Exploitation of Resources against Land Rights: The Lubicon Cree and their Struggle for Survival[1]

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> «The story of the Lubicon Cree shows what can happen in Canada when a native community tries to assert rights to a territory rich in oil. It demonstrate that many people in Canada care deeply about the well-being of native people; but it also reveals to what extremes of deceit and cruelty federal and provincial governments are prepared to go to crush native rights.» (Goddard 1991:6)

Patronage and Termination

In 1992, the aboriginal peoples of Canada – the Indians, Metis and Inuit – did not find any reason to celebrate neither the quincentenary of the so-called discovery of the Americas, nor the 125 years anniversary of the Canadian Confederation. On May 22, 1867, Queen Victoria had proclaimed the «British North American Acts», the constitution of the so-called «Dominion of Canada». With this imperial act the aboriginal peoples lost their sovereignty. Article 91, paragraph 24 of the British North American Acts stipulated that from this time on the government and parliament in Ottawa exerts «(...) the exclusive Legislative Authority (...) to (...) Indians, and Lands reserved for Indians».

To put this article of the constitution into effect the government enacted a special legislation, the Indian Act. This legislation was to comprehensively control the life of the indigenous peoples; they were degraded to mere wards of the state.

And even worse, in the spring of 1969 *termination* loomed, a kind of final solution of the so called Indian problem. The quasi-revalorization to the status of «normal Canadians» would have extinguished the indigenous peoples, at least on paper. *Termination* intended to abrogate all reservations and special rights, to repeal the Indian Act as well as to dissolve the Department of Indian Affairs (DIAND). The government justified this program with article 7 of the Universal Declaration of Human Rights of 1948, stating that all human beings are born equal in rights. Yet, reservations and special rights would lead to inequality; thus, these violations of article 7 of the Human Rights' Declaration would have to be removed, if Canada wished to become a state which protects the human rights in a honest and credible manner, according the argumentation of the liberal government of that time. (White Paper 1969)

However, it can have disastrous effects when the Universal Declaration of Human Rights is applied to indigenous communities. It is true that the human rights protect the individual person of an indigenous people against the dominating state, but indigenous peoples or communities continue to be almost unprotectedly exposed to the arbitrary rule of the dominating state.[2]

Therefore, this new Indian policy of the Canadian government of 1969 – with the «absolution» given by the Human Rights' article – would have undoubtedly led to nothing less but to the ethnocide of Canada's first peoples. Fortunately, this attempted ethnocide triggered off an unexpectedly vehement reaction, not only among the indigenous peoples concerned but also among many white Canadians. A historic change emerged: the native people visibly manifested their claim to self-determination and were rewarded with a first success, after fighting a political struggle for several years: in 1982, they succeeded in explicitly confirming their legal existence in article 35 of the new Canadian Constitution. (Cf. Gerber 1984 and 1985)

Additional success became visible when in the fall of 1983 a Parliamentary commission – in which native representatives were also included – took up the demand for self-determination and specified the concept of an indigenous *self-government* in an extensive report. This socalled Penner Report[3] produced some optimism in Canada; and I shared the view that it was finally possible to find a universally acceptable solution for the self-determination of native people (cf. Gerber 1986). Yet today, my optimism of that time has completely disappeared. To my mind, a thesis has meanwhile materialized which can be pointedly expressed as follows: «Wherever natural resources can be found, there is no place for aboriginal peoples.»

[1] Revised English version of a paper presented at the joint conference on «500 Jahre Zerstörung und Widerstand in den beiden Amerika. Land als existentielle Frage», organized by the Swiss Ethnological Society and the Swiss Society of Americanists in Bern, Mai 14-16, 1992, as well as at a public lecture in the Ethnological Museum of the University of Zurich, Mai 20, 1992. (Translated by Helena Nyberg, Zurich)

[2] Some UN-conventions offer a minimal protection under international law, provided that a nation state has recognized these, so e.g. the ILO-Conventions 107 and 169. (Cf. also the Brundtland Report 1991, United Nations 1991)

[3] Named after the chairman of the commission, the liberal Keith Penner.

The Aboriginal Rights

Since the new Canadian Constitution has been put into effect in April 1982, the political and legal struggle is about the question how to interpret the 1st paragraph of the said constitutional article 35. Paragraph 1 of the article reads as follows:

> «The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.»

These «existing aboriginal rights» include rights pertaining to land that has neither been lost in a war nor ceded by a treaty. In the course of this paper, I am going to explain the position of the Canadian state as against this aboriginal land right, which has no legal grounds based on a treaty. The political and legal case of the Cree community living at Lubicon Lake in Northern Alberta serves this purpose.

Apart from the constitutional article quoted, a lawsuit was of decisive importance to the land rights' question of today; in 1973, the Supreme Court of Canada affirmed the fundamental existence of «aboriginal land rights».[4] Impressed by the ruling of the Court, the federal government hence extended the task of the Claims Commission that it had nominated in 1969: not only should this commission register so-called specific claims, i.e. legal claims based upon existing treaties, or those derived from the Indian Act, but it should also register so-called comprehensive claims, i.e. land claims on land that has neiher been lost through a war, nor ceded by a treaty. By the end of 1991, the Claims Commission had received over 500 claims relating to treaty violations and 35 *comprehensive claims (Coates 1992:1-10).* The fact that the government still has its difficulties to recognize the existing aboriginal rights is shown by the small number of settled *comprehensive claims* so far: on an average one every year.[5]

The *comprehensive claims* explicitly refer to the term of «existing aboriginal rights» in the constitutional article 35. But it remains to be clarified what «existing» really means, for example, for how long has a community lived on a claimed territory and how big is the entire used area. If this aboriginal living space has also be used by whites for a certain period of time and if in the end profitable resources are exploited, then the conflicting question of compensation comes into play. In other words: the quantitative extents of *comprehensive claims* –land size and financial claims – sometimes lead to such huge consequences that the «white side» of the negotiating table uses all dilatory tricks, such as the policy of divide and rule and other maneuvers, to get away as advantaged as possible.

