



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

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Treaties and original spirit and intent: An historic overview, a new framework and decent advances for conflict resolution, redress of violations and restoration of just and respectful relations.

Andrea Carmen

Executive Director, International Indian Treaty Council

and Chief Wilton Littlechild

International Chief for Treaties 6, 7 and 8 and member of the UN Expert Mechanism for the Rights of Indigenous Peoples

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

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

--- Preamble, UN Declaration on the Rights of Indigenous Peoples

“Our word is sacred to us and so are these Treaties. The US government came to us, not the other way around. They asked us to lay down our arms and to live in peace and friendship with them in perpetuity. They said they would respect our traditional land rights in return.

We have held up our end of the bargain. When can we expect the same from them?”

--- James Main Sr., White Clay Society Elder and IITC Board member, Gros Ventre (White Clay) Nation, Montana, USA, 1st Expert Seminar on Treaties, Agreements and other Constructive Arrangements between States and Indigenous Peoples, December 2003

I. THE STRUGGLE FOR TREATY RIGHTS IN THE US AND CANADA: THE ROOTS OF THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

The early 1970's were a period of cultural and political resurgence for Indigenous Peoples in the United States and Canada. Through a number of actions, they asserted the rights affirmed in the hundreds of Treaties that had been concluded with the US and Canada, and called attention to pervasive and ongoing violations. In the US, these included assertions of Treaty-based fishing rights in the Pacific Northwest, the occupation of Alcatraz Island in California, cross-country walks such as the Long Walk and the Trail of Broken Treaties, occupations of government buildings, court cases, armed confrontations at Wounded Knee and Oglala in South Dakota.

The government response was mainly additional repression, with many deaths and incarcerations. Leonard Peltier, Anishinabe from the Turtle Mountain Reservation in North Dakota, remains imprisoned to this day. Few if any actual changes in government policies and practices were made, and the US took no steps towards establishing a fair and just process for redressing continued violations of Treaties and other human rights. It appeared to any Indigenous Peoples that there was little chance for just redress or remedy within the existing legal and judicial systems.

From June 8th – 16th 1974, over 5000 representatives from 98 Indian Nations and Tribes from the US, Canada and Latin America gathered on the Standing Rock Reservation in South Dakota, US, for the “First International Indian Treaty Council of the Western Hemisphere” to discuss this dire situation and propose solutions. These delegates, “meeting under the guidance of the Great Spirit” founded the International Indian Treaty Council and adopted the “**Declaration of Continuing Independence**” which many consider to be one of the first precursors of the UN Declaration of the Rights of Indigenous Peoples.

The **Declaration of Continuing Independence** focused primarily on Treaty violations in the US, in particular the 1868 Ft. Laramie Treaty of the host Lakota and Dakota Nations. It also referenced a number of other examples of colonization and Treaty violations. It was a historical step expressing the clear necessity and justification for moving the search for recognition of Treaty Rights into the international arena, specifically to the United Nations.

The 1974 Declaration also presented the core principles upon which Indigenous Peoples' work for Treaty Rights at the UN would be based for generations of IITC representatives. This work began at the two UN conferences on the Rights of Indigenous Peoples (Geneva, 1977 and 1981) then at the Working Group on Indigenous Populations where the original text of the UN Declaration on the Rights of Indigenous Peoples was drafted, and throughout the process of developing the UN Declaration. These included:

1) Respect by the International community for the sovereign rights of Indigenous Peoples as the basis of peace, dignity and freedom:

“Sovereign people of varying cultures have the absolute right to live in harmony with Mother Earth so long as they do not infringe upon this same right of other peoples. The denial of this right to any sovereign people, such as the Native American Indian Nations, must be challenged by truth and action. World concern must focus on all colonial governments to the end that sovereign people everywhere shall live as they choose; in peace with dignity and freedom.”¹

2) The International nature and character of Treaties and the Treaty relationship

“Treaties between sovereign nations explicitly entail agreements which represent “the supreme law of the land” binding each party to an inviolate international relationship.”²

3) A call for International support and attention to Treaty violations

“The United States of America has continually violated the independent Native Peoples of this continent by Executive action, Legislative fiat and Judicial decision. By its actions, the U.S. has denied all Native people their International Treaty rights, Treaty lands and basic human rights of freedom and sovereignty. This same U.S. Government, which fought to throw off the yoke of oppression and gain its own independence, has now reversed its role and become the oppressor of sovereign Native people. In the course of these human events, we call upon the people of the world to support this struggle for our sovereign rights and our treaty rights. “

...The Council further realizes that securing United States recognition of treaties signed with Native Nations requires a committed and unified struggle, using every available legal and political resource.”³

2) Interpretation of Treaties in accordance with the traditional and spiritual understanding of Indigenous Nations

“ ... The International Indian Treaty Council recognizes the sovereignty of all Native Nations and will stand in unity to support our Native and international brothers and sisters in their respective and collective struggles concerning international treaties and agreements violated by the United States and other governments. All treaties between the Sovereign Native Nations and the

¹ “Declaration of Continuing Independence by the First International Indian Treaty Council at Standing Rock Indian Country, June 1974

² Ibid.

³ Ibid

United States Government must be interpreted according to the traditional and spiritual ways of the signatory Native Nations.”⁴

During this same time period, other Treaty Nations were also seeing the need, under the guidance of their elders, to seek respect, redress and recognition for Treaties and Treaty rights in the International Arena. In Canada, the Maskwacîs Cree elders and leaders gave instructions as presented by Chief Wilton Littlechild in his opening presentation to a training workshop on International Human Rights and Treaties hosted by the Confederacy of Treaty 6 First Nations and the International Indian Treaty Council in Treaty 6 Territory, Edmonton Alberta Canada January 20 – 21, 2009:

“I recall for example our elders in 1975, after ceremonies and after much deliberation, expressing a concern. In a way, to try and recapture their words, they ‘were very, very sad, discouraged and disappointed at how easily our Treaties were being violated’. So because of that experience they decided then to embark on an international initiative. The reason that they began an international initiative was because in their view, in their belief, the Treaty at least for example in the case of Treaty 6, was with Her Majesty the Queen in the right of Great Britain and Northern Ireland.

So for many, many years they viewed the Treaty as an international agreement. To resolve conflicts and to deal with violations we needed to go into the international arena. But before they mandated us to go into the international arena, again with ceremonies, they gave us 4 principles as the basis we needed to use to carry out our work and propose solutions.

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

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

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

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

⁴ Ibid

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

So from the mid-1970’s, we were guided by our elders, ceremony and these fundamental principles in our work internationally. At the drafting and negotiating sessions of the UN Declaration we have stated that this is also a ‘UN Declaration on the Treaty Rights of Indigenous Peoples’... “

II. ORIGINAL SPIRIT AND INTENT OF TREATIES AS UNDERSTOOD BY INDIGENOUS PEOPLES

“The words Spirit and Intent are sometimes used too loosely. Spirit and Intent means a lot to the grandfathers that came to assist in guiding the people that signed treaties on our behalf”.

– Henry Lewis, Director, Treaty Governance, Onion Lake Cree Nation, Chiefs Forum on Treaty Implementation, March 29 – 30, 2012, Federation of Saskatchewan Indian Nations,

Treaties constitute a nation-to-nation partnership based on mutual recognition, good faith, respect and consent. The US Constitution recognizes Treaties as the ‘Supreme Law of the Land’. Special Rapporteur Dr. Miguel Alfonso Martinez, in his *Study on Treaties, Agreements and Other Constructive Arrangements between States and indigenous populations*, affirmed that Treaties are international agreements that continue to be in force to this day.⁵ Indigenous Peoples original “spirit and intent” based upon the oral histories and Indigenous laws surrounding Treaty making implementation also affirms this understanding that Treaties are valid, enforceable and will endure “so long as the sun shines, the grass grows and the rivers flow”.

Most of Canada’s landmass is covered by Treaties and agreements, including comprehensive and specific land claims agreements. Treaties have played a pivotal role in the shaping of the US as well, with over 300 legally-binding ratified Treaties that are still in effect.⁶

Treaties between the Crown and Indigenous Peoples, the original Nations of what is now Canada, are the basis for the current legal relation between Indigenous Peoples and the rest of the population.

