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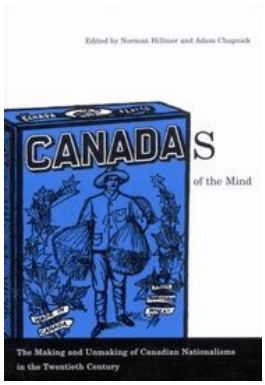
Reveille for First Nations: A 1987 Wake-Up Call by Walter Rudnicki, Its Historical Context and Current Relevance

A Four Arrows Summary

In *Canadas of the Mind: The Making and Unmaking of Canadian Nationalisms in the Twentieth Century,* editors



Norman Hillmer (Carleton University history and international affairs) and Adam Chapnick (defence studies, Canadian Forces College) have looked back over the 20th Century to reconstruct and re-evaluate dimensions of 20th Century Canadian nationalisms which appeared over that time period. The book was published in 2007 and is available from McGill-Queen's University Press.

Particularly insightful is the chapter by Michael D. Behiels of the University of Ottawa, "The Assembly of First Nation's First Campaign for the Inherent Right to Self Government, 1968-1987", an incisive history of the critical events of 1982-1987 which set the foundation for Canada./First Nations relations which still underlies the relationship in 2010.

Excerpts based on Professor Behiels great work are set out in this <e-notes> to provide the background for an essay done by Walter Rudnicki, also known by many as "Eagle Shield". The essay is entitled "Reveille for First Nations", the title echoing Saul Alinsky's book, *Reveille for Radicals,* which provoked so much attention among activists in the 1960s.

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The story really goes back into the mid-1960s when the Government of Canada decided to embark on a "Community Development Program" which had as its objective capacity-development of Indian bands so that they would be able to govern their own affairs. The person in the Privy Council Office assigned to create the program from scratch was Walter Rudnicki (1925 - 2010). Federal officials were thinking along the line of courses in Roberts Rules of Order and Homemakers' Clubs for women and parent-teacher associations in the schools. Persons would be trained – some of whom would actually be Indians! – would be taught how to convey information from the government in a manner which communities would accept.

Walter Rudnicki had a different idea. He saw the program as an opportunity to jump-start the decolonization of First Nations and restore a healthy relationship between self-governing First Nations and Canada. The events of the mid-1960s through to the present day have their roots in Rudnicki's revolutionary community development program which unleashed energies and ideas which had been forced underground since Confederation.

But that's another story for another day. Let it be said here only that there is a strong straight line between Walter Rudnicki's community development program in the 1960s to *Reveille for First Nations* in 1987, and from 1987 straight as an arrow to 2010.

Remember that the 20th Century came into being with the "Vanishing Redman", the gradual extinction of "the North American Indian," their population having dwindled in the 19th Century to less than 100,000 persons across Canada. In 1950, in the wake of the Second World War, Canada's "Indian Affairs Branch" was obscurely located in the Department of Mines and Resources. In that year it was transferred as a Branch to the Department of Citizenship and Immigration, reflecting the thought that a bureaucracy able to integrate immigrants into Canadian society and teach them to become good citizens might be able to accomplish the same objective with First Peoples.

Then came the Canadian Government's plan to resolve Canada's Indian problem by an all-out push toward integration. The coopting community development program which Rudnicki was head was to be the first phase. Then there was to be the 1967 "Hawthorn Report" to put an academic foundation under the policy of Indians taking their place as "citizens".

The fact that the Hawthorne Report came to quite the opposite conclusion was simply ignored by federal officials. Thus, third, in 1969 there came the *Statement on Indian Policy* ("the White Paper") – in a matter of a few years, the government said, there would be no more "Indians" in Canada, no more *Indian Act,* no more treaties,

no more "special status", just Canadians of Indian heritage as there were Canadians of Ukranian heritage. Even the *British North America Act* would be amended to remove the phrase in s. 91(24), "Indians and lands reserved for the Indians".

Among the people recruited by Rudnicki to become a "community development officer" was George Manuel. His training and further radicalization in that role led him into organizing the principal opposition to the 1969 White Paper through the formation of the National Indian Brotherhood, which in 1982 was replaced by the Assembly of First Nations.

As Professor Behiels describes it, the organizing of the First Nations across Canada rallied "their dispersed communities in a campaign for survival, equality, self-affirmation, recognition and self-governance."

George Manuel and the National Indian Brotherhood went into full battle against the White Paper, receiving impressive support from churches, labour unions, and the media. They successfully convinced Canadians it was incongruent to be talking about individual rights and freedoms while stripping Indians of their identities against their will. The contrast with Trudeau's "Just Society" was self-evident.

It was natural that the First Nation leaders interested in defeating the White Paper would come privately to Walter Rudnicki for help and advice. From those contacts came the *Red Paper* and its dramatic presentation to the Prime Minister and members of Cabinet, including Indian Affairs Minister Jean Chretien. The *Red Paper* made a strong defence of treaties, rights to lands and resources, proclaiming that "recognition of Indian status is essential for justice."

From that moment on, the White Paper was dead, although Frankenstein-like, it was dissected and elements of it continue to surface.

By 1973, Walter Rudnicki had been purged from the federal government. There were discussions at the highest level in Ottawa about "treason", about an "Extra-Parliamentary Opposition to take over the Canadian government. He was the subject of security files, surveillance by the RCMP, tracking by military intelligence, a "blacklist". He opened up his own consulting office and carried on.

Other primordial events were unfolding in Canada and in the USA that would affect the old colonial relationship. In 1972 there was the Trail of Broken Treaties in Washington, D.C., and the occupation of the Bureau of Indian Affairs, followed months later by the occupation of Wounded Knee and the military siege which followed.

In 1975, Dene leaders in the Northwest Territories, reinvigorated by their dispute with the federal government's desire to build the Mackenzie Valley pipeline through their lands issued their own *Dene Declaration*,

> "We the Dene of the N.W.T. insist on the right to be regarded by ourselves and the world as a Nation.
>
> "Our struggle is for the recognition of the Dene Nation by the Government and the people of Canada and the peoples and governments of the world . . .
>
> "The New World like other parts of the world has suffered the experience of colonialism and imperialism. Other peoples who have occupied the land -- often with force -- and foreign governments have imposed themselves on our people. Ancient civilizations and the ways of life have been destroyed.
>
> "Colonialism and imperialism are now dead or dying. Recent years have witnessed the birth of new nations or rebirth of old nations out of the ashes of colonialism . . . "

Soon afterwards, the Inuit Tapirisat of Canada called for the creation of a separate Inuit territory in the NWT. It would be called "Nunavut".

When Prime Minister Pierre Trudeau announced his plans to patriate a constitution for Canada, buoyed by their success in forcing the federal government to retreat and disown its 1969 White Paper, the First Nations leadership moved to ensure that their treaty relationship with the Imperial Crown and that their pre-existing and inherent right to govern their own affairs would be protected as the patriation process took on definition.

In October 1978, the Native Council of Canada described their people as a "historical national minority" which had the right "to remain separate and distinct," as well as a right to self-determination.

In September 1980, a jet liner loaded with Treaty Chiefs headed for London and later elsewhere in Europe to meet with Queen Elizabeth, representative of the Imperial Crown which had entered into treaties with the First Nations of Canada, to ensure the patriation of a constitution in Canada would not diminish their rights.

A joint submission was made by the National Indian Brotherhood, the Native Council, and the Inuit Committee on National Issues to the British House of Commons, stating that the British Crown still held a "residual responsibility" because of the treaties and the Royal Proclamation of 1763.

The Indian Association of Alberta pursued a judicial challenge in the British Courts.

As a result of these efforts, most of the debate in Parliament on the patriation of the Constitution focused on the "Aboriginal Question".

George Manuel had moved his leadership from Ottawa back to his home territory of British Columbia under the flag of the Union of British Columbia Indian Chiefs. From that platform, he organized the World Council of Indigenous Peoples, bringing the international indigenous rights issues into Canadian politics, and taking Canadian politics into the international arena. Under the leadership of George Manuel's chosen successor in the National Indian Brotherhood, Noel Starblanket began holding national "All Chiefs Conferences" on "Self-Government".

The All-Chiefs Assemblies organized by Noel Starblanket took permanent root when at one such assembly, it was announced to great applause, "We the Chiefs are the one and only voice of Indian people in Canada." With that declaration, it was just a question of time and mechanics for the National Indian Brotherhood (made up of the presidents of provincial and territorial organizations) to become transformed into a secretariat for the "Assembly of First Nations" (made up of chiefs representing the First Nations of Canada).

The Declaration of First Nations was signed by almost every Chief of a First Nation in Canada:

> "We, the Original Peoples of this land, know the Creator put us here . . . The Creator has given us the right to govern ourselves and the right to self-determination . . . "

The Special Joint Committee of the Senate and House of Commons on the Constitution continued to receive position papers demanding the recognition of Aboriginal and Treaty Rights, the right to self-determination, and a veto on any constitutional change affecting Aboriginal rights.

Negotiations were conducted with Minister of Justice Jean Chretien and leadership of the three major organizations, and a deal was struck that there would be a section included in the proposed constitution which would protect aboriginal and treaty rights.

Finally. The leadership reported to their constituencies that all was well. Then word came that Mr. Chretien had changed his mind and there would be no such protection provided.

When that information was confirmed, in November 1980 In November 1980, George Manuel and the Union of B.C. Indian Chiefs – again with the assistance of Walter Rudnicki – organized the "Constitutional Express". Two trainloads of First Nation people left British Columbia for Ottawa where constitutional negotiations were underway. Along the route, the trains stopped to gather more passengers and to make presentations about the need to ensure a new Canadian Constitution didn't strip away Aboriginal rights.

While one delegation ended its voyage in Ottawa, another went on to New York City to present its case to the United Nations. A separate delegation travelled through Europe, gathering support for the cause. In the end Manuel's efforts were successful. The Ottawa train had brought 2,000 First Nations people into Canada's capital, prepared to engage in public protest until the constitutional protection had been put back into the Act.

A First Nations invasion of Rideau Hall, the Governor General's enclave, was narrowly averted when Minister of Justice Chretien agreed the Constitution would contain a clause stating that the "existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed."

Still under constant pressure from the First Nations, the Trudeau government announced at the end of January 1981 it would introduce a new section 25 which immunized collective rights from the individual rights of the *Charter of Rights* to be contained in the new constitution. A section similar to what is now s. 35(1) would also be written in. And there would be a First Minister's Conference involving aboriginal leaders.

As the date neared for the final draft of the Canadian Constitution to go forward, discussions on "aboriginal and treaty rights" intensified.

On 28 September 1981, the Supreme Court of Canada ruled that it was not necessary to have absolute unanimity of all provinces for the Constitution to be patriated.

