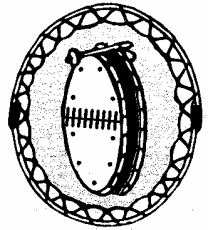


G.C.C.E.I.



C.R.A.
A.R.C.

(Check Against Delivery)

NOTES FOR A SPEECH

BY

GRAND CHIEF DR. TED MOSES, O.Q.

GRAND COUNCIL OF THE CREES (EYYOU ISTCHEE)

EUROPEAN TOUR

NOVEMBER 2002

Thank you for coming today. I will speak about important developments in Quebec concerning the recognition of the rights of Aboriginal Peoples. I come before you as Grand Chief of the Cree Nation (Eeyou Istchee) of Northern Quebec and also as Cree Utchimau, representative and protector of the Moses family hunting territory on the Eastmain River. It is a long way from our family lands inland from the shores of James Bay where I go to hunt moose and beaver, to this room where we are assembled today.

The relationship between aboriginal peoples and states, including Canada, is a long story of conquest and the deprivation of aboriginal peoples of their resources and removal from their ancestral lands. Colonial powers rationalized their actions by a number of legal and moral fictions that facilitated their occupation of our territories, and justified to themselves and to their God their expropriation of these lands and resources for their own purposes.

This process of occupation and dispossession accelerated after an initial tentative phase of exploration in which the explorers sometimes showed interest and respect in their contacts with aboriginal peoples, in early times sometimes believing that they were entering the Garden of Eden. The cautious approach quickly changed once they realized the potential for riches and the enormous disparity in power and military might that European States could exert over what they saw as “discovered territories” and “tribes of savages.”

Various legal notions put forth over the years found their ways into the basic legal structures of the United Kingdom and Canada as well as the United States of America, Australia and New Zealand. All have at their essence a kind of invocation of magic in which instantly, as though with a sorcerer’s magic wand, these lands could be touched and everything that belonged to our peoples suddenly came into their possession.

This might be seen as a quaint historical story but for the fact that Canadian, U.S. and Australian Governments take their magic seriously and back-up their beliefs with the force of their courts, police and sometimes military might. When it comes to human rights however, there is a fine and honourable tension between the force of law on the one hand, and the persistent human comprehension of right and wrong on the other. One wishes sometimes that this comprehension were stronger, but I have a very strong hope that the persistence of this knowledge of what is right and what is wrong will prevail in time to ensure the futures of all aboriginal peoples.

What has happened is that legal theories of racial superiority, discovery, “*terra nullius*” and other such magical incantations have become more and more susceptible to their own internal absurdity. The perverse and self-serving nature of the laws of states created to justify the dispossession of entire peoples does not sit well with the body of human rights law that has emerged in the United Nations and in other international human rights forums. This body of international law had its origins in the terrible human rights abuses inflicted by European societies on many of their own peoples during the Second World War.

It is very hard to make dispossession compatible with respect for human rights, no matter how long ago it took place. However, dispossession of aboriginal peoples is not just an historical phenomenon, but continues as a contemporary legal phenomenon where state governments persistently view their own national interests as being in conflict with the national interests of aboriginal peoples, who are the original inhabitants of those lands.

It is clear that the aboriginal peoples of the world can only survive and prosper when they can benefit from the natural wealth of their traditional lands and resources. This is the most fundamental theory of survival on earth. The land gives and is cared for, and without land, there is always desperation and want. This fundamental principle of human experience forms the basis of both of the two International Covenants - that all peoples have the right of self-determination and by virtue of that right they have the right to use and benefit from, as they may choose, their own lands and resources. This idea is reiterated over and over throughout the basic international instruments on human rights. These principles are the fundamental expression of human social dignity and the right of freedom from the crime against humanity of **colonialism**.

