

**LEGISLATIVE ASSEMBLY OF THE  
NORTHWEST TERRITORIES  
10<sup>TH</sup> ASSEMBLY, 8<sup>TH</sup> SESSION**

**TABLED DOCUMENT NO. 25-86(2)**

**TABLED ON OCTOBER 28, 1986**

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AN UPDATE ON THE WORK OF THE WESTERN CONSTITUTIONAL FORUM

PRESENTED BY

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TO THE LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES

October, 1986

I would like to take this opportunity to provide this House with an update on the progress and activities of the Constitutional Alliance of the Northwest Territories. As you know I am the Vice-Chairman of the Western Constitutional Forum, an organization which is charged with the responsibilities of developing a new constitution for a western territory, and of negotiating with the other members of the Alliance a boundary for division.

The WCF has made considerable progress in the area of constitutional development. A great deal of research has been done and we have held at least one public meeting in every western community with the exception of the Deh Cho Region in order to solicit the opinions of all residents on constitutional development and division. The WCF has also held a series of internal constitutional working sessions as we call them during which we have considered a number of approaches, principles and models for a new western government.

I am pleased to say that in a general way all members of the WCF are now operating within the same ballpark when we are talking about constitutional development. We have tentatively agreed to use a single set of general principles in order to flesh out in much greater detail how those principles might be concretely expressed in a new government. Naturally there are going to be differences of opinion on how and to what extent each principle should be expressed, and it is quite possible that some of our tentative principles will be altered or replaced in the process. However the positive working relationship that has developed among WCF members over time coupled with the fact that we are now operating from a more common understanding makes me optimistic that a tentative agreement on principles for a new constitution could be ready to be taken to the public for their consideration by the late spring of 1987.

There are however, two other factors which have and which continue to impede our progress and which might prevent us meeting that timetable; those being the lack of a formal agreement among the members of the Alliance on the location of a boundary, and the relative lack of involvement of the Inuvialuit in the WCF's constitutional discussions.

The Constitutional Alliance has been discussing the boundary for more than three and a half years; our first meeting on this subject was held in Yellowknife in February, 1983. Two meetings in 1984 saw the Alliance reach agreement in the primary objective for division, on twelve principles or criteria to help us assess various proposals, and one principle which described in general terms the process the Alliance would follow to reach a tentative agreement on the boundary and to have it formally ratified.

The next meeting of the Constitutional Alliance in January 1985 actually produced a tentative agreement on a boundary subject to the Inuvialuit being able to reach a satisfactory agreement with the WCF whereby they could feel secure within the western territory. As you know this agreement was unanimously endorsed via formal motions by the Chiefs of the Dene Nation, the Presidents of the Metis Locals, and by the members of the Western Caucus of the Legislative Assembly. We would have been prepared to put that agreement to the public, and were, confident then of winning support. However the leaderships of the organizations which the members of the NCF represent did not feel comfortable in endorsing that agreement at that time.

The last year and a half have in many respect been a frustrating period for all concerned. The members of the WCF saw their task as twofold; to resume serious negotiations with the NCF regarding the boundary, and to initiate meaningful negotiations with the Inuvialuit regarding their possible future in a

western territory. The WCF tried on a number of occasions to schedule a meeting of the Alliance. However the NCF was involved in some major reorganization during the spring and summer of 1985 and the Alliance was unable to meet until November.

The November meeting of the Alliance was not very productive. The only real outcome was an announcement by the Inuvialuit leaders that COPE had been assigned the task to consult the Inuvialuit in the Western Arctic regarding their opinions on division and the boundary. The other members of the Alliance agreed that COPE would report the results of their survey to the Alliance at its next meeting early in the new year. As it turned out it was August before all members of the Alliance would agree to meet again. COPE did however complete its door-to-door survey and, while the results could be called incomplete, they did succeed in interviewing approximately fifty percent of the adult population. The results of the survey, as we all know, were that the largest group did not want division to occur. However if division was inevitable the next largest group wanted all the Inuvialuit to remain together in a western territory and the smallest group wanted the Inuvialuit Settlement Region split such that Aklavik and Inuvik would be in the west and the four coastal communities would be part of Nunavut.

