7. The Honourable Davie Fulton, the Minister's special representative, undertook a fact finding inquiry and presented the facts of the case and his views on possible areas of reconciliation in a discussion paper dated February 1986.
8. In late September, 1985 it became known that Union Oil of Calgary had requested authorization from the Alberta Energy Resources Board to increase the capacity of an existing pipeline in an existing right-of-way, part of which crosses the land designated in 1940. On January 17, 1986, the Band and Union Oil reached a tentative agreement whereby Union would build its pipeline around the 25.4 square mile area.
9. The Alberta Cabinet, at the last meeting chaired by the Honourable Peter Lougheed, agreed to transfer to Canada upon request by Canada the 25.4 square mile parcel of land designated in 1940 on condition that:
 - a) Alberta make satisfactory arrangements with third parties who now hold leases to part of the land;

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SECRET

- b) The Band accept the oil and gas leases as they are now;
- c) The Band only take action against Alberta for land in excess of 25.4 square miles as a joint party with Canada; and
- d) The Band abandon all its claims against Alberta based on native title.

The first two conditions are acceptable to the Band but they last two, which were added at the direction of the Provincial Cabinet, are not acceptable.

- 10. On December 5, 1985, Cabinet Committee on Social Development approved the payment of \$1.5 M as an ex gratia payment to help the Band defray its legal and other costs associated with presenting its claim. This payment was made on January 8, 1986.
- 11. In December 1985, the Band advised they were willing to participate in negotiations with Alberta present as an observer.
- 12. On February 27, 1986, Cabinet approved a negotiating strategy and mandate for resolving the Band's grievances.
- 13. In a special report to the Minister dated February 10, 1986, Mr. Fulton recommended face-to-face negotiations.
- 14. In March 1986, Mr. Roger Tassé, O.C., Q.C. was appointed as Canada's negotiator.
- 15. In March 1986 the Band advised they were no longer willing to participate in negotiations with Alberta present in any capacity.

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SECRET

16. The Band has indicated that if negotiations are not successful they plan to proceed with an international boycott of the Calgary Olympic games. Indications are that they have at least some support for this boycott from some members of the European Parliament.

CURRENT STATUS:

1. On June 3, 1986 the Band agreed to participate in bilateral negotiations with the federal negotiator, Mr. Roger Tassé. The parties agreed to establish August 30, 1986 as a target date to reach an agreement. Throughout the period, Mr. Tassé was to undertake parallel negotiations with Alberta. It was hoped that once significant progress was made in the bilateral discussions Alberta could be brought to the negotiating table as a full participant.
2. On July 8, 1986 the Band withdrew from the negotiations because Canada refused to consider the provision of land to the Band under Treaty 8 for those members of the Band who are not status Indians. It should be noted the Band has approval to determine its own membership under the Indian Act. It is argued by Canada that Bill C-31, in allowing Bands to determine their own membership, did not also create an automatic entitlement to additional land under Treaty. To accept that an additional land entitlement had been created would have massive policy implications for Canada in terms of the number of status Indians in Canada entitled to services, Federal-Provincial relations, and funding.
3. The federal negotiator, at the conclusion of the talks, tabled with the Band his proposal for a settlement, which is based on the Cabinet approved mandate. A copy was also released and explained to the media. It is felt that this proposal is fair and consistent with Canada policy in regard to treaty entitlement. A copy of the offer is attached.
4. The reason for the breakdown and the federal offer were discussed with senior Alberta officials on July 9, 1986.
5. At the breakdown in negotiations, the Band indicated they planned to pursue their court actions against Canada and Alberta and to pursue their Olympic boycott.

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SECRET

TALKING POINTS:

1. The federal offer to the Band is fair and offers ample scope for a negotiated settlement. If the Band had accepted it would have given them a reserve of about 25,000 acres with full mineral rights, a new community (including housing, infrastructure, and schools) and millions of dollars in compensation and other benefits.
2. It is believed that the Olympic boycott does not have the support of other Indian bands located close to the Olympic site.
3. Canada is committed to resolving this claim and is prepared to return to the negotiating table.

Robert A. Coulter
Policy Branch (994-1241)
Lands, Revenues and Trusts
Indian and Northern Affairs
August 5, 1986

WITHOUT PREJUDICE

**Note from the federal negotiator to the representatives of
the Lubicon Band**

1. The purpose of our negotiations is to find out whether the Lubicon Lake Band (the "Band") and Canada, and eventually Alberta, can agree on a package of benefits to resolve the Band's grievances against Canada and Alberta, some of which are the subject of legal proceedings launched by the Band in Canadian Courts.
2. The Band's claims in the Courts are primarily based on aboriginal title.
3. Canada is resisting these Court proceedings as it does not recognize any claims of the Lubicon Lake Band arising from aboriginal title. Canada considers this title to have been extinguished by the Band's adhesion to Treaty Eight, which occurred as a consequence of its actions since the signing of Treaty Eight on June 21, 1899.
4. Canada recognizes that, subsequent to the creation of the Lubicon Lake Band, it was agreed by all concerned that a parcel of land of 25.4 square miles was to be made available for the benefit of the Band in accordance with the provisions of Treaty Eight. The transfer of this parcel of land to Canada for the creation of a reserve was never effected. Canada, as a result of this and in recognition of the Band's rights under Treaty Eight, is prepared to offer to the Band a package of benefits described below to resolve the Band's grievances.
5. The legal issues raised by the Band and Canada in the Court proceedings can only be resolved in the Courts. A settlement of the Band's grievances, out of Court, will be possible only if the parties concerned accept that current negotiations are not the place where these legal issues can be resolved.
6. Without prejudice to the position it might take in the proceedings before the Courts, Canada is prepared to offer the Band a settlement package which takes into account the Band's unique grievances so that the Band may fully enjoy the benefits provided for by Treaty Eight and receive programs and services from Canada in a manner equivalent to those received by other Bands.

7. DETERMINATION OF BENEFICIARIES AND LAND ENTITLEMENT

7.1 The federal negotiator is prepared to support and take to Alberta a proposal for the transfer of land to Canada for the purpose of creating a reserve for the use and benefit of the Lubicon Lake Band in accordance with the following:

- a) the provision of land for a reserve on the basis of the following formula:

128 acres times the number of status Indians registered on the Indian Registry as Lubicon Lake Band members immediately prior to the passage of Bill C-31 plus any natural increases to this number on the basis of pre-Bill C-31 criteria set out in the Indian Act;

- b) the inclusion in the quantum arrived at by the above formula of the 25.4 square mile parcel of land identified previously for the Band minus the 160 acre homestead of the L'Hirondelle family which is not contested by the Band;
- c) the provision of 160 acres as an offset to the L'Hirondelle homestead;
- d) Canada would not propose to "go behind" the list of persons on the Indian Registry on November 30, 1986, for the purposes of these negotiations only;
- e) the status Indians whose names appear on the membership list maintained by the Lubicon Lake Band and who transfer to the Lubicon Lake Band from other Bands by November 30, 1986 will be considered in the formula under (a) above, however, the "count once" rule and taking of script will be applied to those persons.

- 7.2 As the Minister of Indian Affairs and Northern Development is currently considering what policy should apply to the provision of additional land for persons reinstated under Bill C-31, it is proposed that the question of land for these people be set aside pending the announcement of the policy. This would afford these people the same treatment as all other persons reinstated under Bill C-31.
- 7.3 Canada is not prepared to consider for negotiation the provision of land in accordance with Treaty Eight for any persons not included as a result of 7.1 (a) or (e) above, nor will it seek any release from or on behalf of those persons as to the fulfillment of any rights they may enjoy.
- 7.4 Canada recognizes that the Band claims as members, persons who do not fall within the criteria set out in paragraph 7.1. The exclusion of these persons is consistent with the policy of Canada in similar situations.
- 7.5 The federal negotiator is prepared to include in his request to Alberta that full surface and subsurface rights be transferred to Canada with the land requested.
- 7.6 The federal negotiator will propose to Alberta that any land transferred for the creation of a reserve be clear of third-party interests excepting existing oil and gas leases. It is proposed that Canada assume the administration of these leases on behalf of the Band.

8. RESERVE PLANNING

Canada agrees to provide the Band \$300,000 for reserve planning purposes in order to maximize benefits flowing from a settlement package.

9. WILDLIFE MANAGEMENT

The federal negotiator is prepared to jointly develop with the Band and Alberta a program which would allow the Band a significant voice in the management of wildlife in a specific area beyond the area to be set aside as a reserve for the Band. The details of this program are subject to further negotiation, discussion with the Province of Alberta, and further clarification of the Band's intent.

10. ECONOMIC AND TRAINING OPPORTUNITIES

The federal negotiator is prepared to negotiate a package of economic and training programs within federal resource allocations so as to better meet the Band's needs in this regard and, as elements of this issue fall within provincial jurisdiction, to negotiate with Alberta for the provision of an integrated package to the Band.

11. COMPENSATION FOR PAST LOSSES

11.1 ON LANDS CLAIMED AS A RESERVE

11.1.1 Oil and Gas Revenues

Canada will seek the payment of compensation by Alberta to the Band for all oil and gas revenues gained by Alberta from the 25.4 square mile parcel of land previously identified for the Band, together with interest from the respective date of receipt at the Alberta government bond rate which has prevailed from time to time.

11.1.2 Treaty Benefits

Canada is prepared to pay appropriate compensation to the Band for loss of Treaty benefits.

11.1.3 Loss of Programs and Services

Canada is prepared to pay appropriate compensation to the Band for loss of programs and services and to provide for a "catch-up" capital program which is detailed below.

11.2 ON LANDS CLAIMED AS TRADITIONAL AREA

11.2.1 Loss of Livelihood from Trapping and Hunting

Canada does not accept this claim excepting paragraph 12.1.

11.2.2 Oil and Gas Revenues

Canada does not accept this claim.

COMPENSATION FOR FUTURE LOSSES

12.1 Hunting and Trapping

Canada does not accept this claim in terms of compensation but the federal negotiator is willing to negotiate with the Band and Alberta for the modification of the existing Alberta Trappers' Compensation Program for the ongoing benefit of the Band or for the establishment of a new program for the ongoing benefit of the Band.

12.1 Oil and Gas Revenues from the Band's Traditional Area

Canada does not accept this claim.

13. COMPENSATION - BAND'S COSTS

The federal negotiator is prepared to negotiate this claim for compensation subject to allowance for the \$1.5 million ex gratia payment made to the Band on January 8, 1986, and to the repayment of outstanding loans to the Office of Native Claims.

14. CATCH-UP PROGRAM

It is the position of Canada that all Bands in Canada are entitled to an equivalent level of service from Canada. In addition to making available to the Band all programs normally available to Bands, Canada is prepared to provide for a "catch-up" capital program for the benefit of the Band. This program could include the provision of housing and community infrastructure including water, sewers, roads, and electrification and educational facilities. The details of this program and its phasing over time are subject to negotiation.

15. SELF-GOVERNMENT

The federal negotiator is prepared to discuss the process relating to the Band's self-government proposal.

16. RELEASES

The above settlement proposal is conditional on the Band providing to Canada an appropriate release with respect to its treaty entitlement and to its discontinuance of all legal actions against Canada and Alberta including its complaint to the United Nations Human Rights Committee.

Visit of the Honourable Otto Jelinek,
Minister of Fitness and Amateur
Sport to the 1986 Commonwealth Games
Edinburgh, Scotland

CONFIDENTIAL
J.S. Crowther
Human Rights and
Social Affairs
Division
June 25, 1986

Issue

Proposed boycott of the 1988 Calgary Winter Olympics and other international activities of the Lubicon Lake Indian Band and their supporters.

Background

The Lubicon Lake Band is a group of several hundred Cree Indians living in northern Alberta. The history of the complex discussions which have taken place between the band and successive federal and provincial governments dates back almost 50 years. The current dispute has at its core an unfulfilled 1940 decision by the federal and Alberta governments to create a reserve for the band.

Over the years the situation has grown more complex as other Indian bands entered claims to aboriginal title of portions of a provisional reserve territory. In addition oil and gas development increased and unfavourably affected the band's ability to earn a living, in a traditional manner, through hunting and trapping.

In the 1970's and early 80's the problem intensified with various court actions by the band. Two of those actions before the Alberta Court of the Queen's Bench and the Federal Court of Canada remain unresolved.

In February 1984 the band through its agent brought a complaint against Canada before the United Nations Human Rights Committee. This complaint, which also remains unresolved, is very important for Canada as it alleges, among other things, that the Lubicon Lake band constitutes a people and that their right, as a people, to self-determination has been violated. The band contends that they have been deprived of this right, which includes a degree of control over their own natural wealth and resources, by the improper leasing, for energy exploration, of their traditional lands. In recent months members of the band or their representatives have sought and obtained the support of European and American groups

- 2 -

CONFIDENTIAL

who are sympathetic to their problem. This has culminated in a decision to work together to mobilize international support for a boycott of the Calgary games. The various activities of the band have received considerable media attention in Canada, particularly Alberta, but have not been given much notice in other countries.

Canadian Position

The Minister of Indian and Northern Affairs, the honourable David Crombie, has taken the lead in attempting to resolve the dispute with the Lubicon Lake Indian Band. In March 1985 he appointed the honourable E. Davie Fulton, to review the problem with the band, other interested native communities, the province of Alberta and other groups and to make recommendations. Mr. Fulton's "Discussion Paper" was provided to Mr. Crombie in December 1985. In that paper he outlined several scenarios for negotiation. This led to recommendations that a federal negotiator be appointed to enter into intensive private negotiations with the band for a two-month period commencing in March 1986. The negotiator, Mr. Roger Tassé, a former Deputy Minister of Justice, was appointed late in March and parameters for negotiations were defined at that time. However during this period the Band withdrew its agreement for Alberta's presence as an observer/participant to the negotiations and discussion is stalled at present until this latest problem can be resolved.

In respect of the complaint before the UN Human Rights Committee, Canada has responded to a supplementary communication by the band's agent which inter alia, alleged that "cultural, if not physical genocide is successfully being practised upon the Crees of Lubicon Lake". Canada has disputed these unacceptable allegations and expects that the Committee will rule on the admissability of the complaint in the near future.

In respect of the Commonwealth Games we have seen no evidence that the Lubicon Lake band will demonstrate at Edinburgh or that British or other groups will publicize the dispute during the course of the Games. However should this arise it may be said that Canada is working faithfully to try and resolve the long standing and complex dispute with the Lubicon Lake Indian Band.

LANG MICHENER LASH JOHNSTON

Barristers & Solicitors

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July 21, 1986

(without prejudice)

Chief Bernard Ominayak
Box 2864
Peace River, Alberta
T0H 2X0

Dear Chief Ominayak:

I am writing to express my appreciation for the opportunity of meeting with you and the members of your Band on July 7 and 8, 1986, and for the hospitality afforded Mr. Coulter and myself by your community. While I am personally disappointed that we did not have an opportunity to explore all the issues at hand, my visit has given me a much clearer picture of your Band's aspirations in terms of your claim and requirements for a future community. I found the tour provided by Edward and Mike Laboucan particularly valuable and would ask that you please extend my thanks and appreciation to them for their guidance and explanations.

With regard to the impasse in the negotiations, I fully understand your desire for a settlement which is based on principles of equality and justice. These are principles that I have fought for all my life and that I am not personally willing to see abandoned in my present role. When I met with your representatives in Ottawa on June 19 and 20, 1986, they asked if I was willing to treat your Band on an equal basis with all other bands. While I fully understood the question, I provided them at that time with only a general response because I was not certain that I fully comprehended all of the ramifications of what equality to all other bands would entail, and I did not want to make a statement on a matter upon which I had a less than complete understanding. I spent the following two weeks gaining this understanding and came to Little Buffalo fully prepared to address the question. I believe that the note that I tabled with you provides sufficient scope to enable us to reach a settlement which will place your Band on an equal footing with other bands and afford them equal treatment.

I would like to emphasize that my offer is not cast in stone. I am flexible on many of the points it contains, including the question of the quantum of land. Now that you have had an opportunity to review my note in detail, I would like to know if you have any suggestions for a basis upon which we could resume the talks. After visiting your community, I am personally convinced of the need to establish a permanent community for your members and remain hopeful that we can resolve our differences through negotiation rather than through the onerous and costly court system.

On June 3, 1986, it was agreed that I would undertake parallel negotiations with the Province of Alberta. As you are aware, on July 8, 1986 I met with senior officials of the Attorney General's department in this regard, and feel I should report to you that, from my perspective, a useful and productive exchange resulted. At the meeting I explained the reasons for your withdrawal from the negotiations, and we reviewed my note to you in detail. As our talks had broken down at that point, the Alberta officials felt that a response to the note would be academic. However, I did not feel that they considered the contents of my proposal to be unachievable, and was encouraged by the degree of openness that was demonstrated. I should mention that they raised several areas where "technical difficulties" may be encountered, most notably in the proposed transfer of existing oil and gas leases from Alberta to Canada. I am presently seeking advice as to the nature of these difficulties and on what avenues could be open to us to overcome them.

In closing, I would like to reiterate that my offer remains on the table for discussion. I would be pleased to know if any elements of the proposal are within the realm of what you hope to achieve and whether talks could resume on that basis. Alternatively, I would be pleased to consider, as a basis of discussion, a detailed proposal from you which sets out your aims.

Yours sincerely,



Roger Tassé

c.c. Mr. James O'Reilly
Mr. F. Lennarson
Mr. Doug Rae
The Honourable Bill McKnight

Dutch official to meet Lubicons

EDMONTON (CP) — The land claim of the Lubicon Lake Indian band in northern Alberta will come under international scrutiny this week with the visit of a Dutch member of the European Parliament.

John van Tilborg is to arrive Friday at the Cree band's settlement at Little Buffalo, 375 kilometres northwest of Edmonton, for a weekend of talks, band adviser Fred Lennardson said.

Tilborg is a member of Holland's Graef in Rainbow Group, associated with the environmentalist Greens party.

The politician is also to stop in Edmonton June 16 for a meeting with Opposition Leader Ray Martin. Arrangements are being made as well for

meetings with Conservative government members and representatives from the province's other major parties.

The band says its members were overlooked by an 1899 treaty and are entitled to a reserve they were promised by the federal government in 1940.

The Lubicons and the federal government announced last week that bilateral negotiations will soon be underway to bring about some kind of agreement by Aug. 30.

Van Tilborg is scheduled to fly to Ottawa June 18 to attend meetings with federal negotiator Roger Tasse, Liberal Indian Affairs critic Keith Penner and NDP critic Jim Manly.

CALGARY HERALD

Mon., June 9, 1986

Dutch politician takes up band's case

By KAREN BOOTH
Journal Staff Writer

The plight of the Lubicon Lake band comes under international scrutiny this week with the fact-finding visit of a Dutch member of the European Parliament.

John van Tilborg, a member of Holland's Graef in Rainbow Group, associated with the environmentalist Green party, will make a brief stop in Edmonton on June 13 on his way to Little Buffalo, said band adviser Fred Lennarson.

He will return to Edmonton on June 16 for a meeting the following day with New Democrat Leader Ray Martin. Arrangements are also being made for meetings with Tory MLAs, members of the Liberal and Representative parties and the Indian Association of Alberta.

"It's no longer just an Alberta problem or just a national problem; there's interest throughout the world about the plight of the Lubicons," said Martin.

"I understand he's on a fact-finding mission and we'll certainly tell him about the stands we've taken," he said.

During the recent provincial election campaign, Martin blasted Tory treatment of the band as "a horror story of a callous government using its power in the most unjust way."

The band and the federal government announced last week that they intend to begin bilateral negotiations with a target date of Aug. 30 for reaching an agreement. Federal negotiator Roger Tasse will conduct parallel negotiations with the province.

Van Tilborg is scheduled to fly to Ottawa June 18 for meetings with Tasse, Liberal Indian Affairs critic Keith Penner and NDP critic Jim Manly.

"The government's track record hasn't been a good one, with long delays and the long period between the (E.) Davie Fulton discussion paper and the announcement of negotiations," said Manly.

The discussion paper suggests the band is entitled to at least 80 square miles of reserve land and Fulton's remarks appear to support charges that development has had disastrous consequences for the band.

The band had been overlooked by surveyors and commissioners during the signing of Treaty 8 in 1899 and never received the reserve it was promised in 1940.

Van Tilborg attended a conference of support groups in Luxembourg earlier this year in which delegates unanimously resolved to support an international boycott of the 1988 Winter Olympics in Calgary.

THE EDMONTON JOURNAL, Sunday, June 8, 1986

RESOLUTION ON THE LURICON LAKE BAND

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Kenneth Diner
Tun Welter

André Renard
JAN VAN BELLE

Raidar Huber R. Lüder-
Ebert Dole

Frits F. Terpstra

John van Sling
Eri Collenbusch
Thomas Collenbusch

Schoetmel (Lund)
Günther Marchna

Mandy Bausa
WESSEL HUISMAN

Lucien Vandermore
Gunnar Feldtman

Gerold Ahlström
Claudia Grieshefer
Gerard Schobert
Reinhard TRINK

IRIS KAEPFER-KRAUS
URSULA PETRY

Stephan Dömpke
Thomas Schmiedtchen

Richard Vello
Großmann, Jörg
Frank 7 Rosen-thaler
Walter F. F. F.

Ingrid v. Wögen
Fred Müller

Heike Sieckmann
Bernhard Mogge

Carlos HARDO
Carlo Krieger

Peter Schwarzbaum
Ellen Schriek

Inne Stöckl
Irene Bush

- Svensk-Indianska Förbundet

- Overbiewen a.s.b.l. Luxembg

- BANAI Belgisch Amerikanische Noord Amerikaanse Indische
BELGIUM.

- BANAI Belgisch Amerikanische Noord Amerikaanse Indische
Germany

LPSG Leonard Peltier Support Group Groningen Holland

~~member of the International Indian Movement~~

Germany
Germany

Solidarité Internationaliste Luxembourg

- Plainstraße 85 / 1020 SALZBURG

G. F. b. v. 10.

- DAGUERRE STRAAT 52, 2511 TV DEN HAAG

- BANAI Belgisch Amerikanische Noord Amerikaanse Indische

- Swedish-American Indian League SWEDEN

i.f.i.u. Initiative für Indier u. Umwelt

- Initiative für Indier u. Umwelt - Austria

Arbeitsgruppe Indier u. Nordamerika AUSTRIA

Arbeitsgruppe Indier u. Nordamerika, Gf. b. v. 10.

ARBEITSKREIS INDIANER NORDAMERIKA - AUSTRIA

ARBEITSKREIS INDIANER NORDAMERIKA - AUSTRIA

Gesellschaft für bedrohte Völker Germany

Informationszentrale für Nordamerika, Gf. b. v. 10. Germany

free lance journalist + Koch's Switzerland

Gesellschaft für bedrohte Völker, Gf. b. v. 10.

Shenry BANAI, Nationaler Dachverband Nord Amerikanische Indier u. the relatives

Gesellschaft für bedrohte Völker, Germany

INDIAN AID

Arbeitsgruppe Biologische Indier u. Nordamerika

Fausermüller Gf. b. v. 10.

ARBEITSKREIS INDIANER NORDAMERIKA - VIENNA - AUSTRIA

Gesellschaft für bedrohte Völker Germany

Native American Information Center

LTC Switzerland

Sweden

Luxembourg

Belgium

Belgium

Germany

Holland

Holland

Germany

Germany

Luxembourg

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Luxemburger Wort 12/4/86
Indianerstämme in Not

**Europäische Vereinigungen zu ihrer Unterstützung
tagen in Lultzhausen**

(rh.) In Lultzhausen treffen sich seit Donnerstag mehrere europäische Gruppen, die sich die Unterstützung nordamerikanischer Indianerstämme zum Ziel gemacht haben. Neben Vertretern von Amnesty International nehmen verschiedene Vereinigungen aus Österreich, Belgien, den Niederlanden, Frankreich, der Bundesrepublik Deutschland, der Schweiz und aus Schweden teil, die sich mit spezifischen Indianerproblemen beschäftigen. Luxemburg ist durch die Vereinigung „Iwerliewe fir bedreete Völker“ vertreten, die als Gastgeber fungiert.

Gestern nachmittag fand anlässlich dieses europaweiten Treffens in Lultzhausen im hauptstädtischen Kapuzinertheater eine Pressekonferenz statt, bei der einige der Hauptanliegen der versammelten Vereinigungen zur Sprache kamen. Härtefälle bedrohen das Fortbestehen mehrerer Indianerstämme, die es noch immer schwerhaben, ihr Landrecht vor Gericht zu verteidigen. Wegen pauschal ergangener Entschädigungszahlungen findet oft überhaupt kein Prozeß statt.

In den Vereinigten Staaten von Amerika kämpfen zur Zeit drei Indianerstämme um ihr Land. Die Lakota-Indianer wollen aus religiösen Gründen die „Black Hills“ nicht aufgeben, die sie vor über hundert Jahren zu räumen gezwungen wurden. Der Lebensraum der Western

Shoshone ist die Nevada-Wüste, wo die amerikanischen unterirdischen Atomversuche stattfinden. Und schließlich sollen Navajo- und Hopi-Indianer ein bisher gemeinsam benutztes Gebiet räumen, auf dem Kohle- und Uraniumvorkommen bestehen.

