



BELFAST ASSEMBLY 2022
ENVIRONMENTAL COMMISSION
ADOPTED RESOLUTION

RESOLVED: The Congress of Nations and States shall create a CNS Traditional Ecological Knowledge Forum (TEKF), consistent with the CNS Charter. The TEKF will meet once a year to discuss, exchange, and collaborate on best practices regarding the environment, including but not limited to preservation and protection of sacred sites, ecological systems, the productive capacity of lands or territories and resources, protection and promotion of Indigenous Knowledge and Traditional Ecological Knowledge systems, protection and promotion of traditional medicines, encouraging the use of traditional foods, addressing food and water scarcity, increasing food and water sovereignty, protection of wildlife and traditional flora and fauna, tackling the hazardous waste, and climate change.

FURTHER RESOLVED: The Convening Council shall appoint a leader from the CNS Assembly to lead TEKF.



BELFAST ASSEMBLY 2022 BACKGROUND REPORT

SECURITY COMMISSION

WHEREAS the Congress of Nations and States is dedicated to the promotion of freedom, security, justice, and respectful relations; AND

WHEREAS the members of the Congress of Nations and States share a common commitment to advance self-determination, fundamental rights, and equalities for all Peoples under International Laws and Treaties; AND

WHEREAS, the Congress of Nations and States seek mutually beneficial solutions through diplomacy, cooperation, and new measures to resolve conflicts, sustain natural life, and engage Nations and States toward lasting peace, progress, and prosperity; AND

WHEREAS, the territories occupied by States encompass Nations whose cultures, traditions, religions/spirituality, health, and prosperity are inextricably intertwined with kinship relationships with lands, water, air, plants, animals, insects, fungi, the Sun, Moon, and stars; AND

WHEREAS, relationships between States and Nations are guided by policies, rules and regulations that are administered by various agencies and political entities; AND

WHEREAS, Nations are sovereigns whose unique world views, intimate relationships with the environment are based on hundreds of generations of experience; AND

WHEREAS, the knowledges, languages, stewardship practices held by Nations are vital to protection of the environment upon which the future survival and well-being of States and humanity depend, AND

WHEREAS, several agreements between States contain provisions that affect the environment, biodiversity, human rights, health, and rights of Nations and their citizens; AND

WHEREAS, Nations have had limited opportunity to substantively participate in the development of agreements between States; AND

WHEREAS, effective implementation of agreements between States depends on mutual acceptance by Nations and States of procedures, principles, and protocols acknowledging multiple world views and ways of knowing and supported by technical and financial resources.

The Environmental Commission presents Resolution 1 for adoption by the 2022 Assembly of the Congress of Nations and States:

BACKGROUND:

A variety of Inter-State Agreements (ISA) pertain to matters that involve economic, cultural, spiritual, and physical relationships between human communities and fish, wildlife, plants, soil, air, and water. The policies and principles set forth in ISAs involving the environment can critically affect both States and Indigenous Nations within them. Individual ISA have been considered by domestic processes of each State and there is substantial diversity in the States that have adopted

various ISAs. Indigenous Nations within States were rarely involved in the development of such agreements and few formal mechanisms were employed to solicit their perspectives and secure concurrence prior to adoption by States.

The Environmental Commission distributed two surveys to representatives of Indigenous Nations that indicated an interest to participate in CNS deliberations to obtain information on the implementation of ISAs within the States within which they reside. The 23 responses from the first survey helped the Environmental Commission to draft a second survey to help substantiate the proposed resolutions. Forty responses were received to the second survey with 33 from the Middle East and North Africa and the remaining from Africa and Asia.

The surveys undertaken by the Environmental Commission on the biggest challenges that respondents faced in protecting the environment and interests of Nations indicated that over half the responses identified issues involving the need for mechanisms to provide substantive participation of Nations. Specifically responses highlighted the imbalance of power in the negotiation of international agreements, the lack of authority over own territory, the imbalance of rights and obligations between Nations and States and differentiated responsibility of States towards environmental protection.