The WCF has also been trying hard to discuss with the Inuvialuit ways in which their future could be secured in the west. We were pleased to accept an invitation to make a presentation to COPE's Board of Directors during a meeting in Aklavik in June 1985. At that meeting we encouraged COPE to participate actively in WCF's constitutional negotiations. We restated our standing offer to COPE of full membership in the WCF but we also indicated that we were willing to have COPE

participate in our work on an unofficial basis if COPE was still unwilling to commit itself to the west at that time. We also indicated that the WCF was prepared to formally endorse two of COPE's basic principles which underlay the original WARM proposal.

COPE's Board eventually decided to exercise its observer status within the WCF to a greater extent and COPE's President, Billy Day, or his representatives have attended all four of WCF's constitutional working sessions since that date. This participation has been a big help. Mr. Day and the other members of his delegations have made significant contributions to our discussions and they have also been able to bring back to their region firsthand knowledge of our progress in constitutional matters.

However, COPE's participation in these sessions did not constitute formal negotiations between the Inuvialuit and WCF to try to reach an agreement by which the Inuvialuit could feel secure in the west. Up until the Alliance meeting this last August, the Inuvialuit leadership had still not indicated a willingness to enter into such negotiations.

Meanwhile both the Nunavut Constitutional Forum and the Western Constitutional Forum were becoming extremely concerned at the time it was taking to resolve the boundary question. Both Forums were becoming increasingly aware of the frustration being experienced by many members of the public regarding division. The process was taking too long, people did not like to hear some of the controversy which often emerged in the media. Others, both in and outside government, felt that a number of very important initiatives including land claims, devolution, constitutional development and even economic development were being held back

because of the failure to select a boundary. There was the question of how long would the Federal Government continue to support a process which appeared to be unable to break the impasse on the boundary. Another important factor is that the life of the Tenth Legislative Assembly is rapidly drawing to a close. It was probably never realistic that division itself could occur by 1987, but we do believe that it is very important for the future of the north that a boundary agreement be reached and formally ratified before the next territorial election. Even the people of the east, who I believe continue to be committed to division, are becoming frustrated. They want to get on with the work of establishing Nunavut rather than continue to hear seemingly endless discussions on the boundary.

In light of all these factors, both the NCF and the WCF independently reached the same conclusion; the Alliance must reach a tentative boundary agreement for presentation to the Legislative Assembly before the end of this fall session.

In this very important respect I regret very much that I am at this moment making this presentation to you rather than being part of a delegation presenting to you for your consideration a tentative boundary agreement signed by each member of the Constitutional Alliance.

Both the NCF and the WCF came to the Alliance meeting in Winnipeg last August with the intention of making every effort to reach agreement. The NCF urged the Inuvialuit to sit down with the WCF and seriously attempt to reach agreement. The WCF indicated that it was prepared to do so immediately.



However the Inuvialuit insisted that they could not make a deal with the WCF at that time. Instead they proposed that they return home and develop a set of principles from which to negotiate with the WCF, then negotiate with the WCF leading to an agreement, then bring this agreement back to their communities, then hold a regional workshop to assess and ratify the agreement, then bring the results of this process to the next Alliance meeting on October 15th.

The WCF did not want to accept this proposal. We have had two years to do this work, we said, why are we just going to start it now? It was becoming clear to us that a boundary agreement by October was becoming less and less a possibility.

The WCF then tried to reduce the timeframe by suggesting that the Inuvialuit spell out their principles and negotiate an agreement with the WCF right there. We offered to remain in Winnipeg until the end of the week. The Inuvialuit refused this offer as well. Nearly all the discussion at this meeting focussed on the concerns of the Inuvialuit. Very little time was spent discussing the issues still outstanding between WCF and the Nunavut Constitutional Forum.

While the two Forums are seriously and equally committed to reaching a tentative agreement on the boundary as soon as possible, there still are some important issues which remain to be resolved.