Ähnliche Probleme stellen sich im Kanada. Die Innu-Indianer wehren sich gegen eine Nato-Basis, von der aus Flugzeuge im Tiefstflug erprobt werden, was die Jagdbedingungen in diesem Gebiet stört. Hauptsächlich leben die Innu von der Jagd und dem Fallenstellen.

Die Lubicon-Cree-Indianer jagen in einem reichen Ölgebiet, das seit einigen Jahren von den Weißen genutzt wird. Waren sie einst selbständig und lebten größtenteils von eigener Jagdbeute, sind sie heute, nach Angaben, die wir auf der Pressekonferenz von Indianerhäuptling Ted Moses erhielten, zu über 90 Prozent auf Sozialhilfe angewiesen.

Die Lubicon Cree, ein Stamm, dem kein Reservat zugeteilt wurde, versuchen zur Zeit, einen Boykott der olympischen Winterspiele von 1988, die in Calgary stattfinden werden, zu erreichen. Die europäischen Arbeitsgruppen und -kreise, die Indianerstämme in Not unterstützen und sich bis morgen Sonntag in Luxemburg treffen, sollen, neben anderen Tätigkeiten, auch helfen, diesen Boykott zu verwirklichen.

Boycottage des Jeux Olympiques d'hiver de Calgary (Canada)

Le grand chef indien déterre la hache de guerre

A l'occasion de la deuxième rencontre européenne des groupes de soutien aux peuples indiens d'Amérique du Nord qui se déroule à Lultzhausen (Luxembourg) du 10 au 13 avril, les organisateurs ont annoncé le lancement d'une campagne en faveur du boycottage des Jeux olympiques d'hiver en 1988 qui auront lieu à Calgary dans la province canadienne d'Alberta. La nouvelle a été diffusée simultanément à Luxembourg et à New York où des représentants des indiens Cree de la région du lac de Lubicon ont décidé d'en appeler à l'opinion publique internationale pour mettre un terme au « génocide » dont ils seraient les victimes.

La rencontre de Lultzhausen a

drainé plus d'une centaine de participants venant d'Autriche, de RFA, de France, des Pays-Bas, de Suède, de Suisse, du Luxembourg ainsi que plusieurs délégations indiennes d'Amérique du Nord. C'est d'ailleurs le grand chef du conseil des Cree du Québec, Ted Moses qui a annoncé en personne au théâtre des Capucins à Luxembourg, le lancement de la campagne de boycottage des J.O. M. Ted Moses, secondé par le conseil juridique des Lubicon Cree, M. James O'Reilly, avocat au barreau de Montréal a fourni les explications de ce geste exceptionnel de la communauté indienne. Depuis sept ans, a souligné en l'occurrence le grand chef des Cree, l'exploitation intensive des ressources pétrolières et de

gaz naturel sur le territoire des Lubicon a détruit les bases d'existence d'une communauté autonome vivant de pêche, de la chasse et de la trappe. Aujourd'hui 95 % de cette communauté vit de l'assistance publique, le revenu annuel de la vente de fourrures ayant baissé de 5 000 dollars à 400 dollars par famille. L'exploitation des ressources énergétiques de la région a provoqué l'exode des animaux sauvages (morse, animaux à fourrure), ôtant aux Indiens du Lubicon toute possibilité de vivre selon leur tradition. Le déclin social de cette communauté a progressé à pas de géant : alcoolisme, et crise dans les familles menacent la cohésion de ce groupe social.

Si les cours et tribunaux de l'Alberta et du Canada ont rejeté les actions en justice des Cree du Lubicon, les Indiens ont obtenu l'appui moral des évêques. Mgr Gary Woolsey et Mgr Don Sjöberg ainsi que des archevêques Mgr Ted Scott et Mgr Henri Légaré, qui ont demandé aux autorités que l'exploitation des ressources naturelles de la région ne soit pas développée davantage sans le consentement de la communauté indienne.

Devant le refus du gouvernement de l'Alberta et d'Ottawa de reconnaître leurs droits de chasse et de pêche et leur droit sur les terres, les Cree du Lubicon ont décidé de porter leurs doléances devant l'opinion publique internationale. « Le Canada se pré-

sente comme le champion des droits de l'homme. En apportant la preuve du faux et que le gouvernement crimine les populations indiennes », a dit en substance M. Ted Moses. « Les Jeux d'hiver devraient être boycottés », a encore souligné leur, qui a conclu « que participer à ces jeux contribuerait à la destruction mais sûre d'une communauté ».

La deuxième rencontre européenne des groupes de soutien aux peuples indiens d'Amérique du Nord élaborera sous les modalités de cette conférence internationale. Elle traitera outre d'autres problèmes aussi actuels comme ceux des Lakota (Sioux) dans la réserve de leur montagne « Black Hills », qui sont exploités par des sociétés. Il sera aussi question des Shoshone du Nevada qui sont à ce que leurs terres soient utilisées comme militaire (800 tests atomiques pendant la Seconde Guerre mondiale, l'abandonnement des déchets MX, etc.), des Indiens du Labrador, chasses de caribou contrôlées par les entreprises d'exportation des avocats à l'étranger de l'Otan et des Navajo qui naissent d'être déplacés de leur région de la « Big Horn ».

Toujours dans le cadre de ces rencontres, une exposition graphique sur le thème « Indiens d'Amérique du Nord : l'indigénisme en lutte pour la survie » a été inaugurée au théâtre des Capucins par des artistes d'Amérique du Nord, d'Allemagne, d'Autriche, d'États-Unis, de Pologne, de France et du Luxembourg. L'exposition sera ouverte du lundi au dimanche de 12 h à 16 h et le dimanche de 10 h à 12 h.



Au théâtre des Capucins, inauguration de l'exposition « Les Indiens d'Amérique du Nord en lutte pour la survie ».

Le Républicain Lorrain (Luxembourg édition) 13/4/86

Die Erben Sitting Bulls auf dem Kriegspfad Aufruf zum Boykott der 88er olympischen Winterspiele in Calgary (Kanada)

Am vergangenen Wochenende fand in der Lultzhausener Jugendherberge das zweite europäische Treffen von Gruppen statt, die sich die Unterstützung bedrohter nordamerikanischer Indianerstämme zum Ziel gesetzt haben. Rund 120 Teilnehmer aus Schweden, der BRD, der Schweiz, aus Österreich, Italien und Luxemburg (hierzulande nimmt die Vereinigung „Iwerthowen asbl“ die Interessen der bedrohten Indianervölker Nordamerikas wahr) berieten bei diesem Treffen über die bestehende Situation sowie über die in Zukunft zu ergreifenden Maßnahmen.

Sensibilisierung der internationalen Öffentlichkeit

Dies ist das Leitmotiv aller beteiligten Gruppen, wie sich am vergangenen Freitag anlässlich einer Pressekonferenz im hauptstädtlichen Kapuzinertheater herausstellte, an der auch Vertreter der internationalen Presse teilnahmen.

Herr Carlo Krieger, Ethnologe, und seines Zeichens Hauptverantwortlicher der luxemburgischen Organisation zur Unterstützung der bedrohten Indianervölker, gab bei dieser Gelegenheit einen kurzen Überblick auf die verschiedenen Problemkreise.

Pauschal gesehen ist festzuhalten, daß es den meisten Indianerstämmen um die Respektierung ihres Landes und ihrer kulturellen und sozialen Identität geht.

Die USA und Kanada auf der Anklagebank

Wie Ted Moses, Häuptling der Quebec-Cree, bei dieser Gelegenheit bekanntgab, sollen die kommenden olympischen Winterspiele, die in Calgary (Kanada-Provinz Alberta) stattfinden, boykottiert werden.



Ein Exponat der Ausstellung, die noch bis zum 28. April im Kapuzinertheater zu sehen ist



Feyerliche Eröffnung der Ausstellung mit (v.l.n.r.) Carlo Krieger, Raymond Becker, Pierre Frieden und Roger Lünster

Dieser Boykottaufruf ist auf verschiedene Ursachen zurückzuführen: Die Situation der Lubicon-Cree, die vor 8 Jahren noch Selbstversorger waren, hat sich durch die Industrialisierungspolitik der Provinzregierung in Alberta und der Landesregierung in Ottawa derart drastisch verschlechtert, daß inzwischen rund 95% der Lubicon-Cree auf Sozialfürsorge angewiesen sind.

Kanada würde sich zwar nach außen hin als ein Land hinstellen, welches die Menschenrechte und die Demokratie über alles respektieren, doch falls die multinationalen Erdölfirmen die Ureinwohner durch ihre rücksichtslose und vom Staat geduldete Expansionspolitik um ihre wirtschaftliche Eigenständigkeit und um ihre kulturelle und soziale Identität bringen, müsse man dies kritisieren und an die internationale Öffentlichkeit bringen.

Ted Moses fordert denn auch die repräsentierten europäischen Unterstützungsgruppen dazu auf, den Druck auf ihre respektiven Regierungen zu verschärfen, damit das Volk der Cree nicht vollends ausgerottet werde.

Doch nicht allein die Lubicon-Cree sind die Gebeutelten bei derartigen politischen und industriellen Vorgehensweisen. So ist der mehr als 100jährige Streitfall zwischen Lakota-Sioux und der US-amerikanischen Regierung um den Besitz der „Black Hills“ immer noch nicht beigelegt.

Die „Black Hills“ sind die Verkörperung des Geistes und des Stolzes der Lakota und verschiedener anderer Präriestämme, doch derzeit suchen auch 27 multinationale Firmen das Territorium nach Uranvorkommen und anderen Rohstoffen ab. Da auch vor dem Gericht

keine Einigung erzielt werden konnte, will man nun auch diesen Fall durch die Öffentlichkeit bringen.

Leben auf der Atombombe...

Noch schlechter ist es um das Volk der Schoschonen bestellt, das in der Wüste des amerikanischen Bundesstaates Nevada sesshaft ist.

In der Tat betreiben die Amerikaner auf diesem Gebiet ihre unterirdischen Atomwaffentests, so daß die Schoschonen buchstäblich auf der Bombe sitzen. Innenpolitisch und juristisch habe man alle nur irgend möglichen Schritte unternommen, doch der einzig richtige Weg kann auch hier nur die Mobilisierung der internationalen öffentlichen Meinung sein.

Von einer erzwungenen Umsiedlung sind derzeit die Navajos an der südlichen Grenze zu Mexiko bedroht, da hier zahlreiche Rohstoffvorkommen vermutet werden.

Die Innu in Labrador, die ihren Lebensunterhalt hauptsächlich von der Jagd bestreiten, sehen auch ihre Lebensgrundlage entzogen, da die NATO hier regelmäßig Tiefflüge veranstaltet, welche die Tiere aus der Region vertreiben. Und demnächst soll hier noch eine weitere NATO-Basis im Werte von 2 Billionen Dollar entstehen...

Nach diesem kurzen Überblick über die derzeit bestehenden Probleme der nordamerikanischen Indianervölker schritt man dann zur feierlichen Eröffnung einer Kunstausstellung, die noch bis zum 28. April im Kapuzinertheater zu sehen ist. Öffnungszeiten: Samstags und sonntags von 10.00 bis 17.00 Uhr, montags bis freitags von 12.00 bis 18.00 Uhr.

A. 2

European groups back Lubicon boycott

LAREN BOOTH
Staff Writer

condemning the "genocidal intent" of the Lubicon Lake band, can support groups have unanimously resolved to support an international boycott of the 1988 Winter Olympics.

A member of the European movement has written Chief Bernard Ominayak personally supporting the boycott and expressing "the possibility of proposing a similar resolution for consideration by the European Parliament." "I am aware of the unjust treatment meted out by the Lubicon Lake Indian band," states John van Tilborg, who moderated the conference as a representative of Holland's Graef in the Low Group, a Green Party faction. "The Lubicon Lake issues raise fundamental human rights issues which have universal implications."

Sixty delegates passed the five-part resolution Saturday during a conference of North American Indian support groups in Luxembourg, said James O'Reilly, the band's lawyer.

Delegates from Austria, Belgium, France, West Germany, Holland, Italy, Luxembourg, Sweden and Switzerland attended the four-day meeting.

Delegates also resolved "to convince the countries and people of Europe to abstain from participating in the 1988 Winter Olympic Games" in Calgary, and to demand Canada take immediate action to provide "a just and fair settlement of the (band's) aboriginal rights and claims."

The groups "absolutely condemn the genocidal treatment inflicted upon the Lubicons by the governments of Alberta and Canada," the resolution states, and "demand that the governments respect the aboriginal rights and

fundamental human rights of the Lubicons."

The band, backed by the World Council of Churches, has claimed that oil and gas exploration on land they inhabit in northeastern Alberta has destroyed their livelihood. They have been involved in a lengthy battle with the governments of Canada and Alberta for a reserve.

Ominayak, who attended a weekend conference of Urban/Rural Missions North America — an affiliate of the World Council — said delegates to that meeting also resolved "to support the band in its efforts to boycott" the Calgary Olympics.

"This is the first step," Ominayak said in a phone interview Sunday from New Jersey. "We're trying to spread the word and educate people about the problems our band faces."

O'Reilly said the European groups will begin compiling a contact list of athletes

and Olympic organizers and are considering protests outside embassies in Europe, "perhaps in a few months."

"The degree of awareness they have on the issues is surprising. But we can't start saying there are hundreds of thousands of members in the groups, there are probably hundreds in total," said O'Reilly.

Earlier this month, Calgary organizers dismissed the band's call for an Olympic boycott as "ridiculous." The band has claimed the Games "are being organized by basically the same people that are committing genocide" against them.

The high profile of the Games "is looked at as a good catalyst for media attention" from certain groups which have no connection whatsoever with Olympic sports, said Jerry Joynt, vice-president of communications with the Winter Olympic Games Committee.

"We're not involved at all" with the band's disputes, he said.

Olympic boycott

By Dennis Foley
Citizen staff writer

A tiny band of Alberta Indians seeking land claim settlements has followed through on its threat to embarrass Canada by initiating a North American and European boycott of the 1988 Calgary Winter Olympics.

A nine-country coalition of European groups supporting North American Indian causes passed a resolution in Luxembourg Sunday,

calling on member groups to "take all measures within their power to convince the countries and people of Europe to abstain from participating in the 1988 Winter Olympic Games."

And in Newark, N.J., the Urban Rural Mission, the North American wing of the World Council of Churches, passed a motion Sunday calling on the council to support the boycott.

The Urban Rural Mission also requested that the WCC's Program to Combat Racism undertake an international public relations and education campaign in support of the boycott and to financially support the Lubicon Lake band's campaign. The WCC is a Geneva-based interfaith organization of 300 churches.

Also in Luxembourg, John van Tilburg, Green Party member of the European Parliament, said in a widely-distributed letter he would urge his party to put a similar resolution before the European Parliament.

The Luxembourg resolution was passed at the second meeting of North American Indian Support Groups during a four-day conference attended by about 100 delegates and observers.

The Lubicon Lake Cree band took its case to Europe and the U.S. to pressure the federal government into negotiations on its 100-year-old land settlement claim. The small Peace River band was inexplicably left out of Treaty 8 and has been battling for recognition and a reserve ever since.

Their fight has developed into a battle for survival since oil exploration has depleted hunting and fishing stock and the once self-

sufficient 350-member band is now mostly on welfare.

However, the band's decision to focus international attention on its plight has prompted the Indian affairs department to dig in its heels.

Deputy minister Bruce Rawson said Friday that Indian Affairs Minister David Crombie has accepted his recommendation to delay negotiations "until the band's

current overseas publicity campaign is completed."

That could be some time away as the European support groups plan on co-ordinating continent-wide demonstrations in front of Canadian embassies.

"They're going to be walling one long time," said Chief Bernard Ominayak, who led the band's delegation to the Urban Rural Mission conference.

Front Page

The CITIZEN, OTTAWA • MONDAY, APRIL 14, 1986

ACTION
SUITE A DONNER

DATE	
ACC	REF
FILE	DOSSI
BY HAND	PAR PORTEUR
ATTN:	

45-CDA-13-1-3-LUBICON LAKE BAND
A-3

C O N F I D E N T I A L

FM GENEV YTGR5653 6AUG86

TO EXTOTT JLO

DELIVER BY 070900

INFO PRMNY

BH JUSTOTT/LOW DE OTT SECSTATEHULL/DADSON INAHULL/COULTER DE OCI

FPROOTT/OACA/CARON DE OPM

DISTR IMH IMD JCD

REF YOURTEL JLO1353 1AUG

---HUMAN RIGHTS CTTEE; LUBICON LAKE CASE (COMMUNICATION NO 157/84)

BY BAG DEPARTING 12AUG WE ARE TRANSMITTING COPY OF NOTE FROM CENTRE

CONVEYING COMPLAINANTS 30JUN COMMENTS ON CTTEES 10APR INTERIM

DECISION. THESE COMMENTS SEEK TO REGISTER 3 POINTS: (A) THERE HAS BEEN

NO/NO SUBSTANTIVE PROGRESS IN COURT PROCEEDINGS, WITH SUPREME COURT

OF CDA HAVING REFUSED LEAVE TO APPEAL DENIAL OF INJUNCTION AGAINST

OIL DEVELOPMENT. THUS, WITH DEVELOPMENT AND DESTRUCTION CONTINUING

UNABATED AND NO/NO HOPE OF RESOLUTION FOR SEVERAL YEARS, BAND REPEATS

CONTENTION THAT FOR ALL PRACTICAL PURPOSES, DOMESTIC JUDICIAL REMEDIES

HAVE BEEN EXHAUSTED; (B) TASSE NEGOTIATIONS ARE REFERRED TO, WITH BAND

CONTENDING THAT QUOTE IT APPEARS THAT MR TASSES MANDATE IS TO GIVE

THE LUBICON LAKE PEOPLE AS LITTLE AS POSSIBLE, AND TO CLOSE THE BOOKS

ON THIS ISSUE AS QUICKLY AS POSSIBLE, REGARDLESS OF THE FAIRNESS OF

THE ULTIMATE RESOLUTION. UNQUOTE; (C) VISIT OF EUROPEAN PARLIAMENTARIAN

VAN TILBORG AND HIS CONDEMNATORY CONCLUSIONS ARE MENTIONED.

2. COMPLAINANTS SUBMISSION CONCLUDES THAT QUOTE THE CLEAR INTENT OF

...2

NOTOR

ATTACHED 0 3111

PAGE TWO YTGR5653 CONF

THE FEDERAL GOVT OF CDA IN ADDRESSING THIS SITUATION IS TO UTILIZE ITS OWN DOMESTIC FORA, AS WELL AS THE INNATL SPHERE TO WHICH THE LUBICON LAKE BAND HAS APPEALED, TO OBFUSCATE THE REAL HUMAN ISSUES BY FOCUSING ON PROCEDURAL TECHNICALITIES AND TO THEREBY DELAY INDEFINITELY ANY CONSIDERATION OF THE SUBSTANTIVE ISSUES PRESENTED. RATHER THAN SEEKING A SOLUTION CONSISTENT WITH ITS ESPOUSED POSITION ON HUMAN RIGHTS, CDA APPARENTLY INTENDS TO CONTINUE QUOTE ADDRESSING UNQUOTE THE PROBLEM IN THIS MANNER UNTIL ALL ISSUES HAVE BEEN MOOTED BY THE ULTIMATE DESTRUCTION OF THE LUBICON LAKE BAND. UNQUOTE.

3. CENTRE CONTACT ADVISES (IN CONFIDENCE OF COURSE) THAT LUBICON CASE (INCLUDING LATEST SUBMISSIONS OF COMPLAINANT AND GOVT) WAS DISCUSSED THROUGH THREE MTGS AT LAST CTTEE SESSION. CTTEE WAS HOWEVER UNABLE TO MAKE FINAL DECISION RE ADMISSIBILITY, WITH MAJOR POINT OF DISPUTE FOCUSING ON REVIEWABILITY OF COMPLAINTS RELATING TO ARTICLE 1 OF COVENANT (SELF-DETERMINATION). CONTACT ADVISES THAT PREVAILING OPINION WAS THAT COMPLAINT SHOULD BE DISMISSED ON GROUNDS THAT COMPLAINTS PROCEDURE ESTABLISHED FOR INDIVIDUALS COULD NOT/NOT BE INVOKED IN SUPPORT OF COLLECTIVE RIGHTS. THERE WAS, HOWEVER, A STRONG BODY OF OPINION TO CONTRARY AND CTTEE RAN OUT OF TIME BEFORE ANY FINAL DECISION COULD BE REACHED.

CCC/198 061037Z YTGR5653



External Affairs Affaires extérieures
Canada Canada

IMH/992-2022/amm
CIRC DIVN ORIG WF

- Mission of Canada to the EEC, BRUSSELS
- DE • The Under-Secretary of State for
External Affairs (IMH) OTTAWA
- REFERENCE • Our telegram No. 0814 of August 1, 1986
- REFERENCE
- SUBJECT • LUBICON LAKE INDIAN BAND
- LET

Security/Sécurité
SECRET
Accession/Référence
File/Dossier
45-CDA-13-1-3-LUBICON
LAKE BAND
Date
06 August 1986
Number/Numéro
IMH:0849

ENCLOSURES
ANNEXES

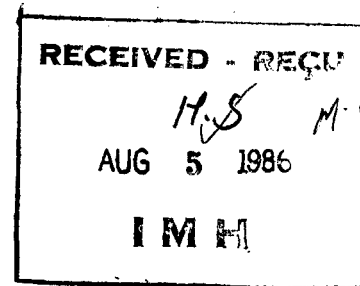
DISTRIBUTION

JLO

... Attached is background material on the Lubicon
Indian Band.

[Signature]
Under Secretary of State
for External Affairs

**ACTION
SUITE A DONNER**



R E S T R I C T E D

FM BREEC YCGR1669 05AUG86

TO EXTOTT IMH RCM

INFO BRU GENEV PRMNY HAGUE VIENN

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---LUBICON LAKE BAND-TILBORG

ACC	REL	ATE
FILE 45-CDA-13-1-3- ^{DOSSIER} LUBICON LAKE BAND		

WE WILL ATTEMPT TO OBTAIN INFO REQUESTED REFTTEL; HOWEVER, GIVEN UNAVAILABILITY OF KEY EURCOM AND EC PARLIAMENTARY CONTACTS DURING EUROPEAN AUGUST HOLIDAY PERIOD MAY BE DIFFICULT TO DO SO, PARTICULARLY IN ADVANCE OF 11AUG DEADLINE FOR INPUT TO IANA RISK ASSESSMENT REPORT. WLD IMMED DRAW TO YOUR ATTN 14TH ANNUAL MTG OF CDN AND EUROPEAN PARLIAMENTARY DELS SCHEDULED FOR LUXEMBOURG 20-25SEPT. SUGGEST THAT IN LIAISON WITH RCM YOU DRAW THIS ISSUE TO ATTN OF HEAD OF CDN PARL DEL J.R. ELLIS, MP PRINCE EDWARD HASTING. 2. ASIDE FM INFO OBTAINED BY US IN INTERIM, WLD NOTE THAT AMB PLANS TO VISIT EC PARLIAMENT 10-11SEP AND WILL BE IN POSN TO TAKE FURTHER SOUNDINGS AT THAT TIME.

CCC/030 051457Z YCGR1669



Indian and Northern
Affairs Canada

Affaires indiennes
et du Nord Canada

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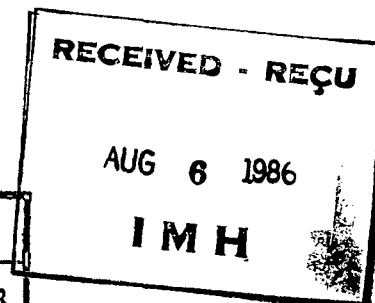
AUG
AOUT - 5 1986

Your file Votre référence

Our file Notre référence

Mr. Michael Cleary,
Department of External Affairs,
Human Rights and
Social Affairs Division,
4th floor, Tower "A",
Lester B. Pearson Building,
125 Sussex Drive,
Ottawa, Ontario.

ACC 460484	REF	DATE
FILE 45-LDA-13-1-3- LUBICON	DOSSIER	
LAKE BAND		



Dear Mr. Cleary:

Re Lubicon Lake Indian Band

Enclosed please find a briefing note on the above noted matter as requested. I have tried to capture the salient historical events vis-à-vis the Band's claim and to describe the current state of affairs. I have also included a number of "talking points" to which you may wish to add if you feel it is necessary. Please let me know if I can be of further assistance.

Yours sincerely,

Robert A. Coulter,
A/Director General,
Policy Branch,
Lands, Revenues and Trusts.

