

THE STATUS AND RIGHTS OF THE JAMES BAY CREES IN THE CONTEXT OF QUÉBEC SECESSION FROM CANADA

Grand Chief Matthew Coon Come¹

Wachiya! Thank you for the invitation to speak here today, and for your warm welcome.

A week ago today, the secessionist government of the Parti Québécois was elected to rule in the Province of Québec. Another secessionist party, the Bloc Québécois already sits in the Canadian federal Parliament as the Official Opposition. The leader of the Bloc Québécois, Mr. Lucien Bouchard, spoke here in Washington last March.

It is no secret that the elected government in Québec now intends to make every effort to take Québec out of Canada. The issue of Québec's secession from Canada has moved from the hypothetical to the distinctly possible.

I believe that America's interests will be challenged by the events now taking place in the Province of Québec. I believe that Americans in particular, with their persistent and heartfelt sense of justice and fairness, and their concern for fundamental human rights, cannot turn their backs on threatened abuses or injustice.

I am here because something wrong could soon take place in my country. I am here because the Aboriginal peoples, who have been the historical victims on this continent for five hundred years, are in danger once again of being dispossessed and shoved aside. This time it is proposed that we simply be handed from our country to a foreign country against our will and without our consent.

I want to make sure that I am fully understood today, so I will offer my apologies for those who

already know our history, because I will first give you some background.

I am a Cree Indian — an elected leader of my people. The Crees have lived, since the end of the last Ice Age, in the territory surrounding James Bay, at the southern end of Hudson's Bay. The Inuit people live to the North of us, and together we occupy a territory about twice the size of California. We are indigenous, that is, Aboriginal peoples, and to this day are the only peoples to live permanently in this territory.

Long before there was a Canada or a United States, our territory was given its name — *Eenou Astchee* — the people's land. We Crees number about 12,000, we continue to hunt, fish, and trap as a major economic pursuit, and we live in nine different communities that are spread out over hundreds of miles. It is a beautiful, and for the most part, pristine land that has only come under development pressure during the past twenty years.

We have always been the majority inhabitants of our territory, which we have never left. We have never been involved in an armed conflict or uprising with Canada or any colonial power. We have never, until recently, faced any political threat to our territory or our existence as a people. We have our own language, culture, history, legal system, social structure, traditions and beliefs. We have always conceived of ourselves as one people, tied together by the land we share and care for, and upon which our survival has always depended.

We Crees are not "nationalists." That concept does not exist in the Cree language. Our tie to the

land is not just political, it also is physical. We are part of our lands.

Our connection to the land is, to this day, barely understood by others. Few who have claimed over the centuries to own and govern our lands have even been there. On the 2nd of May 1670, King Charles II of England "granted" the entire Hudson Bay drainage system to the "Company of Gentleman Adventurers Trading into Hudson's Bay," also known as the Hudson's Bay Company. He named this vast area of land "Rupert's Land" in honour of his cousin Prince Rupert. This grant lasted until 1870, when "Rupert's Land" was annexed to Canada by Queen Victoria at Windsor.² The colony of Canada at that time was just three years old. Thirty or so years later, in 1898 and then in 1912, "Rupert's Land" was broken up and given to the Canadian provinces of Manitoba, Ontario, and Québec.

Thus it was not until 1912 that the largest part of *Eenou Astchee*, the Cree Territory, somehow became part of the Province of Québec. The Cree Territory was never part of the historical entity known as Québec. In colonial terms, it was a territory under exclusive Canadian federal jurisdiction until 1912.

During all of these years of Royal and colonial gifts, transfers, and jurisdictional changes, we Crees were never consulted, or even informed. This was all done without our consent, and without our knowledge. Based on the racist beliefs and practices of those days, we were described in colonial documents as wild creatures and squatters.

However, certain conditions for the settlement of Native rights and interests were attached to the 1912 Act of Parliament that granted our lands to Québec.³ But nothing was done, and still no-one spoke to us, for a further 60 years. Then in 1971, again without so much as notifying the Crees, Québec and its provincially-owned electric utility Hydro-Québec, started construction of the massive James Bay Hydro-electric Project, that would flood and destroy several sensitive regions in the Cree Territory.

We went to court, and won a landmark case on our rights. But Québec's highest court summarily overturned our plea for relief, which we based on the requirements of the 1912 Act transferring a portion of Rupert's Land to the Province of Québec. Québec argued that we Crees had the legal status of "squatters," living on, but not in possession of, our

traditional land.⁴ Unabashed, the Court ruled that our rights to our lands had been extinguished by King Charles II's distant gift to Prince Rupert, way back in the 1600s!

