



“Strengthening Partnership between States and indigenous peoples: treaties, agreements and other constructive arrangements”

Geneva

16-17 July 2012

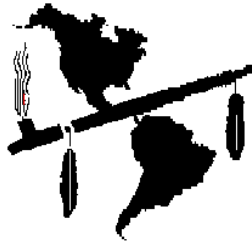
Organized by the Office of the United Nations High Commissioner for Human Rights

A Framework for Conflict Resolution, Reparations, Restitution and Redress of Treaty Violations based on the United Nations Declaration on the Rights of Indigenous Peoples and Free Prior and Informed Consent

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The views expressed in this paper do not necessarily reflect those of the OHCHR



... “treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States

--- Preamble, United Nations Declaration on the Rights of Indigenous Peoples

“Treaties between sovereign nations explicitly entail agreements which represent ‘the supreme law of the land’ binding each party to an inviolate international relationship.”

--- From the “Declaration of Continuing Independence of the Sovereign Native American Indian Nations,” June 1974, Standing Rock South Dakota, founding document of the IITC.

I. TREATIES AND THE RIGHT TO FREE, PRIOR AND INFORMED CONSENT

For Indigenous Peoples, the Right of Free, Prior and Informed Consent (FPIC) is a requirement, prerequisite and manifestation of the exercise of their fundamental right to self-determination as defined in international law.

FPIC is a fundamental underpinning of Indigenous Peoples’ ability to conclude and implement valid Treaties and Agreements with other parties, to exert sovereignty over their lands and natural resources, to develop and participate in processes that redress and correct violations, to accept any results that emerge from these processes, and to establish the terms and criteria for negotiations with States over any and all matters affecting them.

A number of United Nations bodies, including Treaty–monitoring Committees, as well as other UN processes, have underscored the failure of States and other parties to respect the rights to self-determination and FPIC for Indigenous Peoples, resulting in a range of pervasive human rights violations. For example, the 1990 UN **Global Consultation on the Right to Development** stated that, “the most destructive and prevalent abuses of Indigenous Rights are the direct consequences of development strategies that fail to respect their fundamental right to self-determination.”

Experts at the **1st United Nations Seminar on Treaties, Agreements and other Constructive Arrangements between States and Indigenous Peoples** which met in Geneva from December 15th

to 17th, 2003, underscored the vital importance of consent in paragraph 2 of their final conclusions and recommendations. They affirmed that “that treaties, agreements and other constructive arrangements constitute a means for the promotion of harmonious, just and more positive relations between States and indigenous peoples because of their consensual basis and because they provide mutual benefit to indigenous and non-indigenous peoples.”¹

This consensual basis of Treaties and Agreements is an essential component upon which their original validity and ongoing viability is based. The failure of the United States (US) to fully accept the rights to Self-determination and FPIC of Indigenous Nations as stated in the United Nations (UN) Declaration on the Rights of Indigenous Peoples constitutes another example of the Treaty violations and abrogations which have characterized its history in relation to the sovereign Indigenous Nations of this land. Treaties, by definition, can be concluded only between two equally sovereign Nations. The continuing legal validity of the Treaties concluded by the settler government of the US with the Indigenous Nations of this land reaffirms the ongoing nature of the Treaty relationship based on equal standing and rights, mutual recognition and respect. The Treaty relationship continues to be legally binding as per the US Constitution, International Law and the sacred original understandings of Indigenous Nations is a reaffirmation, exercise and validation of the inherent rights to self-determination and consent.