/pl

SECRET

TOPIC: THE LUBICON LAKE BAND GRIEVANCES - ALBERTA

**ISSUE: Status of negotiations aimed at a settlement of the
Lubicon Lake Band grievances.**

BACKGROUND:

1. The Lubicon Lake Band is located 60 miles east of Peace River, Alberta. They were originally paid Treaty money as members of other bands but were granted separate band status in 1940. At that time, Alberta agreed to transfer 25.4 square miles of Crown land to Canada so that a reserve might be set aside. For many reasons, Canada never established the reserve.
2. In 1980 the Band filed a Statement of Claim in the Federal Court against both Canada and Alberta alleging "Indian title" to 8,500 square miles of Northern Alberta and seeking one (1) billion dollars compensation. The Band's case in the Federal Court is still active although the Band has not proceeded with its action in the hope of arriving at a negotiated settlement.
3. In 1983 the Band took action against Alberta and several oil companies seeking an injunction to halt exploration in a 2,300 square kilometer area. The Alberta Court and subsequently the Supreme Court of Canada rejected the application to hear the case.
4. Also in 1983, the Department urged Alberta to cooperate in settling the claim and made the following recommendations: 1) a land base of 25.4 square miles, including minerals, be set aside immediately; 2) a catch-up program of housing, community infrastructure and economic development be initiated; 3) Band members be given preferred hunting, fishing and trapping rights in a designated area. Alberta has indicated willingness to consider all the points noted above.

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SECRET

5. An exhaustive genealogical review of the Band's antecedents has been completed and indicated membership should be set at 347. Justice maintains that the 1940 Band population of 127 be used as the basis for calculating the land quantum, with a view to negotiating up to and including the present population as determined by the Registrar (197 in 1986). The Band membership would approach or exceed 400 if all the individuals named in the genealogical report were to apply for membership in the Band. The Band will not permit the release of the joint DIAND/Band genealogical study to the province and the province will not release its material unless Canada does the same.
6. Respecting land quantum owed to the Band, the Province is of the view that under the Natural Resources Transfer Agreement, it is obligated to assist Canada to fulfill its treaty obligation based on the population in 1899, the year of treaty. No one knows this figure.
7. The Honourable Davie Fulton, the Minister's special representative, undertook a fact finding inquiry and presented the facts of the case and his views on possible areas of reconciliation in a discussion paper dated February 1986.
8. In late September, 1985 it became known that Union Oil of Calgary had requested authorization from the Alberta Energy Resources Board to increase the capacity of an existing pipeline in an existing right-of-way, part of which crosses the land designated in 1940. On January 17, 1986, the Band and Union Oil reached a tentative agreement whereby Union would build its pipeline around the 25.4 square mile area.
9. The Alberta Cabinet, at the last meeting chaired by the Honourable Peter Lougheed, agreed to transfer to Canada upon request by Canada the 25.4 square mile parcel of land designated in 1940 on condition that:
 - a) Alberta make satisfactory arrangements with third parties who now hold leases to part of the land;

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SECRET

- b) The Band accept the oil and gas leases as they are now;
- c) The Band only take action against Alberta for land in excess of 25.4 square miles as a joint party with Canada; and
- d) The Band abandon all its claims against Alberta based on native title.

The first two conditions are acceptable to the Band but they last two, which were added at the direction of the Provincial Cabinet, are not acceptable.

- 10. On December 5, 1985, Cabinet Committee on Social Development approved the payment of \$1.5 M as an ex gratia payment to help the Band defray its legal and other costs associated with presenting its claim. This payment was made on January 8, 1986.
- 11. In December 1985, the Band advised they were willing to participate in negotiations with Alberta present as an observer.
- 12. On February 27, 1986, Cabinet approved a negotiating strategy and mandate for resolving the Band's grievances.
- 13. In a special report to the Minister dated February 10, 1986, Mr. Fulton recommended face-to-face negotiations.
- 14. In March 1986, Mr. Roger Tassé, O.C., Q.C. was appointed as Canada's negotiator.
- 15. In March 1986 the Band advised they were no longer willing to participate in negotiations with Alberta present in any capacity.

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SECRET

16. The Band has indicated that if negotiations are not successful they plan to proceed with an international boycott of the Calgary Olympic games. Indications are that they have at least some support for this boycott from some members of the European Parliament.

CURRENT STATUS:

1. On June 3, 1986 the Band agreed to participate in bilateral negotiations with the federal negotiator, Mr. Roger Tassé. The parties agreed to establish August 30, 1986 as a target date to reach an agreement. Throughout the period, Mr. Tassé was to undertake parallel negotiations with Alberta. It was hoped that once significant progress was made in the bilateral discussions Alberta could be brought to the negotiating table as a full participant.
2. On July 8, 1986 the Band withdrew from the negotiations because Canada refused to consider the provision of land to the Band under Treaty 8 for those members of the Band who are not status Indians. It should be noted the Band has approval to determine its own membership under the Indian Act. It is argued by Canada that Bill C-31, in allowing Bands to determine their own membership, did not also create an automatic entitlement to additional land under Treaty. To accept that an additional land entitlement had been created would have massive policy implications for Canada in terms of the number of status Indians in Canada entitled to services, Federal-Provincial relations, and funding.
3. The federal negotiator, at the conclusion of the talks, tabled with the Band his proposal for a settlement, which is based on the Cabinet approved mandate. A copy was also released and explained to the media. It is felt that this proposal is fair and consistent with Canada policy in regard to treaty entitlement. A copy of the offer is attached.
4. The reason for the breakdown and the federal offer were discussed with senior Alberta officials on July 9, 1986.
5. At the breakdown in negotiations, the Band indicated they planned to pursue their court actions against Canada and Alberta and to pursue their Olympic boycott.

- 5 -

SECRET

TALKING POINTS:

1. The federal offer to the Band is fair and offers ample scope for a negotiated settlement. If the Band had accepted it would have given them a reserve of about 25,000 acres with full mineral rights, a new community (including housing, infrastructure, and schools) and millions of dollars in compensation and other benefits.
2. It is believed that the Olympic boycott does not have the support of other Indian bands located close to the Olympic site.
3. Canada is committed to resolving this claim and is prepared to return to the negotiating table.

Robert A. Coulter
Policy Branch (994-1241)
Lands, Revenues and Trusts
Indian and Northern Affairs
August 5, 1986

WITHOUT PREJUDICE

**Note from the federal negotiator to the representatives of
the Lubicon Band**

1. The purpose of our negotiations is to find out whether the Lubicon Lake Band (the "Band") and Canada, and eventually Alberta, can agree on a package of benefits to resolve the Band's grievances against Canada and Alberta, some of which are the subject of legal proceedings launched by the Band in Canadian Courts.
2. The Band's claims in the Courts are primarily based on aboriginal title.
3. Canada is resisting these Court proceedings as it does not recognize any claims of the Lubicon Lake Band arising from aboriginal title. Canada considers this title to have been extinguished by the Band's adhesion to Treaty Eight, which occurred as a consequence of its actions since the signing of Treaty Eight on June 21, 1899.
4. Canada recognizes that, subsequent to the creation of the Lubicon Lake Band, it was agreed by all concerned that a parcel of land of 25.4 square miles was to be made available for the benefit of the Band in accordance with the provisions of Treaty Eight. The transfer of this parcel of land to Canada for the creation of a reserve was never effected. Canada, as a result of this and in recognition of the Band's rights under Treaty Eight, is prepared to offer to the Band a package of benefits described below to resolve the Band's grievances.
5. The legal issues raised by the Band and Canada in the Court proceedings can only be resolved in the Courts. A settlement of the Band's grievances, out of Court, will be possible only if the parties concerned accept that current negotiations are not the place where these legal issues can be resolved.
6. Without prejudice to the position it might take in the proceedings before the Courts, Canada is prepared to offer the Band a settlement package which takes into account the Band's unique grievances so that the Band may fully enjoy the benefits provided for by Treaty Eight and receive programs and services from Canada in a manner equivalent to those received by other Bands.

DETERMINATION OF BENEFICIARIES AND LAND ENTITLEMENT

7.1 The federal negotiator is prepared to support and take to Alberta a proposal for the transfer of land to Canada for the purpose of creating a reserve for the use and benefit of the Lubicon Lake Band in accordance with the following:

- a) the provision of land for a reserve on the basis of the following formula:

128 acres times the number of status Indians registered on the Indian Registry as Lubicon Lake Band members immediately prior to the passage of Bill C-31 plus any natural increases to this number on the basis of pre-Bill C-31 criteria set out in the Indian Act;

- b) the inclusion in the quantum arrived at by the above formula of the 25.4 square mile parcel of land identified previously for the Band minus the 160 acre homestead of the L'Hirondelle family which is not contested by the Band;
- c) the provision of 160 acres as an offset to the L'Hirondelle homestead;
- d) Canada would not propose to "go behind" the list of persons on the Indian Registry on November 30, 1986, for the purposes of these negotiations only;
- e) the status Indians whose names appear on the membership list maintained by the Lubicon Lake Band and who transfer to the Lubicon Lake Band from other Bands by November 30, 1986 will be considered in the formula under (a) above, however, the "count once" rule and taking of script will be applied to those persons.

- 7.2 As the Minister of Indian Affairs and Northern Development is currently considering what policy should apply to the provision of additional land for persons reinstated under Bill C-31, it is proposed that the question of land for these people be set aside pending the announcement of the policy. This would afford these people the same treatment as all other persons reinstated under Bill C-31.
- 7.3 Canada is not prepared to consider for negotiation the provision of land in accordance with Treaty Eight for any persons not included as a result of 7.1 (a) or (e) above, nor will it seek any release from or on behalf of those persons as to the fulfillment of any rights they may enjoy.
- 7.4 Canada recognizes that the Band claims as members, persons who do not fall within the criteria set out in paragraph 7.1. The exclusion of these persons is consistent with the policy of Canada in similar situations.
- 7.5 The federal negotiator is prepared to include in his request to Alberta that full surface and subsurface rights be transferred to Canada with the land requested.
- 7.6 The federal negotiator will propose to Alberta that any land transferred for the creation of a reserve be clear of third-party interests excepting existing oil and gas leases. It is proposed that Canada assume the administration of these leases on behalf of the Band.

8. RESERVE PLANNING

Canada agrees to provide the Band \$300,000 for reserve planning purposes in order to maximize benefits flowing from a settlement package.

9. WILDLIFE MANAGEMENT

The federal negotiator is prepared to jointly develop with the Band and Alberta a program which would allow the Band a significant voice in the management of wildlife in a specific area beyond the area to be set aside as a reserve for the Band. The details of this program are subject to further negotiation, discussion with the Province of Alberta, and further clarification of the Band's intent.

ECONOMIC AND TRAINING OPPORTUNITIES

The federal negotiator is prepared to negotiate a package of economic and training programs within federal resource allocations so as to better meet the Band's needs in this regard and, as elements of this issue fall within provincial jurisdiction, to negotiate with Alberta for the provision of an integrated package to the Band.

11. COMPENSATION FOR PAST LOSSES

11.1 ON LANDS CLAIMED AS A RESERVE

11.1.1 Oil and Gas Revenues

Canada will seek the payment of compensation by Alberta to the Band for all oil and gas revenues gained by Alberta from the 25.4 square mile parcel of land previously identified for the Band, together with interest from the respective date of receipt at the Alberta government bond rate which has prevailed from time to time.

11.1.2 Treaty Benefits

Canada is prepared to pay appropriate compensation to the Band for loss of Treaty benefits.

11.1.3 Loss of Programs and Services

Canada is prepared to pay appropriate compensation to the Band for loss of programs and services and to provide for a "catch-up" capital program which is detailed below.

11.2 ON LANDS CLAIMED AS TRADITIONAL AREA

11.2.1 Loss of Livelihood from Trapping and Hunting

Canada does not accept this claim excepting paragraph 12.1.

11.2.2 Oil and Gas Revenues

Canada does not accept this claim.

COMPENSATION FOR FUTURE LOSSES

12.1 Hunting and Trapping

Canada does not accept this claim in terms of compensation but the federal negotiator is willing to negotiate with the Band and Alberta for the modification of the existing Alberta Trappers' Compensation Program for the ongoing benefit of the Band or for the establishment of a new program for the ongoing benefit of the Band.

12.1 Oil and Gas Revenues from the Band's Traditional Area

Canada does not accept this claim.

13. COMPENSATION - BAND'S COSTS

The federal negotiator is prepared to negotiate this claim for compensation subject to allowance for the \$1.5 million ex gratia payment made to the Band on January 8, 1986, and to the repayment of outstanding loans to the Office of Native Claims.

14. CATCH-UP PROGRAM

It is the position of Canada that all Bands in Canada are entitled to an equivalent level of service from Canada. In addition to making available to the Band all programs normally available to Bands, Canada is prepared to provide for a "catch-up" capital program for the benefit of the Band. This program could include the provision of housing and community infrastructure including water, sewers, roads, and electrification and educational facilities. The details of this program and its phasing over time are subject to negotiation.

15. SELF-GOVERNMENT

The federal negotiator is prepared to discuss the process relating to the Band's self-government proposal.

16. RELEASES

The above settlement proposal is conditional on the Band providing to Canada an appropriate release with respect to its treaty entitlement and to its discontinuance of all legal actions against Canada and Alberta including its complaint to the United Nations Human Rights Committee.

Visit of the Honourable Otto Jelinek,
Minister of Fitness and Amateur
Sport to the 1986 Commonwealth Games
Edinburgh, Scotland

CONFIDENTIAL
J.S. Crowther
Human Rights and
Social Affairs
Division
June 25, 1986

Issue

Proposed boycott of the 1988 Calgary Winter Olympics and other international activities of the Lubicon Lake Indian Band and their supporters.

Background

The Lubicon Lake Band is a group of several hundred Cree Indians living in northern Alberta. The history of the complex discussions which have taken place between the band and successive federal and provincial governments dates back almost 50 years. The current dispute has at its core an unfulfilled 1940 decision by the federal and Alberta governments to create a reserve for the band.

Over the years the situation has grown more complex as other Indian bands entered claims to aboriginal title of portions of a provisional reserve territory. In addition oil and gas development increased and unfavourably affected the band's ability to earn a living, in a traditional manner, through hunting and trapping.

In the 1970's and early 80's the problem intensified with various court actions by the band. Two of those actions before the Alberta Court of the Queen's Bench and the Federal Court of Canada remain unresolved.

In February 1984 the band through its agent brought a complaint against Canada before the United Nations Human Rights Committee. This complaint, which also remains unresolved, is very important for Canada as it alleges, among other things, that the Lubicon Lake band constitutes a people and that their right, as a people, to self-determination has been violated. The band contends that they have been deprived of this right, which includes a degree of control over their own natural wealth and resources, by the improper leasing, for energy exploration, of their traditional lands. In recent months members of the band or their representatives have sought and obtained the support of European and American groups

- 2 -

CONFIDENTIAL

who are sympathetic to their problem. This has culminated in a decision to work together to mobilize international support for a boycott of the Calgary games. The various activities of the band have received considerable media attention in Canada, particularly Alberta, but have not been given much notice in other countries.

Canadian Position

The Minister of Indian and Northern Affairs, the honourable David Crombie, has taken the lead in attempting to resolve the dispute with the Lubicon Lake Indian Band. In March 1985 he appointed the honourable E. Davie Fulton, to review the problem with the band, other interested native communities, the province of Alberta and other groups and to make recommendations. Mr. Fulton's "Discussion Paper" was provided to Mr. Crombie in December 1985. In that paper he outlined several scenarios for negotiation. This led to recommendations that a federal negotiator be appointed to enter into intensive private negotiations with the band for a two month period commencing in March 1986. The negotiator, Mr. Roger Tassé, a former Deputy Minister of Justice, was appointed late in March and parameters for negotiations were defined at that time. However during this period the Band withdrew its agreement for Alberta's presence as an observer/participant to the negotiations and discussion is stalled at present until this latest problem can be resolved.

In respect of the complaint before the UN Human Rights Committee, Canada has responded to a supplementary communication by the band's agent which inter alia, alleged that "cultural, if not physical genocide is successfully being practised upon the Crees of Lubicon Lake". Canada has disputed these unacceptable allegations and expects that the Committee will rule on the admissibility of the complaint in the near future.

In respect of the Commonwealth Games we have seen no evidence that the Lubicon Lake band will demonstrate at Edinburgh or that British or other groups will publicize the dispute during the course of the Games. However should this arise it may be said that Canada is working faithfully to try and resolve the long standing and complex dispute with the Lubicon Lake Indian Band.

LANG MICHENER LASH JOHNSTON

Barristers & Solicitors

		P O. Box 10	P O. Box 11	50 O'Connor Street
		1 First Canadian Place	Royal Bank Plaza	Suite 1600
		Toronto, Canada	North Tower	Ottawa, Canada
		M5X-1A2	Toronto, Canada	K1P-6L2
Reply to:	Roger Tassé O.C. Q.C.	Tel: (416) 360-8600	M5J-2J1	Tel: (613) 232-7171
	Ottawa Office	Telex: 06-23182	Tel: (416) 865-1100	Telecopier:
Telephone:	(613) 232-7171	Telecopier:	Telex: 06-217621	(613) 231-3191
		(416) 365-1719	Telecopier:	
			(416) 865-1171	

July 21, 1986

(without prejudice)

Chief Bernard Ominayak
Box 2864
Peace River, Alberta
T0H 2X0

Dear Chief Ominayak:

I am writing to express my appreciation for the opportunity of meeting with you and the members of your Band on July 7 and 8, 1986, and for the hospitality afforded Mr. Coulter and myself by your community. While I am personally disappointed that we did not have an opportunity to explore all the issues at hand, my visit has given me a much clearer picture of your Band's aspirations in terms of your claim and requirements for a future community. I found the tour provided by Edward and Mike Laboucan particularly valuable and would ask that you please extend my thanks and appreciation to them for their guidance and explanations.

With regard to the impasse in the negotiations, I fully understand your desire for a settlement which is based on principles of equality and justice. These are principles that I have fought for all my life and that I am not personally willing to see abandoned in my present role. When I met with your representatives in Ottawa on June 19 and 20, 1986, they asked if I was willing to treat your Band on an equal basis with all other bands. While I fully understood the question, I provided them at that time with only a general response because I was not certain that I fully comprehended all of the ramifications of what equality to all other bands would entail, and I did not want to make a statement on a matter upon which I had a less than complete understanding. I spent the following two weeks gaining this understanding and came to Little Buffalo fully prepared to address the question. I believe that the note that I tabled with you provides sufficient scope to enable us to reach a settlement which will place your Band on an equal footing with other bands and afford them equal treatment.

I would like to emphasize that my offer is not cast in stone. I am flexible on many of the points it contains, including the question of the quantum of land. Now that you have had an opportunity to review my note in detail, I would like to know if you have any suggestions for a basis upon which we could resume the talks. After visiting your community, I am personally convinced of the need to establish a permanent community for your members and remain hopeful that we can resolve our differences through negotiation rather than through the onerous and costly court system.

On June 3, 1986, it was agreed that I would undertake parallel negotiations with the Province of Alberta. As you are aware, on July 8, 1986 I met with senior officials of the Attorney General's department in this regard, and feel I should report to you that, from my perspective, a useful and productive exchange resulted. At the meeting I explained the reasons for your withdrawal from the negotiations, and we reviewed my note to you in detail. As our talks had broken down at that point, the Alberta officials felt that a response to the note would be academic. However, I did not feel that they considered the contents of my proposal to be unachievable, and was encouraged by the degree of openness that was demonstrated. I should mention that they raised several areas where "technical difficulties" may be encountered, most notably in the proposed transfer of existing oil and gas leases from Alberta to Canada. I am presently seeking advice as to the nature of these difficulties and on what avenues could be open to us to overcome them.

In closing, I would like to reiterate that my offer remains on the table for discussion. I would be pleased to know if any elements of the proposal are within the realm of what you hope to achieve and whether talks could resume on that basis. Alternatively, I would be pleased to consider, as a basis of discussion, a detailed proposal from you which sets out your aims.

Yours sincerely,



Roger Tassé

c.c. Mr. James O'Reilly
Mr. F. Lennarson
Mr. Doug Rae
The Honourable Bill McKnight

Dutch official to meet Lubicons

EDMONTON (CP) — The land claim of the Lubicon Lake Indian band in northern Alberta will come under international scrutiny this week with the visit of a Dutch member of the European Parliament.

John van Tilborg is to arrive Friday at the Cree band's settlement at Little Buffalo, 375 kilometres northwest of Edmonton, for a weekend of talks, band adviser Fred Lennardson said.

Tilborg is a member of Holland's Grael in Rainbow Group, associated with the environmentalist Greens party.

The politician is also to stop in Edmonton June 16 for a meeting with Opposition Leader Ray Martin. Arrangements are being made as well for

meetings with Conservative government members and representatives from the province's other major parties.

The band says its members were overlooked by an 1899 treaty and are entitled to a reserve they were promised by the federal government in 1940.

The Lubicons and the federal government announced last week that bilateral negotiations will soon be underway to bring about some kind of agreement by Aug. 30.

Van Tilborg is scheduled to fly to Ottawa June 18 to attend meetings with federal negotiator Roger Tasse, Liberal Indian Affairs critic Keith Penner and NDP critic Jim Manly.

CALGARY HERALD

Mon., June 9, 1986

Dutch politician takes up band's case

By KAREN BOOTH
Journal Staff Writer

The plight of the Lubicon Lake band comes under international scrutiny this week with the fact-finding visit of a Dutch member of the European Parliament.

John van Tilborg, a member of Holland's Graef in Rainbow Group, associated with the environmentalist Green party, will make a brief stop in Edmonton on June 13 on his way to Little Buffalo, said band adviser Fred Lennarson.

He will return to Edmonton on June 16 for a meeting the following day with New Democrat Leader Ray Martin. Arrangements are also being made for meetings with Tory MLAs, members of the Liberal and Representative parties and the Indian Association of Alberta.

"It's no longer just an Alberta problem or just a national problem; there's interest throughout the world about the plight of the Lubicons," said Martin.

"I understand he's on a fact-finding mission and we'll certainly tell him about the stands we've taken," he said.

During the recent provincial election campaign, Martin blasted Tory treatment of the band as "a horror story of a callous government using its power in the most unjust way."

The band and the federal government announced last week that they intend to begin bilateral negotiations with a target date of Aug. 30 for reaching an agreement. Federal negotiator Roger Tasse will conduct parallel negotiations with the province.

Van Tilborg is scheduled to fly to Ottawa June 18 for meetings with Tasse, Liberal Indian Affairs critic Keith Penner and NDP critic Jim Manly.

"The government's track record hasn't been a good one, with long delays and the long period between the (E.) Davie Fulton discussion paper and the announcement of negotiations," said Manly.

The discussion paper suggests the band is entitled to at least 80 square miles of reserve land and Fulton's remarks appear to support charges that development has had disastrous consequences for the band.

The band had been overlooked by surveyors and commissioners during the signing of Treaty 8 in 1899 and never received the reserve it was promised in 1940.

Van Tilborg attended a conference of support groups in Luxembourg earlier this year in which delegates unanimously resolved to support an international boycott of the 1988 Winter Olympics in Calgary.

RESOLUTION ON THE LUBICON LAKE BAND

WHEREAS the participants at this second European meeting of North American Indian Support Groups being held at Lultzhausen include delegations from Austria, Belgium, France, Germany, Holland, Italy, Luxembourg, Sweden and Switzerland

WHEREAS the participants continue to support strongly the aboriginal rights and claims of the Lubicon Lake Indian Nation

WHEREAS the participants are also aware of the conclusions of the Fulton Report of February 1986, which in effect criticizes the Federal Government's omissions, confirms a substantial reduction in subsistence hunting and trapping of the Lubicons caused by oil development promoted by Alberta and confirms the legitimacy and justness of many of the claims and grievances of the Lubicon Lake Indian Nation

WHEREAS it is appropriate to take even stronger measures in support of the Lubicons to ensure that they receive the just treatment denied to them for so long

RESOLVED:

That the participants at this meeting:

- 1) absolutely condemn the genocidal treatment inflicted upon the Lubicons by the governments of Alberta and Canada
- 2) demand that the governments of Alberta and Canada respect the aboriginal rights and fundamental human rights of the Lubicons
- 3) hereby confirm their support for an international boycott of the 1988 Winter Olympic Games to be held in Alberta
- 4) take all the measures within their power to convince the countries and people of Europe to abstain from participating in the 1988 Winter Olympic Games
- 5) demand that Canada immediately take the measures required in order to provide a just and fair settlement of the aboriginal rights and claims of the Lubicon Lake Indian Nation.

