

Discussion Paper:
3rd Indigenous Leaders Summit of the Americas
March 2009

Introduction

This discussion paper outlines the purpose of the 3rd Indigenous Leaders Summit of the Americas (3rd ILSA), partners, background and themes of the V Summit of the Americas. It then provides a detailed overview of the Declarations of the 1st and 2nd IPSA and a comparative analysis of the two declarations. This is followed by a section that outlines the next steps to be taken by the technical committee in preparing a draft Declaration and Plan of Action for the 3rd ILSA.

Purpose of the 3rd Indigenous Leaders Summit of the Americas

The purpose of the 3rd ILSA is to provide an international forum for discussion of Indigenous Leaders on a range of policy topics related to the work of the Organization of American States (OAS) and the themes to be addressed during the V Summit of the Americas (V Summit). Indigenous leaders from the Americas will participate in this event, including women, youth and Elder leaders from across the regions of South, Central and North America and the Caribbean. The V Summit will take place from April 17th to 19th in Port of Spain, Trinidad and Tobago.

A Plan of Action for collective action by Indigenous Peoples of the Americas will be developed that identifies the responsibilities of states/ministers, Indigenous Peoples, stakeholders and others. One initiative may be the development of a Permanent Forum of Indigenous Peoples as an advisory body to the OAS. Implementation of Indigenous Peoples' human rights through this Plan of Action will be a strong focus.

Partners

The Assembly of First Nations and the Native Women's Association of Canada are co-hosts to the planning of the 3rd ILSA and will take the lead with respect to the technical and administrative planning of the Indigenous Leaders Summit, working in partnership with Indigenous leaders in North, Central and South America, as well as the Caribbean.

Background

The 3rd ILSA will provide an opportunity to continue the policy dialogue initiated in the first two Indigenous Peoples Summit of the Americas. The First Indigenous Peoples Summit of the Americas was held in Ottawa, Ontario, in March 2001. The Indigenous Summit, which focused on the theme of "Connecting to the New Economy," was hosted by the Assembly of First Nations, with the financial support of the government of Canada. The Indigenous Summit resulted in a Declaration, which formed the Indigenous input into the OAS Third Summit of the Americas in Quebec City, April 2001.

The AFN and ONPIA hosted the Second Indigenous Peoples Summit of the Americas focused on the theme of "Determining our Future: Guided by our Traditional Teachings and Mother Earth." The Summit was held in October 2005 in Buenos Aires, Argentina, and it was preceded by an Indigenous Women's Summit and Indigenous Youth

Symposium. The Summit was a great success, with over 1000 Indigenous Peoples participating, and successful side events related to business, best practices, culture and language. The Main Summit resulted in a Declaration that endorsed Declarations from the Women's Summit as well as the Youth and Language Symposiums. The declarations were based on the three main themes of the Indigenous Summit: 1) Governance and Self-Determination, 2) Lands, Resources and Territories and 3) Sustainable Economic Development.

The 3rd ILSA will move this dialogue forward to focus on implementation of the measures necessary for the previous Declarations and Plans of Actions to be fully realized. Thus, the Indigenous Leaders Declaration will be a synthesis of the first two Declarations, updated to reflect new standards, including the UN *Declaration on the Rights of Indigenous Peoples*. There will be a focus on implementation and on providing "shadow" information from an Indigenous Peoples' perspective on the agenda items for the V Summit of the Americas.

The V Summit of the Americas

The theme of the V Summit is "Securing Our Citizens' Future by Promoting Human Prosperity, Energy Security and Environmental Sustainability." In the Draft Declaration of Commitment this is further divided into the following themes: Promoting Human Prosperity; Promoting Energy Security; Promoting Environmental Sustainability; Strengthening Public Security; Strengthening Democratic Governance and Strengthening the Summit of the Americas, Follow-Up and Implementation Effectiveness. For more information, please visit their website at: www.summit-americas.org.

Declaration of the Indigenous Peoples Summit of the Americas (Ottawa, Canada, March 31, 2001)

Note: Bolded parts of the text indicate that the exact subject matter is not covered by the other Declaration (referring to the 1st and 2nd IPSA's Declarations). Text that is in bold and italics indicates text that may be contradictory or not necessary to cover in the 3rd IPSA based on a preliminary analysis).