Consent is also fundamental Treaty Principle which predates the UN. For example, FPIC is a foundation of the original relationship between the US and Indian Treaty Nations. For example, the Ft. Laramie Treaty concluded on April 29th, 1869 with the “Great Sioux Nation”² states in Article 16:

“The United States hereby agrees and stipulates that the country north of the North Platte River and east of the summits of the Big Horn Mountains shall be held and considered to be unceded Indian territory, and also stipulates and agrees that no white person or persons shall be permitted to settle upon or occupy any portion of the same; or without the consent of the Indians first had and obtained, to pass through the same;”

The principle of consent is essential in assessing the legal and moral validity of a Treaty or Agreement from the perspective of Indigenous Peoples. FPIC requires that valid Treaties, Agreements and Arrangements, whether concluded in the past or the present, must be decided free of any coercion, i.e. not under threat or in the face of starvation, small pox epidemics, cuts or elimination of funding for human services, forced removals, annihilation under the gun, or imposition of conditions and development activities “because we can.”

Certainly, these terms also apply to any consensual changes in the terms, interpretations or implementation of the original Treaty provisions, as they were understood by the Indigenous Peoples when they were agreed to in the first place.

¹ Conclusions and recommendations of the Seminar on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Peoples, held in Geneva from 15 to 17 December 2003. E/CN.4/2004/111, paragraph 3, emphasis added.

² “TREATY WITH THE SIOUX -- BRULÉ, OGLALA, MINICONJOU, YANKTONAI, HUNKPAPA, BLACKFEET, CUTHEAD, TWO KETTLE, SANS ARCS, AND SANTEE-- AND ARAPAHO 15 Stat., 635. Ratified, Feb. 16, 1869. Proclaimed, Feb. 24, 1869

The adoption of the **UN Declaration on the Rights of Indigenous Peoples** (The “UN Declaration”) by the UN General Assembly on September 13th, 2007, represented a historic step forward for Indigenous Peoples. Its numerous provisions affirming the right to FPIC for Indigenous Peoples provides a now-internationally accepted framework for the implementation. These include a just and participatory framework for redress, restitution, settlement, repatriation and dispute resolution affecting lands and resources, subsistence, environment and cultural heritage among others.

The UN Declaration explicitly affirms the right to FPIC and upholds State obligations in this regard in many of its provisions. This issue was a pivotal point of debate throughout the many years at the UN Intersessional Working Group on the Draft Declaration. Some States, including Canada, the US, New Zealand and Australia (under its former administration) consistently proposed wording to diminish this principle to a State obligation to merely “consult with Indigenous Peoples” or to “seek” but not necessarily obtain their FPIC.

With the Adoption of the UN Declaration on the Rights of Indigenous Peoples, as well as other international standards such as General Recommendation XXIII of the UN Committee on the Elimination of Racial Discrimination (CERD), the 2005 UN General Assembly’s Plan of Action for the 2nd International Decade of the Worlds’ Indigenous Peoples, FPIC is now an undeniable operative human rights framework. It contains the minimum standards for negotiating and concluding any new Treaties and agreements, as well as for negotiations between Indigenous Peoples and States pertaining to the implementation of exiting Treaties, Agreements and Constructive Arrangements. FPIC is affirmed as the operative principle through which the parties establish, in equal and full partnership, the terms, processes, mechanisms and criteria for settling disputes arising from the failure to implement and respect existing Treaties.

Many of the relevant provisions of the UN Declaration directly refer to FPIC in relation to rights affirmed in Treaties, Agreements and other Constructive Arrangements between States and Indigenous Peoples as well as other rights. For example, Article 19, addressing the adoption of legislative and administrative measures and Article 32, which addresses development activities affecting Indigenous Peoples lands and natural resources, contain some of the broadest affirmations in the UN Declaration of the right to FPIC for Indigenous Peoples. Article 10, which affirms that Indigenous Peoples shall not be forcibly removed or relocated from their lands or territories without their FPIC, is also of direct relevance to land as the central issue in most Treaty rights violations being carried out around the world.

These provisions, as well as others in the UN Declaration affirm the fundamental nature of the relationship between State and Indigenous parties enshrined and recognized in Treaties. They also highlight some of the most critical ways that Treaty Rights as well as the related right to FPIC are systematically violated, not only historically but in the present day.