⁵ M. Alfonso Martinez, *Study on Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous Populations* E/CN.4/Sub.2/1999/20, including paragraphs: 270. *This leads to the issue of whether or not treaties and other legal instruments concluded by the European settlers and their successors with indigenous nations currently continue to be instruments with international status in light of international law.* 271. *The Special Rapporteur is of the opinion that said instruments indeed continue to maintain their original status, and to be fully in effect and consequently, are sources of rights and obligations for all the original parties to them (or their successors), who shall fulfill their provisions in good faith.* 272. *The legal reasoning supporting the above Conclusion is very simple and the Special Rapporteur is not breaking any new ground in this respect. Treaties without an expiration date are to be considered as continuing in effect until all the parties to it decide to terminate them, unless otherwise established in the text of the instrument itself, or unless, its invalidity is declared.*

⁶ See list online at: <http://www.firstpeople.us/FP-HTML-Treaties/Treaties.html>

From the perspective of the Indigenous Treaty Nations, serve as the ongoing basis for mutually respectful and beneficial relations and commitments between Indigenous Peoples and the Crown.⁷

Treaties, for Indigenous Nations of Canada, the United States, Aotearoa/New Zealand and elsewhere are sacred agreements. They were concluded through ceremony, bringing Canada, the US and New Zealand into existence within Indigenous territories. They were negotiated and interpreted using Indigenous languages, laws and legal traditions and sacred ceremonies in many instances. The agreements surrounding North America's formation in many Treaty territories are profound because they are meant to encourage the spiritual, moral and legal capacities of all the people who would come to live in Canada and the US.⁸ They never included, for the Indigenous Treaty Partners, any understanding or agreement that the newcomers would act to destroy or contaminate the lands, waters, food sources and ceremonial places essential to the continued survival of the Indigenous Peoples. The spiritual relationships and responsibilities as expressed in Article 25 of the UN Declaration could and would never be severed.

The Indigenous Treaty interpretation can be problematic from the Canadian and US government perspective, particularly when government lawyers argue for the narrowest possible technical interpretation of Treaties in order to give the Crown or Federal government more authority relative to Indigenous Peoples.⁹ Inherent and inalienable Treaty, Aboriginal or Indigenous title is the basic underpinning of Treaties for Indigenous Peoples, and continues to apply in those areas where Treaties have not been entered into. However, there have been many instances whereby the United States and Canada have attempted to extinguish this aboriginal title¹⁰, including where imposed development is planned. Regardless, Indigenous Peoples throughout the United States, Canada and other regions continue to hold to their ancestral spiritual relationship to their lands, territories, waters and other resources, as affirmed, for many, in the Nation to Nation Treaties.

Treaty Nations maintain that their original title over their traditional lands, territories and natural resources was never ceded or surrendered,¹¹ and that it was never the intent of those who concluded

⁷ Types of Treaties, Agreements and other Constructive Arrangements: Peace and Friendship Treaties, the historical "numbered treaties", being Treaties #1, 2, 3, 4, 5, 6, 7, 8, 9, 10, & 11 (1871-1921); the Robinson Huron and Robinson Superior Treaties of 1850; the Douglas Treaties (of Vancouver Island, 1850-1854); the Williams Treaties (1923) – see Map of Historical Treaties supra. Also see the over 35 modern land claim agreements, with many others currently under negotiation: <http://landclaimscoalition.ca/map.php>

⁸ See John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at page 29

⁹ See Report on United Nations seminar on treaties, agreements and other constructive arrangements, July 2010 A/HRC/EMRIP/2010/5, at paragraph 10: *As in previous discussions relating to treaties, agreements and other constructive arrangements between States and indigenous peoples, indigenous participants underlined the important role played by treaties in determining their relationship with the States in which they lived. The treaties were perceived by some of the experts as having a legally-binding character and were considered indispensable as a framework for the resolution of conflicts. It was noted that the history of treaty-breaking by Governments over the years had undermined confidence between the parties, and that this was compounded by differing interpretations or understandings of treaties.*

¹⁰ Joint Report by the International Indian Treaty Council et al., Response to Canada's 19th and 20th Periodic Reports: Consolidated Indigenous Alternative Report, Submitted to the Committee on the Elimination of Racial Discrimination 80th Session, Available Online: <http://www2.ohchr.org/English/bodies/cerd/cerds80.htm> at page 34.

¹¹ See *Paulette v. Registrar of Titles (No.2)* (1973), 42 D.L.R. (3d) 8 at 14, wherein the Supreme Court of the Northwest Territories recognized Treaty No.8 and Treaty No. 11 were "peace" treaties that did not effectively terminate or extinguish

the Treaties to do so. The oral interpretation and understanding of the Treaties consecrated with ceremony and passed down through ceremony and oral traditions affirm this understanding, although the written versions of the settler governments often present a contradictory interpretation.

Under United States legal doctrine first established in the early 1800's based, in part, on the so called "Doctrine of Discovery", Indigenous Peoples can be unilaterally deprived of their lands and resources by Congress without due process of law and without compensation and Treaties can be abrogated. Of equal concern is US policy of "non-recognition" of significant numbers of Indigenous Peoples. The US makes a clear policy distinction between "recognized" tribes, recognized by the US as Indigenous Peoples with some Indigenous rights, and other Indigenous Peoples in the United States. Only "recognized" Tribes and Nations, and to a lesser extent, Alaska Native Villages, are accorded some Indigenous rights. All other Indigenous Peoples in the US, including both unrecognized and "terminated" Tribes, Native Hawaiians, Pacific Islanders (including the Chamorro Native Peoples of Guam), the Native Taino Peoples of Puerto Rico, and to a significant extent, Alaska Natives are not recognized as "Indigenous" with regard of their rights as Peoples under federal law. According to the US Periodic report ¹² only federally recognized Tribes are accorded these "special rights."

This was also emphasized by the United States when they made their statement of support for the United Nations Declaration for the Rights of Indigenous Peoples on December 16th, 2007.¹³ It should be noted that some of the Indigenous Peoples currently not "recognized" by the US include those that conducted Nation to Nation Treaties with the US. The Treaty relationship as a basis of partnership in accordance with the original spirit and intent, as further affirmed in the UN Declaration's preamble, is undermined in practice through these policies.

Free Prior and Informed Consent: an Original Treaty Principle

Free, Prior and Informed Consent is affirmed in various provisions throughout the UN Declaration of the Rights on indigenous Peoples. Consent is also a fundamental Treaty principle.

Free Prior and Informed Consent is also a Treaty right, and formed a part of the framework in the original instructions provided by the Treaty Nation elders and leaders who initiated this work at the United Nations. Over the many years of discussion, representatives of Treaties No. 6, 7 and 8 Nations, and other Treaty Nations maintained the consistent position that the Declaration on the Rights of Indigenous Peoples is also a UN Declaration on Treaty Rights, based on the right to Self-Determination and Consent. Many provisions of the Declaration directly refer to, imply or underscore the Right of

Aboriginal title. In fact, the treaties were found to have only dealt with issues of continuation of life-ways – hunting and fishing for example – and not a complete surrender of the land itself.

¹² United States Universal Period Report paragraph 399.

¹³ "The United States aspires to improve relations with indigenous peoples by looking to the principles embodied in the Declaration in its dealings with federally recognized tribes, while also working, as appropriate, with all indigenous individuals and communities in the United States." Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples", page 2.

Free, Prior and Informed Consent in relation to rights affirmed in Treaties, Agreements and other Constructive Arrangements between States and Indigenous Peoples.

In Canada, Treaties No. 6, 7 and 8 all affirm the right to consent as an underpinning of the Treaty relationship between States and Indigenous Nations. Treaty No. 6 concluded in 1876 between Her Majesty the Queen of Great Britain and Northern Ireland and the Plain and Wood Cree Indians and other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions, states:

“And whereas the said Indians have been notified and informed by Her Majesty's said Commissioners that it is the desire of Her Majesty to open up for settlement, immigration and such other purposes as to Her Majesty may seem meet, a tract of country bounded and described as hereinafter mentioned, and to obtain the consent thereto of Her Indian subjects inhabiting the said tract, and to make a treaty and arrange with them, so that there may be peace and good will between them and Her Majesty, and that they may know and be assured of what allowance they are to count upon and receive from Her Majesty's bounty and benevolence.” [Treaty No. 6, paragraph 3, emphasis added].