Prime Minister Trudeau summonsed provincial premiers to a meeting at the Conference Centre in Ottawa. On the night of 5 November 1981, Trudeau was able to get agreement from nine provinces – all except Quebec – to proceed with the proposed constitution, with some significant amendments. One of them, strenuously insisted upon by the four western premiers, was that the carefully worded negotiated section recognizing and affirming aboriginal and treaty rights would be dropped.

Professor Behiels describes the events that ensured. Justice Minister Chretien said that if all three national aboriginal organizations agreed, and if they could get all nine premiers on side, he would reinstate the dropped section on aboriginal and treaty rights. Events were held in 10 Canadian cities on 19 November 1981. In Vancouver, demonstrators occupied the Museum of Anthropology. Premier Peter Lougheed was confronted by 5,000 native demonstrators on the front steps of the Alberta Legislator.

The premiers of British Columbia, Manitoba, Saskatchewan and Ontario said they were on side in reinstating the dropped section. Premier Lougheed finally caved and on 20 November 1981 announced he would accept the reinstatement if the word “existing” was added. It was later reported that Lougheed had legal advice that all aboriginal and treaty rights have been extinguished, and thus the word “existing” would mean there were no rights left to be “recognized and affirmed”. Indeed, government lawyers would later argue that position, but that argument was rejected by the Supreme Court of Canada decision in *Sparrow*.

There continued to be shifts in positions of the aboriginal leadership. After the *Canada Bill* was ratified in the House of Commons and Senate, it was sent to Westminster for final ratification. By then, the AFN, the Inuit ICNI and the Metis and non-status Native Council of Canada had decided to reject the section on aboriginal and treaty rights. They had concluded that such a clause would become a major impediment to the entrenchment of Aboriginal nationhood and self-government.

The decision was made to block the Bill in Westminster. There, the organizations would argue that the entrenchment of aboriginal rights in Canada’s constitution was contrary to the sovereign relationship they enjoyed with the Imperial Crown. The Federation of Saskatchewan Indians argued that the Treaties remained legally binding upon the British Crown, and that any British decision to support patriation of the *BNA Act* was tantamount to rejecting its treaty obligations and constituted a violation of international law.

The Indian Association of Albert went to the United Kingdom’s Queen’s Bench Division of the High Court for a statutory declaration overturning the British Government’s earlier position that it had no remaining treaty or other obligations toward the original peoples of Canada. The decision was not favourable. The IAA appealed to the United Kingdom Court of Appeal, and leave was granted in January 1982,

The appeal decision was not favourable either. All three judges dismissed the Alberta case, each giving different reasons for his decision. Lord Denning is remembered for admonishing Canada that it should honour its obligations “so long as the sun shines and the river flows”. But, he said, as Canada became sovereign with respect to Britain, the Crown became “separate and divisible” and the treaties went with the Crown in right of Canada. Any treaties entered into by the Crown in the right of the United Kingdom became the responsibility of the Government of Canada by the Statute of Westminster in 1931.

There was much criticism of the IAA carriage of the case. It had a British lawyer, Louis Blom-Cooper who among other things noted that Indians had their Chiefs and headmen to regulate "their primitive societies" whose “"solitude was disturbed by the coming of the English from across the seas".

As a result of all this, when Queen Elizabeth of England, acting as Queen of Canada, conducted the patriation ceremony in front of the Parliament buildings on 17 April 1982, none of the aboriginal organizations were present. They boycotted the ceremony.

Which Brings Us to Post-Patriation 1983-1987

The issues raised by the White Paper and the Patriation Process have not been completely answered. Is the goal sovereignty? Or just self-government within Confederation? Views vary. Temporary coalitions are possible when there is agreement on other issues, but only to vanish and then re-emerge in a different form. The debate continues in 2010.

When the first constitutionally-mandated First Ministers Conference was held 15-16 March 1983, some First Nations would not participate because, they said, the goals fell short of international recognition of First Nations sovereignty.

For those First Nations, Metis and Inuit leaders who did attend the First Ministers Conference, as Professor Behiels points out, they demanded that they be treated as peers of the "First Ministers" rather than as mere leaders of client groups. They cast themselves as Canada's third founding peoples, and demanded recognition as such.

Even among those remained involved, there was disagreement as to whether negotiating with the provinces, rather than just with the federal "treaty partner", would prejudice their rights to sovereignty. To maintain unity, it was agreed the two processes would proceed in parallel – the multilateral process involving the federal and provincial governments, and the bilateral process involving only the Assembly of First Nations and the federal government. In fact, the "Bilateral Process" was once memorialized as an amendment to the Constitution of Canada.

The discussions at the FMC broke down over the question of the "full-box" or the "empty-box"process for the definition and identification of the rights which were to be recognized and affirmed.

> The aboriginal leadership was generally united that "the box of rights was full", and the process should go through the box and identify what was in it.
>
> The position of the governments was that "the box was empty", and the correct process was to reach agreement on what rights were to be put into the box.

When it was realized there would be little progress in this nationally-televised debate, Prime Minister Trudeau suggested that there be three more such First Ministers' Conferences, and that a constitutional amendment be made to solidify that agreement.

The Prime Minister also proposed for the agenda that there be discussion about some middle ground, some sort of semi-autonomous self-governing aboriginal communities within Canadian Confederation. He wanted the Premiers and leaders to discuss "institutions of self-government" without discussing "self-government".

The premiers generally seemed to be delighted that the conference had produced no results. They agreed, however, on three constitutional amendments – one making the recognition and affirmation of rights subject to a sexual equality clause and to include "modern treaties" or land claims settlements as having the same protection as historic treaties, and one calling for three more FMCs.

The Parliamentary Task Force on Indian Self-Government – the "Penner Report"

In the autumn of 1982, the Liberal government sponsored establishment of a special mandate for the House of Commons Indian Affairs Committee, as it was then known, to undertake a special study on Indian Self-Government. The Committee later would become a "Parliamentary Task Force on Indian Self-Government" and it would report in November 1983 in what became known as "The Penner Report" after the Committee's chair, Keith Penner.

As Professor Behiels notes, the Report "embraced wholeheartedly the two-row wampum model of separate and equal nations": the First Nations and the Canadian nation would move in tandem, each in their own vessel, toward their common future, but each steering their own vessel. "The Penner Report recommended that the federal government recognize and entrench Indian self-government in Canada's constitution" as a distinct order of government.

That would mean that "virtually the entire range of law-making, policy, program delivery, law enforcement and adjudication powers would be available to an Indian First Nation within its territory." The report was looked upon favourably by most of the First Nation leaders.

The federal government tabled its response to the report in the House of Commons on 5 March 1984. The response was generally positive and supportive. However, soon after, when Indian Affairs Minister John Munro tabled Bill C-52 to provide the legislative base for self-government, it was panned as being a very poor response to Penner, one not responsive to the Report's recommendations.

When the 2nd First Ministers Conference was convened, Prime Minister Trudeau made it clear that he did not favour constitutional entrenchment of Indian self-government. As Professor Behiels describes it, Trudeau "favoured the more cautions, evolutionary process of building democratic self-government institutions through a careful delegation of federal powers."

This approach was trashed by AFN leadership. Building on the Penner Committee's proposition that "it is quite possible that Indian governments may already have the right to self-government, for any rights or freedoms recognized by the Royal Proclamation in 1763 are now guaranteed in the *Constitution Act, 1982,* s. 25," the AFN

took the position that s. 35 of the Constitution implicitly recognized the right to self-government, and all that was needed was explicit recognition.

At the 1985 FMC, Prime Minister Mulroney was criticized because the federal proposal continued to be based on "delegated authority", an unacceptable position. As well, the Prime Minister had said the provinces would have a veto on any arrangements. Disagreements would not be justiciable, and there was nothing to force a province to negotiate.

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And that brings us to Walter Rudnicki's paper, *Reveille for First Nations: The Politics of Aggression and Defence.* It was tabled by the Native Council of Canada at the fifth First Ministers Conference on Aboriginal Constitutional Matters held in Ottawa on 13 March 1987.

In 1983, Walter had been reinstated to a position as Director General of Policy and Program Development in the Department of Indian Affairs as part of a settlement reached on his legal actions for his unjust dismissal. He remained there a few years in order to retire properly, and he left 1986 or early 1987 when he returned to his consulting practice. In other words, he was now free to speak his own mind once again, and *Reveille* was the first result.

Reveille was written originally in Walter's nearly indecipherable longhand (with a quill pen, as he used to say), which he then had typewritten.

Professor Behiels characterizes the paper: "The document put forward the argument that a subtle but elaborate conspiracy was underway to terminate the "special status" enjoyed by Canada's First Nations. It denounced the Mulroney government for its multifaceted policies. They had one clear objective: the gradual and inevitable extinguishment of all Aboriginal and treaty rights and the shifting of 'jurisdiction and responsibility for Indians and their lands to state governments' as had occurred in the U.S. in the late 1950s.

"For the Mulroney government, delegated self-government meant municipal government with 'the affirmation of provincial title over Indian lands, the break-up of such lands into fee-simple holdings.'"

Postlog to the Introduction

Many people today have forgotten – or have never known – that the 1982 constitution contained Section 37, calling for the convening of a constitutional conference of First Ministers dedicated primarily to the "identification and definition" of the rights which had been "recognized and affirmed". When that conference failed to reach agreement, three other First Ministers Conferences were held between 1984 and 1987. Those too were largely unsuccessful, and the failure to "identify and define" continues still, leaving it to reluctant Canadian courts to give political meaning relationships under the guise of "law". But that too is another story for another day.

REVEILLE FOR FIRST NATIONS
by Walter Rudnicki, "Eagle Shield"

15 January 1987

Introduction

For many generations, much like besieged garrisons, the First Nations of Canada have been under constant and unrelenting pressure to surrender their lands and identity. At the forthcoming constitutional conference, a final conclusion may be written to the outcome of this long struggle.

The high expectations that were fostered by the recommendations of the Special Parliamentary Committee on Indian Self-Government and by subsequent Federal promises and professions of good faith have come to naught. What has been reaffirmed instead, in the name of constitutional reform and Indian self-government, is a timeworn termination strategy which, if successful, will spell the end to the existence of most First Nations within a generation.

For Indian Nations today, the salient and most important issue, therefore, is survival.

This paper addresses the issue of survival in contemporary terms, because Ottawa's long sustained war of conquest is being practiced with a number of new weapons.[1] These include "divide and conquer" stratagems, and a new form of double-talk which serves to disguise termination objectives as "self-government", "self-determination", "constitutional recognition", etc. The expectation in Ottawa is that those among the First Nations who are most vulnerable to pressures, tradeoff, and unfounded assurances will lead the way and set the precedents by

[1] Footnotes appearing in this paper were added by <*e-notes*> and do not appear in the original Rudnicki paper.

legitimizing a termination policy in legal and constitutional terms.