In addition, the significance the UN Declaration’s full and unqualified recognition of Indigenous Peoples as Peoples for the first time in an international standard has far-reaching implications. This leaves no room for doubt that the range of other instruments which are legally binding upon the United States and contain rights which accrue to all Peoples, also apply to Indigenous Peoples. Primary among those is the Right to Self-determination as stated in the three paragraphs which constitute Article 1 in Common of the International Human Rights Covenants, as well as the

recommendations of the CERD, in particular General Recommendation XXIII pertaining to the implementation of the ICERD regarding the rights of Indigenous Peoples, including FPIC.

States which have ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and other international Human Rights Treaties, have given their word to treat those within their jurisdiction in a manner consistent with the provisions of internationally recognized human rights, and with within the UN to ensure that other States Parties act as well in accordance to those same provisions. Failure by the US and other States to comply with Treaty body recommendations undermines a core commitment required by the Charter of the UN of all Member States, “to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion,” by pledging “to take joint and separate action in co-operation with the [UN] Organization for the achievement of the purposes set forth in Article 55.”³

In this regard, the IITC calls the attention of this Seminar to the lack of implementation by the United States regarding implementation of the Concluding Observations of the CERD in its 2008 review of the US, especially the recommendations in paragraphs 19 and 29 as follows:

19. While noting the explanations provided by the State party with regard to the situation of the Western Shoshone indigenous peoples, considered by the Committee under its early warning and urgent action procedure, the Committee strongly regrets that the State party has not followed up on the recommendations contained in paragraphs 8 to 10 of its decision 1(68) of 2006 (CERD/C/USA/DEC/1). (Article 5).⁴

The Committee reiterates its Decision 1 (68) in its entirety, and urges the State party to implement all the recommendations contained therein.

29. The Committee is concerned about reports relating to activities – such as nuclear testing, toxic and dangerous waste storage, mining or logging – carried out or planned in areas of spiritual and cultural significance to Native Americans, and about the negative impact that such activities allegedly have on the enjoyment by the affected indigenous peoples of their rights under the Convention. (Articles 5 (d) (v), 5 (e) (iv) and 5 (e) (vi)).

The Committee recommends that the State party take all appropriate measures – in consultation with indigenous peoples concerned and their representatives chosen in accordance with their own procedures – to ensure that activities carried out in areas of spiritual and cultural significance to Native Americans do not have a negative impact on the enjoyment of their rights under the Convention.

The Committee further recommends that the State party recognise the right of Native Americans to participate in decisions affecting them, and consult and

³ United Nations Charter, Articles 55 and 56.

⁴ Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America*, 77th Sess., UN Doc. CERD/C/USA/CO/6 (2008) at para. 19.

cooperate in good faith with the indigenous peoples concerned before adopting and implementing any activity in areas of spiritual and cultural significance to Native Americans. While noting the position of the State party with regard to the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295), the Committee finally recommends that the declaration be used as a guide to interpret the State party's obligations under the Convention relating to indigenous peoples.⁵

The far-reaching implications of these recommendations addressing the United States' obligations under the Convention cannot be minimized. The CERD recommendations do not authorize the US or other States to make their own interpretations of internationally-adopted human rights provisions, or to attempt to unilaterally diminish or limit the rights recognized in the UN Declaration based on federal laws and policies which fail to live up to this now universally-recognized "minimum standard". The CERD's recommendations to the US also underscore the Right of Indigenous Peoples to participate in decisions affecting them.

In another groundbreaking recommendation, the CERD recommended that the Declaration be used as a "guide to interpret the State Party's (i.e. the US's) obligations under the Convention" notwithstanding the State's position vis a vis the Declaration. This ties the Declaration and the implementation of its provisions *as they are written* directly to States' obligations for implementing the ICERD as a legally-binding UN instrument.

II. MOVING BEYOND THE FAILED MODELS OF THE PAST: THE US EXAMPLE

The US federal government entered into and ratified more than 400 treaties with Indian Nations from 1778 to 1871. These Treaties recognized and affirmed a broad range of rights and relationships. These include, among others, mutual recognition of sovereignty, peace and friendship, land and resource rights, right of, health, housing, education and subsistence rights (hunting, fishing and gathering) and in some cases right of transit through Treaty lands for settlers.

