

## SOVEREIGNTY PEOPLES INFORMATION NETWORK

### *Delegation to meet with and present written submission to*

Alfonso Rodriguez Martinez, member of the Working Group on Indigenous Populations,  
Special Rapporteur for the Study on Treaties and other Constructive Arrangements between Indigenous Peoples  
and States.

**Seattle, Washington** September 1994

“We walk together to strengthen, maintain and uphold the principles of our sovereignty which are responsibilities handed down by the Creator, passed on to us by our ancestors, and which are a sacred trust of our Peoples to protect for our future generations.

“As an information network, we will set up an Action Information Centre to keep all groups informed, to research, collect and compile and disseminate documents which any or all of the groups may need or want.

“We will pursue finances to assist us in the active work of the Sovereignty Peoples Information Network.

“Information contact persons for each Nation group in the Sovereignty Peoples Information Network will be responsible to disseminate information outward to their group and to communicate their group’s information back to the Information Centre.

“The Sovereignty Peoples Information Network Centre will be housed at the Residence of Glen Douglas, Elder and Spokesperson for Tommy Gregoire, traditional spokesperson of the Confederated Okanagan/Shuswap.

### **CONTACT PERSONS:**

#### **NUXALK NATION**

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#### **HAIDA GWAI NATION**

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#### **LIL’WAT NATION**

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#### **SUKINAKAIN NATION**

Glen Douglas , Jeannette Armstrong, Bob Campbell

Pierre Kruger (Sinixt)

## **Answering question (a) of Part I**

*(Martinez' questionnaire is attached at the end)*

### **16. What is the position of your people/organization with respect to the principles and norms that govern the interpretation of treaties and other instruments?**

**Answer** In order to answer this question we must refer to Canada's construct. Please refer to additional information provided in question 24. Canada, in right of Britain has never honoured its obligations under the 1763 Proclamation and the arrangements it made as Canada to interpret Sec 91(24) of the BNA Act and now Sec 35 of the Canada Act toward a possible new constitution. It was done without approval or consultation with any peoples of non-treaty areas of what Canada now calls British Columbia, including those peoples whose land and rights have been intruded upon by the US/Canada international boundaries. If Canada is acting under the principles and norms that govern the interpretation of the instruments created by Britain, then we abhor and demand they be changed.

### **17. Would you be willing to make a new treaty today with the national Government? if your answer is no, please explain why. If your answer is yes, please indicate what you want to include in a new treaty.**

**Answer** NO. The sovereign peoples of the Nations of Haida Gwaii, Lil'wat, Sukinakaix Scewepmec, Okanagan, Nuxalk, Patcheedht recognized that our sovereignty originates from our Creator and was conveyed to us when he placed our people in our territories on this island, North America. We were given instructions under which our people have lived in good health since time immemorial. Our spirituality is a sacred trust. It is through our values that we live under the instructions of the Creator. Our values form the foundation of our survival. Therefore our first responsibility is to protect our spirituality.

Our people are a sacred trust. Countless generations to come will carry the sacred trust of our values from one generation to the next to keep it a living thing. Therefore our second responsibility is to protect our future generations.

Our culture is a sacred trust. The values carried by generations of our people are passed through the language, customs and knowledge that we practice in our daily lives. Therefore, our third responsibility is to protect our culture.

The land is a sacred trust. Our knowledge and customs are understood and practiced through our relationship to our land, and in that way it protects and ensures our survival. Therefore, the land is the living body of our spirituality. It is our mother, nourishing us in all ways, physically, spiritually, mentally and emotionally. Therefore, our fourth responsibility is to protect our land.

We hold these truths to be the truth upon which we stand as one. We have never sold the title to our lands or the rights to its use or the resources on it. We have never made any agreements that gave any other nation the right to take any of our lands or resources into their possessions. We have never lost a war with any other nation. Therefore, no other nation may claim any of our lands by conquest. We have never consented to join or become subjects of any other nations of the world. We will never surrender our rights to carry out the aforementioned instructions and responsibilities conveyed to us by our Creator. We will never betray our children. We will never consent to extinguish or surrender our sovereignty to any other nation of the world.