Ironically, the Supreme Court of Canada stated in 1990 that the James Bay Hydro-Electric Project was "initiated without regard to the rights of the Indians who lived there, even though these were expressly protected by a constitutional instrument."⁵

But this statement came too late for the Crees. We had already entered into the James Bay and Northern Québec Agreement back in 1975. This Agreement, which was entered into under conditions of duress and real oppression,⁶ is now purported to have "remedied" the previous 400 years of colonial manipulations.

Such as it is, the Agreement is a treaty that was negotiated within a federalist context, between the Crees, the Government of Canada and the Government of Québec, as a Canadian province. This is critical in the current context. This treaty establishes and confirms rights and obligations emanating from *two* levels of government, with intentional and inherent checks and balances which were fundamental to us. In particular, it is specifically recognized that the Parliament and the Government of Canada have a "special responsibility" to the Crees. The rights we have in this treaty with the governments of Canada and Québec are specifically enshrined within the Canadian Constitution.⁷

In confirming this Agreement by law in 1977,⁸ the Parliament of Canada simultaneously enshrined permanent Cree rights as citizens of Canada and residents in the Province of Québec, as well as the other rights contained in the treaty. These terms and conditions may only be amended with the consent of the original signatories. Our relationship in perpetuity with the federal Crown and Parliament are, in law at least, not subject to unilateral abrogation or transfer.

I will complete this short history by jumping back to the 18th century, recalling that France surrendered its part of what later became the Province of Québec in 1763, in the Treaty of Paris. That surrender and extinguishment followed the conquest of the French by the British on the Plains of Abraham in Québec City in 1759. Importantly, the borders of the Province of Québec were intentionally

drawn in 1763 to *exclude* the lands of the Hudson's Bay Company, which included the Cree Territory far to the North.

Throughout this time, the Crees' way of life went largely unchanged, because there was little or no contact with government authorities; and although our rights were purportedly affected, we remained unaware of all of these jurisdictional implications. Our elders tell us the stories about the French soldiers coming down the frozen rivers to attack the Hudson's Bay Posts in James Bay, but the Hudson's Bay Company remained, and English became the second language of the Crees.

It was not until 1963 that the Province of Québec sent the first government officials into the Cree Territory, but no services were provided then by Québec and little happened until the James Bay Project in 1973. Last year the Government of Québec held formal ceremonies commemorating its presence: "Thirty Years in Northern Québec."

In his study on secession, American scholar Allan Buchanan questions the legitimacy of secession in contexts where the secessionist group acquired all or some of its territory through unjust or nefarious means. Buchanan states:⁹

This may be an accurate description of the situation in Québec... For one thing, the French acquired at least some of the territory in unjust ways from the various Indian tribes (some now extinct, some virtually so, and others readily identifiable) who originally occupied the land. For another, some portions of present-day Québec were ceded to the province by the English after unification.

Even Québec government officials do not really know Cree history. I remember that the Crees were rebuked in 1977 by Québec officials for not speaking and using the French Language. A law passed at that time prohibiting the public use of languages other than French in Québec, was imposed in the Cree and Inuit Territory. After strong protests and demonstrations of civil disobedience by the Crees and Inuit, the French Language Law was imposed in the rest of Québec outside of our Territory, but the Crees and Inuit won an exception substantiated on our treaty rights.

It is because our rights as Aboriginal peoples of Canada could forever and irrevocably be altered and

diminished in this conflict, that I must speak to you. I wish to emphasize that I am not here today to express our fears about whether our human rights will be respected in an independent Québec. We are promised daily by the secessionists that we will be well-treated. But the Crees are not seeking such assurances concerning their rights in some future independent Québec — that is not the point at this time. No, I am here because the process of secession itself, as proposed by the government of Québec, involves imminent denials of fundamental human rights.

The Parti Québécois, now the Government of Québec, proclaims the Québécois — that is, anyone who may presently reside in the province — a people. The Parti Québécois then claims for that Québec people the fundamental right of self-determination, while in the same breath denying the Crees and other Aboriginal peoples this self-same right.

The Parti Québécois, now the Government of Québec, states that we have no rights in our land, that these have all been extinguished through centuries of colonial acts. It always fails to mention, however, the extinguishments and surrenders of the territorial rights of Québécois at the Treaty of Paris and again when Québec joined Canada in 1867.

