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THE RIGHT TO SELF-DETERMINATION OF NATIVE AND INDIGENOUS PEOPLES. THE CASE OF THE CREE NATION

Matthew Coon-Come

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Article abstract

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CONFERENCE PROCEEDINGS

"RETHINKING CULTURE"

THE RIGHT TO SELF-DETERMINATION OF NATIVE AND INDIGENOUS PEOPLES. THE CASE OF THE CREE NATION

Matthew Coon-Come

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ABSTRACT

The cultural situation of native American peoples, with specific reference to the Cree people of James Bay.

RÉSUMÉ

Une mise en contexte du droit à l'autodétermination et l'approfondissement de la situation des Cris de la Baie James.

What follows is the text of a deposition to the International Bar Association sub-committee on Indigenous Peoples and Development Law on Sept. 21st, 1992, made by William S. Grodinsky, which sketches the arguments presented by Mr. Coon-Come at the conference.

The presentations relating to self-determination often look at the issue of self-determination very much from the perspective of academia and the growing evolution in legal thought with respect to this concept.

It is unusual to relate these principles and theories to present day fact situations or political and legal problems on a real life basis. We have that opportunity today.

This growing emergence of principals of self-determination and sovereignty (and particularly their relationship with Indigenous Peoples) has not only sparked a great deal of examination and debate within legal circles, but also at this present time has a very practical and real application in the situation in present day Quebec.

Rights of Indigenous Peoples, and particularly the Right to self-determination, blossom as both a shield and a weapon only when attacked.

In the past, the situation through most of North and South America and through much of the Third World has seen an overwhelming aggression,

legal, physical and psychological, against these Rights of Indigenous Peoples by colonial powers and by other nations.

This fact of life was a subject of debate within legal circles for quite some time and it has only been recently, in the last fifteen years, that the specific Rights of self-determination of Indigenous Peoples have become much more defined and, in specific cases, outwardly exercised. The evolution of the situation involving the Sami Nation in Scandinavian countries is but one case on point.

The work of the United Nations through the Commission on Human Rights and the Working Group on Indigenous Peoples has taken great strides in putting before the international community principles of self-determination and related supportive concepts which are more and more being accepted and recognized -- e.g. The Universal Declaration on the Rights of Indigenous Peoples.

In a number of circumstances, this evolution may not have immediate practical consequences, although in others it does.

We must at the outset make the distinction between "internal" and "external" Rights of self-determination. Scholars debate the distinction, but it is critical not only at the level of legal principles but from that of the comprehension of the people asserting these Rights.

The internal Rights of self-determination basically provide for a "People" to be able to have a full voice within the legal system of the overall nation state, control over natural resources, the appropriate ways of preserving and protecting their culture and way of life and to be able to be a visible partner or participant with strong powers within the overall national polity.

External self-determination arises when a People finds that this internal concept is not being accepted and the Right to full sovereignty, including the Right to international recognition of that People, comes into play.

This distinction is important because as regards Indigenous Peoples both in Canada and the United States, politicians tend to forget the distinction and simply lump any claim to sovereignty or self-determination to be a full one to external Rights of sovereignty,

They then had to go to the extreme to ridicule and trivialize legitimate claims because of international exaggerations of the real issues. This is what happened in Quebec during the conflict at Kahnawake and Kahnésatake in the summer of 1990. Where the political and legal strategy of government was to ignore the fundamental issues of land and self-government and to characterize the situation as an unreasonable grab for complete sovereign powers.

The situation which I would like to put to you today is that of the James Bay Cree People of Northern Quebec. Although there are many aspects of the situation involving the Crees which are unique, there are also fundamental principles with respect to Indigenous Rights to self-determination which apply to other indigenous and Native groups.

The James Bay Crees occupy the position of a distinct People, that is, communities with a distinct culture, society, traditional land, history, attachment to that land, political position, aspects of external recognition, traditional law and culture set against that of the overall society in Quebec and Canada.

