

**REPORT OF THE NORTH AMERICAN INDIGENOUS PEOPLES CAUCUS TO
THE UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES
PREPARATORY MEETING - MARCH 6 AND 7, 2010, hosted by the Confederacy of
Treaty Six First Nations, Alexis Nakota Sioux Nation, Enoch Cree Nation**

I. ORGANIZATIONAL DETAILS

1. The preparatory meeting of the North American Indigenous Caucus took place on March 6 and 7, 2010 in the territory of the Alexis Nakota Sioux Nation. In the morning of the first day Elders conducted a pipe ceremony and Chief Cameron Alexis led fellow Chiefs and delegates in the Grand Entry. At the end of the meeting, delegates were led by Chief Cameron Alexis in the retiring of the sacred Eagle Staff to protect their spirit and ensure safe travels home.
2. Chief Cameron Alexis of the Alexis Nakota Sioux First Nation welcomed delegates to the territory of the Alexis Nakota Sioux Nation. He explained that the Alexis Nakota Sioux people comprise 1,600 members and speak Nakota Sioux. He stressed that language is culture, which forms part of the theme of the upcoming session of the UN Permanent Forum on Indigenous Issues (UNPFII). He said this meeting was a vehicle to continue the efforts of implementing the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), noting that Canada had not supported it. Chief Wayne Moonias, Louis Bull Tribe, also welcomed delegates and said Indigenous peoples deal with contentious issues on a daily basis and called on delegates to get to work.
3. Arthur Manuel and Debra Harry, Co-Cordinators of the North American Indigenous Caucus, and numerous delegates thanked the Alexis Nakota Sioux Nation and the Enoch Cree Nation for hosting the meeting and acknowledged the hard work of local organizing staff, including of the Confederacy of Treaty Six First Nations.
4. Assembly of First Nations (AFN) Regional Vice-Chief for Alberta, George Sandy, stressed that across Canada, Indigenous peoples are concerned with the issue of citizenship and ongoing attempts by governments to implement policies of termination and extinguishment; and stressed that Indigenous peoples have to work together to define their own future.
5. Delegates agreed that Arthur Manuel and Debra Harry, as co-coordinators of the North American Indigenous Caucus also co-chair the meeting. Beverley Jacobs, Steve Newcomb, Nicole Schabus, Tom Goldtooth, Wes George, and Leah Ballantyne volunteered as rapporteurs for the meeting.
6. Andrea Carmen (IITC) proposed and delegates agreed to renew the mandate for Debra Harry and Arthur Manuel to continue to serve as co-coordinators of the North American Indigenous Peoples Caucus. Delegates agree to consider the appointment of an alternate co-coordinator to take over from Debra Harry, if appointed as a member of the UNPFII, in the course of the North American Caucus meetings at UNPFII-9 in New York.
7. The meeting was attended by representatives of over 50 Indigenous peoples from across

North America, including from numerous Cree Nations, the Lakota and Nakota Nations, the Dene, Treaty 8, Treaty 6 and Treaty 4, the Algonquin people, the Yurok, the Zuni, the Secwepemc, the Blood Tribe, the Haudenosaunee Confederacy with representatives of the Onondaga, Cayuga and Mohawk peoples, and from Indigenous organizations such as the Indigenous Environmental Network (IEN), the Native Women's Association of Canada (NWAC), Quebec Native Women, the Assembly of First Nations, the International Indian Treaty Council (IITC), the Seventh Generation Fund, the Southern Chiefs Organization, the Indigenous Law Institute, the American Indian Law Alliance (AILA), the Indigenous Peoples Council on Biocolonialism, the International Organization for Indigenous Resource Development and the Indigenous Network on Economies and Trade (INET). The meeting was also attended by numerous Chiefs, elders, youth and members of the nations comprising Treaty 6.

8. Delegates were presented with a draft report of the meeting that was read out by Rapporteur Beverley Jacobs on Sunday afternoon. Delegates welcomed the report and thanked the rapporteurs for providing an accurate report of the meeting and the recommendations presented. Delegates made amendments from the floor and the amended report was adopted by consensus. Delegates further requested that a summary of the report be prepared for circulation at the UNPFII-9.
9. Professor Sharon Venne presented a tribute to Miguel Alfonso Martinez, former member of the UN Working Group on Indigenous Populations (1984-2006) and Rapporteur for the UN Study on Treaties, who passed away on February 1, 2010. She recalled how Mr. Martinez first attended the United Nations with Fidel Castro as a delegate for the Cuban government and how he built an intricate understanding of the UN system and its limitations. She talked about the passion and determination with which Dr. Martinez spent many years working on the UN Study on Treaties, which was completed in 1999 and then its implementation, which culminated in the United Nations Expert Seminar on Treaties, Agreements and Constructive Arrangements, November 14-17, 2006, in Maskwacis Cree Territory. A number of Chiefs of Treaty 6 also expressed their deep appreciation of Dr. Martinez, who had come to their territory as a UN expert and truly understood the great importance their nations attach to treaties.
10. **Recommendation: Delegates recommended the establishment of a Martinez Memorial Trust to continue work on treaties.**
11. Delegates also mourned the death of Walter Rudnicki, when the news of his passing reached them on March 7, 2010. They acknowledged his life-long commitment to overcoming injustices against Indigenous peoples at great personal cost, including losing his position with the Canadian federal government when he disclosed information about the assimilationist "White Paper" (1969) prepared by then Minister for Indian Affairs Jean Chrétien. Walter Rudnicki documented and commented on all major policies regarding Aboriginal Peoples in Canada in the last decades, and delegates expressed hope that this documentation could be preserved and made available to Indigenous Peoples.