For the First Nations who feel compelled to develop and implement countermeasures in their own interests, there are a number of potential interventions that are possible. These are identified as well, and their possible application and impact is evaluated.

The Politics of Aggression

It is significant that during most exchanges between federal officials and Indian spokespersons, one rarely hears even a passing reference to "termination". As a subject for debate, the concept received its last major attention following the announcement of the Federal Government's White Paper proposal in 1969.

The apparent disappearance of "termination" from the vocabulary of First Nations reflects perhaps the lengths to which Federal authorities have gone to hide the true impact of their policies and actions.

(a) What is Termination:

The term originates in the United States. It became the label which described recurring attempts in that country to extinguish aboriginal and treaty rights and shift jurisdiction and responsibility for Indians and their lands to State governments.

One of the important motives which generated a termination policy was recurring concern in Congress that the costs of Indian administration and programs were too high and too visible. Congress believed that such costs could be reduced by making Indians less dependent on the Federal budget. Congress also thought that Indian costs would be less a target for critics if these were submerged in the budgets of various State governments.
The last major termination initiative in the United States took place from 1954-1960, though efforts to sustain this policy have not ceased even today.

In 1952, the 83rd Congress adopted a policy of "terminating as fast as possible" the special relationship between American Indians and the federal government. By 1960, numerous laws and amendments were passed by Congress, and various strategies were applied, to terminate the special status of as many Indian communities and tribal groups as possible. Most if not all of these Indian groups were not informed about the implications of the termination policy and did not realize what the results would be until it was too late.

The subterfuge used in the United States was to represent termination as a plan to offer Indian people "full citizenship rights". In other instances, government agents persuaded Indians to accept termination by submitting them to unbearable budgeting and administrative pressures, as well as promises and outright lies. Frequently, Indians in the USA who believed they had successfully negotiated special assistance to develop their resources, or a claims settlement agreement, found out later that a termination rider had been attached to these deals.

In almost every case, termination objectives were realized in the United States by misrepresenting them as "forest management schemes", "economic development plans", "self-determination", etc.

During the period 1954 to 1960, sixty-one communities and tribal groups were terminated in the United States. Termination proved to be a potent weapon against Indian people in a modern war of conquest.

One typical feature of the USA termination policy was a requirement that the inalienable nature of Indian lands be transformed into fee-simple title. Indians in the USA were frequently pressured into accepting fee-simple title with arguments that full Indian ownership of such lands would be legally confirmed, and that new opportunities would be created by means of such title for economic development and employment.

In fact, what "fee-simple" means is that Indian lands cease to be protected as the traditional territory of an Indian Nation. In Canada, fee-simple involves affirming an underlying provincial title and breaking up Indian lands into parcels which are owned outright by individuals or corporations. These owners in turn have the right under fee-simple to dispose of the land in any way they see fit – including sale to non-Indian interests. Such transactions occur within the framework of provincial laws and jurisdiction.

In the USA, fee-simple title which resulted from termination policies led to the permanent loss of several million acres of Indian land.

Fee-simple arrangements can only work on Indian land if the underlying title remains inalienable. This would require that the concept of "aboriginal title" be recognized, and that such title ensure that Indian lands remain under the jurisdiction and control of Indian governments, regardless of who owned any given parcel under fee-simple title. Without the protection of an underlying

aboriginal title, fee-simple becomes a way of destroying the land base of Indian Nations, and ensuring that an Indian jurisdiction becomes impossible in the future.

The transfer of program responsibilities and legislative authority to State government similarly had a devastating impact on Indian people in the United States. Destructive State laws were imposed on terminated Indian communities against their will.

These had the effect of wiping out tribal customs, local community and family control, traditional adoption practices, and ultimately all sense of tribal identity. State governments accelerated this process of assimilation by taking control and regulating school curricula, teacher employment, social and recreational programs and most other aspects of social and economic Indian life.

(b) Termination Policies in Canada

In Canada, termination policies have paralleled those in USA and, in some respects, have been more persistent. As early as 1859, the professed aim of Indian administration was asserted to be "the gradual removal of all legal distinctions between Indians and Her Majesty's other Canadian subjects . . ."[2]

A determined drive to municipalize Indian communities started in 1868, just a year after Confederation. The objective found its full expression in the *Indian Advancement Act* of 1884 which undertook to confer "certain privileges" on the "more advanced Bands of Indians of Canada with a view to training them for the exercise of municipal powers."

The "White Paper" of 1969 surfaced from the government of the day as a frankly-articulated termination policy. The intention was to terminate all First Nations quickly and with finality by means of administrative and legislative action, by amending the constitution and by establishing full provincial jurisdiction over Indian communities.

After the First Nations mobilized effectively to block Ottawa's 1969 initiative, the Federal government was compelled to resume its former incremental approach to termination. This entailed adopting a "Band by Band" approach to termination while avoiding substantive negotiations with regional or national Indian organizations.

Selected Bands and tribal groups were pressured and encouraged to build program and funding linkages with provinces and even to accept provincial jurisdiction for various purposes. Federal authorities believed that such linkages would get such Indian groups accustomed to provincial jurisdiction and more amenable to full termination down the line. Termination and extinguishment features became integral parts of comprehensive claims negotiations and settlements. The so-called "devolution" program also became a way of "training them for the exercise of municipal powers."[3]

The devolution of "municipal powers" to Indian communities in the context of federal policies has meant a process of getting such communities ready for municipal status under provincial jurisdiction. This objective is identical to the type of termination practiced in the USA between 1953 and 1960.

Although earlier enfranchisement policies claimed many Indian people and even whole communities, most First Nations have managed to resist the blandishments of termination via the municipal route. It is only in the past ten years that Ottawa has succeeded in effecting this form of termination on several Indian groups by means of comprehensive claims settlements and special legislation.

(c) Current Termination Initiatives

The Federal government is poised again, as it was in 1969, to bring its long-standing and sustained termination policy to fruition.

As was the case in the United States, the Federal Government has adopted the tactics of misrepresentation and disguise to attain its objective. "Municipalization" is referred to as "self-government", and proposed constitutional amendments that are designed to legitimize a termination policy is described as a "constitutional entrenchment of self-government".

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[2] The phrase appears in the 1857 *Act to encourage the gradual civilization of the Indian Tribes of this Province* of the Province of Canada: Whereas it is desirable to encourage the progress of Civilisation among, the Indian Tribes in this Province, and the gradual removal of all legal distinctions between them and Her Majesty's other Canadian Subjects, and to facilitate the acquisition of property and of the rights accompanying it, by such Individual Members of the said Tribes as shall be found to desire such encouragement and to have deserved it . . ."

[3] *Indian Advancement Act, 1884,* SC 1884, c. 28. had as its full title, *An Act for Conferring Certain Powers on the More Advanced Bands of Indians of Canada With the View of Training Them for the Exercise of Municipal Powers.*

Ottawa believes that the First Nations will not see through the smoke screen until it is too late. The Federal assumption is that, in any case, a united opposition by First Nations will be difficult to mobilize to effectively challenge its plans.

(i) *Nielsen Task Force Recommendations*

This controversial report was leaked in April 1985 while it was en route to Cabinet. Severe criticism of the report's recommendations brought reassurance from the Prime Minister that it did not reflect government policy. Nevertheless, the Nielsen recommendations did finally get to Cabinet later that same year and have shaped and given direction to subsequent Indian Affairs policy deliberations and decisions.

Among the more significant policy guidelines that are being implemented are requirements that all future Indian Affairs' initiatives adhere to a rigid cost control strategy. This means that such costs are to be phased into provincial appropriations wherever possible or devolved to Indian communities within fixed budgeting ceilings. The implication in the latter arrangement is that Indians will be pressured to look to provinces if they want to exceed these funding limits.

Reinforcement for the Nielsen recommendations has come from the Justice Department which has maintained its traditional position that there is no constitutional or legal basis for Indian self-government as an aboriginal or Treaty right. This legal view, together with Nielsen's formula for cost control, have shaped Federal self-government policy, its constitutional amendment strategy, as well as other related policies as the recent Comprehensive Land Claims Settlement announcement.

In short, current Federal Indian Affairs policies are founded on much the same concerns and rationale that launched the termination initiatives of Congress in the USA in 1954. These parallels become more evident if one examines closely the building blocks and stratagems that characterize Ottawa's ongoing policy initiatives.

(ii) The Federal Two-Track Policy

This policy was approved by Cabinet in November 1985 and was referred to by Bill McKnight as one of the elements that has been incorporated in the recently announced comprehensive claims policy.

The "two-track policy", as it is known among Federal officials, is a coordinated termination strategy which is supposed to come to fruition at the constitutional conference this coming spring. Its two main features are:

Indian Self-Government. The First Nations view self-government as an aboriginal and Treaty right which should provide for a range of powers that are constitutionally-defined and protected. Such a constitutional entrenchment of First Nations' sovereignty is the only way that Indian governments can be established as full partners within Confederation.

The alternative is to accept delegated powers and to function under the control of a constitutionally-based government (that is, a province). Most First Nations have found this latter option to be unacceptable because, as in the USA, it results in termination with all its evil consequences.

Without admitting publically what it is doing, the Federal government in fact has recast the First Nations concept of self-government in the termination mould. The self-government policy to which the Indian Affairs Minister refers sanctions the creation of Indian municipalities, the affirmation of provincial title over Indian lands, the break-up of such lands into fee-simple holdings, and a phased shift of jurisdiction from the Federal Crown to provinces.

The aim of the so-called "two track policy" is to get a number of Indian bands and tribal groups launched on the road to municipal status and termination before the First Ministers' conference takes place this spring. The new "Self-Government Sector" of the Department of Indian Affairs is now actively engaged in promoting this development.

Once a number of Indian communities commit themselves to municipal status, Ottawa can use them as tangible precedents, and represent them as a consensus with Indian people about the nature of "self-government". This definition then is expected to facilitate an understanding with provinces and produce the kind of constitutional amendments that will authorize the Federal Government to pursue a termination policy on even a larger scale.

The "self-government" aspect of the "two-track policy" was confirmed as a termination stratagem by Bill McKnight during an interview on November 21, 1986, with Jonathan Manthorpe of Southam News. The Minister stated,

> "The Indian leadership doesn't like comparison with municipal government, but without saying the word, I

think that within the existing Constitutional framework of Canada, that is what we're talking about."

The Constitutional Process. The final meeting of First Ministers on the issue of identifying and defining aboriginal and Treaty rights is scheduled for March 1987.

The self-government policy approved in November 1985 identifies the constitutional process as the second major thrust of the "two-track policy". Federal constitutional strategy seeks to produce amendments that in effect legitimize the municipal models that have already been developed and which give Ottawa a constitutional mandate to impose the same result on other First Nations by persuasion, pressure, manipulation or even unilateral legislation if all else fails.

