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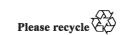
#### **Human Rights Council**

Expert Mechanism on the Rights of Indigenous Peoples
Seventh session
7-11 July 2014
Item 7 of the provisional agenda
United Nations Declaration on the Rights of Indigenous Peoples

Compilation of Conclusions and Recommendations from the United Nations Seminars on Treaties, Agreements and other Constructive Arrangements

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#### I. Introduction

- 1. This document contains the conclusions and recommendations compiled from three United Nations Seminars on Treaties, Agreements and other Constructive Arrangements. The conclusions and recommendations from these seminars are meant to address the key issues, challenges and proposed solutions to implementing Treaties, agreements and other constructive arrangements concluded between States and Indigenous peoples, tribes and nations and the need to foster better understanding between Treaty parties. The recommendations herein include those made to States, Indigenous peoples, tribes and nations, and the United Nations. This document begins with the conclusions and recommendations of the Seminar held in 2012, followed by those of the Seminar held in 2006 and then 2003, respectively.
- 2. The purpose of this compilation is to present as one reference document an important aspect of the International work that began in the 1970s. For many Indigenous peoples' delegations like the Maskwacís Cree, the International Organization of Indigenous Resources Development, Treaties No. 6, 7 and 8, the International Indian Treaty Council, Treaty No. 4, the Sioux Nation, the Navajo Nation and others (all of whom are listed in the Treaty Seminar Reports and the Treaty Study), their initial purpose for bringing the matter of Treaties, agreements and constructive arrangements to the international fora was their concern regarding existing Treaty violations. The nine-year UN Treaty Study by late Special Rapporteur Professor Miguel Alfonso Martinez recommended holding three UN Expert Seminars. These Seminars were held and this document reflects their Conclusions and Recommendations. It is important to note the second UN Seminar was particularly historic in that it was held outside of UN Headquarters in Geneva, on Treaty No. 6 Territory, co-hosted by the Maskwacís Cree Nation and the Office of the High Commissioner for Human Rights.
- 3. While this compilation is a summary update of the three UN Expert Seminars there is additional information in reports of the UN Treaty bodies and mechanisms, international conferences, Special Rapporteur's reports, the Universal Periodic Review, and the Alta Outcome Document, among others. The contribution by all delegations, States and Indigenous Peoples, tribes and nations that attended over many years at numerous meetings and conferences on Treaties, agreements and constructive arrangements is reflected in the UN *Declarations on the Rights of Indigenous Peoples* and the proposed OAS Declaration on the Rights of Indigenous Peoples, among others. A great debt of gratitude is owed to the many contributions from representative delegations, especially Treaty partners.

### II. Report of the United Nations Expert Seminar on Strengthening Partnership between Indigenous Peoples and States: Treaties, Agreements and other Constructive Arrangements, Geneva, 16-17 July 2012

- 4. The conclusions of this Seminar are:
  - (a) Conclusions

In the final session, experts participating in the seminar made a number of concluding remarks, including the following:

i. The right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements has been affirmed in Article 37

of the UN Declaration on the Rights of Indigenous Peoples and in preambular paragraphs 14, 15 and 24, which underscore the importance of partnerships between Indigenous Peoples and States based on mutual consent and good faith

Free, prior and informed consent

- ii. With the adoption of the UN Declaration on the Rights of Indigenous Peoples, the principle of free, prior and informed consent is now an undeniable part of the human rights framework. It should be used as the minimum standard for negotiating and concluding any new treaties and agreements, as well as for negotiations between Indigenous Peoples and States relating to the implementation of existing treaties, agreements and constructive arrangements;
- iii. Free, prior and informed consent is an aspect of the right to self-determination. It is also a fundamental element of treaty-making processes;
- iv. The principle of free, prior and informed consent should be treated as the operative principle through which States and Indigenous Peoples establish, in equal and full partnership, the terms, processes, mechanisms and criteria for settling disputes arising from the failure to implement and respect such treaties

Original spirit and intent of Treaties concluded between States and Indigenous Peoples

- iv. Treaties constitute nation-to-nation partnerships based on mutual recognition, consent, good faith and respect, and they should be enforced in accordance with their original spirit and intent and as understood by Indigenous Peoples;
- v. Oral history and understanding of treaties transmitted from generation to generation among Indigenous Peoples should be given equal weight and standing, and be used to supplement the States' interpretation of treaties based on the written documents.

Respect for Treaties, Agreements and other Constructive Arrangements as a means of Reconciliation

- vi. .Where treaties, agreements and other constructive arrangements already exist, these instruments can provide the foundation for partnership, mutual respect, cooperation and good faith between States and Indigenous Peoples;
- vii. Treaties and the relationship they represent are evidence of the right to self-determination, and as such are the basis for strengthened partnerships, consistent with the UN Declaration on the Rights of Indigenous Peoples;
- viii. Treaties between States and Indigenous Peoples are key tools for securing the recognition of Indigenous Peoples' rights and freedoms; and enforcing these treaties would further the aims of international human rights instruments;
- ix. The work of Truth and Reconciliation Commissions can offer positive examples for improved relations between States and Indigenous Peoples, in particular when they consider the UN Declaration on the Rights of Indigenous Peoples and treaties as framework for reconciliation.