This Declaration covers a comprehensive range of human rights of Indigenous Peoples, including the following:

Basic Human Rights and Fundamental Freedoms of Indigenous Peoples (including the right to self-determination)

- Right to self-determination of Indigenous Peoples which includes the rights to lands and territories (including subsoil and natural resources rights), self-determination and self-governance and recognition of traditional authorities, respect and protection of sacred cultural and ceremonial sites, protection of heritage, intellectual and cultural property rights and respect for oral histories and

laws. (para.'s 1-2)

- Rights to equality and to full, direct and effective participation where Indigenous rights are affected, recognition that national legal and political systems cannot be used as a shield to recognizing Indigenous Peoples right to self-determination, and protection from crimes of genocide, ethnocide and crimes against humanity. (para.'s 3-6)

The United Nations Declaration on the Rights of Indigenous Peoples

- Recognition that the rights contained in the UN *Declaration on the Rights of Indigenous Peoples* constitute the minimum standards for the survival, dignity and well-being of the Indigenous Peoples of the world.¹

Proposed American Declaration on the Rights of Indigenous Peoples

- The American Declaration must contain norms that are not less than those of the UN Declaration and must fully recognize the right of self-determination of Indigenous Peoples without discrimination. The American Declaration must be adopted only with the free, prior and informed consent of Indigenous Peoples. (para.'s 7-9)

Necessary Principles for Trade and the Free Trade Area of the Americas (FTAA)

- In the FTAA, the principles of democracy and respect for human rights must be recognized as inseparable from free trade, including the right of self-determination of Indigenous Peoples. Safeguards must be included in the FTAA for the protection of the environment, including Indigenous Peoples' territories and lands. Provision must be made within the FTAA for participation of Indigenous Peoples and measures aimed at reducing extreme impoverishment and socio-economic marginalization facing Indigenous Peoples. Indigenous women must participate in an equitable manner in resources, investments and access to benefits planning, decision-making, implementation and evaluation. An Indigenous Peoples' strategy for involvement of Indigenous businesses should be adopted. (para.'s 11-17)

Reforms Within the OAS

- The OAS, in conjunction with Indigenous Peoples must ensure that the status and human rights of Indigenous Peoples are advanced in a manner that is consistent with international law, without discrimination. Indigenous Peoples

¹ See Article 43 of the UN Declaration which states, "The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the Indigenous peoples of the world."

must have direct access to advance our rights at the OAS and the **Inter-American Commission on Human Rights and the Inter-American Court on Human Rights** must have adequate resources to promote and protect human rights and the conservation and protection of the environment, including Indigenous Peoples' lands, territories and resources. The Inter-American Indian Institute must be completely restructured consistent with the perspectives of Indigenous Peoples. The OAS must establish an effective and fully funded Permanent Forum on Indigenous Peoples. (para.'s 18-21)

World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR)

- The WCAR *Declaration* and *Program of Action* must be formulated with the full, direct and effective participation of Indigenous Peoples and must recognize Indigenous Peoples as Peoples with the right to self-determination. (para.'s 22-23)

International Labor Organization Convention #169 on Indigenous and Tribal Peoples, 1989

- All OAS States who have ratified ILO #169 must comply and implement it and all States who have not ratified it, must do so. Efforts to improve upon this Convention should be made without prejudice to national and international measures that may exceed the standards contained in this Convention. (para.'s 24-25)

Eradicating Impoverishment

- Eradicating the extreme impoverishment of Indigenous Peoples must be an urgent priority in the 2001 Summit of the Americas Declaration and Plan of Action, through a commitment to concrete actions and plans, developed in conjunction with Indigenous Peoples. (para. 26-27)

United Nations Permanent Forum on Indigenous Issues

- The OAS should encourage adequate funding of the UN Permanent Forum from the UN Regular Budget, as well as ensuring the Permanent Forum has broad powers and a far-reaching mandate. (para. 28)