In other words, for the first time, the Federal agreement would have constitutional authority to implement a full-scale and accelerated termination policy.

The mechanism for getting a constitutional mandate for termination are represented in proposed amendments which appear innocuous on the surface. They are:

– the inclusion of a general amendment in the Constitution which merely recognizes the principle that Indians have a right to self-government;

– a second amendment which commits the Federal Government to negotiate self-government arrangements of an unspecified nature.

The hypocrisy and misrepresentation that are inherent in these proposed amendments become clear when placed in the context of Ottawa's interpretation of Section 35 of the Constitution and its definition of self-government. The view of the Justice Department, which shapes Federal policies, is that Section 35 does not offer any constitutional protection to aboriginal and Treaty rights until such time as these are defined. For example, in advising the government on the constitutional implications of extinguishing the Nishga claim in British Columbia, the Justice Department noted that:

"This proposal contemplates effectively extinguishing Nishga claims to aboriginal land title and rights and replacing them with rights defined upon final settlement being implemented. Such settlements are contemplated in Section 25 of the Constitution and the extinguishment of aboriginal rights is consistent with Section 35."

In short, the Federal view is that Section 35 of the Constitution as written is an empty box. Give the right sort of general amendments, along with the lines that are currently being advanced by Ottawa, the box will remain empty. What the amendments will do, however, will be to facilitate the imposition of Ottawa's definition of self-government on the First Nations.

A constitutional provision that requires Ottawa to "negotiate" self-government is no safeguard to First Nations. The experience in the USA illustrates that pressures, trickery, lies and misrepresentation can masquerade as "negotiation". A constitutional commitment by Ottawa to negotiate self-government arrangements is much like giving an elephant permission to dance the polka among the chickens.

(iii) Comprehensive Claims Policy.
An analysis of the most recent Federal policy announcement on comprehensive claims confirms that it retains the same termination features that characterize Ottawa's self-government strategy. The comprehensive claims policy has been misrepresented as a new approach that was shaped in some measure by the Coolican recommendations.[4]

The truth is that all of Coolican's recommendations were rejected wherever they contradicted the termination objective of the Federal Government. What has emerged as a result is essentially the same policy that has been in effect since 1973. Thus:

- extinguishment of aboriginal title to Indian lands remains the core feature of the policy. (Extinguishment is now called establishing "clarity and certainty".
- a funding ceiling is maintained which limits the number of claims that can be negotiated to six in any given year (and only one at a time in B.C.).

[4] In 1985, Murray Coolican, a Halifax-based consultant, was appointed to chair a Task Force to Review Comprehensive Claims Policy. It received more than 75 briefs in its travels across Canada and met with representatives of many aboriginal peoples. In December 1985, the task force issued its final report, entitled *Living Treaties: Lasting Agreements.* The "Coolican Report" recommended abandonment of cash and land deals, and a wholesale broadening of the land claims policy to allow for the negotiation of economic, social, political, and cultural issues. It recommended also that land claims settlements affirm, rather than extinguish, aboriginal rights, and that government share its authority with aboriginal peoples to manage natural resources.

- eligibility for claims settlements requires that such claims have not been "superceded by law". (This excludes most potential claims in the settled areas of B.C.).
- self-government can be negotiated as part of a comprehensive claims settlement, but it has to be consistent with Federal policy as approved in November 1985 (i.e., municipal forms that can be phased in time under provincial jurisdiction.)
- framework agreements to be developed to define scope, funding, timing, etc., for negotiations. (This mechanism ensures that negotiations adhere to Ottawa's policies and agendas.)
- Indian participation to be permitted on public boards and advisory groups. (This is not new because these provisions were included as early as 1975 in the *James Bay Agreement*.)
- Resource revenue-sharing to be available on certain Indian lands at a percentage and for a length of time to be determined by Ottawa. (This is the only provision that is slightly modified. It means that Ottawa enters into negotiations on the assumption that it owns the resources on Indian lands and that it is prepared to pay a percentage of the compensation in the form of revenue-sharing, given an appropriate offset in cash settlement. This arrangement benefits Ottawa because it permits compensation to be paid over time and reduces the need for larger lump-sum payments.)

Summary

Federal authorities appear to have learned little from past history, or from their neighbours south of the border. The present government in Ottawa is clearly committed to renewed termination objectives. Instead of identifying these objectives for what they are, Ottawa has hidden them behind a smokescreen of rhetoric that is intended to pacify and mislead First Nations and the general public.

Termination today is a three-pronged assault that aims "to get the Federal government out of the Indian business."[5]

[5] The phrase comes from President Dwight Eisenhower's administration. In 1953, the U.S. House of Representatives and Senate approved a resolution calling for an end to the Indians' "status as wards of the United States" and specifying that certain tribes should be freed from federal supervision.

Self-government, the ongoing constitutional process, and comprehensive claims settlements have all come to represent processes and outcomes which are consistent with termination.

Other related activities of the Department of Indian Affairs, including devolution practices, block funding, economic development initiatives and program delivery arrangements are being applied to confer "certain privileges on the more advanced Bands of Canada with a view to training them for the exercise of municipal powers" (in the words of the 1884 *Indian Advancement Act.*).

After more than one hundred years, Ottawa is still spinning its wheels in the same old rut.

The Politics of Defence

So far, neither governments nor industry see much profit in the preservation and protection of Indian rights. Value systems that are predicated on such materialistic concepts as "the national interest", the "gross national produce"; a sound "balance of payments", etc., are not likely to leave much room for concerns about the "spiritual attachment" of First Nations to their lands.

Cynical federal bureaucracies, jurisdiction-conscious provincial governments and predatory captains of industry perceive aboriginal and Treaty rights as an obstacle to their own self-seeking designs. A consensus at this level usually emerges as a policy or an initiative that is in "the national interest" or in "the public interest". Such a consensus is rarely, if ever, in the "First Nations' interest."

First Nations, therefore, have to question seriously whether their past reliance on dialogue and good faith will bear fruit. The conceptual gap that separates Indian views about the nature of aboriginal and Treaty rights, and those held by the Federal Government, seems to be as wide as ever today.

A dialog with Federal authorities has to be maintained as long as possible, but clearly, something more is needed if First Nations are to survive. Two examples of action taken by First Nations in the past to win ground, after all other forms of dialogue had failed, are worth noting. Thus:

In 1969, a termination policy had been announced in the form of a "White Paper" and the Indian Affairs had reorganized and hired new staff to implement it. The Minister of the day was adamant that there would be no turning back. All efforts by Indian representatives to meet with the Prime Minister about the implications of the

policy were blocked by his officials at every turn.

Nevertheless, an Indian stratagem was implemented which compelled the Prime Minister and a number of his Ministers to meet in plenary session with several hundred Chiefs and other Indian leaders.

(Trudeau had met with the Maori in New Zealand previously and got some welcome publicity as a result. It was pointed out to him that it would not look too good in the media if he now refused to meet with representatives of the First Nations in Canada. Once the Prime Minister's presence was assured, a carefully-planned scenario was played out by the Chiefs which resulted in the "White Paper" being shelved.)

Trudeau promised at this meeting that no future policy would be imposed on First Nations without prior consultation and agreement. The current government seems to have forgotten this commitment.

Similarly, during the constitutional debate between 1979 and 1982, little thought had been given in Ottawa to making provisions for aboriginal and Treaty rights. A Parliamentary Committee what was accepting briefs from public interest groups indicated that it had no time to hear from the various First Nations representatives who had prepared their own briefs. It was only after around two thousand Indian people descended on Ottawa in a "Constitution Train" that the government agreed to extend the Parliamentary Committee's timetable. (The event captured media attention throughout Canada.) The result was a number of amendments which at least produced a constitutional acknowledgment of aboriginal and Treaty rights and provided for an ongoing process to identify and define these rights.

If these special initiatives had not been taken by the First Nations, it is possible that the "White Paper" would have been implemented as planned. The "Constitutional Train" was another extraordinary initiative which was instrumental in reshaping the Constitution. Unfortunately, neither of these active measures was effectively followed-through by the First Nations in order to consolidate and protect the gains that had been made.

The situation today also calls for active intervention by First Nations and, in the final analysis, it is Indian leadership who will have to decide what needs to be done. In setting out a number of possible prescriptions for action, the intent is not to provide a detailed battle plan but rather to identify the main elements and principles that need to be taken into account in the planning and implementation of countermeasures.

(a) Ideological Countermeasures

To act with confidence, certainty and a sense of direction, a people under threat need something called an "ideology". Throughout human history, many kinds of ideologies have served as engines of change.

The Federal Government has an ideology about the nature of aboriginal and treaty rights, and how such rights should be translated into institutional, fiscal and jurisdictional arrangements in the future. Ottawa's ideology seeks to justify and implement termination.

First Nations also need an ideology if their concerns, frustration and festering sense of injustice is to be mobilized to serve their collective cause. Without such a unifying force, Indian people will continue to suffer from a sense of helplessness and will remain vulnerable to misinformation, manipulation, and fragmentation.

An ideology is a sense of values and beliefs that go a long way in explaining to Indian people what is going wrong, how they are being affected, and what they can do to correct the situation. It is the task of Indian leadership to ensure that the ideology they do adopt is something that can be shared in common and conveyed to all Indian people. Without such a common understanding, Indian leaders will tend to be paralyzed by internal disagreements and confused by the "divide and conquer" games that are frequently played by Federal agencies.

Most First Nations already do share a common understanding about their history, the destructive impact on their lives of external legislative and administrative encroachments, and the importance of traditional Indian beliefs, spiritual values and attachment to land: all of which sustain the identity and vitality of First Nations as distinct peoples. What may be missing in a First Nations ideology is a shared consensus about such issues as:

(i) Aboriginal and Treaty Rights: Are these rights in fact so different that the interests of treaty and non-treaty Indians can never be reconciled? Or is this really another externally created tactic to split the national Indian community in order to keep it weak and ineffectual?

Unlike Ottawa's views of treaty rights, there are historical and legal grounds for asserting that Indian territories that were set aside by treaties are unceded lands and therefore remain under aboriginal title.

All that a treaty does, in the final analysis, is describe the nature of mutual obligations and undertakings made by the signatories as a result of land actually ceded to the Crown. Indeed, even such apparent land cessions were not complete and final because treaties recognized remaining residual aboriginal rights on ceded lands – including hunting, fishing and trapping rights. In short, all a treaty does is provide an accommodation between the aboriginal rights of a First Nation entering into such an agreement and the Federal Crown. It does not extinguish such rights.

Legal pundits in the Federal Justice Department assert that no First Nation in Canada holds genuine aboriginal title to any lands, whether they signed Treaties or not. They hold that all lands occupied and used at present by Indians belong to the Crown, and that First Nations merely have an "interest" in such lands. The fact that Ottawa is prepared to negotiate Indian claims and pay compensation is represented as being motivated by the Crown's "benevolence" and not by an acknowledgment of Indian ownership.