Proposed by: Peter Schwarzbauer Austria

Seconded by: Stephan Trompke Federal Republic of Germany

Carried unanimously

(signatures of participants - see below and back of this page)

Date: April 12th, 1986

Frank Kressin
Alois Klein
John Thum
Vol. Heinz Eiskel
Suzanne Kimm
Rainer Klat
Wilhelm Flap
Hermann GÜNTCHL
Reto G. Jonny
Babette Hetsch
Elisabeth Starnitz
Dietrich Lüdke
Catherine Chabot
Pascal Cole
ORANGE Denise
SCHINNER RUDOL
Nancy GOSWART
MARC GOSWART

TÜBINGER UNTERSTÜTZUNGSGRUPPE
F. NORD AM. INDIANER
SOCONAS INCOMINDIOS
Native American Information Center
Native American Information Center
Support Group for North American Indians
UNAI = " " " " " "
Gesellschaft für bedrohte Völker
Arbeitskreis indigener Nordamerikas
Incomindios Switzerland
Native American Information Center
SOCONAS INCOMINDIOS
DIFFUSION INTI
DIFFUSION INTI and C.S.I.A.
MUTINERIE
MUTINERIE
MUTINERIE
MUTINERIE
MUTINERIE

WEST GERMANY
ITALY
West Germany
West Germany
West Germany
West Germany
Austria
Switzerland
West-Germany
ITALY
FRANCE
FRANCE
FRANCE
FRANCE
LUXEMBOURG
000893

000894

Luxemburger Wort 12/4/86

Indianerstämme in Not

Europäische Vereinigungen zu ihrer Unterstützung tagen in Lultzhausen

(rh.) In Lultzhausen treffen sich seit Donnerstag mehrere europäische Gruppen, die sich die Unterstützung nordamerikanischer Indianerstämme zum Ziel gemacht haben. Neben Vertretern von Amnesty International nehmen verschiedene Vereinigungen aus Österreich, Belgien, den Niederlanden, Frankreich, der Bundesrepublik Deutschland, der Schweiz und aus Schweden teil, die sich mit spezifischen Indianerproblemen beschäftigen. Luxemburg ist durch die Vereinigung „Iwerliewe fir bedreete Völker“ vertreten, die als Gastgeber fungiert.

Gestern nachmittag fand anlässlich dieses europaweiten Treffens in Lultzhausen im hauptstädtischen Kapuzinertheater eine Pressekonferenz statt, bei der einige der Hauptanliegen der versammelten Vereinigungen zur Sprache kamen. Härtefälle bedrohen das Fortbestehen mehrerer Indianerstämme, die es noch immer schwerhaben, ihr Landrecht vor Gericht zu verteidigen. Wegen pauschal ergangener Entschädigungszahlungen findet oft überhaupt kein Prozeß statt.

In den Vereinigten Staaten von Amerika kämpfen zur Zeit drei Indianerstämme um ihr Land. Die Lakota-Indianer wollen aus religiösen Gründen die „Black Hills“ nicht aufgeben, die sie vor über hundert Jahren zu räumen gezwungen wurden. Der Lebensraum der Western

Shoshone ist die Nevada-Wüste, wo die amerikanischen unterirdischen Atomversuche stattfinden. Und schließlich sollen Navajo- und Hopi-Indianer ein bisher gemeinsam benutztes Gebiet räumen, auf dem Kohle- und Uraniumvorkommen bestehen.

Ähnliche Probleme stellen sich im Kanada. Die Innu-Indianer wehren sich gegen eine Nato-Basis, von der aus Flugzeuge im Tiefstflug erprobt werden, was die Jagdbedingungen in diesem Gebiet stört. Hauptsächlich leben die Innu von der Jagd und dem Fallenstellen.

Die Lubicon-Cree-Indianer jagten in einem reichen Ölgebiet, das seit einigen Jahren von den Weißen genutzt wird. Waren sie einst selbständig und lebten größtenteils von eigener Jagdbeute, sind sie heute, nach Angaben, die wir auf der Pressekonferenz von Indianerhäuptling Ted Moses erhielten, zu über 90 Prozent auf Sozialhilfe angewiesen.

Die Lubicon Cree, ein Stamm, dem kein Reservat zugeteilt wurde, versuchen zur Zeit, einen Boykott der olympischen Winterspiele von 1988, die in Calgary stattfinden werden, zu erreichen. Die europäischen Arbeitsgruppen und -kreise, die Indianerstämme in Not unterstützen und sich bis morgen Sonntag in Luxemburg treffen, sollen, neben anderen Tätigkeiten, auch helfen, diesen Boykott zu verwirklichen.

Boycottage des Jeux Olympiques d'hiver de Calgary (Canada)

Le grand chef indien déterre la hache de guerre

A l'occasion de la deuxième rencontre européenne des groupes de soutien aux peuples indiens d'Amérique du Nord qui se déroule à Lultzhausen (Luxembourg) du 10 au 13 avril, les organisateurs ont annoncé le lancement d'une campagne en faveur du boycott des Jeux olympiques d'hiver en 1988 qui auront lieu à Calgary dans la province canadienne d'Alberta. La nouvelle a été diffusée simultanément à Luxembourg et à New York où des représentants des indiens Cree de la région du lac de Lubicon ont décidé d'en appeler à l'opinion publique internationale pour mettre un terme au « génocide » dont ils seraient les victimes.

La rencontre de Lultzhausen a

drainé plus d'une centaine de participants venant d'Autriche, de RFA, de France, des Pays-Bas, de Suède, de Suisse, du Luxembourg ainsi que plusieurs délégations indiennes d'Amérique du Nord. C'est d'ailleurs le grand chef du conseil des Cree du Québec, Ted Moses qui a annoncé en personne au théâtre des Capucins à Luxembourg, le lancement de la campagne de boycott des J.O. M. Ted Moses, secondé par le conseil juridique des Lubicon Cree, M. James O'Reilly, avocat au barreau de Montréal a fourni les explications de ce geste exceptionnel de la communauté indienne. Depuis sept ans, a souligné en l'occurrence le grand chef des Cree, l'exploitation intensive des ressources pétrolières et de

gaz naturel sur le territoire des Lubicon a détruit les bases d'existence d'une communauté autonome vivant de pêche, de la chasse et de la trappe. Aujourd'hui 95 % de cette communauté vit de l'assistance publique, le revenu annuel de la vente de fourrures ayant baissé de 5.000 dollars à 400 dollars par famille. L'exploitation des ressources énergétiques de la région a provoqué l'exode des animaux sauvages (morse, animaux à fourrure), ôtant aux Indiens du Lubicon toute possibilité de vivre selon leur tradition. Le déclin social de cette communauté a progressé à pas de géant : alcoolisme, et crise dans les familles menacent la cohésion de ce groupe social.

Si les cours et tribunaux de l'Alberta et du Canada ont rejeté les actions en justice des Cree du Lubicon, les Indiens ont obtenu l'appui moral des évêques, Mgr Gary Woolsey et Mgr Don Sjöberg ainsi que des archevêques Mgr Ted Scott et Mgr Henri Legare, qui ont demandé aux autorités que l'exploitation des ressources naturelles de la région ne soit pas développée davantage sans le consentement de la communauté indienne.

Devant le refus du gouvernement de l'Alberta et d'Ottawa de reconnaître leurs droits de chasse et de pêche et leur droit sur les terres, les Cree du Lubicon ont décidé de porter leurs doléances devant l'opinion publique internationale. « Le Canada se pré-

sente comme le champion des droits de l'homme. Et nous apportons la preuve que ces faux et que le gouvernement crimine les populations autochtones », a dit en substance M. Ted Moses. « Les Jeux Olympiques d'hiver devraient aux yeux des autorités contribuer à un développement de la région que nous ne voyons », a encore poursuivi le chef, qui a conclu « que tout participant à ces jeux contribue en fait même à la destruction, mais sûre d'une communauté ».

La deuxième rencontre européenne des groupes de soutien aux peuples indiens d'Amérique du Nord élaborera concrètement les modalités de cette campagne internationale. Elle traitera en outre d'autres problèmes aussi actuels comme le sort des Lakota (Sioux) pour la défense de leur montagne sacrée « Black Hills », qui recèle des sements aurifères importants exploités par des sociétés minières. Il sera aussi question des Indiens Shoshone du Nevada qui s'opposent à ce que leurs territoires soient utilisés comme site militaire (800 tests atomiques pendant la Seconde Guerre mondiale, la stationnement des nouvelles armes MX, etc.), des Indiens Inuit du Labrador, chassés de leurs terres ancestrales par les exercices militaires des avions à réaction de l'Otaw et des Navajos-Dez qui risquent d'être déportés de leur région de la « Big Mountain ».

Toujours dans le cadre de ces rencontres, une exposition géographique sur le thème « Les Indiens d'Amérique du Nord — nations indiennes en lutte pour la survie » a été inaugurée vendredi au théâtre des Capucins. Y participent des artistes d'Autriche, des Etats-Unis, de Pologne, de France et du Luxembourg. L'exposition sera ouverte du lundi au vendredi de 12 h à 16 h et le samedi et dimanche de 10 h à 15 h.



Au théâtre des Capucins, inauguration de l'exposition « Les Indiens d'Amérique du Nord en lutte pour la survie ».

Le Républicain Lorrain (Luxembourg édition)

13/4/86

Die Erben Sitting Bulls auf dem Kriegspfad Aufruf zum Boykott der 88er olympischen Winterspiele in Calgary (Kanada)

Am vergangenen Wochenende fand in der Lultzhausener Jugendherberge das zweite europäische Treffen von Gruppen statt, die sich die Unterstützung bedrohter nordamerikanischer Indianerstämme zum Ziel gesetzt haben. Rund 120 Teilnehmer aus Schweden, der BRD, der Schweiz, aus Österreich, Italien und Luxemburg (hierzulande nimmt die Vereinigung „Iwerllawen asbl“ die Interessen der bedrohten Indianervölker Nordamerikas wahr) berieten bei diesem Treffen über die bestehende Situation sowie über die in Zukunft zu ergreifenden Maßnahmen.

Sensibilisierung der internationalen Öffentlichkeit

Dies ist das Leitmotiv aller beteiligten Gruppen, wie sich am vergangenen Freitag anlässlich einer Pressekonferenz im hauptstädtlichen Kapuzinertheater herausstellte, an der auch Vertreter der internationalen Presse teilnahmen.

Herr Carlo Krieger, Ethnologe, und seines Zeichens Hauptverantwortlicher der luxemburgischen Organisation zur Unterstützung der bedrohten Indianervölker, gab bei dieser Gelegenheit einen kurzen Überblick auf die verschiedenen Problembereiche.

Pauschal gesehen ist festzuhalten, daß es den meisten Indianerstämmen um die Respektierung ihres Landes und ihrer kulturellen und sozialen Identität geht.

Die USA und Kanada auf der Anklagebank

Wie Ted Moses, Häuptling der Quebec-Cree, bei dieser Gelegenheit bekanntgab, sollen die kommenden olympischen Winterspiele, die in Calgary (Kanada-Provinz Alberta) stattfinden, boykottiert werden.



Ein Exponat der Ausstellung, die noch bis zum 20. April im Kapuzinertheater zu sehen ist



Festliche Eröffnung der Ausstellung mit (v.l.n.r.) Carlo Krieger, Raymond Becker, Pierre Frieden und Roger Linster

Dieser Boykottaufruf ist auf verschiedene Ursachen zurückzuführen: Die Situation der Lubicon-Cree, die vor 8 Jahren noch Selbstversorger waren, hat sich durch die Industrialisierungspolitik der Provinzregierung in Alberta und der Landesregierung in Ottawa derart drastisch verschlechtert, daß inzwischen rund 95% der Lubicon-Cree auf Sozialfürsorge angewiesen sind.

Kanada würde sich zwar nach außen hin als ein Land hinstellen, welches die Menschenrechte und die Demokratie über alles respektieren, doch falls die multinationalen Erdölfirmen die Ureinwohner durch ihre rücksichtslose und vom Staat geduldete Expansionspolitik um ihre wirtschaftliche Eigenständigkeit und um ihre kulturelle und soziale Identität bringen, müsse man dies kritisieren und an die internationale Öffentlichkeit bringen.

Ted Moses forderte denn auch die repräsentierten europäischen Unterstützungsgruppen dazu auf, den Druck auf ihre respektiven Regierungen zu verschärfen, damit das Volk der Cree nicht vollends ausgerottet werde.

Doch nicht allein die Lubicon-Cree sind die Gebeutelten bei derartigen politischen und industriellen Vorgehensweisen. So ist der mehr als 100jährige Streitfall zwischen Lakota-Sioux und der US-amerikanischen Regierung um den Besitz der „Black Hills“ immer noch nicht beigelegt.

Die „Black Hills“ sind die Verkörperung des Geistes und des Stolzes der Lakota und verschiedener anderer Präriestämme, doch derzeit suchen auch 27 multinationale Firmen das Territorium nach Uranvorkommen und anderen Rohstoffen ab. Da auch vor dem Gericht

keine Einigung erzielt werden konnte, will man nun auch diesen Fall stärker in die Öffentlichkeit bringen.

Leben auf der Atombombe...

Noch schlechter ist es um das Volk der Schoschonen bestellt, das in der Wüste des amerikanischen Bundesstaates Nevada sesshaft ist.

In der Tat betreiben die Amerikaner auf diesem Gebiet ihre unterirdischen Atomwaffentests, so daß die Schoschonen buchstäblich auf der Bombe sitzen. Innenpolitisch und juristisch habe man alle nur irgend möglichen Schritte unternommen, doch der einzig richtige Weg kann auch hier nur die Mobilisierung der internationalen öffentlichen Meinung sein.

Von einer erzwungenen Umsiedlung sind derzeit die Navajos an der südlichen Grenze zu Mexiko bedroht, da hier zahlreiche Rohstoffvorkommen vermutet werden.

Die Innu in Labrador, die ihren Lebensunterhalt hauptsächlich von der Jagd bestreiten, sehen sich ihre Lebensgrundlage entzogen, da die NATO hier regelmäßig Tiefflüge veranstaltet, welche die Tiere aus der Region vertreiben. Und demnächst soll hier noch eine weitere NATO-Basis im Werte von 2 Billionen Dollar entstehen...

Nach diesem kurzen Überblick über die derzeit bestehenden Probleme der nordamerikanischen Indianervölker, schritt man dann zur feierlichen Eröffnung einer Kunstausstellung, die noch bis zum 20. April im Kapuzinertheater zu sehen ist. Öffnungszeiten: Samstags und sonntags von 10.00 bis 17.00 Uhr; montags bis freitags von 12.00 bis 18.00 Uhr.

a.k.

European groups back Lubicon boycott

KAREN BOOTH
Journal Staff Writer

condemning the "genocidal intent" of the Lubicon Lake band, Jean support groups have unanimously resolved to support an international boycott of the 1988 Winter Olympics.

A member of the European movement has written Chief Bernard Ominayak personally supporting the motion and expressing "the possibility of proposing a similar resolution for action by the European Parliament." "I am aware of the unjust treatment meted by the Lubicon Lake Indian band," states John van Tilborg, who headed the conference as a representative of Holland's Graef in Bow Group, a Green Party faction. "The Lubicon Lake issues raise fundamental human rights issues which have universal implications."

Sixty delegates passed the five-part resolution Saturday during a conference of North American Indian support groups in Luxembourg, said James O'Reilly, the band's lawyer.

Delegates from Austria, Belgium, France, West Germany, Holland, Italy, Luxembourg, Sweden and Switzerland attended the four-day meeting.

Delegates also resolved "to convince the countries and people of Europe to abstain from participating in the 1988 Winter Olympic Games" in Calgary, and to demand Canada take immediate action to provide "a just and fair settlement of the (band's) aboriginal rights and claims."

The groups "absolutely condemn the genocidal treatment inflicted upon the Lubicons by the governments of Alberta and Canada," the resolution states, and "demand that the governments respect the aboriginal rights and

fundamental human rights of the Lubicons."

The band, backed by the World Council of Churches, has claimed that oil and gas exploration on land they inhabit in northeastern Alberta has destroyed their livelihood. They have been involved in a lengthy battle with the governments of Canada and Alberta for a reserve.

Ominayak, who attended a weekend conference of Urban/Rural Missions North America — an affiliate of the World Council — said delegates to that meeting also resolved "to support the band in its efforts to boycott" the Calgary Olympics.

"This is the first step," Ominayak said in a phone interview Sunday from New Jersey. "We're trying to spread the word and educate people about the problems our band faces."

O'Reilly said the European groups will begin compiling a contact list of athletes

and Olympic organizers and are considering protests outside embassies in Europe, "perhaps in a few months."

"The degree of awareness they have on the issues is surprising. But we can't start saying there are hundreds of thousands of members in the groups, there are probably hundreds in total," said O'Reilly.

Earlier this month, Calgary organizers dismissed the band's call for an Olympic boycott as "ridiculous." The band has claimed the Games "are being organized by basically the same people that are committing genocide" against them.

The high profile of the Games "is looked at as a good catalyst for media attention" from certain groups which have no connection whatsoever with Olympic sports, said Jerry Joynt, vice-president of communications with the Winter Olympic Games Committee.

"We're not involved at all" with the band's disputes, he said.

Olympic boycott

By Dennis Foley

Citizen staff writer

A tiny band of Alberta Indians seeking land claim settlements has followed through on its threat to embarrass Canada by initiating a North American and European boycott of the 1988 Calgary Winter Olympics.

A nine-country coalition of European groups supporting North American Indian causes passed a resolution in Luxembourg Sunday,

calling on member groups to "take all measures within their power to convince the countries and people of Europe to abstain from participating in the 1988 Winter Olympic Games."

And in Newark, N.J., the Urban Rural Mission, the North American wing of the World Council of Churches, passed a motion Sunday calling on the council to support the boycott.

The Urban Rural Mission also requested that the WCC's Program to Combat Racism undertake an international public relations and education campaign in support of the boycott and to financially support the Lubicon Lake band's campaign. The WCC is a Geneva-based interfaith organization of 300 churches.

Also in Luxembourg, John van Tilburg, Green Party member of the European Parliament, said in a widely-distributed letter he would urge his party to put a similar resolution before the European Parliament.

The Luxembourg resolution was passed at the second meeting of North American Indian Support Groups during a four-day conference attended by about 100 delegates and observers.

The Lubicon Lake Cree band took its case to Europe and the U.S. to pressure the federal government into negotiations on its 100-year-old land settlement claim. The small Peace River band was inexplicably left out of Treaty 8 and has been battling for recognition and a reserve ever since.

Their fight has developed into a battle for survival since oil exploration has depleted hunting and fishing stock and the once self-

sufficient 350-member band is now mostly on welfare.

However, the band's decision to focus international attention on its plight has prompted the Indian affairs department to dig in its heels.

Deputy minister Bruce Rawson said Friday that Indian Affairs Minister David Crombie has accepted his recommendation to delay negotiations "until the band's

current overseas publicity campaign is completed."

That could be some time away as the European support groups plan on co-ordinating continent-wide demonstrations in front of Canadian embassies.

"They're going to be waiting one long time," said Chief Bernard Ominayak, who led the band's delegation to the Urban Rural Mission conference.

Front Page

The CITIZEN, OTTAWA • MONDAY, APRIL 14, 1986



External Affairs
Canada

Affaires extérieures
Canada

MESSAGE

Align first character of Security Classification under this arrow
Alignez le premier caractère de la Sécurité sous cette flèche

SECURITY
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INFO PRMNY JUSTOTT/LOW SECSTATE/DADSON INAHULL & COULTER FPRB/OACA/CARDN

REF

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SUBJ/SUJ

---HUMAN RIGHTS COMMITTEE; LUBICON LAKE CASE (COMMUNICATION NO. 167/84)

FOR YOUR INFO NEGOTIATIONS BETWEEN FEDERAL NEGOTIATOR AND LUBICON LAKE BAND REFERRED TO IN CDN COMMENTS OF 23 JUN AS SUBMITTED TO HUMAN RIGHTS COMMITTEE (HRC) BROKE DOWN IN JULY. WE ARE SENDING BY BAG COPY OF RECENT PRESS REPORTS AND CONTENT OF FEDERAL OFFER FOR BACKGROUND INFO. INA IS CURRENTLY DOING RISK ASSESSMENT OF TWO OPTIONS (i) RETURNING TO NEGOTIATING TABLE WITH NEW OFFER OR (ii) TAKING CHANCES IN CDN COURTS WHERE LEGAL COUNSEL TO LUBICON LAKE BANK HAS APPARENTLY TAKEN STEPS TO RECOMMENCE COURT PROCEEDINGS THAT WERE BEGUN EARLIER. PART OF ASSESSEMENT INCLUDES INNATL CONSIDERATIONS, ONE OF WHICH IS COMPLAINT OF LUBICON LAKE BANK TO HRC.

2. GRATEFUL YOU CONTACT CENTRE FOR HUMAN RIGHTS ASAP TO OBTAIN ANY AVAILABLE INFO ON DISPOSITION THAT HRC MAY HAVE MADE ON CASE DURING ITS 28TH SESSION.

3. NOTE REVISED INFO/DISTR LINE FOR TELS ON THIS PARTICULAR COMPLAINT.

DRAFTER/RÉDACTEUR

C. SWORDS/AL

SIG

DIVISION/DIRECTION

JLB

TELEPHONE

996 5407

APPROVED/APPROUVÉ

PHILIPPE KIRSCH

SIG

MESSAGE PREPARATION

- 1) Use OCR element and set typewriter for 10 pitch. Observe right margin marked "10". If typewriter capable of 12 pitch only, ensure that right margin, marked "12", is observed.
- 2) Use full capitals and double line feed at all times.
- 3) Security Classification: "UNCLASSIFIED" is to be typed without spacing between letters. All other classifications are to have one space between the letters, e.g. C O N F I D E N T I A L
- 4) Use only one space between words in the address portion of the message, e.g.
TO LDN PARIS IMMED WSHDC
DISTR ACB APS ABD MFD
- 5) Subject line is indicated by three dashes in front of the subject, e.g. --- REVISED FSIDS
- 6) First paragraph is neither numbered nor indented. All subsequent paragraphs are numbered. Do not use space between the paragraph number and the first letter of the text, e.g. 3. THE POST ...
- 7) Do not use space before or after punctuation marks, e.g. WILL ARRIVE BERNE, 15 JUN. THE etc.
- 8) Use only the following punctuation: period, comma, semi-colon, colon, dash, oblique stroke, brackets and question mark.
- 9) Following signs must be spelled out: \$ (DOLLARS), % (PERCENT), # (NUMBER), "(QUOTE)", and " (UNQUOTE). In English the apostrophe is omitted to form a single word, while in French the apostrophe is replaced by a space.
- 10) Always repeat negatives NO and NOT as NO/NO and NOT/NOT (in French negatives are not repeated). DO NOT/NOT underline.
- 11) End of page of multi-page messages is identified on a separate line, at left margin with only three periods and the number of the following page, e.g. ...2
- 12) Do not use punctuation at the end of the message when there is a signature.

PRÉPARATION DES MESSAGES

- 1) Employer le LOC et régler la machine au pas "10". Placer la marge droite à "10". Si vous avez une machine de pas "12", placer la marge droite à "12".
- 2) Toujours utiliser les majuscules et le double inter-ligne.
- 3) La cote de sécurité "NONCLASSIFIÉ" doit être dactylographiée sans espace entre les lettres. Toutes les autres doivent l'être avec un espace, par exemple:
C O N F I D E N T I E L
- 4) Pour l'adresse, utiliser seulement un espace entre chaque mot, par exemple:
A LDN PARIS IMMED WSHDC
DISTR ACB APS ABD MFD
- 5) Faire précéder le sujet de trois tirets, par exemple:
--- DSE REVISÉES
- 6) Le premier paragraphe n'est jamais numéroté et commence à la marge. Tous les paragraphes suivants sont numérotés. Ne pas laisser d'espace entre le numéro du paragraphe et la première lettre du texte, par exemple:
3. LA MISSION...
- 7) Ne pas laisser d'espace avant ou après les signes de ponctuation, par exemple: ARRIVERAI À BERNE, 15 JUN. LE etc.
- 8) Utiliser seulement les signes de ponctuation suivants: point, virgule, point virgule, deux points, tiret, barre oblique, parenthèses et point d'interrogation.
- 9) Les signes suivants doivent être dactylographiés en toutes lettres: \$ (DOLLARS), % (POUR CENT), # (NUMÉRO), "(CITATION)" et " (FIN DE CITATION). En anglais, omettre l'apostrophe et ajouter la terminaison au mot pour en faire un seul mot. En français remplacer l'apostrophe par un espace.
- 10) Répéter toujours les négatifs NO et NOT comme ceci: NO/NO NOT/NOT (en français les négatifs ne sont pas répétés). Ne pas souligner.
- 11) Sur les messages comportant plus d'une page, indiquer sur une ligne séparée, à la marge à gauche, le numéro de la page suivante en le faisant précéder de trois points seulement, par exemple:
...2
- 12) Ne pas mettre de ponctuation à la fin du message quand il comporte une signature.



