

Engaging Free, Prior and Informed Consent for Mutual Benefit

A discussion of Principles, Policies and Commitments between Indigenous Nations and UN Member States from 1920 to 2020 with an emphasis on the period 1977 – 2020.

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ABSTRACT

The Center for World Indigenous Studies, prompted by inquiries and urgings by leaders of indigenous nations, sponsored the planning, organization and convening of a Congress of Nations and States—the process that began in the summer of 2019. In this article we discuss the Congress as a new international mechanism to facilitate engagement by indigenous nations and states on an equal political plain in pursuit of comity and establishment of cooperative measures for mutual benefit.

This article discusses the consequences of the failure of decolonization advanced by the United Nations in 1945 that resulted up to 1.9 billion people from indigenous nations left without their consent inside the boundaries of existing states contributing to social, economic, political and security conflicts demanding relief. More than 5000 nations occupy territories and political space inside states with the states' claiming those territories and competing for political space by asserting state sovereignty. The article presses forward by emphasizing the importance of the principle of free, prior and informed consent responding to the long list of principles and commitments in the policy areas of economics, environment, culture & society, political governance, security, and justice made by nations and states since 1977. I suggest that existing agreements on principles and commitments if implemented by nations and states may resolve most of the current conflicts. Specific principles and commitments are discussed and sourced to treaties, conventions, declarations, and outcome documents issued by nations and states from 1977 forward.

Key Words: free, prior and informed consent, self-government, self-determination, state and nation

From 1971 to the present is an historical period during which Indigenous peoples, their multilateral organizations and their governments became “subjects of international discourse.” Before this time, they had been relegated to the position of minorities subject to domestic state concern. During the years that followed 1971 indigenous peoples engaged in direct and indirect dialogues with states' governments and multi-lateral organizations to set in place a range of policies, principles and

commitments for the conduct of relations between nations and states. These exchanges exemplified a convergence between the positions of many nations and states toward political comity. Indeed, in numerous instances of specific agreement the nations emphasized establishing mechanisms within the international context to implement the policies and agreements documented in international forums producing documents such as the ILO Convention 169 (1989, UN Declaration on the Rights of Indigenous Peoples (2007), Alta Conference Outcome Document (2013) and the UN World Conference on Indigenous Peoples Outcome Document (2014). States' governments, however, have been less willing to establish implementation mechanisms to actualize agreements. Instead, states shifted negotiations and implementation responsibility to the domestic state political environment.

Despite this apparent divergence on the subject of an international versus a state domestic implementation approach, both states and nations repeatedly call for the establishment of a mechanism or mechanisms to implement agreements and commitments suggesting recognition of limitations built into existing state-based multilateral bodies. The Congress of Nations and States opens the opportunity for nations and states to prepare a new international pathway where nations located in existing states will engage states on an equal political plain to define and implement measures for conducting relations with respect and the knowledge that cooperation is essential to meet the global and domestic climate, biodiversity, migration & refugee, violence, acts of genocide

and uncontrolled exposures to viral pandemics threaten global human existence.

After completing 21 months of planning and organizing, beginning in June 2019, the Congress of Nations and States' Preparatory Body, Secretariat and Six Specialized Commissions began the next phase of taking steps to convene the Congress' Assembly in 2022. The Commissions began consideration of the principles and policy commitments made from 1977 by nations and states under the following categories: economic, environmental, culture & society, political governance, security and justice. Protocol Resolutions generated by the Specialized Commissions would be reviewed and receive comments from the Congress of Nations and States' Preparatory Body, a wide array of indigenous nations, states, non-governmental organizations, and academics located around the world. Each of the Commissions will sponsor these resolutions for submission to the Congress Assembly in 2022 where voting indigenous nations and states will decide to introduce new procedures for nation and state relations decided on an equal political plain. Furthermore, and perhaps more to the point, the decisions of the Congress are intended to set out a constructive and beneficial pathway for the conduct of relations between nations and states into the 21st century.

The Congress of Nations and States as now being planned and convened may become the turning point in constructive and respectful relations between indigenous and nations after more than two centuries of political and violent conflicts challenging the existence of

many indigenous nations and many states. The unfolding multiple crises that challenge the survival of human beings throughout the world: biodiversity collapse, mass migrations and refugees, changing climate, rampant illicit drugs, weapons, and viral pandemics. Virtually all of these calamities are rooted in the failures of states and nations to reign in unrestrained development, consumption and religious or ideological hatreds. The intent of the Congress of Nations and States is to redirect the misplaced energies to a constructive international as well as domestic pathway to reversing the damage sitting at humanities' door.

This paper is offered as a discussion of the background of relations between indigenous nations and states, and in particular a review of the many principles, policies and commitments made by nations and states since 1977 in the subject areas of economics, the environment, culture and society, political governance, security and justice. Establishing mechanisms to implement agreed policies and commitments is the priority desired by both states and nations. A brief history is in order and then a subject-by-subject review of recommended principles, policies and commitments will follow.

Free, Prior and Informed Consent

The principle of “free, prior and informed consent” is Central to advancing self-determination and self-government by indigenous nations while stabilizing the territorial and political integrity of existing states. The principle was introduced into international lexicon by the International Labor Organization as it engaged in

the process of revising ILO Convention 107¹ and concluding its replacement in ILO Indigenous and Tribal Peoples Convention No. 169 in 1989. The principle of free, prior, and informed consent is a central concept of self-determination stated in Articles 6, 1 (a), and Article 16 (2) requiring the states to “consult the peoples concerned, through appropriate procedures “and in particular” through their representative institutions whenever consideration is being given to legislative or administrative measures which affect them directly.” Free, prior and informed consent is to be invoked under the Convention in connection with decisions about land and resources and relocation of peoples as an exceptional measure. The United Nations Declaration on the Rights of Indigenous Peoples adopted the principle of free, prior and informed consent in numerous articles covering the right of self-determination, measures to combat prejudice and elimination of discrimination, to promote indigenous peoples' right to enjoy all rights established under international and domestic labor laws, and to ensure the protection of children and other vulnerable members of indigenous societies from hazards, consultations on matters involving military activities, and interference with education and health and physical harms.

The principle elements can be understood as follows: “Free” requires that engagement must be without coercion. “Prior” requires that engagement take place before decisions are

¹ International Organization, 1956. International Labor Organization. 10(4), pp.634-636.

taken. “Informed” requires that information is communicated in a form, language, and manner understandable to both parties. “Consent” requires that agreement must occur resulting from good faith negotiations and full disclosure of facts by parties to ensure intelligent decisions.

The CNS Preparatory Body established the CNS FPIC Guidance Working Group to assess and draft language for a Congress of Nations and States Guidance on the Implementation of the principle of Free, Prior and Informed Consent.² *The expressed reason for this decision was to establish a clear intergovernmental or interinstitutional framework for objectives, functions, authorities, procedures, and mechanisms of compliance and enforcement as originally agreed by indigenous nations and states.* This framework relies on principles and commitments to exercise the principle of free, prior and informed consent enshrined

in international instruments such as the ILO Convention 169 (1989),³ UN Draft Declaration on the Rights of Indigenous Peoples (1994),⁴ International Covenant on the Rights of Indigenous Nations (1994),⁵ United Nations Declaration on the Rights of Indigenous Peoples (2007),⁶ the Alta Declaration and Alta Outcome Document (2013),⁷ and the UN World Conference on Indigenous Peoples Outcome Document (2014),⁸ and the UN Expert Mechanism on the Rights of Indigenous Peoples (2018)⁹.

The UN Permanent Forum on Indigenous Issues with support from the Special Rapporteur on the Rights of Indigenous Peoples issued guidance on the implementation of FPIC. Notably, the UNDRIP itself offered the following broad objectives:

- To maintain and strengthen institutions, cultures and traditions¹⁰

² Decision of the CNS Preparatory Body in Executive Session during the Preparatory Body Session XXX on 8 June 2021 Chaired by Fadjar Schouten-Korwa.

³ International Labor Organization (1989) Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries. Adopted on 27 June 1989 by the General Conference of the International Labour Organisation at its seventy-sixth session. Entry into force on 5 September 1991.

⁴ United Nations Working Group on Indigenous Populations (1994) “Draft Declaration on the Rights of Indigenous Peoples.” as submitted to the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

⁵ International Covenant on the Rights of Indigenous Nations (1994). Initialed by Nadir Bekir, Political and Legal Affairs, the Crimean Tatars; A-Bagi Kabeir, Numba People of Sudan; Ron Lameman, Confederacy of Treaty Six First Nations; and Judy Sayer, Apethesht First Nation; Viktor Kaisiepo, West Papua Peoples Front/OPM. Geneva, Switzerland. Subsequently ratified by nations located in West Asia, North Africa.

⁶ United Nations General Assembly. (2007). “Declaration on the Rights of Indigenous Peoples” drafted by the UN Working Group on Indigenous Populations 1980 – 1994, reviewed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the UN Human Rights Council before submission to the UN General Assembly for approval. A/61/L.67 and Add. 1.

⁷ Global Indigenous Preparatory Conference. (2013) “Alta Outcome Document.” Conference preparatory for the United Nations High Level Plenary Meeting of the General Assembly to be known as the World Conference on Indigenous Peoples. The Conference convened in Sami Territory in Alta, Norway with more than 400 delegates from indigenous peoples and nations from seven global geo-political regions plus a Women’s caucus and a Youth Caucus.

⁸ UN General Assembly (2014) “Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples.” Sixty-ninth Session Agenda item 65. A/RES/69/2.

⁹ UN EMRIP (2018) “Free, Prior and Informed Consent: A Human rights-based Approach. Human Rights Council. A/HRC/39/62

¹⁰ UN General Assembly, (2007) Declaration on the Rights of Indigenous Peoples. Preamble.

¹¹ Ibid.

- To promote development in accordance with aspirations and needs¹¹
- To practice and revitalize cultural traditions and customs¹²
- To participate in decision-making matters affecting Indigenous rights¹³
- To determine and develop priorities and strategies for all forms of development¹⁴
- To not be subjected to forced assimilation or destruction of culture¹⁵
- To not be forcibly removed from lands or territories¹⁶

The principal focus of the UNDRIP and other similar instruments has been to conceive of FPIC as a “safeguard” to ensure that the rights of indigenous peoples are positively fulfilled and to prevent violations of indigenous peoples’ rights. The guidance by the UN Permanent Forum on Indigenous Peoples Issues and the Special Rapporteur on the Rights of Indigenous Peoples takes a decidedly narrow perspective placing the burden on the State to fulfill indigenous peoples’ rights and to avoid violating those rights through consultations and obtaining consent in the light of state administrative, legislative or judicial actions that affect the interests of the specific peoples.