This description, of course, fits many of the Indigenous and Native groups throughout the world.

What is special in the Cree case, however, is that current political events in Canada have allowed them to put forward aggressively their position as regards self-determination in a very concrete way.

As you know, there is presently a constitutional crisis in Canada and the federal state which has existed independently since 1867 is in jeopardy.

Discussions have resulted in a proposed revised constitution with a referendum on a negotiated reviewed constitution scheduled for October 26 of this year. If this proposal is rejected the possible secession of Quebec from all of Canada is a likely result.

These are major issues which impact upon a People, such as the Cree People, who will be affected by any such change.

The issue before the Quebec public at this time is one which has become much more intense because of the attempts by Quebec and Hydro-Quebec to proceed with the hydroelectric development of the Northern parts of the province despite the objections of the Crees.

A fear is that part of the real strategy behind this push for the project is to negate the Right of the Cree People in and to the Territory and land in which they have lived since time immemorial, in contrast to the Rights of the Province of Quebec or the Quebec People or the Canadian Nation to that land and its resources. Quebec is simply trying to occupy, by institutional force, all of Cree Territory and to thereby impose their position over that of others. This is a strategy repeated over and over again against Indigenous Peoples worldwide.

To further explain the situation, the traditional Territory of the James Bay Crees has been used and occupied by them since time immemorial and still continues to be so used today.

This land includes a good part of Northern Quebec and includes land in offshore areas outside of Quebec.

After Canadian Confederation in 1867, the boundaries of Quebec were extended with respect to jurisdiction both in 1898 and 1912 to include two thirds of the present Province of Quebec. This extension was carried-out within the Canadian Federal system on condition that the Rights of the Native People be respected, a condition which was ignored by governments and invoked by the Crees in the early 1970's when the first James Bay hydroelectric project proceeded.

That Agreement provided for an out of court settlement for the construction of a modified and precisely detailed hydroelectric project and it dealt with a number of issues between the Crees and Quebec and Canada as regards Northern Quebec.

It did not, however, deal in the minds of the Cree signatories fundamentally with the question of the Right to self-determination or sovereignty, (to whatever level) of the Cree People.

This is particularly relevant because when the Agreement was in fact negotiated in 1975, concepts such as Native self-determination and sovereignty may well have been understood internally within Native groups, had not yet been put on the table in Canada as issues which were in fact being claimed nor, on the other hand, were being given up. In any case, these Rights were always considered by the Native People as being inherent and not subject to negotiation in any case!

Another major issue today is that in many respects, that Agreement has not been respected by Government and is now being contested before the Courts.

In fact, the Agreement itself has been recognized at the international level *as not being sufficient itself to provide for the Cree Right to internal self-determination.*

In the Decision of the International Water Tribunal of February 20th 1992, the Tribunal has the following comment with respect to the Agreement: "The jury is aware of the ongoing intrusion of an alien culture into culture of indigenous communities and the social, cultural and legal problems which this may raise. The jury recognizes the James Bay and Northern Quebec Agreement, but it doubts whether such a contract adequately reflects the aspirations of the Crees to self-determination and control over resources".

The issues with respect to the Cree Right to self-determination become more important and relevant as the political situation in Quebec deteriorates and the question of Quebec secession becomes a real possibility.

The Cree People of Quebec have Rights to self-determination that are in a number of instances, as compelling and justifiable as those of the Quebec People.

The James Bay Crees have publicly stated their desire to respect the Rights of the Quebec People to self-determination within their legitimate land areas, it is incumbent upon other governments to provide full recognition and respect for the same Cree fundamental Right.

In a strategic political move the Quebec Government is now not only dealing with the question of the possibility of Quebec secession, but doing so in such a way as to deal at the same time with the Rights of the Cree People.

Instead of recognizing them as Peoples in accordance with the norms under International Law, it is intentionally defining them as a "minority" within the overall Quebec population.

The Rights of a minority are not the same as the Rights of a People and it was this intentional strategy of the Quebec Government that has forced the Crees to react. There was no choice.