II. UNPFII MEETING VENUE

12. Tonya Gonnella Frichner, North American Indigenous Representative to the UNPFII, then presented an overview of the 9th session of the UNPFII. In her presentation she was assisted by Sonia Smallacombe, staff member of the UNPFII. They advised about expected logistical difficulties due to remodeling under way at the UN headquarters in New York City where the meeting will be hosted. The previous meeting facilities at the United Nations in New York, which held about 900 people, are not available because of construction. There is a new building, but the allotted meeting room only holds 590 people and the availability of an overflow room has not yet been confirmed.
13. Indigenous delegates raised concern about the overall number of people that will be allowed into the venue, including possible restrictions of the number of people on delegations and concern about the availability of rooms for side events. Delegates further raised concern regarding the limited time for Indigenous interventions, including on the main theme and stressed the need to coordinate interventions within the North American region since the region will be given priority in making an intervention. Delegates discussed the need to consider alternative meeting locations, since the remodeling work at the UN Headquarters at New York will be ongoing for at least five years. Some delegates also recalled that when working on the establishment of the UNPFII, they had considered alternating the meeting location and that the original resolution indicated that UNPFII meetings could be held “at other places” which could also mean in Indigenous territories.
14. **Recommendation: That the UNPFII consider moving future sessions of the UNPFII to Geneva or other places, including Indigenous territories, until proper meeting facilities are available at the UN Headquarters.**
15. Delegates were advised that Elsa Stamatopoulou will cease serving in the position of Chief of the Secretariat of the UNPFII. North American Indigenous delegates expressed their gratitude for the graciousness and commitment with which Elsa Stamatopoulou has served in this position for ten years, since the inception of the UNPFII. Delegates further stressed that there are many competent Indigenous professionals who have the capacity and qualifications to serve in the capacity as chief of the UNPFII.
16. **Recommendation: Since the position of Chief of the Secretariat to the UNPFII requires a deep understanding of Indigenous peoples and their rights, delegates stressed that an Indigenous person would be best suited to take on this position in the future. Delegates stressed that preference in the hiring process should be given to Indigenous applicants, especially Indigenous women, with the necessary qualifications. Delegates encouraged qualified Indigenous professionals from communities across North America to apply. The North American Caucus strongly supported the application of Ms. Beverley Jacobs, Mohawk Nation, for the position of Chief of the Secretariat of the UNPFII.**

III. PARTICIPATION OF INDIGENOUS YOUTH AND WOMEN

17. Delegates stressed the importance of participation of Indigenous Youth and Women in all UN activities, including all work of the UNPFII. Delegates especially stressed the importance of involving more young people in the international work on Indigenous rights to lessen the burden on the generations currently involved and to allow for the acquired knowledge to be passed on.
18. **Recommendation: To support the participation of Indigenous youth in an intergenerational Youth Preparatory Meeting, where the youth would set the agenda items. Training and mentorship would be provided by Indigenous leadership, veteran to the process.**
19. **Recommendation: To advance the attendance and participation of Indigenous Youth in international work and diplomacy, UN agencies such as UNICEF, UNDP should provide funding to Indigenous Youth for their active participation.**
20. **Recommendation: That UNIFEM and other UN agencies assist in funding Indigenous women's participation in various international fora, specifically at the UNPFII and at the Global Indigenous Women's Caucus to assure that Indigenous women can travel to and attend these meetings.**

IV. UNPFII WORK

21. Tonya Gonnella Frichner presented the proposed organization of work for the ninth session of the UNPFII (UNPFII-9). She encouraged delegates to prepare for the meeting by reading the reports and documents associated with the respective agenda items, in order to be able to make specific focused recommendations. Chief Wallace Fox (Onion Lake) expressed concerns about letting governments dictate the agenda of UN meetings pertaining to Indigenous peoples and stressed the importance of ensuring that issues of great concern to Indigenous peoples are brought to the forefront, such as spirituality and Indigenous control over membership. Delegates agreed, stressing the critical importance of the spiritual and cultural dimension despite the restrictions of the UN system.
22. Ms. Gonnella Frichner specifically pointed delegates to the report of the last meeting UNPFII-8 (E/C.19/2009/14) and the annex containing general comments to the follow-up to the recommendations of the UNPFII on the implementation of UNDRIP, since review of implementation of UNDRIP is an ongoing part of the UNPFII agenda of work.

A. First Report on the State of the World Indigenous Peoples

23. Delegates lamented the failure of the UNPFII Secretariat to seek broad direct input, submissions and feed-back from Indigenous peoples from North America and the other regions in the preparation of the First Report on the State of the World Indigenous Peoples.
24. Some concern was expressed about the content of the First Report on the State of the World's Indigenous Peoples, especially that the report focuses on regions other than North America, and therefore does not contain a detailed focus on Indigenous nations and peoples in North America, including treaties. Emphasis was placed on the need to place greater focus in the Report on the UN Treaty Study (1999). Some delegates noted with concern the lack of conceptualization in the Report around colonization and decolonization, and the fact that Indigenous peoples' human rights are often framed in the Report in terms of "minority rights" rather than Indigenous peoples' human rights. To refer to Indigenous peoples' human rights as "minority rights" diminishes Indigenous peoples' standing at international law.
25. **Recommendation: That the UNPFII devise a process for taking into account the substantive concerns regarding the State of the World's Indigenous Peoples Report and to rectify the Report accordingly.**
26. **Recommendation: That the UNPFII ensure that future work on such reports seek even broader input from Indigenous peoples across North America and the other regions, and that the report be made available for review and feed-back before publication and distribution.**

B. Preliminary Study on the Impact on Indigenous Peoples of the International Legal Construct of the Doctrine of Discovery

27. A preliminary study on the doctrine of discovery was requested at UNPFII-8 in 2009, to address the appropriation of Indigenous lands, resources and territories on the basis of that doctrine. Delegates recognized that the doctrine of discovery goes hand in hand with the framework of dominance that was and continues to be used by settler governments to claim dominion and sovereignty over the lands, territories, and resources of Indigenous peoples. Delegates welcomed the preliminary study and its finding that the doctrines of discovery and dominance lie at the root of the human rights violations against Indigenous peoples in North America and elsewhere.
28. **Recommendation: That the UNPFII hold an expert meeting on the issue of the doctrine of discovery in 2011 and make it the theme of UNPFII-10.**
29. **Recommendation: That the preliminary study should be followed by a more comprehensive study on the effect of the doctrine of discovery on Indigenous peoples region by region, including treaties and the doctrines of terra nullus and terra nullius referenced in the preliminary study.**