This legal position remains a feature of the Comprehensive Claims Settlement policy that was announced in December 1986, and provides the rationale as well for specific claims settlements involving land.

It is necessary to conclude, therefore, that Treaty and non-Treaty Indians share a common interest. Both groups have a legitimate claim to aboriginal rights and title, and both re confronted with the need to deal with a Federal position that denies such rights and titles.

(ii) Local versus Self-Government Options: Do these concepts mean the same thing as the Federal Government implies? Is locals or self-government feasible under the *Indian Act* by means of devolution, block-funding, etc., as Federal authorities suggest? Is it safe to move away from the constraints of the *Indian Act* by accepting the provisions of alternative legislation? Should constitutional status be the only acceptable option?

Many Indian communities at present appear to be unclear about the implications of local government and self-government. This may be because Federal authorities have failed to clarify the meaning of these terms and indeed, deliberately add to the confusion by using them interchangeably. Even the media and the general public have fallen victim to the confusion.

"Local Government" means a regime that is usually confined to a single "Band" and "Reserve" as defined by the *Indian Act.* The powers that such a regime exercises are delegated by a senior authority and can be expanded, reduced, or eliminated at any time. Under the *Indian Act,* the senior authority is the Federal Government, and under alternative legislation, it is the provinces.

A transitional period is usually provided to shift Indian local governments from federal to provincial jurisdiction, during which both of the senior jurisdictions may share certain responsibilities.

"Self-Government" means a regime that exercises powers of government in its own right. Such powers are entrenched and protected in the Constitution and cannot be affected in any way by the legislatures of the Federal government or the provinces.

Within Canada's federal system of government, such powers represent a sphere of sovereignty which can only be practiced by governments that have constitutional status, i.e., the Federal government and the provinces. Local governments do not have such status and can only exist at the pleasure of the governments that do have it.

As matters now stand, Ottawa is closing the constitutional door on any possibility that the First Nations will ever achieve self-government. The Federal government's "two-track" policy, related constitutional strategy, and comprehensive land claims settlement policy, provide for local government only. **Indian communities who accept local government arrangements are, in fact, setting a course for themselves that ends in full termination.**

Local government provisions at present are being implemented in a number of ways.

> A recent Treasury Board authority now permits an accelerated transfer of program responsibilities and budgets to Indian communities; while a similar "block-funding approach offers more decision-making scope for budget allocations at the local level. These so-called local government initiatives remain under the aegis of the *Indian Act* and subject to the kinds of interventions by the Minister and his officials which this Act sanctions.
>
> Another way of implementing local government is to persuade an Indian community to establish a regime under alternative legislation. The examples of locals government that have emerged so far suggest that alternative legislation is a giant step into the oblivion of termination.

> The relationship between such provisions as "devolution" and "block-funding" under the *Indian Act* and the exit to full termination provided by alternative legislation is that the former is seen as preparation for the latter. It is significant that both the preparatory phase and the final exit are being implemented in accordance with a Federal policy dictum that present funding levels are to be maintained (as proposed in the Nielsen Report). This means that local communities who assume a larger measure of responsibilities and obligations as a result of devolution or alternative legislation will find themselves increasingly unable to meet the costs as a result of frozen budgets. The expectation in Ottawa is that such communities will be forced to look into other sources of funds – including the provinces. The funding policy therefore must be seen as one integral aspect of Ottawa's current strategy to force termination on such communities.

There are a number of more specific implications to Federal local government stratagems that demonstrate the ways in which they work to make it difficult for First Nations to mobilize an effective defence. For example:

Local Government under the Indian Act: As suggested, devolution and block-funding generate the kinds of budgetary pressures in Indian communities which will precipitate an earlier acceptance of alternative legislation and ultimate termination.

Both these provisions are being implemented under the *Indian Act* which arbitrarily structures Indian society to suit the administrative convenience and termination objectives of Federal authorities. In other words, local Indian government structures are being imposed on an already existing set of Indian institutional arrangements that are creatures of the *Indian Act* and other related federal interventions.

The *Indian Act* is a legal instrument that, from its earliest versions in the 19th Century, has denied the existence of First Nations and has failed to ascribe any significance to aboriginal and treaty rights. The purpose of the *Indian Act* has been to provide a weapon in the hands of Federal bureaucrats to attack and destroy the traditional institutions and practices of Indian self-government, and to compel First Nations to submit as subjects to a distant bureaucracy.

The *Indian Act* is Canada's legislative expression of its long-standing termination policies. Its essential rationale in all its versions has been to separate Indians from their identity and to break up First Nations as coherent political entities into numerous "Bands" and "Reserves" for grooming for their future status as provincial municipalities.

Devolution and block-funding therefore must be regarded as continuing and integral aspects of a federal policy of keeping First Nations fragmented and divided as a way of facilitating termination and assimilation.

What is even worse, devolution and block-funding are predicated on a Federal notion of "fitness" that also originate in the 19th Century. This means that Ottawa decides which Indian communities are "fit" to assume additional responsibilities of local management, and to handle funds with fewer direct controls. In the context of current Federal policies, it is very probable that "fitness" implies a community's readiness to work toward institutional arrangements that result in future municipal status and termination.

It is understandable, therefore, why Ottawa is promoting devolution and block-funding, and it is equally clear why First Nations should regard these apparent concessions with extreme caution. At the same time, First Nations should be prepared to reject absolutely the premises and controls of the *Indian Act* as an intolerable attack on the rights of First Nations to be self-governing in their own right, on their own lands.

Local Government via Alternative Legislation: This stratagem represents a fallback position which Ottawa offers whenever Indian communities want to be freed of the shackles imposed on them by the *Indian Act.* In the context of Ottawa's fundamental policy commitments to termination, it is much like asking Indian people to jump from the frying pan into the fire.

Alternative legislation is appropriate only when its provisions for local government are shaped by guarantees and imperatives that are identified, defined and entrenched in Canada's Constitution. In the absence of such constitutional guarantees, local government implemented by means of alternative legislation can only assume a municipal form and be subordinate to a political authority that does have constitutional status. Since the Federal Government has no intention of taking on the expenses and headaches of operating several hundred Indian municipalities, the aim is to sweep them under the constitutional umbrellas of provinces.

Federal assurances that they are prepared to "negotiate" local government and alternative legislation is a fiction. What Ottawa is prepared to negotiate is phasing, timing, interim funding, administrative arrangements and other minor details that, in spite of the variations that may result, all lead to the same predetermined result. For example, although the *Cree-Naskapi Act* resulted from a comprehensive claims settlement while the *Sechelt Act* emerged as a specific legislated avenue to "local government", both have set the Indians concerned on the road of no return to termination.

It is necessary to conclude, therefore, that alternative legislation, in the absence of appropriate constitutional guarantees, is an unacceptable option for attaining local government.

It is relevant only to those Indian communities who are prepared to break their ties with the nation that originally gave them their language, traditions and identity; to forfeit their aboriginal and treaty rights; to change the status of their land holdings to provincial title and fee-simple; and to submit to the jurisdiction of provincial laws, politicians, and bureaucrats.

Many of the Indian communities who have gone this route or are poised to do so, either have made the choice under pressure or have fallen victim to Ottawa's campaign of disinformation.

The issue of local government versus self-government is relevant primarily to Indian communities which now exist within the boundaries of provinces. This is because the various levers and mechanisms that have been identified are being used by Ottawa to integrate these communities as municipalities into the regimes of provinces.

North of the 60th parallel (that is, in the Northwest Territories and the Yukon), the Federal game plan is a little different, even though the essential objective is still termination. In the northern territories, Ottawa is promoting something called "Public Government". This means that the issue of aboriginal title and rights are to be resolved by fee-simple arrangements, and by establishing political and administrative structures at the locals and territorial levels on which both native and non-native persons can participate.

The rationale for making public government acceptable to native people is that they are the majority population at present, and would be able to hold the balance of power in supporting political decisions that take their special interests into account. This may be true for the immediate future. However, in the longer run, the balance of power is likely to shift significantly, especially if petroleum and mineral development brings a large influx of non-native people into the North.

Public government therefore has to be seen as termination with a longer time fuse that delays but does not prevent the inevitable crunch. In many respects, "public government" is similar to "local government" as a means of terminating native rights and unleashing forces that accelerate the process of assimilation and absorption.

(iii) Vested Interests versus Common Interests:

Contemporary federal strategy has been refined to make it much for difficult for First Nations to function in a coordinated way in their own common interests. Ottawa is targeting selected communities who are more vulnerable to influence and pressure in order to establish the kinds of local government precedents that conform to the termination model.

A "Band by Band" approach to Federal policy implementation makes such encroachments possible and inevitable, and fosters local vested interests which frequently undermine the common interests of First Nations that affect all Indian people. "Dissident" and "uncooperative" Indian Bands and organizations are being pressured to submit to Ottawa's prescription for their future by budget cuts, paper burdens, and administrative delays. Cooperative Bands receive special attention and funding, including even special visits by teams of supportive headquarters personnel from Ottawa who are anxious to recruit more Indian victims for the termination mill.

As matters now stand, Federal authorities have the advantage. Through the years, Federal legislation and funding practices have operated to reshape and restructure the traditional political structures of First Nations to serve the convenience and aims of non-Indian bureaucrats. The *Indian Act* defines such entities as "Bands" whether or not these have any historical basis.

At the same time, as formal recognition is ascribed by the Federal Government to Indian Nations which may comprise many Indian communities within a larger geographic area, and which may be characterized by a common history, language, culture and identity.

In short, Indian Nations have been fragmented into the smallest digestible entities as a way of undermining their collective strength and effectiveness, and making them

more amenable to external controls and manipulation. Ottawa wants to leave things this way because it is infinitely easier to terminate individual "Bands" than larger political units such as "First Nations".

The recent emergence of "tribal" organizations is similarly constrained and managed externally by Federal authorities. Frequently, these are organized and funded on lines that are solely intended to facilitate Ottawa's program delivery activities. Such "tribal" organizations could be made up of elements from several Indian Nations and are regarded by Ottawa as little more than administrative extensions of the Department of Indian Affairs.

Regional Indian organizations that became established after 1971 as a result of the core-funding program also have conformed in large measure to Ottawa's notions about how Indians should be organized. It is significant that all such organizations were required to conform to provincial boundaries, even though such boundaries have no relevance to Indian nationhood.

It is also perhaps significant that core-funded Indian organizations were encouraged to include in their formal title the name of the province within which they functioned. This had the effect of identifying Indians with a particular province, rather than with their traditional nation. The result was that a First Nation often would find itself split by provincial boundaries and by organizational affiliations into two or more parts.