On a national level, the course of the political events between 1982 and 1987 were decisive for the question of land rights. During this time, by means of a special constitutional mandate it was tried to interpret article 35, and above all, attempts were made to coherently define the term of «aboriginal rights». Yet, even after four meetings with the Provincial Premiers as well as with federal state officials and with the representatives of the four national native organizations no agreement was reached. Most of the provinces were against the proposal to introduce the already mentioned *self-government* as a genuine aboriginal right. According to the stated Penner Report of 1983, Canada should create a third government system of equal importance for native people in addition to the two existing government systems, namely the federal government and the province government. This third government should be granted equal rights to land and resources as granted to the provinces; however, those provinces rich in resources could not approve of this at all.[6]

Here, another factor of the continuous deprivation of aboriginal rights has to be mentioned: the right to use natural resources, which according to article 92 of the Canadian Constitution falls under the competence of each province. If resources are discovered, the province usually grants the mining rights to multinational companies. The native people have no say – even if it concerns land on which an aboriginal community has a *comprehensive claim* – and must begrateful if they are granted some royalties, at least.[7]

During all these negotiations with the prime ministers, for the native people it was evident that their *comprehensive claims* for self-government, for restitution of territories, for the right to dispose of natural resources as well as for compensation payments together were to be considered an indivisible political package. But on the national level, neither the right *to self-government* has been laid down in

[4] The court refused to give back to the Niska-Tsimshian their aboriginal land as reserve, i.e. as their own territory; yet, on closer consideration this negative judgement proved to be a change in the Canadian legislation: the majority of the judges accepted the existence of «aboriginal land rights»: three of the six judges were however of the opinion that with the founding of the Canadian confederation in 1867 these aboriginal land rights are abrogated. The other three spoke of the fact that these «aboriginal rights» are still valid. (Cf. among others Bruggmann/Gerber 1987:182f.; Sanders 1973)

[5] The negligible settlement rate of such cases is one of the many indicators of how little importance is attached to the Department of Indian Affairs within the government. An additional sign is the fact that DIAND-ministers succeeded each other very fast: between 1985 and 1990 the minister was replaced four times. This shows how easy it is to delay essential decisions; the new minister in office needs time, of course, to get acquainted with the job... (Cf. Poulin 1991:10f.)

[6] After the failure of the First Ministers Conference in March 1987 it was clearly crystalized that the provinces play the decisive role in the revision of the constitution in relation to indigenous rights. In this connection, a few books were published on the subject, e.g. CARC 1988, Hawkes 1989a and the anthologies of Hawkes 1989b as well as Long and Boldt 1988.

[7] No environmental protection measures have so far been applied, because the extraction of the resources often happens in remote areas. This is why several cases of contamination of air, water and land with negative effects on the state of health for the local population – usually indigenous – have been documented. One of the most blatant cases was the mercury pollution of English-Wabigoon River and the destruction of the Ojibway-community in Grassy Narrows in the Northwest of Ontario; cf. Shkilnyk 1985. See Goldstick 1987 on the deadly effects of uranium mining for an indigenous community in northern Saskatchewan.

The Lubicon Lake (photo: Peter R. Gerber)

the constitution, which in their view is a self-evident right (as it has always existed), nor has the question of land rights in this connection been fundamentally solved. Some agreements like the *James Bay-Agreement* of 1975, or the *self-government-agreement* with the Sechelt First Nation in British Columbia of 1986 offer some approaches in the desired direction, but partially they reveal themselves as setbacks and they also carry the danger, that the federal government and the provincial governments could be in the position of dividing the native people along political lines to be easily manipulated.[8]

The Lubicon Cree and their Landright

This is the general framework for the announced example of a political and legal case about land and compensation which has lasted for many decades: the *comprehensive claim* of the Cree at Lake Lubicon.[9] For many native politicians, the Lubicon case is not only exemplary, but also stands as a testcase for the entire legal and political situation in Canada.[10]

The legal dispute started in 1899: representatives of the federal government and Indian communities in Northern Alberta and Saskatchewan had negotiated *Treaty 8* in that year. The «numbered» treaties – signed between 1871 and 1921 – legally recorded the individual native communities, recognized its members as registered Indians and set aside a reserve according to the number of members. To render *Treaty 8* effective, it was therefore necessary to find the scattered communities of that remote area, to register their members and to determine the respective reserve borders. In 1899 and 1900, two expeditions were sent into the aboriginal territory of the Lubicon Cree, i.e. into the area between Peace River and Athabasca River. However, these undertakings were not carried out too thoroughly, and thus, this Cree community was simply left out, although their existence was known. They must have been several thousand people, though many

[8] As to the James Bay Agreement see among others Richardson 1991; as to the Sechelt self-government-model see Etkin 1988.

[9] The files and records that I have personally received by the PR-office of the Lubicon community since summer 1986 already fill twelve big folders. Therefore, John Goddard's book «Last Stand of the Lubicon Cree», a highly competent summary of this legal case, was very helpful for my presentation of events.

[10] The former National Chief of the Assembly of First Nations, George Erasmus, wrote in a letter dated November 18, 1987, directed to all Chiefs in Canada: «Lubicon's battle is our battle and your battle. Lubicon's situation is not only one of the best known of aboriginal people's struggles around the world, its success can set precedents and cause major policy change which could benefit all First Nations in Canada.» (AFN 1987:3)

died of the worldwide Spanish influenza epidemic of 1918.