After reviewing the current stage of implementation of free, prior and informed consent and existing agreements and commitments in a 3 June 2021 Memorandum “Establishing a Congress of Nations and States Guidance to States and Nations on the Implementation of Free, Prior and Informed

Consent” the following observation was made:

... nations, states, NGOs and academics present a wide range of opinions and policy views demonstrating there is confusion and a general misunderstanding of what are the applications of Free, Prior and Informed Consent in relations between nations and other entities. Between the policy views of Australia and the United States asserting there is no definition of “free, prior and informed consent” stating that the principle provides for consultation, but not necessarily agreement and the policy views suggested by Mohawk Nation international relations diplomat Kenneth Deer and the First Nations Assembly (Canada) where they assert the process is one of mutual benefit between nations and states and a “negotiation” as in the process of treaty making, there are many who simply don’t know what it means.

Supplemental to the commitments made by nations and states to FPIC corporations and various extraction industries and corporations have taken steps to affirm their commitment to the principle. The United Nations issued a Global Compact document entitled *Indigenous Peoples’ Rights and the role of Free, Prior and Informed Consent: A Good Practice Note*, issued

¹² Ibid., Article 11

¹³ Ibid., Article 18

¹⁴ Ibid., Article 32

¹⁵ Ibid., Article 8

¹⁶ Ibid., Article 10

in 2014. As of early 2018 some 9,704 companies across 161 countries voluntarily committed to adhering to the Global Compact's principles. The Global Compact essentially restates the broad objectives of the principle originally stated in the UN Declaration of 2007 with an emphasis on "safeguarding" the rights of indigenous peoples. Unfortunately, the text of the Global Compact includes numerous conflicting statements focusing primarily on obtaining consent without stating the iterative process and procedures. The compact fails, however, to recognize the fulfillment of self-determination as an outcome, but rather emphasizes consent without the function of control over outcomes. The Global Compact, therefore, adds to confusion and provides industry the opportunity to interpret how and with whom consent is obtained (selecting an individual or subgroup sympathetic to a business' interests could give consent without following the political and cultural practices normally applied by the nation, for example).

A Brief Overview of Decision History from 1830-2014

So called marginalized peoples within the boundaries of existing states and empires and

in distant colonies have been the subject of "promises" by empires and states throughout the history of structured international relations—particularly in the last 170 years. Outcomes from three nineteenth century congresses (Vienna [1814-1815],¹⁷ Paris [1856] and Berlin [1878]) included treaty provisions providing for the security and rights of minority peoples that in today's terminology would be identified as "indigenous peoples." Despite well recognized acts of oppression of such peoples by old empires and newly functioning states, the "Concert of Europe"¹⁸ failed to enforce the treaty commitments. The subsequent treaties in the 19th century failed as well.¹⁹

The Political Status of Peoples Challenge

The challenges political leaders have sought to, but only partially resolved are: how can a ruling government of a state and the governments of indigenous nations conduct equitable and constructive relations when the state and the nations occupy the same territorial and political space? The goals of the state and the nations relating to land and natural resources and political governance do not always converge. This problem was partially addressed when

¹⁷ After the fall of Napoleon four European powers (Britain, Russia, Prussia and Austria) convened the Congress to reorganize the peace in Europe under the rule of the "great powers." The European Imperial powers added France as an equal and together they set about reordering territorial and political claims in Europe. Included in this effort was a focus on "ethnic minorities" whose distinct languages and cultures set them apart from so called dominant populations. Croats, Magyars, Czechs, Slovaks, Bohemians, Moravians, and many other nations became a subject for the great powers to address as populations requiring protection.

¹⁸ The Concert of Europe was a post-Napoleonic (1830s) consensus by European monarchies intent on preserving the territorial and political status quo contained in the Congress of Vienna, Congress of Paris and the Congress of Berlin. The Concert of Europe was viewed as necessary to reorder Europe after nearly two centuries of war and the Napoleonic dictatorship. The consensus reflected the assumption that monarchs retained responsibility and the right to intervene and impose their collective will on states threatened by internal rebellions. This early 19th Century collective consensus formed the basis of what is today referred to as the responsibility of the great powers of state to dominate international behaviors of all other states.

¹⁹ Fink, C. (1995) The League of Nations and the Minorities Question. Vol.157, No. 4, Woodrow Wilson and the League of Nations: Part One (Spring 1995), pp. 197-205.

in the 20th century states and nations agreed to “decolonize” so-called non-self-governing territories territorially separated from the colonizing power. The question placed on the table was “what should be the political status²⁰ of non-self-governing peoples whose colonial status is changed?”

Between 1946 and 2020 more than eighty ‘non-self-governing territories were decolonized and most became independent states while many decided to absorb into another nation or state. The political status of 750 million people was the subject of the decolonization process. Still seventeen “non-self-governing territories” have not had their political status resolved. The United Kingdom, France and the United States continue to “administer” peoples (combined population of 2 million) in mainly island territories while the question of political status remains an open question.

The political status of another 1.9 billion people in more than 5000 nations located inside the boundaries of existing UN member states stands as an unresolved matter since the status of

these peoples was set aside by the UN in favor of focusing on “non-self-governing peoples” located outside the territory of existing states—mainly island, African, Melanesian, and Asian territories. Conscious of the unresolved political status of nations located inside the boundaries of existing states the issues political autonomy, self-government and exclusive territorial control have been policy issues introduced to the international community since 1923. The Haudenosaunee and Maori peoples, much aware of this unresolved political status question, took the initiative to carry the issue of hundreds of millions of people to the international forums of the League of Nations, United Nations and many regional multilateral state and nation forums.

The Congress of Nations and States is intended to directly meet the “political status challenge” by promoting political equality between nations and states in the implementation of measures to benefit both nations and states concerning a range of economic, environmental, culture & society, political governance, security and justice arenas.

²⁰ Three categories under state-based international law set the initial boundaries for what is meant by “political status:” 1. Independent countries, 2. internally independent countries under the protection of another country in matters of defense and foreign affairs and 3. Colonies or dependent political entities absorbed into an existing state. Beyond this definition there are nations or countries that where there is a territorial dispute or entities have declared the separation and independence as they seek diplomatic recognition from the international community as *de jure* sovereign states. Under existing state-based international law a state or distinct country exists by declaration if it has a defined territory, permanent population, a ruling government and the capacity to enter into relations with other states or countries. Such declarations are not dependent on recognition by other states. However, under what is referred to as “consultative theory” a state becomes a person of international law only if it is recognized as a state by other states that have attained recognition in the international community. Variations on state personality exist where a state like the Republic of Korea is not recognized by the government of North Korea, the Republic of Armenia is not recognized by Pakistan and Azerbaijan. The Republic of China (Taiwan) is not recognized by the Peoples’ Republic of China though it is recognized by fourteen states including Guatemala, Honduras, Holy See, Haiti, Paraguay, Nicaragua, Eswatini, Tuvalu, Nauru, Saint Vincent and the Grenadines, St. Kitts and Nevis, St. Lucia, Belize, Marshal Islands and Palau. Bhutan is the UN member state that has never explicitly recognized either the PR China or the Republic of China. The State of Israel is not recognized by 28 UN member state including Algeria, Bangladesh, Brunei, Comoros, Cuba, Djibouti, Indonesia, Iraq, Kuwait, Lebanon, Libya, Mali, Pakistan, Somalia and Malaysia among others.

Cayuga and Maori appeals to the League of Nations (1923-1925)

Sovereignty as asserted by states came to the surface at the beginning of the 20th century when in 1923 and 1925 Cayuga Chief Deskaheh serving as the speaker of the Six Nations of Haudenosaunee carried the question of the nations' right to self-determination to the League of Nations—to determine their own social, economic, political, and cultural future without interference by the Canadian state. He was joined by Ratana, Maori Spiritual Leader, at the League of Nations and both were denied access or the opportunity to deliver their message. Chief Deskaheh also traveled to the chambers of the British Parliament to present the Six Nations' arguments for self-determination from Canada and the Maori position of self-government from New Zealand. Making their appeal to the British government and then to the states' governments in the League of Nations was passionate and well-reasoned, but it fell on “deaf ears.” Chief Deskaheh pleaded that, “We are determined to live the free people that we were born”²¹

Bolivian Government Calls for Study of Aboriginal Peoples (1948) and other States Act

The Bolivian government at the UN General Assembly (1948-1949) introduced a measure to create a sub-commission to study the social problems of aboriginal populations. That idea was later transformed into a resolution proposing a “study of the situation of indigenous populations” that would eventually become the charge of Dr. José R. Martínez Cobo in the early 1970s. The

Bolivian resolution was configured to become a proposal for assistance and a study, but it was later converted into a resolution for the eradication of the “chewing of coca leaf in Bolivia and Peru.”²² It was not until 1971 that a chapter on the study of racial discrimination generated for the UN Sub-Commission entitled “Measures taken in connection with the protection of indigenous peoples,” led to the recommendation in the Sub-Commission for a broader study. That recommendation led to the UN Economic and Social Council to authorize the Sub-Commission²³ to carry out a full and comprehensive study of the situation of indigenous peoples focusing on discrimination. The Study authorized by the Sub-Commission resulted in 24 documents (chapters and attachments) presented in 1981, 1982 and 1983.

It is noteworthy that the Bolivian Government approved a new Constitution in the Bolivian Constituent Assembly on 9 December 2007 that was later in 2009 approved by 60% of the population incorporating key principles in the United Nations Declaration on the Rights of Indigenous Peoples. The main emphasis of changes in the Constitution recognized the authority of indigenous peoples (Aymara, Quechua, Yuki-Ichilo, Kaa-lyá among 32 other peoples) to govern their territories. The Bolivian government in 1991 signed the Indigenous Peoples Convention of 1989.

²¹ Scheinpflug, S. M., Rosie Waters & Christian. (2021, February 20). The Basics of Indigenous Perspectives. Retrieved March 6, 2021, from <https://chem.libretexts.org/@go/page/11257>

²² IBID., p. 2. paras., 5, 6.

²³ EcoSoc Resolution 1589(L) of 21 May 1971.

New Zealand and Maori

Representatives of the British Crown and Māori chiefs from the “north island” concluded the Treaty of Waitangi on 6 February 1840. This unratified Treaty is considered by New Zealand as the “founding document” for that confers political legitimacy on the state institutions. The Treaty established the British Governor of New Zealand, identified Māori lands and resources as belonging to Māori (reservations), and extending British citizenship to the Māori. A Native Land Court was established by the New Zealand government in 1975 with the purpose mainly to confiscate Maori lands or otherwise conduct hearings concerning Māori land claims, as well as successions title improvements and Māori land sales.