It may be timely to discard such appellations as "British Columbia Indians" or "Alberta Indians" etc. and to adopt organizational structures and titles that reflect the historical and traditional realities of Indian Nations. Such realities transcend national and even international boundaries and must become operative if Indian nationhood is to re-emerge as an effective political force.

These are matters to be debated and discussed internally among representatives of the First Nations who are prepared to address the issue of survivals ahead of more immediate and local vested interests.

In reshaping the organizational and political capabilities of First Nations, a number of general principles can be kept in mind. These are:

(i) **Measures need to be developed and implemented which will have the effect of reaffirming, in political and international terms, the power and effectiveness of First Nations as authorities exercising jurisdiction over their traditional lands.** Federal policy remains based, as it always has been, on the premise that there is no substance to the concept of Indian nationhood.

The *Indian Act* recognizes the existence of "Bands" only, and Ottawa is working actively to transform these smaller entities and their "reserves" into municipalities under provincial jurisdiction. Because provinces enjoy constitutional status, they have the power to impose any legislative or administrative controls on municipalities that they want. It is clear, therefore, that under these arrangements, there is no room for such concepts as "Treaty Rights", "aboriginal title", or "First Nations".

This suggests that Bands should consider taking the initiative to reduce their vulnerability to termination by establishing larger and more powerful First Nation governments designed to protect Indian rights and aboriginal title throughout their jurisdictions.

(ii) **A common linguistic and cultural identity, shared historical traditions and a geographically delineated land base are the main elements that serve to define any given First Nation.** To reestablish the political and institutional effectiveness of First Nations as governments exercising a jurisdiction throughout their territories, a plan is needed that will address two main issues:

> – the dismantling of structures, procedures and relationships which have been imposed as a result of Federal interventions, and which are intended to facilitate termination.
>
> – the establishment of preferred or indigenous structures, practices and customs that reinforce the identity and rights of First Nations and support their survival.

(iii) **Each First Nation may find it desirable to consider the establishment of two levels of government within its jurisdiction, that is, community-level governments and a regional First Nations government that protects the rights of all its citizens.** The internal political and institutional features that are adopted by each First Nation and their communities have to be their own.

Whatever line of development First Nations adopt to restore their capacity as governments, they will be challenging current Federal policy prescriptions. Federal policy assumes that Indian government is practical only at the community level, and that it must conform to established municipal models. The implications of a First Nations response alone the lines proposed would be that

all member communities of a First Nation share a common interest in survival and their new political and institutional arrangements are more likely to make this possible.

(iv) **First Nation governments would define their jurisdictions, and designate titles for any organizations which they may want to establish collectively, without reference to provincial boundaries or any other similar factors.** One result of the "divide and conquer" tactics that have been employed by Federal authorities has been to split First Nations further by provincial boundaries and in other ways. The integrity and inclusiveness of First Nations bear no relationship whatsoever to provincial boundaries, to the regional organization of the Department of Indian Affairs, or to the lines of demarcation that are defined for regional Indian organizations (which usually conform to provincial boundaries).

The fundamental basis for the existence of a First Nation's government is a jurisdiction that defines its own boundaries and requires that external agencies which relate to it organize themselves accordingly.

(v) **First Nations who succeed in reestablishing their identity and political capacity should affirm their jurisdiction over lands that have never been ceded to the Crown in accordance with the Royal Proclamation of 1763.** Such an affirmation means that the premises and assumptions that comprise Ottawa's comprehensive land claims settlement policy must be totally rejected. A First Nation's assertion of title over its lands, along the lines suggested, will no doubt be disputed.

The proper mechanisms for resolving such differences are "Boundary Commissions", which have been established many times in the past to reconcile boundary problems between provinces. Implicit in the use of a Boundary Commission is the assertion that First Nations are no longer prepared to see aboriginal title extinguished. The task of such a commission would be to permanently fix the boundaries of each First Nation's jurisdiction.

(vi) **In the first instance, a tangible political and institutional affirmation by First Nations of inherent rights to self-government and to jurisdiction on traditional lands would have to be unilateral.** This is because the Federal Government would not immediately sanction such a First Nation's initiative. The emergence of operating Indian government structures that depart from the municipal model flies in the face of Federal efforts to terminate Indians and their lands on a Band-by-Band basis. The strategic purpose of a First Nation's unilateral initiative is to take the high ground and to compel Federal authorities to react. This in turn will generate public and media debate as well as international attention, and force Ottawa to explain policies that are difficult to defend in public.

(vii) **Any steps that are taken to give genuine political life to First Nations can only succeed with the full cooperation of communities which make up each nation.** The Chiefs and Councils of each community would need to participate in the drafting of their First Nation's constitution which should provide, among other things, for a clear division of powers and authority between any levels of government that are being established.

Provisional arrangements would also have to be made to establish minimum operating budgets for First Nations governments. Ottawa is not likely to fund such governments during their developmental phase. Communities therefore may have to consider alternative methods of financing, pending the negotiation of an appropriate fiscal relationship between First Nation governments and Federal authorities.

(b) ***Summary***

Virtually every legislative and policy initiative that the Federal Government has taken through the years has been designed to destroy the cohesiveness and integrity of First Nations, and to ensure that they can never re-emerge as an effective political force in Canada. In spite of the sustained aggression of which First Nations have been subjected, they have nevertheless managed to fight off some of Ottawa's earlier attempts to achieve total and final termination.

The ongoing constitutional process and a reorganized Department of Indian Affairs now offer Federal authorities a new opportunity to get the kind of legal mandate they have always wanted. In a sense, Ottawa is racing a constitutional clock to obtain such a mandate. Failure to do so could conceivably provide First Nations an opportunity to gain ground over the long run through the courts. Federal politicians fear such litigation because they cannot control the outcome.

It is critical, at this particular juncture, in a long history of struggle, for the First Nations to look to their defences anew. An essential feature of such defences must be a

practical and operative First Nation's ideology that is designed to build consensus and foster cooperative strategy and action. Some elements of such an ideology have been suggested by way of example.

Above all, to block Federal intentions at the forthcoming constitutional conference and take longer-term measures designed to become self-governing and prosperous once again on their traditional lands.

(c) ***Strategic Considerations***

A First Nation's strategy implies a well-thought-out plan that has broad support, and is skilfully carried out to achieve short-term and longer-range objectives. In the absence of a First Nations' "War Room" where such a campaign can be designed and orchestrated throughout Canada, other ways have to be found to confront the more immediate threat that is posed by events such as the forthcoming constitutional conference.

Concurrent and more sustained action by First Nations in the national and international arenas is also indicated in defence of their rights. Such action, if it is to be sustained long enough to be effective, may require a special vehicle that is organized, supported and maintained for this purpose by the First Nations. A shared ideology and a common interest in survival should make such organized action possible.

At all costs, it is important to avoid to the greatest extent possible a lot of separate and uncoordinated regional and local initiatives that end up at cross-purposes. This achieves little except to provide additional ammunition to the Federal government in support of its frequent assertion that its own policies are justifiable because they are geared to a demonstrable absence of consensus among Indian people.

(i) ***Shaping Constitutional Outcomes***

If the First Nations agree that Aboriginal and Treaty rights to self-government are pre-existing, it follows that a way has to be found to accommodate such rights in Canada's federal system.

Accommodation means something very different than extinguishment, extinction, or termination. There is no implication of "tradeoffs" in the concept of accommodation of the kind that have characterized previous transactions with First Nations (i.e., "we'll take everything of value and you can have the rights of ordinary citizenship and perhaps a little pocket money").

In Canada as in the USA, such tradeoffs – or in the current jargon of Ottawa, "an exchange of one set of rights for other rights" – always adds up to termination.

Accommodating the rights of First Nations in the Constitution means adding rooms to Canada's Federal House and creating space for First Nations to shape their own development and destiny.

The Federal Government is proposing to reduce First Nations to the status of boarders in a constitutional space that is occupied and controlled by provinces.

Unless Federal authorities experience a change of heart between now and next March [1987], (and this is most unlikely), all indications point to the probability that constitutional amendments will be proposed to provide a legal mandate for future termination initiatives. The subterfuge of referring to such amendments as "entrenching the principle of self-government" does not disguise the fact that what is actually being entrenched is *Ottawa's definition of local government.* It is doubtful that any Indians will be fooled for long by this kind of crude Federal manoeuver.

It seems clear by now that Federal authorities have no intention of perfecting section 36 of the *Constitution Act* by defining explicit powers of self-government. First Nations have come up with numerous and different proposals about what such powers could be, but none have generated much enthusiasm or support in Ottawa. The impasse is not too surprising because, in the final analysis, very little political leverage is being exercised, or is even possible, for First Nations to get a serious hearing.

At the same time, it is difficult to anticipate and fix within the Constitution powers of self-government in circumstances where no models exist, except some examples of locals government that are predicated on termination.

Any exercise in arriving at a Constitutional definition of self-government powers at this stage may be like asking someone to fly and design his aeroplane at the same time.

It may not be too paranoid to assume that Federal strategists deliberately fabricated a stalemate over the issue of identifying and defining actual powers of self-government. Given such a stalemate, compromises are easier to negotiate. Once the stage is set for compromise, the practiced negotiators in Ottawa are given an excellent opportunity to finesse their game plan into the Constitution.

Instead of spending a lot of time reacting to Federal compromise proposals for constitutional amendments – which are not really compromises at all – First Nations should come up with their own alternative. The essence of a First Nations' counterproposal would run along these lines:

> "Since it is difficult and perhaps impractical to seek an explicit definition and entrenchment of powers of self-government in the Constitution, let's settle for a set of broad specifications or guidelines that provide a clear direction for future development. Such a consensus could be declaration or an accord, but would have to amount to a constitutional guarantee that self-government will evolve according to the standards and stipulations agreed to."

An accord or declaration of this sort would steer clear of attempting to define powers of self-government, because the task is premature and therefore a blind alley. At the same time, it would have to be specific and explicit enough to ensure that there is no possibility whatsoever of lending itself to future interpretation as a termination plan.

The danger with general statements of intent and principle, such as Ottawa is proposing at present, is that they can mean anything Ottawa wants them to mean. The courts also tend to interpret chatch-all commitments in a catch-all way. In the context of Federal political and policy biases, this amounts to getting a green light to go ahead with termination.

A constitutional declaration or accord would provide First Nations with all the guarantees they need to assure a future course of political development that is founded on aboriginal and Treaty rights. At the same time, it provides for the degree of flexibility needed to accommodate differences among First Nations in step with their pace of development and institutional preferences. (*See Annexes A&B for draft Constitutional Declaration or Accord which attempts to meet those criteria.)*

(ii) *Informing the Public and the Media*

It is clear that First Nations need to take immediate and urgent initiatives to prevent Federal authorities from slipping through amendments at the forthcoming constitutional conference that lend themselves to later interpretation as a legal mandate for termination. A constitutional Declaration or Accord, along the lines proposed in Annexes "A" and "B", could be one stratagem which, in effect, gives every Chief and Councillor in Canada the opportunity to have a voice at the constitutional table. This puts the ball squarely in the Federal Court, and in the face of a demonstrable First Nations' consensus, it would be a difficult ball indeed to juggle.