Protection of Indigenous Intellectual Property, Culture and Heritage

- Protection from extinction of Indigenous Nations and the extinction, exploitation, appropriation and dispossession of our cultural resources, such as under WTO international trade agreements, with a particularly negative effect on Indigenous women, must not continue. This is inextricably linked to the protection of our traditional knowledge, culture and heritage which must include the right to control

our lands, territories and resources (including cultural and intellectual resources) and the right and obligation to develop our own cultures and knowledge systems, to be transmitted to future generations. (para.'s 29-32)

- Intellectual property of Indigenous Peoples is collective, inalienable and intergenerational. These rights, as recognized in the *Convention of Biological Diversity*, must be fully respected and implemented. The free, prior and informed consent of Indigenous Peoples must be obtained before the intellectual property is used, including for commercial purposes, and must result in just and equitable compensation. Indigenous Peoples must have full, direct and effective participation in the Working Group on the implementation of Article 8(j) of this Convention. (para.'s 33-36)

Treaties and Agreements

- **Treaty violations of States, including discriminatory legal doctrines and abrogation of Treaty rights, must be rectified. Implementation of the recommendations contained in the UN Study on Treaties, Agreements and other constructive arrangements should be done. States are called upon to honour and respect Treaties as international agreements, according to their original spirit and intent and Indigenous Peoples' understandings. Unsettled disputes should be submitted to international bodies such as the UN Permanent Forum for resolution.** (para.'s 37-38)

Coordination and Cooperation Among Indigenous Peoples, Nations and Organizations

- A commitment to work in unity to ensure the rights of our Indigenous Peoples, Nations and Organizations are promoted and protected to achieve our common aspirations. (para.'s 39-41)

The Second Indigenous Peoples Summit of the Americas (2nd IPSA)

The 2nd IPSA resulted in four Declarations and one Plan of Action, endorsed by the Indigenous Peoples Caucus of the Americas in attendance at the 2nd IPSA. These are described below.

Declaration of the Second Indigenous Peoples Summit of the Americas

This Declaration includes a Preamble, and then three sections concerning the relationships 1) between all Indigenous Peoples, 2) between Indigenous Peoples and States and 3) between Indigenous Peoples, Civil Society and Religious Institutions. Each of these sections addresses the following three topics: Governance and Self-Determination; Lands, Territories and Resources; and Sustainable Development.

Concerning the Relationship Between All Indigenous Peoples

Governance and Self-Determination

- Reaffirmation of the right to self-determination, with our own ancestral world view and systems of governance. Inclusion of Indigenous Peoples on an equal basis is necessary for a functional democracy. This includes bicultural and bilingual education to counteract the unacceptably high levels of illiteracy of Indigenous Peoples.
- Calls on Indigenous Peoples to advance the results of the 1st and 2nd IPSAs, including in relation to our communal intellectual property, culture and heritage.
- Importance of valuing our children, youth, women and the Elders and commit to addressing the **vulnerability of children in regards to child labour, HIV/AIDS, forced conscription into armed conflict, trafficking and migration of children and emergency situations.**
- Respect the exercise of the right to self-determination of Indigenous Peoples in **voluntary isolation or initial contact.**
- Protection of sacred sites and return of our cultural property to our Peoples;
- Reject and repudiate the State agreements such as the *ACLA, NAFTA, PPP, Plan Colombia, CBM, MIE, Mercosur and TLC* on the basis of their violation to the rights related to lands, territories and resources of Indigenous Peoples

Lands, Territories and Resources

- The legacy of our Elders, our holistic and cosmic relationship with all of Mother Earth, is our priority, leading us to defend our territorial rights, including our cultural and natural heritage and the richness of our **biological diversity.**
- We have the right to prior consultation and participation and to give our free, prior and informed consent regarding matters that impact our lands, territories and resources.
- The vitality of our ancestral spiritual practices is the basis for our existence as Peoples and leads to a harmonic relationship with our territories.

Sustainable Development

- Economic impoverishment of Indigenous Peoples is caused by the lack of recognition by States of our cultural, natural, social and economic heritage.

- Commit to new mechanisms and resources necessary for the effective implementation of Indigenous land tenure systems, the use and occupation of our territories and the recognition of the cultural, natural, social and political richness of Indigenous Peoples.