In 1999, the rights of aboriginal peoples were clearly stated by the Human Rights Committee of the United Nations. It happened when the Grand Council went to the United Nations to insist that Canada respect the International Covenant in its own dealings with Aboriginal Peoples. It was in the context of Canada's Third Periodic Report to the Human Rights Committee under the International Covenant on Civil and Political Rights. The Committee declared explicitly that Canada's practice of the "extinguishment" and "conversion" of aboriginal rights was inconsistent with its obligations under Article 1 of the International Covenant. The Committee found, and I quote:

*"The Committee notes that, as the State party acknowledged, the situation of the aboriginal peoples remains "the most pressing human rights issue facing Canadians". In this connection, the Committee is particularly concerned that the State party has not yet implemented the recommendations of the Royal Commission on Aboriginal Peoples (RCAP). With reference to the conclusion by RCAP that without a greater share of lands and resources institutions of aboriginal self-government will fail, the Committee emphasizes that the right to self-determination requires, inter alia, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence (art. 1, para. 2). The Committee recommends that decisive and urgent action be taken towards the full implementation of the RCAP recommendations on land and resource allocation. **The Committee also recommends that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with article 1 of the Covenant.**"*

On July 9th 2002, the federal government of Canada assured the UN Committee that extinguishment was no longer its policy and that it was working with aboriginal peoples on the implementation of a new policy, presumably one consistent with the requirements of Article 1 of the International Covenant. However, it would appear that the application by the government of Canada of its illegal policy of extinguishment of Aboriginal and treaty rights is "alive and well" in a new guise.

In September 2002, the newly proposed Tlicho-Dene Treaty revealed Canada's "new policy". It demands that the Tlicho renounce and agree to never again assert any and all of their Aboriginal rights, excepting those limited rights that are specifically defined in a new arrangement with the Crown. To my view, this is an extinguishment by any measure, except that now the government of Canada is extracting the "consent" of the aboriginal party to this violation of its human rights. In addition, the aboriginal nation concerned is prohibited from approaching a court of law to challenge the validity of this oppressive provision. And in the future event that a court of law were to somehow find that the Tlicho-Dene do indeed still have

Aboriginal rights that remain intact, they are required by the treaty to indemnify Canada against any claims made by others on the basis of such rights.

Canada now refers to its new extinguishment policy, that limits aboriginal peoples' access to the courts, as its "non-assertion fall-back release policy". It is the offer of a colonial regime to a People of the land that if they agree to accept the extinguishment of their human rights to lands and resources, they will have the access, until now denied, to some limited means intended to address their poverty and exclusion from the Canadian economy.

The exclusion was itself brought about by Canada's historic policy of removal and extinguishment. Asking Aboriginal Peoples who face the duress of mass poverty and unemployment to consent to such extinguishment clauses is an attempt by the Crown to remove the taint of previously unjust treatment by committing yet another injustice.

The United Nations Human Rights Committee has since applied the principles of self-determination in several other states where aboriginal peoples live. For years, the Grand Council of the Crees (Eeeyou Istchee) has fought for the application of this human rights principle to Aboriginal Peoples.

We want all who will listen to understand: what we ask is not new. We want justice and respect for the human rights **that we already have**. We want all States, but particularly those that have bound themselves to the International Covenants, to accept that they did not sign those covenants just to promote a double standard that only applies to others and not to themselves. We believe that they should say: "Yes, those are your fundamental rights, and we will respect them and work with you to build upon them, because we understand that justice should prevail for the benefit of all."

Canada now argues that extinguishment leads to "certainty". Policies of extinguishment that are used to sanitize an unjust history of dispossession will not bring about social or legal certainty. Peace can only be built on a foundation of mutual respect and the willingness to work together toward common goals.

Canada is a federal state, and the traditional lands and resources of the James Bay Crees lie predominantly within the province of Quebec. On February 7, 2002, a breakthrough occurred between the James Bay Crees and the Government of the province of Quebec. In the Cree community of Waskaganish, Crees from all nine communities assembled to witness the signature by Quebec Premier Bernard Landry and myself, of the "**Agreement to Establish a New Relationship between the Government of Quebec and the Crees**". We reached an understanding and a level of mutual respect and recognition that I believe could well be a model approach useful for aboriginal rights around the world. We have fought long and hard for this and I feel that the Government of Quebec has finally heard and understood our people, the Cree Nation. Although Quebec is so far the only government within Canada to recognize the mutually beneficial nature of this understanding, I believe that others will follow.