Implementation of Treaties, Agreements and other Constructive Arrangements

- x. Indigenous Peoples have the right to the recognition, observance and enforcement of the treaties, agreements and other constructive arrangements concluded with States and their successors in accordance with their true spirit and intent, in good faith, and to have the same be respected and honored by the States;
- xi. The UN Declaration on the Rights of Indigenous Peoples, in particular Articles 27, 28, and 40, should serve as a framework for implementing, in full partnership with Indigenous Peoples, processes that can resolve the violations of treaty rights;
- xii. In some instances, National Human Rights Commissions have proven to be a strong voice in favour of Indigenous Peoples;
- xiii. The experience of the Waitangi Tribunal can serve as an important example for the establishment of participatory grievance mechanisms to address treaty violations;
- xiv. In light of the principles and purposes of the United Nations Charter and the rights of Indigenous Peoples affirmed in the UN Declaration on the Rights of Indigenous Peoples, an International Court of Justice (ICJ) advisory opinion regarding treaties between Indigenous Peoples and States could make an important contribution to implementation efforts.

Negotiating new agreements including for benefit sharing

- xv. The process of negotiation and consent inherent in treaty-making is the most suitable way of not only securing effective indigenous contribution towards the recognition of Indigenous Peoples' rights and freedoms, but also establishing the practical mechanisms to ensure enforcement;
- xvi. Good faith consultations and consent or agreement of Indigenous Peoples are necessary in relation to the development of benefit-sharing arrangements, which must accord with Indigenous Peoples' own understanding of benefits and use and protection of their territories, resources and cultural heritage;
- xvii. Building trust between representatives of States and Indigenous Peoples and having in place a political climate conducive to fair and fully participatory deliberations are critical factors to allow comprehensive and sustainable agreements.

#### (b) Recommendations

In the final session, experts participating in the seminar also proposed a range of recommendations for various interlocutors, including the following:

#### Recommendations to States

- i. Give due consideration to the understanding of the Indigenous Peoples in regard to implementation of treaties, agreements and other constructive arrangements;
- ii. Support efforts of Indigenous Peoples to raise their capacity to engage, assert and advocate for the implementation of their treaty rights;
- iii. Recognize that the UN Declaration on the Rights of Indigenous Peoples is also a Declaration on treaties and provides a framework for the implementation of treaty rights;

- iv. Establish effective participatory mechanisms, including monitoring, to ensure that Indigenous Peoples' traditional knowledge is not expropriated without their free, prior and informed consent and that provisions are made for the development of appropriate and mutually acceptable access and benefitsharing arrangements;
- v. Develop, in conjunction with the Indigenous Peoples concerned, treaty education programs for both indigenous and non-Indigenous Peoples and ensure inclusion in school curricula at all levels;
- vi. Establish participatory grievance mechanisms to address treaty violations based on the framework contained in the UN Declaration on the Rights of Indigenous Peoples;
- vii. Address the lack of recognition and enforcement of treaties, agreements and constructive arrangements at the World Conference on the Rights of Indigenous Peoples to be held in September 2014.

Recommendations to the United Nations system and human rights mechanisms and bodies

- viii. That United Nations agencies contribute to strengthening and integrating the rights affirmed in treaties, agreements and other constructive arrangements, including Indigenous Peoples' treaty rights to food, education, health, culture, lands and resources, in their programmes and standard setting activities;
- ix. That the proposal of the UN Study on treaties, agreements and other constructive arrangements between States and indigenous populations to establish an international mechanism to handle disputes related to treaties and constructive arrangements be followed up. This mechanism should operate pursuant to the principle of free, prior and informed consent and incorporate Indigenous legal norms and understanding in order to foster just and fair outcomes;
- x. That close attention is paid to addressing power imbalances that invariably exist in negotiation contexts, as well as to the substantive rights, as affirmed in the UN Declaration on the Rights of Indigenous Peoples, which should shape the substantive content of new agreements and legal texts;
- xi. That the United Nations country teams engage in monitoring and reporting on different aspects of implementation of peace agreements, in partnership with Indigenous Peoples affected by conflicts;
- xii. That the United Nations system, including country teams, actively support and promote processes of dialogue and consensus-building guided by the principles of the UN Declaration on the Rights of Indigenous Peoples and the rights affirmed in treaties, Agreements and other Constructive Arrangements;
- xiii. That UN human rights treaty bodies address issues related to treaties or agreements concluded between States and Indigenous Peoples and pay special attention to the studies of the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) which offer guidelines to States;
- xiv. That the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of non-recurrence pay particular attention to the situation of Indigenous Peoples and their right to reparations for, and especially, on non-recurrence of the continued violations of the rights affirmed in treaties, agreements and other constructive arrangements;