Because at this time, these governments of Canada and the US has neither the capacity nor the intent to honour or respect any of our Nations in their right to be peoples with full self-determination. We will not participate in our own genocide/termination.

**18. What do you think would be the best way to see that treaties with Indigenous peoples are enforced and respected?**

**Answer** This question is not applicable to our unique situation. We declare absolute sovereignty to be a governing principle of the rights all Indigenous Nations and where nations who have treaties fail to adhere to this principle, they are to be brought to task by all who uphold this principle and where such treaties are violated, the Indigenous peoples revert to their original untreated sovereignty.

**19. What measures have indigenous peoples/organizations undertaken to resolve situations of conflict arising from treaty, or non-treaty, relations between States and indigenous peoples?**

**Answer** These are measures taken by our peoples and organizations to resolve situations of conflicts... 1. We continue to object to intrusions on our homelands, resources and our lives  
2. We continue to practice our own governance -language -customs -spirituality and continue to teach it.  
3. We continue organizing, recognizing and upholding each other's sovereignty.

**20. Does your government currently have authority to make treaties with other indigenous peoples? How would it be exercised?**

**Answer** Our government(s) have the right to make treaties but are impaired and criminalized in that authority by the condoned violations\* sanctioned through military and police interventions by Canada, US and the UN.

\*-spiritual/religious, cultural, political, social, economic, human rights, women's rights, children's rights

Part 2 - How would it be exercised: We are denied the fundamental right to exercise full authority to make treaty with other indigenous peoples of the world.

**21. Does your Government currently have authority to make other kinds of agreements with other indigenous peoples? With what objects, and by what procedure?**

**Answer** For example: The Okanagan/Shuswap spiritual alliance with the Haudenosaunee, for the protection of land, people and our sovereignty. Our governments currently have the authority to make other kinds of agreements with Indigenous peoples to the extent of our capacity to exercise the full intent of the agreement. In addition there are fishing agreements which exist, joint land use agreements which exist, spiritual alliances which exist in each of our separate nation groups.

**22. Would you recommend that, in the process of treaty making and treaty application, indigenous peoples and States establish relations in political, cultural and economic spheres of interaction?**

**Answer** Only within the full meaning and implementation of the definition contained in question 18 on the absolute recognition of Indigenous peoples' sovereignty.

**23. Does your people/organization have any suggestions to the Special Rapporteur which would help define the future role of indigenous treaties and other instruments?**

**Answer** Our suggestion to the Special Rapporteur to define the future role of indigenous treaties and other instruments is to terminate any or all colonial government conventions, laws, practices, policies which are repugnant and which continues the oppression, aggressions, cooptation, neo-colonization and genocide of Indigenous peoples under the flags of convenience of world economic institutions such as IMF, World Bank, NAFTA, GATT, NATO, and to instate and to protect in perpetuity the absolute Indigenous sovereignty and to

institute reparations for the damages incurred throughout the violations named above and invoke those applicable articles of the Principles of Nuremburg.

**24. Please provide any additional information you consider relevant.**

**Answer** A past and current history (etc.) is attached here below:

**A PAST AND CURRENT HISTORY OF SALIENT POINTS IN BRITISH COLUMBIA, CANADA AND THE TREATMENT OF INDIGENOUS PEOPLES**

PREPARED FOR THE UN STUDY ON TREATIES, AGREEMENTS AND OTHER CONSTRUCTIVE ARRANGEMENTS.

Prepared by the Sovereignty Peoples Information Network September 11, 1994.

In 1763, the Royal Proclamation of King George III was issued to preserve Canada's friendly trade and military relations with the Aboriginal Nations who were being slowly seduced into trade relationships with the 13 Colonies who were revolting against Britain's rule. The Royal Proclamation of 1763, is the International legal tool which Canada, as a dominion of Britain, is bound to, in making treaties west of the original colonies already settled by treaties and arrangements predating this proclamation.

The proclamation is clear in its instructive content; that no British subjects have rights "to occupy, settle, use or otherwise molest the lands or tribes of Aborigines....whose territories lie to the west of the headwaters of the rivers flowing into the Atlantic"; that all such lands must be properly ceded to the British Crown within a mutually agreed compensation in a treaty and that lands reserved and not ceded "remain in the full possession of those Tribes". Persons not legally situated on such lands are to "forthwith remove themselves under pain of penalty...".

