

Chief Negotiator's Report on the Deh Cho Process

Negotiating Session with Canada and the GNWT

May 23-25, Yellowknife

The May 23-25 meeting in Yellowknife was attended by myself, Grand Chief Nadli, Assistant Negotiator Herb Norwegian, Chief Lloyd Chicot, and Elders Jim Thomas and Daniel Sonfrere. This report is intended to highlight the main issues which were discussed at the meeting.

Executive Summary

Prior to the May 23-25 meeting, the GNWT had failed to respond to the DCFN's proposals concerning interim measures and questions concerning the "objectives" of the Deh Cho Process. The GNWT had also failed to respond to DCFN proposals for limiting their role in Phase II of the negotiations. The May 23-25 meeting was called in order for the GNWT to provide answers to the DCFN's questions and proposals.

I am please to report that progress was made on some important issues. On other issues, there is a great deal more work to be done.

BACKGROUND

The DCFN has always taken the position that the main purpose of the Deh Cho Process negotiations should be to produce an agreement which build upon the existing Treaties by clarifying the roles, jurisdiction(s) and responsibilities of the parties in governing and providing services to the lands and people of the Deh Cho region. Since the negotiations are intended to "build upon" the existing Treaties - not replace them - they should be bilateral between Canada and the DCFN. However, the federal government has taken the position that it will not sign a framework agreement or negotiate with the DCFN unless the GNWT is a signatory to the framework agreement and at the table as a full party. In other words, either the negotiations will be tri-partite (3 parties) or there will be no negotiations.

At the January 21-22, 2000 workshop in Yellowknife, the Elders proposed that the DCFN should attempt to negotiate a political accord with the GNWT. The Accord would address the fundamental concerns with respect to the involvement of the GNWT in the Deh Cho Process. The Leadership unanimously endorsed the Elders' recommendation and a working group was set up to begin negotiations with the GNWT on a Political Accord. The DCFN then asked the GNWT to state the position it would take if it were a party to the negotiations, and to implement certain interim measures in order to build trust and create a positive atmosphere for negotiations. The DCFN has also stated that certain subjects must be negotiated bilaterally between Canada and the DCFN.

By April, 2000, despite several requests, the GNWT had failed to respond to the DCFN's proposals for limiting their role in the Process. Finally, the DCFN wrote to the GNWT in April to advise that we would not meet with them again until they were prepared to respond to the DCFN's proposals. We were then advised by the federal Chief Negotiator that the GNWT would be prepared to respond and to table positions on May 23. The May 23-25 meeting was called for the purpose of discussing the DCFN's concerns about GNWT participation in the negotiations.

a) Interim Measures

In previous letters, the GNWT has been asked whether it would agree to include the following clause in an interim measures agreement:

- i) The GNWT will agree not to issue any land use permits or licenses affecting Deh Cho lands or waters, or sell or lease any lands within the Deh Cho, without the consent of affected First Nations;"

Prior to May 24, we had never received a response to this proposal. On May 24, however, the GNWT tabled a promising and constructive counter-proposal on forestry issues. They also promised to provide us with a proposal on municipal lands by June 12. A copy of the GNWT proposal on forestry interim measures is attached to this Report. Also attached is a copy of the DCFN response to the GNWT proposal.

b) Framework Agreement

The DCFN has proposed that the framework agreement include the following description of the objectives of the Deh Cho Process:

"2. The objectives of the Deh Cho Process are:

"An agreement, or series of agreements, which build upon the existing Treaties by clarifying the roles, jurisdiction(s) and responsibilities of the parties in governing and providing services to the lands and people of the Deh Cho region. The parties intend that the negotiations will result in a public government in the Deh Cho region, based upon Dene laws and customs, which will be the primary government responsible to deliver programs and services to all residents of the Deh Cho."

Prior to the May 23-25, 2000 meeting, the GNWT had not responded to our proposed statement of objectives for the Deh Cho Process. On May 25, they informed the DCFN that they are not opposed to the recognition of a public government in the Deh Cho which will be the primary government for all

residents of the Deh Cho, however, they do not have sufficient information at this time about how the Deh Cho government will operate.

We proposed to re-draft the statement of objectives to reflect the 21 Common Ground Principles, by stating that a final agreement will result in a public government "based upon Dene laws and customs, and other laws, which will be the primary government responsible to deliver programs and services to residents of the Deh Cho.". The reference to "other laws" is taken from the 21 Common Ground Principles. The revised wording also addresses concerns about whether or not "all residents" of the Deh Cho will be governed and served by the Deh Cho government. The revised wording on this point is also consistent with the 21 Principles and the Deh Cho Proposal, which calls for the establishment of a public government in the Deh Cho which will be the primary government of the Deh Cho.