Since the turn of the century, the Lubicon Cree have tried to be registered as Indians in the first place and secondly, they have struggled as a community to get a reserve. A government official, who lived south of the Lubicon territory, tried to prevent this; he refused to grant legal aboriginal status to some Lubicon natives, others were allotted to other communities, and least of all he considered marking a reserve. In 1933, the Lubicon wrote to Ottawa directly and asked to be acknowledged as a registered community under *Treaty 8* and also to be granted a reserve.

But only in 1939 a first meeting between representatives of the government and the Lubicon took place. The request was answered and a reserve was put down, at least on a map. Its size amounted to approximately 66 km2, yet, the surveying of the land on the spot was never done. In the year 1940, bad weather prevented the landing of a surveyor team, later the credit for the surveying was cancelled because of the Second World War. In addition, the official mentioned before continued his arbitrary registration of the Lubicon between 1942 and 1947 and denied most of the officially counted 127 Lubicon Cree the legal status as registered Indians. From the total of six subgroups only the one in Little Buffalo was registered as a community.

Tar Sand and Oil Boom

1947 a turn of events took place, which was to have disastrous effects: Alberta explored more and more oil, and expected huge tar sand deposits especially in the North.[11] Logically, the provincial government of Alberta acted on its own high-handed authority and assumed the control of the promised reserve territory. The promised land was then qualified as unsuitable for the establishment of a reserve, and if a reserve was at all granted, then only without the right to use the natural subsurface resources. 20 years of struggle to be registered and to get a reserve ended with an all-time low for the Lubicon, of which only 30 had an Indian status at that time.

When oil was discovered north of Little Buffalo in 1954, and the oil boom expanded to Northern Alberta, the conflict started to escalate between the exploiters of resources and the native people struggling for their aboriginal land. In 1967 for example, the tiny Lubicon Cree settlement at Marten River was simply razed to the ground and its inhabitants relocated. This shocking event produced a kind of «never again»-mentality among the Lubicon Cree.

As it is generally known, after the first oil crisis in 1973 the oil price increased, and prospection of tar sand started to be profitable; the search for oil in northern Alberta was intensified. This marked the beginning of the destruction of the traditional life style of the more than 400 Indians at Lake Lubicon.

1979, as an epilogue to the Iran-crisis, bulldozers, blasting and drilling teams invaded the traditional grounds of the Lubicon Cree. Their activities destroyed the forests and drove the game away. In the fifties, there were 11 oil pump jacks to be found on the Lubicon territory; in the sixties, there were 23; in the seventies, around 50. And then, within four years, between 1979 and 1983, in a 25 km-radius around Little Buffalo more than 400 oil pumps were erected. The effects of this explosive oil development of the Lubicon territory: in 1978, 90 % of the population lived a completely self-sufficient life; only 10 % depended on state welfare. But already 1984 the relationship was in inverse ratio to one another: 90 % of the population had become dependent on welfare. In 1979, the average income of the fur trade amounted to 5'000 $ per trapper; in 1991, it yielded not a single dollar any more. In the meantime, the rate of medical cases and alcoholism jumped; and 1985, the first known suicide in the history of the Lubicon occurred.

Unsuccessful Resistance

During the last 40 years, how did the Lubicon react in view of this increasingly disastrous development? According to their traditional economic systems as hunters and trappers and according to their solitary way of life within family ties far away from the dominating society, they seemed not to realize the imminent dangers. Thus, their first reactions looked quite helpless. When Chief Joseph Laboucan died in 1951 – he was the first chief to be elected in 1940 –, he was only replaced in 1973 with the election of Walter Whitehead; exactly in the year when the intensive search for oil was to be first felt in the Lubicon territory, also because of the construction of an all-weather highway from Peace River to Little Buffalo.

In the same year, Chief Whitehead appealed to the general assembly of the Indian Association of Alberta and asked for support in their struggle for a reserve. Under the then leadership of Harold Cardinal, the Indian Association hoped to be able to share in the economic and financial benefits of the tremendous tar sand business, as the tar sand deposits were found on traditional Indian territory.[12] But neither the provincial government nor the oil industry of Alberta wanted to listen.

In the fall of 1975, seven Indian communities, among which also the Lubicon Cree, filed a caveat and by virtue of «unextinguished aboriginal rights» claimed a territory of approximately 86'000 km2 between Peace River and Athabasca River. First, the provincial as well as the federal government applied several delaying tactics and the caveat was thus put off. But later on, a ruling of the Supreme Court of Canada forced Alberta to deal with the caveat in court. During the court session, the provincial government pushed through an amendment of the Alberta Land Title Act to prohibit caveats on un-

[11] In 1973, the tar sand reserves were estimated to run to 800 billion barrels of oil, i.e. greater than the entire world's conventional oil reserves, judged to be 600 billion barrels; one barrel amounts to 159 liter. (Goddard 1991:47)

[12] Harold Cardinal distinguished himself at the beginning of the seventies on a national level as an eloquent political fighter and author in the quashing of the White Paper-policy; cf. Cardinal 1969 and 1977.

patented «Crown land». This legislation came to be known as Bill 29 and was to be applied retroactively. Hence, this legislation stands for a unique measure unheard of in a democracy. Yet, in 1977 this legal case was passed to the advantage of the provincial government, in spite of nationwide outrage and protest; the application was dismissed on grounds of no longer having a basis in law.