The language of these ISAs is written to provide flexibility in interpretation. Within States ISA implementation is left to domestic processes effected through domestic law, policies, and administrative rules and regulations administered by various entities. Indigenous Nations within States are sovereigns with their own cultural norms, expressed in a variety of forms, such as written laws, rules, and regulations, or practiced through traditions, customs, languages, and practices appropriate for their own communities.

NEED:

By their nature, matters pertaining to the environment are complex because they involve interactions between social, economic, and political considerations that are nuanced by local circumstances and legacies including colonialist institutional and educational processes that have displaced decision-making, worldviews, and traditional knowledge systems of Indigenous Nations. There is growing recognition of the value of and need for consideration of traditional science and Indigenous knowledge systems when addressing matters affecting the environment. Local, place-based information will be vital to the development of solutions to complex and difficult problems. Indigenous Nations have acted as stewards of the environment for millennia and the wisdom accumulated over generations will be critical to the development of practical, effective approaches to address complex environmental, economic, and cultural challenges. Indigenous Nations still have major responsibility to manage 38 million square miles in 87 States, including about 36% of intact forest landscapes that are vital for maintaining biological diversity and resilience in a rapidly changing environment. (Garnett, S.T., Burgess, N.D., Fa, J.E. et al. A spatial overview of the global importance of Indigenous lands for conservation. *Nat Sustain* 1, 369–374 (2018). <https://doi.org/10.1038/s41893-018-0100-6>)

Within States, environmental matters are contextual, affecting resources, the environment, and communities at various scales ranging from local to regional. While some environmental matters can be addressed by individual States, others can involve matters that extend multiple territorial boundaries. There is a critical need for formal mechanisms that provide substantive engagement between States and Indigenous Nations within them for operationalizing and implementing ISAs.

In the surveys undertaken by the Environmental Commission Nations noted that one of the key barriers to implementation of ISAs was the “lack of consultation with and/or participation of Nations impacted by relevant international agreements in the drafting of said agreements”. In addition, in response to another question, almost all participants in the second survey also noted that Nations were not consulted in the implementation of the selected environmental agreements. The

surveys undertaken by the Environmental Commission indicated that the key barriers/impediments to the implementation of the above agreements were: lack of consultation with and/or participation of Nations impacted by relevant international agreements in the drafting of said agreements, lack of access to implementation mechanisms, lack of conflict resolution mechanisms, lack of Infrastructure, lack of authority to implement agreements, lack of organisation and governance within your region, gaps and weakness identified in the relevant international agreements, security threats including lack of positive implementation due to threats to persons and or lack of pursuing rights under relevant agreements due to such security threats, Nations lack suitable recognition within relevant environmental protection agreements including lack of recognized rights and/or ability to pursue recourse and/or damages, varying interpretations of rights and obligations under relevant international agreements, relevant agreements are too general and do not address the issues within the regions and relevant agreements are not adaptable to suit issues within the region.

In recognition of the place-based, socio-economic-legal-political contextual nature of environmental issues, a one size fits all solution to improve relations between nations and states is not proposed. Rather we are encouraging a commitment to a collaborative process. Examples of types of collaborative processes that align with the intent of Resolution 1 include:

- Centennial Accord between the Federally Recognized Indian Tribes in Washington State and the State of Washington, 1989 and Centennial Accord Millennium Agreement
- The 1985 Compact of Free Association (CFA) between the US, Marshall Islands, and Micronesia. The CFA is broad, encompassing 472 sections in 4 Titles - Governmental Relations (7 articles - see especially Article vi on Environmental Protection), Economic Relations (5 articles), Security and Defense (4 articles), and General Provisions (7 articles). As an over-arching agreement of relations between sovereign States and Nations, it contains many of the elements that the EC has been thinking would be developed under Resolution 1. This complex agreement represents a modern analog to the 19th Century treaties between the United States and Indian Nations.
- Indigenous Protected and Conserved Areas (IPCAs) provide examples of Indigenous Laws in the Context of Conservation
- Natural Resource Co-management Agreement-E.g., between the State of Oregon and the Coquille Indian Tribe
- Master Stewardship Agreements
- Step into the River - a framework for economic reconciliation being developed in area known as Canada