V. UNPFII9 AGENDA ITEM 2: SPECIAL THEME: DEVELOPMENT WITH CULTURE AND IDENTITY

A. Report of the International Expert Meeting on Development

30. Delegates considered the Report and recommendations of the International Expert Group Meeting on Indigenous Peoples: Development with Culture and Identity Articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples (E/C.19/2010/14) which was held 12 -14 January 2010 in New York.
31. Delegates noted that some additions to the report were needed, such as the following:
- a) That the report ought to begin from an Indigenous perspective on development rather than from a dominant society perspective on development. Some delegates indicated that Article 3 is much broader in scope than what is set out in the report:
 - b) With respect to the conceptual and policy framework to advance the business and human rights agenda, as reported by the Expert Group, three (3) pillars were proposed: first, the state duty to protect against human rights abuses by third parties, including businesses and corporations, through appropriate policies, regulation and adjudication; second, the corporate responsibility to respect human rights, which means corporations acting with due diligence to avoid infringing on the rights of others; and, third, greater access for victims to effective remedy, both judicial and non-judicial. Delegates proposed a fourth pillar, based on treaty relations and international standards of Indigenous peoples: Namely, that in discussions of Articles 3 and 32 more focus needs to be placed on treaties, issues of redress, and the principles of Free, Prior and Informed Consent, and Permanent Sovereignty over Natural Resources as guiding principles to be incorporated and followed by parties especially where conflict arises.
 - c) In addition, Wes George and Lea Ballentyne recommended the following points should also be addressed in the report:
 - That we the Indigenous Peoples/Nations of Turtle Island are the rightful keepers of our territories according to International Law and International Standards and we are a fundamental and critical component of the Universal Family of Peoples;
 - That as a result of Indigenous Peoples belonging to the Universal Family of Peoples, the Inherent Rights we possess are rights that are part and parcel of Universal Human Rights;
 - That as a direct result of Indigenous Peoples' Rights existing within the realm of Universal Human Rights, the United Nations Declaration on the Rights of Indigenous Peoples applies to Treaties and other International Law Instruments that are relevant and applicable to Indigenous Peoples;
 - That as a result of Canada's commitment to uphold Universal Human Rights, the United Nations Declaration on the Rights of Indigenous Peoples applies in full effect and is fully enforceable;

- That the Treaties with the Crown of Great Britain, Ireland, Scotland and Wales are of International Status, Responsibility, Observation and Enforceability;
- That the Treaties with the Crown of Great Britain, Ireland, Scotland and Wales are Nation-to-Nation covenants, guaranteeing a relationship that is intended to benefit the Treaty Parties equally;
- That Canada as the successor country to these Treaties immediately recognize, affirm, and uphold the Treaties according to International Law and International Standards;
- That the universal principle of Free, Prior and Informed Consent is the Treaties minimum standard;
- That the universal principle of Free, Prior and Informed Consent is an inherent aspect of Treaty making, Treaty duty and Treaty responsibility;
- That the universal principle of Free, Prior and Informed Consent has primacy over Canada's 'duty to consult and accommodate';
- That the universal principle of Indigenous Peoples' Permanent Sovereignty Over Natural Resources is an inherent aspect of Treaty Making, Treaty Duty and Treaty Responsibility;
- That the universal principle of Indigenous Peoples' Permanent Sovereignty over Natural Resources applies in full effect;
- That the redress principle contained in the United Nations Declaration on the Rights of Indigenous Peoples and defined further in the various relevant Indigenous Peoples studies and United Nations Treaty Bodies opinions and recommendations applies in full effect.

32. In addition, the Inter-Agency Support Group on the Indigenous Issues prepared a report (E/C.19/2010/8). The group is made up of numerous UN agencies that have made a commitment to work on Indigenous issues. The recent First Report on the State of the World Indigenous Peoples recognizes that Indigenous peoples in the North are in a position and have needs similar to those of Indigenous peoples in developing countries. Although UN agencies are not able to fund projects in developed countries, they can still provide other (in kind) support, including research and institutional support.

33. Recommendation: That the Inter-agency Support group meet with Indigenous peoples and organizations in North America to address the needs of North American Indigenous Peoples within UN agencies.

B. Analysis and Recommendations of the North American Region

34. It was noted by Co-Chair Debra Harry that the process of colonization under the guise of development affects Indigenous cultural expressions and traditional knowledge. It imposes a framework of commodification over Indigenous peoples. Delegates discussed the nature of the word "development" in the specific context of North America and noted that from an indigenous perspective it contains a colonizing agenda and that it is a synonym for "colonization". Some representatives gave concrete examples of what happens when "development" is in reality a deadly process of colonization of the territory of Indigenous peoples and of genocide.

1. Concept of Development

35. Delegates discussed the difference between undertaking development individually and collectively and recommended that Indigenous peoples continue to develop in keeping with their “collective equilibrium” and spiritual understandings of maintaining the nation and social reciprocity.
36. Delegates challenged the term “developed countries” in the context of the North American region. Indigenous peoples in North America remain economically marginalized and are deprived of access to their traditional territories. They are measured by the UNDP Human Development Index and should be at the same level as “developing countries”. Delegates expressed great concern about increasing attempts by state and provincial governments, historical adversaries of Indigenous peoples, to seek control over traditional Indigenous territories. State and provincial governments are developing more and more legislation regarding land and resource management to further their claims to jurisdiction over Indigenous territories. Delegates also commented how federal governments devolve authority to lesser levels of government (that do not have standing at international law) rather than upholding their fiduciary duty to protect the rights of Indigenous peoples.
37. Indigenous peoples in North America are constantly faced with Western forms of development, while they remain economically marginalized and discriminated against. Indigenous peoples have a right to participate in development, but often the proposed “development” is foreign to Indigenous cultural concepts and the peoples are faced with a choice that divides Indigenous peoples. Commercial-industrial “development”/exploitation is moving into new areas such as genetic resources and accessing traditional knowledge, in turn for very limited benefit-sharing. Delegates asserted the principles of tradition, language, spirituality, and cosmovision, to redefine the concept of development in an Indigenous manner. .

