

Human Rights Council

Expert Mechanism on the Rights of Indigenous Peoples, Third session

12–16 July 2010

Item 4: United Nations Declaration on the Rights of Indigenous Peoples: “Report of the United Nations seminar on treaties, agreements and other constructive arrangements between States and indigenous peoples, Hobbema, Canada, 14–17 November 2006” , [A/HRC/EMRIP/2010/5]

Presented by Chief Wilton Littlechild, Co-rapporteur for the 2nd Seminar

Thank you Mr. Chairman. By words of introduction to the next section of the report, I respectfully remind the delegates and experts attending this session that it was Treaties, Treaty rights and Treaty violations that originally brought Indigenous Peoples, Tribes and Nations to participate in the United Nations in the early 1970's, including the Lakota and other Nations of the IITC and the Maskwachis Cree. Our elders told us they 'were very, very sad, discouraged and disappointed at how easily our Treaties were being violated'. So because of that experience they decided then to embark on work in the international arena. After sacred ceremonies and deliberations, they gave us 4 principles as the basis we needed to use to carry out our work and propose solutions.

The first principle has to do with the right to self determination. That in fact without that right, an inherent right to Self determination, we as Treaty Nations could not have signed an international Treaty. Our elders believed we are born with an inherent right to self determination (Kikpaktinkosowin).

Secondly, it was very important to remind the international community that the Cree understanding of Treaty was fundamental to our work. So it was not only the written text of Treaty that was important. It was very important also to recall the original spirit and intent of Treaty and how we, at least through our forefathers and oral testimony, understood those Treaties as sacred agreements (Ketchi Oyichikaywina).

Thirdly, a Treaty principle that's very fundamental to all international agreements (Treaties) was mutual consent. No party to a Treaty could unilaterally change that Treaty without the consent of the other Party. Also fundamental is the understanding that both Parties are Treaty beneficiaries. Both Parties have Treaty rights and responsibilities.

And lastly of course was peaceful coexistence, another principle of Treaty, so that we had to honor, both of us as Treaty Parties, our responsibility to the agreement. In our case, Cree government would legislate, administer and adjudicate Cree laws.

So with those four fundamental principles of Treaty, they reminded us of another principle, in our language. They said be mindful that the Treaties, and you have heard it said, are for “so long as the sun shines, the grass grows and the rivers flow”. That was very important advice and a reminder from the elders before we went into every international arena.

With those words of introduction as the basis, Mr. Chairman, I will continue with our presentation of A/HRC/EMRIP/2010/5, the report of the 2nd UN Seminar on Treaties, Agreements and other Constructive Arrangements between States and Indigenous Peoples:

II. Summary of discussions

9. Expert participants took note of the Enoch River Cree Declaration, adopted at the preparatory meeting organized on 12 and 13 November 2006. Discussions focused on the themes of indigenous peoples' and States' understanding of treaties, agreements and constructive arrangements; issues related to the implementation of treaties, agreements and other constructive arrangements; practical experiences of treaties and agreements as mechanisms for conflict resolution and reconciliation; international developments and treaties, agreements and other constructive arrangements, including the role of the Declaration on the Rights of Indigenous Peoples, the human rights treaty bodies and regional human rights instruments. The programme of work of the seminar is annexed to the present report.

A. Indigenous peoples understanding of treaties, agreements and other constructive arrangements

10. As in previous discussions relating to treaties, agreements and other constructive arrangements between States and indigenous peoples, indigenous participants underlined the important role played by treaties in determining their relationship with the States in which they lived. The treaties were perceived by some of the experts as having a legally-binding character and were considered indispensable as a framework for the resolution of conflicts. It was noted that the history of treaty-breaking by Governments over the years had undermined confidence between the parties, and that this was compounded by differing interpretations or understandings of treaties. For example, speakers referred to the unwritten intent as expressed orally, which was to give indigenous nations the capacity to be self-determining and self-sufficient, while States and courts focused literally on the text of the treaty itself. The language the treaty was written in might also change the contents, as is the case of the Waitangi treaty between the British Crown and the Maori people of Aoteroa, New Zealand.

11. A number of speakers pointed to the importance of elders and oral histories as sources of interpretation of the original spirit and intent of treaties, and believed that greater efforts should be made to gather information from them. The role of treaty education was mentioned as critical in passing the message of treaties on to future generations and not losing the indigenous oral understanding of the original documents.

B. Implementation of treaties, agreements and other constructive arrangements

12. Reference was made to the recommendations made by the Special Rapporteur, Miguel Alfonso Martínez, in his study and at the 2003 treaties seminar organized by OHCHR by participants, and it was recommended that they be used as a starting point for the discussions on implementation. The experts as well as the representative of Canada believed there was much to be learned from recent experiences in treaty negotiation that could be helpful if applied to the contemporary context.

