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INDIGENOUS ISSUES

Note by the secretariat*

The present note transmits the conclusions and recommendations of the Seminar on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Peoples, held in Geneva from 15 to 17 December 2003.

* In accordance with General Assembly resolution 53/208 B, paragraph 8, this document is submitted late so as to include the most up-to-date information possible.

Summary

In its resolution 2002/19, the Sub-Commission on the Promotion and Protection of Human Rights recommended that the United Nations High Commissioner for Human Rights organize, before the end of the International Decade of the World's Indigenous People, a seminar on treaties, agreements and other constructive arrangements between States and indigenous peoples to explore ways and means to follow up on the recommendations included in the final report of the Special Rapporteur, Mr. Miguel Alfonso Martínez (E/CN.4/Sub.2/1999/20). The Commission on Human Rights endorsed the recommendation of the Sub-Commission in its decision 2003/117, which was subsequently endorsed by the Economic and Social Council in its decision 2003/271. The Seminar on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Peoples was held at the United Nations Office at Geneva, from 15 to 17 December 2003. The purpose of the present note is to transmit the conclusions and recommendations agreed upon by the participating experts. The report of the Seminar will be submitted to the Working Group on Indigenous Populations at its twenty-second session and will also include recommendations made by the Government of Canada. The list of participants is annexed to the present note.

**CONCLUSIONS AND RECOMMENDATIONS OF THE
SEMINAR ON TREATIES, AGREEMENTS AND OTHER
CONSTRUCTIVE ARRANGEMENTS BETWEEN STATES
AND INDIGENOUS PEOPLES**

1. The experts participating in the Seminar on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Peoples, meeting in Geneva from 15 to 17 December 2003, agreed upon the following conclusions and recommendations:

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.

3. The experts consider that treaties, agreements and other constructive arrangements constitute a means of promoting harmonious, just and more positive relations between States and indigenous peoples because of their consensual basis and because they provide benefits to both indigenous and non-indigenous peoples.

4. The experts welcome the efforts being made by States to explore ways of redressing historical and contemporary injustices related to treaties, agreements and other constructive arrangements through negotiation and underline the principle of free, prior and informed consent. The experts agree that the negotiation processes should have legitimacy with both indigenous and non-indigenous parties to the treaties, agreements and other constructive arrangements.

5. The experts draw attention to the situation of indigenous peoples who have not entered into formal juridical relations with colonial powers and whose lands have been occupied on the basis of *terra nullius* ("land without owner") and affirm that such peoples should be able to claim status as nations should they so wish.

6. The experts recognize that indigenous peoples have a legitimate interest in the elaboration and implementation of multilateral and bilateral treaties among and between States in cases where their peoples may be affected negatively or positively by such agreements.

Recommendations

Governments

7. The experts call upon States to respect treaties, agreements and other constructive arrangements between States and indigenous peoples and, in cases where disputes arise, to establish effective mechanisms for the resolution of conflicts. Such conflict resolution processes should include, inter alia, the following elements:

(a) They should be developed with the free, prior and informed consent of the indigenous peoples concerned;

(b) They should include as an integral part of the process indigenous laws and legal norms;

(c) They should be independent and free from political interference;

(d) They should recognize the collective nature of the rights of indigenous peoples, including to their lands and resources.

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

Commission on Human Rights

9. The experts request the Commission on Human Rights:

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

(b) To consider recommending to the Economic and Social Council the convening of a world conference on indigenous peoples, at which the question of treaties, agreements and other constructive arrangements between States and indigenous peoples, and inter alia the principle of *pacta sunt servanda* ("treaties must be kept"), the impact of treaty abrogation on indigenous peoples and remedies for such abrogation could be considered;

(c) To consider recommending to the Economic and Social Council that a further seminar be held on treaties, agreements and other constructive arrangements from all regions;

(d) To consider recommending that the Economic and Social Council seek an advisory opinion from the International Court of Justice in relation to treaties and agreements between States and indigenous peoples;

(e) To consider recommending that the Economic and Social Council request that the United Nations Treaty Section of the Office of Legal Affairs be charged with locating, compiling, registering, numbering and publishing all treaties concluded between indigenous peoples and States;

(f) To authorize the publication by the Office of the United Nations High Commissioner for Human Rights of the study on treaties, agreements and other constructive arrangements between States and indigenous peoples in a consolidated version in all official languages and including the recommendations of the present seminar;

(g) To recommend that the United Nations library receive, catalogue and publish an inventory of materials relating to treaties and agreements, including materials submitted to the Special Rapporteur on treaties, agreements and other constructive arrangements between States and indigenous peoples.

Working groups, treaty bodies and special procedures

10. The experts invite the Working Group on Indigenous Populations to include as a permanent part of its agenda an item relating to treaties, agreements and other constructive arrangements between States and indigenous peoples.
11. The experts recommend that the Working Group formulate guiding principles on the elaboration, negotiation and implementation of treaties, agreements and other constructive arrangements, taking into account the importance of open, transparent, equitable, inclusive and participatory avenues of redress, monitoring, arbitration and mediation.
12. The experts invite the Working Group to develop a working paper to follow up on mechanisms for resolving conflicts arising from treaties, agreements and other constructive arrangements.
13. The experts call upon the working group on a draft United Nations declaration on the rights of indigenous peoples to adopt the declaration before the end of the International Decade of the World's Indigenous People.
14. The experts affirm the importance of article 36 of the draft declaration on the rights of indigenous peoples in its current text as approved by the Sub-Commission, in particular its importance as a critical element of the right of self-determination, as well as the importance of its last sentence which calls for the establishment of a competent international body directly to adjudicate treaty disputes unresolved through other mechanisms, and call upon the working group to adopt the article.
15. The experts recommend that the United Nations human rights treaty bodies pay specific attention to obligations contained in treaties, agreements and other constructive arrangements signed between States and indigenous peoples, as non-compliance with these obligations have negative effects with regard to the rights protected under international human rights instruments.

16. The experts also recommend that the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people pay special attention to the question of treaties, agreements and other constructive arrangements in his official visits.

United Nations bodies and specialized agencies

17. The experts recommend that a study be undertaken by the secretariat of the Convention on Biological Diversity on the impact of treaty abrogation on the ways of life and biological diversity of territories specifically covered by a treaty, agreement or other constructive arrangement.

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.

**Office of the United Nations High Commissioner
for Human Rights (OHCHR)**

20. The experts recommend that OHCHR make available technical cooperation to assist indigenous peoples with their negotiations in relation to treaties, agreements and other constructive arrangements.

21. The experts also recommend that the report of the Seminar be made available to States, indigenous peoples and non-governmental organizations at the third session of the Permanent Forum on Indigenous Issues and the twenty-second session of the Working Group on Indigenous Populations.

Annex

LIST OF PARTICIPANTS

Indigenous organizations and experts

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