- xv. That procedures and models for Indigenous Peoples to negotiate modern agreements and legal texts be developed in conjunction with Indigenous Peoples concerned, drawing on the provisions of consultation and free, prior and informed consent articulated in the UN Declaration on the Rights of Indigenous Peoples;
- xvi. That guidelines for the implementation/recognition of treaties, agreements and constructive arrangements be developed from the lens of the principles of the UN Declaration on the Rights of Indigenous Peoples;
- xvii. That an appropriate body be considered to register and publish copies of all treaties, taking into account the oral histories, between Indigenous Peoples and States, giving due attention to securing access to the indigenous oral version of the instruments in question;
- xviii. That relevant mechanisms within the UN system, including the Advisory Committee of the Human Rights Council in the framework of its work on the right to peace, continue to address the issues of treaties, agreements and other constructive arrangements;
- xix. That the recommendations of the three OHCHR seminars devoted to treaties, agreements and other constructive arrangements be submitted to the World Conference on the Rights of Indigenous Peoples to be held in September 2014;
- xx. That OHCHR organize workshops to discuss the establishment of participatory mechanisms to address the issues of redress; restitution; conflicts resolution; land rights adjudication and recognition in matters relating to treaties, which should use the UN Declaration on the Rights of Indigenous Peoples and its provisions related to treaties as a framework;
- xxi. That an appropriate body be considered to request an advisory opinion by the International Court of Justice (ICJ) regarding the status of the historic treaties concluded between States and Indigenous Peoples; Recommendations to regional human rights mechanism;
- xxii. That disputes that cannot be resolved between the parties in relation to treaties, agreements and other constructive arrangements, be submitted to competent bodies, including regional and international bodies by the States or Indigenous Peoples concerned;
- xxiii. That the African Commission on Human and Peoples' Rights engage on the issue of treaties, agreements and constructive arrangements, in particular when Indigenous Peoples are involved in peace agreements;
- xxiv. That the Inter-American Commission on Human Rights make recommendations on treaty disputes that affect the obligations of the American Convention on Human Rights.

#### Recommendations to Indigenous Peoples

- xxv. That Indigenous Peoples concerned share information about draft legislations that affects treaty rights and seek technical advice from United Nations system and mechanisms related to Indigenous Peoples;
- xxvi. That Indigenous Peoples use existing international human rights treaty bodies, including Early-Warning Measures and Urgent Procedures of the Committee on the Elimination of Racial Discrimination (CERD), which could serve as effective mechanisms for resolving disputes between Indigenous

Peoples and States as a means to ensuring the obligations required by the human rights instruments;

xvii. That Indigenous Peoples strengthen, and where necessary, restore traditional legal and judicial processes including those based on Treaty principles, original understanding and intent, rights and relationships.

# III. Report of the United Nations seminar on treaties, agreements and other constructive arrangements between States and indigenous peoples, Hobbema, Canada, 14-17 November 2006, UN Document (A/HRC/EMRIP/2010/5).

- 5. The conclusions of this Seminar are
  - (a) Conclusions
    - i. 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.
    - ii. 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.
    - iii. 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.
    - iv. 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.
    - v. 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.
- 6. The recommendations of this Seminar are:
  - (a) Recommendations

#### i. Governments

- The experts expressed concern at the lack of implementation by States of recommendations, particularly those contained in paragraphs 7 and 8 of the report on the 2003 seminar and addressing the need to establish effective mechanisms through mutually agreed upon processes to address issues of implementation, compliance, prevention and resolution of conflicts related to treaties.
- The experts reiterated the need for States to implement effective participatory and just processes, based on the principles of free, prior and informed consent and mutual recognition, whereby treaty violations and disputes regarding implementation and compliance could be addressed by States and indigenous treaty partners.
- The experts noted with appreciation that the Government of Canada, in its statement on the present seminar of 15 November 2006, also recognized the need for implementation of effective mechanisms.
- The experts recommended that States should clarify their terminology relating to the use of the terms "treaties", "agreements" and "constructive arrangements" in keeping with the definitions applied in the original United Nations treaty study. This will prevent any confusion with regard to the national and international legal status of treaties as legally binding nation to nation, on the one hand and, on the other, agreements with international character and other forms of agreements and arrangements, which sometimes carry the misnomer "modern treaties".
- The experts called upon States to provide and support education programmes in public school systems and through other education programmes, with the full participation and direct involvement of indigenous peoples, regarding the accurate historical record of indigenous peoples, treaty rights and responsibilities of their own citizens, government agencies and officials.
- The experts urged States to include the implementation of treaties and treaty rights, as well as a review of current international mechanisms and activities, as permanent agenda items in all relevant legislative, parliamentary processes and, when relevant, in chiefs' summits. The experts also encouraged treaty partners to initiate discussions for the development of mutually acceptable joint implementation plans of action and institutional mechanisms in this regard.
- The experts recommended that States should assess and incorporate into their respective legal systems those rights recognized in treaties, agreements and other constructive arrangements, as well as international human rights standards regarding the rights of indigenous peoples and nations divided by international borders.
- The experts recommended full compliance with and implementation of articles of the United Nations Declaration on the Rights of Indigenous Peoples relating to the principle of free, prior and informed consent and the right to self-determination as key

principles for concluding, implementing, monitoring and redressing of violations regarding treaties, agreements and other constructive arrangements.

#### ii. Indigenous peoples and nations

- The experts reaffirmed the need to advance the treaty-making processes between indigenous nations for their mutual support and development.
- The experts endorsed the implementation and dissemination of treaty education curricula developed independently by indigenous peoples and in conjunction with State educational systems.
- The experts expressed support for ongoing and current efforts by indigenous nations and peoples to document, research and preserve oral histories, traditional knowledge and cultural understandings of the treaties negotiated by their peoples, including the content, terms, provisions, rights and relationships that they affirm from an indigenous understanding.

#### iii. Human Rights Council

- The experts recommended that the new Human Rights Council should implement the recommendations made by consensus of the indigenous participants in the fifth session of the Permanent Forum on Indigenous Issues and presented to the Council at its second session to establish an expert advisory body on indigenous peoples' human rights, to provide advice to the Council regarding issues affecting the exercise and enjoyment of the human rights of indigenous peoples, including treaty rights.
- The experts also recommended that the Council should include the question of treaties, agreements and other constructive arrangements when undertaking its universal periodic review.