"An agreement, or series of agreements, which build upon the existing Treaties by clarifying the roles, jurisdiction(s) and responsibilities of the parties in governing and providing services to the lands and people of the Deh Cho region. The parties intend that the negotiations will result in a public government in the Deh Cho region, based upon Dene laws and customs, and other laws, which will be the primary government responsible to deliver programs and services to *** residents of the Deh Cho."

The GNWT and Canada have not yet responded to the revised wording..

c) The Negotiations Process

The Deh Cho Process is largely a process of implementing the promises made by the Crown during the negotiation of Treaties 8 and 11. These Treaty obligations are owed by Canada, not the GNWT. It is therefore important that Phase II negotiations be guided by the Deh Cho Elders' view of the Treaties, even if the GNWT is at the table as a party for some of the negotiations.

In consultation with the 2 Elders who were present at the May 23-25 negotiations in Yellowknife, we proposed that the following clauses be included in the framework agreement:

III. Roles of the Parties

- 3.1 The parties recognize and respect the bilateral relationship between the Deh Cho First Nations and the Crown through Treaties 8 and 11. The parties also recognize that Canada and the Deh Cho First Nations will discuss matters respecting the provisions of Treaties 8 and 11 on a bilateral basis, with the GNWT as observers.
- 3.2 Prior to beginning negotiations on any subject matter, the parties will hold a workshop at which each party will table an interest. The roles of the parties, and whether negotiations on a particular subject matter will be bilateral or trilateral, will be determined on a subject matter by subject matter basis.
- 3.3 The parties acknowledge that the roles of Canada and the GNWT will vary depending on the nature of the subject matter and area of jurisdiction or authority being discussed."

If the above wording is included in the framework agreement, negotiations on each subject matter (eg. resource revenues, health, education etc...) would begin with a workshop, and then discussions on whether that subject matter should be negotiated bilaterally - between Canada and the DCFN - or trilaterally, with the GNWT at the table. At each workshop, the DCFN would present the Dene perspective on the treaties and explain why some matters (such as lands and resources) should be negotiated bilaterally between Canada and the DCFN.

Conclusion

While there are still many gaps between the DCFN position and Canada's position on the role of the GNWI in the negotiations, there has been a good deal of movement. The next meetings on interim measures will be held on June 20 in Yellowknife and June 26-28 in Rabbit Kettle. If the GNWT continues to show movement on interim measures for forestry and municipal lands, I am optimistic that we will be able to reach agreement on interim measures and a framework agreement before the Assembly in August.

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Comments:

Please review. This is my suggested response to BNWT re: forestry. It's more of a land use planning approach.

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Deh Cho Reply - For Discussion Purposes Only**June 5, 2000****Interim Measures Respecting Forestry Authorizations**

1. Affected First Nations shall advise the GNWT regarding the location, terms, and conditions for new timber cutting permits/licenses and research licenses. No new timber cutting permits/licenses, export permits, and research licenses will be issued without the support of affected First Nations.¹
2. The GNWT shall consult² with affected First Nations, the Deh Land and Water Panel, and any other designated committees regarding terms and conditions for the issuance of the following permits and licenses:
 - a) renewals, replacements, or extensions of existing timber cutting permits/licenses, export permits, and research licenses on the condition that there will be no increases in the annual allowable cuts and/or the volume of wood permitted to be exported from the NWT.
 - b) free timber cutting permits
 - c) timber cutting permits and timber cutting licenses that may be issued for the incidental use of timber.
3. Where affected First Nations do not support the issuance of a timber cutting permit or timber cutting license, they shall provide written reasons to the GNWT.
4. No new timber cutting permits or licenses will be issued by the GNWT on lands where the surface has been withdrawn.
5. The GNWT shall not enter into any Forest Management Agreements without the support of affected First Nations.
6. The GNWT shall exclude timber on lands where the surface has been withdrawn from its timber supply analysis and/or annual allowable cut calculations for each Forest Management Unit, Zone, or Area. The GNWT shall incorporate this new calculation into any new timber cutting permits/licenses and/or renewals, replacements, and extensions to existing timber cutting permits/licenses.

¹ Further discussion required regarding the process for signifying support.

² See definition of consultation in March 22, 2000 DCFN Draft of Interim Measures Agreement..