2. Destructive Development and Human Rights Violations

38. Grievous human rights violations against Indigenous peoples are occurring due to destructive development. If the United Nations is meant to be a place for addressing the true grievances of Indigenous peoples, there must be a process where Indigenous peoples can present these violations and address state and corporate responsibility and accountability for the often deadly effects of "development."
39. **Recommendation: That the UNPFII set up a process that addresses specific violations of human rights of Indigenous Peoples as a result of ecologically and culturally destructive modes of development.**
40. Delegates were specifically alerted to the case of the Athabasca Chipewyan peoples at Fort Chipewyan whose territory is currently being broken up by tar sand exploitation, as a result of which disproportionate numbers of the peoples are dying of cancer. The unchecked exploitation of tar sands is accelerated by policies of nation state governments in North America, while their policies on Indigenous issues continue to promote termination and extinguishment.

41. **Recommendation: That the UNPFII take notice of increasing human rights violations against the Athabasca Chipewyan peoples and institute an early warning and urgent action procedure to address this and related urgent human rights violations.**
42. Delegates expressed concern that Canadian policies on land rights and self-government violate the right to self-determination. Under its "self-government" policy the government unilaterally decides which issues they are ready to discuss and which will be excluded. It does not recognize the inherent rights and jurisdiction of Indigenous peoples. Delegates asserted the permanent sovereignty of Indigenous peoples over natural resources.
43. Delegates expressed outrage about the ongoing criminalization of Indigenous peoples who oppose destructive commercial-industrial "development" and assert their Indigenous rights to land and resources.
44. Delegates cited a legacy of environmental degradation from industrial development including, but not limited to, tar-sands mining, metallic and uranium mineral extraction, deforestation, and emissions and toxic chemical releases from polluting industries including, but not limited to, petrochemical and other, mining wastes, and toxic waste incineration. Delegates expressed the need for Indigenous Peoples to assert their self-determination, sovereign, and inherent rights to develop their own environmental and human health standards and Indigenous-based laws for environmental and natural resource/habitat conservation and mechanisms for enforcement. It was stressed that Indigenous Peoples are the original peoples of North America, and within the teachings of the traditional "Original Instructions" and beliefs, Indigenous Peoples are the caretakers of all lands, territories and waters of North America – Turtle Island. The environmental laws of Indigenous Peoples must be enforceable on all political jurisdictions and non-Indigenous Peoples that violate these laws. The economic model of development that the United States and Canada are operating within is ecologically destructive, unsustainable, and in violation of Indigenous peoples' human rights.
45. Delegates reasserted the need to base Indigenous development on Indigenous knowledge and values. Indigenous concepts and language function as a good measuring stick to see if a proposed development is consistent with Indigenous values. Indigenous peoples from the North are well aware of the schemes that are used to promote unsustainable development, and that development often takes place against the will of Indigenous peoples.
46. **Recommendation: All dialogue between Indigenous peoples and states, provinces, and corporations regarding "development" include an acknowledgment and discussion of Indigenous knowledge and values grounded in Indigenous language systems. The discussion of issues of "development" has to be broad enough, by agenda setting and getting expert advice, to include Indigenous perspectives on traditional economies based on the ongoing relationship of Indigenous peoples with their lands and traditional territories, in keeping with their own languages.**

47. **Recommendation: That the UNPFII promote a fuller discussion and debate regarding the difference between ecologically unsustainable patterns of economic development and Indigenous-oriented ecologically sustainable economic development patterns that remain mindful of the needs of future generations.**

3. Right to Food and Water

48. Delegates also stressed the right to food and water. Delegates noted that Indigenous peoples on the ground have to take increasing responsibility for the resources around them and not leave resource issues to the decision of a few elected leaders who operate within the confines of delegated authority and never-ending funding needs. Delegates reaffirmed the need to be responsible, respectful and sustainable, rather than motivated by greed and to think seven generations ahead when making decisions about development. Delegates stressed the need to protect Indigenous ceremonies, medicines and spirituality to help people understand the earth.
49. Delegates expressed major concerns with respect to the impact of development on drinking water and sanitation on or near Indigenous peoples' communities. Delegates further requested that cultural and spiritual aspects of water be protected.
50. **Recommendation: That the UNPFII – 9 ensure that water must be a focus of discussion within the main theme of development according to culture and identity.**

VI. SPECIAL THEME: UNDRIP ARTICLE 3 (SELF-DETERMINATION) AND ARTICLE 32 (DEVELOPMENT) (AGENDA ITEM 3)

51. Co-Chair Arthur Manuel stressed that the underlying power of Indigenous Peoples is in their own political structures and Indigenous knowledge, based on reciprocity and giving back to the land. He expressed concern about attempting to commodify everything and externalize the cost to the environment and to Indigenous peoples. Indigenous peoples value land, air, and water differently than non-Indigenous societies. He recommended that Indigenous political values and views be expressed through Indigenous terminology.

A. Right to Self-Determination

52. Delegates noted that Indigenous Peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development based on respect for their original instructions, and the spiritual and cultural integrity of their traditional knowledge and wisdom systems.