Under the authority of the New Zealand Minister of Māori Affairs, the Māori Community Development Act of 1962 recognizes local community committees combined into districts to allow for the establishment of the New Zealand Māori Council at the state government level.

The Māori interpret the Treaty of Waitangi as an affirmation of Māori autonomy required of the British Crown carrying out its duties toward the Māori. The English version of the Treaty “grants the Crown sovereignty” and the Māori text limits the Crown’s rights of government short of sovereignty leaving the question of Māori self-government unsettled. While there are still difference of interpretation the Treaty of Waitangi does have scholarly and political support for serving as a guarantee for customary law, state recognition of cultural rights (language, hunting/fishing, religion, etc.), upholding the Treaty

itself, and representation and consultation in the New Zealand Government. Meanwhile, New Zealand and Māori relations under international instruments are rather limited. New Zealand refrained from adopting the ILO Convention 189 and it opposed the UNDRIP though New Zealand did not object to commitments made in the World Conference on Indigenous Peoples Outcome Document in 2014.

Other states, for example, considered to be open to constructive engagement with indigenous nations include Finland, Norway, Canada, the United States of America and Australia. However, commitments made by these and other states generally range from partial recognition of indigenous peoples to no recognition as relates to land rights, self-government, implementation of signed treaties, cultural rights, constitutional or legislative affirmation of distinct status of a people, guarantees of representation or consultation with the central state government and support for or ratification of international instruments on the rights of indigenous nations.

The State and Nation record of engagement for the better portion of two-hundred years has remained often contentious and occasionally collaborative. In virtually all instances, the various nations claim and assert their autonomy or full authority to govern themselves and the state counters with measures or policies asserting state sovereignty—absolute governing power.

Sweden and Saami

While the Swedish government joined, other states to approve the UN Declaration on the

Rights of Indigenous Peoples, its internal policies have consistently ignored Saami land rights and systematically violated claiming absolute sovereignty over Saami traditional lands, water, and natural resources. Despite this generally hostile posture toward Saami, the Sami Parliament Act of 1992 established the Sami Parliament of Sweden as a “government agency” to the central government placing the body under the authority of the Swedish government. As a government body, the Sami Parliament must carry out the policies and decisions made by the Swedish Parliament. The Sami Parliament is controlled by the Swedish Parliament through laws, ordinances and appropriation decisions originating in the Swedish government. In 2007, the Sami Parliament was granted responsibility for the reindeer industry on its own, but guided by the Swedish Parliament.

The observations here presented are based on the inquiries and studies of the Center for World Indigenous Studies over the last 42 years, the Queens University (Canada) Multi-Culturalism Policy Index, Democracy Index – The Economist Intelligence Unit, and the Freedom House political rights and civil liberties of 210 countries and territories Annual Freedom in the World Report (2020).

Cobo Study of the Situation of Indigenous Peoples (1971-1982)

Dr. José R. Martinez Cobo of Ecuador was appointed in 1971 by the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities to serve as a Special Rapporteur. His mandate was to undertake a Study of the Problem

of Discrimination Against Indigenous Populations and report his findings to the Sub-Commission. Eleven years after his appointment, what became known as the “Cobo Study” was issued in 22 chapters concluding in part: “the basic United Nations texts contain no explicit or specific mention of indigenous populations.”²⁴ Dr. Cobo’s study shifted to focusing on “human rights” and “fundamental freedoms” as general areas of study noting that these subject areas concerned some aspects and principles that “affect indigenous populations as groups of human beings.”²⁵ Cobo considered the conclusions of two world conferences²⁶ that concerned discrimination against minorities and indigenous peoples even as there were several other conferences to follow where UN Member States were called on to adopt the text of the conference reports.

It was the founding conclusion of the Cobo Study that since many UN member states do not apply “existing international instruments fully, “specific principles should be formulated for use as guidelines by Governments of all States in their activities concerning indigenous populations, on a basis of respect for the ethnic identity of such

²⁴ Cobo, JRM, (1981) Study of the Problem of Discrimination Against Indigenous Populations. Final Report. Special Rapporteur, Mr. José R. Martinez Cobo. E/CM.4/Sub.2/1983/21/Add.8 July 1982. Chapter XXI, Conclusions. p. 1. para. 1.

²⁵ IBID., para 2.

²⁶ UNESCO sponsored two World Conferences to Combat Racism and Racial Discrimination held in Geneva, Switzerland in 1978 and 1983. The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance convened by the UN Human Rights Council at Durban, South Africa (31 August – 8 September 2001) also provided a forum for UN member States to adopt the Outcome text of the Conference containing a section specifically concerned with “Indigenous Peoples” in its Declaration and Programme of Action at pp. 51-53.

populations and for the rights and freedoms to which they are entitled” * * * ... when the ideas and measures considered fundamental have been organized into a set of principles, the Sub-Commission may deem it advisable to recommend to its subsidiary organs the need to prepare a declaration of the rights and freedoms of indigenous populations as a possible basis for a convention on that question.”²⁷

The Cobo Study and strong advocacy by leaders of indigenous nations impressed on the United Nations Economic and Social Council that it must authorize the Sub-Commission on the Promotion and Protection of Human Rights to establish a working group in 1982 to review developments having to do with the promotion and protection of human rights and fundamental freedoms of indigenous peoples; and to consider the evolving international standards concerning “indigenous rights.” Originally established under the UN Commission on Human Rights (dissolved in 2006) the UN Human Rights Council took responsibility for the working group. The working group became the focal point within the international relations for consideration of new standards for the protection and advancement of the rights of indigenous peoples. The Cobo Study is included in the CNS Reference Library under Human Rights.

Martínez, Miguel Alfonso. (1999)

In his multi-chapter Study on Treaties, agreements and other constructive arrangements between States and Indigenous populations, Dr. Martínez reports in considerable detail obstacles and benefits to state and nation agreed

arrangements throughout the world. Recognizing that there are many levels of political, economic, social and environmental conflict between states and nations, Martínez urges in his third volume at Paragraph 308 the establishment of a special jurisdiction to address conflicts, negotiations, a judicial body and an administrative body. This new mechanism, Martínez suggests may be faced with many obstacles, but it is essential in his reporting that such a mechanism become established with the agreement of nations and states. At Paragraph 315 he directly asserts, “of the opinion that one should not dismiss outright the notion of possible benefits to be reaped from the establishment of an international body (for example, the proposed permanent forum of indigenous peoples) that, under certain circumstances, might be empowered-with the previous blanket acquiescence, or acquiescence on an ad hoc basis, of the State concerned-to take charge of final decision in a dispute between the indigenous peoples living within the borders of a modern State and non-indigenous institutions, including State institutions.”

To further amplify the importance of the international standing of indigenous nations to be the benefit of nations and states, Martínez recommends the establishment of a “Treaty Registry with the responsibility of locating, compiling, registering, numbering and publishing all treaties concluded between indigenous peoples and States. Prepared at the request of the UN Working Group on Indigenous Populations

²⁷ IBID., p. 79. para. 626, 627.

under the UN Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities Martínez. All three sections of his report are located in the CNS Reference Library under Human Rights.

UN Working Group on Indigenous Populations—Nation & State Forum

The UN Working Group on Indigenous Populations convened annual sessions in Geneva at the Palais des Nations. Dr. Erica-Irene Daes of Greece served as the Chairperson-rapporteur joined by other members including Dr. Miguel Alfonso Martinez (Cuba), Bladimir Boutkevich (Ukraine), el-Hadjé Guisse (Senegal) and Ribot Htano (Japan)—all serving in their personal capacity. Each of the sessions of the five-member working group from 1982 through the year it completed its work received more than 700 indigenous nations' representatives from 50 countries on all continents and ecological regions. Given its mandate the Working Group became a formal forum for nation and state engagement concerning matters of international policy and standards for relations between indigenous nations and states and the United Nations

System. In addition to the ILO Convention 107²⁸, numerous international forums of indigenous nations, NGOs from 1977 on ward, the UN Working Group on Indigenous Populations ***gave weight to the assertion that for states' governments the rights of indigenous peoples had fully become a subject of international law.***

Within the context of the UN Working Group on Indigenous Populations representatives of indigenous nations engaged the United Nations and representatives of states' governments as identifiable political entities.²⁹

Enhanced Indigenous Peoples' Participation in the UN, Delayed (2014 -)

Despite the extensive engagements between indigenous peoples' representatives and states' governments in various state-based international mechanisms over decades, UN member states set aside a previously agreed commitment in the UN World Conference on Indigenous Peoples Outcome Document.³⁰ The commitment made in 2014 was to set the 70th session of the UN General Assembly as the forum to consider proposals by the Secretary General describes "ways to enable the participation of indigenous

²⁸ International Labor Organization Convention 107 was adopted in 1957 as the Indigenous and Tribal Populations Convention to provide protection and integration of indigenous and other tribal and semi-tribal populations in independent countries originally ratified by 27 states and now maintained in force by the states of Angola, Bangladesh, Belgium, Cuba, Dominican republic, Egypt, El Salvador, Ghana, Guinea-Bissau, Haiti, India, Iraq, Malawi, Pakistan, Panama, Syrian Arab Republic and Tunisia. Ten of the original ratifying states (Portugal, Peru, Paraguay, Mexico, Ecuador, Costa Rica, Colombia, Brazil and Bolivia) automatically cancelled ratification of 107 in favor of ratifying the replacement ILO Convention 169 concluded in 1989.

²⁹ The Working Group declared that indigenous representatives would be recognized as representing their nations or peoples and unless they otherwise declared would not be considered representatives of non-governmental organizations as they have been so identified by the United Nations in other forums.

³⁰ UN General Assembly. (2014) Outcome Document to be adopted by the General Assembly on 22 September 2014. Outcome Document of the High-level Meeting of the General Assembly: The World Conference on Indigenous Peoples 69/.

peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them." Following the adoption of a resolution on 8 September 2017 entitled "revitalization of the work of the General Assembly" included in a report by the Ad Hoc Working Group on the revitalization of the General Assembly delegates to the UN were informed that no progress had been made toward the commitment made in 2014 to enable indigenous peoples' participation in UN forums. Canada, Australia and New Zealand expressed "disappointment" that no progress had been made while the government of PR China's representative suggested "continuing discussions on enhancing the participation of indigenous peoples in the United Nations." China's claim was that absent an internationally recognized definition of the term "indigenous peoples" was an obstacle because the situation of many states was that "ethnic minorities should be distinguished from indigenous peoples." China further argued that "discussions must respect the sovereignty and territorial integrity of Member States.