Interestingly enough one could say that the actual location of the boundary is no longer the major issue subject to the Inuvialuit concerns being met, and subject to other conditions being agreed upon, the proposed boundary will probably, in essence, place the Inuvialuit and Dene/Metis Settlement Regions in the west and the Inuit Settlement Region in the east. This is not to say that the political boundary will necessarily follow exactly along the boundaries of the claim.

One of the issues which needs to be addressed are the concerns on the part of the Dene and Metis that placing a political boundary on top of their claims boundary will undermine their rights to lands and wildlife on the other side of the line. The Dene and Metis were willing to accept a single line claims boundary between themselves and the Inuit only so long as there was also a definition of an overlap area on both sides of the line which was subject to joint management and usage. If the claims boundary were also to be used as the political boundary, then the Dene and Metis would want to be ensured that a Nunavut Government would not in any way be able to jeopardize their rights or their interests in lands and wildlife within the jurisdiction of Nunavut.

Another point of contention is the rate at which we will proceed towards an actual division notwithstanding an agreement on a boundary. The Dene, Metis and presumably the Inuvialuit do not want division until they are satisfied that their political rights and interests are satisfactorily entrenched in the constitution which establishes the western territory. They are very sensitive to the fact that aboriginal people will be a minority in the west and that it will be more difficult to amend a western constitution to meet their concerns after division has occurred.

The Inuit understand the concerns of aboriginal peoples in the west and support them in their efforts to meet their objectives. They also realize that they too have a lot of work to do before division is finally proclaimed. However, they are reluctant to make the realization of Nunavut directly dependent upon the satisfaction of the Dene, Metis and Inuvialuit in the west.

Furthermore, in addition to the enhancement of self-government, the major reason division has historically been proposed is for improvements in the quality of government and the delivery of services to its citizens. Citizens in both jurisdictions are concerned that the level of services which will be available to them in the short and medium terms after division not be less than the level of services provided in an undivided Northwest Territories.

Finally there is the matter of how the tentative boundary agreement reached by the Alliance should be formally ratified. The WCF has always argued that the location of the boundary will affect all present and future residents of the north and therefore that the boundary should not be imposed by one group unilaterally. An agreement by the Alliance on the boundary will go part of the way to assure that a genuine consensus has been reached. The question then is what is the fairest way for this recommendation to be accepted or rejected.

The turnout for the 1982 plebiscite on division was very low; less than fifty percent. On our visits to communities many people expressed their unhappiness with the original plebiscite because of its vagueness. They said they wanted the opportunity to vote on a concrete proposal for division which included the boundary rather than on a general principle.

With this in mind WCF has strongly endorsed the proposal that the formal ratification of the Alliance agreement should take the form of an NWT-wide plebiscite. The NCF for its part agrees that a formal ratification of the agreement should take place but they are very reluctant to accept the idea of the plebiscite.

These are all important issues; not easy to resolve. Nevertheless I am optimistic that the members of both the NCF and the WCF have both the motivation and the determination to reach an agreement, and to do so in a very short period of time. I am not optimistic about WCF's negotiations with the Inuvialuit.

As I mentioned earlier at the Winnipeg Alliance meeting WCF had agreed in a general way to accept the negotiation process proposed by the Inuvialuit; the objective being to reach an agreement on principles whereby the Inuvialuit would be able to accept a boundary agreement which would place the Inuvialuit Settlement Region in the west.

The Inuvialuit leadership completed the first step; they put to paper a set of principles for negotiation and forwarded them to WCF members for their consideration. The second step was the negotiations between the Inuvialuit and WCF members to try to reach an agreement. We did in fact have three sets of meetings with the Inuvialuit entailing four and a half days of discussion.

The first set of meetings took place on September 12th and 14th. Attending on behalf of the WCF were members Stephen Kakfwi, Larry Tourangeau and myself; alternate members Richard Nerysoo and John Bekale, our staff and legal counsel. On behalf of the Inuvialuit COPE President Billy Day attended the first day but was absent for the second. IRC Chief Roger Gruben arrived near the end of the first day's session and remained for the second. Nellie Cournoyea attended both days although she made it clear her presence was on the basis of her being an IRC staff person involved in the implementation of claims, rather than as a member of the NCF. One other staff person and legal counsel were also present.