Our new agreement recognizes that the Crees are entitled to share meaningfully with Quebec in the benefits from natural resources that accrue within the entire traditional territory of the Cree Nation, an area a little larger than Italy. The Agreement contains the following elements:

- The Agreement establishes between the Quebec Nation and the Cree Nation based on cooperation, partnership and mutual respect. It sets up structures where we work with Quebec in a cooperative spirit;
- In the future, industrial development in our traditional lands must be compatible with our way of life and must be sustainable. This is now being applied in the new forestry regime, through the social and environmental impacts review process and most importantly through a change in Quebec's approach resulting in a scaling-down of the of hydroelectric projects that Hydro Quebec will promote;
- The new Cree-Quebec Forestry Board will review all company cutting plans and oversee Cree hunter-company consultations. The Cree family hunting territory is now the basis for planning, with provisions for protected areas and special cutting rules. Hunters may designate up to 25% of their lands for special mosaic and other cutting techniques designed to protect wildlife. They may also completely protect certain campsites and cultural areas. Already, of the 50 family-territories that were scheduled for cutting this year, only 14 have been found to meet the forest-cover criteria set out in the agreement. The other 36 are now protected until the forest regenerates and the cut is being redistributed across other hunting grounds. In addition, the Crees will receive an annual commercial allotment of 350,000 meters of harvestable wood and guaranteed priority for jobs and contracts in the forestry industry. In forestry the Crees, while making up about 30% of the population in the region, have about 5% of the jobs in forestry.
- In hydroelectric development, the Agreement with Quebec cancels the 6,500 square kilometer NBR Project. This project involved the diversion of the Rupert and Nottaway Rivers into the Broadback River that would be transformed into a sluiceway with six powerhouses and dams on it. We consent to the construction of the previously permitted EM 1 Project, which incidentally is being constructed on my family's hunting lands. In addition, we consent, subject to environmental review, to the EM1A/Rupert Diversion Project, an addition to the EM1 Project and causing an additional 350 sq. km of flooding. This project diverts the river further from its mouth than was proposed in NBR Project. It therefore allows more of the water to continue to flow. In fact, 55% of the normal flow is to reach the mouth of the river near the community of Waskaganish.

Hydro Quebec agrees to \$105 million to train and hire Crees for permanent technical jobs at the dams and to provide some part-time employment. The Crees are presently under-represented in the permanent workforce of Hydro Quebec with fewer than 10 of the 600 permanent jobs on the La Grande Hydro-electric Project. On the new projects, over \$800 million of contracts are to set aside for Cree companies. In addition, Hydro Quebec agrees to set up a fund of \$24 million to combat the impact of mercury contamination.

- A new Cree-Quebec Mining Exploration Board is established to facilitate Cree involvement in mining and mining exploration. At the present time, the Crees have only about 10 percent of the permanent jobs in mining.
- Concerning the government of Quebec's treaty obligations for Cree economic and community development, the Crees will assume the costs of implementing them. To fund

the Cree Government for this, Quebec will make an annual payment of \$70 Million to the Crees. This payment will increase annually to reflect the growth in the total value of production in the forestry, hydroelectricity and mining sectors. This fund could grow, for example, to reflect increases in energy prices in Quebec and in the United States or to reflect the value of a new mine or hydroelectric dam coming into production.

- We will set up the Cree Development Corporation that will invest in Cree and Cree/Non Cree economic enterprises.
- The Agreement implements a 1975 commitment to train Cree Game Wardens. The Cree people have always cared for the animals, so it is important that they continue to ensure that these resources be properly managed.
- Subject to Federal government participation, as called for in our 1975 treaty, a Cree regional police force will be set up and will hire 18 full-time Cree constables. The government of Canada unfortunately continues to delay implementation of this important commitment.
- The new Agreement settles a number of outstanding land issues. Also, a permanent high-level Liaison Committee and a mediation process are set up to deal with future disputes. Court actions against Quebec are withdrawn and disputes in relation to health are being settled.

This is “La Paix des Braves”, as it has come to be known. It is important to understand the essential nature of the new paradigm that it contains.

As Dr. Erika-Irene Daes has pointed out many times throughout her work, “extinguishment” and “surrender” are applied exclusively to the world’s aboriginal peoples, solely to facilitate dispossession. The principle is applied in no other instance. Land claims, as they are practiced in Canada, continue to be based on the mistaken idea that there is no economic capacity within aboriginal communities. To the contrary, Canada insists that aboriginal peoples must give up their human right to benefit from their traditional lands and resources, so that Canada can allow others to develop the natural resource economies of the regions. It is a policy of: “Move out Aboriginal peoples, so that our people we can develop your lands!”