Paragraphs 3 of Treaty No. 7 (1877) and Treaty No 8 (1899) contain almost identical language regarding consent.

The Ft. Laramie Treaty concluded on April 29th, 1869 between the United State of America and the “Great Sioux Nation”¹⁴ also 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;”

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” (E/CN.4/2004/111, paragraph 3, emphasis added).

These conclusions highlight the consensual basis of Treaties and Agreements as an essential component upon which their original validity and ongoing viability is based. The failure of State parties to respect the right to Free Prior Informed Consent of Indigenous Nations is a principle cause of Treaty violations and abrogation, and is the direct cause of a wide range of pervasive human rights violations.

¹⁴ “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 Right to Free Prior and Informed Consent continues to be challenged by States such as Canada in a number of international processes impacting the rights of Indigenous Peoples and Treaty rights in particular. However, significant advances continue to be made internationally affirming and emphasizing this understanding of the inextricable link between self-determination, consent and the rights affirmed in Treaties, Agreements and Constructive Arrangements. Notably, the recommendations of the 10th session of the UN Permanent Forum on Indigenous Issues included the following:

36. As a crucial dimension of the right of self-determination, the right of indigenous peoples to free, prior and informed consent is also relevant to a wide range of circumstances in addition to those referred to in the Declaration. Such consent is vital for the full realization of the rights of indigenous peoples and must be interpreted and understood in accordance with contemporary international human rights law, and recognized as a legally binding treaty obligation where States have concluded treaties, agreements and other constructive arrangements with indigenous peoples. In this regard, the Permanent Forum emphatically rejects any attempt to undermine the right of indigenous peoples to free, prior and informed consent. Furthermore, the Forum affirms that the right of indigenous peoples to such consent can never be replaced by or undermined through the notion of “consultation”.¹⁵

Indigenous Peoples are now insisting on the full implementation of Free, Prior and Informed Consent and full and effective participation in all of the international processes, bodies and Treaty Negotiations in which they are involved at the United Nations, as well as in regional standard setting processes. Article 42 of the UN Declaration, as well as our standing as Treaty Nations, makes it clear that Indigenous Peoples should expect and accept no less in these processes:

“The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration”.

Significant advances continue to be made advancing the recognition of the rights inherent in the Original Understanding and Intent of Treaties from the point of view of Indigenous Peoples. Other examples include:

1) The Treaty Right to Food

“Our ancestors in some areas have secured our traditional ways and food systems in Treaties. These international agreements were signed for “so long as the sun shines, the grass grows, and the rivers flow”¹⁶ --- Wilton Littlechild, Ermineskin Cree Nation, Treaty No. 6 Territory, Canada

¹⁵ Report of the 10th session on the United Nations Permanent Forum on Indigenous Issues, 16 – 27 May, 2012, [E/2011/43-E/C.19/2011/14]

¹⁶ Wilton Littlechild, Ermineskin Cree Nation, addressing the United Nations World Food Summit, Rome, November 1996 noted the significance of many traditional and sacred ceremonies and feasts that include food as a spiritual practice and an offering to the spirit world.

Many of the legally binding Nation to Nation Treaties concluded between Colonial States including the British Crown and their successors (Canada and the US) affirm the right of Indigenous Treaty Nations to their means of subsistence (hunting, trapping, fishing and gathering) as well as land and water rights, which are essential for the exercise of Food Sovereignty.

To cite one of many examples, the 1837 United States Treaty with the Chippewa Nation affirmed that ***“The Privilege of hunting, fishing, and gathering the wild rice upon the lands, the rivers and the lakes is guaranteed...”***¹⁷

These Nation-to-Nation Treaties, as well as other types of Agreements between States and Indigenous Peoples and the consensual relationships they are based on, if honored and upheld, can also be the foundation and model for respectful partnerships to address Food Sovereignty, Sustainable Development and a range of related issues. This is true, in particular, when there is an urgent need for joint and or/shared decision-making in order to correct current injustices, respond to critical violations, redress and provide restorative measures to correct historic and ongoing wrongs that undermine Indigenous Peoples food sovereignty and Treaty right to food.

In September 2011, the Treaty 1-11 Chiefs met in Calgary Canada, Treaty No. 6 Territory, and adopted a resolution on the Treaty and Inherent Right to Food. “On behalf of the Chiefs, Headmen and citizens of the First Nations of Treaties 1-11”, they declared that they:

1. *Affirm that our Right to Food is an Inherent Right affirmed in our Treaties, and that Food Sovereignty is an essential aspect of our Sovereignty as Treaty Nations.*
2. *Affirm that our traditional foods are essential to our physical, cultural and spiritual health, identity and survival.*
3. *Recognize that the Creator placed us on our traditional lands and provided clean food and water for our health and survival and that we have an inherent and Treaty right and responsibility to care for and protect the land, plants, animals and water, and our sacred Mother Earth as a whole, from destruction and contamination.*
4. *Affirm that any attempt to restrict or curtail our rights to hunt, fish, grow or gather our traditional foods and to use the water on our Treaty lands by federal, provincial or municipal government laws, regulations or ordinances are fundamental violation of our human rights and Treaty rights, including our Treaty Right to Food.*
5. *Recognize the negative impacts of imposed development such as mining, damming, drilling, Tar Sands extraction and clear cutting, as well as climate change and environmental contamination on our traditional foods and water sources. We recognize our Inherent and Treaty rights and responsibilities to care for and protect the food and water sources that have been the basis of our survival since time immemorial.*
6. *Recognize that we continue to have the traditional knowledge and wisdom within our Nations about how to use and protect our traditional foods, and that our elders, spiritual leaders and other traditional practitioners carry this knowledge as passed down from our ancestors.*
7. *Recognize the urgent need to make sure that our children, young people and future generations learn about our Treaty Rights, including our Treaty Right to Food and how to use and care for our traditional subsistence foods, waters and medicines. This is fundamental for our continued survival.*

¹⁷ 1837 United States Treaty with the Chippewa Nation.

8. *Recognize the importance of re-establishing the traditional trade relationships that always existed between our Nations as part of our Indigenous development, Nation-to-Nation relations, and food sovereignty; we recognize the importance of reestablishing these Indigenous trade relations that include the exchange of traditional foods and knowledge as a response to the urgent situations now facing many of our Nations as their traditional foods become more scarce (such as urbanized areas).*
9. *Call upon all of our Treaty Nations to assert and put into practice these rights and responsibilities, to exercise their Inherent and Treaty Right to Food and Food Sovereignty on their traditional and Treaty lands, to protect these resources from contamination and destruction, and to accept this responsibility for the survival of our Nations, especially our children, grandchildren and future generations.*

The Treaty Right to Food, from the original understanding of Indigenous Peoples continues to be of vital relevance. For example, the Treaty Right to Food was addressed in an intervention by the IITC at the 11th session of the United Nations Permanent Forum on Indigenous Issues on May 14th, 2011 in the context of the half-day discussion on Food Sovereignty and the Right to Food. It was a major focus of the presentations made by Indigenous chiefs and other representatives to UN Special Rapporteur on the Right to Food Olivier deSchutter in his recent country visit to Canada, and in particular, during his site visit to Alexis Nakota Sioux First Nation, Treaty 6 Nation Territory, on May, 13th 2012.

There have other signs of progress in other United Nations bodies and processes. The “**Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security**” adopted on March 9th, 2012 by FAO and the UN Committee on Food Security (which in 2011 also established two seats for Indigenous representatives). The Guidelines recognize the rights of Indigenous Peoples in a number of provisions including in section 9 that is dedicated specifically to Indigenous Peoples.