The young Chief and his Adviser

Now, the time started for a man which has become the symbol of Indian resistance in Canada. He represents highest political integrity and stands out against all his white opponents in the provincial and federal government. I talk about Bernard Ominayak, who was elected Little Buffalo chief in 1978. Chief Ominayak was born as the oldest son of a hunter's family of six children in 1950. Together with his younger brother Leonard he went to school, but decided to quit it towards the end of grade ten, although some community elders judged him an intelligent and smart pupil and had designated him as future chief. Already as a child he had trapped with his father and had learned to be a hunter. After school, he worked as a hunter, but took also jobs with a logging outfit and a farming cooperative.

Slowly but deliberately Ominayak also worked himself through various community jobs, and watching from the back he acquired political skills. He noticed that many officials were corrupt and lacked the commitment needed; also, they showed a poor sense of responsibility towards their own people. This is widely spread among indigenous communities and can be explained by the fact that the community officials are paid by Indian Affairs in Ottawa and thus feel more accountable to Ottawa and not to their own communities.

When another attempt to push the question of land rights through court failed, and when Harold Cardinal, the long-standing ally of the Lubicon Cree quitted the political scene, Bernard Ominayak decided to secure the help of a white adviser, a man which he had experienced as a hard working associate of Cardinal: his name is Fred Lennarson, nine years older than Bernard Ominayak, a committed social scientist and a long-time political activist, first in the civil-rights-movement in the US, later in Canada for other social causes.

First of all, Ominayak and Lennarson succeeded in forcing the federal and provincial government to grant the community all operating funds that so far had been illegally denied, as according to the government an indigenous community without reserve would not be entitled to benefit from these government programs. With this mainly financial support it was possible to develop a proper administrative structure, i.e., a community office was built, a secretary hired, telephones installed and a housing project started. Furthermore, adult education courses and an educational counselling program for school-age children as well as other social services were offered. Apart from the two official councilors, Chief Ominayak created an unofficial, eleven members council representing a cross section of local political interests. He tried hard to achieve the greatest transparency possible within the small community and to make decisions on the basis of consensus.

Strategy against Indians

Unfortunately, this fast and positive turn in the development stood already against the negative developments around the community described earlier, when the oil boom started to destroy the land base of the Lubicon as of 1979. The traditional life of the Lubicon Cree was turned inside out, and they changed from self-sufficient native people into people depending on welfare. And behind this fact, presumes Goddard (1991:78), there is an elaborate political master strategy devised by the provincial government linked with the oil industry.

The first part of the strategy was based upon a judgement issued in 1980 by the Supreme Court of Canada involving the Baker Lake Inuit of the Northwest Territories. The ruling demanded in the case of «unextinguished aboriginal titles», a native society must prove that its members use the land traditionally. It therefore implied that the traditional hunting and gathering economy of the Lubicon Cree had to be wiped out by destroying their land base. Then, no longer would the Lubicon be able to prove that they used the land traditionally. The second part of the strategy involved the Alberta Natural Resources Act, under which the federal government is entitled to dispose of «unoccupied Crown lands» to set aside new reserves, for example. But because the oil companies with their oil drilling activities now «occupy» the Lubicon territory – which is considered «unoccupied Crown land» –, Ottawa can no longer dispose of this land.

Apart from this strategy that was obviously applied, the provincial government also tried with other means to gain control over the insubordinate Lubicon Cree. Using a policy of divide and rule of the most primitive kind, they sowed the seeds of discord in the community, in particular between the metis and the status Indians. Most of the metis really belonged to the group of status Indians, but had been stripped legal Indian status in the forties, as mentioned earlier. Due to the space available no further harassments by the provincial government are mentioned here (for more details cf. Goddard 1991:74-99); yet, these efforts to control the community resulted in a greater resistance on the part of the Lubicon, but the social disintegration of the community could not be stopped.

The Critical Development

In 1982, the Lubicon once again tried to seek help via the court rooms. This time they employed the lawyer James O'Reilly, who had already been successful in two lawsuits involving indigenous peoples. However, in Alberta the presiding judge had previously been working as a lawyer for an oil company. Thus, the case was lost before short, but to underline his seriosity, Judge Forsyth delayed the case spending over a year to deal with a matter that is commonly dealt within a few weeks. An appeal to

the Supreme Court of Canada was also doomed to failure, but had its bitter consequences: the Lubicon were saddled with legal costs that totalled over 200'000 $.

For the time being, all political and legal means were exhausted, hopelessness among the Indians increased. At the same time, Chief Bernard Ominayak and his advisor Fred Lennarson experienced for the first time that the public sympathized with the Lubicon's struggle for survival. A mailing-list was compiled and extended to several hundred of addresses. What had so far been a rather silent struggle with representatives of the provincial and federal government now systematically developed into a political media campaign, constantly informing the interested public and the media. Some individuals and various groups of the church and of socio-political supporters got actively involved into the struggle in favour of the Lubicon and started to contribute financially. This was badly needed: the burden of debts turned into a «legal sword of Damokles», hovering over the Lubicon, as Lennarson put it (Goddard 1991:113).

After the power changed from a liberal to a conservative government in the fall of 1984, the situation became more and more critical. The *Union Oil Company of Canada* annnounced plans to build a pipeline across the promised reserve land. This was the moment when the Lubicon chose a public form of protest for the very first time: a demonstration staged in front of the office skyscraper of the oil company triggered off a flood of media reports; letters to the editor, editorials and further demonstrations forced the company to give up the building plans until the question of land rights was solved.

The transition of power in Ottawa also induced a change in leadership of the Ministry of Indian Affairs: the new minister, David Crombie, commissioned investigations for each «Indian problem» that seemed to be important to him and had «reports» written about their findings. «Reports» are the darlings of Canadian politicians, because these tend to be very time-consuming; and when a specific «report» is published a few years later, the public opinion has long turned to other questions, and thus, for the government, the investigated problem has in a way solved itself nicely.