Ghana expressed hope for compromise and Mexico complained that Latin American countries were under-represented in the process that led to the resolution's adoption and regretted that Member states had not agreed to approve a new category of participation of indigenous peoples. Ecuador expressed its view that it was important to ensure the effective participation of indigenous peoples in the UN system stressing that indigenous peoples are not non-governmental

organizations. Vietnam expressed concern that the "intergovernmental process" of the UN must be upheld. Bangladesh agreed with Vietnam and stressed the importance of continuing inter-governmental consultations in the UN between states. The Bangladesh representatives concluded by saying that in the absence of an agreed definition for "indigenous peoples," a creative solution was needed to address the question of their enhanced participation.

***As of 2021, the matter of
"enhanced participation"
remains unresolved in the
United Nations.***

Subjects of Nation and State Agreement and CommitmentsS

States and Nations have registered their policies and commitments enshrined in various international and domestic instruments adopted in domestic and international bodies. Among these instruments are the International NGO Conference on Discrimination in the Americas, the UNDRIP, ILO Convention, Convention on Biodiversity and the Climate Change Treaty focused on economic rights for the state and the nations.

Relevant documents indicating joint agreement and or commitments between nations and states on principles and policies are as follows:

Nations Formalized and Enshrined Nation-based Law

Indigenous nations have engaged in the organization of activation of multilateral bodies to represent the unified political and legal concepts, principles and commitments with effective influence inside the boundaries of existing states and within the international environment. Numerous international treaties have been concluded forming one of the foundations of nation-based law. In addition, temporary and long-term coalitions of nations have formulated specific policies and commitments in the form of declarations and policy resolutions. Examples of these instruments are located in the CNS Reference Library online, but some of the most notable instruments are as follows:

- *INTERNATIONAL NGO CONFERENCE ON DISCRIMINATION Against Indigenous Populations in the Americas – September 20-23, 1977.*

- *Draft Declaration of Principles for the Defense of the Indigenous National and Peoples of the Western Hemisphere – 1977*

- *International Covenant on the Rights of Indigenous Nations (1994)*

- *ASIA: A Call to Action from Indigenous Peoples in Asia to the World Conference on Indigenous Peoples (Bangkok. Nov 8 - 9 2012)*

- *AFRICA: Proceedings Report: Africa Preparatory Meeting for the World Conference on Indigenous Peoples (Hosted in Nairobi, Kenya by Mainyoito Pastoralist Integrated Development Organization (2012))*

- *AMERICA, NORTH: Decisions and Recommendations of the North American Indigenous Peoples' Caucus (hosted by Kumeyaay Nation sponsored by Sycuan Band of the Kumeyaay Nation, the Haudenosaunee, the Viejas Band of the Kumeyaay Nation and the Lummi Nation March 1,2,3 2013)*

- *AMERICA, SOUTH: Foro Indígena de Abya Yala, Declaraaation of the Indigenous Forum of Abya Yala (Iximulew, Guatemala April 11-13, 2013)*

- *ARCTIC: Nuuk Arctic Declaration on the World Conference on Indigenous Peoples 2014 (Adopted in Nuuk, Greenland, October 23 -24, 2012)*

- *EUROPE, EASTERN: Discrimination against indigenous small-numbered peoples of North, Siberia and the Far East of the Russian Federation (CERD 82nd Session 11 February to 1 March 2013)*

- *PACIFIC REGION: The Pacific Declaration of the Preparatory Meeting for Pacific Indigenous Peoples on the World Conference on Indigenous Peoples 2014 (Redfern, Sydney, Australia. National Centre for Indigenous Excellence, 19-21 March 2013)*

- *Global Indigenous Preparatory Conference for the United Nations High Level Plenary Meeting of the General Assembly to be known as the World Conference on Indigenous Peoples (Alta, Saamiland, 10-12 June 2013)*

- *Alta Outcome Document (Alta, Saamiland 2013)*

- *Resolution on Treaties and Implementation of the UN Declaration on the Rights of Indigenous Peoples and other International Human rights Standards. (IITC 40th Annual Conference (2014)).*

States Formalized and Enshrined State-based Law

Internationally recognized states have engaged in the organization and activation of multilateral bodies to represent the unified political and legal concepts, principles and commitments directly and indirectly affecting relations with indigenous nations. Numerous inter-national treaties have been concluded forming one of the foundations of state-based law added to decisions of the International Court of Justice and protocol agreements between states. In addition, temporary and long-term coalitions of states formulated specific policies and commitments in the form of declarations and policy resolutions. Examples of these instruments are located in the CNS Reference Library online, but some of the most notable instruments are as follows:

- UN Declaration of Human Rights (1948) [adopted by 48 of 58 UN members with eight abstaining and two not voting]
- Convention on the Prevention and Punishment of the Crime of Genocide (1948)
- European Convention on Human rights (1953)
- Convention Relating to the Status of Refugees (1954)
- Convention on the Elimination of All Forms of Racial Discrimination (1969)
- African Charter on Human and Peoples' Rights (1986)
- INTERNATIONAL NGO CONFERENCE ON DISCRIMINATION Against Indigenous Populations in the Americas (September 20-23, 1977)
- American Convention on Human Rights (1978)
- UN Convention Against Torture (1987)
- ILO Convention on Indigenous and Tribal Peoples (1989)
- Convention on the Rights of the Child (1990)
- CONVENTION ON BIODIVERSITY (1992)
- UN Framework Convention on Climate Change (1992)
- Draft UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (1994)
- International Convention on the Protection of the rights of All Migrant Workers and Members of their Families (2003)
- UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (2007)
- International Convention for the Protection of All Persons from Enforced Disappearance (2010)
- WORLD CONFERENCE ON INDIGENOUS PEOPLES – Outcome Statement (2014)

Multiple Topic Reference:

The following extraction reveals the decisions in 1977 taken by participants in the International NGO Conference on Discrimination Against Indigenous Populations in the Americas that stands as the contemporary statement of indigenous nations and state principles on which are based in much of the future international instruments concerning relations between indigenous nations and states. The main elements of outcome decisions of this conference are here fully presented.

Document: International NGO Conference On Discrimination Against Indigenous Populations in the Americas—September 20-23, 1977.

Economic

Multinational Corporations: Demands for materials and resources and the inherent profit quest, the multination corporations have accelerated development and exploitation of native peoples and resources resulting in many cultures and peoples are on the brink of annihilation.

Land Question: Mother Earth provides the sustenance of all life. The land must be respected, carefully used, and meticulously restored ... the land base of indigenous peoples has been steadily diminished by colonial exploitation and the result has been a policy of genocide against the indigenous peoples.

Recommendations:

- Investigation of inhumane and exploitive use of indigenous peoples' labor in South and

Central America and enforcement of the U.N. Convention and Supplementary Convention on Slavery, with Particular Regard to the Force Labour and Induced Indebtedness of Indigenous Peoples.

- Affirm the right of self-determination for Dené Nation and the Inuit
- Investigation of Alaskan Native Land Claims Act in cooperation with Alaskan Natives.
- Immediate action to arrest the genocide being committed by governments and multinational corporations and multilateral aid in the Amazon Basin.
- Protection and preservation of existing Native Land bases from exploitation by multinational corporations.
- Environmental impact investigations of the exploitation of non-renewable natural resources on Indian land, especially water.
- The right of self-determination of aboriginal people in the development of their land and resources according to their own values and social structures and laws.
- Affirmation of the Declaration of Principles of Indigenous Nations and Defense of Indigenous Nations and peoples of the Western Hemisphere.

Social and Cultural Commission

- Preamble Paragraph I. The destruction of indigenous cultures in the Americas is historically inseparable from the considerations which motivated, and which

still motivate the criminal acts of the European colonizers, the primary consideration being human exploitation and the greed for land and cheap labour. To destroy a culture is to destroy the basis for an autonomous society able to defend the interest of its members. It is noteworthy that this Commission has had great difficulty in isolating the destruction of culture from other acts of genocide, and it is necessary to constantly bear in mind the links existing between these phenomena.

- Culture is the heritage of all peoples. Its preservation among a community is a fundamental guarantee of that community's physical survival and well-being. It is the human right of all peoples to develop and transmit their own culture.
- The commission of Ethnocide must be defined as both a cause and a part of Genocide, in that the ulterior purpose is the disappearance of the indigenous community.
- CA guarantee must be secured where necessary for the right of indigenous peoples to participate in the national life of their countries wherever they live, on the basis of their own culture, values and ideals. Cultural and social assimilation into the dominant society must proceed from the free choice of individuals and never from the coercive effort of the dominant society.
- Indigenous communities must be guaranteed the control and supervision of both the form and content of education of their people.
- Indigenous peoples must be protected from the following practices:

- Sterilization in the absence of free and informed consent.
- Adoption, sponsorship and foster-home actions that remove Indian children from the native community and culture.
- Medical-experimentation practices at the risk of the health and integrity of their subjects.

Legal Commission

Legal Status of Indigenous Peoples

- Demand immediate application of the principle of self-determination for indigenous peoples, and their recognition as nations.
- Recognition of some nations that have concluded treaties assert immediate recognition as states under international law based on treaties that clearly recognized nations' sovereign status.
- States claim under the UN Charter the principle of territorial integrity and preservation of state sovereignty that can be affected by nations' assertion of self-determination.
- The Declaration of Principles for the Defense of Indigenous Nations and Peoples of the Western Hemisphere come under study by appropriate non-governmental organizations, and that the Declaration come to the attention of the appropriate organs of the United Nations.

Indigenous Laws and Courts

- Indigenous laws have existed and still exist among indigenous peoples.

- Customs are the sources of law.
- Traditional law and customs of indigenous peoples become respected, including the jurisdiction of their forums and procedures for applying their law and customs.

Legal Discrimination

- Outsider-imposed systems of justice negate the inherent legal right of indigenous peoples to control and regulate their own affairs, such as:
 - Acts of outright aggression by the military-police forces
 - Torture, arrest and false imprisonment
 - Failure to prevent violence persecution by racist/neo-fascist organizations, mineral companies, land agents.
 - Infiltration and destabilization of legally constituted indigenous organizations by security agents
 - Controlling or manipulating legal jurisdiction of major crimes, preventing indigenous peoples from being judged by a jury of their peers
 - Failure to respect the fundamental rights of women and children
 - Failure to respect indigenous graveyards and sacred places.

Recommendations of the Conference: revised ILO Convention 107, traditional law and customs of indigenous peoples respected including

jurisdiction of their own forums and procedures, engage the Intergovernmental Committee for European Migration, return control of suitable land to enable nations to live an economically viable existence, ownership of Indian land by indigenous peoples should be unrestricted.