External Affairs
Canada

Affaires extérieures
Canada

MESSAGE

Accession/Référence

File/Dossier

45-Cda-13-1-3-Lubicon Lake

Align first character of Security Classification under this arrow
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SECURITY
SÉCURITÉ

C O N F I D E N T I A L

1 AUG 06 22

12
11 2

10

FM/DE

FM EXTOTT JLO-1353 01AUG86

TO/A

TO GENEV

INFO

DISTR

INFO PRMNY JUSTOTT/LOW SECSTATE/DADSON INAHULL/COULTER FPRO/OACA/CARON

REF

DISTR IMH IMD JCD

SUBJ/SUJ

---HUMAN RIGHTS COMMITTEE; LUBICON LAKE CASE (COMMUNICATION NO. 167/
84)

FOR YOUR INFO NEGOTIATIONS BETWEEN FEDERAL NEGOTIATOR AND LUBICON
LAKE BAND REFERRED TO IN CDN COMMENTS OF 23 JUN AS SUBMITTED TO
HUMAN RIGHTS COMMITTEE (HRC) BROKE DOWN IN JULY. WE ARE SENDING BY
BAG COPY OF RECENT PRESS REPORTS AND CONTENT OF FEDERAL OFFER FOR
BACKGROUND INFO. INA IS CURRENTLY DOING RISK ASSESSMENT OF TWO OPTIONS
(i) RETURNING TO NEGOTIATING TABLE WITH NEW OFFER OR (ii) TAKING
CHANCES IN CDN COURTS WHERE LEGAL COUNSEL TO LUBICON LAKE BANK HAS
APPARENTLY TAKEN STEPS TO RECOMMENCE COURT PROCEEDINGS THAT WERE
BEGUN EARLIER. PART OF ASSESSEMNT INCLUDES INNATL CONSIDERATIONS, ONE
OF WHICH IS COMPLAINT OF LUBICON LAKE BANK TO HRC.

2. GRATEFUL YOU CONTACT CENTRE FOR HUMAN RIGHTS ASAP TO OBTAIN ANY
AVAILABLE INFO ON DISPOSITION THAT HRC MAY HAVE MADE ON CASE DURING
ITS 28TH SESSION.

3. NOTE REVISED INFO/DISTR LINE FOR TELS ON THIS PARTICULAR COMPLAINT.

DRAFTER/RÉDACTEUR

DIVISION/DIRECTION

TELEPHONE

APPROVED/APPROUVÉ

C. SWORDS/AL
SIG

JLO

996-5407

PHILIPPE KIRSCH

SIG

000902



External Affairs
Canada

Affaires extérieures
Canada

MESSAGE

Accession/Référence

File/Dossier

45-CDA-13-13-LUBICON LAKE
BAND

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SECURITY
SÉCURITÉ

R E S T R I C T E D

AUG 85 22 2:42

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FM/DE

FM ~~EXT~~ EXT OTT IMH0814 01 AUG 86

TO/À

TO BREC

INFO

INFO BRU GENEV PRMNY HAGUE ^{BH} SECSTATEHULL/DADSON ~~SECRET~~ VIENNA

DISTR

^{BH} INAHULL/EXEC SERVICES/GOLDBERG ~~SECRET~~ ^{BH} JUST OTT/LAW ~~SECRET~~

REF

SUBJ/SUJ

DISTR RCM JLO BKC MINA IMD

REF OUR TEL IMH00466 APR08 TO PRMNY AND OUR MEMO IMH-M-472 APR15

---LUBICON LAKE BAND-VAN TILBORG

1. JOHN VAN TILBORG OF HOLLAND S GRAEL IN RAINBOW GROUP VISITED CDA IN JUNE AND HAS LET IT BE KNOWN DURING PRESS INTERVIEWS HERE THAT HE INTENDS TO INTRODUCE TO EUROPEAN PARLIAMENT DRAFT RESOLUTION CONDEMNING CDA FOR ITS TREATMENT OF LUBICON LAKE BAND AND CALLING FOR BOYCOTT OF OLYMPIC GAMES IN CALGARY. HE BELIEVES HE HAS WIDESPREAD SUPPORT AND THAT DRAFT RESOLUTION WILL BE ADOPTED.

2. LUBICON LAKE BAND IS GROUP OF APPROX 250 ~~4~~ 457 CREE INDIANS LIVING IN NORTHERN ALBERTA. HISTORY OF COMPLEX DISCUSSIONS WHICH HAVE TAKEN PLACE BETWEEN BAND AND SUCCESSIVE FEDERAL AND PROVINCIAL GOVERNMENTS DATES BACK ALMOST 50 YEARS. CURRENT DISPUTE HAS AT ITS CORE AN UNFULFILLED 1940 DECISION BY FEDERAL AND ALBERTA GOVERNMENTS TO CREATE A RESERVE FOR THIS BAND. IN 1984 BAND BROUGHT ITS COMPLAINT TO UN HUMAN RIGHTS COMMITTEE. MINISTER OF INDIAN AND NORTHERN AFFAIRS APPOINTED DAVIE FULTON IN MARCH 1985 TO REVIEW PROBLEM WITH BAND AND OTHER INTERESTED PARTIES. IN

.../2

DRAFTER/RÉDACTEUR

DIVISION/DIRECTION

TELEPHONE

APPROVED/APPROUVÉ

M. Cleary
M. CLEARY-992-2112
SIG
IMH

HUME SMITH
SIG

000903



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2814
PAGE TWO IMHUBS RESTRICTED

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DECEMBER FULTON PROVIDED MINISTER WITH DISCUSSION PAPER WHICH
OUTLINED SEVERAL SCENARIOS FOR NEGOTIATION. THIS LED TO
RECOMMENDATION THAT FEDERAL NEGOTIATOR BE APPOINTED. ROGER
TASSE, FORMER DEPUTY MINISTER OF JUSTICE WAS APPOINTED AS
NEGOTIATOR IN MARCH 1986. HOWEVER DURING PERIOD OF NEGOTIATIONS
LUBICON BAND WITHDREW ITS AGREEMENT FOR ALBERTA'S PRESENCE AS
OBSERVER/PARTICIPANT WHICH HAD EFFECT OF STALLING
DISCUSSIONS. FEDERAL NEGOTIATOR CONTINUES TO STRIVE FOR SETTLEMENT
OF THIS DISPUTE. BUT TALKS HAVE NOW BROKEN DOWN ON HOW LAND SHOULD
BE ALLOCATED. CASE IS BEING PURSUED IN CDN COURTS. IT IS UNLIKELY
THAT UN HUMAN RIGHTS COMMITTEE WILL RENDER VERDICT UNTIL CDN
JUDICIAL PROCESS IS COMPLETED. IN RECENT MONTHS BAND HAS SOUGHT
SUPPORT OF EUROPEAN AND USA GROUPS. BAND HAS ALSO RECEIVED
CONSIDERABLE MEDIA ATTENTION IN CANADA.

3. SINCE OUR UNDERSTANDING OF NATURE OF DRAFT RESOLUTION, IF IT YET
EXISTS, IS WEAK, ANY LIGHT YOU COULD SHED ON IT AS WELL AS
PROCEDURAL STEPS CONCERNING ITS INTRODUCTION TO EUROPEAN
PARLIAMENT AND TIMETABLE BEFORE IT COULD BE ADOPTED WOULD BE
WELCOMED. IN ADDITION TO POTENTIAL EMBARRASSMENT SHOULD SUCH
RESOLUTION BE ADOPTED WOULD THERE BE ANY OTHER IMPACT-I.E. CALLS
FOR SELECTIVE TRADE SANCTIONS OR CALL FOR OLYMPIC BOYCOTT OF
CALGARY GAMES?

.../3



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0814
PAGE THREE IMH0006 RESTRICTED

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4. TASSE HAS ASKED IF IT WOULD BE POSSIBLE TO HAVE CDN DIPLOMATIC MISSIONS BRIEF VAN TILBORG OR OTHER EUROPEAN PARLIAMENTARIANS OR INTERESTED PARTIES. WE SUPPORT THIS REQUEST BUT LEAVE IT TO YOUR DISCRETION AS TO ITS IMPLEMENTATION. IN ANY EVENT THIS STEP SHOULD AWAIT RECEIPT OF BACKGROUND INFO WHICH WE ARE SENDING.

5. DEPT OF ~~IANA~~ ^{IANA} IS PREPARING RISK ASSESSMENT REPORT ON THEIR DISCUSSION WITH LUBICON BAND AND WOULD LIKE INPUT ON POINTS RAISED IN PARA 3 AND 4 BY AUG 11. IN LIGHT OF THIS TIMETABLE YOUR PRELIMINARY COMMENTS WOULD BE WELCOMED.

6. FOR VIENNA: FOR YOUR INFO MINISTER OF INDIAN AND NORTHERN AFFAIRS HAS RECEIVED ¹ INQUIRY FOR INFORMATION ON LUBICON BAND ISSUE AND POSSIBLE BOYCOTT OF CALGARY S OLYMPIC GAMES FROM AUSTRIAN EMBASSY.



External Affairs
Canada

Affaires extérieures
Canada

IMH/Michael Cleary/882-2112/MP

TO/À • FILE
FROM/DE • IMH

REFERENCE •
RÉFÉRENCE

SUBJECT • Human Rights Commission - Lubicon Lake
SUJET

Security/Sécurité RESTRICTED
Accession/Référence
File/Dossier 24-143-1
45-CDA-13-1-3-LUBICON
Date July 30, 1986 LAKE BAND
Number/Numéro IMH-0834

ENCLOSURES
ANNEXES


DISTRIBUTION

Roger Tassé chaired on July 25 an interdepartmental meeting at Justice on the Lubicon Lake issue. During the meeting he provided an update on his role as federal negotiator and he requested input for a risk assessment report to be prepared. Input is required by August 11.

2. Following a lengthy deliberation which focused a great deal on who is or is not an Indian and that the Indians had refused to even look at the federal offer, Tassé sought the following input from External:

- if Canada receives a negative decision from the HRC what are the implications; what would be the impact of a European parliamentary resolution condemning Canada for its treatment of the Lubicon band and what is the nature of the resolution, i.e. does it call for a boycott of the Calgary Olympics?;
- is it possible to balance the Lubicon band public relations campaign with our own and in this vein would it be possible to meet with the originator of the resolution or other European parliamentarians or interested parties such as the World Council of Churches?

3. We agreed to comply by the August deadline.


Hume Smith
Acting Director
Human Rights and
Social Affairs Division



Indian and Northern
Affairs Canada

Affaires indiennes
et du Nord Canada

Your file Votre référence

Our file Notre référence

July 28, 1986

Mr. Michael Cleary
Human Rights and Social Affairs
Division - I.M.H.
External Affairs
Lester B. Pearson Building
Tower A, Fourth Floor
125 Sussex Drive
OTTAWA, Ontario
K1A 0G2

Dear Mr. Cleary:

RETURN TO RENOYER AU		BICO		FOR FILING POUR - ETRE PORTE AU DOSSIER	
ACC	REF	DATE			
FILE		DOSSIER			
45-CDA-13-1-3-LUBICON		LAKE BAND			

Re: Lubicon Lake - Land claim

Further to our meeting with Roger Tassé on Friday July 25, and as follow-up to your request for information on John van Tilborg of the European Parliament, please find enclosed, several press clippings, as well as a resolution passed by the North American Indian Support Group.

I hope that this information will be of some assistance. Should you require further details of the Lubicon claim I may be reached at 994-1831.

Sincerely,

Alison A. Mortimer
Senior Advisor
Self-Government and Constitutional
Affairs Branch

Encl.

Canada

000907

Dutch politician takes up band's case

By KAREN BOOTH
Journal Staff Writer

The plight of the Lubicon Lake band comes under international scrutiny this week with the fact-finding visit of a Dutch member of the European Parliament.

John van Tilborg, a member of Holland's Graef in Rainbow Group, associated with the environmentalist Green party, will make a brief stop in Edmonton on June 13 on his way to Little Buffalo, said band adviser Fred Lennarson.

He will return to Edmonton on June 16 for a meeting the following day with New Democrat Leader Ray Martin. Arrangements are also being made for meetings with Tory MLAs, members of the Liberal and Representative parties and the Indian Association of Alberta.

"It's no longer just an Alberta problem or just a national problem; there's interest throughout the world about the plight of the Lubicons," said Martin.

"I understand he's on a fact-finding mission and we'll certainly tell him about the stands we've taken," he said.

During the recent provincial election campaign, Martin blasted Tory treatment of the band as "a horror story of a callous government using its power in the most unjust way."

The band and the federal government announced last week that they intend to begin bilateral negotiations with a target date of Aug. 30 for reaching an agreement. Federal negotiator Roger Tasse will conduct parallel negotiations with the province.

Van Tilborg is scheduled to fly to Ottawa June 18 for meetings with Tasse, Liberal Indian Affairs critic Keith Penner and NDP critic Jim Manly.

"The government's track record hasn't been a good one, with long delays and the long period between the (E.) Davie Fulton discussion paper and the announcement of negotiations," said Manly.

The discussion paper suggests the band is entitled to at least 80 square miles of reserve land and Fulton's remarks appear to support charges that development has had disastrous consequences for the band.

The band had been overlooked by surveyors and commissioners during the signing of Treaty 8 in 1899 and never received the reserve it was promised in 1940.

Van Tilborg attended a conference of support groups in Luxembourg earlier this year in which delegates unanimously resolved to support an international boycott of the 1988 Winter Olympics in Calgary.

Dutch official to meet Lubicons

EDMONTON (CP) — The land claim of the Lubicon Lake Indian band in northern Alberta will come under international scrutiny this week with the visit of a Dutch member of the European Parliament.

John van Tilborg is to arrive Friday at the Cree band's settlement at Little Buffalo, 375 kilometres northwest of Edmonton, for a weekend of talks, band adviser Fred Lennardson said.

Tilborg is a member of Holland's Grael in Rainbow Group, associated with the environmentalist Greens party.

The politician is also to stop in Edmonton June 16 for a meeting with Opposition Leader Ray Martin. Arrangements are being made as well for

meetings with Conservative government members and representatives from the province's other major parties.

The band says its members were overlooked by an 1899 treaty and are entitled to a reserve they were promised by the federal government in 1940.

The Lubicons and the federal government announced last week that bilateral negotiations will soon be underway to bring about some kind of agreement by Aug. 30.

Van Tilborg is scheduled to fly to Ottawa June 18 to attend meetings with federal negotiator Roger Tasse, Liberal Indian Affairs critic Keith Penner and NDP critic Jim Manly.

CALGARY HERALD

Mon., June 9, 1986

RESOLUTION ON THE LUBICON LAKE BAND

WHEREAS the participants at this second European meeting of North American Indian Support Groups being held at Lultzhausen include delegations from Austria, Belgium, France, Germany, Holland, Italy, Luxembourg, Sweden and Switzerland

WHEREAS the participants continue to support strongly the aboriginal rights and claims of the Lubicon Lake Indian Nation

WHEREAS the participants are also aware of the conclusions of the Fulton Report of February 1986, which in effect criticizes the Federal Government's omissions, confirms a substantial reduction in subsistence hunting and trapping of the Lubicons caused by oil development promoted by Alberta and confirms the legitimacy and justness of many of the claims and grievances of the Lubicon Lake Indian Nation

WHEREAS it is appropriate to take even stronger measures in support of the Lubicons to ensure that they receive the just treatment denied to them for so long

RESOLVED:

That the participants at this meeting:

- 1) absolutely condemn the genocidal treatment inflicted upon the Lubicons by the governments of Alberta and Canada
- 2) demand that the governments of Alberta and Canada respect the aboriginal rights and fundamental human rights of the Lubicons
- 3) hereby confirm their support for an international boycott of the 1988 Winter Olympic Games to be held in Alberta
- 4) take all the measures within their power to convince the countries and people of Europe to abstain from participating in the 1988 Winter Olympic Games
- 5) demand that Canada immediately take the measures required in order to provide a just and fair settlement of the aboriginal rights and claims of the Lubicon Lake Indian Nation.

Proposed by: Peter Schwarzbauer Austria

Seconded by: Stephan Dompke Federal Republic of Germany

Carried unanimously

(signatures of participants - see below and back of this page)

Date: April 12th, 1986

Frank Kressin
Hilary Klein
John Shum
Vol-Heinz Bockel
Suzanne Simon
Dorian Klatt
Wilma Hays
Hermann GUENTHER
Reto G. Janny
Babette Hetsch
Flaminia Starnagel
Didier Luvéque
Catherine Chabry
PRISCIL COLLE
ORANGE Denise
SCHIMMER RUDOL
NANCY GODART
MARC GODART

TÜBINGER UNTERSTÜTZUNGSGRUPPE
F. NORD AM. INDIANER
SOCONAS INCOMINDIOS
Native American Information Center
Native American Information Center
Supportgroup for North American Indians
UNAI = " " " "
Gesellschaft für bedrohte Völker
Arbeitskreis Indianer Nordamerikas
Incomindios Switzerland
Native American Information Center
SOCONAS INCOMINDIOS
DIFFUSION INTI
DIFFUSION INTI AND C.S.I.A.
MUTINERIE
MUTINERIE
MUTINERIE
MUTINERIE
MUTINERIE

WEST GERMANY
ITALY
West Germany
West Germany
West Germany
West Germany
Austria
Switzerland
West-Germany
ITALY
FRANCE
FRANCE
FRANCE
FRANCE
LUXEMBOURG
LUXEMBOURG 000910

Professor
Kanneth Diner
Ti. Welter
Hilmandine Renard
JAN VAN BELLE

- Svensk-Indianska Förbundet
- Svensk-Indianska Förbundet
- Överlevare a.s.b.l. Luxemburg
- BANAI Belgisch Amerikanen
- BANAI Belgisch Amerikanen Noord Amerikaanse Indianen
Belgium

Raidar Huber R. Lüder-
Evert Dals

- BANAI Belgisch Amerikanen Noord Amerikaanse Indianen
LPSG Leonard Peltier Support Group Groningen Holland
Germany

Frits F. Terpstra
John van Tilburg
Eri Coltenbusch
Thomas Coltenbusch
Schockmel Claude
Günther Marchina
Maddy Bausa
WISSEL HUISMAN

- member Secret in Rainbowgroup Em. parliament
- Germany
- Solidarité Internationaliste Luxembourg
- Plainstraße 85 / 1020 SALZBURG
G. F. B. V. 10.
Österreich

Lucien Vandermore
Gunnar Feldtman

- DAGUERRE STRAAT 52, 2511 TV DEN HAAG
- BANA Belgisch Amerikanen Noord Amerikaanse Indianen
- Swedish-American Indian League SWEDEN
Indians League

Gerald Ahlström
Claudia Griesheffer
Gerald Schober
Reinhard TRINK

i.f.i.u. Initiative für Indianer u. Umwelt - Austria
- Initiative fuer Indianer und Umwelt - Austria
Arbeitsgruppe Indianer Nordamerika AUSTRIA
Arbeitskreis Indianer Nordamerika, GfB-U

URS KAEFER-URAS
URSULA PATRY

ARBEITSKREIS INDIANER NORDAMERIKA - AUSTRIA
ARBEITSKREIS INDIANER NORDAMERIKA - AUSTRIA

Stephan Dömpke
Thomas Schmiedchen
Richard Kelly
Großmann, Jörg
Hart 7 Rosenkranz
Walter F. F. F.

Gesellschaft für bedrohte Völker Germany
Informationszentrale für Nordamerikanische Indianer Germany
free lance journalist + Radio Switzerland
Gesellschaft für bedrohte Völker, Biel/Bienne - FRG
Switzerland

Ingrid v. Wären
Fred Müller

Stichting NANAI: Nederlandse Achtergrond Noord Amerikaanse Indianen
Indians in the Netherlands

Heike Sieckmann
Bernhard Mogge

Gesellschaft für bedrohte Völker, Germany
INDIAN AID
Germany

Carlos HAREDO.
Carlo Krieger
Peter Schwarzbauer
Ellen Schriek
Anne Stöckl
Irene Bush

Arbeitsgruppe Brasilianische Indianer AUSTRIA
Fauernüller GfB-U-B
ARBEITSKREIS INDIANER NORDAMERIKA - VIENNA-AUSTRIA
Gesellschaft für bedrohte Völker Germany
Native American Information Center Germany
LIC Switzerland

Luxemburger Wort 12/4/86

Indianerstämme in Not

Europäische Vereinigungen zu ihrer Unterstützung tagen in Lultzhausen

(rh.) In Lultzhausen treffen sich seit Donnerstag mehrere europäische Gruppen, die sich die Unterstützung nordamerikanischer Indianerstämme zum Ziel gemacht haben. Neben Vertretern von Amnesty International nehmen verschiedene Vereinigungen aus Österreich, Belgien, den Niederlanden, Frankreich, der Bundesrepublik Deutschland, der Schweiz und aus Schweden teil, die sich mit spezifischen Indianerproblemen beschäftigen. Luxemburg ist durch die Vereinigung „Iwerliewe fir bedreete Völker“ vertreten, die als Gastgeber fungiert.

Gestern nachmittag fand anlässlich dieses europaweiten Treffens in Lultzhausen im hauptstädtischen Kapuzinertheater eine Pressekonferenz statt, bei der einige der Hauptanliegen der versammelten Vereinigungen zur Sprache kamen. Härtefälle bedrohen das Fortbestehen mehrerer Indianerstämme, die es noch immer schwerhaben, ihr Landrecht vor Gericht zu verteidigen. Wegen pauschal ergangener Entschädigungszahlungen findet oft überhaupt kein Prozeß statt.

In den Vereinigten Staaten von Amerika kämpfen zur Zeit drei Indianerstämme um ihr Land. Die Lakota-Indianer wollen aus religiösen Gründen die „Black Hills“ nicht aufgeben, die sie vor über hundert Jahren zu räumen gezwungen wurden. Der Lebensraum der Western

Shoshone ist die Nevada-Wüste, wo die amerikanischen unterirdischen Atomversuche stattfinden. Und schließlich sollen Navajo- und Hopi-Indianer ein bisher gemeinsam benutztes Gebiet räumen, auf dem Kohle- und Uraniumvorkommen bestehen.

Ähnliche Probleme stellen sich im Kanada. Die Innu-Indianer wehren sich gegen eine Nato-Basis, von der aus Flugzeuge im Tiefstflug erprobt werden, was die Jagdbedingungen in diesem Gebiet stört. Hauptsächlich leben die Innu von der Jagd und dem Fallenstellen.

Die Lubicon-Cree-Indianer jagten in einem reichen Ölgebiet, das seit einigen Jahren von den Weißen genutzt wird. Waren sie einst selbständig und lebten größtenteils von eigener Jagdbeute, sind sie heute, nach Angaben, die wir auf der Pressekonferenz von Indianerhauptide Ted Moses erhielten, zu über 90 Prozent auf Sozialhilfe angewiesen.

Die Lubicon Cree, ein Stamm, dem kein Reservat zugeteilt wurde, versuchen zur Zeit, einen Boykott der olympischen Winterspiele von 1988, die in Calgary stattfinden werden, zu erreichen. Die europäischen Arbeitsgruppen und -kreise, die Indianerstämme in Not unterstützen und sich bis morgen Sonntag in Luxemburg treffen, sollen, neben anderen Tätigkeiten, auch helfen, diesen Boykott zu verwirklichen.

Boycottage des Jeux Olympiques d'hiver de Calgary (Canada)

Le grand chef indien déterre la hache de guerre

A l'occasion de la deuxième rencontre européenne des groupes de soutien aux peuples indiens d'Amérique du Nord qui se déroule à Lultzhausen (Luxembourg) du 10 au 13 avril, les organisateurs ont annoncé le lancement d'une campagne en faveur du boycottage des Jeux olympiques d'hiver en 1988 qui auront lieu à Calgary dans la province canadienne d'Alberta. La nouvelle a été diffusée simultanément à Luxembourg et à New York où des représentants des indiens Cree de la région du lac de Lubicon ont décidé d'en appeler à l'opinion publique internationale pour mettre un terme au « génocide » dont ils seraient les victimes.

La rencontre de Lultzhausen a

drainé plus d'une centaine de participants venant d'Autriche, de RFA, de France, des Pays-Bas, de Suède, de Suisse, du Luxembourg ainsi que plusieurs délégations indiennes d'Amérique du Nord. C'est d'ailleurs le grand chef du conseil des Cree du Québec, Ted Moses qui a annoncé en personne au théâtre des Capucins à Luxembourg, le lancement de la campagne de boycottage des J.O. M. Ted Moses, secondé par le conseil juridique des Lubicon Cree, M. James O'Reilly, avocat au barreau de Montréal a fourni les explications de ce geste exceptionnel de la communauté indienne. Depuis sept ans, a souligné en l'occurrence le grand chef des Cree, l'exploitation intensive des ressources pétrolières et de

gaz naturel sur le territoire des Lubicon a détruit les bases d'existence d'une communauté autonome vivant de pêche, de la chasse et de la trappe. Aujourd'hui 95 % de cette communauté vit de l'assistance publique, le revenu annuel de la vente de fourrures ayant baissé de 5.000 dollars à 400 dollars par famille. L'exploitation des ressources énergétiques de la région a provoqué l'exode des animaux sauvages (morse, animaux à fourrure), ôtant aux Indiens du Lubicon toute possibilité de vivre selon leur tradition. Le déclin social de cette communauté a progressé à pas de géant : alcoolisme, et crise dans les familles menacent la cohésion de ce groupe social.