As you know, the WCF is taking a comprehensive approach to the development of a new government. That is to say that we are looking at the structures and powers of the territorial or provincial level of government, community governments, possible regional institutinos and the relationship of each to the others. WE are also discussing various ways in which aboriginal self-government could be constituted within a public government system which represents and serves all residents. Obviously we are not going to propose that every recommendation we offer for a new government be entrenched in a constitution. Nevertheless we believe it is very important to have a fairly complete scenario in mind when we do come forth with a concrete constitutional proposal.

The Inuvialuit, for their part, presented WCF with a set of nine principles, all of which were focussed exclusively on the establishment of a regional government. To avoid confusion, it must be emphasized that these were not the same nine principles which were developed by COPE and the mayors of some Western Arctic communities in August 1985 and presented to the Nunavut Constitutional Forum's conference in Coppermine a month later. In fact the principles which were presented to the WCF described a regional government which was considerably more powerful than the Coppermine principels or any other proposal for a regional government for the Western Arctic which we are aware of. Aside from the inclusion of a principle making Inuvialuktun an official working language of the regional government, the proposal made no reference to any specific political rights for the Inuvialuit.

The first day was taken up primarily by a description and explanation of the Inuvialuit principles by their lawyer followed by questions and discussions involving all parties. Their lawyer tried to characterize the overall package as

a typical regional government similar to those operating in other parts of Canada. However, the members on our side could give no credence to this argument. For one thing the geographic area of the proposed Western Arctic Regional Government which includes a sizeable portion of the offshore is much much larger than any regional government in the south. Therefore even if the powers were the same in both governments, the fact that WARG could exercise those powers over such a large area would put it into a class by itself.

This was not the only difference, however. The powers described to us particularly as they related to land, sub-surface and offshore rights and control over non-renewable resources were much greater than any regional government in southern Canada could possibly entertain. Also, unlike anywhere in southern Canada they wanted the powers of their regional government and their relationships to the territorial and federal governments entrenched in the constitution.

As it was described to us the regional government would have title to all public lands within the region and outside of municipalities and it would also own the sub-surface other than under the Inuvialuit's 7(1(A)) lands. With regards to the offshore, while the regional government could not own these resources, it should control their development. The regional government would enter into an accord with the federal government similar to the accord presently in existence between the Government of Canada and Newfoundland. Such an accord would guarantee one half the seats on any management boards to the regional government and, in this way, the regional government would be able to exercise control over the offshore. Finally the regional government would obtain revenues directly from the oil and gas development both on and offshore although the regional government would share these revenues according to some formula with the other levels of government.



To make a long story short the response from a WCF member was; you aren't asking for a regional government at all, what you want is a third territory or province. At this point we decided to break off for the day, each side to reconsider its position in light of the day's discussion.

The second day began with both parties presenting a position. The Inuvialuit proposal was reduced from nine principles to eight. This proposal no longer called for ownership of the sub-surface but it still included control over and direct revenues from development. The approach to the offshore remained the same. The regional government's fiscal capacity would also be entrenched in the constitution along with the jurisdictions. For the sake of specificity the proposal listed the jurisdiction the regional government would include. These included the topics listed in the original WARM proposal; education, local government, economic development, police services, game management and certain powers of taxation; and added on some new ones; land use planning and management, highways, ownership of public utilities, and public health. The paper said that responsibility in some or all of these areas might be shared between the regional and the territorial governments.

WCF members responded by suggesting that the Dene and Metis, and for some principles, the non-aboriginal population shared the same objectives as the Inuvialuit; greater general and aboriginal control over and benefits from development, land use management and wildlife, the protection and enhancement of aboriginal languages and cultures, the definition and protection of aboriginal peoples' political rights and interests, the devolution of decision-making authorities to community and regional institutions as appropriate being some examples. The problem for us was that we felt that a number of these issues.. should be addressed at the provincial level, some at the communities and others

in the regions. We stated that the region they were describing was really a province and that if we were talking of having a western territory which included the Inuvialuit, we would have to take some time working together to design the provincial government before we went too far in determining the role of regional institutions.