Document: Draft Declaration of Principles for the Defense of the Indigenous Nations and Peoples of the Western Hemisphere-1977

1. Indigenous peoples shall be accorded recognition as nations, and proper subjects of international law, provided the people concerned desire to be recognized as a nation and meet the fundamental requirements of nationhood, namely:
 - a. A permanent population
 - b. Defined territory
 - c. A government
 - d. Ability to enter into relations with other [nations] and states.
2. Indigenous groups not meeting the requirements of nationhood are hereby declared to be subjects of international law ... provided they are identifiable groups having bonds of language, heritage, tradition, or other common identity.
3. No indigenous nation or group shall be deemed to have fewer rights, or lesser status for the sole reason that the nation or group has not entered into recorded treaties or agreements with any state.
4. Indigenous nations or groups shall be accorded such degree of independence as they

may desire in accordance with international law.

5. Treaties and other agreements entered into by indigenous nations or groups with ... states, whether denominated as treaties or otherwise, shall be recognized and applied in the same manner and according to the same international laws and principles as the treaties and agreements [as] with any state.

6. Treaties and agreements made with indigenous nations or groups shall not be subject to unilateral abrogation.

7. No State shall assert or claim to exercise any right of jurisdiction over any indigenous nation or group or the territory of such indigenous nation or group unless pursuant to a valid treaty or other agreement freely made with the lawful representatives of the indigenous nation or group.

8. No state shall claim or retain, by right of discovery or otherwise, the territories of an indigenous nation or group, except such lands as may have been lawfully acquired by valid treaty or other cessation freely made.

9. All states in the Western Hemisphere shall establish through negotiations or other appropriate means a procedure for the binding settlement of disputes, claims, or other matters relations to indigenous nations or groups. Such procedures shall be mutually acceptable to the parties, fundamentally fair, and consistent with international law.

10. It shall be unlawful for any state to take or permit any action or course of conduct

with respect an indigenous nation or group which will directly or indirectly result in the destruction or disintegration of such indigenous nation or group or otherwise threaten the national or cultural integrity of such nation or group, including but not limited to, the imposition and support of illegitimate governments and the introduction of non-indigenous religions to indigenous peoples by non-indigenous missionaries.

11. It shall be unlawful for any state to make or permit any action or course of conduct with respect to any indigenous nation or group which will directly or indirectly result in the destruction or deterioration of an indigenous nation or group through the effects of pollution of earth, air, water, or which in any way depletes, displaces or destroys any natural resource or other resources under the dominion of, or vital to the livelihood of an indigenous nation or group.

12. No state, through legislation, regulation or other means shall take actions that interfere with the sovereign power of an indigenous nation or group to determine its own membership.

Supplemental to the 1977 conference statements of principles and commitments it is important to note how the UN Working Group on Indigenous Populations (1982-1994) included many elements in the Draft UN Declaration on the Rights of Indigenous Peoples that was the foundation of the UN General Assembly approved Declaration in 2007. While states' representatives reviewing the Draft Declaration made significant changes

for the final Declaration key elements of the Draft did survive—further indicating nation and state agreement to principles and commitments. Detailed below are the main elements of the Draft Declaration that were announced and often carried over into the 2007 Declaration.

Document: UN Draft Declaration on the Rights of Indigenous Peoples (March 1994)

Part II, 6. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and to full guarantees against genocide or any other act of violence, including the removal of indigenous children from their families and communities under any pretext ...

Part II, 7. Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide, including prevention of and redress for:

- (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- (c) Any form of population transfer which has the aim or effect of violating or undermining any of their rights;
- (d) Any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;

(e) Any form of propaganda directed against them.

Part V. 19. Indigenous peoples have the right to maintain and develop their political, economic and social systems, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. Indigenous peoples who have been deprived of their means of subsistence and development are entitled to just and fair compensation.

Part V. 22. Indigenous peoples have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health and social security.

Part V. 23. Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to determine and develop all health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Part VI. 30. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands, territories and other resources, including the right to require that States obtain their free and informed consent prior to the approval of any project affecting their lands, territories and other resources, particularly in

connection with the development, utilization or exploitation of mineral, water or other resources. Pursuant to agreement with the indigenous peoples concerned, just and fair compensation shall be provided for any such activities and measures taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Part VII. 31. Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.

Part VII. 35. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with other peoples across borders.

Part VIII. 38. Indigenous peoples have the right to have access to adequate financial and technical assistance, from States and through international cooperation, to pursue freely their political, economic, social, cultural and spiritual development and for the enjoyment of the rights and freedoms recognized in this Declaration.

Part VII. 39. Indigenous peoples have the right to have access to and prompt decision through mutually acceptable and fair procedures for the resolution of conflicts and disputes with States, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall take into consideration the customs, traditions, rules and legal systems of the indigenous peoples concerned.

The next and most revealing stage of agreements between nations and states was revealed in the text of the UN World Conference on Indigenous Peoples Outcome Document adopted in September 2014. Key principles and commitments made by states to nations and commitments made by nations to states were explicitly stated in the text of Outcome Document.

Document: World Conference on Indigenous Peoples (2014)

Commitments made in the UN World Conference on Indigenous Peoples Outcome Statement concerning state and nation economic policy relations appear in: Paras. 9, 11, 17, 25*, 26

Of particular relevance to a need for domestic and international implementation protocols is the emphasis in paragraph 25 of the Statement emphasizing “traditional subsistence activities”

7. We commit ourselves to taking, in consultation and cooperation with indigenous peoples, appropriate measures at the national level, including legislative, policy and administrative measures, to achieve

the ends of the United Nations Declaration on the Rights of Indigenous Peoples and to promote awareness of it among all sectors of society, including members of legislatures, the judiciary and the civil service.

8. We commit ourselves to cooperating with indigenous peoples, through their own representative institutions, to develop and implement national action plans, strategies or other measures, where relevant, to achieve the ends of the Declaration.

9. We commit ourselves to promoting and protecting the rights of indigenous persons with disabilities and to continuing to improve their social and economic conditions, including by developing targeted measures for the aforementioned action plans, strategies or measures, in collaboration with indigenous persons with disabilities.

10. We commit ourselves to working with indigenous peoples to disaggregate data, as appropriate, or conduct surveys and to utilizing holistic indicators of indigenous peoples' well-being to address the situation and needs of indigenous peoples and individuals, in particular older persons, women, youth, children and persons with disabilities.

13. We commit ourselves to ensuring that indigenous individuals have equal access to the highest attainable standard of physical and mental health.

14. We commit ourselves to promoting the right of every indigenous child, in community with members of his or her group, to enjoy his

or her own culture, to profess and practise his or her own religion or to use his or her own language.

17. We commit ourselves to supporting the empowerment of indigenous women and to formulating and implementing, in collaboration with indigenous peoples, in particular indigenous women and their organizations, policies and programmes designed to promote capacity-building and strengthen their leadership.

18. We commit ourselves to intensifying our efforts, in cooperation with indigenous peoples, to prevent and eliminate all forms of violence and

25. We commit ourselves to developing, in conjunction with the indigenous peoples concerned, and where appropriate, policies, programmes and resources to support indigenous peoples' occupations, traditional subsistence activities, economies, livelihoods, food security and nutrition.

33. We commit ourselves to considering, at the seventieth session of the General Assembly, ways to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them, including any specific proposals made by the Secretary-General in response to the request made in paragraph 40 below.

35. We commit ourselves to respecting the contributions of indigenous peoples to ecosystem management and sustainable

development, including knowledge acquired through experience in hunting, gathering, fishing, pastoralism and agriculture, as well as their sciences, technologies and cultures.

This emphasis is supplemented in Paragraph 26 by the text that reads how states and nation should recognize the role that indigenous peoples can play in economic, social and environmental development through traditional sustainable agricultural practices, including traditional seed supply systems, and access to credit and other financial services, markets, secure land tenure, health care, social services, education, training, knowledge and appropriate and affordable technologies, including for irrigation, and water harvesting and storage.

In paragraph 31 the World Conference emphasized the need for the Secretary-General of the UN “in consultation and cooperation with indigenous peoples” begin the development of a “system-wide action plan to ensure a coherent approach to achieving the ends” of the UN Declaration on the rights of Indigenous Peoples.

Having included the primary international instruments that enshrine principles and commitments, but provided no mechanism for implementation it may be helpful to know how the documented principles and commitments apply to the six categories of engagement between nations and states. I note them here:

ECONOMIC Policy and Commitments

These are the relevant international instruments indicating nation and state agreement or commitments concerning economic matters:

Reference Source: International NGO Conference on Discrimination Against Indigenous Populations in the Americas (September 20-23, 1977)

Reference Source to Documents: World Council of Indigenous Peoples (1977–1991)

World Council of Indigenous Peoples, Declaration on Human Rights. [fourteen principles] (Kiruna, Sweden, September 24–27, 1977)

World Council of Indigenous Peoples, Remarks before the Sub-Committee on Petitions, Information and Assistance of the World Council of Indigenous Peoples, President Jose Carlos Morales (New York City, 24 June 1981)

World Council of Indigenous Peoples, International NGO Conference on Indigenous Peoples and the Land (WCIP Third General Assembly, April 1981)

World Council of Indigenous Peoples, Land Rights of the Indigenous Peoples, International Agreements and Treaties, Land Reform and Systems of Tenure. (International NGO Conference on Indigenous Peoples and the Land September 1981)

World Council of Indigenous Peoples, Statement Prepared by Eloi Machoro of New

Caledonia before the Third General Assembly of the World Council of Indigenous Peoples. (WCIP Third General Assembly, April 1981).

World Council of Indigenous Peoples, Indigenous Homelands and Transnational Corporations. (WCIP, Canberra, Australia 1981)

Document: Convention on Biodiversity (1992)

Preamble. Paragraph 12: recognizing the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components,

ARTICLE 8(J) (IN-SITU CONSERVATION): Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices

Article 17 2. Exchange of Information: exchange of information shall include exchange of results of technical, scientific

and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, indigenous and traditional knowledge as such and in combination with the technologies referred to in Article 16, paragraph 1. It shall also, where feasible, include repatriation of information.

Article 18 4. Based on state legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies ...

Reference Document:

UN Draft Declaration on the Rights of Indigenous Peoples

Annexed to E.CN/Sub.2/1994/45

Reference Document: Cobo, JRM, (1981) Study of the Problem of Discrimination Against Indigenous Populations. Final Report. Special Rapporteur, Mr. José R. Martínez Cobo. E/CM.4/Sub.2/476/Add.4 30 July 1982.

