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**Indigenous Peoples and Nations Coalition<sup>1</sup>**  
**Indian Council of South America**  
**International Council For Human Rights**  
**Koani Foundation**  
**Ke Aupuni o Hawaii**  
**Kungari Aboriginal Association**  
**Tanganekald, Meintangk and Buanditj**  
**American Indian Movement of Colorado**  
**Republic of Lakotah**

EMRIP 4<sup>th</sup> Session

Thursday 13 July 2011

Item 5 Declaration on the Rights of Indigenous Peoples

Ambassador Ronald Barnes

Greeting Mr. /Madame Chair and distinguished Members of EMRIP,

Concerning this item, it is our position that the rights of Indigenous Peoples are not only in the Declaration on the Rights of Indigenous Peoples, but also in other sources of international law that Indigenous Peoples can harness or develop to their benefit.

Thus it is important not to forget that Indigenous Peoples have operated in their capacity as fully independent peoples prior to the arrival of Europeans and some were recognized as States or as a State of Peoples listed to become independent under the United Nations decolonization process under Article 73 of the Charter of the United Nations or have international treaties that have never been relinquished. Indigenous Peoples also continue to be denied their status applicable to their circumstance as equals in the law of nations and international law. Presently, many Indigenous Peoples are severely discriminated by the application of the doctrine of discovery or other superiority doctrines of dispossession.

I will now read an intervention prepared and supported by other Indigenous Organizations:

One of the consensus recommendations from the 2nd Seminar on TAOCA in 2006 was to hold the 3rd Treaty Seminar in Aotearoa (New Zealand). We request placing the planning of the **3<sup>rd</sup> Seminar on Treaties, Agreements and other Constructive Arrangements** as its own item on the agenda of the July 2011 session of EMRIP to address the following concerns:

1. Indian Council of South America (CISA) and those of this joint statement are of the view that it would be more productive to hold the 3rd Seminar on treaties, agreements and other constructive arrangements in Geneva, Switzerland with representatives from

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all regions and with the attendance of all Indigenous Peoples and Nations affected by the many thematic issues arising in this study. It is important in planning the way forward that many Indigenous Peoples and Nations are well represented. Historically, Geneva is more open for attendance and it is neutral ground.

2. In preparing the way forward, we call upon the OHCHR to be more open and transparent in planning the 3rd Seminar. To ensure openness and transparency it is the position of [CISA and those of this joint statement] that information on this subject must be sent to Indigenous Peoples and Nations, Organizations and Experts who have presented Expert Papers or to anyone of our Indigenous who is willing to participate.

3. It appears that the preparation for the 3rd Seminar is being controlled by a few Indigenous representatives that attended the 2nd Seminar, taking it upon themselves to meet with United Nations officials to move this issue forward without informing other peoples who have legitimate interest and concerns, such as our peoples from South America and Indigenous Peoples and Nations affected by multilateral treaties. The 2nd Seminar did not sufficiently address these issues. Information and notices must be sent regularly to inform all Indigenous in planning and developing the 3rd Seminar.

4. The 2007 Declaration was adopted after the 2nd Seminar and it cannot be the sole source of law to determine the way forward for all Indigenous Peoples and Nations. There are amendments, deletions or additions to the text that affects the scope and application of the Declaration. There are other sources of law, including international treaty obligations and yet unsettled methods for addressing Indigenous rights to fully recognize and implement the rights of Indigenous Peoples and Nations. There are Indigenous representatives who will question why, or would not accept, that TAOCA be placed under an Item on the Declaration on the Rights of Indigenous Peoples as it was cloaked at the 2010 EMRIP. A separate Item must be created as a permanent part of the agenda in an appropriate body in Geneva and be conducive to accepting all cases and issues related to assisting and relieving all Indigenous Peoples and Nations of their challenges.

5. As we understand, Ms. Sharon Venne was instrumental in the all phases in the development of this study. So can the OHCHR explain why Ms. Venne was not consulted nor a participant in presenting the report as the Chair of the 2nd Seminar? It is our desire to see Ms. Venne a part of this process leading to the 3rd Seminar as she was instrumental in promoting the study.

6. OHCHR needs to include Indigenous Peoples and Nations from other venues or thematic topics such as those that do not have formal juridical relations with colonial powers and whose lands have been occupied on the basis of terra nullius ("land without owner")? Indigenous Peoples and Nations affected by violations of multilateral and bilateral treaties among and between States must also play a substantive role in advancing this study.

7. We are concerned that the South American NGO's and Indigenous Peoples and Nations from other thematic phases of the study were not consulted. If the proposed meeting in New Zealand is a regional meeting, then treat it as such, but as we understand, it is being presented as the 3<sup>rd</sup> Seminar. Indigenous Peoples and Nations occupied on the basis of terra nullius and those affected by multilateral treaty violations are deeply concerned about having the meeting in New Zealand.

8. There was an attempt to control facets of this study and to narrow the issues specifically raised in the Seminars during a discussion at the Indigenous Caucus of the October 2010 session of EMRIP by a distinct group of peoples belonging to or associated with one NGO, despite an explanation given that particular Members of

CERD called for support. This particular sector would not support a call to CERD to address multilateral issues that are a specific part of a CERD procedure as it is one of the thematic issues mention in TAOCA. This call to implement the CERD procedure under Article 15 of the International Convention on the Elimination of Racial Discrimination is legitimate. Paragraph 15 of the 1st Seminar recommended that United Nation human rights treaty bodies pay specific attention to this issue. Similarly, the Human Rights Committee's treatment must allow for the same.

9. CISA and those of this joint statement are concerned that the lack of openness and transparency may lead to problems in the future with further reductions of the scope and application of the rights of Indigenous Peoples and Nations in the Western Hemisphere. One sided planning by certain individuals, NGOs or regional groups or by closing the planning process to a small select group of people can potentially damage our ability to achieve the highest attainable goal in the conclusions and recommendations presented by Professor Miguel Alfonso Martinez in his final report: to create an international mechanism for conflict resolution with its own international jurisdiction to address all disputes, including those arising to non-implementation of treaty obligations or non-application of rights to all Indigenous Peoples and Nations.

10. To address these problems, we request placing the **3rd Seminar on Treaties, Agreements and other Constructive Arrangements** as its own item on the agenda of the July 2011 session of EMRIP.

Thank you Mr. Chair.