PROPOSED RESOLUTION:

The Environmental Commission proposes that the Congress of Nations and States adopt Resolution 1 which would commit States and the Indigenous Nations within their territorial boundaries to collaboratively develop and agree upon procedures and mechanisms to strengthen intergovernmental deliberation and actions to implement ISAs. It is anticipated that mutually acceptable principles and standards for representation, procedures, and processes would be developed in accordance with cultural and legal norms and supported through appropriate governmental and administrative processes of the States and Indigenous Nations. Details regarding the structure and operation of mechanisms would be determined through collaborative deliberative processes. For example, a Steering Committee, comprised of selected representatives of States and Nations, might be established and authorized to receive and prioritize requests for fact finding and facilitation services to establish a common foundation for co-production of science and solutions to shared problems, funding support, dispute resolution, resolution, authorize production and acceptance of reports, and provide general oversight. In summary, CNS EC Resolution 1 would commit Nations and States to undertake a collaborative process to develop mechanisms, policies, and programs to implement the principles and tenets set forth in ISAs within their respective territorial jurisdictions.

RESOLUTION 2 REPORT

Whereas, effective mechanisms for implementation of inter-State agreements among States are needed to ensure equitable treatment of Nations of Indigenous Peoples, an Intergovernmental Relations Council (IRC) is proposed to facilitate the development of working, sovereign-to-sovereign relationships between States and Nations. The IRC would seek to overcome structural and institutional barriers to participation by Indigenous Peoples by providing a process and forum to identify and reconcile divergent perspectives regarding priorities, values, and knowledge systems. The intergenerational wisdom and place-based insights that Nations have accumulated over generations will be especially crucial in understanding and re-thinking how human communities affect and are affected by their environments. Holistic world views, based on principles of interconnectedness, respect, and reciprocity that have enabled Indigenous Peoples to adapt and survive socio-economic-political-environmental changes can contribute greatly to the dialogue needed to chart a common path to the future. Political sovereigns must forge collaborative, cooperative relationships at multiple levels to care for the environment, a new system of problem solving, governance, and decision-making will be required to reconcile differences and substantively effectuate lofty principles and objectives espoused in inter-State Agreements to contend with the diversity of circumstances that will arise in implementation.

The aim of the Intergovernmental Relations Council (IRC) is to establish a governance process for collaborative working between Nations and States that will achieve mutually desirable and reciprocal environmental and resource usage outcomes for both parties. The IRC mechanism will provide a neutral and independent forum to facilitate the exchange of knowledge, tools, policies, priorities and approaches on environment matters that are culturally sensitive and environmentally sustainable. It is also envisaged that the IRC would, in time, develop regional entities/councils that would better tailor the governance of environmental policies and strategies to the interest of nations, thereby helping to redress the current imbalance between states and nations. The IRC would make recommendations and, in time, it is envisaged the IRC would also become a mediating and dispute resolution mechanism at both global and regional levels. The value added of the IRC is that it will bring to bear on development and resource usage policies, strategies and decisions, the extensive knowledge and expertise of Indigenous Peoples in working in harmony with and safeguarding their environments. Currently this wisdom, expertise (and the underpinning value-systems of adaptability) are insufficiently deployed in such decision making resulting in excessive depletion of environmental quality. In addition, such a body would help to highlight the human rights needs and give stronger voice to the socio-economic dimensions of environmental issues, especially for Indigenous Peoples. Moreover, by establishing a formal platform for Indigenous Peoples to articulate their interests at both global and regional levels, the IRC will help to redress the current imbalance between States and Nations in environmental decision making, thereby reducing conflicting and competing claims and ensuring better cooperation and trust between the parties. Simultaneously, by establishing a mechanism that draws more effectively on under-represented environmental discourses and value systems of Nations, the IRC will enable States to enhance longer term sustainability agendas that reflect the interconnected needs of all human and non-human communities. As explained above, we are not prescribing a fixed off-the-peg entity for the IRC, but a framework of a structure, objectives and modalities that will develop and evolve as mutual capacity, experience and needs grow.