Paragraph 9.3: *“States should ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. In the case of indigenous peoples, States should meet their relevant obligations and voluntary commitments to protect, promote and implement human rights, including as appropriate from the International Labour Organization Convention (No 169) concerning Indigenous and Tribal Peoples in Independent Countries, the Convention on Biological Diversity and the United Nations Declaration on the Rights of Indigenous Peoples.”*¹⁸

Finally, regarding Food Sovereignty as a key component in international discussions on Sustainable Development, Indigenous Peoples recommended that *“an objective of Rio + 20 [the UN World Summit on Sustainable Development] shall be to ensure the implementation of Treaty Rights to Food and Food Sovereignty in accordance with these internationally binding treaties and agreements made between Indigenous Peoples and Colonialist States and their successors”*¹⁹

¹⁸ UN Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security,

¹⁹ Input and Contributions to the Rio + 20 compilation document to serve as a basis for the preparation of zero draft of the outcome document, submitted by the Dene Nation (Northwest Territories, Canada), the Nishnawbe Aski Nation (Thunder Bay, Ontario, Canada), the International Indian Treaty Council (IITC), the Indigenous Environmental Network (IEN), the Indigenous Peoples Council on Biocolonialism (IPCB), Indigenous World Association IWA, as well as Alaska Community Acton on Toxics (ACAT), and Ms. Mirna Cunningham, President, UN Permanent Forum on Indigenous Issues and on behalf of CADPI (Nicaragua), October 31st, 2012

The “Rio + 20 Indigenous Peoples’ International Declaration on Sustainable Development and Self-Determination” was adopted by consensus of over 70 Indigenous Nations, organizations, federations and networks, and Indigenous UN experts from the UN Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and CERD, June 19th, 2012 in Rio de Janeiro. The theme of the International Conference was “*Standing Together for our Food Sovereignty, Traditional Cultures and Ways of Life*”. The Declaration was presented formally to the Secretariat of the World Conference on Sustainable Development and the World Conference in the Indigenous Peoples “major group” opening plenary statement on June 20th, addressed the relevant international obligations of States, including specifically, Treaty rights, in the context of Sustainable Development:

“We insist that States fully implement their commitments under National and International laws and standards which uphold the inherent, inalienable, collective and inter-generational rights of Indigenous Peoples and rights affirmed in Treaties, Agreements and Constructive Arrangements, the UN Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169.”²⁰

2) The Treaty Right to Health

For many Indigenous Nations, the provision of health services the State is a Treaty Right. For example, a direct reference to the obligations of the federal Crown in this regard, known as “the Medicine Chest Clause” is included in Treaty No. 6, 1876 with the British Crown at Fort Pitt:

“That a medicine chest shall be kept at the house of each Indian agent for the use and benefit of the Indians at the direction of such agent. That in the event hereafter of the Indians comprised within this treaty being overtaken by any pestilence, or by a general famine, the Queen, on being satisfied and certified thereof by Her Indian Agent or Agents, will grant ... assistance of such character or to such extent as the Chief Superintendent of Indian Affairs shall deem necessary and sufficient to relieve the Indians from the calamity ... befallen them...”

The right to health as a component of the original understanding of Treaty is affirmed by Indigenous First Nations of Canada:

“All rights are recognized in Treaties between the Crown and Nations or Tribes of Indians in Canada ensuring the holistic and the spiritual concept of Treaties. That the medicine chest clause binds the federal government to provide medicines and all that is required to maintain proper

²⁰ The “Rio + 20 Indigenous Peoples’ International Declaration on Sustainable Development and Self-Determination”, June 19th 2012, Rio de Janeiro

health. So long as the sun shines, rivers flow and the grass grows, these words must never be broken.”²¹

With the health of Indigenous Peoples in Canada and access to health care lagging severely and drastically behind the overall Canadian population, and levels of communicable (HIV/AIDS and TB) and non-communicable diseases (diabetes and cancer, among others etc.) at many times those found in non-Indigenous Canadians, Treaty Nations in Canada continue to call for the full implementation of this inherent and Treaty right to health according to its original spirit and intent, as a legally-binding obligation of the Crown in Right of Canada:

*“Our Inherent rights to health and health care includes our traditional health system of Medicine Women and Men, our ceremonies and practices for healing and prevention, our medicines from minerals, animals, plants and water, our traditional lands and resources. First Nations philosophy and world view is one of holistic health and health care, that includes spiritual, mental, emotional and physical health and health care. Our inherent rights to health and health care are recognized by Treaty-making and the Treaties”.*²²

United Nations bodies have recognized the Treaty Right to Health. Wilton Littlechild representing the Maskwacîs Cree presented the keynote address to the “International Consultation on the Health of Indigenous Peoples”, Geneva, 21-22 November 1999, emphasizing the Treaty Right to Health. The recommendations contained in the final “Geneva Declaration on the Health and Survival of Indigenous Peoples” reflect this input and include the following recommendation: “we call upon governments where Treaties, Agreements and Other Constructive Arrangements exist, that the original spirit and intent of these international agreements be honored, respected and implemented”²³.

Subsequent to this Geneva Declaration, the Maskwacîs Cree presented similar input to UN Special Rapporteur on the Right to Health Paul Hunt who also included recognition of the Treaty Right to Health in his report to the United Nations 3rd Committee.

3) The Treaty Right to Water and the Impacts of Climate Change

In 2007 and 2008, the Office of the UN High Commissioner on Human Rights conducted a consultation for preparation of a report on the relationship of Human Rights and Climate Change²⁴ and a study on

²¹ Treaty No. 6, No. 7 and No. 8 Chiefs “Declaration on the Treaty Right to Health”, March 16 - 17, 2005, adopted by the 31st Anniversary International Indian Treaty Council Conference hosted by the Confederacy of Treaty 6 First Nations, at Ermineskin Cree Nation, Alberta Canada, August 7, 2005

²² “Treaties, Treaty Rights and Inherent Rights to Health and Health Care” briefing note prepared by the Health and Social development Secretariat for the Chiefs’ Forum on Treaty Implementation, Federation of Saskatchewan Indian Nations, March 19, 2012.

²³ The “Geneva Declaration on the Health and Survival of Indigenous Peoples” , WHO/HSD/00.1

²⁴ Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, A/CHR/16/61 to the 10th session of the HRC, 15 January 2009

the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments²⁵. The International Indian Treaty Council (IITC) and the International Organization of Indigenous Resource Development (IOIRD) made submissions for inclusion in these studies that were presented by the UN High Commissioner on Human Rights to the UN Human Rights Council at its 6th and 10th sessions and addressed critical issues for the survival of Indigenous Peoples.

The IITC and IOIRD submissions stressed the denial of the inherent right to water and effects of climate change on rights affirmed in Treaties in keeping with their original spirit and intent, in particular their cultural and spiritual relationships with water and traditional subsistence foods. They also highlighted impacts on the rights affirmed in the UN Declaration on the Rights of Indigenous Peoples including rights to lands, natural resources, rights to traditional subsistence and food, cultural and spiritual rights and responsibilities, self-determination, free prior and informed consent, spiritual relationship to traditional lands and territories, health, responsibilities to future generations and participation in decision making, among others.

These inputs were reflected in the “Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments”:

“In the case of indigenous peoples, guaranteeing their access to safe drinking water might require action to secure their customary arrangements for managing water and the protection of their natural water resources,”²⁶

These contributions were also reflected in the OHCHR’s report on the relationship between human rights and climate change presented to the Human Rights Council’s 10th session as follows:

“Indigenous peoples have been voicing their concern about the impacts of climate change on their collective human rights and their rights as distinct peoples. In particular, indigenous peoples have stressed the importance of giving them a voice in policy-making on climate change at both national and international levels and of taking into account and building upon their traditional knowledge.”²⁷

“The United Nations Declaration on the Rights of Indigenous Peoples sets out several rights and principles of relevance to threats posed by climate change. Core international human rights

²⁵ Human Rights Council decision 2/104, November 27th, 2006

²⁶ Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments, A/HRC/6/3, 16 August 2007, to the 6th session of the UN HRC, paragraph 24

²⁷ Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, A/CHR/10/61 to the 10th session of the HRC, 15 January 2009, paragraph 52 paragraph 52

*treaties also provide for protection of indigenous peoples, in particular with regard to the right to self-determination and rights related to culture...*²⁸

The UN Permanent Forum on Indigenous Issues specifically recognized the Treaty Right to Water in the report of its 10th Session, in response to joint interventions made by IITC, IOIRD, Confederacy of Treaty 6 First Nations, Seventh Generation Fund and others, as follows:

*80. The Permanent Forum recognizes treaty rights, including associated rights to water, as a key element in the comprehensive discussion of indigenous peoples' understanding and interpretation of treaties, agreements and constructive arrangements between indigenous peoples and States.*²⁹

4) Traditional governing and decision-making structures as the basis of the Treaty relationship

The right to maintain, use, determine and preserve traditional governmental and leadership systems is an inherent right of Indigenous Peoples. This is an essential component of self-determination. It is central to the original understanding and spirit of the Treaty relationship, and is also affirmed in various provisions of the UN Declaration on the Rights of Indigenous Peoples.