Concurrently, with a Declaration or Accord or any comparable means that First Nations decide to employ, it seems important to get a number of messages out to the provinces, the media, and the generals public. A public information strategy would need to be guided by a number of considerations and targeted to achieve several objectives, namely:

The Provinces: Few provinces seem to be aware about the full implications of Ottawa's current moves to amend the constitution. It was only at the recently concluded meeting in Halifax that some federal representatives reacted to Federal fiscal proposals with a dawning suspicion that their own treasuries might be left with the burden of Indian costs somewhere down the line.

First Nations may want to consider their own campaign to expose the provinces the full dimensions of Ottawa's constitutional strategy and its relationship to termination objectives.

Some provinces may not be swayed by such arguments if they believe that it is cheaper in the long run to accept the costs that would fall on them as a result of termination than it would be to concede to First Nations, lands and resources of considerable value. Nevertheless, there probably will be a necessary quorum of provinces who will resist this kind of responsibilities once they grasp the implications.

One immediate task of First Nations, therefore, could be to recruit provincial support to block Ottawa's constitutional amendment proposals. Such action need not imply that provinces are required at the same time to support the substance of any declaration or accord that First Nations chose to put forward as an alternative to Ottawa's amendments.

The Media: As matters now stand, members of the media confess their utter confusion about the issues, implications and probable outcomes of various Federal initiatives. It is reported that many of the editors of Canada's largest newspapers have lost interest in the First Nations' cause and that few even take the trouble to assign full-time reporters now to the so-called "Indian beat".

Whatever the limitations of the media, they can be important conveyors of accurate information that educates the public and keeps politicians honest. On the eve of a constitutional conference, which could determine the future status of Indian people, First Nations should be making special efforts to get their story across to media people.

There are several classes of story lines that have the potential of getting media attention, for example:

– the media could be encouraged to do a few special features which identify the essential issues that are at stake at the forthcoming constitutional meeting, and which expose the machinations of the Federal Government;

– specific First Nations responses can be made via the media to particular Federal policy initiatives and Ministerial statements. It is surprising that neither the Comprehensive Claims policy announcement of last month, nor Mr. McKnight's public confession that he was out to "municipalize" Indian communities got no rebuttals at all from any First Nation.

– the current political situation in Ottawa can also serve as context for First Nations media comment. The present government is clearly on the defensive as a result of a succession of scandals which broadcast images suggesting corruption, dishonesty, manipulation and an absence of morality. First Nations certainly are in a position to claim that they have been victimized in large measure and demonstrate this in graphic terms.

The Public: Most recent polls suggest that approximately half of the people in Canada support the idea of Indian self-government. It is not clear what this means because the pollsters failed to distinguish self-government and local government as defined in this paper. Nevertheless, it is clear that many people at least favour self-determination for Indian people. This is support that can be expanded and mobilized on behalf of the First Nations cause.

There is always a danger that large sections of the public would be turned off if they are left with erroneous impressions – which Ottawa is fostering – that First Nations were being offered "self-government" and had turned it down. Few would understand that what the Federal Government was actually offering was a wolf in sheep's clothing. It is important, therefore, for First Nations to consider getting letters out to major church organizations, labour organizations, business organizations, universities and other public interest groups which clearly states the issues, the implications of Federal moves, and the position of First Nations.

(iii) Mobilizing the International Arena

It is evident that there is a great deal of interest and potential support for the cause of First Nations that is lying fallow in the international arena. The Lubicon Indians in Alberta have been able to tap this support with a high degree of success in their struggle to regain titles and rights to lands which were wrongfully ceded.

Support by international agencies and even foreign governments could be mobilized in circumstances where First Nations can demonstrate – as they can – that Canada is breaking international conventions and laws to which it is a party.

In the absence of many international legal precedents that support the rights and titles of aboriginal peoples in independent countries, it may not be possible at this stage to prosecute Canada in an international court with any degree of success. Nevertheless, one can put Canada's image on trial in the court of international opinion by lodging formal complaints under the various conventions that are available for this purpose.

Few domestic politicians are able to withstand for long the cold shoulder of countries who are persuaded that Canada's aboriginal peoples are the victims of injustice and are being set-up for cultural genocide. Aboriginal rights are emerging as the legitimate concern of international law and First Nations should be taking full advantage of the opportunities that these developments offer.

Some of the relevant conventions to keep in mind, should First Nations went to include the international arena in their sphere of operations are as follows:

The Inter-American Commission on Human Rights: recognized that "special protection for indigenous populations constitutes a sacred commitment" of all members of the Organization of American States. (It may not be prudent to rely too much on this particular agency because many of its members at present seem to be some of the leading violators of aboriginal rights in their own countries – it is therefore simply noted for the record.)

The Helsinki Accord: Canada has undertaken obligations under the *Helsinki Final Act* which

commits signatory countries among other things to respect the rights of aboriginal peoples. A Commission on Security and Cooperation in Europe criticized the performance of the United States in 1979 for its treatment of American Indians. First Nations in Canada have the option to lodge complaints under the Helsinki Accord and to be heard.

The *Helsinki Final Act* stipulates that the participating states, including Canada, would:

> ". . . respect the equal rights of peoples and their right to self-determination . . . All peoples have the right, in full freedom, to determine when and as they wish, their internal and external political status, without external interference, and to pursue as they wish, their political, economic, social and cultural development."

United Nations Charter, Article 55: states that "self-determination of peoples" is a principle which leads to stability and well-being. The term "peoples" can be applied to First Nations who fulfill the UN criteria for self-determination because they have a permanent population, a defined territory, cultural and linguistic homogeniety, etc. All members of the UN pledge to take action to uphold the Charter. It could be reported by First Nations to the UN that Canada's interpretation of "self-determination" is designed to end their existence as "peoples".

International Covenant of Economic, Social and Cultural rights* and the *International Covenant of Civil and Political Rights: these are basic UN documents. Article One in each provides that:

> – All peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic and cultural development.
>
> – The peoples may, for their own ends, freely dispose of their natural wealth and resources . . . In no case may a people be deprived of its own means of subsistence.
>
> – States who are parties to the Covenant shall promote the realization of the right to self-determination and shall respect that right.

There are other UN conventions and declarations that are similar in spirit and intent. Canada is a member of the UN and subscribes to its various charters dealing with human rights and self-determination. Canada's hypocritical stance at the UN would become a mockery if First Nations undertook to expose the direction and implications of Federal policies.

Convention on the Prevention and Punishment of the Crime of Genocide: An international penal tribunal has been established under Article 6 of the Convention which provides a standard for the prevention of acts that cause serious harm to peoples or their members. Cultural genocide that can be demonstrated to be an aim of government policy might come under the purview of this Convention.

Convention 107, International Labour Conference: concerning the Protection and Integration of other Tribal and Semi-Tribal Populations in Independent Countries. Article 11 is a strong statement in this connection on land ownership:

> "The right to ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognized."

In some respects, Convention 107 can be interpreted as an assimilationist document, through certain of its provisions are applicable.

These clearly are a number of important avenues in the international arena that First Nations can pursue in mobilizing support for their rights. As a minimum, the result would be to generate pressures on Canada to respond more positively and constructively to the legitimate aspirations of First Nations.

(d) Summary

A number of strategic considerations have been outlined which could have a significant impact in determining the outcome of the constitutional conference next March and in furthering the course of First Nations over the long run.

In proposing various coordinated initiatives that Chiefs and other Indian leaders can take in defence of their peoples' rights, it has been assumed all along that a legitimate accommodation with Canada's federal system will be acceptable to the majority. But such an accommodation must consist of eventual constitutional status for First Nations' governments, and be definition, put an end to Ottawa's sustained efforts to terminate Indian rights.

Constitutional status makes it possible for First Nations to exercise a sphere of sovereignty as governments within a federal framework that operates much like a partnership. It also is the only way for First Nations to achieve a political accommodation in Canada without trading off their aboriginal and Treaty rights as well as their lands and resources. Constitutional status therefore must remain a First Nations objective because to compromise it means to come under the influence and direction of Canada's termination policies.

International law and conventions have emerged and are being refined to recognize the rights to self-determination of aboriginal peoples around the world. The First Nations of Canada are not asking for anything more than is already recognized in the international arena as a legitimate right. Canada is a party to many of these conventions and therefore answerable to international fora for any contraventions.

There is no reason, therefore, for First Nations to be defensive about their objectives, or about their commitment to the protection of their rights. Federal authorities frequently employ the tactics of representing legitimate First Nations demands as "unreasonable" and "impossible" flights of fancy. If the fundamental truths that describe the nature of aboriginal and Treaty rights are unacceptable as a basis for negotiations, there is clearly little point in any constitutional amendment that commits Ottawa to negotiate.

In the final analysis, therefore, it is the Federal government that has cause to be defensive and accountable for the shameful way that there are double-dealing with First Nations. An old adage says that "the world stands aside for the man who knows where he is going." Much the same can be said for the First Nations of Canada once they set their course and stick to it.

3. CONCLUSIONS AND RECOMMENDATIONS

(a) The Federal Government is aggressively pursuing termination policies and is seeking enabling constitutional amendments that are open to such wide interpretation that termination will gain constitutional sanction instead of remaining purely a political initiative as at present. In defence of aboriginal and Treaty rights and to keep open constitutional avenues for the establishment of genuine self-government, First Nations are obligated to initiate countermeasures.

(b) One immediately effective countermeasure would be a nationally supported First Nations' Declaration or Accord that spells out a set of specific guidelines for the future development of self-government regimes that are founded on a recognition of aboriginal and Treaty rights. Such a First Nation consensus could be tabled at the forthcoming constitutional conference for ratification.

The objective would be to get a constitutional guarantee that the guidelines would be observed in the future and that all present Federal policies and initiatives would be recast to conform to these guidelines.

(c) The struggle to save First Nations and their lands from absorption into the regimes of provinces, and from ultimate extinction, may have to be continued for many years. The most that can be expected from the forthcoming conference is another stalemate if First Nations succeed in blocking Ottawa's constitutional amendment stratagems. It will therefore be important for First Nations to develop and sustain a coordinated campaign designed to mobilize domestic as well as international pressures on the Federal Government to change its course.