The treaties enacted under the Royal Proclamation of 1763 were not conquest treaties, but rather treaties between friendly trade nations assisting each other against the new American States and other European interests to occupy the same territories for its trade value. All the numbered treaties in the Central Plains area of Canada were made under this proclamation.

In what is now known as British Columbia, west of the Rocky Mountains to the coast of the Pacific and between the 60th parallel and the Canada/ USA boundary, this treaty making process was never completed. Lord Douglas, the Governor of the Crown Colony of British Columbia had begun the treaty making process. Fourteen proprietorship treaties were completed on Vancouver Island, granting licence to use and occupy some lands. These treaties were not full Treaties under the Royal Proclamation which ceded territory or agreements for compensations for surrender of any territory.

In the Interior of British Columbia, Governor Douglas instructed reserve surveyors to lay out reserves to the extent "as they may ...be pointed out by the Indians themselves". The Interior tribes did lay out large reserves besides keeping hunting and fishing and other resources on the land for themselves, in those lands which they

were willing to surrender use of. However the Colony of British Columbia was broke and owed money to Britain for financing its trade licences, so the treaties were never formally enacted.

Governor Douglas' attempts to obtain treaties were necessary to begin the legal colonization of lands in B.C. There was a critical reason. The Civil War in the United States had created an anti-British feeling against Canada. In Southern British Columbia, despite agreements between Britain and the USA on boundaries settled between them in the War of 1812, US merchants invaded and infringed on Britain's trade territory north of the 49th parallel because gold was discovered in the interior of British Columbia.

With fear of American takeover, in 1867, the British North America Act was passed by Britain's parliament, allowing the colonies in Canada to confederate to govern themselves and to protect their secured interests in right of the British Commonwealth. The British North America Act allowed the colonies to constitute a governing process separate from Britain's parliament, although remaining bound to it under its legislative authority.

This is the constitution of Canada at this time. Section 91-24 of the British North America Act says that the Federal level of Government shall oversee the Crown's responsibility of Indians and Indian lands. This is the responsibility to meet Britain's proclaimed orders and maintain the treaties that it had secured. Canada remains as obliged today. Section 35 of the new Canada Act, which spells out the terms by which Canada may make a new constitution, confers this same responsibility with the wording "to recognize Aboriginal and treaty rights" in any new constitution it might construct for its citizens.

British Columbia joined the Confederation of Canada in 1871, under special terms and conditions, because it had not yet legally secured lands in British Columbia under the orders of the Royal Proclamation. Article 13 of the Terms of Union said that British Columbia would join Canada, with the guarantee that Canada (the federal government) was to be "as liberal as B.C. was" in treating with the Aboriginals, before B.C. entered Confederation.

After confederation the provincial government of B.C. took illegal actions to interfere with the carrying-out of the treaty making. It undertook to declare the size and extent of reserves by cutting the Douglas reserves down to almost nothing. It declared that gaining jurisdiction over lands and works as a provincial governing responsibility, somehow conferred upon it lands which could only be acquired through treaty, as ordered by the Royal Proclamation.

The Federal government acted in negligence to the orders in the Royal proclamation and Article 13 of the Terms of Union in its non-interference policy of the province's wrong-doing. The treaty making process in British Columbia was never completed although several attempts to "settle" it, through several royal commissions struck for that purpose, only resulted in further violations of the proclamations orders which Canada is still bound by.

No treaties in B.C. have ever been negotiated to completion under the Royal Proclamation in right of the Crown up to the present time, in which Canada is seeking to be a newly constituted government. Even though, in the process of granting Canada the right to make a new constitution under its own legislative powers, Lord

Denning, in the English High Courts of Appeal, in 1982 described the Royal Proclamation of 1763 as "equivalent of an entrenched provision in the constitution of the colonies of North America."

Lord Denning said that, "Its force as a statute, is the same as to the statutes of the Magna Carta, which has always been considered to be the law throughout the Empire." He further said that the obligations of the Crown under the Royal Proclamation of 1763 and under the pre-confederation treaties signed with Aboriginal people, were undertaken with the passing of the British North America Act and were affirmed in their meaning and were now affirmed in the Canada Act of 1982.