For Indigenous Peoples, our status as Nations since time immemorial is based on an inherent spiritual, political, and social relationships and structures. Internal decision-making structures varied among the Nations and Peoples, but most were based on consensus decision-making, decentralization of authority, oral history, spiritual and ceremonial traditions for recognizing and transferring authority, clan and family systems including clan mothers in some Nations, and leadership by hereditary chiefs, leaders or headmen. The conclusion of Treaties between Indian Nations and European and settler governments, for Indigenous Peoples, was based upon mutual recognition of government systems, leadership and decision-making structures and processes.

Even before Nation to Nation Treaty-making ended, the US started to pass legislation and make decisions in their courts limiting the jurisdiction and status of the sovereign Indigenous Nations. In the US, transformative decisions of the US Supreme Court of John Marshall in the 1830's defined Indian Nations as occupying a position "resembling" wards of the federal government (*Cherokee Nation v Georgia*, 1831). In 1832 Chief Justice John Marshall issued his decision in the case of *Worcester v. Georgia* maintaining that although Indian tribes in the United States had been treated as independent and sovereign nations since Europeans first arrived, they were now--*domestic dependent nations* possessing inherent sovereignty predating contact with Europeans. Attributes of this sovereignty extend over their "members and their territory." [*United States v. Mazurie*, 419 U.S. 544, 557 (1975)].

²⁸ Ibid, paragraph 53

²⁹ Report of the 10th session on the United Nations Permanent Forum on Indigenous Issues, 16 – 27 May, 20122, [E/2011/43-E/C.19/2011/14]

The Indian Act in Canada (1876) and the Indian Reorganization Act (IRA) in the US (1934) firmly established elected tribal government, decision-making and leadership selection systems for the Indigenous Nations who voted (by majority vote) to organize themselves under the IRA. At that time, for many Indigenous Nations, voting as a method of decision making was new, and for many it was culturally very foreign. Today, by and large, electoral systems for selecting leadership as well as for internal decision-making by tribal governments have replaced traditional leadership structures.

Nevertheless, many Indigenous Nations in North America have maintained elements and principles of their traditional decision-making systems, which are inherent in the ongoing Nation to Nation Treaty relationship, and have integrated them into their modern “federally recognized” decision-making and leadership selection systems. For example, some of the 19 federally-recognized indigenous Pueblos in New Mexico USA do not have written constitutions nor do they have an election system for selecting leaders but instead still use the centuries- old “theocratic way” of appointing modern “Tribal Governors”. The Seminole Nation of Oklahoma selects members of its federally-recognized tribal council in accordance with its traditional band council system, based on hereditary leadership and membership. Many Indigenous Nations in Canada trace their leadership systems back to the hereditary chiefs and Treaty signatories.

Some Indigenous Nations have maintained intact and active traditional decision- making systems, at times operating parallel to a modern federally- recognized tribal government system. The Hopi traditional system in the mesas of Northern Arizona, the traditional form of consensus decision-making among the Pueblos tribes in New Mexico, USA as well as the Haudenosaune traditional long house in the US and Canada are three examples, although others exist as well. Other Indigenous Nations, such as the Yaqui in Northern Mexico the Kuna in Panama and the Maori of Aotearoa (New Zealand), have maintained unbroken traditional government systems, recognized by Treaties and Agreements, that are also formally recognized by colonial States.³⁰

Since the adoption of the UN Declaration, a growing number of Indigenous Nations, including Treaty Nations as sovereign Indigenous governments have passed resolutions affirming, adopting and supporting the UN Declaration as a minimum standard of rights for their survival, dignity and well-being of their own tribal citizens, and also affirming the obligations of States to uphold them. These Nations include the Maskwacis Cree and other Nations of Treaties 6, 7 and 8 in Canada, the Seminole Nation of Oklahoma, Pit River Tribe in California, Gila River Indian Community in Arizona and the Navajo Nation. These Nations are also implementing and using the Declaration as a basis for their laws, court decisions, policies and ordinances as well as for the protection of their Treaties, homelands and sacred sites and in carrying out negotiations with States.

³⁰ Submission to the United Nations Expert Mechanism of the Rights of Indigenous Peoples (EMRIP) Study on Indigenous Peoples and the Right to Participate in Decision-making presentation to the *Expert Seminar on Indigenous Peoples and the Right to Participate in Decision-Making* by Chief Wilton Littlechild and Andrea Carmen, with thanks to Chief Victor Buffalo, Kenneth Deer, Petuuche Gilbert, Jackie Warledo for their contributions.

Please refer to Addendum 1 of this submission for a compilation of references to Original Interpretation, Spirit and Intent of Treaties in the Treaty Study and the UN Study of Treaties, Agreements and Other Constructive Arrangements and the Reports of the 1st and 2nd UN TAOCA Seminars.

III. THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES AND THE INTERNATIONAL CONTEXT FOR UPHOLDING THE RIGHTS AFFIRMED IN TREATIES, AGREEMENTS AND OTHER CONSTRUCTIVE ARRANGEMENTS

The adoption of the **United Nations Declaration on the Rights of Indigenous Peoples** (“the UN Declaration”) by the UN General Assembly on September 13th 2007 was an historic and long-awaited step forward for Indigenous Peoples in the recognition of Treaties and the rights they affirm as matters of “international concern, interest responsibility and character”.³¹ Its adoption demonstrates broad acceptance by the international community that they must take an active role in ensuring that that these international rights are upheld, in collaboration with Indigenous Peoples.

The UN Declaration recognizes the fundamental importance of the relationship between State and Indigenous Peoples enshrined in Treaties and the Treaty-making process. With its adoption by the UN General Assembly, the Declaration on the Rights of Indigenous Peoples and the framework it provides as a “minimum standard” can be used as the basis for transforming Special Rapporteur Miguel Alfonso Martinez’ recommendation into a practical reality.

The first step will be to bring the practices and procedures for redressing Treaty violations into line with currently accepted International Human Rights standards, as the CERD recommended to the US in the case of the Western Shoshone. Doing so will also fulfill the Maskwacis Cree assertion that “*Treaties are a solution*”.

This is the first UN Seminar on Treaties, Agreements and Other Constructive Arrangements since the adoption of the UN Declaration on the Rights of Indigenous Peoples. As such, it holds historic significance and impact. The Declaration’s recognition of the international standing of Treaties with Indigenous Peoples and the framework it provides for implementing redress and restitution processes should be reflected in the recommendations of this Seminar addressing next steps.

One of the most important victories in Indigenous Peoples’ struggle to ensure a strong and effective Declaration for the defense of Treaty rights was adoption of the original text of Article 3 affirming the right of Self- Determination consistent with Article 1 in Common of the International Human Rights Covenants. The right to Self-Determination as affirmed in International law, unqualified use of the term “Peoples”, strong language on traditional land and resource rights, and the obligation of States to obtain Free, Prior and Informed Consent are Treaty principles which were affirmed as non-negotiable by Indigenous Peoples throughout Declaration’s many years of development and adoption.