#### iv. United Nations bodies and specialized agencies

- The experts recommended that the Working Group on Indigenous Populations should initiate at its twenty-fifth session a study focusing on the full implementation of treaty or non-treaty rights of indigenous peoples in all regions of the world.
- The experts reaffirmed the call by the United Nations study on treaties, agreements and constructive arrangements for the international recognition of the treaties concluded between indigenous peoples and States, as well as effective and accessible mechanisms to provide international redress for treaty violations and abrogations.
- The experts called for the full and effective implementation of article 42 of the Declaration on the Rights of Indigenous Peoples and, in particular, call upon the Permanent Forum on Indigenous Issues to initiate a five-year review and follow-up process based on

- reports from States, specialized agencies and bodies, and indigenous organizations addressing treaties and treaty rights.
- The experts reiterated the recommendation made at the first seminar on treaties, agreements and other constructive arrangements, calling upon the Economic and Social Council to seek an advisory opinion from the International Court of Justice in relation to treaties and agreements between States and indigenous peoples, and recommended that the request should be made through the Permanent Forum on Indigenous Issues at its sixth session.
- The experts requested that the relevant recommendations contained in the United Nations study on treaties, agreements and constructive arrangements and the two United Nations seminars on treaties, agreements and constructive arrangements be taken into consideration by:
- The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples and other relevant thematic special procedures;
- International conferences of the United Nations system;
- The Permanent Forum, in particular at the 2007 session focusing on land, territories and natural resources, which would also include the issue of treaties, agreements and constructive arrangements;
- States when implementing the United Nations Millennium Development Goals, as well as United Nations bodies when developing indigenous peoples' indicators relating to sustainable development, food sovereignty, biological diversity as other key aspects of development from indigenous peoples' perspective;
- United Nations organizations and specialized agencies when developing plans of action, including, inter alia, the Food and Agriculture Organization of the United Nations, the World Intellectual Property Organization, the United Nations Development Programme, the Convention on Biological Diversity and the Commission on Sustainable Development;
- States, when implementing the plan of action for the International Decade of the World's Indigenous Peoples, and in particular, its stated goals to promote non-discrimination and inclusion of indigenous peoples in all phases of the policy process, from design through implementation and evaluation, and to promote full and effective participation of indigenous peoples in the decisions that affect their lives, based on the principle of free, prior and informed consent.
- v. Office of the United Nations High Commissioner for Human Rights
  - 43.The experts called upon the Office of the United Nations High Commissioner for Human Rights to develop, in conjunction with the Working Group on Indigenous Populations and indigenous treaty nations and organizations, a capacity-building and training programme for indigenous peoples, United Nations staff and State

representatives in the use of treaties, agreements and constructive arrangements for conflict prevention and resolution.

- The experts recommended that the Office of the High Commissioner should organize seminars, in cooperation with the Working Group on Indigenous Populations, to study the situation of treaties, agreements and other constructive arrangements in Asia and Africa.
- The experts reaffirmed the recommendation that the Office of the High Commissioner organize, in conjunction with the Working Group on Indigenous Populations and indigenous treaty nations and organizations, a world conference on indigenous peoples' treaties, agreements and constructive arrangements, to be held during the first half of the Second International Decade of the World's Indigenous People.
- The experts recommended that the third expert seminar on treaties, agreements and other constructive arrangements should be held in Waitangi, Aotearoa (New Zealand), in February 2008 and that the Office of the United Nations High Commissioner for Human Rights should organize the seminar with the full participation of the Special Rapporteur on treaties, agreements and other constructive arrangements, the indigenous host communities, States and other indigenous organizations.
- The experts requested that the above recommendations be submitted
  to all relevant United Nations bodies, including, inter alia, the
  Permanent Forum on Indigenous Issues, the Human Rights Council,
  the Working Group on Indigenous Populations and the Special
  Rapporteur on the situation of human rights and fundamental
  freedoms of indigenous people.

Annex: Enoch River Cree Declaration. Of the International Indigenous Nations Treaty Summit. For presentation to the United Nations Expert Seminar on Treaties, Agreements and Constructive Arrangements 12-13 November, 2006.

. "Our Treaties are Sacred. We must protect them! ...As long as the sun shines, the river flows and the grass grows" – Confederacy of Treaty Six First Nations Elders

ENOCH RIVER CREE DECLARATION
Of the International Indigenous Nations Treaty Summit
November 12 – 13, 2006
Enoch Cree Nation, Treaty No. 6 Nations' Territory

For presentation to the United Nations Expert Seminar on Treaties, Agreements and Constructive Arrangements

November 14-17, 2006, Maskwacis Cree Territory

With the understanding that we as Indigenous Peoples and Indigenous Nations are a critical and integral part of the universal family of Peoples and Nations; and

Recognizing that the International Indigenous Nations Treaty Summit held in Enoch Cree Nation, was attended by Chiefs, Leaders, Elders and other authorized representatives of Indigenous Nations and Peoples from

North, Central and South America, Africa, and the Pacific; and

Affirming that the fundamental sacredness of our Indigenous understanding of our treaties and the relationships they represent is based on our traditions, histories, our ceremonial ways, our relationships with our lands that are reflected in our creation stories, blood and sacrifices of our ancestors; and

Affirming also that Treaties and Agreements between states and Indigenous Nations are to be regarded from our respective spiritual understandings; and

