



## AMERICAN INDIAN MOVEMENT-WEST

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Seventeenth Session of the Expert Mechanism on the Rights  
of Indigenous Peoples, July 8-12 July 2024

Item 10: Future work of the Expert Mechanism, and follow up  
to thematic studies and advice (July 10, 2024)

(written statement. Please distribute)

The American Indian Movement-West, (AIM-West) an inter-tribal human rights and treaty organization based in San Francisco, submits this written statement before the EMRIP 17th session and as a follow-up with the 1848 Treaty of Guadalupe Hidalgo report submitted to inform the EMRIP study on “Treaties, agreements and other constructive arrangements between Indigenous Peoples and State, including peace accords and reconciliation initiatives, and their constitutional recognition.”

The EMRIP Study on Treaties sought to contribute to an understanding of the Declaration on the Rights of Indigenous Peoples (DRIP) Article #37 of the rights enshrined therein and the obligations of States arising therefrom. The EMRIP reviewed its Study on Treaties submissions July 2022 and has reported it received over 30 submissions from Indigenous peoples and organizations. AIM-West was one of them. Unfortunately, it was not among the recommendations to the Human Rights Council in 2022. Governments were lacking and Only two countries cooperated and submitted their report to EMRIP. A poor response.

The Declaration on the Rights of Indigenous Peoples (DRIP) states that, “Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to Self-Determination, exercised in conformity with international law,’ and “Convinced that the recognition of the rights of Indigenous Peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,” it is a duty of the UN Human Rights Council to encourage “States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned.”

Our organization, AIM-West asks that the same consideration given to other Indigenous Peoples in the US, as in the case of American Indian tribes that have federal recognition by the U.S. Government because of long-standing Treaties, be ascribed to the Mexican American peoples in the USA. Accordingly the DRIP Articles #3, 5, 6, 9, 10, 26, 27, 28, 30, 36, & 37 are pertinent to our claim. The Treaty of Guadalupe Hidalgo is a bilateral agreement between two States that denied the participation of the affected peoples living in the “conquered” territory. It was signed on February 2, 1848, and concluded armed conflict between the United States of America (U.S.) and the United Mexican States (Mexico). By its terms, Mexico ceded 55 % of its territory, including parts of present-day Arizona, California, New Mexico, Texas, Colorado, Nevada, and Utah, to the US.

It excluded Mexicans of indigenous origins and the indigenous peoples that have populated the area since time immemorial, termed "Indians" and "savage tribes." The Treaty codified international legal obligations for each State to fulfill toward the peoples living in the newly annexed territory. Once the Treaty (TGH) went into effect, these obligations were immediately abrogated and disregarded over time. Thus, the Treaty was not just an instrument to end war or set a new State borderline; it conveys international norms and standards of human rights affecting indigenous peoples.

During the July 2022 EMRIP session, Ms. Valmaine Toki (member of EMRIP) encouragingly acknowledged that there may be a second study to expand on the topic of Treaties and Agreements. At the same time Ms. Margaret Lokawua (also member of EMRIP) welcomed the comments made by the participants from Asia, especially when they said that the Study on Treaties needed more input. The solution, as she said, could be to have another Study on Peace Accords. AIM-West is in support of this endeavor.

Further, in the EMRIP report to the Human Rights Council in 2022, in paragraph #50 states, "Participation also pointed out that the report contained references regarding significant cases of peace accords in some of focused countries, but the consideration of peace accords and agreements had not been addressed in depth. It was therefore requested that the EMRIP conduct a separate study and report on peace, agreements and accords in conflict and post conflict situations involving or affecting Indigenous peoples." AIM-West is also in support of this position.

We assert that the Treaty of Guadalupe Hidalgo (TGH), was a peace accord (but never ratified by the US), which concluded the U.S. war against Mexico in 1848, conveys the same status to Mexican Americans as other Treaties, even though the Mexicans at that time an estimated 75,000 persons were subsumed by the US Government by force. In effect we are a nation within a nation, embodying historical and cultural origins similar to other Indigenous Peoples. The TGH is a living document that has been used in legal proceedings virtually since it was enacted because the US Government, State and private entities violated its terms almost immediately. We Mexican Americans assert it as our birthright as Indigenous Peoples. And, the U.S. government has an inherent duty to fulfill its obligation.

Our cause may be considered a novel approach within Treaty law because Mexican Americans represent an Indigenous Peoples which was virtually created by force of arms on the part of the U.S. Government. The 1999 Final Report by the late Dr. Miguel Alfonso Martinez, Special Rapporteur on Treaties affecting Indigenous Peoples, infers that the Treaty of Guadalupe Hidalgo (TGH) represents a viable basis for acceptance of the claim of indigeneity by Mexican Americans and deserved further scrutiny. He stated, in paragraph 54, of his report, "a narrow definition of "a treaty" and "treaty-making" would hinder or pre-empt any innovative thinking in the field. Yet it is precisely innovative thinking that is needed to solve the predicament in which many indigenous peoples find themselves at present." We assert this claim on the basis of having become an entity that should be recognized as viable under the terms of the UN DRIP document which does guarantee, we assert, our right to have our claim heard and given further scrutiny. We ask for EMRIP to offer us that opportunity to pursue our claim.

Mexicans living in the conquered territory, mostly what is now the Southwest from Texas to California, were made silent partners of that Treaty along with the "savage" tribes that were subsumed by it, but had no say in its terms and thus were denied Free, Prior and Informed Consent, a modern day concept which we now seek to assert.

AIM-West once again, respectfully assert that EMRIP's recommendation to the Human Rights Council to include a further study of the Treaty Guadalupe Hidalgo 'warrants further scrutiny' and will advance treaties, agreements and other constructive arrangements between the Indigenous peoples and States. AIM-West is of the opinion that the recognition, observance, enforcement, honoring and respect of the Treaty of Guadalupe Hidalgo will improve the Indigenous peoples and States' partnership within the territories covered by this Treaty.

Thank you for your attention.

Ajo!

AIM-West