Concerning the Relationship Between Indigenous Peoples and States

Self-Determination

- Calls for recognition of the collective rights of Indigenous Peoples, including the rights to self-determination and to ***self-identification***, in urban and rural settings. This is required for full democratic participation, leading to intercultural dialogues among Indigenous Peoples and the elimination of assimilation.
- Calls for the OAS to recognize Indigenous Peoples as “Peoples” and further seek:
 - a) the establishment of an OAS Permanent Forum on Indigenous Peoples,
 - b) all OAS documents recognize the collective rights of Indigenous Peoples and that the OAS successfully approve the American Declaration on the Rights of Indigenous Peoples
 - c) ***a specific budget for the Inter-American Commission and Court be established to guarantee access to justice for Indigenous Peoples*** and
 - d) **ensuring that Indigenous Peoples can intervene in the annual convention on climate change. [need proper title]COP of CBD**
- Calls for States who have not done so to adopt and ratify ILO Convention #169 and those States that have to implement it and ensure their legislation and policies are consistent with it.
- Apply the principles of the World Conference Against Racism as accepted by the UN General Assembly;
- Acknowledge the creation of the UN Permanent Forum on Indigenous Issues and support its evaluation and extension of its mandate.
- Acknowledge the 4th Summit of the Americas’ inclusion of the 1st IPISA’s call for the eradication of impoverishment and extreme poverty and call on the OAS to address poverty through fostering the spiritual, cultural and governmental strengths of Indigenous Peoples rather than continued State exploitation and unregulated consumption of Indigenous Peoples’ resources.
- ***Constitutional recognition and entrenchment of the collective rights of Indigenous Peoples.***
- Seek a just relationship with States through ensuring access to justice for Indigenous Peoples, recognition of Indigenous laws and jurisdictions and a reversal in the ***burden of proof*** in establishing the existence of Indigenous

Peoples as Peoples. **Moot now with UN declaration**

- State adoption, in conjunction with Indigenous Peoples, of adequate measures to recognize, respect and protect the lands, territories, environment and cultures of Indigenous Peoples in **voluntary isolation or in initial contact**.
- Demand respect for our cultural heritage and *effective restitution measures* in relation to our sacred sites and objects. **Moot now with UN declaration**
- Denounce States' assumed right to dispose of our lands, territories and resources, in particular in agreements including the *ALCA, NAFTA, PPP, Plan Colombia, CBM, MIE, Mercosur and TLC*.

Lands, Territories and Resources

- Promote *land regularization, self-demarcation and titling* of lands to secure legality of our territories and Indigenous forms of sustainable development.
- Demand State recognition of our collectives rights over our original lands, territories and resources and our political, social and economic life.
- Demand social policy implementation aimed at protecting our life and environment in the fact of policies and actions of multinational, international or national financial and governmental corporations, including the International **Monetary Fund, the World Bank and the Inter-American Bank, as well as extractive industries. Corporate social responsibility**
- Urge States to stop *anti-terrorist, anti-drug and anti-subversion actions* or programs where these interfere with our right to self-determination. Wrongly stated
- Urge States to prohibit the militarization of our territories and related human rights violations.
- Reject the creation of **protected areas** and declarations of human heritage sites that disregard our ancestral rights, including maintaining sacred sites. Not applicable in all regions of the Americas

Sustainable Development

- Consider the *Kyoto Protocol, 1997* insufficient because of its acceptance of extractive industry practices that violate Indigenous Peoples' rights to lands, resources and territories and the displacement of Indigenous Peoples

- Denounce environmental contamination through overuse of resources that cause **physical and mental disabilities** in Indigenous populations and call for reparations for these harms as well as decent and safe work conditions in conformity with international conventions. Relevant but needs improvement.
- Demand State recognition of the negative impacts of their policies on Indigenous Peoples and their lands, resources and territories through restitution and sustainable development.
- Urge State implementation of international legal instruments that incorporate Indigenous Peoples' practices and values of preserving Mother Earth.

Concerning the Relationship between Indigenous Peoples, Civil Society and Religious Institutions

Is this whole section necessary/relevant to the 5th Summit?

Self-Determination

- Call on Civil Society to provide greater opportunities for discussions with Indigenous Peoples as distinct governmental entities.
- Call on **religious institutions** to stop implementing religious programs that interfere with our spiritual practices.