The Fulton Paper

Minister David Crombie met with Chief Bernard Ominayak end of November 1984. The result of this meeting consisted in the move that Crombie employed the former Minister of Justice E. Davie Fulton who produced a report after one year of investigation that turned out to be pro-Lubicon, surprisingly enough. He called the report a «discussion paper».[13] An important aspect in the Fulton Paper were his efforts to adjust the opposite positions with convincing arguments. After 1973, when the federal Claims Commission started to extend its tasks, the Lubicon saw their legal case as a *comprehensive claim* on the grounds of «aboriginal land titles», whereas Ottawa continued to judge the case as a *specific claim* related to *Treaty 8*.

Fulton broke through the unsolvable dispute trying to prove that the Lubicon Cree could assert their rights generously by means of the treaty obligations of the federal government. The reserve should be determined according to the number of population that has been defined by the Lubicon, i.e. for 427 community members the size of the reserve would amount to 238 km2. Because the province of Alberta had already accepted the territory of the reserve to be approximately 66 km2 planned in 1940, the federal government should buy the rest from Alberta, as it was in the responsibility of the government that the promised reserve had not been realized since 1940.

In addition, he endorsed the claims of the Lubicon to be compensated for the destruction of their traditional lifestyle. In this connection, the amount of 167 million $ was mentioned for the first time, based on the calculations of the liabilities that the federal government had not yet paid since signing *Treaty 8* in 1899. Fulton however recommended to solve the problem by negotiating directly, particularly since the calculations were based on questionable grounds. This was probably the sorest point in the Fulton Paper, as the question of the financial compensations has not been solved to this day.

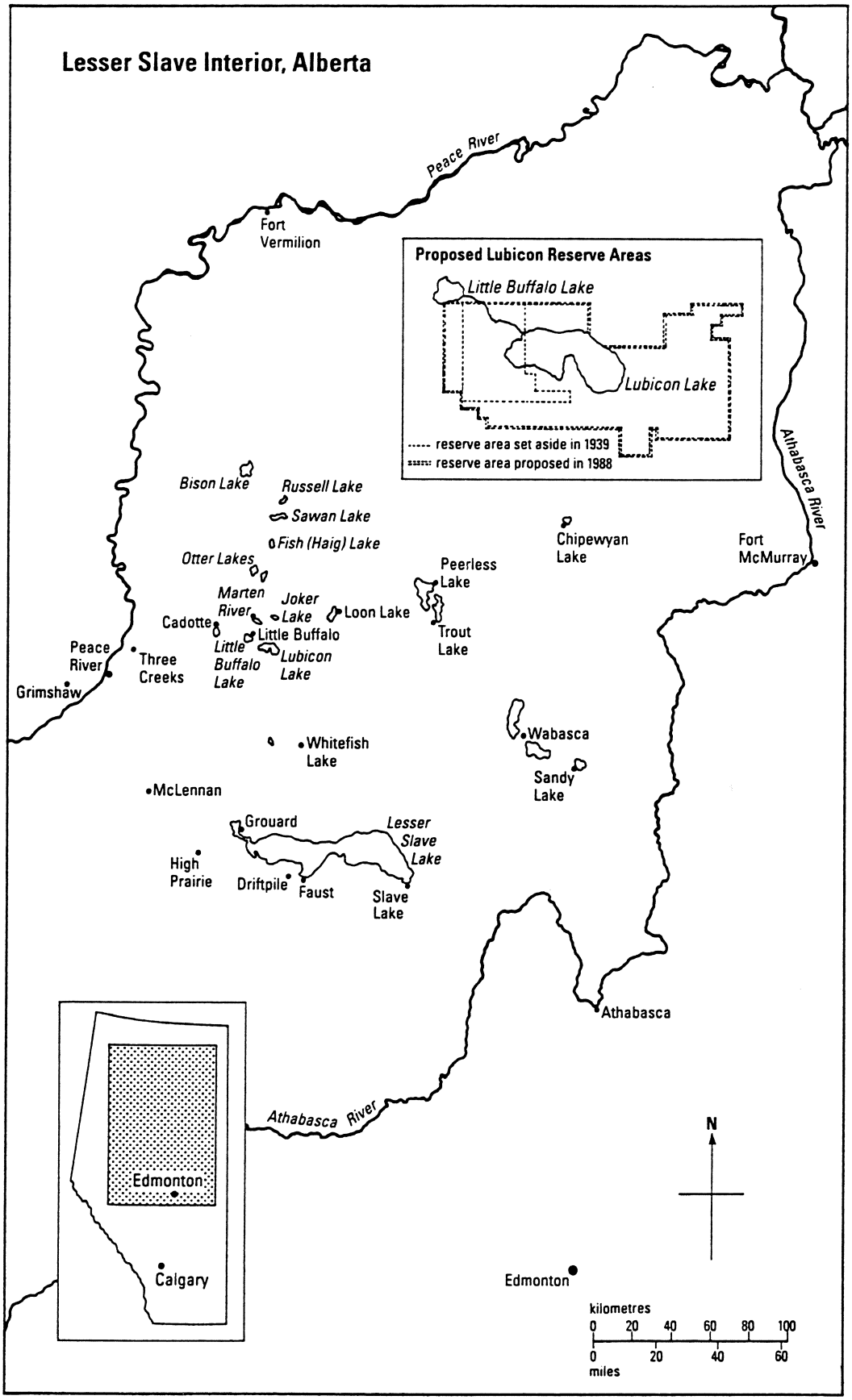
The reactions to this discussion paper were foreseeable: the Lubicon had new hopes, once more. Alberta reacted in a hostile way and Ottawa had the paper disappear silently, as a matter of fact it was never published. Of course, Fred Lennarson managed to get a copy and thus the public was soon informed. The reason why Ottawa did not like the Fulton Paper certainly had to do with the changes in its Indian policies that took place that time. For the conservative government started to drastically reduce the financial supports on the basis of a report by Vice Premier Kenneth Nielsen of April 1985, that had originally been kept secret. With this move, the termination policy was to be realized according to the old White Paper of 1969. (Cf. Gerber 1986:75)