At this time, Canada is in the process of trying to construct a new constitution. In this process, it has taken the position that the "Indians" are Canadian subjects, somehow automatically, and come under the legislative will of Canada. No treaty or arrangement or agreement or conquest supports this. The Royal Proclamation of 1763 and its orders, in fact, affirms the opposite and confirms that the treaties affirm sovereignty and that Canada's western non-treaty Aboriginal Nations retain their full sovereignty and have the full statute authority of the Royal Proclamation in that.

Canada does not allow Aboriginal participation in the constitutional discussions, except under its aggressive assimilationist agenda, which consists of Canada defining "Aboriginal and treaty rights" as a possibility, solely under the legislative authority of Canada, rather than co-existent with it as separate nations having their own legislative authority.

Canada calls this termination process, "Indian Self-government" and insists it is to be negotiated away, village council by village council. It enforces its "Indian Act" of parliament, through village/band councils, as having authority to negotiate as "First Nations" rather than the Nation Groups and thus alienates villages from each other and divides them from their total territory.

Through the use of its program policies and finances, it maintains control of the village/band councils through a genocidal policy of carefully controlled curtailment of rights and distribution of assistance. It is carefully constructed to create and maintain dependency and extreme poverty conditions incurring frightening statistics of death and suffering in each Nation, rivalling those of any third world's statistics. It calls this type of human rights abuse and genocide, "consent", when a village council is coerced by the resulting social ills to try to "get a better deal" for their people.

At this time, there are three Canadian constructed mechanisms which are attempting to "quietly" settle the question of "Outstanding Business" in British Columbia and in the rest of Canada.

Canada has adopted a policy, based solely on "extinguishment" of underlying aboriginal rights, in lands which have not been ceded properly, while occupying and extracting billions in resources off those same lands and using those same resources to control public opinion and subjugate the Aboriginal owners. It has devised a history of legislated theft which is still open to serious legal question at both the domestic and international levels.

The work of the B.C. Treaty Commission currently under mandate by both the federal and provincial governments is trying to negotiate land claims settlements in B.C., within a pseudo framework of "Treaty Negotiations" which starts from the premise that the "First Nations" are not Sovereign Nations but special rights Canadian citizens needing redress for past wrongs and therefore cannot negotiate for sovereignty but for compensations.

Canada has adopted a policy of gaining "consent" for the termination of aboriginal sovereignties by making either self-administration (Indian Self-Government package) or dictatorship under the extremely restrictive Indian Act, the only choices possible for peoples to survive. The Work of "The Chiefs Governance Committee", currently under mandate to negotiate with Canada, an "Indian Governance Act", is the tool being used to bring all "First Nations" into a new relationship with Canada.

Canada has adopted a policy of police state terrorism and fascism, criminalizing any Aboriginal Nations and individuals who implement and exercise their sovereignties and jurisdictions, while portraying a face of tolerance and liberalism to the rest of the world.

### ***Overview of Study on treaties and agreements with indigenous peoples***

From “The Rights of Indigenous Peoples,” United Nations Human Rights Fact Sheet No. 9, reprinted November 1992:

The relations between indigenous peoples and the Governments of the countries in which they live in many cases have a legal foundation in treaties, agreements and other arrangements. Some of the documents date back to the seventeenth and eighteenth centuries. The making of such agreements has continued in many countries. Some treaties stand the test of time, providing a basis for peoples with different backgrounds and cultures to live in harmony. Others have been disputed, either because they are thought of as unfairly negotiated, or because the treaty rights have been breached and obligations not fulfilled. Many of the treaties carry a great symbolic meaning to indigenous peoples. They are seen as providing recognition of indigenous self-determination, and a guarantee of the collective rights of the peoples concerned. An agreement which has the character of a solemn pledge by one people to another, when fully honoured by both parties, breeds mutual trust and respect, and has a potentially vital role in promoting and protecting the human rights and fundamental freedoms of indigenous peoples. For all these reasons, the Economic and Social Council in 1989 authorized the Sub-Commission on Prevention of Discrimination and Protection of Minorities to appoint Mr. Miguel Alfonso Martinez, a member of the Working Group on Indigenous Peoples, as Special Rapporteur with the task of writing a study on the potential utility of treaties, agreements and other constructive arrangements between indigenous peoples and States. While the study will take into account the sovereignty and territorial integrity of States, the Special Rapporteur has been asked to give particular attention to universal human rights standards which now exist or are emerging, and to suggest ways of achieving the maximum promotion and protection possible of indigenous treaty rights in domestic as well as in international law. The United Nations is asking States and indigenous peoples to transmit all information relevant to these treaty issues to the Special Rapporteur. As a point of departure, he is studying thousands of treaties and agreements already in existence and the work which went into their preparation. He will consult constitutional and legislative acts of States and international and national judicial decisions, as well as other pertinent information.