The Inuvialuit responded by saying that they would be willing to enter into discussions about the other levels of government eventually, but only after the WCF had offered them satisfactory guarantees regarding regional government. The meeting broke up at this point with both parties agreeing to meet again soon and with a commitment from the WCF to send to the Inuvialuit our position on regional government in the interim.

The next meetings took place on September 29 and 30 in Yellowknife. WCF members Steve Kakfwi, Larry Tourangeau and myself, alternate Charlie Furlong from Aklavik, staff and legal counsel were present for both days. WCF member James Wah-Shee was present on the 29th. For the Inuvialuit Roger Gruben and a staff member attended both days and Billy Day was present on the 29th.

The basic question posed to the WCF members by the Inuvialuit was; are you going to constitutionally guarantee us regional government or not? After considerable discussion the WCF offered the following principle; that within a constitution of a western territory, community government will have the right to form a regional government and the central government will be obliged to recognize and accept regional governments so formed.

Members of the WCF preferred this approach to entrenching a specific regional government in a constitution for several reasons. First we felt that whatever we offered the Western Arctic we must also be prepared to offer to the other regions in a western territory. Also we preferred to let communities determine their membership and their regional boundaries rather than having them predetermined.

But there was another important reason why we felt this approach was more desirable. It is our opinion that communities want to form regional governments, not to exercise power over them, but rather to increase each community's ability to have more control over its situation. Our approach, while guaranteeing the right to form a regional government, would clearly leave the communities in the drivers seat where we felt they belonged.

This offer seemed to break the logjam and for the rest of the day it appeared that real progress was being made. The next day however, particularly in the afternoon, the Inuvialuit seemed to suddenly reject all that had taken place in the past day and a half and retreated back to their initial position. After some discussion we appeared to get somewhat back on track and by the end of the day it appeared that the only significant outstanding issue was whether or not the powers of a regional government should be entrenched in a constitution.

For greater certainty the Inuvialuit preferred to have the powers entrenched. For our part we did not believe that this would be a good idea. We felt that the communities who decided to form a regional government should play a major role in determining what the mandates of their regional government should be. We supported the idea that regional governments should be able to

obtain from the other levels of government: shared responsibility, management and control over certain programs and services, including aspects of education, economic development, local government relations, police services, game management, land use planning and management and of the powers to tax by way of property taxation, business taxes and license fees and amusement taxes.

The WCF does not at present support legislative authority for a regional government in these areas, but the WCF agrees that the community and central governments should be empowered to delegate such authority.

We pointed out that WCF was seriously considering proposals to increase significantly the powers and responsibilities of community governments and that these communities would be able to devolve these powers to a regional government as they saw fit. But we also wanted to protect the right of a community to opt out of a regional government if they so desired subject of course to certain terms and conditions which would limit the ability of a community to withdraw on short notice and thus pose a risk to the sound operation of the regional government. We also offered fiscal guarantees for regional governments.

The meeting ended with Inuvialuit and WCF each agreeing to give the question of entrenching the powers of regional government more thought and then meet together once more. For myself I indicated that I had gone about as far as I or the MLAs I represent are likely to be willing to go.

Our third meeting took place in Yellowknife on October 5th. Steve Kakfwi, Larry Tourangeau and myself, accompanied by our lawyer and staff were present. The Inuvialuit sent only one staff person and legal counsel.

Their lawyer indicated that the Inuvialuit continued to believe that the powers of a regional government must be entrenched in the constitution. He also insisted that the regional government must have a veto over all non-renewable resource development in the region both onshore and off.