Understanding that the inherent rights, responsibilities and relationships encompassed in treaties impact every aspect of our lives, including our health, cultural practices, means of subsistence and food sovereignty, access to and protection of our sacred sites and our rights to our lands, territories and natural resources, to self determination and free, prior and informed consent; and

Considering that the legally-binding Nation to Nation Treaties which were freely, entered into by Indigenous Peoples with non-indigenous governments constitute an important body of international law; and

Recognizing the vital contribution and role of the United Nations Study on Treaties, Agreements and Constructive Arrangements and the work of its Special Rapporteur Miguel Alfonso Martinez, and strongly endorsing its conclusions and recommendations; and

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; and

Appreciating the important recent advances in this regard by international bodies and mechanisms including the UN Committee on the Elimination of Racial Discrimination (CERD), the UN Human Rights Committee, and the OAS Inter-American Human Rights Court; and

Calling attention to the reality that Canada and other states continue to undermine our Treaties and related Treaty Rights, specifically by:

- i. Failing to honour their treaty obligations to Indigenous Peoples by denying their rights to land, such as those who have had their reserves illegally surrendered in Canada and through similar actions in other parts of the world.
- ii. Developing policies and laws designed to extinguish states' legal recognition and responsibility under Treaties and Agreements made with Indigenous Peoples.
- iii. The unilateral passing of laws and regulations terminating and limiting the exercise by Indigenous Peoples of Treaty and Land Rights, for example, Canada's gun registry legislation.

- iv. Interpreting Treaties as domestic rather than as international agreements and establishing so-called "settlement" processes based on unilateral decisions by the state parties.
- v. Attempting to diminish the legal standing of Treaties by referring to modern negotiated settlements and even unilateral, non-consensual state decisions as "treaties."
- vi. Refusing to recognize the essential rights of free, prior and informed consent, permanent sovereignty over lands, territories and natural resources and self-determination which are implicit and explicit in existing Treaties and agreements.
- vii. Denying, undermining, and diminishing rights recognized and upheld in Treaties to social services, child and family wellness, traditional subsistence, health care, education, culture, spiritual practices and language among others.
- viii. Continuing, in courts and other processes, to disregard and deny Indigenous understandings, interpretations and oral histories regarding our treaties and agreements, as well as the rights affirmed for all Peoples under international law.

The participants in the International Indigenous Nations Treaty Summit meeting in Enoch Cree Nation, Treaty No. 6 Territory, November 12 – 13, 2006

Hereby declare the following:

To affirm and support the following current struggles of Indigenous Nations to uphold Treaties and the rights they recognize including sovereignty and self determination:

- a) The efforts of the Onion Lake Cree Nation and other Nations of Treaty No. 6 Territory to assert their sovereignty under Treaty No. 6 and international law.
- b) The Maori struggle against New Zealand's Foreshore and Seabed Act as well as other domestic legislation that seeks to violate and undermine the Treaty of Waitangi, and in particular the endeavours by the Te Whanau a Apanui to ensure the full measure of their rights in regard to their nation, lands, territories, and natural resources.
- c) The Yaqui of Rio Yaqui Sonora Mexico and their case to the Organization of American States (OAS) to defend their land and water rights and assert traditional Yaqui authority.
- d) The Lubicon Lake Cree Nation's struggle for their lands.
- e) The 1868 Ft. Laramie Treaty between the United States and the Great Sioux Nation and the defence of the Sacred Paha Sapa (Black Hills).
- f) The Western Shoshone Nation's efforts to assert their rights under the Treaty of Ruby Valley in the international arena including at the CERD.
- g) First nations' efforts to uphold and enforce the Jay Treaty & Lamebull Treaty that support First Nations border crossing rights.

- h) Recognition and full implementation of the Kuna Nation's treaty, land, and resource rights in Panama and Colombia.
- i) The Moskitia Nation's right under international law to exercise its sovereignty under a new Constitution approved by 386 communities.
- j) The assertion of land recognition by Treaty No. 7 Nations as presented to the Canadian government.
- k) The Kakisiwew-Ochapowace and other Treaty No. 4 Nations' assertion of sovereignty under their Treaty and their rejection of Canada's taxation law.
- Full preservation and implementation of the Pimicikamak Nation's self-determination process according to their laws, treaty rights, and Creator-granted rights and powers.
- m) The Akaitcho Dene's implementation of their Treaty negotiated and concluded in 1900.
- 2) To actively engage in and support Indigenous Nations' Treaty education initiatives and worldview to protect our future generations against alienation, assimilation, and genocide.
- 3) To support the development of Treaties between our Indigenous Nations for our mutual support and development.
- 4) To support the development of aggressive strategies on the national and international levels to target key legal decisions that undermine Treaty Rights.
- 5) To support the vital need to develop effective international mechanisms to monitor compliance with Treaties between states and Indigenous Peoples and to ensure effective redress in the case of abrogations or violations.
- 6) To support the recognition of Health, Education, Housing, Subsistence Rights, Land Rights, Peace and Security, Free Prior informed Consent and Permanent Sovereignty over natural resources as well as Self-determination as inherent Rights of all Indigenous Peoples and Nations which are affirmed in Treaties, Agreements and Constructive Arrangements.
- 7) To continue to call upon the United Nations, other international bodies and states to recognize and uphold the rights affirmed in Treaties concluded with Indigenous Peoples and to develop effective mechanisms in this regard with the full participation of the Indigenous Peoples involved.
- 8) To reaffirm the recommendation that the United Nations Office of the High Commissioner on Human Rights organize, in conjunction with the UN Working Group on Indigenous Populations and Indigenous Treaty Nations and Organizations, a World Conference on Indigenous Peoples' Treaties, Agreements and Constructive Arrangements to take place during the first half of the Second UN International Decade of the Worlds' Indigenous Peoples.
- 9) To commit to continue to meet in annual Treaty Nation's Summits to share information, build alliances, develop strategies, and solutions and

unite our efforts to defend our rights as Treaty Peoples and Nations internationally and in our homelands.