Boycott

Not much happened between 1986 and 1988, apart from the fact that the Lubicon started to mark their territory themselves and to educate the oil companies to ask the Lubicon community for permission first whether it was possible to drill for oil at a certain place. This procedure worked increasingly well, because the community council allowed such drillings, as long as they remained beyond the planned reserve lands. A reason why the oil companie

[13] Fulton also arranged that Indian Affairs paid the Lubicon Cree the debts of 1,5 million $, however, only in the sense of an advance payment in view of a future conclusion of a claim settlement.

[14] Between 1985 and 1990 the per capita funding of Indian Affairs was reduced by 11%. In the same time period, the total budget was however nominally increased by 50% – from 1,6 billion to 2,4 billion $ – but when inflation is taken into account, then the increase is reduced to 19%; and if the fact is taken into account that the figure of status-Indians has been increased by 34% since 1985, then the funding has been reduced in real terms. (AFN 1990a:5; cf. also Angus 1991)



(Map from Goddard 1991)

behaved so well could be found in the fact that Canada was preparing for the Olympic winter games and thus all negative news had to be avoided. The Olympic winter games, namely, took place in and around Calgary, the oil city of Alberta.

As it is known, the Lubicon Cree used the games to make the world public aware of their situation: they called to boycott the games, which did not work out because of several reasons. Yet, they were more successful with their second call to the world of museums, not to provide loans for the gigantic exhibition called «The Spirit Sings» in the Glenbow Museum of Calgary, because the show was sponsored by Shell Oil of Canada, one of the oil companies destroying the lands of the Lubicon they depended upon. (Cf. Gerber 1987 and 1992)

The Grimshaw-Agreement

After the Olympic games the scandalous story moved on again, as the Premier of Alberta, Don Getty, interfered in the dispute: to the surprise of many he contacted Bernard Ominayak personally and reached an agreement between the Lubicon Cree and the province of Alberta as to the disputed reserve territory. The so-called Grimshaw-Agreement of October 22, 1988 foresaw a reserve of 246 km^2.[15]

Now the ball was played back to Ottawa, that agreed to the *Grimshaw-Agreement* as to the territory of the reserve. Ottawa also agreed that the Lubicon members in the meantime had amounted to 506 people. However, when it came to the financial compensations, the disputes started that have not been solved to this very day: the Lubicon claim 70 million $ in direct investment funds in addition to compensation of 100 million $, which might seem to be a considerable amount of money for outsiders but the fact is that in the first eight years of the oil boom in the Lubicon territory the oil companies made over 5 billion $ in profits. The investments are meant to develop a new village, i.e. the construction of houses, the infrastructure needed for running water, electricity, drainage systems and streets, for a school, a community centre and for the construction of a farm and additional small businesses. All these investments in a tiny reserve of 246 km^2 were geared to develop a new, self-sufficient economy, as a substitution for the lost aboriginal territory of more than 10'000 km2 that they used for their hunting and trapping economy. The new economic structure therefore was meant to free the community members from the humiliating and patronizing welfare, into which they were forced between 1979 and 1984.

«Take-it-or-leave-it»

No agreement was reached, in particular when Ottawa came forward with a «take-it-or-leave-it»-offer in the form of an ultimatum in January 1989. The offer only included investment funds for setting up the infrastructures necessary, but no money was designated for economic development projects, let alone the opportunity to file compensation claims. For the Lubicon Cree this was inacceptable, as it was exactly the central question of constructing a new economic structure that remained unsolved. Chief Bernard Ominayak stressed the point:

> «(What) we're looking at is to try and build a community that is going to be viable, both economically and as a community. (...) We've got people whose livelihood has been destroyed by the oil development. We don't want to just build a community where people are going to have nice houses but remain on welfare. We want to get out of that system. (...) We tried to negotiate with the federal government. We put the best effort we could into the talks, and they're not prepared to settle at this point in time. So we're going to be looking at all the possibilities. But we're not going to go begging to anybody. These guys have taken billions of dollars in resources from our lands. They keep saying that we're trying to take the taxpayers' dollars. That isn't the case.» (Goddard 1991:201)

The Government-Indian

To force the Lubicon Cree down once and for all, the federal government shamelessly used the fact that some Lubicon members were not satisfied with the consistent position of Chief Bernard Ominayak and the majority of the Lubicon. The social and economic disintegration wore the community rapidly down, because apart from the oil companies another threat became imminent since the beginning of 1988: the provincial government of Alberta granted the Japanese paper manufacturing company Daishowa logging rights over 29'000 km2, of which 11'000 km2 alone over traditional Lubicon territory. Now the Lubicon had really become a superfluous plague, and for both governments in Ottawa and Edmonton just one political motto seemed to exist: «Only a non-Lubicon Cree is a good Cree.»

