



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2003/91
10 February 2003

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-ninth session
Item 15 of the provisional agenda

INDIGENOUS ISSUES

**Working Group on Indigenous Populations of the Sub-Commission
on the Promotion and Protection of Human Rights and the
International Decade of the World's Indigenous People**

**REPORT OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
SUBMITTED IN ACCORDANCE WITH COMMISSION
RESOLUTION 2002/63***

1. In its resolution 2002/63 (para. 22), the Commission on Human Rights took note of the report of the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights entitled "Study on treaties, agreements and other constructive arrangements between States and indigenous populations" (E/CN.4/Sub.2/1999/20) and requested the High Commissioner to seek information from Governments, non-governmental organizations and indigenous people's organizations on the report and the broader issues it raises, and to submit a report to the Commission at its fifty-ninth session on the views expressed as a basis for a decision by the Commission on a possible seminar on this subject. The present report provides information in relation to the request contained in the above-mentioned resolution.
2. The Office of the High Commissioner for Human Rights sent a note verbale to Governments on 4 November 2002 and a letter to non-governmental organizations acting in the indigenous area on 5 November 2002 and invited them to provide information before 15 December 2002. As of 10 January 2003, the Office had received replies from the

* To allow time for the receipt of information, the present report is submitted after the deadline for documents established by the Documents Management Section.

Governments of Finland and Norway and from the Juridical Commission for Auto-Development of First Andean Peoples (CAPAJ), the International Indian Treaty Council, the North West Territory (NWT) Treaty 8 Tribal Corporation, the Netherlands Centre for Indigenous Peoples and Ms. Mililani Trask, member of the Permanent Forum on Indigenous Issues. The replies of the Governments of Finland and Norway provide information on the human rights of indigenous peoples in those countries but do not contain a specific reference to the proposed seminar on treaties.

3. The Peruvian-based indigenous organization CAPAJ suggested that the proposed seminar include cases relating to the Royal Deeds given by the Spanish Crown over the area occupied by the grand confederation of the Aymara Quechua people in the colonial period. It claimed that the Deeds had been granted on the basis of the concept of “terra nullius”.

4. The International Indian Treaty Council (IITC) welcomed the proposal to hold a seminar on treaties. It recalled the purpose of the study, which was to analyse the potential utility of treaties, agreements and other constructive arrangements between States and indigenous populations for the purposes of ensuring the protection and promotion of the rights and fundamental freedoms of indigenous peoples. It also recalled that the Special Rapporteur had proposed three possible themes for workshops: on the establishment of an international conflict resolution mechanism on indigenous issues; on modalities for redressing the effects of the historical process of land dispossession suffered by indigenous peoples; and on the implementation/observance of indigenous treaty rights. It noted further that the Special Rapporteur had proposed paying attention to the ongoing development of universally relevant standards and the need to develop innovative, forward-looking approaches to relationships between indigenous populations and Governments. The organization concurred with the Special Rapporteur that there was a need for an international process for the resolution of long-standing and existing human rights violations, violations of treaties and agreements and resulting land claims, because domestic remedies had been inadequate and, in its view, had contributed and continued to contribute to violations.

5. The IITC proposed that the seminar be forward-looking and address the unilateral abrogation or non-observance of treaties and agreements, with a view to resolution of the ongoing conflicts between indigenous peoples and the State, and particularly consider possible international mechanisms for the resolution of treaty violations. The organization also pointed out that there were several areas not adequately covered by the treaty study. These included modern bilateral and multilateral treaties on trade and development, such as those of the World Trade Organization, that have a profound effect on previous treaties between indigenous peoples and colonial and/or successor States. Another area for consideration could be the issue of consultation, free and informed consent and new agreements or treaties between indigenous peoples and States with regard to development schemes on indigenous lands. The letter concludes by suggesting that the Commission extend the mandate of the Special Rapporteur to monitor and study these new developments. It also suggests that the importance of the issue merits a series of regional seminars.

6. The NWT Treaty 8 Tribal Corporation provided information about the Peace and Friendship Treaty negotiated between the Dene Peoples and the British Crown and the efforts being made by the community to implement the Treaty. The organization concludes by

encouraging the United Nations to hold a seminar, to which it would like to be invited, so that the representatives can share their experiences and ideas about resolving disputes in a peaceful and harmonious way as understood by the Dene elders who made the Treaty with the non-Dene.

7. The Netherlands Centre for Indigenous Peoples (NCIV) indicated that it supported the seminar if it also receives support from indigenous peoples. It highlighted a concern in relation to the final report of the Special Rapporteur, namely that the report did not consider the overall “*problématique*” in the African and Asian contexts. The organization considered it extremely important, if such a seminar were to be held, to have participation from African and Asian indigenous peoples.

8. Ms. Trask noted that the Special Rapporteur had called for a United Nations workshop to consider the establishment of an international body to address disputes between indigenous peoples and States and she suggested that the proposal could be considered by such a workshop. She said she supported the proposed workshop which would inform the United Nations system and the Permanent Forum, and recommended that Permanent Forum, experts and persons involved in the United Nations Educational, Scientific and Cultural Organization Centre of Catalonia who had worked on the issue of indigenous peoples and self-determination also be invited.

9. The correspondence is available for consultation in the Office of the High Commissioner for Human Rights.