We further declare that we will continue to advocate for Treaty Rights utilising the United Nations Study on Treaties, Agreements and Constructive Arrangements between Indigenous Peoples and states, the United Nations Declaration on the Rights of Indigenous Peoples, the OAS Inter-American Declaration on the Rights of Indigenous Peoples and any and all other relevant international mechanisms, Conventions and bodies.

Titawiyh saweyhtam Wiyohtawiymaw mamawo askiyw iyntwaysiynyw wiyihcikewin. Koh itotamahk oma eh aspih kiskisiyahk kakiyh niykanohtakoyahkok nikehteyayiminanak miyna wiyawaw ohcih ayaniskac oteh niykan awasisak.

May the Father bless this completed Indigenous World Declaration.

We do this in honour of ancestors and on behalf of our future generations.

Adopted by consensus this 13<sup>th</sup> day of November, 2006, Enoch Cree Nation. Alberta Canada

# IV. Report of the seminar on treaties, agreements and other constructive arrangements between States and indigenous peoples, Geneva, 15-17 December 2003, UN Doc. E/CN.4/2004/111.

#### 7. The conclusions of this Seminar are:

#### (a) Conclusions

- i. The experts participating in the Seminar on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Peoples, meeting in Geneva from 15 to 17 December 2003, agreed upon the following conclusions and recommendations:
- ii. The experts note that historic treaties, agreements and other constructive arrangements between States and indigenous peoples should be understood and implemented in accordance with the spirit in which they were agreed upon. The experts also note that treaties, agreements and other constructive arrangements between States and indigenous peoples have not been respected, leading to loss of lands, resources and rights, and that non-implementation threatens indigenous peoples' survival as distinct peoples.
- iii. The experts consider that treaties, agreements and other constructive arrangements constitute a means of promoting harmonious, just and more positive relations between States and indigenous peoples because of their consensual basis and because they provide benefits to both indigenous and non-indigenous peoples.
- iv. The experts welcome the efforts being made by States to explore ways of redressing historical and contemporary injustices related to treaties, agreements and other constructive arrangements through negotiation and underline the principle of free, prior and informed consent. The experts agree that the

negotiation processes should have legitimacy with both indigenous and non-indigenous parties to the treaties, agreements and other constructive arrangements.

- v. The experts draw attention to the situation of indigenous peoples who have not entered into formal juridical relations with colonial powers and whose lands have been occupied on the basis of terra nullius ("land without owner") and affirm that such peoples should be able to claim status as nations should they so wish.
- vi. The experts recognize that indigenous peoples have a legitimate interest in the elaboration and implementation of multilateral and bilateral treaties among and between States in cases where their peoples may be affected negatively or positively by such agreements.

#### (b) Recommendations

#### i. Governments

- The experts call upon States to respect treaties, agreements and other constructive arrangements between States and indigenous peoples and, in cases where disputes arise, to establish effective mechanisms for the resolution of conflicts. Such conflict resolution processes should include, inter alia, the following elements:
- They should be developed with the free, prior and informed consent of the indigenous peoples concerned;
- They should include as an integral part of the process indigenous laws and legal norms;
- They should be independent and free from political interference;
- They should recognize the collective nature of the rights of indigenous peoples, including to their lands and resources.
- The experts recommend that States promote, and educate the general public, particularly through the education system, on indigenous peoples' treaties, agreements and other constructive arrangements, underlining that such treaties are sacred agreements that define the nature of indigenous peoples' relationships with the family of nations.

#### ii. Commission on Human Rights

- 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;

- (b) To consider recommending to the Economic and Social Council the convening of a world conference on indigenous peoples, at which the question of treaties, agreements and other constructive arrangements between States and indigenous peoples, and inter alia the principle of pacta sunt servanda ("treaties must be kept"), the impact of treaty abrogation on indigenous peoples and remedies for such abrogation could be considered;
- (c) To consider recommending to the Economic and Social Council that a further seminar be held on treaties, agreements and other constructive arrangements from all regions;
- (d) To consider recommending that the Economic and Social Council seek an advisory opinion from the International Court of Justice in relation to treaties and agreements between States and indigenous peoples;
- (e) To consider recommending that the Economic and Social Council request that the United Nations Treaty Section of the Office of Legal Affairs be charged with locating, compiling, registering, numbering and publishing all treaties concluded between indigenous peoples and States;
- (f) To authorize the publication by the Office of the United Nations High Commissioner for Human Rights of the study on treaties, agreements and other constructive arrangements between States and indigenous peoples in a consolidated version in all official languages and including the recommendations of the present seminar;
- (g) To recommend that the United Nations library receive, catalogue and publish an inventory of materials relating to treaties and agreements, including materials submitted to the Special Rapporteur on treaties, agreements and other constructive arrangements between States and indigenous peoples.