Reference Document: Martínez, Miguel Alfonso. (1999). Study on Treaties, agreements and other constructive arrangements between States and indigenous populations. UN Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities. E/CN.4/Sub.2/1999/20

Reference Document: Daes, Erica-Irene (2004). Prevention of Discrimination and Protection of Indigenous Peoples,

Indigenous peoples' permanent sovereignty over natural resources. Final report. Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities. E/CN.4/Sub.2/2004/30.

Reference Document: Draft UN Declaration on the Rights of Indigenous Peoples (2007)

Reference Document: UN Draft Declaration on the Rights of Indigenous Peoples (March 1994)

Particular references to economic policy and commitments are these:

Document: Declaration on the Rights of Indigenous Peoples (2007)

25. We commit ourselves to developing, in conjunction with the indigenous peoples concerned, and where appropriate, policies, programmes and resources to support indigenous peoples' occupations, traditional subsistence activities, economies, livelihoods, food security and nutrition.

34. We encourage Governments to recognize the significant contribution of indigenous peoples to the promotion of sustainable development, in order to achieve a just balance among the economic, social and environmental needs of present and future generations, and the need to promote harmony with nature to protect our planet and its ecosystems, known as Mother Earth in a number of countries and regions.

Document: Alta Declaration (2013)

Principles and commitments made and proposed by more than 400 delegates to the Global Indigenous Preparatory Conference for the High-Level Plenary Meeting of the General Assembly to be known as the World Conference on Indigenous Peoples:

Part 1: Paragraph 3. ... establishment of mechanisms to ensure that States obtain the free, prior, and informed consent of Indigenous Peoples and Nations before entering their lands and territories or relocating them. Past relocations require just and fair compensation and, where possible, the option of return. In such instances where Indigenous Peoples have been forcibly evicted from their ancestral lands and territories, that States provide immediate redress including compensation and humanitarian assistance as required

Part 1: Paragraph 4. ... States uphold and respect the self determination of Indigenous Peoples and Nations who do not want resource extraction in their lands and territories

Part 2: Paragraph 2. ... the General Assembly [of the UN] call for the establishment of an international mechanism to provide oversight, redress, restitution and the implementation of Treaties, agreements and other constructive arrangements between Nations and States and successor states.

Part 3: Implementation of the rights of Indigenous Peoples

Paragraph 1. Self-determination includes, inter alia, the right and power of Indigenous Peoples to negotiate on an equal basis with States the standards and mechanisms that will govern relationships between them.

Paragraph 2. ... States, with full, equal and effective participation of indigenous peoples ...ensure that local, provincial and national laws, policies and procedures comply with international standards including human rights treaties and the United Nations Declaration on the Rights of Indigenous Peoples

Paragraph 3. ... States enter into new treaties, agreements and other constructive arrangements with Indigenous Peoples as a way to effectively implement their rights and to resolve violent conflicts and disputes

Paragraph 5. ... States refrain from further militarizing the lands and territories of Indigenous Peoples and Nations and that the security of all Indigenous Peoples be upheld with special measures being taken to ensure the protection of Indigenous women and children.

Paragraph 6. ... States consult with Indigenous Peoples and Nations on the establishment and development of national commissions of inquiry or other independent, impartial and otherwise effective investigative mechanisms to document matters of impunity and other human rights concerns of Indigenous Peoples, and to ensure the recommendations to governments to end impunity for violations of Indigenous Peoples' rights are effectively implemented.

Part 4: Indigenous Peoples' priorities for development – (free, prior and informed consent)

Paragraph 1. Indigenous Peoples' priorities for development are predicated on the full and effective recognition of their rights to lands, territories and natural resources and the connection between customs, belief systems, values and traditional knowledge ... culture be integrated as a pillar into strategies that relate to development

Paragraph 2. ... States uphold and respect Indigenous Peoples' and Nations right of free, prior and informed consent before any activities are carried out in the lands and territories of Indigenous peoples.

Paragraph 3. ... States take a strategic approach to crime and justice with Indigenous Peoples which is informed by standardized and disaggregated data collection ... focused on prevent and diversion as well as protection and rehabilitation.

Paragraph 5. ... States collect, analyze and disaggregate data

Document: World Conference on Indigenous Peoples (2014)

Commitments made in the UN World Conference on Indigenous Peoples Outcome Statement concerning state and nation economic policy relations appear in: Paras. 9, 11, 17, 25*, 26

Of particular relevance to a need for domestic and international implementation protocols is the emphasis in paragraph 25 of the Statement emphasizing "traditional subsistence activities"

7. We commit ourselves to taking, in consultation and cooperation with indigenous peoples, appropriate measures at the national level, including legislative, policy and administrative measures, to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples and to promote awareness of it among all sectors of society, including members of legislatures, the judiciary and the civil service.

8. We commit ourselves to cooperating with indigenous peoples, through their own representative institutions, to develop and implement national action plans, strategies or other measures, where relevant, to achieve the ends of the Declaration.

9. We commit ourselves to promoting and protecting the rights of indigenous persons with disabilities and to continuing to improve their social and economic conditions, including by developing targeted measures for the aforementioned action plans, strategies or measures, in collaboration with indigenous persons with disabilities.

10. We commit ourselves to working with indigenous peoples to disaggregate data, as appropriate, or conduct surveys and to utilizing holistic indicators of indigenous peoples' well-being to address the situation and needs of indigenous peoples and individuals, in particular older persons, women, youth, children and persons with disabilities.

13. We commit ourselves to ensuring that indigenous individuals have equal access to

the highest attainable standard of physical and mental health.

14. We commit ourselves to promoting the right of every indigenous child, in community with members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion or to use his or her own language.

17. We commit ourselves to supporting the empowerment of indigenous women and to formulating and implementing, in collaboration with indigenous peoples, in particular indigenous women and their organizations, policies and programmes designed to promote capacity-building and strengthen their leadership.

18. We commit ourselves to intensifying our efforts, in cooperation with indigenous peoples, to prevent and eliminate all forms of violence and

25. We commit ourselves to developing, in conjunction with the indigenous peoples concerned, and where appropriate, policies, programmes and resources to support indigenous peoples' occupations, traditional subsistence activities, economies, livelihoods, food security and nutrition.

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35. We commit ourselves to respecting the contributions of indigenous peoples to ecosystem management and sustainable development, including knowledge acquired through experience in hunting, gathering, fishing, pastoralism and agriculture, as well as their sciences, technologies and cultures.

This emphasis is supplemented in Paragraph 26 by the text that reads how states and nation should recognize the role that indigenous peoples can play in economic, social and environmental development through traditional sustainable agricultural practices, including traditional seed supply systems, and access to credit and other financial services, markets, secure land tenure, health care, social services, education, training, knowledge and appropriate and affordable technologies, including for irrigation, and water harvesting and storage.

In paragraph 31 the World Conference emphasized the need for the Secretary-General of the UN “in consultation and cooperation with indigenous peoples” begin the development of a “system-wide action plan to ensure a coherent approach to achieving the ends” of the UN Declaration on the rights of Indigenous Peoples.

ENVIRONMENTAL policy and commitments

Numerous nation and state instruments enshrine principles, policies and commitments to

address the environment and related matters, but the most direct and clear relationship between nation policies and commitments and state policies and commitments appear in several key instruments. These are included below with relevant parts and sections of those instruments.

These are the relevant international instruments indicating nation and state agreement or commitments concerning environmental matters:

Document: International NGO Conference on Discrimination Against Indigenous Populations in the Americas–September 20-23, 1977.

1. Indigenous peoples shall be accorded recognition as nations, and proper subjects of international law, provided the people concerned desire to be recognized as a nation and meet the fundamental requirements of nationhood, namely:
 - a. A permanent population
 - b. Defined territory
 - c. A government
 - d. Ability to enter into relations with other [nations] and states.
2. Indigenous nations or groups shall be accorded such degree of independence as they may desire in accordance with international law.
3. Treaties and other agreements entered into by indigenous nations or groups with ... states, whether denominated as treaties or otherwise, shall be recognized and applied in the same manner and according to the same international laws and principles as the

treaties and agreements [as] with any state.

4. Indigenous groups not meeting the requirements of nationhood are hereby declared to be subjects of international law ... provided they are identifiable groups having bonds of language, heritage, tradition, or other common identity.

10. It shall be unlawful for any state to take or permit any action or course of conduct with respect an indigenous nation or group which will directly or indirectly result in the destruction or disintegration of such indigenous nation or group or otherwise threaten the national or cultural integrity of such nation or group, including but not limited to, the imposition and support of illegitimate governments and the introduction of non-indigenous religions to indigenous peoples by non-indigenous missionaries.

11. It shall be unlawful for any state to make or permit any action or course of conduct with respect to any indigenous nation or group which will directly or indirectly result in the destruction or deterioration of an indigenous nation or group through the effects of pollution of earth, air, water, or which in any way depletes, displaces or destroys any natural resource or other resources under the dominion of, or vital to the livelihood of an indigenous nation or group.

ILO Convention on Indigenous and Tribal Peoples (1989)

Part 1, Article 1: Convention Applies to:

(a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations

(b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

Article 1.2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

Article 1.3. The use of the term “peoples” in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

Part 2, Articles 13-19:

13.1. ... governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories.

13.2. The use of the term “lands” in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the

areas which the peoples concerned occupy or otherwise use.

14.1 The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized.

14.2 Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

14.3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

15.1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

15.2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programs for the exploration or exploitation of such resources pertaining to their lands.

16.1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.

16.2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent.

16.3 Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

16.4 When such return is not possible, as determined by agreement ... these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied...

17.1. Procedures established by the peoples concerned for transmission of land rights among members of these peoples shall be respected.

17.3 Persons not belonging to these peoples shall be prevented from taking advantage of their customs or lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belong to them.

Article 4.1 Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.

Article 7.3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental

criteria for the implementation of these activities.

Article 7.4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

Article 32. Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and cooperation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

Document: UN Declaration on the Rights of Indigenous Peoples (2007)

35. We commit ourselves to respecting the contributions of indigenous peoples to ecosystem management and sustainable development, including knowledge acquired through experience in hunting, gathering, fishing, pastoralism and agriculture, as well as their sciences, technologies and cultures.

Document: Alta Declaration–Outcome Document (2013)

Principles and commitments made and proposed by more than 400 delegates to the Global Indigenous Preparatory Conference for the High-Level Plenary Meeting of the General Assembly to be known as the World Conference on Indigenous Peoples: Part 4: Paragraph 1, 2, 3, 4, 5.