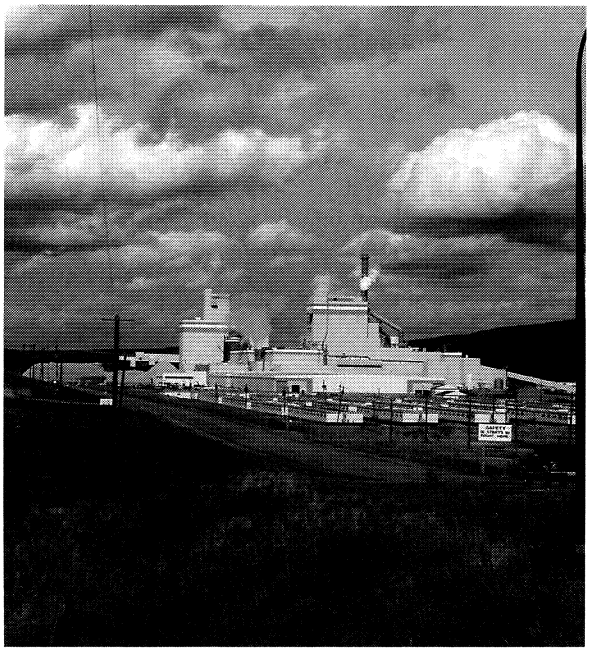
With the help of a few Lubicon community members, a few metis of the area and some non-status Indians, Indian Affairs hence created a new Indian community called Woodland Cree and granted to them a reserve of 142 km2 on the calculation basis of 355 members.

29 million $ for the construction of houses and infrastructure plus 19 million $ for «economic development» were granted in addition, although no concrete development projects existed.

Within and outside of Canada people boiled with indignation and rejection. But this did not prevent the new Minister for Indian Affairs Tom Siddon to call this agreement a «clear indication of the federal government's commitment to honour its obligations» (Goddard 1991:211).[16]

[15] For 42 km2, however, only a surface-use would have been granted to the Lubicon; but they would have a right to co-determine the use of possible subsurface-resources.

[16] The vote among the Woodland Cree on the conclusion of the agreement with Indian Affairs on July 5 and 6, 1991 was to boldly exemplify the arbitrary use of power of the federal government: the eligible voters were promised 50$ reimbursement of expenses and in case of passing of the agreement a bonus of 1'000 $ per head. As in the former communist countries, the result of the vote was thus preprogrammed: 87% of eligible voters had participated in the vote, 98,5% approval to ratify the agreement. A few days later the Woodland Cree were informed that the reimbursement of the expenses and the promised bonus of 1'000 $ was to be deducted from the next welfare payments...



The Japanese pulpmill Daishowa north of Peace River as a deadly threat to the Lubicons — and the environment (photo: Peter R. Gerber)

In fall 1991 the federal government started a new negotiation phase, after the political atmosphere in the country had obviously changed against their existing overall Indian policy.[17]

Yet, in relation to the specific negotiations with the Lubicon, the dealings went on as double-faced as ever, applying the usual delaying tactics. As mentioned before, there is no break-through in sight because the positions as to the financial questions are still incompatible.

Retrospect and Prospect

Looking back to the last two decades of Canada's Indian policy, I can summarize as follows: With the two court decisions concerning the Niska-Tsimshian and the James Bay Cree in the year 1973 there were hopes that all *termination* policies would come to an end and that the indigenous peoples can look forward to a self-determined future, namely based upon existing special rights and treaties which are also specifically mentioned in the new Canadian Constitution of 1982. (Cf. among others Sanders 1975a, Smith 1974) Nevertheless, it was already in 1975 when the nationwide known Canadian professor of law Douglas Sanders stated that the Indian policy of Ottawa was not led by understanding but according to the power structure (Sanders 1975b:10). Power policy applied against native people has been a constant feature since the existence of the Canadian confederation. In this connection, it is not only David Hawkes – another Canadian professor of law – that speaks of internal colonialism in a publication of 1989 (Hawkes 1989a:65).[18]

The professor of anthropology Tony Hall proves in a study in the middle of the eighties that the interpretation of the term *self-government* by the federal government simply means a form of self-administration as in a white community within a province. An Indian reserve community with such a model of self-administration would be under the control of the provincial government in the future and would be exposed to a massive pressure of assimilation. And the federal government in turn could sneak out of the responsibility towards the indigenous peoples, in other words, the old *termination*-ideology would still exist. (Hall 1986:78f) This is why Indian personalities and white lawyers have been pressing for years that so-called land claims have to be considered as «rights» to the land and not only as simple «claims», and that these «rights» are always linked to «self-determination».[19]

Because of the central question of land rights and of rights to the exploitation of resources, the Indian policy turns into a mere power game, in which the parties fight with unequal weapons. The federal government and the economy tangled up with it mainly operate with delaying tactics. Several lawyers are commissioned in court cases; these lawyers extend the trials with procedural means, thus making them either unaffordable to the indigenous peoples or indebting them. Also, the chances of the indigenous peoples are often small to win a case because the judges used to work as economic lawyers and are thus more or less biased.

[17] The national associations of native people demanded the same status as «distinct societies», as should have been granted to the Province of Quebec within the Canadian confederation according to the so-called Meech Lake-agreement between the federal and provincial governments of summer 1987 (AFN 1990d). After the failure of Meech Lake in summer 1990 the constitutional question in Canada has yet to be solved.

[18] Various publications of recent times deal with the difficult relationships between whites and Indians (e.g. Miller 1989 and 1991) or settle with the official policy towards native people (e.g. York 1990, York and Pindera 1991) on the one hand, on the other hand they voice the annoyance and the revival will of the indigenous peoples (e.g. CARC 1988, Richardson 1989).