Canada then offers aboriginal peoples a small one-time payment but denies them a substantial and on-going stake in the resource development that becomes the essential economic base upon which the state depends.

Canada’s Royal Commission on Aboriginal Peoples, examined this phenomenon for many years and in its voluminous and authoritative report came to the conclusion that this system does not work. Aboriginal Peoples are forced onto small reserves devoid of resources and into a position of dependency on a government, under which they continue to suffer poor health, crowded housing, high rates of unemployment, poor education: a life at the edge of poverty. It is certainly a life at the lowest standard of living in one of the largest and richest countries on earth.

Premier Landry of Quebec has explained that his view of the situation is pragmatic: he asks what is in the national interest of Quebec? His conception of the national interest includes the James Bay Cree Nation as a Nation with a history and a permanent future in Quebec. He appreciates that the Crees are there to stay! He understands that the Crees must be part of Quebec's vibrant economy and a living part of its economic and cultural mosaic. **He does not see Quebec's national interest and the Cree Nation's interests as contradictory, and neither do I.**

For years we have confronted industrial development in our traditional territories, and we have resisted it for two reasons:

1. We saw that development was done at great expense to our traditional economies and way of life. The damages were too great, it diverted many rivers and flooded thousands of square kilometers of land
...and secondly:
2. Industrial development on our lands clearly only benefited others, who lived mostly in the south. We did not benefit in any substantial way. Few of our people found permanent jobs in development, and our communities lacked badly needed services such as fire protection, sanitation, clean water, shelter, community facilities and employment.

This time, when we took the proposed new agreement with the government of Quebec to the Cree communities, the same fears were expressed: will this be the way of pushing us out of development and of also pushing us off the land?

However, our analysis has fundamentally changed. For the first time the agreement is not based on damages, or exchanges or surrenders of rights, but rather upon the recognition of our status in our territory and our right to benefit from its resources. The Crees not only become part of the developmental process, but also become part of the decision making process and planning process for future development on our traditional territories.

With the Government of Quebec as our partner we jointly plan the course of development on our traditional lands. The spirit around the table is one of mutual interest and cooperation. This is so at the highest levels of government and as measures are implemented it is increasingly the case at the local level. The Cree Nation is small and so our cultural, linguistic and social survival depends upon cooperation such as the Government of Quebec has offered. Peace is possible only when the parties see their futures in continuing their relationship with the other. We, the Crees, have never taken a position of being anti-development as such. We understand and need industrial development. However, this development must also include our future and be sustainable of our way of life. This is the first time anyone has listened to what we said!

Frankly, there are those, including some in the Cree camp, who don't like this new agreement. For some, Aboriginal Peoples by definition must oppose all development. Many of these people dream of a past in which man was totally in tune with nature and with God. Actually, this past never existed. However, let me ask: **Whose image of the past and present is this?**

It is certainly not the image of someone who has walked a hundred miles on snowshoes looking for food. A Cree hunter is not just someone who goes into the bush and brings home the bacon. Often it is someone who returns home empty handed to a family short of food. It is also not the image of someone who has felt the impotence of being unable to help a dying child, because of a lack of health services. Traditional medicines are fine, but we must remember that the infant mortality rate used to be very high in our community. There are more Crees today because life is easier and less dangerous and services are more available. People go into the bush today because they love that way of life, but the past was certainly not a time of easy living.

Today we face different challenges. The stress of culture change has brought an epidemic of diabetes upon us. Social unrest in our communities, often brought on by poverty and unemployment and by the history of culture change, is another reality that we must deal with. However, we cannot pin our hopes on a future with everyone back in the bush. The bush will remain as a source of peace and of personal fulfillment, but the bush is less and less able to support all of our people as we increase in number. We must look to increasing employment opportunities, improving housing and managing our situation to reduce the problems and to take advantage of the opportunities afforded by industrial development in our northern lands.

In order to survive and continue as an indigenous society we must be able to reinvent ourselves and also be proud of the accomplishments of Crees who work in jobs in government, education, health services, in development or who own businesses. We need to recognize one another for these accomplishments and see ourselves as pursuing valid and meaningful careers. One is not any more or less Cree because of what one does for a living, any more than one loses one's European or Canadian identity by being an astronaut, a woodsman, a mechanic or a social worker. This is the challenge that we face today. Yes, we are proud of our past, when we had but one way of living, but we are not fossils or museum pieces.