53. Delegates concluded that the essence of self-determination is that the creator gave Indigenous Peoples the ability to determine their own destiny based on Indigenous world views, philosophies and teachings. Article 45 of the Declaration on the Rights of Indigenous Peoples states that:
Nothing in this Declaration may be construed as diminishing or extinguishing the rights Indigenous peoples have now or may acquire in the future.
54. Delegates agreed that Article 45 of the Declaration on the Rights of Indigenous Peoples must be applied so that Indigenous Peoples can harness and implement the existing obligations of States to Indigenous Peoples in their desire to develop and to ensure their full recognition and protection against abuses. This includes the international obligations in United Nations resolutions based on the U.N. Charter and all other international law obligations. States cannot reduce the scope and application of rights by using solely the Declaration on the Rights of Indigenous Peoples; it is not the only basis from which States assumed obligations to Peoples. In this regard States and United Nations mechanisms and Special Procedures need to include the full range of obligations to Indigenous Peoples without denying their input through restricted procedures or by unequal participation in elaborating upon the rights.
55. The efficacy of the right of peoples to self-determination in its cultural aspects is essential in order that a people may be aware of its rights and consequently be fully capable of fighting for their recognition and implementation.
56. Delegates concluded that the right to self-determination includes the right to determine their culture and to be in control of their land rights. Indigenous peoples' culture is derived from their interaction with the land and use of their resources. The title to their territory and resources is absolute as a result of the right to self-determination. This is a right to resist colonialism and a right to struggle against exploitation of property in a manner that deprives us of our cultural heritage. The heart of Indigenous peoples' culture is based on interaction with land. The ties they have with flora, fauna, animals, minerals and other facets of the material world are expressed in culture.
57. Delegates expressed the importance of economic sovereignty and self determination with a goal of enhancing the well-being and sustainability of their Indigenous nations and communities. Delegates saw the importance of developing an Indigenous economy based on the fundamental principles of Indigenous spiritual and cultural values and having the capacity of meeting the needs of diverse Indigenous communities.

B. The Right to Development

58. Delegates recalled that Article 32 of UNDRIP was changed substantively from its original form, when it was more deeply rooted in an Indigenous perspective. It now gives more authority to state governments than was originally intended. Delegates stressed that it is important to put forward an Indigenous interpretation and stay focused on the original purpose to have development rooted in Indigenous concepts.

59. Delegates further considered the connotation of the term “developed” country and noted that Indigenous peoples are nations within a developed country, yet they are poorer and than the mainstream population surrounding them and making profits off their territory. Indigenous Peoples are Fourth world nations. They are also impacted by corporations and commercial/industrial development. These disparities are accurately noted in the UNPFII report, State of the World’s Indigenous Peoples (p.22).
60. Delegates recognized that it is of critical importance to ensure that Indigenous knowledge and values can be preserved on the land, including through traditional knowledge protocols and by mapping traditional sites and territories.
61. **Recommendation: That the UNPFII consider concepts of restorative development, repairing and healing the earth, through languages and ceremonies.**
62. Delegates discussed situations where tribal organizations participate in destructive development and whether other Indigenous peoples have a moral obligation to stop it. Delegates opposed the disingenuous use of the term self-determination to its own end, as a “right to do whatever you see fit” and to justify destructive development that violates Indigenous values. Delegates stressed that Indigenous peoples’ culture never was and never should be for sale.
63. A number of participants spoke about how language constitutes a collective cultural filter that can help frame problems with Western (Eurocentric) concepts. There is often a fundamental difference in approach and conceptualization around an issue. Indigenous thinking has built-in controls that are meant to stop destructive development. Delegates noted that the right to development is held collectively and cannot be implemented through a top-down approach.

C. Commodification and Western Concepts of Development

64. Delegates expressed concerns with attempts to force Indigenous peoples into the Eurocentric development paradigm which commodifies land, water, air, and now even genetic resources and Indigenous knowledge. Delegates commented on other UN processes, such as the Convention on Biological Diversity (CBD) and the World Intellectual Property Organization Intergovernmental Committee on Genetic Resources, Traditional Knowledge, Folklore (WIPO IGC) that continue to be based on Western concepts and fail to understand Indigenous systems for the protection of biological diversity and traditional knowledge.
65. Delegates commented on the difficulties of operating under Western processes that pretend to aim at cooperation and good faith negotiation, but often result in manipulation. Indigenous Peoples in the North are often faced with a “forced choice scenario,” where rather than stopping a destructive development, compensation is proposed to “buy out” part of the damages. This approach is then “sold” or marketed to Indigenous Peoples in the Global South as an approach accepted by Indigenous Peoples in the North. Canada and the United States are in the best position to change policies

regarding Indigenous Peoples and implement appropriate processes. Impacts have to be mitigated at every level based on cultural indicators. There has to be just and fair redress for any harmful activities.

66. Delegates expressed concerns regarding leadership following colonized approaches relying solely on the duty to consult and accommodate, as opposed to relying on an Indigenous and treaty rights approach.
67. Dominant society economic development approaches have largely been unsustainable especially in the appropriation of lands for mineral extraction, industrial agriculture, and other industrial purposes. These western forms of development have profound systemic disregard of the limits of Mother Earth, in terms of resource availabilities, consumption, waste generation and absorption.
68. Delegates recognized that economic globalization policies of Canada and the United States and their corporations have infringed on Indigenous human rights and natural resources in the global south. Delegates are concerned about the negative elements of economic globalization with its highly undemocratic “neoclassical” economic model itself. These negative factors include: hyper economic growth; export-oriented production in agriculture, energy, and manufacturing; deregulation of corporate activity; privatization of natural resources and Nature; “structural adjustment” of economies toward global trade and away from local needs; destruction of local markets; and suppression of protective tariffs and investment controls meant to protect local resources and businesses. Such features of economic globalization are designed to sustain global corporations.
69. Delegates stressed the need to balance the economic development needs of Indigenous nations and communities with the recognition of traditional knowledge (what many Indigenous peoples term “Original Instructions”). Delegates expressed the need for an economic paradigm governed by the absolute limits and boundaries of ecological sustainability, the carrying capacities and sacredness of Mother Earth, equitable sharing of global and local resources, encouragement of and support for self sustaining communities, not only for Indigenous peoples, but for all peoples. The Permanent Forum on Indigenous Issues must ensure that all international human rights, economic, and environmental bodies, and United Nations research and monitoring agencies include the means to respect the health, water quality, ecological biodiversity and freedom of Indigenous Peoples.
70. **Recommendation: The UNPFII must encourage public and private interests to expand beyond only considering profit as the primary motivator for development but also consider the expense profit has on the land, water and Indigenous Peoples. The UNPFII must be a very strong advocate for the purpose it was established, to give a voice to Indigenous Peoples within the complex and challenging the global community. Indigenous Peoples are overwhelmed by the money and expert resources that global, as opposed to, local bodies have. This means the UNPFII must make strong recommendations in all venues in order for Indigenous Peoples to ensure that the United Nations Declaration on the Rights of Indigenous Peoples is accepted as the minimum standard by State governments on a**

nation-to-nation and government-to-government basis.