#### iii. Working groups, treaty bodies and special procedures

- The experts invite the Working Group on Indigenous Populations to include as a permanent part of its agenda an item relating to treaties, agreements and other constructive arrangements between States and indigenous peoples.
- The experts recommend that the Working Group formulate guiding principles on the elaboration, negotiation and implementation of treaties, agreements and other constructive arrangements, taking into account the importance of open, transparent, equitable, inclusive and participatory avenues of redress, monitoring, arbitration and mediation.
- The experts invite the Working Group to develop a working paper to follow up on mechanisms for resolving conflicts arising from treaties, agreements and other constructive arrangements.
- The experts call upon the working group on a draft United Nations declaration on the rights of indigenous peoples to adopt the

- declaration before the end of the International Decade of the World's Indigenous People.
- The experts affirm the importance of article 36 of the draft declaration on the rights of indigenous peoples in its current text as approved by the Sub-Commission, in particular its importance as a critical element of the right of self-determination, as well as the importance of its last sentence which calls for the establishment of a competent international body directly to adjudicate treaty disputes unresolved through other mechanisms, and call upon the working group to adopt the article.
- The experts recommend that the United Nations human rights treaty bodies pay specific attention to obligations contained in treaties, agreements and other constructive arrangements signed between States and indigenous peoples, as non-compliance with these obligations have negative effects with regard to the rights protected under international human rights instruments.
- The experts also recommend that the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people pay special attention to the question of treaties, agreements and other constructive arrangements in his official visits.

#### iv. United Nations bodies and specialized agencies

- The experts recommend that a study be undertaken by the secretariat of the Convention on Biological Diversity on the impact of treaty abrogation on the ways of life and biological diversity of territories specifically covered by a treaty, agreement or other constructive arrangement.
- The experts also recommend that the World Intellectual Property Organization begin cataloguing the oral history of indigenous peoples on the making of treaties, agreements and other constructive arrangements.
- The experts further recommend that the Department of Public Information of the Secretariat provide information about indigenous peoples' treaties, agreements and other constructive arrangements, underlining that such treaties are sacred agreements that define indigenous peoples' relationship with States and the international community.

## v. Office of the United Nations High Commissioner for Human Rights (OHCHR)

- The experts recommend that OHCHR make available technical cooperation to assist indigenous peoples with their negotiations in relation to treaties, agreements and other constructive arrangements.
- The experts also recommend that the report of the Seminar be made available to States, indigenous peoples and nongovernmental organizations at the third session of the Permanent

Forum on Indigenous Issues and the twenty-second session of the Working Group on Indigenous Populations.

Annex: Conclusions and Recommendations Submitted by the Government of Canada at the Seminar on Treaties, agreements and other constructive arrangements between States and Indigenous peoples, 26 February 2014, UN Doc. E/CN.4/2004/111/Add.1.

First theme: Presentation of the recommendations of the Final Report of the Study on treaties, agreements and other constructive arrangements between States and indigenous populations.

#### Recommendations:

- States should honour existing treaties, agreements and other constructive arrangements.
- Recognizing that treaties, agreements, and other constructive arrangements are not international treaties in the sense of agreements between sovereign entities, such agreements should be addressed domestically.
- States should undertake efforts to negotiate modern treaties, agreements or other constructive arrangements where indigenous rights have not been previously addressed.
- States should proceed with such negotiations in part to promote better understandings between parties and contribute to reconciliation. Such reconciliation can help States and indigenous peoples work together to improve the quality of life for indigenous peoples and individuals.
- States should make provision for dispute resolution outside of the judicial process. Examples of this within modern treaty-making could include: implementation agreements; treaty commissions; and new structures for resolving disputes. Such a set of initiatives, institutions and practices should also contain factors which work, either directly or indirectly, to both create a more positive environment in which treaties and other constructive arrangements are negotiated and implemented and to prevent the need for dispute resolution in the first place.
- States should also ensure indigenous access to the judicial system.
- All indigenous rights should apply to indigenous peoples worldwide. Processes such as the United Nations Working Group on the Draft Declaration on the Rights of Indigenous Peoples will help foster agreement on the scope and extent of indigenous rights. States, indigenous peoples and other parties should take an active role in efforts at the United Nations and elsewhere to establish internationally agreed rights of indigenous peoples.
- States and indigenous peoples should consider, through for a such as the United Nations Working Group on the Draft Declaration on the Rights of Indigenous Peoples, provisions which provide for fair and equitable processes to recognize, determine, adjudicate or agree upon the

rights or interests of indigenous peoples in relations to lands and resources to which they have a traditional connection.

- States should also support such international standard setting processes in order to encourage the improvement of domestic laws, processes and policies while respecting national needs and circumstances.
- Work should be undertaken to collect, share and disseminate information on "best practices" in relation to treaties, agreements and other constructive arrangements between States and indigenous peoples. We suggest that the Permanent Forum on Indigenous Issues is the most appropriate venue for such work.

Second theme: The situation of existing treaties, agreements and other constructive arrangements.

#### Recommendations:

- Treaties, agreements and other constructive arrangements should be used to set out the framework for new relationships which address rights to the use of lands and resources, and the exercise of governance and lawmaking powers. These processes continue to offer the best means for achieving reconciliation between the prior presence of indigenous peoples and the sovereignty of modern States.
- Modern treaties should reflect the reality that indigenous peoples do not stand in opposition to, nor are they subjugated by, the sovereignty of modern States. Rather, they are part of such sovereignty.
- States, along with indigenous peoples, should undertake public education activities on specific and broader treaty and indigenous issues. Ceremonial events to mark historic occasions and renew relationships should be held. Other means to promote understanding could include treaty commissions and similar bodies.