[19] In this respect, the former National Chief Georges Erasmus said in an interview already in fall 1985:

> «What we recommended was that rather than extinguishment, there should be a recognition of rights, and a recognition of title. We also proposed that the negotiation forum should not be one that only deals with land, but also with self-government. Another major recommendation was that all settlements should provide sufficient land and resources, and control and jurisdiction. If the land base is sufficient, and the resource ownership is sufficient claimant First Nations can grow and flourish, as well as protect traditional culture and be able to develop new economic future.» (AFN 1985:11)

Six years later Ovide Mercredi had to repeat this statement almost word for word in an interview after his election to succeed Erasmus as National Chief:

> «Aboriginal people believe a new country can be built that will have as one of its fundamental characteristics the recognition, protection, and promotion of our treaty and aboriginal rights, which by definition includes our inherent ancient right of self-determination.»

And Mercredi is being further quoted in a summary: «He is also an advocate for the recognition of aboriginal title as a fundamental pillar for comprehensive land negotiations agreements, or modern treaties.» (AN 1991:4)

Violet Rose Ominayak as the speaker of the Lubicon women and Chief Bernard Ominayak during the public hearing before the independent Lubicon Settlement Commission of Review, on August 6, 1992, in Little Buffalo
(photo: Peter R. Gerber)

The international pressure on Canada to justly solve its problem with indigenous peoples has nevertheless increased in the said time. In the case of the Lubicon, the UN-Human Rights Commission has expressed itself not exactly in a favourable way on the Canadian government policy. Hovewer, its wording was diplomatically ambiguous, which gave the federal government the possibility to spread its euphemistic interpretation of the judgement of Geneva. Now even the Canadian Human Rights Commission has expressed itself very negatively on several occasions, which is putting the federal government under considerable moral pressure. (AFN 1990b and 1990e) And some newer court cases have been decided in favour of the plaintive natives (cf. among others AFN 1990c). And last but not least, two investigating bodies dealing with the question of the constitution on a national level have formulated recommendations in favour of the native people.[20]

Once again, Ottawa tries to counteract this by implementing a huge propaganda machinery. For example, every Canadian embassy received standard answering-letters and several pages of background information on the Lubicon case in winter 1991/92. In these papers, half-truths and crude lies were widely used. For example, the absurd assertion was maintained that the Lubicon claimed a territory as big as Belgium and the Netherlands together, i.e. more than 72'000 km2. (LI 1991)

When it comes to the question of finances, the government is especially not willing to pay compensations, as this could amount to a confession of guilt. It could also become a precedence case, if due to compensation payments an indigenous community would be able to become economically independent and thus the internal colonialism could be ended. By delaying the process especially in this connection the federal government and the corporate interests involved hope the natives would lose patience; this does happen from time to time, as has been shown by the example of the Woodland Cree. Yet, native resistance has endured for 120 years and will continue to endure, said Mohawk Marlyne Kane

[20] The Beaudoin-Dobbie Special Joint Committee, consisting of Parliament and Senate members, respecting «The Government of Canada's proposals for a renewed Canada», recommends in its report of February 28, 1992 «the entrenchment in section 35 of the Constitution Act, 1982 of inherent right of aboriginal peoples to self-government within Canada» and «that representatives of the aboriginal peoples of Canada be invited to all future constitutional conferences» (Beaudoin-Dobbie Report 1992:29, 32). And the Spicer Commission (also called Citizens Forum) – appointed by the government – represented the opinion of the Canadian people in its report in June 27, 1991, demanding a speedy and fair regulation of the territorial and treaty claims of the aboriginal peoples and at the same time demanding self-government for them (AFN 1991:2). The new Royal Commission on Aboriginal Peoples appointed in summer 1991 will most probably come upwith similar recommendations (cf. Dickson Report 1991).

after the failure of the First Ministers Conference in March 1987 (CARC 1988:24).

The resistance has taken on new shape in summer 1992, also in the case of the Lubicon Cree. So, for the first time in the history of the Lubicon 26 women joined up in the beginning of August 1992 to express themselves on the desperate situation of their people in a «Statement of the Lubicon Lake Nation Women»:

> «We ask why? Why us, what have we done to deserve such treatment. Why can't the government settle with the Lubicon? Why have they spent so much time and energy trying to destroy us rather than deal fairly with us? What have we done, our children, our people? What wrong have we done to the outside? (...) The Lubicon women demand an end to the physical, emotional, economic, cultural and spiritual destruction. We demand an end to the invasion and devastation to all spheres of our lives. We demand an end to the government and corporation warfare with our lands and lives. We demand an end to the mockery of our Nation! We demand an end to the genocide. Hear our voice and our message – we don't know if we'll be here tomorrow.» (LI 1992:2)

Despite their political and legal particularity, the situation of the Cree at Lubicon Lake reflects the general situation of the Canadian native peoples. This is the reason why this contribution ends with a quote telling quite a lot on the question of self-determination of aboriginal peoples in Canada that has yet to be solved.[21] In fall 1991, the newly elected National Chief Ovide Mercredi spoke to the Montreal chapter of the Canadian Bar Association and rose the following question:

> «And when you think about land and resources, why should we be the only landless people in the world? Why can we not enjoy land under our jurisdiction, a territory of our own where we can find expression of our self-determination, where we can make decisions about how we will exploit the natural resources available to us on our territory consistent with our own world view, our own economic agenda and our own values for economic development? Why do we always have to be placed in the position of having to beg the rest of Canada for the land that once belonged to our ancestors? Why in Canada, for example, can the federal government designate 20 percent of the land mass for future parks but not have the same political will to designate 20 percent of the total land mass of Canada for Indian territorial jurisdiction?» (Mercredi 1992:7)

[21] In August 1992 the federal government, the First Ministers of the provinces and the representatives of the aboriginal peoples agreed on a new constitutional agreement granting the Province of Quebec a special status and the aboriginal peoples the realization of self-government models within five years. The Canadian people, however, has rejected this agreement in the nation-wide referendum of October 26, 1992 – and the aboriginal peoples of Canada have again to wait for their true self-determination...

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