VII. HALF-DAY DISCUSSION ON NORTH AMERICA (AGENDA ITEM 5)

71. Delegates commented on underlying issues, like the lack of implementation and enforcement of treaties and the lack of recognition of the inherent rights of Indigenous peoples to their territories and jurisdiction. In the past these sessions involved UN agencies and experts. This will be the first time that the governments in a region, in this case the US and Canada, are ready to engage in a dialogue with the respective Indigenous peoples in a UN setting. This will set an important precedent for other regions where Indigenous peoples never have an opportunity to engage with governments safely. It is also a great opportunity to engage with the United States and Canada on key issues of concern to Indigenous peoples in the region.
72. Delegates were informed that the UN Human Rights Council has to conduct universal periodic reviews of all its members every four years. Canada has already been reviewed and important human rights violations against Indigenous Peoples were criticized by the UN Human Rights Council. The United States is currently being reviewed. As a result the US State Department is conducting a number of consultations, including some just on Indigenous peoples' issues, in which information can be presented. In addition Indigenous peoples can submit their information directly to the UN Human Rights Council.
73. **Recommendation: That the following subjects be included in the half day discussion on North America: treaty rights and aboriginal rights/title, border crossing, the doctrine of discovery, and the Canada/US position on the UNDRIP, water and environmental health and protection.**
74. **Recommendation: The Algonquin First Nation of Wolfe Lake reported that they and Carrier Sekani Tribal Council in BC are preparing a discussion paper on Indigenous Forest Carbon Management as part of forest management. The Algonquin First Nation of Wolfe Lake also offered to name a representative to participate on the UNPFII panel on forest dialogue with Indigenous peoples.**

A. UNDRIP and the North American Region

75. Delegates expressed concern that the two nation states in the region voted against the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and have to date not endorsed the Declaration unconditionally.
76. Delegates discussed the announcement in the Throne Speech (March 3, 2010) by the government of Canada that:
"We are a country with an Aboriginal heritage. A growing number of states have given qualified recognition to the United Nations Declaration on the Rights of

Indigenous Peoples. Our Government will take steps to endorse this aspirational document in a manner fully consistent with Canada's Constitution and laws."

77. Delegates welcomed the announcement by the government of Canada as a first step towards overcoming Canada's refusal to endorse UNDRIP, but expressed concern about the government's reference to "qualified recognition," the mischaracterization of UNDRIP as an "aspirational document," and the conditional endorsement of UNDRIP "in a manner consistent with the Canadian constitutions and laws rather than vice versa".
78. Delegates also recalled Canada's vote declaration on September 13, 2007 when they voted against UNDRIP, noting concerns with the right to self-determination, land rights and the principle of free prior informed consent. These provisions are of critical importance to Indigenous peoples and the articulation in UNDRIP are minimum standards that form part of international customary law and cannot be undermined or diminished.
79. Delegates also noted that the United States is currently reconsidering its position on UNDRIP and recalled the UN CERD committee's recommendation in their most recent review of the US that it apply UNDRIP as a guideline notwithstanding its negative vote.
- 80. Recommendation: That the United States and Canada unconditionally endorse UNDRIP, and follow-up with steps to ensure that their laws and policies are made consistent with UNDRIP. Delegates expressed their readiness to work with the United States and Canada in that regard.**

B. Land Rights

81. Delegates stressed the need for state governments to reverse their laws and policies that are based on the colonial doctrine of discovery. In the Canadian context, in areas where no treaties have been signed, this refers to the doctrine of terra nullius and the failure to recognize the inherent jurisdiction and land rights of Indigenous peoples over their traditional territories. Canada's current land rights policy, the Comprehensive Claims Policy, continues to aim at the extinguishment of Aboriginal Title rather than implementing an approach based on recognition and co-existence.
- 82. Recommendation: That Canada revise its Comprehensive Claims Policy and abandon its policy of *de facto* extinguishment of Aboriginal Title and Rights. They recommended that Canada and the United States adopt a policy based on the recognition of inherent Indigenous land rights, meeting the minimum standards set out in UNDRIP.**

C. Treaties

83. Delegates recalled that Indigenous peoples went to the League of Nations in the 1920's and again in the 1970's to present the view of Indigenous nationhood within the family of nations based on nation-to-nation treaty relationships. One of the major initiatives of the UN was to have a study on treaties by Dr. Miguel Alfonso Martinez. It took many years to get a study and many more to get it finished. It was a major struggle –yet the United Nations has not recognized that work. It is not listed as an accomplishment of the UN system in the UNPFII Report on the State of the World's Indigenous Peoples.
84. In his Final Report, [E/CN.4/Sub.2/1999/20] Dr. Miguel Alfonso Martinez presented a number of Conclusions and Recommendations under the heading "Looking Ahead". One of the most important, and least developed to date, was his recommendation that, due to the failures and injustices of existing mechanisms to resolve conflicts arising from Treaty violations, an "entirely new, special jurisdiction" should be established within States (supported by public funds) to deal exclusively with "Indigenous Issues". The Rapporteur affirmed that this "new jurisdiction" or mechanism for conflict resolution must be "independent of existing governmental structures."
85. In paragraphs 306 - 308 of his Final Report, the Rapporteur presented some of the criteria and components he saw as necessary for this "new jurisdiction" to be a successful and viable tool for the resolution of disputes and redress of violations, including "those related to treaty implementation". A key component of this "new jurisdiction" would be a "body to draft, through negotiations with the Indigenous peoples concerning new juridical, bilateral, consensual, legal instruments with the Indigenous Peoples interested", as well as legislation "to create a new institutionalized legal order applicable to all Indigenous issues and that accords with the needs of Indigenous peoples". The Rapporteur stressed that to effectively replace outmoded, oppressive and ineffective unilateral processes and structures, the full participation of Indigenous Peoples would be essential.
86. Delegates welcomed and supported in its entirety the "Conclusions and Recommendations of the United Nations Expert Seminar on Treaties, Agreements, and Constructive Arrangements between states and Indigenous peoples," that took place November 14 – 17, 2006, and December 2003 .
87. Delegates reaffirmed the importance of treaties as an ongoing concern that requires immediate action from the UNPFII to reinstate the observations, conclusions and recommendations of the UN Study on Treaties, agreements, and other constructive arrangements as outstanding and unfinished business.
- 88. Recommendation: That the UNPFII support continuing work on the UN treaty study within the United Nations and to call upon other UN bodies, such as the expert mechanism and the expert advisory committee to advance the work on treaties.**