**Annex VI**

**WORKING PAPER AND QUESTIONNAIRES BY THE SPECIAL RAPPORTEUR OF THE SUB-COMMISSION, MR. MIGUEL ALFONSO MARTINEZ, REFLECTING THE PROGRESS MADE AND IDENTIFYING INFORMATION NEEDED FOR HIS CONTINUING WORK ON THE STUDY OF TREATIES, AGREEMENTS AND OTHER CONSTRUCTIVE ARRANGEMENTS BETWEEN STATES AND INDIGENOUS POPULATIONS**

I. Subsequent to both my appointment as Special Rapporteur by the Sub-Commission and the confirmation of this appointment by the Commission on Human Rights and the Economic and Social Council, I have proceeded with and made good progress on research of all aspects of the Study assigned to me.

2. In the course of this research work it has become abundantly clear, and increasingly so, that the scope of the study is particularly broad. The treaties, agreements and other arrangements in question number in the thousands; the legal nature and contents of these texts vary significantly; the use and application of these texts likewise vary within and between States; and the national and international legal issues concerning treaties, agreements and other constructive arrangements raise questions of great complexity on several scores, including conclusion, interpretation, application and possible termination of such instruments.

3. I am grateful to Governments, indigenous peoples and their organizations, academic institutions and individual scholars who have come forward and provided me with what is already a valuable source of materials concerning the topics brought up by the Study. Nevertheless, in order to obtain full information about all the various aspects, additional research and collection of texts and other reports and materials are essential.

4. For these reasons, I am enclosing with this brief Working Paper two questionnaires addressed respectively to Governments and indigenous peoples. It is my request that the Working Group annex them to its report and that the Secretariat distribute them as soon as possible by means of notes - verbal and letters. The questionnaires reflect closely the issues and questions which have come up in my research so far and it is my sincere hope and expectation that all the parties concerned will provide me with their responses and points of view as soon as possible, preferably by the end of April 1991, so as to take into account their views in my preliminary report.

**QUESTIONNAIRES PREPARED BY THE SPECIAL RAPPORTEUR FOR THE STUDY OF  
TREATIES, AGREEMENTS AND OTHER CONSTRUCTIVE ARRANGEMENTS BETWEEN  
STATES AND INDIGENOUS POPULATIONS  
E/CN.4/Sub.2/1990/42**

**INDIGENOUS PEOPLES /ORGANIZATIONS VERSION**

**PART I**

Do you feel bound to honour any treaty, agreement or other constructive arrangements with the Government of the country in which you live, or with a colonial Government, or with any other European countries?

(a) If your answer is no, please go to Part III.

(b) If your answer is yes, the Special Rapporteur would request all relevant materials and information with respect to the questions under Parts II and III.

**PART II**

1. Copies of treaties, agreements or other types of formal or informal mutually agreed upon instruments between indigenous peoples and States.
2. Other constructive arrangements constituting elements governing relations between indigenous peoples and States, in particular those consisting of mutual obligations or containing guarantees relating to indigenous rights (i.e. land/or resources, traditional practices and beliefs, etc.).

3. Parties to the treaties, agreements or other constructive arrangements, including statistical data on the respective indigenous peoples.

4. Historical circumstances of the negotiation, conclusion, celebration, application, amendment, modification and/or termination of the treaties, agreements or other constructive arrangements.