Even though Congress decided to end US Treaty-making with Indian Nations in 1871, the preexisting Treaties are still in effect and contain obligations which are legally binding upon the US today. The US Constitution's reference to Treaties as "the Supreme Law of the Land" includes and encompasses the US obligations in accordance with Treaties entered into in good faith with the original Indigenous Nations of this land.

These Treaties have continued to be violated by the US Treaty party. The Land Claims Commission established by the US government in 1946 (and disbanded in 1978) was a failed process for Treaty abrogation "settlements" in violation of the FPIC of Indigenous Treaty Nations. It was established by the US government as a unilateral decision-making process by which the same party which had violated Treaty Rights was also the sole arbitrator of the resulting claims. This had disastrous impacts for Indigenous Treaty Nations in the US, whose rights were doubly violated by this process.

⁵ Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America*, 77th Sess., UN Doc. CERD/C/USA/CO/6 (2008) at para. 29.

The desire of government and private interests to access Indigenous Peoples' lands for mineral development has been a primary force behind the illegal acquisition and appropriation of many of the Treaty Lands in the US and elsewhere. One of many examples was the US response to the discovery of gold in the sacred Black Hills only 6 years after they were recognized by the 1868 Fort Laramie Treaty between the US and Sioux Nation as belonging to the Lakota (Sioux) in perpetuity.

The Black Hills (He' Sapa) are the sacred place of Creation for the Lakota. The protection of the Black Hills is an ancient, inherent and sacred responsibility for the Lakota, and was the central component of the Treaty the Lakota Nation made with the US settler government in 1868. The Black Hills means as much to the Lakota as the Vatican means to Roman Catholics or Jerusalem means to Christians, Muslims and Jews.

In 1980, the US Supreme Court stated, referring to the illegal confiscation of the Treaty Lands in the Black Hills of South Dakota that "... a more ripe and rank case of dishonorable dealing will never, in all probability, be found in the history of our nation" and considered that "...President Ulysses S. Grant was guilty of duplicity in breaching the Government's treaty obligations with the Sioux relative to ... the Nation's 1868 Fort Laramie Treaty commitments to the Sioux". The Court also concluded that the US Government was guilty of "... a pattern of duress ... in starving the Sioux to get them to agree to the sale of the Black Hills." ⁶

Despite this clear acknowledgement of wrongdoing by the US Supreme Court over 30 years ago, to this day none of these illegally-confiscated Treaty Lands have been returned, and gold mining continues in the Black Hills.

In these and other proceedings affecting Treaty rights, the US Treaty party has continued to assert that they have sole jurisdiction to determine, decide and control the process for redress of Treaty violations or to unilaterally abrogate legally binding Treaties based on the "plenary power of congress." They have established the procedures and criteria for claims, determined if any violations have occurred and set the terms and parameters for compensation (which seldom if ever returned appropriated lands and resources) when and if Treaty the violations are recognized by the violating party. They continue to make unilateral decisions to extract resources (gold, uranium, coal, timber, water, etc.), and to carry out development projects (i.e. the Keystone XL Pipeline and a number of current mining plans) on Treaty lands.

This denial of due process has been addressed by the CERD. In its 2006 recommendations to the US in response to a submission under the Early Warning and Urgent Action Procedure⁷ by the Western Shoshone National Council et. al., stated that the Indian Claims Commission processes had denied due process and did not comply with contemporary human rights norms, principles and standards. The CERD expressed concerns regarding the US assertion that the Western Shoshone lands had been rightfully and validly appropriated as a result of "gradual encroachment" and that the offer to provide monetary compensation to the Western Shoshone, although never accepted, constituted a final settlement of their claims.⁸

⁶ *United States v. Sioux Nation*, 207 Ct. Cl. 234 at 241, 518 F.2d 1298 at 1302 (1975), cited in *United States v. Sioux Nation of Indians*, 448 U.S. 371 at 388 (1980).