Third theme: The modern-day treaties, agreements and other constructive arrangements.

#### Recommendations:

- Analysis of existing state processes to resolve Aboriginal claims should be conducted and circulated widely to interested states, international bodies and indigenous organizations. This would enable States contemplating new or revised processes to learn from other States' experiences and best practices.
- The existing text of the Draft Declaration on the Rights of Indigenous Peoples should include a reference to processes to resolve land and resource claims involving indigenous peoples and states. Suggested wording would be:

States should provide fair and equitable processes to recognize, determine, adjudicate or agree upon the rights or interests of indigenous

peoples in relation to lands and resources to which they have a traditional connection.

In establishing modern treaty-making processes, consideration should be given to the following features:

- Treaty-making processes must have legitimacy with both indigenous and non-indigenous citizens.
- Treaty-making processes need a domestic legal foundation which provides recognition of indigenous rights in a manner which is compatible with the legal and constitutional structures of the state.
- Effective and sustained treaty-making will require that treaties focus on more than legal reconciliation of rights. Treaties must also establish the foundation for new political, social and economic relationships which will improve the social conditions of indigenous peoples.
- The achievement of political support for treaties will require public education and the demonstration that treaties provide mutual benefit to indigenous and non-indigenous citizens.
- Effective treaty processes require political commitment and mandating at the highest levels within the State.
- Treaties establish ongoing relationships that require implementation planning, dispute resolution mechanisms and other ongoing mechanisms within the State to manage and sustain the treaty relationships.
- Given the length of time it can take to negotiate new treaty relationships, treaty processes may need to incorporate mechanisms which provide for incremental approaches and which build capacity as negotiations proceed.

Fourth Theme: Implementation, monitoring and dispute resolution and prevention in relation to treaties, agreements and other constructive arrangements.

#### Recommendations:

- For modern treaties, agreements and other constructive arrangements, implementation plans, dispute resolution mechanisms, and fiscal arrangements should be developed in tandem with overall agreements.
- Other measures should be considered by States to help resolve issues. These can include:
- funding to enable indigenous people to bring lawsuits forward in domestic courts on specific cases which would help establish legal principles;
- claims and other such negotiation processes which can provide an alternative to more costly litigation; and

- commissions and other bodies designed to bring together different parties, to promote dialogue, and to foster common understandings.
- Canada recommends that Article 36 of the Draft Declaration on the Rights of Indigenous Peoples be revised to:

Indigenous peoples have the right to the recognition and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, and to have States honour and respect such treaties, agreements and arrangements. Conflicts and disputes that cannot otherwise be settled may be submitted to competent domestic bodies.

As Canada has said before, however, indigenous peoples or individuals can exercise their existing or future rights of recourse to international tribunals which are competent to deal with internationally agreed rights.

- V. 14th Session of Negotiations for the Proposed American Declaration on the Rights of Indigenous Peoples in Washington, D.C. adopted by consensus: Article XXIII on Treaties, Agreements and other constructive arrangements, 20 April 2012.
  - 8. At the 14<sup>th</sup> Session of the Organization of American States Working Group on the Draft American Declaration on the Rights of Indigenous Peoples, our delegation presented the following article that was adopted, which strengthens article 37 of the UN *Declaration on the Rights of Indigenous Peoples* from a regional perspective. It states:

Article XXIII on Treaties, Agreements and other constructive arrangement:

- 1. Indigenous peoples have the right to the recognition, observance, and enforcement of the treaties, agreements and other constructive arrangements concluded with states and their successors in accordance with their true spirit and intent, in good faith, and to have the same be respected and honored by the States. States shall give due consideration to the understanding of the Indigenous Peoples in regards to treaties, agreements and other constructive arrangements. 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.
- 2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

#### VI. Conclusion

9. The High Level meeting of the General Assembly to be known as the World Conference on Indigenous Peoples will take place on September 22<sup>nd</sup> and 23<sup>rd</sup>, 2014 at the UN headquarters in New York according to UN General Assembly resolutions A/RES/65/198 and A/RES/66/296. The Outcome Document should contribute to the realization of the rights of Indigenous peoples, pursue the objectives of the UN *Declaration on the Rights of Indigenous Peoples* and promote the achievement of all internationally agreed development goals.

- 10. Since the World Conference shall result in a concise, action oriented document, taking account of the views of both member States and Indigenous peoples, it is imperative that Treaties, agreements and other constructive arrangements be included "considering...that Treaties, agreements and other constructive arrangements, and the relationships they represent, are the basis for strengthening partnership between Indigenous peoples and States."
- 11. This compilation can be utilized as a reference document to inform delegations to the World Conference about some of the previous work over decades on Treaties, agreements and constructive arrangements. Unfortunately, Treaties, agreements and constructive arrangements continue to be violated. However, the World Conference presents an historic opportunity to restore respectful relationships by ensuring mechanisms are instituted to implement the UN *Declaration on the Rights of Indigenous Peoples* "according to the original spirit and intent of Treaties and as understood by Indigenous peoples."<sup>2</sup>
- 12. Finally, it is recommended that the third UN Seminar report be submitted as an official UN report to be included for consideration at the World Conference together with the other reports.

<sup>1</sup> Preambular paragraph 15.

<sup>&</sup>lt;sup>2</sup> Article XXIII, as of 14th Session of Negotiations for the Proposed American Declaration on the Rights of Indigenous Peoples in Washington, D.C. adopted by consensus: 20 April 2012.