³¹United Nations Declaration on the Rights of Indigenous Peoples, preamble

Most Treaty rights violations occurring around the world also involve violations of rights to lands, territories, natural resources and means of subsistence as affirmed in Articles 20, 25, 26 and 32 among others. For example, Tar Sands development in Northern Alberta Canada is being carried out in violation of the Treaty Rights, and rights to lands, subsistence and Free Prior and Informed Consent of a number of impacted Treaty Nations in Canada. This issue was presented at the Committee on the Elimination of Racial Discrimination's review of Canada at its 80th Session in Geneva in February 2012. Dene Nation Chief Bill Erasmus and IITC Board member from Beaver Lake Cree Nation Ronald Lameman made the following submission regarding the devastating impacts of the Tar Sands development:

The area of north-eastern Alberta within the Treaty No. 6 and Treaty No. 8 territories known as the "Tar Sands" continues to be a national sacrifice area as it pertains to the Indigenous Peoples affected by this, the most destructive project on earth. Although the Chiefs of Treaty No. 6, Treaty No. 7 and Treaty No. 8 (Alberta) through their All Chiefs Assembly known as the AoTC (Assembly of Treaty Chiefs) have called for a moratorium³² on any further expansion of this development, the government of Alberta continues to grant leases, licenses and permits to the extraction companies.

Our Treaty partner, the federal Crown, sits back and does nothing to support the actions and concerns of the Indigenous Treaty Nations of this part of Canada. ... At present there are numerous problems that have been attributed to continued unabated extraction activities of a majority of the oil companies that have converged on this sensitive ecosystem from all parts of the globe. A few examples include increased cancer rates amongst Indigenous peoples who are downstream from the project; huge toxic tailings ponds leaching poison, including arsenic, into the environment and water sources; the diversion of water from the Athabasca River on a daily basis with no thought about the short or long term effects on the health of one of the most pristine rivers in the world; destruction of wildlife habitat, pollution of lakes and streams by the ever expanding nature of the exploration and extraction activities of the oil companies, 24 hours a day, 7 days a week, 365 days a year; and total disregard for the Treaty Rights to fish, gather, hunt and trap of the Indigenous Treaty Peoples within the Tar Sands area as this activity is going ahead without the free, prior and informed consent of the Indigenous Treaty Nations concerned. The tar sands developments have effectively placed significant limitations on our ability as Indigenous peoples to exercise our economic, social and cultural rights in our lands and territories, which is not only an immediate impact but will stretch far into the future and the livelihoods of future generations.³³

IV. RELEVANT RECOMMENDATIONS BY THE UN COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

³² Assembly of Treaty Chiefs, Treaties 6, 7 & 8 Resolution 2008

³³ United Nations Committee on the Elimination of Racial Discrimination 80th Session, Review of Canada's 19th and 20th Periodic Reviews, Oral Intervention by the International Indian Treaty Council, February 20th, 2012, presented by Ron Lameman and Chief Bill Erasmus

The UN Declaration, including its provisions on Treaties, Agreements and Other Constructive Arrangements, has been recognized as a guideline for the interpretation and implementation of other international standards to which States are legally obligated, in particular the International Convention for the Elimination of all Forms of Racial Discrimination (ICERD). The role of the Declaration in this regard was specifically affirmed in 2008 in the recommendations of the **Committee on the Elimination of Racial Discrimination** (“CERD”, the Treaty Monitoring Body for the ICERD)³⁴ to the United States, as follows:

“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.”³⁵

The CERD, further to their 2008 review of the United States, also expressed concerns about the adverse effects of exploitation of natural resources by US transnational corporations “on rights to land, health, living environment and the way of life of indigenous peoples,” and called upon the US to take appropriate legislative and administrative measures to prevent transnationals it registers “from negatively impacting on the enjoyment of rights of indigenous peoples in territories outside the United States.”

In 2012³⁶, CERD found that while Canada “has enacted a Corporate Responsibility Strategy, the Committee is concerned that the State has not yet adopted measures with regard to transnational corporations registered and incorporated in Canada whose activities negatively impact the rights of indigenous peoples outside Canada, in particular in mining activities.” CERD went on to recommend that Canada “take appropriate legislative measures to prevent transnational corporations registered in Canada from carrying out activities that negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada, and hold them accountable.”³⁷

An example presented to the CERD by the International Indian Treaty Council in the joint alternative report submitted by a number of First Nations and organizations was the Western Shoshone in Nevada, USA who continue to suffer impacts of gold mining carried out by Barrick Gold Corporation, the largest gold producer in the world based in Toronto Canada. Barrick has operated a massive open pit gold mine in Western Shoshone Treaty lands since 1965. The mine continues to destroy and desecrate the sacred mountain Mt. Tenabo which is used for ceremonies and food gathering, despite the Western Shoshone’s consistent vehement opposition. It should also be noted, as in the case of the Tar Sands, that the United States, the State Treaty Party to the Treaty of Ruby Valley with the Shoshone has failed to exercise its obligations to protect the Western Shoshone Lane rights and in fact has directly collaborated in promoting and facilitating large scale mining projects in their Treaty territories against their vehement objections.

³⁴ ICERD, 7 Mar. 1966, 660 U.N.T.S. 195 (entered into force 4 Jan. 1969).

³⁵ Committee on the Elimination of Racial Discrimination Seventy-second session Geneva, 18 February - 7 March 2008, Concluding observations, United States of America, UN Doc. CERD/C/USA/CO/6, 8 May 2008, para. 29.

³⁶ This recommendation was a follow-up to a previous similar recommendation of the CERD to Canada in 2007.

³⁷ CERD.C.CAN.CO19-20 at section 14.

Further, in 2001, in the Concluding Observations regarding their review of the United States (CERD/C/351/Add.1 paragraph, 400), the CERD also noted its concern “that treaties signed by the Government and indigenous nations, described as “domestic dependent nations” under national law, can be abrogated unilaterally by Congress....The Committee recommends that the State party ensure effective participation by indigenous communities in decisions affecting them, including those on their land rights, as required under article 5 (c) of the Convention, and draws the attention of the State party to general recommendation XXIII on indigenous peoples which stresses the importance of securing the "informed consent" of indigenous communities...”

Extensive information regarding lack of just, participatory processes to uphold and implement Treaty rights and redress Treaty violations in Canada in accordance with the provisions of the UN Declaration on the Rights of Indigenous Peoples was presented to the 80th session UN Committee on the Elimination of Racial Discrimination by Indigenous Treaty Nations in the IITC, Confederacy of Treaty Six et al joint Indigenous Peoples shadow report and in other submissions. In response, the CERD expressed its concerns about the continued lack of fair and effective processes in Canada, implemented in consultation with Indigenous Peoples, to redress Treaty violations, settle land claims and recognize land title.

CERD’s concluding recommendations to Canada issued on March 9th 2012, included the following:

“In light of its General Recommendation no. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party, in consultation with Aboriginal peoples:

- (a) Implement in good faith the right to consultation and to free, prior and informed consent of Aboriginal peoples whenever their rights may be affected by projects carried out on their lands, as set forth in international standards and the State party’s legislation;*
- (b) Continue to seek in good faith agreements with Aboriginal peoples with regard to their lands and resources claims under culturally-sensitive judicial procedures, find means and ways to establish titles over their lands, and respect their treaty rights;*
- (c) Take appropriate measures to guarantee that procedures before the Special Tribunal Claims are fair and equitable and give serious consideration to the establishment of a Treaty Commission with a mandate to resolve treaty rights issues.”³⁸*

Indigenous leaders who participated in this process stressed the importance of these recommendations. Chief Perry Bellegarde, Treaty 4 Spokesperson and Chief of the Little Black Bear First Nation attended the CERD review of Canada in Geneva and expressed appreciation for the CERD’s report, commenting that “The CERD’s recommendation that Canada ‘give serious consideration to the establishment of a Treaty Commission with a mandate to resolve Treaty rights issues’ is one which I urge Canada to

³⁸Committee on the Elimination of Racial Discrimination Eightieth session 13 February– 9 March 2012 Consideration of reports submitted by States parties under article 9 of the Convention, CERD/C/CAN/CO/19-20, para. 20

implement.” Danika Littlechild, Ermineskin Cree Nation and IITC Legal Counsel, stated “it is important that we continue the momentum and ensure that Canada actually implements the recommendations of the CERD, especially those relevant to Indigenous struggles in Canada. The CERD has laid out a road map for progress on these issues, including calling for a formal mechanism for implementation.”

