

**NINTH SESSION OF THE
UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES
April 19 to 30, 2010
New York City**

**STATEMENT OF THE
NORTH AMERICAN INDIGENOUS PEOPLES' CAUCUS**

AGENDA ITEM 5: HALF - DAY DISCUSSION ON NORTH AMERICA

Thank you Mr. Chairman. I'm honored to give this intervention on behalf of the North American Indigenous Peoples' Caucus.

By way of background, the North American Indigenous Peoples' Caucus held a preparatory meeting for the Ninth Session of the UNPFII. The preparatory meeting took place on March 6 and 7, 2010 in the territory of the Alexis Nakota Sioux Nation in Alberta, Canada and the full report is included in the UNPFII9 documents. This statement reflects the outcomes of our deliberations.

The NAIPC welcomes this opportunity to engage with the United States and Canada on key issues of concern to Indigenous peoples in the region. We encourage the UNPFII to continue to provide this type of dialogue opportunities between Indigenous peoples and states in future sessions.

UNDRIP and the North American Region

With regard to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), delegates expressed concern that the two nation states in our region, to-date, have not yet endorsed the Declaration, unconditionally.

Delegates discussed the announcement in the Throne Speech (March 3, 2010) by the government of Canada that:

“We are a country with an Aboriginal heritage. A growing number of states have given qualified recognition to the United Nations Declaration on the Rights of Indigenous Peoples. Our Government will take steps to endorse this aspirational document in a manner fully consistent with Canada’s Constitution and laws.”

Delegates welcomed the announcement by the government of Canada, in the Throne Speech (Mar 3, 2010) as a first step towards overcoming Canada’s refusal to endorse UNDRIP, but expressed concern about the government’s reference to “qualified recognition,” the mischaracterization of UNDRIP as an “aspirational document,” and the conditional endorsement of UNDRIP “in a manner consistent with the Canadian constitutions and laws rather than vice versa”.

Delegates also recalled Canada’s vote on the declaration on September 13, 2007 when

they voted against UNDRIP, noting concerns with the right to self-determination, land rights and the principle of free prior informed consent. These provisions are of critical importance to Indigenous peoples and the articulation in UNDRIP are minimum standards that form part of international customary law and cannot be undermined or diminished.

Delegates also noted that the United States is currently reviewing its position on the Declaration. While the US and Canada have signaled a possible change in their position on the UNDRIP, the NAIPC is concerned that the states are attempting to place a domestic interpretation on the articles of the UNDRIP.

Recommendation: That the United States and Canada give their unconditional and unqualified endorsement of the UNDRIP, and follow-up with steps to ensure that their laws and policies are made consistent with UNDRIP.

Delegates expressed their readiness to work with the United States and Canada in that regard.

Land Rights

Delegates stressed the need for state governments to reverse their laws and policies that are based on the colonial doctrine of discovery. In the Canadian context, in areas where no treaties have been signed, this refers to the doctrine of terra nullius and the failure to recognize the inherent jurisdiction and land rights of Indigenous peoples over their traditional territories. Canada's current land rights policy, the Comprehensive Claims Policy, continues to aim at the extinguishment of Aboriginal Title, within the context of the Doctrine of Discovery framework, rather than implementing an approach based on recognition and co-existence.

The legal basis for Canada and the US interactions with Indigenous Nations and Peoples with regard to lands, territories and issues of sovereignty lead directly back to Johnson v. M'Intosh, and the Doctrine of Discovery. There is now ample evidence that the Johnson v. M'Intosh case is based on fraud. Given the evidence of fraud and given the use of Christian religious categories, namely "Christian people" and "natives, who are heathens," as the basis of the US Supreme Court's decision in that case, how can Johnson v. M'Intosh and the Doctrine of Discovery be treated by Canada and the United States as a valid foundational aspect of their legal systems?

Treaties

One of the major initiatives of the UN was to have a study on treaties by Dr. Miguel Alfonso Martinez. In his Final Report, [E/CN.4/Sub.2/1999/20] Dr. Miguel Alfonso Martinez presented a number of Conclusions and Recommendations under the heading "Looking Ahead." One of the most important, and least developed to date, was his recommendation that, due to the failures and injustices of existing mechanisms to resolve conflicts arising from Treaty violations, an "entirely new, special jurisdiction"

should be established within States (supported by public funds) to deal exclusively with "Indigenous Issues". The Rapporteur affirmed that this "new jurisdiction" or mechanism for conflict resolution must be "independent of existing governmental structures."

Delegates welcomed and supported in its entirety the "Conclusions and Recommendations of the United Nations First and Second Expert Seminars on Treaties, Agreements, and Constructive Arrangements between states and Indigenous peoples," that took place December 15-17, 2003 (Geneva) and November 14-17, 2006 (Sampson Cree First Nation).

Delegates reaffirmed the importance of treaties as an ongoing concern that requires immediate action from the UNPFII to reinstate the observations, conclusions and recommendations of the UN Study on Treaties, agreements, and other constructive arrangements as outstanding and unfinished business.

Recommendation: That the UNPFII support continuing work on the UN treaty study within the United Nations and to call upon other UN bodies, such as the expert mechanism and the expert advisory committee to advance the work on treaties.

Membership

Delegates expressed concern over processes underway in Canada to change the Indian Act membership requirements due to recent court decisions. Concerns were expressed especially regarding second-generation children losing Indian status.

The greater legal issue is the fundamental right of Indigenous peoples and nations to determine their own citizenship. Delegates stressed that the Canadian government as a treaty successor does not have the authority to determine who is and who is not an Indian and if they continue on this path they are violating international law.

Recommendation: That governments recognize the right of Indigenous nations to self-determine their own membership, and not infringe on that right.

Border Issues

Delegates also raised concerns with Indigenous peoples being denied the right to cross the border to attend international meetings.

Recommendation: That the UN establish a procedure to allow Indigenous participants to attend international meetings, even if they do not have state-issued documentation.

A number of participants, including chiefs from Alberta raised concerns regarding new border crossing regulations for Indigenous peoples. For Indigenous peoples in the region, the border between Canada and the United States is a colonial construct. Indigenous Peoples' right to freely cross the border has been recognized in the Jay Treaty (1794). In the past, status Indians from Canada were able to cross the border with a simple Indian status card, and did not require a passport. Recently attempts were made to impose a passport requirement or a new status-card both of which would include a locator chip with extensive personal information.

Recommendation: Delegates recommended that no passport or new status card requirements be imposed on Indigenous peoples from North America to cross the Canada-US border.

MOU between the US DOI and Canada Department of Indian and Northern Affairs

The NAIPC has recently become aware of the Memorandum of Understanding between the United States Department of the Interior and Canada's Department of Indian and Northern Affairs concerning Indigenous issues. We are concerned the MOU was developed without the consultation or meaningful participation of Indigenous Peoples. In relation to the MOU between the US and Canada, we seek clarification as to what is your interpretation of the term "indigenous land tenure" and "title" as found in the MOU?

Finally, it has been mentioned that Indigenous Peoples want equal access to the American dream. However, we must remind you that the American dream comes at the cost of the destruction of Mother Earth, and to the detriment of Indigenous Nations and Peoples in terms of languages, cultures, sacred sites and places, and all of the socio-economic indicators mentioned by the representative of the US today.

Instead, we are citizens of our respective Nations, and consistent with Article 3 of the UNDRIP, seek to freely exercise our right of self-determination, and ensure the well-being of our future generations as Indigenous peoples.

For all of our relations.