



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2004/G/28
18 March 2004

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sixtieth session
Agenda item 15

INDIGENOUS ISSUES

**Letter dated 9 March 2004 from the Permanent Representative
of Canada to the United Nations Office at Geneva addressed
to the secretariat of the Commission on Human Rights**

The Government of Canada was a full participant in the Seminar on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Peoples, held in Geneva from 15 to 17 December 2003. Our senior-level delegation made several presentations.

At the conclusion of the seminar, recommendations were presented by indigenous participants and experts. Canada chose to present its own, separate set of recommendations. It was Canada's understanding that these recommendations would be included in the seminar report which would be sent to the Commission on Human Rights for consideration under item 15 at its sixtieth session.

The Permanent Mission has now been advised that, for technical reasons, it was not possible for the Canadian recommendations to be attached to the report on the seminar (E/CN.4/2004/111). Consequently, I have the honour to request officially that they be circulated separately to members of the Commission on Human Rights and issued with an appropriate United Nations document number for consideration under item 15. You will find attached* copies of these recommendations, in both English and French.

(Signed): Paul MEYER
Ambassador
Permanent Representative

* Reproduced in the annex as received, in the languages of submission only.

Annex

*Government of Canada Recommendations
UN Expert Seminar on Treaties*

**Government of Canada Recommendations:
UN Expert Seminar on Treaties
Geneva, 15-17 December 2003**

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

Recommendations:

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

- States and indigenous peoples should consider, through fora such as the United Nations Working Group on the *Draft Declaration on the Rights of Indigenous Peoples*, provisions which provide for fair and equitable processes to recognize, determine, adjudicate or agree upon the rights or interests of indigenous peoples in relations to lands and resources to which they have a traditional connection.
- States should also support such international standard setting processes in order to encourage the improvement of domestic laws, processes and policies while respecting national needs and circumstances.
- Work should be undertaken to collect, share and disseminate information on "best practices" in relation to treaties, agreements and other constructive arrangements between States and indigenous peoples. We suggest that the Permanent Forum on Indigenous Issues is the most appropriate venue for such work.

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

Recommendations:

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

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

Recommendations:

- Analysis of existing state processes to resolve Aboriginal claims should be conducted and circulated widely to interested states, international bodies and indigenous organizations. This would enable States contemplating new or revised processes to learn from other States' experiences and best practices.
- The existing text of the *Draft Declaration on the Rights of Indigenous Peoples* should include a reference to processes to resolve land and resource claims involving indigenous peoples and states. Suggested wording would be:
 - States should provide fair and equitable processes to recognize, determine, adjudicate or agree upon the rights or interests of indigenous peoples in relation to lands and resources to which they have a traditional connection.
- In establishing modern treaty-making processes, consideration should be given to the following features:
 - Treaty-making processes must have legitimacy with both indigenous and non-indigenous citizens.
 - Treaty-making processes need a domestic legal foundation which provides recognition of indigenous rights in a manner which is compatible with the legal and constitutional structures of the state.
 - Effective and sustained treaty-making will require that treaties focus on more than legal reconciliation of rights. Treaties must also establish the foundation for new political, social and economic relationships which will improve the social conditions of indigenous peoples.
 - The achievement of political support for treaties will require public education and the demonstration that treaties provide mutual benefit to indigenous and non-indigenous citizens.
 - Effective treaty processes require political commitment and mandating at the highest levels within the State.
 - Treaties establish ongoing relationships that require implementation planning, dispute resolution mechanisms and other ongoing mechanisms within the State to manage and sustain the treaty relationships.
 - Given the length of time it can take to negotiate new treaty relationships, treaty processes may need to incorporate mechanisms which provide for incremental approaches and which build capacity as negotiations proceed.

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

Recommendations:

- For modern treaties, agreements and other constructive arrangements, implementation plans, dispute resolution mechanisms, and fiscal arrangements should be developed in tandem with overall agreements.
- Other measures should be considered by States to help resolve issues. These can include:
 - funding to enable indigenous people to bring lawsuits forward in domestic courts on specific cases which would help establish legal principles;
 - claims and other such negotiation processes which can provide an alternative to more costly litigation; and,
 - commissions and other bodies designed to bring together different parties, to promote dialogue, and to foster common understandings.
- Canada recommends that Article 36 of the *Draft Declaration on the Rights of Indigenous Peoples* be revised to:

Indigenous peoples have the right to the recognition and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, and to have States honour and respect such treaties, agreements and arrangements. Conflicts and disputes that cannot otherwise be settled may be submitted to competent domestic bodies.
- As Canada has said before, however, indigenous peoples or individuals can exercise their existing or future rights of recourse to international tribunals which are competent to deal with internationally agreed rights and standards.