The UN CERD has also, very significantly insisted that States do not characterize their Treaty obligations to Indigenous Peoples as “special measures” or affirmative actions taken to address historic and current discrimination. In response to information presented by the Maori for the Periodic Review of New Zealand in August of 2007, the CERD also stated its concern with New Zealand's characterization of its historic Treaty settlements as a "special measure." In an important finding for the principle of Treaty Rights and State obligations to uphold them, the CERD stated that, “[t]he Committee draws the attention of the State party to the distinction to be drawn between special and temporary measures for the advancement of ethnic groups on the one hand and **permanent rights of indigenous peoples** on the other hand.”³⁹ (emphasis added).

The CERD’s very important recommendations in these cases involving failure of States to uphold Treaty rights of Indigenous Peoples further supports the compelling case for international oversight and processes to protect the Treaty and other rights of Indigenous Peoples in countries around the world.

V. A FRAMEWORK FOR STRUCTURES AND PROCESSES TO ENSURE JUSTICE, REDRESS, RESTITUTION, RESTORED RELATIONS AND NON-RECURRENCE OF VIOLATIONS

The UN Declaration establishes this and other minimum criteria and principles for the establishment of just, fair and fully participatory processes for conflict resolution and redressing violations of inherent rights related to Treaties, lands and resources as well as other rights.

Even though the Congress unilaterally ended Treaty-making with Indigenous Peoples in the United States in 1871, the preexisting Treaties are still in effect and contain international obligations which are legally binding upon the United States today according to the understanding and insistence of Indigenous Treaty Nations. The US Constitution’s reference to Treaties as “the Supreme Law of the Land” certainly includes and encompasses the US obligations in accordance with Treaties entered into in good faith with the original Indigenous Nations. There is parallel legal history in Canada’s patriation of its Constitution, Sections 35⁴⁰ and 52⁴¹, which was also affirmed in the CERD’s recommendations to

³⁹ Concluding observations of the Committee on the Elimination of Racial Discrimination, New Zealand, CERD/C/NZL/CO/17, 15 August 2007

⁴⁰ Canada’s Constitution Act (1982), Section 35:

- (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed. (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.
- (3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.
- (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

⁴¹ Ibid, Section 52: (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect. (2) The Constitution of Canada include (a) the Canada Act, 1982, including this Act...

Canada in 2007.⁴² The Indian Claims Commission in the United States was an example of a unilateral, non-participatory and unjust process which utterly failed to effectively redress violations or provide for restitution based on the spirit and intent of Nation-to-Nation Treaties as understood by the Indigenous Treaty Parties. As noted by the CERD in 2006 in response to the Early Warning/Urgent Action submission by the Western Shoshone, it also failed to implement due process or “comply with contemporary international human rights norms, principles and standards.”⁴³ There was no consideration of Consent in either the process or the results. 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, whose rights to Consent were doubly violated by this process.

The UN Study on Treaties, Agreements and Constructive Arrangements between States and Indigenous Populations called for states to establish new processes to address Treaty violations and resolve related conflicts based on full participation. In his Final Report, [E/CN.4/Sub.2/1999/20] Dr. Miguel Alfonso Martínez presented a number of Conclusions and Recommendations under the heading “Looking Ahead”. He recommended that “in the light of the situation endured by indigenous peoples today, the existing mechanisms, either administrative or judicial, within non-indigenous spheres of government have been incapable of solving their difficult predicament”⁴⁴ there was a need to establish an “entirely new, special jurisdiction independent of existing governmental (central or otherwise) structures, although financed by public funds, that will gradually replace the existing bureaucratic/administrative government branches now in charge of those issues”⁴⁵. The Special Rapporteur stressed the importance of the full and effective participation of Indigenous Peoples “preferably on a basis of equality with non-indigenous people”⁴⁶ in the establishment and functioning of such processes.

⁴² Concluding observations of the Committee on the Elimination of Racial Discrimination 70th session, Canada: “In line with the recognition by the State party of the inherent right of self-government of Aboriginal peoples under section 35 of the *Constitution Act, 1982*, the Committee recommends the State party to ensure that the new approaches taken to settle aboriginal land claims do not unduly restrict the progressive development of aboriginal rights. Wherever possible, the Committee urges the State party to engage, in good faith, in negotiations based on recognition and reconciliation, and reiterates its previous recommendation that the State party examine ways and means to facilitate the establishment of proof of Aboriginal title over land in procedures before the courts. Treaties concluded with First Nations should provide for periodic review, including by third parties, where possible” [CERD/C/CAN/CO/18, March 2007, para. 22]

⁴³ Committee for the Elimination of Racial Discrimination, Sixty- eighth session Geneva, 20 February – 10 March 2006 Early Warning and Urgent Action Procedure, Decision 1 (68). United States of America, UN Doc. CERD/C/USA/DEC/1.Id, “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 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).”

⁴⁴ Study on treaties, agreements and other constructive arrangements between States and indigenous populations, Final report by Miguel Alfonso Martínez, Special Rapporteur, E/CN.4/Sub.2/1999/20, June 22, 1990, para. 306

⁴⁵ Ibid para. 307

⁴⁶ Ibid para. 309

The UN Declaration provides key elements for establishing such participatory mechanisms for Treaty-related redress/restitution/conflict resolution/land rights adjudication and recognition. These include:

Article 27: States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process. The process be fair independent, impartial, open and transparent, be established and implemented in conjunction with the indigenous peoples concerned and give due recognition to indigenous peoples' laws, traditions, customs and land tenure systems

Article 28:

- 1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.*
- 2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources*

Article 40: Indigenous peoples have the right to access to and prompt decisions through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

The basis for any processes and decisions in which Treaties and Treaty rights are involved or affected must be Article 37 of the Declaration. This article 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."

Also of significance for State obligations to respect the customs, traditions and systems of Indigenous Peoples regarding their traditional lands is Article 26, para 3:

- 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.*

Indigenous Peoples and States now have a clear and compelling mandate, represented by the vote of 144 States from all regions of the world on September 13th 2007, to bring the procedures for redressing

Treaty and other rights violations in line with international human rights standards and principles, including Free Prior and Informed Consent. The Declaration, as adopted, provides a minimum standard for a new framework for States and Indigenous Peoples to establish in partnership effective, just and bi-lateral processes and mechanisms for redress and dispute resolution without prejudice to other existing options.

VI. RECENT ADVANCES IN ESTABLISHING INTERNATIONAL PROCESSES FOR DISPUTE RESOLUTION

When the language affirming the rights to Indigenous Peoples under Treaties, Agreements and Constructive Arrangements was adopted, the visions and instructions of those elders who initiated this work at the United Nations were realized, in large part. It recognized the international character and relationship inherent in Treaties, it upheld Free Prior and Informed Consent and Self-Determination under International law, and contained a large number of other provisions recognizing rights affirmed in Treaties including subsistence, health, education, culture, language, land and resources among others.

However, States did not agree to the inclusion of 2 other key provisions in the original text as adopted by the UN Working Group on Indigenous Populations and the Subcommission on the Prevention of Discrimination and Protection of Minorities.⁴⁷ These were regarding the original spirit and intent of Treaties as understood by the Indigenous Peoples and the need for international processes to redress Treaty violations and resulting conflicts.

In an historic next step demonstrating the continued developments based on this strong “minimum standard”, on April 20, 2012, States attending the 14th session of negotiations for the proposed American Declaration on the Rights of Indigenous Peoples in Washington DC adopted by consensus strong language on Treaty Rights.

The proposed American Declaration has been under negotiation by Indigenous Peoples and the 35 member States of the Organization of American States (OAS) since 1995, and will be applicable in the American States when adopted in its entirety. Article XXIII on Treaties, Agreements and other Constructive Arrangements had been under discussion for many years, and considerable progress was made in the negotiating session in January 2011, leaving only the first paragraph still to be decided.