A brief has now been filed before the Commission on Human Rights of the United Nations.

It is not an exhaustive review of the situation, but basically deals with specific issues which must be looked at in the context of Quebec secession and the Rights of Cree People. It is relevant for Native and Indigenous Peoples throughout the world no matter what level of self-determination they are asserting.

Although the brief deals with issues related to the James Bay and Northern Quebec Agreement itself and its particular application to the Cree situation, the other relevant issues of Native self-determination, the Right to self-determination of a People and the development of international principles in this regard are clearly spelled out and will hopefully be useful to other Native groups who are looking at the same issues and approaches. The work that will be carried-out by the Commission on Human Rights in regard to this brief will be important because it will as well set new standards with respect to these developing issues.

As in the past, when work at the international level has subsequently had impact domestically in a number of different areas, this is an example where the same opportunity has arisen.

Without the appropriate audience at the domestic level in the Canadian or Quebec courts to look at these issues, the Crees have had to go to the international forum to seek the legitimacy and legality that are necessary to support their claims and it is in this way that the whole question has been brought to a much higher level of discussion and debate.

This is not a mere academic exercise, but a major effort to have Rights recognized through the use of whatever appropriate forums are available. This is not the only international arena that will be consulted.

What is the definition of a People in the context of International Law?

Is the overall nation state able to demean and degrade the status of a People to that of a minority simply by the force of its own voice, the use of commissions and other vehicles when, in International Law, the status of a People is clearly recognized?

To what extent can the overall Nation State change the constitutional ground rules affecting Native or Indigenous Peoples without their consent?

To what extent can Quebec, a part of a nation state, attempt to secede from Canada without looking at constitutionalized agreements such as the James Bay and Northern Quebec Agreement?

The Agreement establishes a firm relationship not only between Quebec and the Crees, but a tripartite relationship between Quebec, the Crees and Canada. It was also signed with Quebec in Canada and this is a basic part of the Agreement.

The Crees' legal position in domestic and international law is clear.

Any move to secession would either result in a fundamental breach of that Agreement or that Agreement would be seen as a domestic one which would no longer be recognized and the whole issue of Cree self-determination and sovereignty would come to the fore.

A third question, and that which is once again relevant not only to International Law but also to political scientists, is to what extent a government may redefine fundamental questions with respect to the Right of self-determination by the use of referenda and legislation.

The legislation which establishes the referendum procedure in Quebec with respect to sovereignty, for example, talks in the introductory clauses of the Right of the "Quebec People" to self-determination, yet specifically deals with the Right of the Province of Quebec to exercise that Right.

Can a political body exercise the Rights of a People?

What about competing Rights that are as compelling and as justifiable as those of the Crees in Northern Quebec?

The International Standards with respect to the Rights of Peoples and their Rights to self-determination and sovereignty have taken huge steps and advanced in the last fifteen years. International covenants, working groups, legal writing and other means of advancing and upgrading the standards in this regard have been very successful and the whole International Law context has changed.

Faced with the legal reality in international law and in the international community of the continued progression in the recognition of Rights of Peoples and the Rights to self-determination of Indigenous Peoples, the Rights of the Cree People of Quebec must be dealt with in the context of these issues of self-determination before other governments move to fundamentally change or tear apart the political structure of Canada.

The sovereignists in Quebec are after the recognition of the legitimacy of the exercise they are undergoing, not its legality, and the Crees have no choice but to go to legal circles to firstly, impugn the legality of what is taking place and secondly to fiercely attack the legitimacy.

The International Covenant on Civil and Political Rights and the International Covenant on Economic and Social and Cultural Rights specifically provide for the Right of self-determination and these are Rights which the Crees claim, to a great degree exercise, and at this point of time, find in danger.

There is a great deal of support for the proposition that if Quebec can accede to self-determination, either as a Quebec people or as a Province, then Aboriginal Peoples and particularly the Cree People, have the same option if basic and inherent Rights are attacked.