Si les cours et tribunaux de l'Alberta et du Canada ont rejeté les actions en justice des Cree du Lubicon, les Indiens ont obtenu l'appui moral des évêques. Mgr Gary Woolsey et Mgr Don Sjoberg ainsi que des archevêques Mgr Ted Scott et Mgr Henri Legare, qui ont demandé aux autorités que l'exploitation des ressources naturelles de la région ne soit pas développée davantage sans le consentement de la communauté indienne.

Devant le refus du gouvernement de l'Alberta et d'Ottawa de reconnaître leurs droits de chasse et de pêche et leur droit sur les terres, les Cree du Lubicon ont décidé de porter leurs doléances devant l'opinion publique internationale. « Le Canada se pré-

sente comme le champion des droits de l'homme. Eh bien nous apportons la preuve que cela est faux et que le gouvernement discrimine les populations autochtones », a dit en substance M. Ted Moses. « Les Jeux Olympiques d'hiver devraient aux yeux des autorités contribuer à un développement de la région que nous récusons », a encore poursuivi l'orateur, qui a conclu « que tout participant à ces jeux contribuera par là même à la destruction lente mais sûre d'une communauté ».

La deuxième rencontre européenne des groupes de soutien aux peuples indiens d'Amérique du Nord élaborera concrètement les modalités de cette campagne internationale. Elle traitera en outre d'autres problèmes tout aussi actuels comme le combat des Lakota (Sioux) pour la défense de leur montagne sacrée, les « Black Hills », qui recèle des gisements aurifères importants exploités par des sociétés minières. Il sera aussi question des Indiens Shoshone du Nevada qui s'opposent à ce que leurs territoires soient utilisés comme aire militaire (800 tests atomiques depuis la Seconde Guerre mondiale, stationnement des nouvelles fusées MX, etc.), des Indiens Innu du Labrador, chassés de leurs terres ancestrales par les exercices d'entraînement des avions à réaction de l'Otan et des Navajos-Diné qui risquent d'être déportés de leur région de la « Big Mountain ».

Toujours dans le cadre de ces rencontres, une exposition d'art graphique sur le thème « Les Indiens d'Amérique du Nord — nations indigènes en lutte pour la survie » a été inaugurée vendredi au théâtre des Capucins. Y participent des artistes d'Autriche, des Etats-Unis, de Pologne, de RFA et du Luxembourg. L'exposition sera ouverte du lundi au vendredi de 12 h à 16 h et le samedi et le dimanche de 10 h à 17 h.



Au théâtre des Capucins, inauguration de l'exposition « Les Indiens d'Amérique du Nord en lutte pour la survie ».

Le Républicain Lorrain (Luxembourg édition) 13/4/86

Die Erben Sitting Bulls auf dem Kriegspfad Aufruf zum Boykott der 88er olympischen Winterspiele in Calgary (Kanada)

Am vergangenen Wochenende fand in der Lultzhausener Jugendherberge das zweite europäische Treffen von Gruppen statt, die sich die Unterstützung bedrohter nordamerikanischer Indianerstämme zum Ziel gesetzt haben. Rund 120 Teilnehmer aus Schweden, der BRD, der Schweiz, aus Österreich, Italien und Luxemburg (hierzulande nimmt die Vereinigung „Iwerllowen asbi“ die Interessen der bedrohten Indianervölker Nordamerikas wahr) berieten bei diesem Treffen über die bestehende Situation sowie über die in Zukunft zu ergreifenden Maßnahmen.

Sensibilisierung der internationalen Öffentlichkeit

Dies ist das Leitmotiv aller beteiligten Gruppen, wie sich am vergangenen Freitag anlässlich einer Pressekonferenz im hauptstädtlichen Kapuzinertheater herausstellte, an der auch Vertreter der internationalen Presse teilnahmen.

Herr Carlo Krieger, Ethnologe, und seines Zeichens Hauptverantwortlicher der luxemburgischen Organisation zur Unterstützung der bedrohten Indianervölker, gab bei dieser Gelegenheit einen kurzen Überblick auf die verschiedenen Problemkreise.

Pauschal gesehen ist festzuhalten, daß es den meisten Indianerstämmen um die Respektierung ihres Landes und ihrer kulturellen und sozialen Identität geht.

Die USA und Kanada auf der Anklagebank

Wie Ted Moses, Häuptling der Quebec-Cree, bei dieser Gelegenheit bekanntgab, sollen die kommenden olympischen Winterspiele, die in Calgary (Kanada-Provinz Alberta) stattfinden, boykottiert werden.



Ein Exponat der Ausstellung, die noch bis zum 20. April im Kapuzinertheater zu sehen ist



Feierliche Eröffnung der Ausstellung mit (v.l.n.r.) Carlo Krieger, Raymond Becker, Pierre Frieden und Roger Linster

Dieser Boykottaufruf ist auf verschiedene Ursachen zurückzuführen: Die Situation der Lubicon-Cree, die vor 8 Jahren noch Selbstversorger waren, hat sich durch die Industrialisierungspolitik der Provinzregierung in Alberta und der Landesregierung in Ottawa derart drastisch verschlechtert, daß inzwischen rund 95% der Lubicon-Cree auf Sozialfürsorge angewiesen sind.

Kanada würde sich zwar nach außen hin als ein Land hinstellen, welches die Menschenrechte und die Demokratie über alles respektieren, doch falls die multinationalen Erdölfirmen die Ureinwohner durch ihre rücksichtslose und vom Staat geduldete Expansionspolitik um ihre wirtschaftliche Eigenständigkeit und um ihre kulturelle und soziale Identität bringen, müsse man dies kritisieren und an die internationale Öffentlichkeit bringen.

Ted Moses forderte denn auch die repräsentierten europäischen Unterstützungsgruppen dazu auf, den Druck auf ihre respektiven Regierungen zu verschärfen, damit das Volk der Cree nicht vollends ausgerottet werde.

Doch nicht allein die Lubicon-Cree sind die Gebeutelten bei derartigen politischen und industriellen Vorgehensweisen. So ist der mehr als 100jährige Streitfall zwischen Lakota-Sioux und der US-amerikanischen Regierung um den Besitz der „Black Hills“ immer noch nicht beigelegt.

Die „Black Hills“ sind die Verkörperung des Geistes und des Stolzes der Lakota und verschiedener anderer Präriestämme, doch derzeit suchen auch 27 multinationale Firmen das Territorium nach Uranvorkommen und anderen Rohstoffen ab. Da auch vor dem Gericht

keine Einigung erzielt werden konnte, will man nun auch diesen Fall stärker in die Öffentlichkeit bringen.

Leben auf der Atombombe...

Noch schlechter ist es um das Volk der Schoschonen bestellt, das in der Wüste des amerikanischen Bundesstaates Nevada sesshaft ist.

In der Tat betreiben die Amerikaner auf diesem Gebiet ihre unterirdischen Atomwaffentests, so daß die Schoschonen buchstäblich auf der Bombe sitzen. Innenpolitisch und juristisch habe man alle nur irgend möglichen Schritte unternommen, doch der einzig richtige Weg kann auch hier nur die Mobilisierung der internationalen öffentlichen Meinung sein.

Von einer erzwungenen Umsiedlung sind derzeit die Navajos an der südlichen Grenze zu Mexiko bedroht, da hier zahlreiche Rohstoffvorkommen vermutet werden.

Die Innu in Labrador, die ihren Lebensunterhalt hauptsächlich von der Jagd bestreiten, sehen sich ihre Lebensgrundlage entzogen, da die NATO hier regelmäßig Tiefflüge veranstaltet, welche die Tiere aus der Region vertreiben. Und demnächst soll hier noch eine weitere NATO-Basis im Werte von 2 Billionen Dollar entstehen...

Nach diesem kurzen Überblick über die derzeit bestehenden Probleme der nordamerikanischen Indianervölker, schritt man dann zur feierlichen Eröffnung einer Kunstaussstellung, die noch bis zum 20. April im Kapuzinertheater zu sehen ist. Öffnungszeiten: Samstags und sonntags von 10.00 bis 17.00 Uhr; montags bis freitags von 12.00 bis 18.00 Uhr.

a.h.

European groups back Lubicon boycott

By KAREN BOOTH
Journal Staff Writer

Condemning the "genocidal treatment" of the Lubicon Lake band, European support groups have unanimously resolved to support an international boycott of the 1988 Winter Olympics.

And a member of the European Parliament has written Chief Bernard Ominayak personally supporting the resolution and expressing "the possibility of proposing a similar resolution for adoption by the European Parliament."

"I am aware of the unjust treatment offered by the Lubicon Lake Indian Nation," states John van Tilborg, who attended the conference as a representative of Holland's Graef in Rainbow Group, a Green Party faction.

"The Lubicon Lake issues raise fundamental human rights issues which have universal implications."

Sixty delegates passed the five-part resolution Saturday during a conference of North American Indian support groups in Luxembourg, said James O'Reilly, the band's lawyer.

Delegates from Austria, Belgium, France, West Germany, Holland, Italy, Luxembourg, Sweden and Switzerland attended the four-day meeting.

Delegates also resolved "to convince the countries and people of Europe to abstain from participating in the 1988 Winter Olympic Games" in Calgary, and to demand Canada take immediate action to provide "a just and fair settlement of the (band's) aboriginal rights and claims."

The groups "absolutely condemn the genocidal treatment inflicted upon the Lubicons by the governments of Alberta and Canada," the resolution states, and "demand that the governments respect the aboriginal rights and

fundamental human rights of the Lubicons."

The band, backed by the World Council of Churches, has claimed that oil and gas exploration on land they inhabit in northeastern Alberta has destroyed their livelihood. They have been involved in a lengthy battle with the governments of Canada and Alberta for a reserve.

Ominayak, who attended a weekend conference of Urban/Rural Missions North America — an affiliate of the World Council — said delegates to that meeting also resolved "to support the band in its efforts to boycott" the Calgary Olympics.

"This is the first step," Ominayak said in a phone interview Sunday from New Jersey. "We're trying to spread the word and educate people about the problems our band faces."

O'Reilly said the European groups will begin compiling a contact list of athletes

and Olympic organizers and are considering protests outside embassies in Europe, "perhaps in a few months."

"The degree of awareness they have on the issues is surprising. But we can't start saying there are hundreds of thousands of members in the groups, there are probably hundreds in total," said O'Reilly.

Earlier this month, Calgary organizers dismissed the band's call for an Olympic boycott as "ridiculous." The band has claimed the Games "are being organized by basically the same people that are committing genocide" against them.

The high profile of the Games "is looked at as a good catalyst for media attention" from certain groups which have no connection whatsoever with Olympic sports, said Jerry Joynt, vice-president of communications with the Winter Olympic Games Committee.

"We're not involved at all" with the band's disputes, he said.

Indian band wins support for Olympic boycott

Document disclosed under the Access to Information Act
Document divulgué en vertu de la Loi sur l'accès à l'information

By Dennis Foley
Citizen staff writer

A tiny band of Alberta Indians seeking land claim settlements has followed through on its threat to embarrass Canada by initiating a North American and European boycott of the 1988 Calgary Winter Olympics.

A nine-country coalition of European groups supporting North American Indian causes passed a resolution in Luxembourg Sunday,

calling on member groups to "take all measures within their power to convince the countries and people of Europe to abstain from participating in the 1988 Winter Olympic Games."

And in Newark, N.J., the Urban Rural Mission, the North American wing of the World Council of Churches, passed a motion Sunday calling on the council to support the boycott.

The Urban Rural Mission also requested that the WCC's Program to Combat Racism undertake an international public relations and education campaign in support of the boycott and to financially support the Lubicon Lake band's campaign. The WCC is a Geneva-based interfaith organization of 300 churches.

Also in Luxembourg, John van Tilburg, Green Party member of the European Parliament, said in a widely-distributed letter he would urge his party to put a similar resolution before the European Parliament.

The Luxembourg resolution was passed at the second meeting of North American Indian Support Groups during a four-day conference attended by about 100 delegates and observers.

The Lubicon Lake Cree band took its case to Europe and the U.S. to pressure the federal government into negotiations on its 100-year-old land settlement claim. The small Peace River band was inexplicably left out of Treaty 8 and has been battling for recognition and a reserve ever since.

Their fight has developed into a battle for survival since oil exploration has depleted hunting and fishing stock and the once self-

sufficient 350-member band is now mostly on welfare.

However, the band's decision to focus international attention on its plight has prompted the Indian affairs department to dig in its heels.

Deputy minister Bruce Rawson said Friday that Indian Affairs Minister David Crombie has accepted his recommendation to delay negotiations "until the band's

current overseas publicity campaign is completed."

That could be some time away as the European support groups plan on co-ordinating continent-wide demonstrations in front of Canadian embassies.

"They're going to be waiting one long time," said Chief Bernard Ominayak, who led the band's delegation to the Urban Rural Mission conference.

Front Page

The CITIZEN, OTTAWA • MONDAY, APRIL 14, 1986

EXTERNAL AFFAIRS



ATTN:

RETURNS TO RENOYER AU	DIVISION BICO	FOR FILING POUR ÊTRE PORTÉ AU DOSSIER
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The Under-Secretary of State
for External Affairs OTTAWA (JLO)

SECURITY RESTRICTED
Sécurité
DATE July 1st, 1986
NUMBER 4716
Numéro

FROM
De

The Permanent Mission of Canada
GENEVA

REFERENCE
Référence

Our telegram YTGR-4715 of July 1, 1986

SUBJECT
Sujet

Human Rights Committee: Boutros (Communication
192/1985) and Alberta Union of Public
Employees (R26/118)

FILE	DOSSIER
OTTAWA	
MISSION	45-13-2-Boutros
cc: 45-13-2-Aupe	

ENCLOSURES
Annexes

DISTRIBUTION

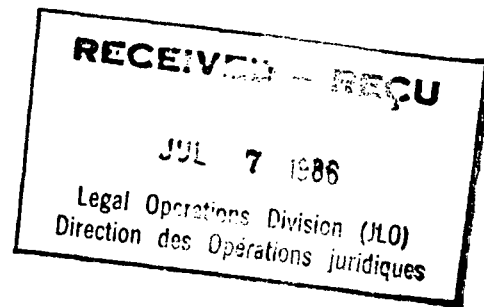
USTOTT/LOW
ECSTATEHULL/
ADSON

MH
ICD

Attached are the submissions referred
to in our telegram under reference.

DATE	
ACC	REF
FILE	DOSSIER
45-CDA-13-1-3-Boutros, s	
BY HAND	PAR PORTEUR
ATTN:	A-3

J.C. Hammond
for The Permanent Mission



CENTRE POUR LES DROITS DE L'HOMME

CENTRE FOR HUMAN RIGHTS

Télégramme : UNATIONS, GENÈVE

Télex : 28 96 96

Téléphone : 34 60 11 31 02 11

RÉF. N°: G/SO 215/51 CANA (41)

(à rappeler dans la réponse)

192/1985

Palais des Nations

CH - 1211 GENÈVE 10



The Secretariat of the United Nations (Centre for Human Rights) presents its compliments to the Permanent Mission of Canada to the United Nations Office at Geneva and has the honour to transmit herewith, for information, a copy of further comments, dated 10 June 1986, made by Dr. S.H. Boutros on the observations of the State party on the question of admissibility of communication No. 192/1985, which is before the Human Rights Committee for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights.

23 June 1986

for info + file

LANG MICHENER LASH JOHNSTON Barristers & Solicitors

*Br to - please file on
Human Rights Act*

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*complaints
against
Canada!*

- Lush on

Lave

file

July 21, 1986

(without prejudice)

Chief Bernard Ominayak
Box 2864
Peace River, Alberta
T0H 2X0

DATE	
ACC	REF
459235	
FILE	FOSSIER
45-CDA-13-1-3-LUB	
BY HAND	PAR POSTER
ATTN:	A-3

CON LAKE BAND

Dear Chief Ominayak:

I am writing to express my appreciation for the opportunity of meeting with you and the members of your Band on July 7 and 8, 1986, and for the hospitality afforded Mr. Coulter and myself by your community. While I am personally disappointed that we did not have an opportunity to explore all the issues at hand, my visit has given me a much clearer picture of your Band's aspirations in terms of your claim and requirements for a future community. I found the tour provided by Edward and Mike Laboucan particularly valuable and would ask that you please extend my thanks and appreciation to them for their guidance and explanations.

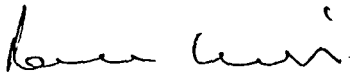
With regard to the impasse in the negotiations, I fully understand your desire for a settlement which is based on principles of equality and justice. These are principles that I have fought for all my life and that I am not personally willing to see abandoned in my present role. When I met with your representatives in Ottawa on June 19 and 20, 1986, they asked if I was willing to treat your Band on an equal basis with all other bands. While I fully understood the question, I provided them at that time with only a general response because I was not certain that I fully comprehended all of the ramifications of what equality to all other bands would entail, and I did not want to make a statement on a matter upon which I had a less than complete understanding. I spent the following two weeks gaining this understanding and came to Little Buffalo fully prepared to address the question. I believe that the note that I tabled with you provides sufficient scope to enable us to reach a settlement which will place your Band on an equal footing with other bands and afford them equal treatment.

I would like to emphasize that my offer is not cast in stone. I am flexible on many of the points it contains, including the question of the quantum of land. Now that you have had an opportunity to review my note in detail, I would like to know if you have any suggestions for a basis upon which we could resume the talks. After visiting your community, I am personally convinced of the need to establish a permanent community for your members and remain hopeful that we can resolve our differences through negotiation rather than through the onerous and costly court system.

On June 3, 1986, it was agreed that I would undertake parallel negotiations with the Province of Alberta. As you are aware, on July 8, 1986 I met with senior officials of the Attorney General's department in this regard, and feel I should report to you that, from my perspective, a useful and productive exchange resulted. At the meeting I explained the reasons for your withdrawal from the negotiations, and we reviewed my note to you in detail. As our talks had broken down at that point, the Alberta officials felt that a response to the note would be academic. However, I did not feel that they considered the contents of my proposal to be unachievable, and was encouraged by the degree of openness that was demonstrated. I should mention that they raised several areas where "technical difficulties" may be encountered, most notably in the proposed transfer of existing oil and gas leases from Alberta to Canada. I am presently seeking advice as to the nature of these difficulties and on what avenues could be open to us to overcome them.

In closing, I would like to reiterate that my offer remains on the table for discussion. I would be pleased to know if any elements of the proposal are within the realm of what you hope to achieve and whether talks could resume on that basis. Alternatively, I would be pleased to consider, as a basis of discussion, a detailed proposal from you which sets out your aims.

Yours sincerely,



Roger Tassé

c.c. Mr. James O'Reilly
Mr. F. Lennarson
Mr. Doug Rae
The Honourable Bill McKnight

WITHOUT PREJUDICE

**Note from the federal negotiator to the representatives of
the Lubicon Band**

1. The purpose of our negotiations is to find out whether the Lubicon Lake Band (the "Band") and Canada, and eventually Alberta, can agree on a package of benefits to resolve the Band's grievances against Canada and Alberta, some of which are the subject of legal proceedings launched by the Band in Canadian Courts.
2. The Band's claims in the Courts are primarily based on aboriginal title.
3. Canada is resisting these Court proceedings as it does not recognize any claims of the Lubicon Lake Band arising from aboriginal title. Canada considers this title to have been extinguished by the Band's adhesion to Treaty Eight, which occurred as a consequence of its actions since the signing of Treaty Eight on June 21, 1899.
4. Canada recognizes that, subsequent to the creation of the Lubicon Lake Band, it was agreed by all concerned that a parcel of land of 25.4 square miles was to be made available for the benefit of the Band in accordance with the provisions of Treaty Eight. The transfer of this parcel of land to Canada for the creation of a reserve was never effected. Canada, as a result of this and in recognition of the Band's rights under Treaty Eight, is prepared to offer to the Band a package of benefits described below to resolve the Band's grievances.
5. The legal issues raised by the Band and Canada in the Court proceedings can only be resolved in the Courts. A settlement of the Band's grievances, out of Court, will be possible only if the parties concerned accept that current negotiations are not the place where these legal issues can be resolved.
6. Without prejudice to the position it might take in the proceedings before the Courts, Canada is prepared to offer the Band a settlement package which takes into account the Band's unique grievances so that the Band may fully enjoy the benefits provided for by Treaty Eight and receive programs and services from Canada in a manner equivalent to those received by other Bands.

DETERMINATION OF BENEFICIARIES AND LAND ENTITLEMENT

7.1 The federal negotiator is prepared to support and take to Alberta a proposal for the transfer of land to Canada for the purpose of creating a reserve for the use and benefit of the Lubicon Lake Band in accordance with the following:

- a) the provision of land for a reserve on the basis of the following formula:

128 acres times the number of status Indians registered on the Indian Registry as Lubicon Lake Band members immediately prior to the passage of Bill C-31 plus any natural increases to this number on the basis of pre-Bill C-31 criteria set out in the Indian Act;

- b) the inclusion in the quantum arrived at by the above formula of the 25.4 square mile parcel of land identified previously for the Band minus the 160 acre homestead of the L'Hirondelle family which is not contested by the Band;
- c) the provision of 160 acres as an offset to the L'Hirondelle homestead;
- d) Canada would not propose to "go behind" the list of persons on the Indian Registry on November 30, 1986, for the purposes of these negotiations only;
- e) the status Indians whose names appear on the membership list maintained by the Lubicon Lake Band and who transfer to the Lubicon Lake Band from other Bands by November 30, 1986 will be considered in the formula under (a) above, however, the "count once" rule and taking of script will be applied to those persons.

- 7.2 As the Minister of Indian Affairs and Northern Development is currently considering what policy should apply to the provision of additional land for persons reinstated under Bill C-31, it is proposed that the question of land for these people be set aside pending the announcement of the policy. This would afford these people the same treatment as all other persons reinstated under Bill C-31.
- 7.3 Canada is not prepared to consider for negotiation the provision of land in accordance with Treaty Eight for any persons not included as a result of 7.1 (a) or (e) above, nor will it seek any release from or on behalf of those persons as to the fulfillment of any rights they may enjoy.
- 7.4 Canada recognizes that the Band claims as members, persons who do not fall within the criteria set out in paragraph 7.1. The exclusion of these persons is consistent with the policy of Canada in similar situations.
- 7.5 The federal negotiator is prepared to include in his request to Alberta that full surface and subsurface rights be transferred to Canada with the land requested.
- 7.6 The federal negotiator will propose to Alberta that any land transferred for the creation of a reserve be clear of third-party interests excepting existing oil and gas leases. It is proposed that Canada assume the administration of these leases on behalf of the Band.

8. RESERVE PLANNING

Canada agrees to provide the Band \$300,000 for reserve planning purposes in order to maximize benefits flowing from a settlement package.

9. WILDLIFE MANAGEMENT

The federal negotiator is prepared to jointly develop with the Band and Alberta a program which would allow the Band a significant voice in the management of wildlife in a specific area beyond the area to be set aside as a reserve for the Band. The details of this program are subject to further negotiation, discussion with the Province of Alberta, and further clarification of the Band's intent.

10. ECONOMIC AND TRAINING OPPORTUNITIES

The federal negotiator is prepared to negotiate a package of economic and training programs within federal resource allocations so as to better meet the Band's needs in this regard and, as elements of this issue fall within provincial jurisdiction, to negotiate with Alberta for the provision of an integrated package to the Band.

11. COMPENSATION FOR PAST LOSSES

11.1 ON LANDS CLAIMED AS A RESERVE

11.1.1 Oil and Gas Revenues

Canada will seek the payment of compensation by Alberta to the Band for all oil and gas revenues gained by Alberta from the 25.4 square mile parcel of land previously identified for the Band, together with interest from the respective date of receipt at the Alberta government bond rate which has prevailed from time to time.

11.1.2 Treaty Benefits

Canada is prepared to pay appropriate compensation to the Band for loss of Treaty benefits.

11.1.3 Loss of Programs and Services

Canada is prepared to pay appropriate compensation to the Band for loss of programs and services and to provide for a "catch-up" capital program which is detailed below.

11.2 ON LANDS CLAIMED AS TRADITIONAL AREA

11.2.1 Loss of Livelihood from Trapping and Hunting

Canada does not accept this claim excepting paragraph 12.1.

11.2.2 Oil and Gas Revenues

Canada does not accept this claim.

12. COMPENSATION FOR FUTURE LOSSES

12.1 Hunting and Trapping

Canada does not accept this claim in terms of compensation but the federal negotiator is willing to negotiate with the Band and Alberta for the modification of the existing Alberta Trappers' Compensation Program for the ongoing benefit of the Band or for the establishment of a new program for the ongoing benefit of the Band.

12.1 Oil and Gas Revenues from the Band's Traditional Area

Canada does not accept this claim.

13. COMPENSATION - BAND'S COSTS

The federal negotiator is prepared to negotiate this claim for compensation subject to allowance for the \$1.5 million ex gratia payment made to the Band on January 8, 1986, and to the repayment of outstanding loans to the Office of Native Claims.