⁷ CERD/C/USA/DEC/1 11 April 2006

⁸ "The Committee is concerned by the State party's position that Western Shoshone peoples' legal rights to ancestral lands have been extinguished through gradual encroachment, notwithstanding the fact that the Western Shoshone peoples

The right to FPIC of the concerned Indigenous Treaty Party is not a factor in these procedures and decisions. A just, fair process in the US to address, adjudicate and correct these and other Treaty violations with the full participation and agreement of *all* Treaty Parties has never, to date, been established.

Given the content of the UN Declaration's relevant provisions constituting the minimum standard, combined with the wide range of international norms and standards recognizing the right to FPIC for Indigenous Peoples, this situation can no longer be considered an acceptable status quo in the US. The call upon States and Indigenous Peoples to work together to change the terms, nature and structure of such processes so that they conform to current International Human Rights standards is clear and compelling.

Of particular importance are the specific provisions in the UN Declaration (Articles and preambular paragraphs) recognizing the international character and standing of Treaties and States' obligation to and the related right to self Determination as defined under international (not "domestic") law, and the many articles which directly address and affirm the right to FPIC.

The significance of these provisions and the rights and obligations for States which they affirm, cannot be minimized. They provide a clear basis for the next steps forward.

VI. THE UN DECLARATION: A FRAMEWORK FOR A "NEW JURISDICTION" FOR REDRESS OF TREATY VIOLATIONS BETWEEN TREATY PARTIES AND IN THE INTERNATIONAL ARENA

"The experts request the Commission on Human Rights: (a) To consider recommending to the Economic and Social Council that a workshop be convened, drawing upon existing good practices of conflict resolution, with a view to exploring ways and means to develop a mechanism for resolving conflicts arising from treaties, agreements and other constructive arrangements in cases where the domestic conflict resolution processes have proven ineffective;"⁹

***"Reaffirming** the call by the UN Study on Treaties, Agreements and Constructive Arrangements for the international recognition of our Treaties with states, as well as effective and accessible mechanisms to provide international redress for Treaty violations and abrogations;"¹⁰*

have reportedly continued to use and occupy the lands and their natural resources in accordance with their traditional land tenure patterns. The Committee further notes with concern that the State party's position is made on the basis of processes before the Indian Claims Commission, "which did not comply with contemporary international human rights norms, principles and standards that govern determination of indigenous property interests", as stressed by the Inter-American Commission on Human Rights in the case *Mary and Carrie Dann versus United States* (Case 11.140, 27 December 2002)". Ibid para 6.

⁹ Recommendations from the Seminar on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Peoples, Geneva, 15 to 17 December 2003. [E/CN.4/2004/111, 2 January 2004]

¹⁰ ENOCH RIVER CREE DECLARATION Of the International Indigenous Nations Treaty Summit November 12 – 13, 2006 Enoch Cree Nation, Treaty No. 6 Nations' Territory, endorsed and included in the recommendations from the 2nd United Nations Expert Seminar on Treaties, Agreements and Constructive Arrangements November 14-17, 2006, Maskwacis Cree Territory

In his Final Report, the **UN Rapporteur on Treaties, Agreements and Constructive Arrangements between States and Indigenous Populations**,¹¹ 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."

In paragraphs 306 – 308 of his Final Report, the Rapporteur presented some of the criteria and components he saw as necessary for this "new jurisdiction" to be a successful and viable tool for the resolution of disputes and redress of violations, including "those related to treaty implementation". A key component of this "new jurisdiction" would be a "body to draft, **through negotiations with the indigenous peoples concerned new juridical, bilateral, consensual, legal instruments with the indigenous Peoples interested,**" as well as legislation "to create a new institutionalized legal order applicable to all indigenous issues and that accords with the needs of indigenous peoples;" (para. 308 (ii)).