Part 4: Indigenous Peoples' priorities for development–(free, prior and informed

consent)

Paragraph 1. Indigenous Peoples' priorities for development are predicated on the full and effective recognition of their rights to lands, territories and natural resources and the connection between customs, belief systems, values and traditional knowledge ... culture be integrated as a pillar into strategies that relate to development

Paragraph 2. ... States uphold and respect Indigenous Peoples' and Nations right of free, prior and informed consent before any activities are carried out in the lands and territories of Indigenous peoples.

Paragraph 3. ... States take a strategic approach to crime and justice with Indigenous Peoples which is informed by standardized and disaggregated data collection ... focused on prevent and diversion as well as protection and rehabilitation.

Paragraph 5. ... States collect, analyze and disaggregate data

Document: World Conference on Indigenous Peoples (2014)

Commitments or points of “encouragement” made by states' parties in the UN World Conference on Indigenous Peoples Outcome Statement concerning state and nation environmental policy relations appear in: Paras. 34, 35, 36.

The states' agreed in Paragraph 34 to “encourage” UN member states to recognize the significant contribution of indigenous

peoples to the promotion of sustainable development to ... achieve... *a just balance between economic, social and environmental needs of the present and future generations.*

The Commitment is made in Paragraph 35 for UN member states to respect “*the contributions of indigenous peoples to ecosystem management and sustainable development, including knowledge acquired through experience in hunting, gathering, fishing, pastoralism and agriculture, as well as their sciences, technologies and cultures.*”

UN member states and recommendations from nations are presented in Paragraph 36 stating, “*indigenous peoples’ knowledge and strategies to sustain their environment should be respected and taken into account when we develop national and international approaches to climate change mitigation and adaptation.*”

25. We commit ourselves to developing, in conjunction with the indigenous peoples concerned, and where appropriate, policies, programmes and resources to support indigenous peoples’ occupations, traditional subsistence activities, economies, livelihoods, food security and nutrition.

33. We commit ourselves to considering, at the seventieth session of the General Assembly, ways to enable the participation of indigenous peoples’ representatives and institutions in meetings of relevant United Nations bodies on issues affecting them, including any specific proposals made by the Secretary-General in

response to the request made in paragraph 40 below.

35. We commit ourselves to respecting the contributions of indigenous peoples to ecosystem management and sustainable development, including knowledge acquired through experience in hunting, gathering, fishing, pastoralism and agriculture, as well as their sciences, technologies and cultures.

CULTURE AND SOCIETY principles and commitments

These are the relevant international instruments indicating nation and state agreement or commitments concerning cultural and social matters:

Document: International NGO Conference on Discrimination Against Indigenous Populations in the Americas–September 20-23, 1977.

Social and Cultural Commission

Preamble Paragraph I. The destruction of indigenous cultures in the Americas is historically inseparable from the considerations which motivated, and which still motivate the criminal acts of the European colonizers, the primary consideration being human exploitation and the greed for land and cheap labour. To destroy a culture is to destroy the basis for an autonomous society able to defend the interest of its members.

- Culture is the heritage of all peoples. Its preservation among a community is a

fundamental guarantee of that community's physical survival and well-being. It is the human right of all peoples to develop and transmit their own culture.

- The commission of Ethnocide must be defined as both a cause and a part of Genocide, in that the ulterior purpose is the disappearance of the indigenous community.
- CA guarantee must be secured where necessary for the right of indigenous peoples to participate in the national life of their countries wherever they live, on the basis of their own culture, values and ideals. Cultural and social assimilation into the dominant society must proceed from the free choice of individuals and never from the coercive effort of the dominant society.
- Indigenous communities must be guaranteed the control and supervision of both the form and content of education of their people.
- Indigenous peoples must be protected from the following practices:
 - Sterilization in the absence of free and informed consent.
 - Adoption, sponsorship and foster-home actions that remove Indian children from the native community and culture.

Medical-experimentation practices at the risk of the health and integrity of their subjects

Legal Commission

- Immediate application of the principle of self-determination for indigenous peoples, and

their recognition as nations.

- Recognition of some nations that have concluded treaties assert immediate recognition as states under international law based on treaties that clearly recognized nations' sovereign status.
- States claim under the UN Charter the principle of territorial integrity and preservation of state sovereignty that can be affected by nations' assertion of self-determination.

Indigenous Laws and Courts

- Indigenous laws have existed and still exist among indigenous peoples. Nations such as the Iroquois traditional councils continue to exercise their full system of law and custom.
- Customs are the sources of law.
- Traditional law and customs of indigenous peoples become respected, including the jurisdiction of their forums and procedures for applying their law and customs.

Document: ILO Convention on Indigenous and Tribal Peoples (1989)

Part 1, Article 1: Convention Applies to:

- (a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations
- (b) Peoples in independent countries who

are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

Article 1.2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

Article 1.3. The use of the term “peoples” in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

Part 2, Articles 13-19:

13.1. ... governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories.

13.2. The use of the term “lands” in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

Article 4.1 Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.

Article 32. Governments shall take appropriate measures, including by means of international

agreements, to facilitate contacts and cooperation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

UN Declaration on the Rights of Indigenous Peoples (2007)

ARTICLE 8, 1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

Alta Declaration (2013)

Principles and commitments made and proposed by more than 400 delegates to the Global Indigenous Preparatory Conference for the High-Level Plenary Meeting of the General Assembly to be known as the World Conference on Indigenous Peoples contained in the WCIP (2014) Outcome Statement: Part 4: Paragraphs: 9, 10, 11, 12, 13, 14, 19, 24, 25, 26, 27, 29

Paragraph 9: Commitment to promoting and protecting the rights of indigenous persons with disabilities and to continuing to improve their social and economic conditions, including by developing targeted measures for the aforementioned action plans, strategies or measures, in collaboration with indigenous persons with disabilities. We also commit ourselves to ensuring that national legislative, policy and institutional structures relating to indigenous peoples are inclusive of indigenous persons with disabilities and contribute to the advancement of their rights.

Paragraph 10: Commitment to work with indigenous peoples to disaggregate data, as appropriate, or conduct surveys and to utilizing holistic indicators of indigenous peoples' well-being to address the situation and needs of indigenous peoples and individuals, in particular older persons, women, youth, children and persons with disabilities.

Paragraph 11: Commitment to ensure equal access to high-quality education that recognizes the diversity of the culture of indigenous peoples and to health, housing, water, sanitation and other economic and social programmes..."

Paragraph 17: Commitment to empowerment of indigenous women and to formulating and implementing, in collaboration with indigenous peoples, ... programs designed to promote capacity-building and strengthen their leadership.

POLITICAL (GOVERNANCE) principles and commitments

These are the relevant international instruments indicating nation and state agreement or commitments concerning political governance matters:

Document: International NGO Conference on Discrimination Against Indigenous Populations in the Americas–September 20-23, 1977.

Legal Commission

Legal Status of Indigenous Peoples

- Demand immediate application of the principle of self-determination for indigenous peoples, and their recognition as nations.
- Recognition of some nations that have concluded treaties assert immediate recognition as states under international law based on treaties that clearly recognized nations' sovereign status.
- States claim under the UN Charter the principle of territorial integrity and preservation of state sovereignty that can be affected by nations' assertion of self-determination.
- The Declaration of Principles for the Defense of Indigenous Nations and Peoples of the Western Hemisphere come under study by appropriate non-governmental organizations, and that the Declaration come to the attention of the appropriate organs of the United Nations.

Indigenous Laws and Courts

- Indigenous laws have existed and still exist among indigenous peoples.
- Customs are the sources of law.
- Traditional law and customs of indigenous peoples become respected, including the jurisdiction of their forums and procedures for applying their law and customs.

Legal Discrimination

- Outsider-imposed systems of justice negate the inherent legal right of indigenous peoples to control and regulate their own affairs, such as:

- Acts of outright aggression by the military-police forces
- Torture, arrest and false imprisonment
- Failure to prevent violence persecution by racist/neo-fascist organizations, mineral companies, land agents.
- Infiltration and destabilization of legally constituted indigenous organizations by security agents
- Controlling or manipulating legal jurisdiction of major crimes, preventing indigenous peoples from being judged by a jury of their peers
- Failure to respect the fundamental rights of women and children
- Failure to respect indigenous graveyards and sacred places.

Recommendations of the Conference: revised ILO Convention 107, traditional law and customs of indigenous peoples respected including jurisdiction of their own forums and procedures, engage the Intergovernmental Committee for European Migration, return control of suitable land to enable nations to live an economically viable existence, ownership of Indian land by indigenous peoples should be unrestricted,

Document: ILO Convention on Indigenous and Tribal Peoples (1989)

Part 1, Article 1: Convention Applies to:

- (a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations
- (b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

Article 1.2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

Article 1.3. The use of the term “peoples” in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

Part 2, Articles 13-19:

13.1. ... governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories.

13.2. The use of the term “lands” in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

Documents: UN Declaration on the Rights of Indigenous Peoples (2007)

ARTICLE 3: Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

ARTICLE 6: Every indigenous individual has the right to a nationality.

Document: Alta Declaration–Outcome Document (2013)

Principles and commitments made and proposed by more than 400 delegates to the Global Indigenous Preparatory Conference for the High-Level Plenary Meeting of the General Assembly to be known as the World Conference on Indigenous Peoples: Part 4: Paragraph 3,

World Conference on Indigenous Peoples (2014)

Commitments or points of “encouragement” made by states’ parties in the UN World Conference on Indigenous Peoples Outcome Statement concerning state and nation Justice policy relations appear in: Preamble, Paragraphs 5, 6, 7. Paragraphs 3, 15, 17, 20, 31

Preamble: Paragraph 5: United Nations must uphold their solemn obligations under the United Nations Charter to develop friendly relations among nations based on

respect for the principle of equal rights and self-determination of peoples, to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and to promote and encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and in particular in the specific cultural context of Indigenous Peoples and the standards recognized by the United Nations Declaration on the Rights of Indigenous Peoples.

Preamble: Paragraph 6: *must uphold their obligations in relation to peremptory norms of international law, including equality, non-discrimination, the absolute prohibition of racial discrimination and genocide as well as existing state obligations under customary international law principles concerning the right of self-determination of all peoples, including Indigenous Peoples, and our rights to lands, territories and resources; redress and reparations; free, prior, and informed consent; and our distinct economic, social, cultural and political rights.*

Preamble: Paragraph 8: *... affirm that the inherent and inalienable right of self-determination is preeminent and is a prerequisite for the realization of all rights.*

SECURITY principles and commitments

These are the relevant international instruments indicating nation and state agreement or commitments concerning security matters:

Document: International NGO Conference on Discrimination Against Indigenous Populations in the Americas—September 20-23, 1977.