(Please specify the nature of the instrument, explaining the circumstances leading to negotiations and the signing of the treaty; indigenous law regarding the format of the treaty negotiations; legal system used and the authority exercised by the indigenous peoples at the time of entering into the treaty (sovereignty and indigenous government); authority and legitimacy of those who signed the treaty on behalf of indigenous peoples; process of ratification practised by the indigenous peoples within or outside the indigenous legal system.)

5. The purpose of the treaties, agreements or other constructive arrangements (i.e. peace, boundary delimitation, friendship, co-operation, trade, etc.);

(The cause and object of the instrument; use of treaties as a pretext for legitimizing settlement, without any intention on the part of the State to observe the indigenous peoples' treaty rights; the express or tacit language in the instrument implying the relinquishing of indigenous rights to lands and resources; the specific requests made to indigenous peoples prior to entering into the treaty: peace, friendship, land cession or cession of indigenous governments; the exact nature of treaty agreement).

6. The substantive contents of the treaties, agreements or other constructive agreements.

7. The authoritative language(s) in which the treaties, agreements or other constructive arrangements were concluded.

(The existence of different language versions of the treaty, including indigenous languages; up-dating, in terms of language, of the treaty.)

8. Applicable rules of interpretation of the treaties, agreement/ or other constructive arrangements (of both their texts and connected legal instruments).

(In the case of reinterpretation: the possibility for indigenous peoples to hold the Government to the original provisions of the treaty; the existence of legal means for indigenous peoples to reject formally reinterpretation they disagree with; consultation with treaty peoples regarding changes proposed by the State; the existence, within present implementation machinery, of the requirement to consult with the Indigenous party.)

9. Conflict resolution provisions of the treaties, agreements or other constructive arrangements.

(Settling of disputes in relation to treaty interpretation; the existence of mechanisms within the treaty provisions to resolve outstanding disputes.)

10. Methods of registration and publication of the treaties, agreements or other constructive arrangements.

(Transmission of knowledge contained in the treaty from generation to generation; written or oral transmission; the sharing of treaty knowledge by all, or the existence of a specific group of individuals having exclusive knowledge.)

11. Constitutional and legislative provisions on the conclusion of the treaties, agreements or other constructive arrangements, as well as the constitutional and legislative provisions on the application and termination of such instruments.

(The decision-making authority with regard to the implementation of the treaty provisions; the position of indigenous peoples on the treaty mechanism; right of veto for indigenous peoples on issues directly related to the treaty.)

12. The juridical status and official recognition by States and indigenous peoples of the treaties, agreements or other constructive arrangements.

13. Practical consequences for all parties resulting from the implementation, or lack thereof, of the treaties, agreements or other constructive arrangements.

(Recognition, through provisions of the instruments and consequent practice of indigenous legal systems.)

14. On-going or planned negotiations for the conclusion of new treaties, agreements or other constructive arrangements, as well as for the amendment or modification of existing ones.

15. Treaties, agreements or other constructive arrangements which have been terminated, abandoned or rendered obsolete by indigenous peoples or States, either unilaterally or bilaterally.

(The existence of administrative or legislative measures altering the nature of the treaty relationship; steps or measures taken to actually terminate the treaty.)

### **PART III**

16. What is the position of your people/organization with respect to the principles and norms that govern the interpretation of treaties and other instruments?

17. Would you be willing to make a new treaty today with the national Government? If your answer is no, please explain why. If your answer is yes, please indicate what you want to include in a new treaty.

18. What do you think would be the best way to see that treaties with indigenous peoples are enforced and respected?

19. What measures have indigenous peoples/organizations undertaken to resolve situations of conflict arising from treaty, or non-treaty, relations between States and indigenous peoples?

20. Does your Government currently have authority to make treaties with other indigenous peoples? How would it be exercised?

21. Does your Government currently have authority to make other kinds of agreements with indigenous peoples? With what objects, and by what procedure?

22. Would you recommend that, in the process of treaty making and treaty application, indigenous peoples and States establish relations in political, cultural and economic spheres of interaction?
23. Does your people/organization have any suggestions to the Special Rapporteur which would help define the future role of indigenous treaties and other instruments?
24. Please provide any additional information you consider relevant.