D. Membership and Border Crossing

89. Delegates discussed how membership in Indian Bands and Indian status in Canada remain governed by the Indian Act, controlled by the Department of Indian and Northern Affairs (DIAND). There is currently a process underway to change the Indian Act membership requirements due to recent court decisions. Concerns were expressed especially regarding second-generation children losing Indian status. Little input from Indigenous representatives was accepted by the Canadian government and few substantive changes have been made to the proposed legislation. Delegates recognized that this problem has very deep international significance and that the Canadian government ought to realize from past mistakes that it needs to get the approval of Indigenous peoples before making any decisions on membership matters.
90. Delegates noted that a plethora of government policies in North America are designed to wipe out Indigenous Peoples identities, their relationship with the land and undermine the oral understanding of their treaties. Evidence of the intent to dispossess Indigenous Peoples of their right to exist as Peoples can be found in early and current policies and laws. Indigenous Peoples are being subjected to policies and laws designed to dispossess them of their territories. The policies and laws of the settler state serve the purpose and intention of genocide.
91. Delegates noted that the settler state's child removal policies serve the intention of genocide. The residential school and the ensuing child welfare system have had the most traumatic effect on Indigenous Peoples. Indigenous Peoples' collective identity and worldview are threatened as a result of the generational transmission of trauma and the tactics employed by the state to "kill the Indian in the child." Generations of Indigenous Peoples were fractured from their land and cultures, as Indian child welfare systems were put into place to deal with the problem created by the residential schools. The end result has violated the Indigenous worldview and relationship with Mother Earth. This alienation allows the colonizer to move onto the lands of Indigenous Peoples.
92. Delegates noted that the recent *McIvor* case has opened the door for the Canadian state to determine Indian status and that the limited interpretation by the government affects the survival of Indigenous Peoples, especially Indigenous children who will lose their status. The greater legal issue is the fundamental right of Indigenous peoples and nations to determine their own citizenship. Delegates stressed that the Canadian government as a treaty successor does not have the authority to determine who is and who is not an Indian and if they continue on this path they are violating international law.
93. **Recommendation: That governments recognize the right of Indigenous nations to self-determine their membership.**
94. Delegates also raised concerns with Indigenous peoples being denied the right to cross the border to attend international meetings.

95. **Recommendation: That the UN establish a procedure to allow Indigenous participants to attend international meetings, even if they do not have state-issued documentation.**
96. A number of participants, including chiefs from Alberta raised concerns regarding new border crossing regulations for Indigenous peoples. For Indigenous peoples in the region, the border between Canada and the United States is a colonial construct. Indigenous Peoples' right to freely cross the border has been recognized in the Jay Treaty (1794). In the past, status Indians from Canada were able to cross the border with a simple Indian status card, and did not require a passport. Recently attempts were made to impose a passport requirement or a new status-card both of which would include a locator chip with extensive personal information.
97. **Recommendation: Delegates recommended that no passport or new status card requirements be imposed on Indigenous peoples from North America to cross the Canada-US border.**
98. Delegates recognized that problems Indigenous peoples in North America face today are connected to the British legal system and the monarchy, including the claim of sovereignty, legal fictions of "discovery," and constructs of the common law.
99. **Recommendation: That current government processes on land and treaty rights should not continue until there is full recognition of inherent land rights and treaty rights and implementation on the ground.**

VIII. HUMAN RIGHTS

100. Tonya Gonnella Frichner provided an overview of the human rights for the discussions during the UNPFII, with a special focus on implementation of UNDRIP and the report from the UN Special Rapporteur on the Rights and Freedoms of Indigenous Peoples. Delegates were advised that meetings could be scheduled with the Special Rapporteur during UNPFII.
101. **Recommendation: That a meeting with the Special Rapporteur for the North American Region be arranged to brief him before the special dialogue on North America in which he will also participate.**
102. Delegates were also advised that the debate about human rights is one of the most highly-demanded agenda items of the UNPFII, since a lot of Indigenous peoples have grievances, but not all will have the ability to take the floor due to limited time allocations.