Lands and Resources

- Call on Civil Society and religious institutions to acknowledge Indigenous Peoples' relationship to the land, and related to this, call on Civil Society to support the right of Indigenous Peoples to free, prior and informed consent.

Sustainable Development

- Call on Civil Society and religious institutions to acknowledge the value of Indigenous Peoples' relationships to their lands and resources, spiritual values and ancestral belief systems and to promote greater understanding of the implications for all of the unsustainable use and stewardship of economic resources.

Indigenous Women's Declaration of the 2nd Indigenous Peoples Summit of the Americas: Determine our future guided by our traditional teachings and the Mother Earth, (October 24th & 25th, Uspallata, Mendoza)

This Declaration contains a preamble that sets out the critical importance and interrelationship between the collective and individual rights of Indigenous women, including the right to live free from violence and rights related to lands, territories, natural resources and traditional knowledge. Key human rights issues identified include

gendered racism, inequality and marginalization, the lack of democratic governance, militarization of Indigenous communities and lack of recognition of Indigenous peoples' right of self-determination.

The Indigenous Women's Declaration is divided into the following three sections:

Governance and Self-Determination

- Identifies the central role Indigenous women play as life-givers and primary transmitters of traditional knowledge, values, culture and spirituality;
- Assert right to self-determination as necessary to alleviate extreme poverty facing Indigenous women and their families;
- Demand Indigenous educational system necessary to transmit traditional knowledge to future generations;
- Assert the necessity for the full and effective participation of Indigenous women in all forms of governance

Lands, Territories and Resources

- Right to own and control our lands, resources and territories as a fundamental basis of the right to self-determination;
- Critical importance of the right to protection of traditional knowledge and intellectual property of medicinal herbs, plants and animals

Sustainable Economic Development

- Importance of the protection and conservation of resources in order to address increased poverty and marginalization of Indigenous Peoples resulting from exploitative development;
- Integral role of Indigenous women in reaching food security as traditional knowledge holders and
- Demand for full involvement of Indigenous women in decision-making processes related to poverty alleviation in order to achieve sustainable development based on Indigenous systems.

Indigenous Women's Plan of Action of the 2nd Indigenous Peoples Summit of the Americas: Determining our future guided by our traditional teachings and the Mother Earth, (October 24th & 25th, Uspallata, Mendoza)

The Plan of Action call for the advancement of the human rights and fundamental freedoms of Indigenous women through the State Plan of Action for the 4th Summit of the

Americas, and that, States, in conjunction with Indigenous Peoples and the full and effective participation of Indigenous women, with their free, prior and informed consent, do the following:

Governance and Self-Determination

- Calls for specific measure to implement the right to self-determination, specifically in the areas of labor rights, inclusive globalization and strengthening democratic governance;
- Reform the existing educational systems to provide for Indigenous educational systems;
- Eradicate all forms of discrimination and marginalization of Indigenous women and ensure democratic governance and their full and effective participation in at all levels of national policies and development strategies

Lands, Resources and Territories

- Recognition of lands, territories and resource rights necessary for the continuity, survival and self-determination of Indigenous Peoples and the particular rights of Indigenous women related to traditional knowledge and practices and land rights.

Sustainable Development

- Implement sustainable development initiatives and investments that are based on Indigenous worldview, values, principles, practices and relationship with Mother Earth; and
- Recognize the integral role played by Indigenous women in sustainable development initiatives and poverty alleviation efforts at all levels.

Indigenous Youth Declaration of the Second Indigenous Peoples Summit of the Americas (Buenos Aires, Argentina, October 26, 2005)

The preamble of this Declaration calls for recognition of the distinctiveness of the regions of the Americas, while also recognizing the right to envision the world as an Indigenous cosmivision where all aspects of life are interconnected. Recognition of the cultural specificities will be necessary in order to fully exercise our autonomy as peoples.