14. CATCH-UP PROGRAM

It is the position of Canada that all Bands in Canada are entitled to an equivalent level of service from Canada. In addition to making available to the Band all programs normally available to Bands, Canada is prepared to provide for a "catch-up" capital program for the benefit of the Band. This program could include the provision of housing and community infrastructure including water, sewers, roads, and electrification and educational facilities. The details of this program and its phasing over time are subject to negotiation.

15. SELF-GOVERNMENT

The federal negotiator is prepared to discuss the process relating to the Band's self-government proposal.

16. RELEASES

The above settlement proposal is conditional on the Band providing to Canada an appropriate release with respect to its treaty entitlement and to its discontinuance of all legal actions against Canada and Alberta including its complaint to the United Nations Human Rights Committee.

July 9/86

Edmonton Journal

Lubicons pull out of talks

By KAREN BOOTH
Journal Staff Writer

The Lubicon Lake band has withdrawn from land claims negotiations because the federal government is employing "divide-and-conquer tactics," says Chief Bernard Ominayak.

After less than two days of negotiations, band representatives walked out of Tuesday's meeting, claiming the federal government is only prepared to negotiate a land claim based on band membership prior to the passage of Bill C-31 a year ago.

The bill, an amendment to the Indian Act, allowed for the reinstatement of thousands of Indians — including those who lost status through marriage — and provided for bands to develop their own membership codes.

Based on membership prior to the bill, only half the community — an

estimated 200 people — would qualify for land entitlement. The remaining Metis and non-status people would have to register a separate claim and ultimately settle the matter in court, the band was told.

"So far, hopes for negotiation look pretty dim," Ominayak said. "There's no way we'd accept a separate claim. We started this together and we're not going to change that now."

The band is not prepared "to let the federal government split us up in ways in which even the federal government has publicly admitted, through recent C-31 amendments, are totally unfair, unjust and discriminatory."

The band is prepared to resume negotiations "if and when (federal negotiator Roger Tasse) receives a mandate from the federal government which allows him to engage in serious negotiation of our aboriginal land rights," Ominayak said.

Bruce Rawson, deputy minister of Indian Affairs, would neither confirm nor deny that negotiations had broken down.

"It's improper, almost, to make a public statement before we've talked to Alberta," he said in an interview from Ottawa.

Parallel land claim negotiations with the province were to begin later this week, but Rawson said Tasse would likely meet with provincial officials today.

Tasse said he would not comment until today.

In a news release prepared earlier, Ominayak said, "It's hard to believe that the government of Canada ever intended to use the negotiations as anything other than a way to deflect growing public outrage over our situation."

The band's lawyer, James O'Reilly, predicted "a battle for number of years ahead."

JUL 10 '86 12:07 I.N.A.C. EDM

pull out of talks

LUBICON LAKE, Alta. (CP)
— The Lubicon Lake Indian Band from northern Alberta has withdrawn from land claims negotiations because the federal government is using "divide-and-conquer tactics," Chief Bernard Ominayak said Tuesday.

Representatives of the band walked out of meetings, claiming Ottawa was only willing to negotiate based on band membership one year ago — prior to passage of Bill C-31.

The legislation was the amendment to the Indian Act which allowed for reinstatement of thousands of Indians — including women who lost their status by marrying men who were not treaty Indians — and provided for bands to try to develop their own membership codes.

Based on membership prior to the bill, only half the community — an estimated 200 people — would qualify for land entitlement. The remaining Metis and non-status people would have to register a separate claim and ultimately settle the matter in court, the band was told.

"So far, hopes for negotiation look pretty dim," Ominayak said. "There's no way we'd accept a separate claim. We started this together and we're not going to change that now."

Ominayak said the bands will only resume talks when federal negotiator Roger Tasse is given a clear mandate from the federal government to negotiate seriously.

Indian Affairs Department officials will not comment until they discuss the issue with the Alberta government.

Parallel land claim negotiations with the province were scheduled to begin later this week.

*Calgary
Herald
10/7/86*

*July 10/86 Edna
Calgary*

JUL 10 '86 12:06 I.N.A.C. EDM

July 10/86

Edmonton Journal

Only 'status' Lubicons can be entitled, Ottawa says

By KAREN BOOTH
and KIM McLEOD
Journal Staff Writers

The federal government is in no position to negotiate a land entitlement for Lubicon Lake based on a head count of non-status Indians and Metis, negotiator Roger Tasse said Wednesday.

The Lubicon Lake band withdrew from negotiations Tuesday in Little Buffalo, accusing the federal government of employing "divide-and-conquer tactics" by refusing to negotiate on the basis of band membership since the passage of Bill C-31.

The bill, given royal assent in June 1985, allowed for status restoration for thousands of Indian people and enabled bands to develop their own membership codes. The Lubicon Lake band assumed control of its membership list earlier this year.

Based on membership prior to the bill, only half the community — about 200 people — would qualify for land entitlement. The remainder would have to register a separate claim and ultimately resolve the matter in court.

Using a standard formula of 128 acres per person, the 200 status Indians would collectively be entitled to 40 square miles of reserve land.

"We're taking the view that C-31 does not create any land entitlement," Tasse said Wednesday.

Indian bands across the country expressed concern last year that the bill made no provisions for increasing their land base to compensate for newly created band members.

"The Lubicon Lake band is being treated the same as all other bands," he said. "Should the government policy (with respect to land compensation) change in the future, so will their entitlement."

The band has based their claim on aboriginal title, thereby including all members of aboriginal ancestry who claim ties to the community. The federal government, however, recognizes entitlement based on treaty right.

"We're not saying that the non-status and Metis won't be able to live on the reserve," Tasse said. "The band, in its wisdom, has decided that it would allow a lot of non-Indians to participate in band life and allow them to be band members. Now they're saying government should give them land as well and that's a long step."

The federal government will accept "at face value" the number of band members prior to the bill and will not "quibble" over whether they or their ancestors took scrip or had already been counted in another band, Tasse said.

Provincial Attorney General Jim Horsman said the Alberta government is in a no-win situation in the land claim dispute.

"There's really nothing Alberta can or should do at this stage in view of the fact that the Lubicons have made it clear from the outset they do not want to have the government of Alberta involved in a tripartite discussion."

Even though Alberta will eventually have to hand over ownership of the land, it wouldn't be proper for the province and federal government to push on with the negotiations, he said.

"There's just no way that we would determine unilaterally, on the part of two governments, a settlement that's not acceptable to the Lubicons," he added.

"We are prepared to discuss the matter on a tripartite level, but until the Lubicons indicate a desire to have that happen, we don't have a position to force in any way our way into the discussions."

Horsman would not comment on the Lubicons' move, saying "it would just exacerbate the situation."



Affaires indiennes
et du Nord Canada

Indian and Northern
Affairs Canada

Direction générale des communications
Unité de surveillance des média

Communications Branch
Media Monitoring Unit

Publication

EDMONTON JOURNAL

Date

JUL 11 1986

Lubicon lands

Why is the federal government dragging its heels on negotiating an equitable land claims settlement with the beleaguered Lubicon Lake band?

Is Ottawa so accustomed to obstructing and clouding the Lubicon's claim that it can't break the nasty habit?

The band deserves better. Ottawa has admitted that the Lubicon were cheated out of land that was promised to them more than 40 years ago. The federal government had hoped to settle the issue last year.

Now, the dispute has reached another impasse. Federal negotiator Roger Tasse says he has no mandate to negotiate land entitlement based on band membership as defined by Bill C-31.

That bill, proclaimed in June, 1985, redressed more than a century of government injustice. It restored status to thousands of Indian women robbed of it through marriage; it doubled the official size of the band and doubled the amount of land to which it is entitled.

Prior to the passage of the legislation, only 200 people would have qualified for the standard land entitlement of 128 acres per person. The remaining Metis and non status individuals would have been forced to register separate claims and ultimately settle in court.

Now, Ottawa wants to negotiate as if the legislation had never been enacted — an approach that could deprive the Lubicon of half their entitlement.

Chief Bernard Ominayak says there is "no way" the band will accept such a proposal. Nor should it. He is, however, prepared to resume talks when Tasse receives a mandate to engage in serious negotiation.

That's a fair position. Will Ottawa be as reasonable?

RECU PAR - REC'D. BY
DEX / TELEX

EDMONTON JOURNAL

P.C. 11

JUL 12 1986

Band seeks dignity—lawyer

By KAREN BOOTH
Journal Staff Writer

The Lubicon Lake band's only alternatives are to settle its land claim in court, or "on the ground" through militancy, their lawyer says.

"I know that they'd rather lose with dignity than get down on their knees to an unjust settlement offer," said James O'Reilly.

The band withdrew from talks this week because of federal insistence on using the number of band members prior to the passage of Bill C-31 as a basis for negotiation.

Under those terms, only half of the Lubicon community — about 200 people — would be counted as eligible for land entitlement.

The bill, given royal assent last year, allowed for status restoration for thousands of Indian people and enabled bands to develop their own membership codes. The Lubicon Lake band officially assumed control of its membership list earlier this year although the band has always kept its right to determine its own members.

Although O'Reilly said he wouldn't advocate physical violence to resolve the decades-old dispute, "I don't see how they can avoid it."

The federal offer is "fair and just" and remains on the table for the band's consideration, said Chuck Meagher, special assistant to Indian Affairs Minister Bill McKnight.

McKnight was briefed by negotiator Roger Tasse on Friday.

In an earlier interview, Tasse said he was "disappointed" that negotiations failed but the federal offer was one that (he) "was not ashamed, as a Canadian, to make."

"I spent two days (in Little Buffalo) and felt that, while there are problems, they have been effective in their traditional activities. I haven't seen anything which would justify use of the word 'genocide' to describe the erosion of the band's traditional lifestyle."

O'Reilly challenged Tasse's remarks. "I guess he's really trying to do a hatchet job," O'Reilly said. "If he'd been up there in winter,

he'd be hard put to make the same kind of statement."

Lubicon Chief Bernard Ominayak said the federal government is obliged to negotiate a land claim on the same basis it did for other bands who signed Treaty 8.

"The band has never asked for any special treatment, just that we be treated equally," he said.

"They (treaty commissioners) took a head count of the native people who wanted to take treaty, and that's how reserve land was determined," based on a formula of 128 acres per person.

The Lubicon Lake band was not a signatory to Treaty 8, which was negotiated in 1899 and 1900. Although the band bases its claim on aboriginal title, the federal government instead recognizes its claim as one of treaty entitlement.

The band intends to proceed with legal action already initiated against the federal government, Ominayak said.



Department of Justice
Canada

Ministère de la Justice
Canada

July 18, 1986

Colleen Swords:

As discussed, please find
attached a letter to
Al Kennedy for your comments.

Thank you.

Irit Weiser

RECEIVED - REÇU

JUL 21 1986

Legal Operations Division (JLO)
Direction des Opérations juridiques

000930



Department of Justice
Canada

Ministère de la Justice
Canada

Ottawa, Canada
K1A 0H8

July 17, 1986

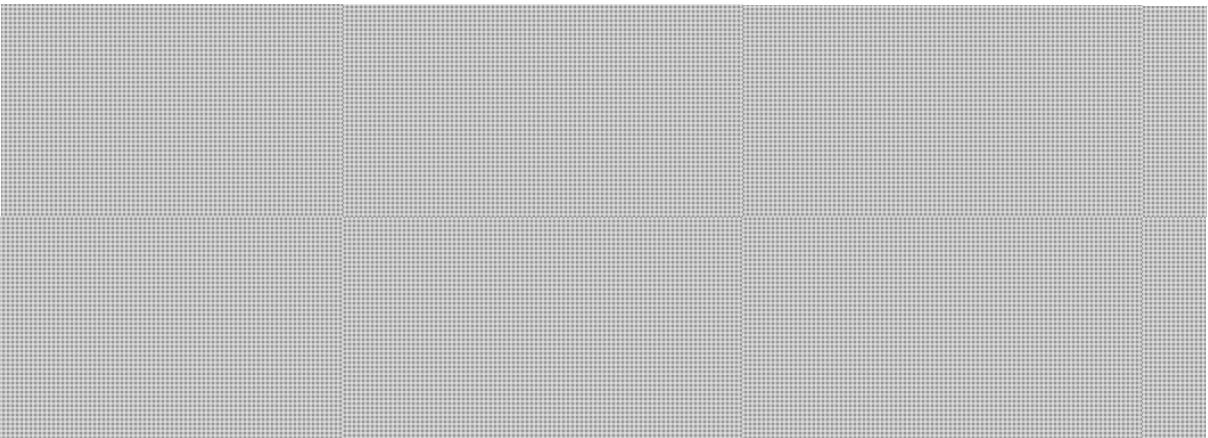
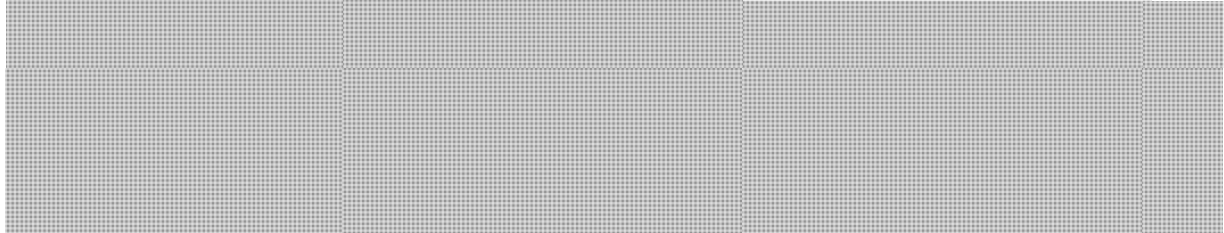
Mr. Al Kennedy
Assistant Deputy Minister
Alberta Labour
10808 - 99 Avenue
Edmonton, Alberta
T5K 0G5

Dear Mr. Kennedy:

Re: Government of Canada Submission to United Nations Human Rights Committee - Complaint from Lubicon Lake Band

I am writing in response to your letter of June 24, 1986, in which you indicated that Alberta does not support the most recent Government of Canada submission to the United Nations Human Rights Committee regarding the Lubicon Lake Band. Your concern was that it did not specifically mention that Alberta has put forth a settlement proposal to the Band.

As you are aware, the international proceedings are at this stage concerned solely with whether the Band's communication is admissible, and in this regard,



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W. L.

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ACC	REF
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BY HAND	PAR PORTEUR
ATTN:	A-3

- 2 -

I hope this letter answers your concerns. Please do not
hesitate to contact me if you have any further questions.

Yours sincerely,

D. Martin Low
General Counsel
Human Rights Law Section

/ssp

*suggested that she
add sentence saying
joint
commitment to
absolute confidentiality*

*joint interest
in ~~joint~~
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w/...*

s.23

000932



Office of the Assistant Deputy Minister
Labour Division

27 JUN 86 13 00

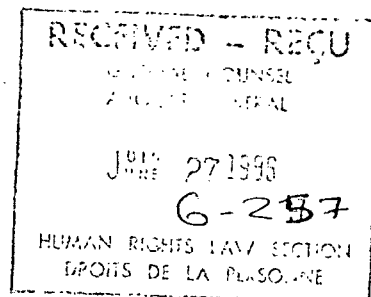
10808 - 99 Avenue, Edmonton, Alberta, Canada T5K 0G5 403/427-7494

RECEIVED
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JUSTICE OTTAWA

277269

June 24, 1986

Martin Low,
General Counsel,
Human Rights Law Section,
Department of Justice,
Government of Canada,
OTTAWA, Ontario
K1A 0H8



JUN 27 1986 - 143

Dear Martin:

SUBJECT: GOVERNMENT OF CANADA SUBMISSION TO UNITED
NATIONS HUMAN RIGHTS COMMITTEE - COMPLAINT
FROM LUBICON LAKE BAND

I have had several conversations with Irit Weiser in follow-up to her letter of June 18, 1986, regarding possible changes to the draft reply to the Second Supplement from the Complainant, and the Interim Decision from the United Nations Human Rights Committee.

My reading of the first Federal Reply, and that suggested as a second, is that failure to exhaust domestic remedies is thought to be a critical flaw in the Band's case, at least at this time. It is also argued that because of the many interests involved, and complexity of the issues, a domestic negotiation process, not just normal legal processes, should be considered part of available domestic remedies.

Pursuit of this argument would obviously be more credible if it were clearly understood the negotiation process is focussed on one or more proposals from the parties.

/2.....

- 2 -


Alberta made its' position clear in October, 1985. The proposal forms a basis for further negotiation. The suggested response does not mention this fact, thereby giving the impression Alberta is not working toward resolution of this matter.

Noting the Alberta offer would not compromise the need to avoid "substance" at this stage. Existence of the offer, not its details, is all that need be confirmed. The second paragraph of the draft takes a similar approach on the issue of genocide.

While recognizing Federal jurisdiction in this matter I would appreciate the record showing Alberta does not support the draft as forwarded June 18th because of its failure to outline activity at the provincial level.

I note the draft response, at page 4, indicates there will be "parallel" discussions with Alberta during the negotiation process. Please let me know how Alberta will become involved in these discussions, and who you would expect to work with.

Yours truly,



Al Kennedy
Assistant Deputy Minister,
Alberta Labour

AK/cgj

cc: Clint Mellors
Ken Boutillier
Nolan Steed
Paul Whittaker



External Affairs
Canada

Affaires extérieures
Canada

MESSAGE

Accession/Référence
File/Dossier
45-Cda-13-1-Lubicon Lake

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SECURITY SÉCURITÉ	R E S T R I C T E D	12	10
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TO/A	TO GENEV		
INFO	INFO JUSTOTT/LOW SECSTATE/DADSON		
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SUBJ/SUJ	REF OURTEL JLO 1151 27JUN, OURLET JLO 1128 23 JUN		
	--HUMAN RIGHTS CTTEE-LUBICON LAKE (COMMUNICATION 167/1984)		
	JUSTOTT ADVISES FOLLOWING CORRECTION SHOULD BE MADE		
	TO SUBMISSION TRANSMITTED BY REFLET.PAGE 1 FIRST PARA,		
	LAST SENTENCE REPLACE QUOTE 12JULY1986 UNQUOTE WITH		
	QUOTE APRIL 10, 1986 UNQUOTE.		
	2.THIS CORRECTION DOES NOT AFFECT SUBSTANCE OF CDN COMMENTS,		
	BUT FOR RECORD,GRATEFUL YOU ADVISE CENTRE OF THIS CORRECTION		
	IN WRITING.		

DRAFTER/RÉDACTEUR	DIVISION/DIRECTION	TELEPHONE	APPROVED/APPROUVÉ
C. Swords/jk SIG	JLO	6-5407	Philippe Kirsch SIG



External Affairs
Canada

Affaires extérieures
Canada

MESSAGE

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Accession/Référence
File/Dossier
45-COA-13-3

SECURITY
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FM EXTOTT IMH0788 14JUL86

TO/À

TO CNBRA

INFO

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DISTR

REF

REF YR YAGR3358 14JUL

SUBJ/SUJ

---TASK FORCE REPORT ON COMPREHENSIVE LAND CLAIMS-CDN NATIVE
PEOPLES

COPIES OF REPORT SENT TO YOU MAY 07 IMH TRANSMITTAL SLIP NUMBER
0614. ADVISE IF YOU CANNOT LOCATE AND WE WILL OBTAIN DUPLICATES.

12 10
45-COA-13-1-3-
LUBICON LAKE
band.

DRAFTER/RÉDACTEUR

J.S.CROWTHER/emcl

SIG

DIVISION/DIRECTION

IMH

TELEPHONE

992-6664

APPROVED/APPROUVÉ

F.D. PILLARELLA

SIG

000936

RECEIVED - REÇU

JUL 14 1986

IMH

ACTION
SUITE A DONNER

UNCLASSIFIED

FM CNBRA YAGR3358 14JUL86

TO EXTOTT IMH

DISTR PPP

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45-CDA-13-1-3 - LUBICON LAKE BAND		

REF OURTELS YAGR2901 24MAR. YAFC8173 06JUN YOURTEL IMH0423 24MAR

---TASK FORCE REPORT ON COMPREHENSIVE LAND CLAIMS CDN

NATIVE PEOPLES

TO DATE WE HAVE NOT/NOT RECEIVED SUBJ REPORT. GRATEFUL

YOU ADVISE IF REPORT HAS BEEN SENT.

UUU/113 140240Z YAGR3358

TO: CNBRA

FROM: IMH

DIST: PPP

RBF: YR YAGR 3358 14 JUL

SUBJ: ---

COPIES OF REPORT SENT TO YOU
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AND WE WILL OBTAIN DUPLICATES.

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FILE	45-CDA-13-1-3-LUBICON LAKE
BY HAND	PAR PORTEUR A-3
ATTN:	

R E S T R I C T E D

FM GENEV YTGR4699 27JUN86

TO EXTOTT JLO DELIVER BY 270900

INFO BH JUSTOTT/LOW DE OTT SECSTATEHULL/DADSON DE OCI

DISTR IMH

REF OURTEL 3483 7MAY

---HUMAN RIGHTS CTTEE:LUBICON LAKE(COMMUNICATION 167/1984)

CENTRE FOR HUMAN RIGHTS HAS INFORMALLY ASKED FOR INDICATION WHETHER
CDN GOVT EXPECTS TO BE IN POSITION TO RESPOND TO REQUEST FOR INFO
RE OUTCOME OF FULTON REVIEW BY 2JUL TARGET DATE.CENTRE IS HOPING TO
RECEIVE AT LEAST AN INTERIM RESPONSE IN ORDER TO BEGIN PREPARATION
OF PAPERWORK FOR NEXT SESSION OF CTTEE.

CCC/198 270926Z YTGR4699

DOSSIER
45-Cda-13-1-Lubicon
Lake Band

RECEIVED - REÇU

JUN 24 1986

Legal Operations Division (JLO)
Direction des Opérations juridiques

**ACTION
SUITE A DONNER**

R E S T R I C T E D

FM GENEV YTGR4699 27JUN86

TO EXTOTT JLO DELIVER BY 270900

INFO BH JUSTOTT/LOW DE OTT SECSTATEHULL/DADSON DE OCI

DISTR IMH

REF OURTEL 3483 7MAY

---HUMAN RIGHTS CTTEE:LUBICON LAKE(COMMUNICATION 167/1984)

CENTRE FOR HUMAN RIGHTS HAS INFORMALLY ASKED FOR INDICATION WHETHER
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OF PAPERWORK FOR NEXT SESSION OF CTTEE.

CCC/198 270926Z YTGR4699

Minister of Indian Affairs
and Northern Development



Ministre des Affaires
indiennes et du Nord canadien

The Honourable L'honorable
David Crombie

SECRET

JUN 27 1986

The Right Honourable Joe Clark, M.P., P.C.,
Secretary of State for
External Affairs,
House of Commons,
Room 163-EB,
Ottawa, Ontario
K1A 0A6

ACC	472/39	DATE
45-CDA-13-1-3-LUBICON LAKE BAND.		

Dear Joe:

Thank you for your letter of May 10, 1986 concerning the longstanding grievances of the Lubicon Lake Indian Band.

I share your concern over this matter and over the Band's complaint to the United Nations' Human Rights Committee, in particular.

I can advise you that Mr. Roger Tassé, O.C., Q.C., has been appointed as Canada's representative for the conduct of negotiations between Canada and the Band on the basis of the mandate approved by Cabinet on February 27, 1986. Mr. Tassé began bilateral negotiations with the Band on June 3, 1986 to resolve this issue and will be undertaking negotiations with the Band in Edmonton throughout July and August. The parties have established August 30, 1986 as a target by which time they hope to conclude a final agreement. As important elements of the Band's claim involve the Province of Alberta, Mr. Tassé will also be conducting parallel discussions with the Province throughout this period. I fully expect once significant progress is made in the Band/Canada negotiations, it will be possible to bring Alberta to the negotiating table. Once negotiations reach this stage, I may require your assistance on some matters relating to the Government of Alberta.

- 2 -

With reference to the Band's complaint to the Human Rights Committee, I stated in my memorandum which was considered by Cabinet on February 27, 1986, that a condition of a final settlement would be that the Band drop its legal action against Canada and Alberta. This would include their United Nations complaint.

I will keep you informed on the progress of negotiations throughout the summer.

Hope all is well. Take care.

Sincerely,

A handwritten signature in cursive script, appearing to read "David".

David Crombie.



External Affairs
Canada

Affaires extérieures
Canada

MESSAGE

Accession/Référence
File/Dossier
45-cda-13-1-3-
27 JUN 86 21 32 7 12 10

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SECURITY
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R E S T R I C T E D

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TO/A

TO GENEV (DELBY 300900)

INFO

INFO JUSTOTT/LOW SECSTATEHULL/DADSON de OCI

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SUBJ/SUJ

REF YRTEL YTGR4699 27 JUN

---HUMAN RIGHTS CTTEE:LUBICON LAKE (COMMUNICATION 167/1984
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GENEV 30 JUN.PAGE 5 OF RESPONSE WAS CHANGED AT LAST MINUTE.REVISED
VERSION IS BELOW.SEE NBRED LET ACCOMPANYING RESPONSE FOR
EXPLANATION.