The alternative open to us was far, far less acceptable than accepting the right to a say in the pace of the industrialization of our lands, a significant stake in the economic benefits they produce, and the permanent protection of an entire boreal watershed. I ask you to put yourselves in our shoes. We faced continuing with poverty and unemployment and with the inevitable consequence of the dispersal of our people to the cities in the south. Our vision for the future is to protect our lands and traditions, while at the same time seeking development, which is of a scale and nature that allows us to define a future for our Nation and lands.

There are perhaps those of you who say that this is a formula for assimilation. I say to you that the status quo, where people leave the reserves to go to the city is assimilationist. Our people so far, remain in the territory and go to the city to further their educations. We retain some control over our lands and as a result, there are as many people hunting today as hunted in 1975, few other reserves across Canada can make that claim. I myself continue to hunt waterfowl, moose and beaver.

The federal Royal Commission on Aboriginal Peoples concluded in 1996 that the cultural and economic survival of the aboriginal peoples of Canada depended upon them gaining access and benefit from the resources on their traditional lands. Canada has not yet implemented the beneficial and highly constructive recommendations of the Royal Commission, although the United Nations Human Rights Committee has explicitly cited it for its failure to do so. We view the new agreement with Quebec as a partial implementation of our treaty in respect to Quebec's

obligations and as consistent with our internationally recognized right to self-determination. The revenue sharing in the new agreement, combined with the rights in the treaty in respect to among other things, employment initiatives, business incentives and social and environmental protections and rights in respect to hunting already in our treaty are a significant, if still partial implementation of our rights.

I sincerely believe that the federal government of Canada's apparent inability to move in this direction is based upon a persistent misperception of its own national interest. Canada acts as though the national interest of the State largely excludes the national interest of the aboriginal peoples, for which the Parliament of Canada has direct legal responsibility. One need only look at the extensive Canadian jurisprudence to see over and over again the repeated pattern of the government of Canada, the government of a province and a multinational corporation lined up together in the courts to defeat the affected aboriginal peoples. This is simply a fact in Canada for the past century and right up to the present time. Canada also benefits from the resource revenues created on its territories and in the northern regions of the provinces. It must recognize that it is in its interest to promote the development of the aboriginal communities by making them partners in the development of their aboriginal territories in Canada.

We have now come to a point where the facts on the ground created by "La Paix des Braves", our agreement with the government of Quebec, will hopefully begin to force a change in this thinking that sets us apart. Quebec and the Cree Nation, by basing our agreement on principles consistent with international human rights law, will produce positive economic and social change. Through this change we hope to influence the current misperception in Canada of the national interest. It has been estimated that Canada's entire GDP would rise by several percentage points if Canada's aboriginal peoples were to be participants in the national economy rather than remaining as 600 pockets of poverty excluded from it.

Canada needs to show the vision, political will, and leadership to address this problem. Even now, after the Royal Commission on Aboriginal Peoples has laid out the problems and solutions in thousands of pages of evidence, Canada is still not addressing the issue.

This is why our new Agreement with Quebec is called "La Paix des Braves", because Quebec and the Crees have bravely abandoned the old colonial confrontational positions that came with the history of the United Kingdom and grew in the Common Law. Premier Landry and Quebec have shown leadership in this matter.

The government of Canada's national interest and that of the Cree Nation are not incompatible. I believe that if the Cree nation prospers in Canada, then Canada will prosper. The Aboriginal Peoples in Canada should and must have good housing, education, jobs, health and a right to contribute to and share in Canada's future economic, cultural and political well-being, at the same level that most other Canadians take for granted. More than this however, they must have a place of pride in Canada, not as the poor relatives without means, but as partners with recognized and real interests in the development of their ancestral lands.

The federal government of Canada has yet to take up our invitation. Quebec, with its historic interests in its language and culture, has more common ground with the Crees and has understood the problem and accepted the challenge of meaningfully addressing it. The rights-based approach is just and sound and I hope and know that it will bring about change for the better and positive change in the way people think.

Thank you.