The leader of the Parti Québécois, now the Premier of Québec, has stated that the Cree people have no valid claim on their territory because, he says, our rights were all extinguished when the James Bay and Northern Québec Agreement came into force in 1977.¹⁰ With respect, we disagree. In any case, Mr. Parizeau neglects to mention, of course, the many federalist aspects of the Agreement that bind his Province and the federal government to the Crees.

All these statements constitute a profound double standard, a discrimination we can only conclude is based on race, in breach of all international standards. An observer of this situation noted recently in the *Cornell Journal of International Law*:¹¹

A self-respecting international law cannot apply as lofty a principle as self-determination in a racially discriminatory manner: 'yes' for whites in Québec, 'no' for indigenous peoples throughout Canada.

All of these assertions of the Parti Québécois, now the government of Québec, involve breaches of domestic and international law and of our human rights.

Fundamentally, there is no right for a portion of a State to secede, either in international or in Canadian constitutional law. To accomplish its stated goal, the Government of Québec will either have to persuade the Canadian State to amend its Constitution to dismember itself or Québec will have to secede unilaterally. In either case, we intend to ensure that the constitutional and human rights of the Aboriginal peoples are not violated.

There are many injustices in the Americas that bring all of us to this point in history — wars waged, battles lost, the powerful against the weak, the caprice of monarchs, the treachery of tyrants. None of this is fair, but here we are, anyway — those of us who have survived. The Aboriginal peoples of the Americas have without doubt been the most tragic victims of European migration to the “New World.”

Yes, we fight against injustice, we file land claims in the courts, we demonstrate to defend our rights, we seek the further recognition of our status and rights in international forums. But this does not constitute an effort to turn back the clock on history itself, and to demand total independence and absolute sovereignty over our peoples and their territory. Much as some of us might like to, we recognize that the best we can do is defend and enhance the rights that belong to us as peoples and nations.

As a result, we live in relatively stable societies, governed by known laws and procedures (though mostly not of our own making) which, although frustrating and often unfair or unjust, are evolving to provide some means for us to pursue the interests of our people. Over time we will redress the wrongs we have suffered, within the framework of law and international human rights standards. We spend a great deal of time and money in the law courts and even at the United Nations. But, and I say this again, we have not tried to change history.

In Québec, something else is happening. In Québec, a group representing less than half of the population of the province, wants to “correct” history. Automobile license plates in Québec carry the motto: “Je me souviens,” which means “I remember.” What is it that I, as a Cree Indian, am supposed to remember?

Québec was never independent. It was a French colony, surrendered by France in war — a strip of land along the upper St. Lawrence River where two

European powers fought for control of Aboriginal land. From an Aboriginal point of view, both the French and the English are recent arrivals. Whatever upsetting defeat may have occurred on the Plains of Abraham in 1759, it does not begin to compare with the dispossession and oppression that has been practised against the Aboriginal peoples.

Now, the political leaders of the Official Opposition in the federal Parliament and a provincial government in power are demanding total independence and sovereignty for Québec so that it can, as Mr. Bouchard claims, reach its full economic potential. Québécois want to become a “normal people,” Premier Parizeau stated last week. These are the reasons being put forward as the justification for the dismemberment of Canada.

Under international law, the right of self-determination may not be exercised so as to affect the territorial integrity of a recognized State, unless that State violates the basic human rights and fundamental freedoms of peoples within its borders. Only then may secession become the only practical remedy.¹²

The Province of Québec can hardly claim that the rights of its citizens are now being abused. The Prime Ministers of Canada have come from Québec repeatedly through the history of Canada, including for 25 of the past 26 years. The leader of the Official Opposition in the House of Commons is a Québécois; the leader of the Progressive Conservative Party, which formed the previous federal government is a Québécois; the Chief Justice of the Supreme Court is a Québécois; the Canadian Ambassador to the United States is a Québécois. And as Mr. Bouchard told you, his secessionist party has been treated fairly in Parliament even though it openly avows the dismemberment of Canada itself. Québec holds 75 of 211 seats in the House of Commons. One third of the seats in the Supreme Court of Canada are guaranteed to Québec.

Nevertheless, the secessionist government in Québec has made public its program to separate from Canada, which will formally place Québec on the course of secession. Within one year, Premier Parizeau, has promised to hold a referendum on separation from Canada. If there is a “yes” vote on the referendum — even a fifty-per-cent-plus-one “yes” vote — Québec promises to separate. If Canada refuses, then Québec will unilaterally declare independence and attempt to impose its own laws on

an exclusive basis throughout the territory of the existing province.