Economic Commission

Multinational Corporations: Demands for materials and resources and the inherent profit quest, the multinational corporations have accelerated development and exploitation of native peoples and resources resulting in many cultures and peoples are on the brink of annihilation.

Land Question: Mother Earth provides the sustenance of all life. The land must be respected, carefully used, and meticulously restored ... the land base of indigenous peoples has been steadily diminished by colonial exploitation and the result has been a policy of genocide against the indigenous peoples.

Recommendations:

- Investigation of inhumane and exploitive use of indigenous peoples' labor in South and Central America and enforcement of the U.N. Convention and Supplementary Convention on Slavery, with Particular Regard to the Force Labour and Induced Indebtedness of Indigenous Peoples.
- Affirm the right of self-determination for Dené Nation and the Inuit
- Investigation of Alaskan Native Land Claims Act in cooperation with Alaskan Natives.
- Immediate action to arrest the genocide being committed by governments and

multinational corporations and multilateral aid in the Amazon Basin.

- Protection and preservation of existing Native Land bases from exploitation by multinational corporations.
- Environmental impact investigations of the exploitation of non-renewable natural resources on Indian land, especially water.
- The right of self-determination of aboriginal people in the development of their land and resources according to their own values and social structures and laws.
- Affirmation of the Declaration of Principles of Indigenous Nations and Defense of Indigenous Nations and peoples of the Western Hemisphere.

Social and Cultural Commission

- Preamble Paragraph I. The destruction of indigenous cultures in the Americas is historically inseparable from the considerations which motivated, and which still motivate the criminal acts of the European colonizers, the primary consideration being human exploitation and the greed for land and cheap labour. To destroy a culture is to destroy the basis for an autonomous society able to defend the interest of its members. It is noteworthy that this Commission has had great difficulty in isolating the destruction of culture from other acts of genocide, and it is necessary to constantly bear in mind the links existing between these phenomena.
- Culture is the heritage of all peoples. Its preservation among a community is a

fundamental guarantee of that community's physical survival and well-being. It is the human right of all peoples to develop and transmit their own culture.

- The commission of Ethnocide must be defined as both a cause and a part of Genocide, in that the ulterior purpose is the disappearance of the indigenous community.
- CA guarantee must be secured where necessary for the right of indigenous peoples to participate in the national life of their countries wherever they live, on the basis of their own culture, values and ideals. Cultural and social assimilation into the dominant society must proceed from the free choice of individuals and never from the coercive effort of the dominant society.
- Indigenous communities must be guaranteed the control and supervision of both the form and content of education of their people.
- Indigenous peoples must be protected from the following practices:
 - Sterilization in the absence of free and informed consent.
 - Adoption, sponsorship and foster-home actions that remove Indian children from the native community and culture.
 - Medical-experimentation practices at the risk of the health and integrity of their subjects.

Legal Commission

Legal Status of Indigenous Peoples

- Demand immediate application of the

principle of self-determination for indigenous peoples, and their recognition as nations.

- Recognition of some nations that have concluded treaties assert immediate recognition as states under international law based on treaties that clearly recognized nations' sovereign status.

Document: ILO Convention on Indigenous and Tribal Peoples (1989)

Part 1, Article 1: Convention Applies to:

(a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations

(b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

Article 1.2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

Article 1.3. The use of the term "peoples" in this Convention shall not be construed

as having any implications as regards the rights which may attach to the term under international law.

Part 2, Articles 13-19:

13.1. ... governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories.

13.2. The use of the term “lands” in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

15.1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

15.2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programs for the exploration or exploitation of such resources pertaining to their lands.

16.1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.

16.2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent.

16.3 Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

16.4 When such return is not possible, as determined by agreement ... these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied...

17.1. Procedures established by the peoples concerned for transmission of land rights among members of these peoples shall be respected.

17.3 Persons not belonging to these peoples shall be prevented from taking advantage of their customs or lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belong to them.

Document: UN Declaration on the Rights of Indigenous Peoples (2007)

Article 7, 1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

Article 7, 2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group or another group.

Article 30, 1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Document: Alta Declaration (2013)

Principles and commitments made and proposed by more than 400 delegates to the Global Indigenous Preparatory Conference for the High-Level Plenary Meeting of the General Assembly to be known as the World Conference on Indigenous Peoples: Part 3: Paragraph 5,

Part 3: Paragraph 5: *States refrain from further militarizing the lands and territories of Indigenous Peoples and Nations and that the security of all Indigenous Peoples be upheld with special measures being taken to ensure the protection of Indigenous women and children.*

Part 3: Paragraph 5: *States consult with Indigenous Peoples and Nations on the establishment and development of national commissions of inquiry or other independent, impartial and otherwise effective investigative mechanisms to document matters of impunity and other human rights concerns of Indigenous Peoples and to ensure that recommendations*

to [states'] governments to end impunity for violations of Indigenous Peoples' rights are effectively implemented.

JUSTICE principles and commitments:

These are the relevant international instruments indicating nation and state agreement or commitments concerning Justice matters:

Document: International NGO Conference on Discrimination Against Indigenous Populations in the Americas–September 20-23, 1977.

Legal Discrimination

- Outsider-imposed systems of justice negate the inherent legal right of indigenous peoples to control and regulate their own affairs, such as:
 - Acts of outright aggression by the military-police forces
 - Torture, arrest and false imprisonment
 - Failure to prevent violence persecution by racist/neo-fascist organizations, mineral companies, land agents.
 - Infiltration and destabilization of legally constituted indigenous organizations by security agents
 - Controlling or manipulating legal jurisdiction of major crimes, preventing indigenous peoples from being judged by a jury of their peers

- Failure to respect the fundamental rights of women and children
- Failure to respect indigenous graveyards and sacred places.

Document: ILO Convention on Indigenous and Tribal Peoples (1989)

Part 1, Article 1: Convention Applies to:

(a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations

(b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

Article 1.2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.
Article 1.3. The use of the term “peoples” in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

Document: UN Declaration on the Rights of Indigenous Peoples (2007)

Article 7, 2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group or another group.

Article 8.1 Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

Article 8, 2, States shall provide effective mechanisms for prevention of, and redress for:

- (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights
- (d) Any form of forced assimilation or integration.

Document: Alta Declaration (2013)

Principles and commitments made and proposed by more than 400 delegates to the Global Indigenous Preparatory Conference for the High-Level Plenary Meeting of the General Assembly to be known as the World Conference on Indigenous Peoples: Preamble, Paragraphs 3Part 1: Paragraph 3, Part 4: Paragraph 2, 3, 4
Preamble: Paragraph 2: *colonial strategies, policies, and actions designed to destroy Indigenous Peoples and Nations thereby resulting in the ongoing usurpation of Indigenous Peoples' lands, territories and resources; extensive destruction of Indigenous Peoples' political and legal institutions;*

discriminatory practices of colonizing forces aimed at destroying Indigenous Peoples' cultures; failure to honour Treaties, agreements and other constructive arrangements with Indigenous Nations; genocide, crimes against humanity, war crimes and the militarization of Indigenous Peoples and their lands; corporatization and commodification of Indigenous Peoples; and the imposition of "development" models that are destroying the life-giving capacities of Mother Earth and producing a range of detrimental impacts of which climate change could prove to be the most destructive.

Preamble: Paragraph 6: must uphold their obligations in relation to peremptory norms of international law, including equality, non-discrimination, the absolute prohibition of racial discrimination and genocide as well as existing state obligations under customary international law principles concerning the right of self-determination of all peoples, including Indigenous Peoples, and our rights to lands, territories and resources; redress and reparations; free, prior, and informed consent; and our distinct economic, social, cultural and political rights.

Part 1 Paragraph 3: ... establishment of mechanisms to ensure the States obtain the free, prior and informed consent of indigenous Peoples and Nations before entering their lands and territories or relocating them.

Part 4: Paragraph 2: ... States uphold and respect Indigenous Peoples' and Nations right of free, prior and informed consent before any activities

are carried out in the lands and territories of Indigenous Peoples

Part 4: Paragraph 3: ... States take a strategic approach to crime and justice with Indigenous Peoples which is informed by standardised and disaggregated data collection and which is focused on prevention and diversion as well as protection and rehabilitation

World Conference on Indigenous Peoples (2014)

Commitments or points of "encouragement" made by states' parties in the UN World Conference on Indigenous Peoples Outcome Statement concerning state and nation Justice policy relations appear in: Paras. 4, 16, 18

4. We reaffirm our solemn commitment to respect, promote and advance and in no way diminish the rights of indigenous peoples and to uphold the principles of the Declaration.

10. We commit ourselves to working with indigenous peoples to disaggregate data, as appropriate, or conduct surveys and to utilizing holistic indicators of indigenous peoples' well-being to address the situation and needs of indigenous peoples and individuals, in particular older persons, women, youth, children and persons with disabilities.

16. We acknowledge that indigenous peoples' justice institutions can play a positive role in providing access to justice and dispute resolution and contribute to harmonious relationships within indigenous peoples' communities and within society. We commit

ourselves to coordinating and conducting dialogue with those institutions, where they exist.

18. We commit ourselves to intensifying our efforts, in cooperation with indigenous peoples, to prevent and eliminate all forms of violence and discrimination against indigenous peoples and individuals, in particular, women, children, youth, older persons and persons with disabilities, by strengthening legal, policy and institutional frameworks.

21. We also recognize commitments made by States, with regard to the Declaration, to establish at the national level, in conjunction with the indigenous peoples concerned, fair, independent, impartial, open and transparent processes to acknowledge, advance and adjudicate the rights of indigenous peoples pertaining to lands, territories and resources.

FURTHER REFERENCES IN CNS REFERENCE LIBRARY:

Cobo, JRM, (1981) Study of the Problem of Discrimination Against Indigenous Populations. Final Report. Special Rapporteur, Mr. José R. Martínez Cobo. E/CM.4/Sub.2/476/Add.4 30 July 1982.

Martínez, Miguel Alfonso. (1999). Study on Treaties, agreements and other constructive arrangements between States and indigenous populations. UN Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities. E/CN.4/Sub.2/1999/20

Daes, Erica-Irene (2004). Prevention of Discrimination and Protection of Indigenous Peoples, Indigenous peoples' permanent sovereignty over natural resources. Final report. Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities. E/CN.4/Sub.2/2004/30.

The Center for World Indigenous Studies does not suggest that the information contained here is all encompassing, but rather we do suggest that key principles and commitments cited in the many documents and references may assist to advance the process of nations and states implementing procedures under free, prior and informed consent to establish comity in the 21st century.

This Article may be cited as:

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