(d) Should the struggle be sustained for many years, First Nations could implement many kinds of unilateral measures that have the effect of reinforcing their rights and laying the groundwork for future self-government. For example, political and administrative structures, nomenclature, relationships, and many other features that have been imposed from the outside by legislation and regulation can be challenged and replaced unilaterally with regimes that are more appropriate and acceptable to First Nations.

(e) It is time for First Nations to take their own destiny into their own hands. In doing so, there will be new scope and opportunity created for the exercise of leadership, imagination and initiative that is certain to result in significant gains in Canada. Such action, moreover, could provide an example and show the way for aboriginal people in other countries, many of whom are also under siege.

Annex A

Draft Constitutional Declaration (or Accord)

I. Any population of aboriginal people within Canada who share a common language, customs and traditions, and who have been in occupation of a territory from time immemorial, shall be entitled to the preservation of their identity and culture within Canada's federal system of government, and collectively shall be known hereafter as the First Nations of Canada.[6]

II. All lands and resources of First Nations which have not been formally and legally ceded in accordance with the Royal Proclamation of 1763 will be defined by aboriginal title and shall be the demesne lands and resources of the First Nations.[7]

III. The lands and resources of First Nations will enjoy the certainty of boundaries which will be adjudicated and permanently fixed by third-party Boundary Commissions, and will heretofore no longer be subject to annexation or appropriation by other jurisdictions.[8]

IV. First Nations who have ceded territories to the Crown by Treaties, or other legal means, will continue to exercise residual aboriginal rights on such lands, including hunting, fishing and trapping rights where provided, as well as other rights that were not explicitly forfeited as a result of such agreements.[9]

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[6] ***Annex B, Clause I:*** This clause defines a First Nation in terms that are recognized in international law and conventions. It is about time that First Nations were recognized as political and cultural entities in Canada. As matters now stand, Federal authorities even challenge the validity of the term "First Nations", claiming that such a concept has no legal or constitutional meaning and therefore, no place in the vocabulary of negotiations and agreements.

[7] ***Annex B, Clause II:*** This clause challenges the current definition of "aboriginal title which originates with the Justice Department and shapes all Federal transactions with First Nations. The Justice Department takes the view that First Nations merely have an "interest" in their lands which is based on traditional occupation and use, and that this "interest" is merely a burden on the paramount title of the Crown. Any lands that First Nations are permitted to use, therefore, depends on the "goodwill" of the Crown, which can expropriate whenever it requires such lands for other purposes.

This Federal interpretation of "Aboriginal title" is clearly unacceptable and is not even supported by international conventions. For example, Part II of Convention 107 of the *International Labour Conference* states that:

> "The right of ownership, collective and individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognized."

(This Convention deals with the protection of Indigenous people in Independent Countries.)

The Clause in the proposed Declaration defines First Nations as "demesne lands and resources". This is a legal description which states that First Nations exercise full jurisdiction and title throughout their territories and that such jurisdiction and title is immune from alienation to either the Federal or Provincial Crowns.

[8] ***Annex B, Clause III:*** This clause in effect rejects any further depletion of First Nations territories and resources as well as the Comprehensive Land Claims Settlement policy that is currently the means by which this is done. Instead, it proposes that independent and impartial Boundary Commissions be established (which will be guided by international Conventions and laws), to establish permanent boundaries defining First Nations territories. Such boundaries will constitute the final accommodation that still needs to be made between First Nations lands and provincial territories.

It is a truism that Indian self-government must remain a fiction unless active steps are taken to consolidate and define, in final terms, the full extent of First Nation territories.

[9] ***Annex B, Clause IV:*** Those First Nations who have signed treaties with the Crown would retain lands now known as "reserves" under aboriginal title as defined above, and add to their territories any additional lands that are due under unfulfilled Treaty provisions. It is always preferable, of course, to insist on land and resources instead of money, because it is the former that serves as the basis for future political and economic survival. This clause also recognized the need for applying proper rules of Treaty interpretation to define aboriginal rights that were never extinguished on lands that were ceded to the Crown.

V. First Nations have rights to self-government through political, legal and administrative institutions that are appropriate to their needs and circumstances, and compatible with established Canadian principles of peace, order, and good government, and the powers exercised by First Nations will be entrenched in the Constitution at a time when they are fully defined and implemented.[10]

VI. First Nations have rights to fiscal and program benefits and arrangements and to standards of services that are equivalent to those enjoyed by the other partners in Confederation and their citizens.[11]

VII. First Nations have rights to evolve as governments through intermediate stages toward full constitutional status, and if circumstances so dictate, to federate with other First Nation Governments for various purposes.[12]

VIII. Any existing political, administrative and legal structures, processes and instruments that are inconsistent with the spirit and intent of this Declaration will be phased out, the pace and timing to be regulated by agreement between the respective authorities of each First Nation and the Federal Government.[13]

IX. Nothing in this Declaration will be interpreted to mean or imply the establishment of political, institutional or fiscal arrangements, or the exercise of First Nations' powers of self-government in ways that extend the jurisdiction of provinces over First Nations, their lands and resources.[14]

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[10] ***Annex B, Clause V:*** This clause sets a future course of development for self-government in terms that ensures ultimate constitutional status and protection. It is assumed in this clause that each First Nation may want to set their pace of development, and to adopt political, legal and administrative arrangements that are different from those adopted by other First Nations.

[11] ***Annex B, Clause VI:*** The Federal Government, the Provinces, and the Territories have all developed fiscal and program arrangements in the form of equalization and transfer payments, deficit funding, and other mechanisms. By means of these various systems of redistributing the country's wealth, the intent is to ensure that all the partners in Confederation enjoy more or less equal standards of living and services. First Nations are present are not on this redistribution network, and never will be, If the termination plans of Ottawa succeed.

This clause in the Declaration is intended to turn things around and get First Nations their share of the country's wealth in the form of funding and services. Ottawa insists, of course, that this would cost too much. This argument does not hold water.

For example, Federal deficit payments for around 60,000 people in the North West Territories amounted to around $9,500 per capita in 1986 (a deficit payment is the difference between the amount the NWT Government raises in taxes and the full amount they need to discharge their responsibilities as a government.) On a per capita basis, First Nations get about half of this and remain short-changed in virtually every program sector.

Ottawa's intention now is to maintain these budgetary ceilings and generate fiscal pressures on First Nations to look to provinces for their salvation via local government/municipal development. Such a Federal policy amounts to blatant discrimination and is nothing less than a form of unconscionable aggression against First Nations.

[12] ***Annex B, Clause VII:*** This clause in effect underlines the rights of First Nations to evolve to full constitutional status as governments through transitional stages that will provide time for preparation, training, institutional development, experimentation, etc. Such transitional stages could accommodate local Indian governments, regional Indian governments, and even larger scale arrangements. These would all be within the framework of a direct relationship to the Federal Crown (which, by definition, excludes any form of provincial jurisdiction.)

At the same time, the essential message in this clause is that whatever line of development emerges, it is the First Nation who will be designing and building toward their new constitutional status.

[13] ***Annex B, Clause VIII:*** This clause recognizes that Indian people are at present saddled, constrained and even oppressed by structures, mechanisms and procedures that result from an externally-imposed system of rule and control. Such a system cannot be dismantled overnight, even though much of it is dysfunctional, destructive, and designed to affect termination. The intent of this clause, therefore, is to put a stop to any further refinements to an unacceptable system and to start replacing it step by step with building blocks that will form the foundation of genuine self-government.

[14] ***Annex B, Clause IX:*** This clause clearly closes the door on termination. It categorically excludes any legal, institutional or program arrangements that have the effect of extending a province's jurisdiction over Indians and their lands. At the same

X. This Declaration applies to all First Nations who subscribe to its provisions and who have signified their agreement with the signatures of their respective Chiefs and Councils.[15]

(Annex B, which contains explanatory notes to the Declaration in the original document appears as footnotes, one by one, in this version.)

General Comment I

As a mechanism which is intended to result in constitutionally-protected guarantees that define a direction for the development of First Nation governments, the Declaration also serves a number of other strategic purposes. Thus:

– the Declaration recognizes that elected Chiefs and Councils currently represent the accountable authority in each of the Indian communities throughout Canada.

– A draft Declaration or Accord that is ratified by the majority, or possibly all of the Chiefs and Councils, could not be easily ignored either by the First Ministers this coming Spring, nor by the spokespersons who are present to speak on behalf of Indian Interests.

– To have any impact on the First Ministers Conference, a Declaration or Accord would have to represent a clear First Nations consensus in the form of a single statement. Regional variations in construction or wording will tend to dilute the impact and allow different statements as evidence that a consensus among First Nations is impossible.

– A single and broadly-supported First Nations Declaration will have the effect of checkmating the Prime Minister's "damage control" strategy in the event the constitutional conference results in another failure. His intention is to explain such a failure to the media and the public by blaming First Nations for being in disagreement and at cross-purposes among themselves. Mulroney's government is now riddled with scandals and he would not like to experience additional pressures on the Indian front. This could work to the advantage of First Nations.

– A Declaration or Accord along the lines proposed offers all Chiefs and Councils a means to express a consensus by proxy at the constitutional forum and to negate the dangerous compromises that are cooking on the constitutional back-burner. To compromise aboriginal and Treaty rights and rights to self-government results in half-rights and no-rights.

– If the First Ministers reject a Declaration or Accord that is being put forward by the Chiefs, the effect will be to flush out Federal termination policies into the open where they can be properly exposed and debated in the national media and in the international arena. This will also buy First Nations time to mobilize broad political support for their cause, and take other initiatives.

– Should the Declaration or Accord be ratified at the Constitutional Conference, First Nations will have gained for the first time a clear set of constitutionally-protected specifications that define a line of development for Indian self-government in ways that preserve the integrity and substance of aboriginal and Treaty rights.

General Comment II

This is probably less than eight weeks left before the Constitutional Conference takes place. The current dates that the Federal Government has targeted are March 26-27, 1987.

If the constitutional outcome is to be influenced at all by the Chiefs of Councils of Canada in a way that demonstrates a broad consensus among them, then action will have to be taken now to get their signatures on a Declaration. This could be attempted in regional assemblies that are scheduled before the end of March and by recruiting "Bands" to the cause who may be unable to be represented at assemblies. Whether the declaration is handled in the form of Band Council Resolutions or in some other way, the aim should be to keep its clauses as intact as possible.

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time, it does not exclude the possibility that some First Nations may want to enter into agreements with provinces that are inter-jurisdictional in nature. Such agreements, for example, could provide for the purchase of goods and services by a First Nation from a province under a set of conditions and for a period of time that is mutually acceptable. Inter-jurisdictional agreements of this nature do not entail any loss of sovereignty by any of the parties to it.

[15] This clause provides that any First Nation who is unable or unwilling to support a Declaration or Accord along the lines proposed will not be bound by any resulting consensus. This is achieved simply by withholding the signatures of the Chiefs and Councils concerned.