Strong pressure was exerted on the States to officially adopt the final remaining language for Article XXIII as proposed by Indigenous Peoples at the April 2012 negotiating session. As adopted, it included

⁴⁷ 1994/45, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Draft United Nations declaration on the rights of indigenous peoples, Article 36: “Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, according to their original spirit and intent, and to have States honour and respect such treaties, agreements and other constructive arrangements. Conflicts and disputes which cannot otherwise be settled should be submitted to competent international bodies agreed to by all parties concerned.”

all of the language in Article 37 of the UN Declaration, adding **international redress for violations** and recognizing the **“true spirit and intent” as well as in good faith, understanding of Treaties by Indigenous Peoples**. The final text of Article XXIII as officially adopted is as follows:

Article XXIII, 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*

Chief Wilton Littlechild, Ermineskin Cree Nation member and International Chief for Treaties 6, 7 and 8, who played a key role in the negotiations, consider the adoption of Article XXIII as a major victory. It builds upon the strong language on Treaties in the UN Declaration, developed in a UN working group that he co-chaired, by strengthening important elements for the Cree Nation and its elders who began their work for international recognition of Treaty rights 39 years ago.

Chief Littlechild, who is also a member of the UN Expert Mechanism on the Rights of Indigenous Peoples, stated:

“It was an honor to secure the dreams and fulfill the original instructions of our elders through the wording that was adopted. This was a long and difficult journey but it was a goal well worth it for the Maskwacîs Cree. The adopted language strengthens the UN Declaration by recognizing the true spirit and intent of Treaties, the understanding of Indigenous Peoples, and ensuing that disputes can be submitted to international bodies. Now we must ensure that all the other articles of the OAS Declaration are also fully adopted and implemented before the 2014 UN World Conference on Indigenous Peoples.”⁴⁸

Other important steps forward have taken place towards the establishment of mechanisms for international redress and restitution, notably the new UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence established by a resolution of the UN Human Rights Council’s 18th session in September 2011.⁴⁹ While this resolution does not mention Indigenous Peoples or Treaty violations specifically, this Rapporteur can also be called upon to focus attention on reparations for, and especially, on non-recurrence of the continued violations of the rights Affirmed in Treaties, Agreements and other Constructive Arrangements with Indigenous Peoples. Their original

⁴⁸ International Indian Treaty Council Press Release, April 22, 2012.

⁴⁹ A/HRC/18/L.22, 16 September 2011

spirit and intent as understood and interpreted by Indigenous Peoples, and passed down through oral traditional, ceremonies, elders and other knowledge holders, as well as full participation and consent, must be principles for resolving conflicts and developing solutions in any and all such mechanisms and processes.

VII. RECOMMENDATIONS FOR THE 3rd UN SEMINAR REPORT

If implemented fully, in good faith and the spirit of mutual respect and shared responsibility, the UN Declaration on the Rights of Indigenous Peoples and other recent advances provide a framework for implementing Treaty rights and obligations, as well as mechanisms for redress and conflict resolution, based on partnership in keeping with their original spirit and intent. We therefore respectfully present the following recommendations for discussion at this Seminar, and for inclusion in its final report.

- 1) That the Expert Seminar recognize, support and affirm the OAS Declaration Text Article XXIII, relevant CERD recommendations and other advances in the international arena affirming and applying the rights in Treaties as understood and interpreted by Indigenous Peoples.
- 2) That the Expert Seminar recommend that States and UN systems implement bi-lateral, fully participatory processes for redress and restitution of rights affirmed in Treaties, Agreements and Other Constructive Arrangements, with respect for their original spirit and intent as understood and interpreted by the Indigenous Peoples and in accordance with the framework contained in the UN Declaration on the Rights of Peoples.
- 3) That next steps include a review of States' compliance with Treaties and that development of guidelines be considered for implementation of modern agreements and arrangements.
- 4) That Treaties, Agreements and Other Constructive Arrangements and the development of effective, participatory international processes to resolve conflicts and redress violations be a focus for the 2014 World Conference on Indigenous Peoples.

Cheoque Utesia, Hai Hai (Thank you very much).

Addendum 1: References to Original Interpretation, Spirit and Intent of Treaties in the Treaty Study and the Reports of the 1st and 2nd UN TAOCA Seminars

A. M. Alfonso Martinez, Study on Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous Populations E/CN.4/Sub.2/1999/20

E/CN.4/Sub.2/1999/20

22 June 1999

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of Discrimination and Protection
of Minorities

Fifty-first session

Item 7 of the provisional agenda

II. SUMMARY OF FINDINGS (excerpts)

A. Treaties/agreements between indigenous peoples and States

116. Whatever the reasoning followed, the dominant viewpoint - as reflected, in general, in the specialized literature and in State administrative decisions, as well as in the decisions of the domestic courts - asserts that treaties involving indigenous peoples are basically a domestic issue, to be construed, eventually implemented and adjudicated via existing internal mechanisms, such as the courts and federal (and even local) authorities.

117. It is worth underlining, however, that this position is not shared by indigenous parties to treaties, whose own traditions on treaty provisions and treaty-making (or on negotiating other kinds of compacts) continue to uphold the international standing of such instruments. Indeed, for many indigenous peoples, treaties concluded with European powers or their territorial successors overseas are, above all, treaties of peace and friendship, destined to organize coexistence in - not their exclusion from - the same territory and not to regulate restrictively their lives (within or without this same territory), under the overall jurisdiction of non-indigenous authorities. In their view, this would be a trampling on their right to self-determination and/or their other unrelinquished rights as peoples.

118. By the same token, indigenous parties to treaties have rejected the assumption held by State parties, that treaties provided for the unconditional cession of indigenous lands and jurisdiction to the settler States.

119. It is worth noting in this regard that indigenous views on treaties have begun to receive increased attention in some countries, such as Chile, New Zealand and Canada. Thus, in its recent Final Report, the Royal Commission on Aboriginal Peoples, established by the Government of Canada, recommended that the oral history of treaties, orally transmitted from generation to generation among indigenous peoples, should be used to supplement the official interpretation of treaties based on the written document. (41)

120. Nevertheless, the contradictions one notes regarding the historiography and interpretation of treaties, depending on whether one is dealing with State-promoted views on this matter, the established academic legal discourse or the traditions upheld by indigenous peoples themselves, in their practical consequences undoubtedly create a conflict situation.

121. In addition, these contradictions place a formidable burden on the formulation and realization of future negotiated legal instruments between indigenous peoples and States: the difficulties of negotiating those new instruments without having previously identified and settled key questions need not be stressed.

122. This observation clearly pertains to all treaty/agreement-related issues. One example is the alleged opposition, in the Canadian context, between treaties of peace and friendship (concluded in the eighteenth century and earlier) and so-called numbered treaties of "land surrenders" (especially from the second half of the nineteenth century on). This opposition is contradicted by indigenous parties to numbered treaties, who consider that they are parties to treaties of peace, friendship and alliance and that they did not cede either their territories or their original juridical status as sovereigns. Similar discrepancies are to be noted in the United States and New Zealand.

B. Conclusions and Recommendations of the Seminar on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Peoples (excerpts)

E/CN.4/2004/111

2 January 2004

COMMISSION ON HUMAN RIGHTS

Sixtieth session

Item 15 of the provisional agenda

1. Experts at the United Nations 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:

Conclusions

2. 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.

Recommendations

Governments

7. The Experts called 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 include as an integral part of the process indigenous laws and legal norms.

8. The Experts recommend that States promote and educate the general public particularly through the education system about indigenous peoples' treaties, agreements and other constructive arrangements underlining that such treaties are sacred agreements defining the nature of indigenous peoples' relationships with the world family of nations.

United Nations bodies and specialized agencies

18. 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.

19. 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.

**B. Report of the 2nd UN Seminar on Treaties, Agreements and Other Constructive Arrangements
(excerpts)**

Human Rights Council

Expert Mechanism on the Rights of Indigenous Peoples, Third session

12–16 July 2010

Item 4 of the provisional agenda

United Nations Declaration on the Rights of Indigenous Peoples

Report of the United Nations seminar on treaties, agreements and other constructive arrangements between States and indigenous peoples

Hobbema, Canada, 14–17 November 2006

II. Summary of discussions

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

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

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

II. Conclusions and recommendations

1. Conclusions

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

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

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

23. The experts emphasized that these understandings must be the basis for all current processes between States and indigenous peoples, to resolve conflicts and disputes related to the abrogation and implementation of treaties and the rights they affirm.

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

2. Recommendations

35. 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.

C. The River Cree Declaration, as endorsed and included in the official report of the 2nd UN Seminar (excerpts)

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

***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.***

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

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

- ...8) 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.