The Rapporteur stressed that to effectively replace the current outmoded, oppressive and ineffective unilateral processes and structures, the full participation of Indigenous Peoples would be essential.

The UN Declaration and the framework it provides can be used to transform the Rapporteur's recommendation into a practical reality in the US and other States. There is an historic opportunity to finally bring procedures for redress and restitution of Treaty violations into line with currently accepted International Human Rights standards, based on the provisions of the Declaration that now been accepted and adopted by the vast majority of UN member States around the world.

Some key elements of this "new jurisdiction model" as a bi-lateral mechanism for Treaty-related redress/restitution/conflict resolution/land rights adjudication and recognition, based on relevant provisions contained in the UN Declaration, would include:

- **The process be fair independent, impartial, open and transparent (Article 27)**
- **It be established and implemented in conjunction with the indigenous peoples concerned (Article 27)**
- **It gives due recognition to indigenous peoples' laws, traditions, customs and land tenure systems (Article 27); and/or gives due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights (Article 40)**
- **It provides redress for Indigenous Peoples' lands, territories and resources, including those which were traditionally owned or otherwise occupied or used and which were**

¹¹ Final Report of the UN Rapporteur on Treaties, Agreements and Constructive Arrangements between States and Indigenous Populations [E/CN.4/Sub.2/1999/20]

confiscated, taken, occupied, used or damaged without their free, prior and informed consent (Articles 27 and 28)

- **Indigenous peoples shall have the right to participate in this process (Article 27)**
- **Redress can include restitution of their traditionally owned or otherwise occupied or used lands and resources unless this is not possible (Article 28)**
- **Compensation shall be just, fair and equitable (Article 28)**
- **If return of original lands (as per #6 above) is “not possible”, compensation shall take the form of lands, territories and resources equal in quality, size and legal status, unless otherwise freely agreed to by the peoples concerned (Article 28)**
- **Monetary compensation or other appropriate redress can also be provided according to the above criteria, but only with the free agreement of the affected Peoples (Article 28)**
- **Indigenous peoples have the right to have access to the process (Article 40)**
- **The process provides for prompt decisions (Article 40)**
- **It provides just and fair procedures to Indigenous Peoples for the resolution of conflicts and disputes with States or other parties (Article 40)**
- **The process shall provide effective remedies for all infringements of their individual and collective rights (Article 40)**

The basis for all processes and decisions in which Treaties and Treaty rights are involved or affected must be Article 37 of the UN Declaration which affirms Indigenous Peoples’ unequivocal rights to the recognition, observance and enforcement of the Treaties, Agreements and Other Constructive Arrangements concluded with States or their successors, as well as the obligation of States to honour and respect such Treaties, Agreements and other Constructive Arrangements.

On April 20th, 2012, this article was reaffirmed, expanded and further strengthened by the adoption of Article XXIII of the Organizational of American States (OAS) proposed America Declaration on the Rights of Indigenous Peoples. The American Declaration will be applicable in the 35 member States of the OAS, including the US and Canada. Article XXIII, now officially adopted, includes all of the language in Article 37 of the UN Declaration on the Rights of Indigenous Peoples. It further adds the right to international redress for violations as follows:

“When disputes cannot be resolved between the parties in relation to such treaties, agreements and other constructive arrangements, these shall be submitted to competent bodies, including regional and international bodies, by the States or indigenous peoples concerned.”

Article XXIII as adopted also calls for implementation of Treaties, Agreements and Other Constructive Arrangements “in accordance with their true spirit and intent” with consideration for the understanding of Treaties by the Indigenous Peoples.

The final text of Article XXIII of the proposed American Declaration is enclosed as an attachment.

The progress made through this adoption underscores the importance of the UN Declaration as the minimum standard in future standard setting and the need to put in place effective processes to resolve disputes over Treaty violations between the parties regionally and internationally when processes put into place between the parties are not able to resolve them in a manner that is satisfactory to either or both Parties. It is also in keeping with the recommendations adopted by both the previous UN Seminars on Treaties, Agreements and other Constructive Arrangements (2003 and

2006), as well as River Cree Declaration adopted by the participants in the “International Indigenous Nations Treaty Summit (November 2006) in Enoch Cree Nation, Treaty No. 6 Nations’ Territory, which was endorsed and included in the official report of the 2nd UN Seminar.