The mandate of the IRC is to promote a collaborative, cautionary and diplomatic approach to State-Nation relationships, policies and actions on environmental matters. To this end, the development of regional entities of the IRC based on regional groupings of common interest and priorities is recommended, in due course, that will better capture the divergent and evolving perspectives on these matters. The development of such regional groupings with strong representation of Indigenous Nations 'interests is a significant, innovative proposal. The modalities for such groupings could draw on a number of existing models and templates of multilateral groupings (see e.g., Balsiger, P.,

and Prys, M., (2016) 'Regional agreements in international environmental Politics', *Journal of International Environmental Agreements*, 2016:16, pps. 239–260, DOI 10.1007/s10784-014-9256-3), and types of environmental issues that are amenable to regional approaches such as: biological diversity and threatened species, climate change; ocean acidification, hypoxia, harmful algal blooms; air and water quality; forestry resources (forest (deforestation, wildfire, insects, disease, illegal logging, supply train verification, tariffs/taxation); pollution and waste; and overfishing (depletion of ocean fish stocks).

Inter alia, the tasks of the global and regional IRCs should be to:

- Provide technical advice, implement technical cooperation projects, undertake capacity-building and awareness-raising initiatives on environmental matters of common interest to nations and states;
- Monitor and gather information and provide analysis of the key environmental issues that pertain to the collective interests of nations and states;
- Commission open and transparent reviews by experts, nations' representatives and governments to identify where further research is needed specifically support and conduct various forms environmental monitoring, fact-finding and investigations that relate to the collective interest of nations and states.

In due course, the IRC should progress beyond an advisory, research and technical body to develop governance systems and processes that monitor, arbitrate, and ensure compliance on environmental issues and standards pertaining to the interests of Nations and States. The governance functions should encompass the capacity to:

- Promote, in the longer term, the implementation of agreements, conventions and treaties as they relate to the joint interests of nations and states on environmental matters will be monitored by committees of independent experts. The committees will receive submissions from: State parties' reports, Nations complaints or communication, Confidential inquiries and submissions
- Undertake or promote, where necessary or as appropriate, country/regional studies, monitoring, fact finding or investigative missions to further examine environmental impacts or in response to a particular situations;
- Promote the establishment of temporary non-judicial Commissions to establish facts regarding non-compliance (mapping violations, taking testimonies etc). Depending on funding and capacity constraints these should be at a regional level;
- Develop mechanisms to publish reports on compliance and the findings of Commissions which constitute impartial records of the events examined with conclusions on accountability, and recommendations on reconciliation and reparations;
- Promote the establishment of dispute resolution mechanisms particular to environmental dispute between Nations and States.

This resolution and the processes for mobilising it that are elaborated above, are based on data collected by the Environmental Commission in its research. These highlight that the primary concerns of Nations are the imbalance of power in the negotiation of international agreements between Nations and States, the lack of consultation with and/or participation of Nations impacted by relevant international agreements in the drafting of these agreements were primary concerns to Nations. Further, although not to the same extent, our data suggest a number of secondary but still significant concerns that this resolution seeks to address. These are: an imbalance of rights and obligations between Nations and States; the lack of just and equitable recognition of Nations' interests within relevant environmental protection agreements including lack of recognised rights and/or ability to pursue recourse and/or damage mitigation and compensation; the lack of organisation and governance notably at a regional level; the lack of conflict resolution mechanisms

and associated security threats. In particular, the inclusion of Indigenous Nations in regional multilateral processes is a novel and significant element in this resolution and its mobilization.¹

Environmental Commissioners

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¹ It should be noted that the resolution and the commentary are based on 23 responses to an initial survey and 40 responses of Nations to a second survey undertaken by the Environmental Commissioners. We did not receive commentary or responses from States.