As an Indian, I am terribly disturbed by this scenario, which makes no allowance for the rights of my people.

In May Mr. Bouchard stated publicly that the Aboriginal peoples in Québec do not have the right to self-determination — in his words, “it does not belong to them.”¹³ Yet Mr. Bouchard’s chief legal advisor, Professor Daniel Turp of the University of Montreal, wrote in 1992:¹⁴

The fact that [Aboriginal peoples] constitute peoples who are self-identified as peoples confers on them a right of self-determination *at the same level as Québec*. Aboriginal nations and Québécois both... have a right to self-determination. In terms of legitimacy, the Aboriginal peoples, the Aboriginal nations on their territory, are quite ahead of the francophones of Québec, the anglophones of Québec, all the Europeans and other nationalities on this territory.

The secessionists simply are saying that we Crees may not choose to stay in Canada. They are saying that whether we like it not, and with or without our consent, we are aboard the canoe of independence, and may not stay where we are on the dry land of Canada. We are being told that we must join with the secessionists in their adventure to redress their historic wrongs.

And if the Crees refuse to go with Québec, what then? What will Québec do if the Crees invoke their treaty rights as citizens of Canada, protected by the Canadian Constitution? What will Québec do if we ask the governments to respect their own laws and respect our constitutional and treaty rights — the right to live on our lands in Canada and to benefit from all of the rights of Aboriginal peoples in Canada?

Mr. Jacques Brassard, now a prominent member of the new government in Québec City, stated in May that an independent Québec would ensure that its laws are respected by those who may resist separation from Canada. He was referring primarily to the Crees. Mr. Brassard warned: “We would have to maintain order with the means of a modern state; that means laws, courts, *and police forces*, which are also institutions and instruments of a state.”¹⁵

We Crees are not nationalists, and we are not contemplating secession or insurrection. We have never and will never use violence. We ask ourselves, however, in the face of the potential breakup of Canada: Who is it that is really threatening these things?

This, ladies and gentlemen, is the situation we face not many miles from here. If the Crees want to remain in Canada, we will have to face the police forces and army of a State that is itself acting in defiance of Canadian and international law. Mr. Bouchard was careful to avoid these questions when he spoke here in March. He attempted to soothe the American people, to make it all look easy.

My people are worried. At our Cree Nation Assembly last month they gave the mandate to hold a Cree referendum if Québec holds its promised referendum on secession. We Crees do intend indeed to make our own choice, to assert a right of self-determination at least equal to that claimed by Québec.

Of course, the new government of Québec promises that it will adequately define and then respect the rights of the Aboriginal peoples in an independent Québec, and they ask us to be content with that.¹⁶ But they ignore the fact that the very establishment of an independent Québec through the process they describe will entail violations of our basic human rights and fundamental freedoms. Among these violations are denial of our nationality, denial of our right of self-determination as a people, unilateral abrogation of our treaty rights, and the imposition of a new international border between us and our brethren in the rest of Canada.

Mr. Parizeau, now the Premier of Québec, reacted immediately and heatedly to the Cree decision to hold our own referendum. He declared that the Crees would have to respect the wishes of Québec in its own referendum. He stated that Québec’s borders were inviolable, that the territorial integrity of Québec with its present borders could not be questioned. He stated again that the Crees, as an Aboriginal people, do not have a right of self-determination.

These double standards are deeply disturbing, and make us fear for the future of our people. Premier Parizeau claims territorial integrity for Québec, but not for Canada, a recognized State. He objects to the idea of a nation-wide Canadian referendum on Québec secession, stating that

Québecers have the right to decide for themselves. However, when my people take a similar position and explain that the future of the Crees can only be determined by the Crees themselves, and that the Crees will not permit themselves to be forcefully integrated into the entire Québec population, Mr. Parizeau demurs.

The secessionists are now accusing the Government of Canada of engaging in a conspiracy with the Aboriginal peoples to use the Aboriginal issue to block separation. This is both paternalistic to us, and untrue.