WCF members responded that as far as we were concerned the concept of a region as the Inuvialuit described is really the entire western territory. We stated once more that the task of the WCF is to develop a constitution for the whole territory which will help enable all the peoples in the west; Dene, Metis, non-aboriginal and Inuvialuit; to live together under one public government in ways which are of benefit to each. We indicated once again that we do support the Inuvialuit's desire for a regional government but that it is important to have a strong provincial government and strong independent community governments as well. We reiterated our intention to entrench aboriginal self-government provisions within the public government system.

We agreed that the Inuvialuit do have a real interest in the important issue of non-renewable resource development. We stated that we thought it was a reasonable request that a regional government be able to participate directly in the land-use planning process within its region. We rejected their proposal that the regional government should have a veto over all

development in the region but we did suggest that we were willing to look seriously at ways in which the Inuvialuit could be directly, formally and significantly involved in the decision-making process for development projects. However we made it clear that we felt this function should probably rest primarily at the provincial level. Once again we invited the Inuvialuit to participate actively in the WCF as full members.

By this point it was clear that we had reached an impasse and the meeting broke off. A few days later the President of COPE tried to keep the channels of communication open by inviting Steve Kakfwi and a second WCF member to tour the Delta-Beaufort communities to listen to the people firsthand. We were very pleased to accept this invitation and last week Mr. Kakfwi and Larry Tourangeau accompanied Mr. Day to a number of communities.

Apparently Roger Gruben was not so impressed with the idea of a tour and it has been reported that he actively encouraged the coastal communities to refuse to meet with us. Sachs Harbour and Paulatuk both asked us not to come. However we were invited to go to Holman and Tuktoyaktuk. We also had a meeting in Inuvik with Inuvialuit, Dene, Metis and non-aboriginal leaders from Inuvik, Aklavik and the Delta Regional Council which had been designated by Fort McPherson to represent their views.

The meetings were free-wheeling but cordial. Naturally there were some differences of opinion, but apparently a number of people at these meetings found the concept of communities having ascendancy over a regional government quite attractive. This is not surprising since the last two of the principles put forward by the Inuvialuit to the Coppermine conference in 1985 reflect this position.

The joint Boards of Directors of COPE and IRC will be holding a meeting in Tuktoyaktuk on October 27 for the purpose of reassessing their position on constitutional development. I hope that the results of the meeting will enable the Inuvialuit and the WCF to return to the bargaining table. I believe that a practical and reasonable agreement between the Inuvialuit, the Dene, the Metis and the non-aboriginal representatives will make the reaching of an agreement on the boundary much easier.

However, as I have stated earlier in this presentation, time is of the essence. There are many other important issues needing to be dealt with and they cannot all be tucked away on a shelf to await an agreement with the Inuvialuit.

The Constitutional Alliance was scheduled to have a meeting here in Yellowknife on Tuesday and Wednesday of this week. At the last minute Roger Gruben contacted the NCF office and asked them to postpone the Alliance meeting until after their meeting in Tuk. By the time WCF found out about this request it was too late to get the meeting back on track.

As far as we are concerned the Tuk meeting was no excuse to cancel the meeting of the Alliance. As I indicated earlier there are a number of other outstanding issues between the WCF and NCF which need to be addressed. We could have concentrated all our energies into trying to resolve those questions thus enabling the Alliance to set up another meeting soon after which could focus entirely on the Western Arctic.

We are not going to continue meeting as the Alliance to discuss the boundary much longer. All the research has been done, and the issues are clear. The time is ripe, very nearly overripe to either reach an agreement or to decide that an agreement is simply impossible in that the Alliance apparently is not the vehicle to resolve the questions of division. Our deadline for an agreement is short; weeks not months.

If some Inuvialuit leaders consider this timeframe to be unreasonable we can only remind them that we have literally had years to be working out ways their future could be secured in the west. There was no good reason that those discussions did not start until last month.

We intend to do all we can to enable the Alliance to come before this House as soon as possible to present you with our recommendation for a boundary and to ask you to submit our recommendation to the public in the form of a plebiscite for formal ratification. Failing that I shall come to you as the representative of the WCF and ask you to initiate a different plebiscite; a plebiscite which will not only deal with the boundary, but which will also reconsider the whole question of division.

Thank you.