This was followed by proposals to:

- To promote the creation of communication and exchange channels among the youth to build a network of inter-cultural support;

- To seek support from the Leader to establish a strong youth voice for the next Indigenous Summit of the Americas, in collaboration with Elders, to strengthen their leadership and relationship to the land and rights as ancestral nations

Declaration on the Protection of Indigenous Languages: II Indigenous Peoples Summit of the Americas (Buenos Aires, October 27 & 28, 2005)

The Declaration notes that Indigenous languages are sacred and define our world view as Indigenous peoples and that isolationist and assimilationist government policies have interfered with this fundamental right. It notes that despite these violations, Indigenous Peoples continue to exercise their linguistic right to their mother tongue, even in the face of educational systems that only provide instruction in the dominant language.

Resolution of the II Indigenous Peoples Summit of the Americas on Indigenous Languages

- Whereas the political, economic, social, spiritual and cultural survival of Indigenous Peoples is severely threatened by the ongoing destruction and displacement of Indigenous languages, these past and present practices amounting to linguisticide leading to up our languages becoming extinct;
- And whereas the UN General Assembly's definition of linguisticide is violated (under provisions of the UN International Convention on the Prevention and Punishment of the Crime of Genocide)
- Whereas educational system efforts to date have not been effective, failing to be based on the method that recognizes that education through the medium of the language least likely to be learned (usually the mother tongue) significantly promotes high-level fluency in two languages (bilingualism)

The following demands are made:

- Specific linguistic human rights laws guaranteeing Indigenous Nations in the Americas the option of life long education through their own languages, with the opportunity to be fully bilingual;
- Reparation from the States for historical damage done to Indigenous languages in terms of financial resources that would allow the mother tongue to be the medium for education in every Indigenous community;
- State laws that respect Indigenous Peoples' exclusive ownership over our intellectual and cultural property, including the return of external research of our languages and oral traditions alongside reparations;

- Further, be it resolved that the 2nd IPSA form an International Language Council to establish a hemispheric Indigenous language network.

Comparative Analysis

In addition to the differences highlighted in bold and italics above, it is worth mentioning the following similarities and differences between the two Declarations. Both the 1st and 2nd IPSA Declarations address the following topic areas:

- The fundamental right to self-determination of Indigenous Peoples on a non-discriminatory, equal basis to all other Peoples, including our own legal and political systems;
- Rights related to lands, resources and territories, including the right to free, prior and informed consent and to full and to, as a principle of democracy, effective participation in all domestic, regional and international institutions and processes that may affect the rights of Indigenous Peoples;
- The recognition of the UN *Declaration on the Rights of Indigenous Peoples* as the minimum international legal standard to which the OAS States must conform, including in relation to the OAS American Declaration on the Rights of Indigenous Peoples;
- The need for greater recognition of Indigenous forms of sustainable development and environmental protection and stewardship and to address past and current related violations to the rights of Indigenous Peoples in this area.

The 2nd IPSA endorses an Indigenous Women's Declaration and Plan of Action, an Indigenous Youth's Declaration and an Indigenous Languages Declaration that provide for explicit recognition of the rights of Indigenous women, youth and languages. It was noted at the Planning Committee meeting that these perspectives should be integrated into the overall 3rd ILSA Declaration and Plan of Action.

Next Steps:

Based on this review and discussions among the technical and planning committees, the following course of action is recommended:

1. Develop a list of key issues/rights, perhaps using the 1st IPSA Declaration as a starting point, and integrating any relevant issues from the 2nd IPSA Declarations into the list, to create a one-page Declaration that sets out the rights that are recognized. It will be important that this Declaration sets out statements of principles, norms and rights and does not identify action items;

2. Identify the relevant provisions of the UN *Declaration on the Rights of Indigenous Peoples* for each of these issues/rights, as well as other relevant international law standards, including case law from the Inter-American Court;
3. Develop a Plan of Action that corresponds to this list, setting out an implementation strategy for each area, integrating action items from the previous Declarations as well as new implementation strategies. Consider key questions posed to date which include, “What is needed to drive toward the creation of the equivalent of the UN Permanent Forum on Indigenous Issues? Are there other objective that the 3rd ILSA may wish to pursue? How would the conditions for these be created?” and
4. Compare our Declaration and Plan of Action to the V Summit’s Draft Declaration of Commitment to determine complementary areas that will provide entry points as well as areas that are contradictory. Determine a lobbying strategy based on this review.