The Crees saw all of this coming several years ago. We began to research our rights under Canadian and international law. We sought to further delineate our rights, and to inform the international community of the threatened violation of our human rights. Our basic study on Cree rights in the context of Québec secession was tabled before the United Nations Commission on Human Rights in 1992, and published subsequently in the *New York International Law Review*.¹⁷

The Aboriginal peoples, and the Crees in particular, have now indeed been recognized as crucial elements that could prevent the secession of Québec. But it was not until May of this year that the Canadian federal Minister of Indian Affairs, Ron Irwin, finally stated the obvious, and confirmed the right of the Aboriginal peoples together with their territories to choose to remain in Canada.¹⁸ The hostility and outrage of the secessionists was deafening, but in the end they had to admit that he might have a point.

After all, Mr. Irwin explained, the Crees have been on their lands for 5,000 years. The Canadian Prime Minister stated that Mr. Irwin was doing his job, and that as long as there was a Canadian Constitution, the federal government would have a special relationship with Aboriginal peoples. He also observed that while Québec's borders as a province are guaranteed in the Canadian Constitution, there was no guarantee that an independent Québec would have the same borders as the present Province of Québec.¹⁹

We are confident that our position in law is clear. The Canadian Constitution recognizes us as a people. As a people, the Crees are entitled to enjoy the right of self-determination described in the two

International Covenants and other United Nations instruments. International law experts consider that Québec, as an administrative entity within Canada made up of diverse populations, is not a unit for self-determination.

An act of secession by Québec would constitute a sufficient violation of the Crees' fundamental rights for us to invoke an external right of self-determination, and give the Crees, at the very least, the choice to remain in Canada.²⁰

As for the purported extinguishment of Cree rights, legal experts note that the concept, like discovery, is increasingly being rejected as racist against Aboriginal peoples and incompatible with modern concepts of human rights.²¹ In any case it must be noted that extinguishment of Cree rights, if they occurred at all, did so in a federalist context in which our rights to remain in Canada were enshrined. And if extinguishment is an issue to be used against the Crees, let us not forget that Québec's sovereign rights were also extinguished and surrendered in 1763 and again in 1867.

I have already referred to the conclusions of secessionist advisor Professor Daniel Turp, who has stated the view that the Crees would have the right to choose — Canada, Québec, or even independence. Likewise Gordon Robertson, former Clerk to the Privy Counsel, and once Canada's most senior civil servant, predicts that there may be dire consequences if Aboriginal constitutional rights are ignored.²²

The secessionists like to say that it would be absurd for 12,000 Crees and 10,000 Inuit to determine the status of such a large area of land. This is, of course, a political and not a legal argument. So is Mr. Bouchard's argument that Québec is the only "nation" of 7 million people in the Western world who do not have their own State. New York City could make the same claim. Many Europeans comment on the fact that Canada is too large a country to have a population of only 28 million people.

However, in the context of Québec secession, the political arguments are likely to be just as important as the legal ones. The big questions are: What would Canada do? Would certain countries recognize Québec? Would human rights be a factor in the decision to recognize the new State?

The most critical question for us is: Would force be used against the Crees if we asserted our right to choose? The secessionists predict that all will be peaceful and reasonable. Nevertheless, they now state that they will assemble an army. Asked who would threaten them, they reply that they need an army "just as any modern State." When I think of Mr. Jacques Brassard's comments about the instruments of a modern state, I can only think that one purpose of the Québec Army will be to deal with the Aboriginal people who may reject being taken from Canada.

The secessionists also raise the spectre of an Indian uprising in Canada. If the right of self-determination of the Crees in Québec is recognized, they claim, then all the Indians in Canada and the United States will have the right to set up their own countries and the situation would be intolerable. This line of argument is absurd.

Please recall, it is not the Aboriginal peoples who are attempting to upset the political makeup of North America. I must repeat: the Crees are not secessionists and we are not nationalists. If Québec makes no attempt to change unilaterally a constitutional landscape in which we are an explicit stakeholder, then the issue of our right to external self-determination remains moot. Our right of self-determination would arise from the fundamental denial of our rights in the process I have just explained. Self-determination conveys no right of secession in States where human rights are respected.

The big question, as always, is: What would the United States do? Mr. Bouchard came here to Washington to tell the American people that he did not plan to take the campaign for Québec sovereignty beyond Canada's borders.²³ But he had just come from a meeting with the United Nations Secretary General, and he subsequently went to Europe to meet with the most senior members of the French government to discuss the secessionist cause.

Here in Washington he told you that he was simply providing information on an internal Canadian issue. He said this despite the fact that the secessionists have said over and over again that the success of their venture will depend on a favourable reception from the United States, and they have lobbied here to achieve this end.