A. Implementation of UNDRIP

103. Delegates commented on the gap between international standards and implementation on the ground. Despite nation-to-nation relationships between Indigenous peoples and federal governments, the responsibility of implementation is often left with other levels of government that do not have standing at international law (US states, Canadian provinces, municipalities). Implementation responsibility is often limited to consultation processes rather than substantive recognition of Indigenous rights. Canadian provinces and US States often are adversarial to Indigenous interests.
104. **Recommendation: That provincial and state governments also endorse and implement UNDRIP and issue reports on their implementation.**
105. **Recommendation: That States meet directly with Indigenous peoples to discuss and review implementation of the UNDRIP.**
106. Delegates noted that the UN Declaration on the Rights of Indigenous Peoples is an expression of minimum standards, and the inherent human rights of Indigenous peoples are not limited to the framework of the UN Declaration on the Rights of Indigenous Peoples. Delegates stressed that it is important for Indigenous peoples to put forward their own interpretation of the provisions from an Indigenous perspective.
107. The UN Declaration on the Rights of Indigenous Peoples specifically calls upon States to establish, in conjunction with Indigenous Peoples, a process for the recognition and adjudication of rights pertaining to traditional lands, territories and resources and "all collective rights".
108. **Recommendation: That Indigenous peoples from North America endorse and adopt the UNDRIP, translate it into their own languages and take steps to document their implementation of the UNDRIP as examples that can be replicated by other Indigenous peoples.**
109. Delegates also discussed the second decade of the "World's Indigenous Peoples," and asked that a report card (not a calendar), be submitted by countries.
110. **Recommendation: That countries submit a report card on the implementation of the Second Decade, and as a celebratory goal to end the Decade, there be a world conference on Indigenous Peoples with a focus on the UNDRIP and Treaties.**
111. The UNDRIP provides a framework for the establishment of, and Indigenous Peoples' participation in this process as follows:
- It is fair, independent, impartial, open & transparent, established and implemented in conjunction with Indigenous peoples concerned (Article 27)
 - It gives due recognition to Indigenous peoples' laws, traditions, customs, land tenure systems, rules and legal systems of the Indigenous peoples concerned and international human rights (Articles 27 & 40)

- It provides redress for Indigenous Peoples' lands, territories, resources traditionally owned, occupied or used which were confiscated, taken, occupied, used or damaged without free, prior informed and consent, which redress can include restitution of these lands and resources (Articles 27 & 28)
It provides that compensation shall be just, fair and equitable; If return of original lands is not possible, compensation shall take the form of lands, territories/resources equal in quality, size, legal status; monetary compensation or other redress can provided with the free agreement of the affected Peoples (Article 28)
- It provides effective remedies for all infringements of individual & collective rights (Article 40)
- It provides that Indigenous peoples shall have the right to participate in this process (Article 27)

112. **Recommendation: That the following recommendations of the Report of the international expert group meeting on the role of the UNPFII in the implementation of Article 42 (E/C.19/2009/2) be implemented:**

- 1) **creation of a procedure within the UNPFII to facilitate a constructive dialogue with States on the challenges, achievements and future action that Indigenous issues require in each country under UNDRIP.**
- 2) **a mechanism be implemented to remind States of the binding characteristics of human rights.**
- 3) **training programs for national parliamentarians, staff within national institutions such as human rights commissions and other agencies to result in transforming the Declaration into national policies.**

B. Substantive human rights violations

113. Delegates raised serious concerns regarding destruction of the land and pollution of the air and water. Delegates noted that unless international standards are enforced Indigenous peoples cannot exercise their rights. Current mainstream western processes, such as environmental impact assessment procedures, do not really aim at protection of the environment, but seek the approval of large-scale commercial industrial projects and often fail to take into account the inherent rights of Indigenous peoples. t

114. **Recommendation: That the UNPFII engage all UN agencies to initiate work on an environmental protection instrument based on Indigenous laws, protocols and knowledge to protect Indigenous rights to water, land and air. Delegates further recommended that traditional Indigenous laws be respected as the fundamental law of the land.**

115. Delegates heard a report about Kitchenuhmaykoosib Inninuwug (“Big Trout Lake”, otherwise known as “KI”), a fly-in community in Northern Ontario which had not been affected by commercial-industrial development, and, where the Elders have given

instructions to protect the land and water. As a result the people opposed mining in their territory. The Chief and council of the community were jailed by Justice Patrick Smith, who imposed a six month sentence. The judge did not recognize Indigenous land rights and had no respect for the KI people. Yet Canada recently appointed him to sit on a special tribunal. Delegates rejected the appointment of Justice Patrick Smith and considered it an insult to Indigenous peoples across North America.

116. **Recommendation: That Canada reverse the appointment of Justice Patrick Smith.**
117. **Recommendation: That Canada and its provincial governments stop criminalizing Indigenous peoples who exercise their rights to protect their lands and territories; and that the governments engage with Indigenous peoples on the basis of recognition of the land and territorial rights of Indigenous nations and peoples.**

C. Other human rights processes

118. Kenneth Deer reported on the UN Voluntary Fund for Indigenous Participation at UN meetings, noting that only one person from North America had applied at the last session and if the number of applicants did not increase, funding for the region could be further cut. Delegates noted that a number of Indigenous representatives who had applied in the past might have stopped applying because they were not funded.
119. **Recommendation: That Indigenous peoples in North America continue applying to the UN Voluntary Fund to enable their participation in UN meetings.**
120. **Recommendation: That the UN Voluntary Fund support North American Indigenous participation in proportionate numbers.**
121. **Recommendation: That Canada and the United States contribute to the Voluntary Fund.**
122. Sharon Venne reported on the work of the Expert Mechanism and advisory council of experts and explained how the experts could support the work of Indigenous issues, and conduct more studies and develop new mechanisms for drafting standards. She stressed that much of the previous work on Indigenous issues such as the treaty study of the UN Working Group on Indigenous Populations did not have a home in the UN and lacked follow-up. She encouraged increased participation and use of the existing mechanisms. Andrea Carmen reported that there was a commitment by the expert mechanism to address treaties and treaty studies and they are planning a third expert seminar on the issue.

123. At the Committee on the Elimination of Racial Discrimination, Canada was reviewed in 2008 and the United States is currently being reviewed. The CERD recommended that the U.S. and Canada use the Declaration as a standard of assessment, notwithstanding their vote.

124. Recommendation: That the UNPFII call upon Canada and the United States to report on the list of issues that were focused on by the Committee on the Elimination of Racial Discrimination.

125. Recommendation: That the list of Indigenous experts be expanded to include Youth from Indigenous peoples and nations that maintain a strong connection to the land in their traditional territories.

IX. FUTURE WORK

126. Recommendation: That a future special theme of the UNPFII be “Violence against Indigenous Women”.

127. Recommendation: That the issue of water be included as future work of the UNPFII and that a UN expert meeting focus on water, its sanctity, and its protection for future generations.