In the view of IITC, to be considered “competent”, a regional or international body for resolution of Treaty conflicts and violations must also be implemented in accordance with the criteria, provisions and framework set forth in the UN Declaration on the Rights of Indigenous Peoples as summarized above, including full and effective participation and Free Prior and Informed Consent.

VII. CONCLUSIONS AND RECOMMENDATIONS

Article 43 of the UN Declaration affirms that the rights therein “constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.” Now that the Declaration has been adopted by the UN General Assembly, and supported by the US, negotiation processes between Indigenous Peoples to redress Treaty, land and other rights violations must be established. These processes must not fall below the basic, minimum standards contained in this universal human rights instrument.

Therefore IITC presents the following recommendations to the 3rd United Nations Seminar on Treaties, Agreements and Other Constructive Arrangements for inclusion in its final report:

1. That the US, Canada and all States fully implement the UN Declaration on the Rights of Indigenous Peoples without any attempts to qualify or seek to diminish the inherent rights of Indigenous Peoples including Self-Determination, Free, Prior and Informed Consent and the rights recognized and affirmed in Treaties, Agreements and other Constructive Arrangements.
2. That the US and other States take immediate steps to establish fair, transparent and fully participatory processes to ensure that the mutual obligations established under Treaties with Indigenous Nations are fully honored, upheld and respected, and violations are redressed, as an essential aspect of compliance with international human rights obligations. These processes must be established with the full participation of the Indigenous Treaty Nation parties in accordance with international human rights norms and standards, recommendations of the UN Treaty Monitoring Bodies and provisions of the UN Declaration on the Rights of Indigenous Peoples.
3. That the States apply the rights affirmed in the UN Declaration on the Rights of Indigenous Peoples as a framework and guideline for interpreting and implementing their obligations under the legally binding international Conventions and Covenants, consistent with the recommendation in the February 2008 “Concluding observations of the Committee on the Elimination of Racial Discrimination” in relation to the United States that the UN “declaration be used as a guide to interpret the State party’s obligations under the Convention relating to indigenous peoples” [CERD/USA/CO/6, para. 29, February 2008]”.
4. That relevant recommendations of the final Study of Special Rapporteur Miguel Alfonso Martinez (1999), the 2 previous UN Seminars on TOACA (2003, 2006), Article XXIII of the OAS proposed America Declaration on the Rights of Indigenous Peoples (April 2012), and the provisions of the UN Declaration on the Rights of Indigenous Peoples be affirmed and a process be initiated to utilize, modify and/or establish a competent international body to resolve Treaty disputes or violations and provide redress when the processes established between the Parties are deemed ineffective, unjust or unsatisfactory by either Party.

5. That the recommendations of this Seminar, including a process to establish a competent international body to address violations and disputes pertaining to Treaties, Agreements and Other Constructive Arrangements, be presented to the UN World Conference on Indigenous Peoples in 2014 for assessment and further discussion regarding implementation.

In closing, IITC sincerely thanks the UN High Commissioner on Human Rights Ms. Navi Pillay, the Office of the High Commissioner on Human Rights, the UN Expert Mechanism on the Rights of Indigenous Peoples, the United Nations Human Rights Council, the UN Permanent Forum on Indigenous Issues, the UN Special Rapporteur on the Rights of Indigenous Peoples Professor James Anaya, the UN Committee on the Elimination of Racial Discrimination, Indigenous Peoples and Nations representatives, and especially late Dr. Miguel Alfonso Martinez. We recognize and deeply appreciate their vital contributions and ongoing commitment to address and advance this vital area of work in the international arena.

Pilamaye. Mitakuya Oyasain.