I will not pretend that I am not interested in your support. We Crees and the other Aboriginal peoples in Québec need the support of the American people.

We believe that the interests of the Aboriginal peoples are at stake, but also that the honour of Canada and the community of North American nations is also at stake. For this reason, we want you to ask tough, vigilant questions of Québec now, and also if and when it requests membership in the club of nations. This membership should not be granted if its achievement can only be accomplished through the breach and denial of our fundamental human rights.

So I ask: Where will the United States stand on this issue? Is it hands-off no matter what happens?

Québec secession is essentially an ethnic nationalism that is supported by barely half of the Québécois of French descent (a majority of whom, by the way, agree that the Aboriginal peoples have the right to make their own choice).²⁴ Mr. Bouchard told this audience that Québec nationalism is "territorial nationalism." There is no such thing — and it is hard to imagine a territorial nationalism where two-thirds of the "national" territory only came into the province in 1912. No, these arguments were given only to quiet American concerns.

It should be obvious that others may have a great interest in what happens in Canada. We have heard first-hand reports in Geneva that the secessionists have prior agreements with Belgium and France to quickly recognize an independent Québec. It is impossible to predict the outcome of any new arrangements in the political make-up of North America, or in the changes in trade relations that could occur in the North American trading bloc if European interests secure political affinities with an independent Québec.

A New York Times editorial late last week stated:²⁵

the United States has political, economic and neighbourly interests in keeping Canada whole, as well as a desire to avoid the chaotic unknown. As a global superpower, America wants stability on its borders, not neighbours engaged in a testy divorce... In power, the Parti Québécois may yet convince the majority of Québécois they would be better off as a nation apart. That would be unfortunate for all concerned.

We Crees also have strong political, economic and neighbourly interests in avoiding the chaotic unknown. But there is an important connection between Cree and U.S. interests. The U.S. is correctly

reticent about interfering in Canada's internal affairs. But it is beyond dispute that human rights issues are always a matter for international discussion and comment. It is also beyond dispute that the human rights of Aboriginal peoples, including the rights of Aboriginal peoples in Canada, are not fully respected.

It would be particularly unfortunate if Americans were to accept the position advanced by Michael Lind in his article in *Foreign Affairs* where he implicitly condones the oppression of small groups as an acceptable cost of Québec secession: "Québecers, if independent, might be more inclined to oppress American Indians in Québec," he observes, just prior to an explanation that he is of course "not condoning any injustice."²⁶

Full respect for the fundamental human rights of the Crees and the other Aboriginal peoples in Québec would include our right to choose whether we wish to remain in Canada in the event of Québec secession. Guaranteeing Cree human rights and choices — currently being denied by the Québec secession strategy — could decisively influence the desirability of the secession option. The guarantee of Cree rights and full respect of our treaty with Canada and Québec seriously could affect the Québec secession option.

Economically speaking, about 50% of the electricity generated in Québec is produced in the Cree Territory; 50,000 megawatt-hours per year with a value of some \$2 billion per year. From one-half to all of the electricity exported to the U.S. from Québec is generated on Cree lands. Millions of dollars worth of timber and pulp is taken from the Cree Territory every year, and many millions of dollars more of copper, gold, silver and other minerals. Much of this is imported into the United States. If Cree Territory remains in Canada, an independent Québec would be a smaller, poorer country than it is as a Canadian Province.

Politically, if Québec secedes with its borders intact, Canada would be split into two parts, east and west of Québec. If, however, Cree territory remained in Canada, Canada would remain continuous from coast to coast.

I want to conclude with a frank explanation of our interest in this entire issue. The Crees do not oppose the aspirations and legitimate expression of self-determination by any people; and we certainly will do nothing to prevent an expression of self-

determination by any populations in Québec, so long as there is full and equal respect for the rule of law and our human rights. Québec may well have legitimate claims, but it may make no valid claims on the Cree people or Cree Territory that would deny the Cree people's right to choose how we would be governed.

"What do the Crees want?" our critics ask. Let me end by telling you what I want for my people, and what we want for all Aboriginal peoples. We want to become legitimate and genuine participants in our society and its government. We want the Aboriginal peoples, who today are the most marginalized peoples in our country, to have a fair share of the wealth of the nation. We want our people to be treated with respect. We want our opinions and our beliefs to be taken seriously.