2.QUOTE III.COMMENTS ON THE COMPLAINANT'S FURTHER SUBMISSION DATED
APRIL 9, 1986 (I) THE LITIGATION PROCEEDINGS:THE BAND ALLEGES AT
PAGE 3 OF SUPPLEMENT NO.2 THAT QUOTE [B]OTH [OF ITS] COURT CASES
HAVE BEEN HELD UP ON PROCEDURAL QUESTIONS AND ARE ONLY NOW COMING
TO TRIAL UNQUOTE.WE REFER TO CANADA'S OBSERVATIONS OF MAY 31,
1985, FOR DETAILS OF THE LITIGATION PROCEEDINGS.THOSE OBSERVATIONS
INDICATE THAT ANY DELAYS IN LITIGATION HAVE BEEN CAUSED BY INTERIM
PROCEEDINGS INITIATED BY THE BAND AND BY THE BAND CONTESTING
CLEARLY SETTLED PROCEDURAL MATTERS OF LAW.THE GOVERNMENT OF CANADA
REITERATES ITS POSITION THAT THE LUBICON LAKE BAND HAS NOT PURSUED
TO COMPLETION THE EFFECTIVE DOMESTIC REMEDIES AVAILABLE TO IT AND
THAT RESPONSIBILITY FOR ANY DELAYS IN THE APPLICATION OF SUCH
REMEDIES DOES NOT LIE WITH THE GOVERNMENT OF CANADA.

DRAFTER/RÉDACTEUR

DIVISION/DIRECTION

TELEPHONE

APPROVED/APPROUVÉ

SIG C.SWORDS

JLO

996 5407

SIG P.MCRAE/A/DIRECTOR 000942



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PAGE TWO JLO 1151 RESTR

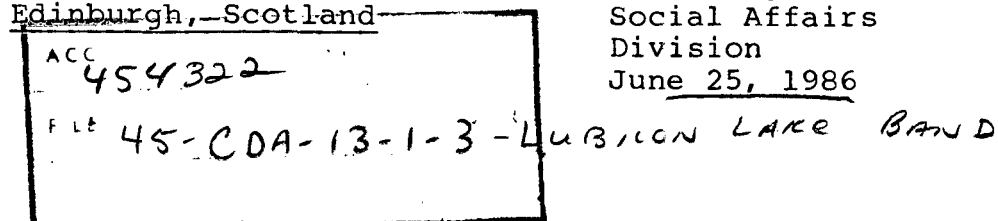
3. (II) MISREPRESENTATIONS: IN ITS PREVIOUS COMMUNICATIONS, THE LUBICON LAKE BAND HAS MADE UNFOUNDED ALLEGATIONS ATTACKING THE INTEGRITY AND HONESTY OF THE CANADIAN GOVERNMENT AND JUDICIARY. IN CANADA'S PREVIOUS OBSERVATIONS, THESE ALLEGATIONS WERE REFERRED TO AND DENIED (AT... UNQUOTE.

4. COPY OF REVISED PAGE BEING SENT IN NEXT CLASS BAG.

Visit of the Honourable Otto Jelinek,
Minister of Fitness and Amateur
Sport to the 1986 Commonwealth Games
Edinburgh, Scotland

CONFIDENTIAL
J.S. Crowther
Human Rights and
Social Affairs
Division
June 25, 1986

Issue



Proposed boycott of the 1988 Calgary Winter Olympics and other international activities of the Lubicon Lake Indian Band and their supporters.

Background

The Lubicon Lake Band is a group of several hundred Cree Indians living in northern Alberta. The history of the complex discussions which have taken place between the band and successive federal and provincial governments dates back almost 50 years. The current dispute has at its core an unfulfilled 1940 decision by the federal and Alberta governments to create a reserve for the band.

Over the years the situation has grown more complex as other Indian bands entered claims to aboriginal title of portions of a provisional reserve territory. In addition oil and gas development increased and unfavourably affected the band's ability to earn a living, in a traditional manner, through hunting and trapping.

In the 1970's and early 80's the problem intensified with various court actions by the band. Two of those actions before the Alberta Court of the Queen's Bench and the Federal Court of Canada remain unresolved.

In February 1984 the band through its agent brought a complaint against Canada before the United Nations Human Rights Committee. This complaint, which also remains unresolved, is very important for Canada as it alleges, among other things, that the Lubicon Lake band constitutes a people and that their right, as a people, to self-determination has been violated. The band contends that they have been deprived of this right, which includes a degree of control over their own natural wealth and resources, by the improper leasing, for energy exploration, of their traditional lands. In recent months members of the band or their representatives have sought and obtained the support of European and American groups

- 2 -

CONFIDENTIAL

who are sympathetic to their problem. This has culminated in a decision to work together to mobilize international support for a boycott of the Calgary games. The various activities of the band have received considerable media attention in Canada, particularly Alberta, but have not been given much notice in other countries.

Canadian Position

The Minister of Indian and Northern Affairs, the honourable David Crombie, has taken the lead in attempting to resolve the dispute with the Lubicon Lake Indian Band. In March 1985 he appointed the honourable E. Davie Fulton, to review the problem with the band, other interested native communities, the province of Alberta and other groups and to make recommendations. Mr. Fulton's "Discussion Paper" was provided to Mr. Crombie in December 1985. In that paper he outlined several scenarios for negotiation. This led to recommendations that a federal negotiator be appointed to enter into intensive private negotiations with the band for a two month period commencing in March 1986. The negotiator, Mr. Roger Tassé, a former Deputy Minister of Justice, was appointed late in March and parameters for negotiations were defined at that time. However during this period the Band withdrew its agreement for Alberta's presence as an observer/participant to the negotiations and discussion is stalled at present until this latest problem can be resolved.

In respect of the complaint before the UN Human Rights Committee, Canada has responded to a supplementary communication by the band's agent which inter alia, alleged that "cultural, if not physical genocide is successfully being practised upon the Crees of Lubicon Lake". Canada has disputed these unacceptable allegations and expects that the Committee will rule on the admissability of the complaint in the near future.

In respect of the Commonwealth Games we have seen no evidence that the Lubicon Lake band will demonstrate at Edinburgh or that British or other groups will publicize the dispute during the course of the Games. However should this arise it may be said that Canada is working faithfully to try and resolve the long standing and complex dispute with the Lubicon Lake Indian Band.

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

FILE

TO Permanent Mission of Canada to the Office
A of the United Nations, Geneva

SECURITY RESTRICTED
Sécurité

FROM The Under-Secretary of State for
De External Affairs, OTTAWA (JLO)

DATE June 23, 1986

REFERENCE
Référence

NUMBER JLO-1128
Numéro

SUBJECT Human Rights Committee Optional Protocol
Sujet Communication No. 167/1984: Lubicon Lake

FILE	DOSSIER
OTTAWA	
MISSION	REF
ACC	DOSSIER
FILE	45-CDA-13-1-3-LUBICON LAKE BAND
BY HAND	PAR PORTEUR
ATTN:	A-3

ENCLOSURES
Annexes

DISTRIBUTION

W/Out Att.

JUSTOTT/
Weiser

With Att.

IMH
PRMNY
SECSTATE/
Dadson

Attached are the observations of the Canadian Government and accompanying documentation in response to the questions raised in the interim decision of the human rights committee forwarded to you by Note No. G/SO/215/51/CANA(38).

2. You will note that page five* of the Canadian observations is missing. We have deleted it due to last minute changes and will be sending a revised version of page five to you by telegram. When you receive the revised version of page five we would be grateful if you would insert it into the observations and transmit them together with the annex to the Centre under cover of a diplomatic note. You will recall that the deadline for this response is July 2, 1986. We attach a copy of all the material for your files.

3. To complete our files here, we would be grateful if you would forward to us a copy of the diplomatic note transmitting these observations.

Peter McRae

(for) The Under-Secretary of State
for External Affairs

* Revised version of page 5 is attached.

FURTHER RESPONSE OF THE GOVERNMENT OF CANADA ON THE
ADMISSIBILITY OF THE COMMUNICATION OF CHIEF BERNARD OMINAYAK
AND THE LUBICON LAKE BAND

I. General

The Secretary-General of the United Nations, in his note GSO 215/51 CANA (38) 167/1984, has asked the Government of Canada to inform the Human Rights Committee, by July 2nd, 1986, of the outcome of the special envoy's review and his recommendations, as well as of any measures which the Government of Canada has taken, or may intend to take in that connection. In addition, the Secretary General has transmitted to the Government of Canada the further submission of the complainant dated 2 July 1986.

II. The Negotiated Settlement Process

The Government of Canada noted in its observations of May 31, 1985 (at page 9) that, as regards the issue of exhaustion of domestic remedies, remedies apart from administrative and legal proceedings should also be considered. In that context, it was noted (at pages 10-11) that Mr. E. Davie Fulton was appointed by the Minister of Indian and Northern Affairs in March, 1985, as a special envoy to meet with representatives from the Band, other native communities and the Province of Alberta, review the entire situation and formulate recommendations. Mr. Fulton filed his

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report with the Government on November 29, 1985, and a further addendum on February 10, 1986. A copy of the report and addendum is attached as Appendix I.

The Band states at page 9 of Supplement No. 2 that: "Within days of its filing [Mr. Fulton's report], the Federal and Provincial Governments had withdrawn their support for the proceedings, the inquiry had been closed, and Mr. Fulton had been re-assigned to a wholly unrelated position". In response, the Government of Canada points out that Mr. Fulton was appointed on a term basis for the purpose of fact-finding; his appointment was never intended to be on-going and his mandate did not include negotiation. All parties involved in the Fulton inquiry were aware of these conditions from the outset. In addition, shortly following the submission of Mr. Fulton's report and on the basis of the information contained in it, the Government of Canada appointed Mr. Roger Tassé to act as negotiator, the details of which are outlined below. The Government of Canada has at no time withdrawn from or abandoned the negotiation process.

On December 20, 1985, shortly after receipt of Mr. Fulton's report, a representative of the Federal Government met with the Band's representatives to discuss ways to begin full negotiations with a view to final settlement. At that time, the Band requested that Mr. Fulton undertake another round of consultations to clarify several items in his report. The Government agreed and as a consequence, Mr. Fulton filed an addendum and corrections on February 10, 1986.

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-3-

Also, at the December 20, 1985 meeting, the Government of Canada proposed the terms listed below for the purpose of negotiations:

- (1) That the parties enter into two months of intensive negotiations commencing in March 1986;
- (2) That during that period, all parties avoid "negotiating in the press"; and
- (3) That the Province of Alberta be present at the negotiations as an observer.

On December 24, 1985, the Band advised the Government of Canada of its acceptance of the above terms. In addition, on January 8, 1986, the Federal Government paid to the Band 1.5 million dollars to cover legal and other costs associated with the presentation of its claim.

On March 18, 1986, after being advised that the structure was in place for negotiations, the Band asked for a preliminary meeting with Federal Government representatives and Mr. Tassé. At that meeting, held on March 27, 1986, the Band indicated that they were unwilling to have Alberta participate in the negotiations in any capacity, contrary to the terms they had previously agreed to.

-4-

It is the opinion of the Federal Government that a mechanism to involve the Province of Alberta is extremely important to any viable attempt to resolve the claims of the Lubicon Lake Band. The lands claimed by the Band are Crown lands owned by the Province, and portions of these lands are subject to resource permits issued under the authority of provincial law. Many other elements of the claim, such as economic development, employment and education, are also affected by provincial jurisdiction.

Nevertheless, the Government of Canada acceded to the Band's request and on May 28, 1986, agreed to bilateral negotiations between the Band and the Federal Government with Mr. Tassé acting as negotiator. On June 3, 1986, discussions between the parties began, and August 30, 1986 has been established as a target date for reaching an agreement. At the same time, Mr. Tassé will be conducting parallel discussions with Alberta, in the expectation that tripartite negotiations will become possible once significant progress is achieved in the bilateral process.

The Government of Canada submits that its actions, as indicated above, demonstrate that prompt and substantive steps are being taken towards resolution of the Lubicon Lake Band's claims and that the Federal Government has and continues to be genuinely willing to seek a solution. Furthermore, it is submitted that the Government of Canada has made every reasonable effort to accommodate the Band's wishes in the negotiation process.

II. Comments on the Complainant's Further Submission dated April 9, 1986

(i) The Litigation Proceedings

The Band alleges at page 3 of Supplement No. 2 that "[b]oth [of its] court cases have been held up on procedural questions and are only now coming to trial". We refer to Canada's observations of May 31, 1985, for details of the litigation proceedings. Those observations indicate that any delays in litigation have been caused by interim proceedings initiated by the Band and by the Band contesting clearly settled procedural matters of law. The Government of Canada reiterates its position that the Lubicon Lake Band has not pursued to completion the effective domestic remedies available to it and that responsibility for any delays in the application of such remedies does not lie with the Government of Canada.

(ii) Misrepresentations

In its previous communications, the Lubicon Lake Band has made unfounded allegations attacking the integrity and honesty of the Canadian Government and judiciary. In Canada's previous observations, these allegations were referred to and denied (at

pages 18 to 20). Similar misrepresentations have been made in the Band's Supplement No. 2. The most serious are listed below:

- (1) Page 3 states that the request for an interim injunction was heard and and denied "... by a judge with clear ties to the energy corporations operating in the area, leaving the Band no effective means of redress within the domestic legal system". This is an unfounded allegation directed at a judge whose independence is not in question;
- (2) Again, at page 3, it is stated that "[s]everal major forest fires occurred in the area and were allowed to burn out of control, decimating the remaining populations of game animals". The allegation that fires were intentionally allowed to burn out of control is unfounded.

The Government of Canada relies on its earlier observations of May 31, 1985, and repeats its submission that the making of such serious and unsubstantiated allegations are an abuse of the right of submission under the Optional Protocol, and that the Communication should be dismissed on this basis pursuant to article 3 of the Protocol.

(iii) Miscellaneous

The Band contends in Supplement No. 2 that it is a victim of genocide, an allegation which the Government of Canada totally rejects. If the Human Rights Committee deems it necessary to

-7-

consider this allegation, the Government of Canada reserves the right to make submissions on this issue at a later date.

IV. Conclusion

For the reasons mentioned above, in addition to the reasons contained in our observations of May 31, 1985, the Government of Canada submits that Chief Ominayak's Communication under the Optional Protocol, should be considered inadmissible by the Committee.

June 23, 1986



MEMORANDUM/NOTE DE SERVICE

Bico

File number - numéro de dossier
277269
Date
June 20, 1986

TO/A: Fred Caron
Michael Hudson
John Tait
Colleen Swords

FROM/DE: Irit Weiser
Legal Advisor, Human Rights Law

Martin Freeman
Rob Coulter
Ann Dadson

RETURN TO RENOYER AU	BICO	FOR FILING PO R FTR PORTE AU DOSSIER
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SUBJECT/OBJET: Lubicon Lake Band - Communication to the Human Rights Committee

Comments/Remarques

Attached is the final draft of Canada's submission to the U.N. Human Rights Committee in response to the complaint filed by the Lubicon Lake Band. I hope to send this draft to Geneva by diplomatic bag leaving Ottawa June 24, 1986 at 8:00 A.M. If you have any comments on the response, please let me know before that date.

Irit Weiser

Irit Weiser
/be

Encl.

ACC 490409	FILE	DOSSIER
45-COA-13-1-3-LUBICON		LAIER BAND

UPM

U

I have phoned Irit with few comments of organizational/drafting nature to Irit + they have been taken into account herein. Also warned her of bag deadline.

Now it seems Alton has some problems + wants to add or still - will have to wait til Mon. to see if we will be able to get response into letter by their deadline of

2 July

Return to us

2nd Draft

FURTHER RESPONSE OF THE GOVERNMENT OF CANADA ON THE
ADMISSIBILITY OF THE COMMUNICATION OF CHIEF BERNARD OMINAYAK
AND THE LUBICON LAKE BAND

I. General

The Secretary-General of the United Nations, in his note GSO 215/51 CANA (38) 167/1984, has asked the Government of Canada to inform the Human Rights Committee, by July 2nd, 1986, of the outcome of the special envoy's review and his recommendations, as well as of any measures which the Government of Canada has taken, or may intend to take in that connection. In addition, the Secretary General has transmitted to the Government of Canada the further submission of the complainant dated 2 July 1986.

II. The Negotiated Settlement Process

The Government of Canada noted in its observations of May 31, 1985 (at page 9) that, as regards the issue of exhaustion of domestic remedies, remedies apart from administrative and legal proceedings should also be considered. In that context, it was noted (at pages 10-11) that Mr. E. Davie Fulton was appointed by the Minister of Indian and Northern Affairs in March, 1985, as a special envoy to meet with representatives from the Band, other native communities and the Province, review the entire situation and formulate recommendations. Mr. Fulton filed his

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report with the Government on November 29, 1985, and a further addendum on February 10, 1986. A copy of the report and addendum is attached as Appendix I.

The Band states at page 9 of Supplement No. 2 that: "Within days of its filing [Mr. Fulton's report], the Federal and Provincial Governments had withdrawn their support for the proceedings, the inquiry had been closed, and Mr. Fulton had been re-assigned to a wholly unrelated position". In response, the Government of Canada points out that Mr. Fulton was appointed on a term basis for the purpose of fact-finding; his appointment was never intended to be on-going and his mandate did not include negotiation. All parties involved in the Fulton inquiry were aware of these conditions from the outset. In addition, shortly following the submission of Mr. Fulton's report and on the basis of the information contained in it, the Government of Canada appointed Mr. Roger Tassé to act as negotiator, the details of which are outlined below. The Government of Canada has at no time withdrawn from or abandoned the negotiation process.

On December 20, 1985, shortly after receipt of Mr. Fulton's report, a representative of the Federal Government met with the Band's representatives to discuss ways to begin full negotiations with a view to final settlement. At that time, the Band requested that Mr. Fulton undertake another round of consultations to clarify several items in his report. The Government agreed and as a consequence, Mr. Fulton filed an addendum and corrections on February 10, 1986.

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Also, at the December 20, 1985 meeting, the Government of Canada proposed the terms listed below for the purpose of negotiations:

- (1) That the parties enter into two months of intensive negotiations commencing in March 1986;
- (2) That during that period, all parties avoid "negotiating in the press"; and
- (3) That the Province of Alberta be present at the negotiations as an observer.

On December 24, 1985, the Band advised the Government of Canada of its acceptance of the above terms. In addition, on January 8, 1986, the Federal Government paid to the Band 1.5 million dollars to cover legal and other costs associated with the presentation of its claim.

On March 18, 1986, after being advised that the structure was in place for negotiations, the Band asked for a preliminary meeting with Federal Government representatives and Mr. Tassé. At that meeting, held on March 27, 1986, the Band indicated that they were unwilling to have Alberta participate in the negotiations in any capacity, contrary to the terms they had previously agreed to.

-4-

it is the opinion of the Federal Government that a mechanism to involve the Province of Alberta is extremely important to any viable attempt to resolve the claims of the Lubicon Lake Band. The lands claimed by the Band are Crown lands owned by the Province, and portions of these lands are subject to resource permits issued under the authority of provincial law. Many other elements of the claim, such as economic development, employment and education, are also affected by provincial jurisdiction.

Nevertheless, the Government of Canada acceded to the Band's request and on May 28, 1986, agreed to bilateral negotiations between the Band and the Federal Government with Mr. Tassé acting as negotiator. On June 3, 1986, discussions between the parties began, and August 30, 1986 has been established as a target date for reaching an agreement. At the same time, Mr. Tassé will be conducting parallel discussions with Alberta, in the expectation that tripartite negotiations will become possible once significant progress is achieved in the bilateral process.

The Government of Canada submits that its actions, as indicated above, demonstrate that prompt and substantive steps are being taken towards resolution of the Lubicon Lake Band's claims and that the Federal Government has and continues to be genuinely willing to seek a solution. Furthermore, it is submitted that the Government of Canada has made every reasonable effort to accommodate the Band's wishes in the negotiation process.

III. Comments on the Complainant's Further Submission dated 2 July 1986

(i) The Litigation Proceedings

The Band alleges at page 3 of Supplement No. 2 that "[b]oth [of its] court cases have been held up on procedural questions and are only now coming to trial". We refer to Canada's observations of May 31, 1985, for details of the litigation proceedings. Those observations indicate that any delays in litigation have been caused by interim proceedings initiated by the Band and by the Band contesting clearly settled procedural matters of law. Moreover, the Band, which as plaintiff has carriage of the proceedings, has as of the date of this response, still taken no steps to bring the action on for trial on its merits. The Government of Canada reiterates the position outlined in its earlier observations, that the Lubicon Lake Band has not pursued to completion domestic remedies commenced by it, that effective remedies are available, and that responsibility for any delays in the application of such remedies does not lie with the Government of Canada.

(ii) Misrepresentations

In its previous communications, the Lubicon Lake Band has made unfounded allegations attacking the integrity and honesty of the Canadian Government and judiciary. In Canada's previous observations, these allegations were referred to and denied (at

pages 18 to 20). Similar misrepresentations have been made in the Band's Supplement No. 2. The most serious are listed below:

- (1) Page 3 states that the request for an interim injunction was heard and and denied "... by a judge with clear ties to the energy corporations operating in the area, leaving the Band no effective means of redress within the domestic legal system". This is a slur directed at the judge who presided over the interim injunction hearing;
- (2) Again, at page 3, it is stated that "[s]everal major forest fires occurred in the area and were allowed to burn out of control, decimating the remaining populations of game animals". The allegation that fires were intentionally allowed to burn out of control is unfounded.

The Government of Canada relies on its earlier observations of May 31, 1985, and repeats its submission that the making of such serious and unsubstantiated allegations are an abuse of the right of submission under the Optional Protocol, and that the Communication should be dismissed on this basis pursuant to article 3 of the Protocol.

(iii) Miscellaneous

The Band contends in Supplement No. 2 that it is a victim of genocide, an allegation which the Government of Canada totally rejects. If the Human Rights Committee deems it necessary to

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consider this allegation, the Government of Canada reserves the right to make submissions on this issue at a later date.

IV. Conclusion

For the reasons mentioned above, in addition to the reasons contained in our observations of May 31, 1985, the Government of Canada submits that Chief Ominayak's Communication under the Optional Protocol, should be considered inadmissible by the Committee.

June 20, 1986



MEMORANDUM/NOTE DE SERVICE

File number - numéro de dossier

277269

Date

June 18, 1986

TO/A: Fred Caron Martin Freeman
Michael Hudson Rob Coulter
John Tait Ann Dadson
Colleen Swords

FROM/DE: Irit Weiser
Legal Advisor, Human Rights Law

SUBJECT/OBJET: Lubicon Lake Band - Communication to the Human Rights Committee

Comments/Remarques

Attached is the most recent draft of Canada's submission to the U.N. Human Rights Committee in response to the complaint filed by the Lubicon Lake Band. Please review it and give me your comments, if any, by June 20, 1986. Thank you.

I. Weiser
Irit Weiser
/be

Encl.

→ Bio File

PM
CS U

DOSSIER	
45-Cda-13-1-3-	
Lubicon Lake	

Band.

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Spoke to Weiser

19/6/86

re bagging &
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suggestions

FURTHER RESPONSE OF THE GOVERNMENT OF CANADA ON THE
ADMISSIBILITY OF THE COMMUNICATION OF CHIEF BERNARD OMINAYAK
AND THE LUBICON LAKE BAND

I. General

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As a preliminary point, the Government of Canada totally rejects the Band's contention that it is a victim of genocide. In any event, this is an issue which would relate to the substance of a claim, rather than the question of admissibility. If the Human Rights Committee deems it necessary to consider this allegation, the Government of Canada reserves the right to make submissions on this issue at a later date.

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V. Conclusion

For the reasons mentioned above, in addition to the reasons contained in our response of May 31, 1985, the Government of Canada submits that Chief Ominayak's Communication under the

-7-

Optional Protocol, should be considered inadmissible by the
Committee.

June 18, 1986



External Affairs
Canada

Affaires extérieures
Canada

MESSAGE

Align first character of Security Classification under this arrow
Alignez le premier caractère de la Sécurité sous cette flèche.

Accession/Référence

File/Dossier

45-COA-13-1-3-
Lubicon Lake Band

SECURITY
SÉCURITÉ

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---HUMAN RIGHTS CTTEE:LUBICON LAKE BAND.

AUTHORITY NOW OBTAINED FOR CONVEYING CDN OBSERVATIONS TO CENTRE.

GRATEFUL COPY YOUR NOTE BY BAG.

DRAFTER/RÉDACTEUR

HENRY W. RICHARDSON/mp

DIVISION/DIRECTION

IMU

TELEPHONE

2-6836

APPROVED/APPROUVÉ

R.M. MIDDLETON

SIG

000970