13. Some discussion arose concerning the principle of free, prior and informed consent and its relevance to the process of negotiating and finally agreeing upon treaties and agreements as they are reviewed and considered today. Free, prior and informed consent, it was suggested, was the means by which treaties should be respected, and implied the full consultation with the indigenous peoples concerned to ensure their agreement on any outcome. The evolution of treaties as implemented in practice was considered relevant to the seminar. An example was given from a constructive arrangement in Panama, which placed in the hands of the indigenous authorities almost all matters concerning the administration of justice and the economic development on their lands. These responsibilities had evolved over time and through negotiations with successive Governments.

C. Treaties and agreements and conflict-prevention and conflict-resolution mechanisms

14. Much of the discussion on treaties focused on their value as mechanisms and models for the resolution of disputes and conflicts between States and treaty-making indigenous peoples. It was understood by the experts that treaties, in order to be useful as a framework for reconciliation, had to be understood in the same way by all parties and respected. Experts also commented that treaties could be a major factor in any discussion or settlement process involving indigenous peoples, with a focus on conflict prevention as well as the establishment of fair and fully participatory processes to redress violations effectively.

15. Many speakers noted that, unfortunately, the history of implementation had not been good in the past, hence the interest of indigenous peoples in raising the issue at the international level and seeking some evaluation from the United Nations. One specific proposal related to restorative justice and the possibilities for financial and other forms of compensation to indigenous nations through application to the courts. There was discussion about a possible role for the United Nations and its organs, such as the Permanent Forum on Indigenous Issues, which, it was felt, might be able to act as an arbiter in cases of conflicts arising between indigenous nations and States. Experts noted that such an international mechanism, while desirable in cases where conflicts and violations are not able to be resolved by bilateral processes established jointly by the treaty partners, would require considerable political and technical adaptation by the United Nations.

D. Role of the United Nations Declaration on the Rights of Indigenous Peoples

16. The seminar concluded by reflecting on the role of the United Nations Declaration on the Rights of Indigenous Peoples in implementing treaty rights. The long history of elaboration and negotiation of the Declaration was noted, and the successful adoption by the Human Rights Council welcomed. Article 36 (now 37) specifically addressed treaties and treaty rights but, it was noted, the article needed to be read alongside a number of other articles, as well as the preambular paragraphs of the Declaration, which are directly relevant.

17. Experts noted in particular the importance and relevance of the references in the United Nations Declaration to the right of free, prior informed consent, which is an essential principle of international treaty-making. Articles 19 and 32 were noted in particular. Several experts stressed that free, prior and informed consent was basic to traditional understandings about treaty-making and was a requirement for addressing violations and abrogations of treaty rights, as well as for the establishment of participatory processes to redress violations effectively.

18. Reference was also made to the specialized agencies of the United Nations currently working on indigenous issues, such as the World Intellectual Property Organization (WIPO), or human rights bodies such as the Committee on the Elimination of Racial Discrimination, where it was felt the implications of the Declaration and particularly the article relating to treaties ought to be given visibility and used as guidance in current negotiations and monitoring. Experts concluded by agreeing that there was further need for discussions on the implementation of treaties and hoped that a third seminar would be convened in the future.

III. Conclusions and recommendations

19. The experts participating in the seminar on treaties, agreements and other constructive arrangements between States and indigenous peoples, meeting in Maskwacis Territory of Treaty No. 6, from 14 to 17 November 2006, agreed upon the conclusions and recommendations set out below.

1. Conclusions

20. The experts reaffirmed the conclusions and recommendations of the seminar on treaties, agreements and other constructive arrangements, held in Geneva in December 2003 (E/CN.4/2004/111), and emphasized their continued relevance.

21. The experts endorsed the Enoch River Cree Declaration adopted by consensus by the participating experts of the International Indigenous Nations Treaty Summit, held on 12 and 13 November 2006 on Enoch Cree Nation Territory of Treaty No. 6 and presented to the United Nations expert seminar on treaties, agreements and constructive arrangements on 14 to 17 November 2006.

22. The experts stressed the need to emphasize and assert indigenous peoples' own understanding of the treaties negotiated by treaty nations, as documented and evidenced by indigenous peoples' oral histories, traditions and the concepts expressed in their own languages.

23. The experts emphasized that these understandings must be the basis for all current processes between States and indigenous peoples, to resolve

conflicts and disputes related to the abrogation and implementation of treaties and the rights they affirm.

24. The experts took note with deep appreciation of the recent advances with respect to the recognition of treaty rights in the work of key United Nations bodies, including the Working Group on Indigenous Populations, the Permanent Forum on Indigenous Issues, the Committee on the Elimination of Racial Discrimination, the Human Rights Committee, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, as well as regional organizations, such as the Inter-American Human Rights Court of the Organization of American States, which had taken place since the first seminar.

[the final Recommendations of the Seminar will be presented by Andrea Carmen, Co-Rapporteur of the 2nd Seminar]