We want our lands and our environment protected from irresponsible and destructive development; and we want our people, who have cared for those lands and resources for thousands of years, to have a real say and stake in their future use. We want our people to benefit from the best educational and health services that we can provide. We want our people to have decent housing, sanitation, and clean water to drink, and meaningful economic choices. We want an end to tuberculosis, whooping cough, gastroenteritis and other endemic diseases that were eliminated in non-native communities in Canada decades ago. This is what we want for our people and I want for my children.

So when and if that day comes, and my people have made their choice, and I am asked — you can hold me to my word — this is what I will ask.

In the meantime, we ask to be treated equally and with respect for our fundamental rights, particularly in the context of the possible secession of Québec from Canada.

President Woodrow Wilson stated: "No right exists to hand peoples about from sovereignty to sovereignty as if they were property."

We feel that these words are as applicable to the situation facing Aboriginal peoples in Québec as they were when they were spoken. □

Matthew Coon Come

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Endnotes

1. These remarks were delivered by Chief Coon Come in an address to the Centre for Strategic and International Studies in Washington, D.C. on September 19, 1994. Endnotes have been added to this text by the Grand Council of the Crees (of Québec) for the purpose of publication in this journal.
2. See the *Rupert's Land and North-Western Territory Order*, R.S.C. 1985, App. II No. 7, included as item 3 in the Schedule to the *Constitution Act*, 1982 as part of the Constitution of Canada.
3. See Grand Council of the Crees (of Québec), *Submission to the Forty-Eighth Session of the United Nations Commission on Human Rights: The Status and Rights of the James Bay Crees in the Context of Québec's Secession from Canada* (Ottawa: Grand Council of the Crees (of Québec), 1992) at 75ff.
4. *Kanatewat v. James Bay Development Corp.*, [1975] C.A. 166, reversing [1974] R.P. 38, leave to appeal to S.C.C. granted [1975] 1 S.C.R. 48.
5. *R. v. Sparrow*, [1990] 1 S.C.R. 1075 at 1103-4.
6. See Grand Council of the Crees (of Québec), *Submission to the Royal Commission on Aboriginal Peoples*, (Montreal, 28 May 1993) and Grand Council of the Crees (of Québec), *Submission to the Royal Commission on Aboriginal Peoples*, (Montreal, 18 November 1993).
7. By virtue of s. 35 of the *Constitution Act*, 1982.
8. *James Bay and Northern Québec Native Claims Settlement Act*, S.C. 1976-77, c. 32. The preamble of this Act makes clear that the federal fiduciary responsibility for the James Bay Crees and Inuit continues: "AND WHEREAS Parliament and the Government of Canada recognize and affirm a special responsibility for the said Crees and Inuit." Moreover, it has been held by the Supreme Court of Canada that the federal Crown has a continuing fiduciary responsibility towards Aboriginal peoples: see s. 91(24) of the *Constitution Act*, 1867; *R. v. Sparrow*, [1990] 1 S.C.R. 1075 (S.C.C.); *Guerin v. The Queen*, [1984] 2 S.C.R. 335 (S.C.C.).
9. Allen Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Québec* (Boulder, Colorado: Westview Press, 1991) at 111.
10. See E. Thompson, P. Authier, "Ottawa won't abandon aboriginals; Will help them remain in Canada if Québec separates: minister" *Montreal Gazette* (18 May 94) A1; J. Aubry, "Québec Separation: Cree say army should be ready to guard lands" *Ottawa Citizen* (19 May 1994) A1.
11. M.C. Lâm, "Making Room for Peoples at the United Nations: Thoughts Provoked by Indigenous Claims to Self-Determination" (1992) 25 Cornell Int'l L.J. 603 at 618-619. The full text reads:

Indeed, if now Québec, whose ethnic 'depth' as Québécois (as opposed to French) is *chronologically* shallower than that of any other cultural group presently claiming self-determination, receives a hushed response from both Canada and the interstate system to its secession threat, what then remains of the prohibition against secession other than the selective and arbitrary exercise of raw power? Indigenous representatives from Canada attending last summer's Working Group session in Geneva passionately argued that a *self-respecting international law cannot apply as lofty a principle as self-determination in a racially discriminatory manner: 'yes' for whites in Québec, 'no' for indigenous peoples throughout Canada.*

See also B. Kingsbury, "Claims by Non-State Groups in International Law" (1992) 25 Cornell Int'l L. J. 481 at 496, who observes that the:

Cree in Québec ... have argued that if the province proceeded to exercise the right to self-determination, the Cree would have a separate international legal right to self-determination; that historically Cree sovereignty was not surrendered to Québec and could properly be (re)asserted; and that, international norms specifically applicable to indigenous peoples would also apply.
12. See Grand Council of the Crees (of Québec), *supra* note 3 at 8ff and *The Québec Boundaries Extension Act*, 1912, S.C. 1912 (2 Geo.V), c.45.
13. Bouchard's full statement in this regard was: "Native people do not have the right of self-determination. It does not belong to them. We have been very clear on that." See R. Gibbons, "Home and Native land" *Ottawa Sun* (26 May 1994) 11.
14. Assemblée Nationale, *Journal des débats*, Commission d'étude des questions afférentes à l'accession du Québec à la souveraineté (9 October 1991) No. 5, p. CEAS-137. Likewise, Gordon Robertson declares that: there is no clear principle in international law and there is no clear definition in any of the United Nations covenants ... that would say that there is a right of self-determination by the people of Québec as a whole, but no right of self-determination by an Aboriginal people.

Assemblée Nationale, *Journal des débats*, Commission d'étude sur toute offre d'un nouveau partenariat de nature constitutionnelle (22 January 1992) No. 15, p. CEOC-491.
15. See (Canadian Press), "Sovereign Québec would use police against dissident natives, PQ official says" *Ottawa Citizen* (31 May 1994) A3.
16. See, for example, D. Cliche, "The sovereignty and territorial integrity of Québec" (1992) 2(5) *The Network* (May 1992).
17. Grand Council of the Crees (of Québec), *The Status and Rights of the James Bay Crees in the Context of*

- Québec's Secession from Canada* (1993) 6 New York International L. R. 1.
18. See R. Seguin, "Irwin reassures Québec Natives" *The Globe and Mail* (18 May 1994) A1.
 19. See S. Delacourt, "Québec land not inviolable, PM says" *The Globe and Mail* (25 May 1994) A4.
 20. See C. Iorns, "Indigenous Peoples and Self-Determination: Challenging State Sovereignty" (1992) 24 Case W. Reserve J. Int'l L. 199 at 267:
 The argument relating to consistent application of the law is even more relevant in the case of Canada and the proposed secession of Québec. *If Québec is allowed to secede from Canada without objection from the international community then an argument can be made that consistent application demands that at least the indigenous peoples within Canada similarly be entitled to secede.* This argument is stronger than in the European examples, particularly because of the lack of history of oppression of Québec by Canada (it thereby does not fit the existing criteria for colonial or racist domination) or of imposed union with the other Canadian states, and because of the *satisfaction of these criteria by the indigenous peoples.* (Emphases added.)
 See also G. Marchildon & E. Maxwell, "Québec's Right of Secession Under Canadian and International Law" (1992) 32 Virginia J. Int'l L. 583 at 616-617:
 [t]he possibility of other secessionist movements within Québec (by...native peoples, for example) is not unfathomable. [Footnote to text: *In northern Québec for example, native Indians and Inuit remain in majority. Moreover, this territory has never historically been a part of French Canada, but was granted to Québec by the Canadian government in 1912 by virtue of the Québec Boundaries Extension Act, 1912, 2 Geo. 5, ch. 45.*] Indeed, the Cree aboriginal people of northern Québec have already made a formal submission before the United Nations Commission on Human Rights that, without denying Québec its right of self-determination, asserts a right of self-determination for the Crees.
 21. See, for e.g., R. Penner, "Power, the Law, And Constitution-Making" in *Aboriginal Title in British Columbia: Delgamuukw v. The Queen* (Montreal: Institute for Research on Public Policy, 1992) at 247-252.
 22. See G. Robertson, "A few hitches: PQ blueprint for sovereignty ignores constitutional realities" *Montreal Gazette* (23 June 1994) B4.
 23. See L. Bouchard, *Towards Québec's Sovereignty*, Notes for a speech to the Center for Strategic and International Studies, Washington, D.C. March 1994; and CBC Newsworld, *Bouchard Press Conference*, Washington, D.C., 1 March 1994.
 24. See A. Toulin, "Québec 'No' for independence; Majority back aboriginal referendum if province separates: poll" *The Financial Post* (28 June 1994).
 25. Editorial, "An Encouraging Signal from Québec" *New York Times* (15 September 1994).
 26. Michael Lind, "In Defense of Liberal Nationalism" (1994) 73(3) Foreign Affairs 87 at 91.

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