**To: United Nations Human Rights Office of the High Commission**

Expert mechanism on the rights of Indigenous peoples: *Call for submissions*

*Study on "Treaties, agreements and other constructive arrangements, between indigenous peoples and States, including peace accords and reconciliation initiatives, and their constitutional recognition."*

Treaty No. 3

 1873

Is a treaty between

Her Gracious Majesty the Queen of Great Britain and Ireland,

As represented by Her commissioners,

The Hon. Alexander Morris, the Lieutenant-Governor of

the province of Manitoba and Northwest Territories,

Joseph Albert Norbert

Simon J. Dawson,

of the one part,

and the Saulteaux tribe of the Ojibway Indians,

of the other part

A

Submission

 to the UN Study on Treaties

by

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The primary relationship was established by a nation-to-nation agreement, known today as Treaty No. 3. Essentially, the treaty granted the Queen, Her Government and Her subjects the right to pass through the lands and territory, of the Saulteaux tribe without compromising Anishinaabe sovereignty.

In 1848 Simon J. Dawson accompanied Henry Youle Hind and met with the Grand Council of Anishinaabe Chiefs and they agreed-in-principle to have their country explored and the Chiefs requested that someone come to their annual spring assembly to explain the objects of the expedition, the chiefs also stated that they desire to have a treaty.

(Exploration party of Henry Youle Hind 1848)

In 1868 Simon J. Dawson accompanied an exploration party of Henry Youle Hind, and Dawson wrote in the Report on the Line of Route between Lake Superior and the Red River settlement: " from what I have said, I trust it will be seen that some sort of treaty should be arrived at with these Indians. They are as I have stated, desirous of seeing the communication opened, believing that it will conduce to their advantage, and I think a treaty with them; in the first instance, be confined to this one point, namely, right-of-way, this they expressed their willingness to accord to many years ago, but the question of relinquishing land for settlement was taken by them en delibre."

(Report on the Line of Route between Lake Superior and the Red River Settlement, Simon J. Dawson 1068)

In June 1870 the following were the terms laid out by the head chief of the Saulteaux, declaring that they had determined upon ten dollars per man, woman, and child to be paid “as long as the sun shines”. In addition, the Indians wanted flour, pork, tea, and tobacco to provide for a feast at the annual payments.

The chief further stated:

that we expect an answer to our demand sent to Mr. Pither during the winter so that we may know how to act and when to assemble for the payment.

For this we are willing to:

* allow the Queen’s subjects the right to pass through our lands,
* to build and run steamers,
* build canals and railroads and to take up sufficient land for Government use – but we will not allow farmers to settle on our lands.

Those terms were again stated in October 1873 by the head chief of the Saulteaux tribe to the commissioners that those were the terms they agreed to in 1870.

The Saulteaux agreed to allow for a right-of-way through their lands and territory and to permit the Queen’s government to undertake certain activities, for which the Indians were to be compensated. Thus, the treaty was defined as those specific items the Indians were willing to grant and flatly refused to allow any settlement.

December 1870 meeting in Fort Frances the principal chief stated:

“We want much that the white man has to give, and the white man on his part wants roads and land, when we meet next summer, you must be prepared to tell us.

* Where your roads to pass and,
* What lands you require.”

For the Saulteaux the term treaty meant annuities in exchange for a right-of-way as well a certain section of land for specifically defined purposes.

June 1872 the fact that they made those demands was a clear indication that the Saulteaux viewpoint had not changed; to them, the term “treaty” still meant an annuity and the restriction of Queen’s government activity to certain specific areas.

October 1, 1873, the chiefs issued an ultimatum, and it would appear from the presentation of these demands, that the chiefs still contemplated the “treaty” as a form of a lease, by which they would still retain ultimate control of the lands, territory, and resources.

Thus, the term “treaty” means annuities in exchange for granting a privilege or right-of-passage, to be able to travel through the Saulteaux lands and territory.

On October 3, 1873, and it took 25 years for the Queen’s representatives and the Saulteaux tribe of Ojibway Indians to conclude a treaty at the North-West Angle of the Lake of the Woods, by which the Saulteaux agreed to lease tracts of land for the railway and the Dawson Road. By this treaty, the Queen’s government acquired land for the Canadian Pacific Railway and the Dawson Road. The treaty is based on the principle of “rights-of-passage granted by the Saulteaux to the Queen, Her government and Her subjects.

(Treaty Research Report Treaty Three 1873 by Wayne Daugherty 1986)

"An unnamed elder who was not part of the official signing of the Treaty asked permission to speak. His own sons tried to discourage him but Chief Mawedopenais, in his wisdom, suggested that he go ahead.

The elder drew a circle on the ground and drew a line across. He said to the others, 'did you stand aside and allow them to use all your land?' he went on to say that only half the circle be (shared) and that half be used for people who would be living in time forward...

At the conclusion of the Treaty, Chief Powassin got up and took some earth from any place on the ground. He took out the grass, the twigs, the leaves and said "All these items I have taken away from the ground itself represent the natural resource and the natural resources are not included as a result of this signing.

As Powassin was talking about the ground, he said, “as deep as the plough and the harrow would go, that is all we are allowing you to use. The islands of this lake are not relinquished as a result of this treaty...only the ground as I have outlined”. The Queen's representative then went on to say, "That is the way it shall be, as you have outlined."

(Neogezhik's words, as translated by T.P. Kinew, in Georges Dufaux, Manomin (incomplete) film, NFB, 1981 reel 8)

In Anishinaabemowin the intent of the word, 'kii ta wi'in' that Neogezhik chose to use when he said "to step aside and allow you to use" which means to lend, to rent and in this case when it refers to the Treaty it means to 'lease' the lands use for the railway and Dawson Road.

Since the racist decision of the Privy Council in their 1887 St. Catherine's Milling and Lumber Company case, the Canadian legal and political system has said that Aboriginal title was no more than a 'usufruct' or use of the land that was 'dependent upon the goodwill of the sovereign'. Actually, what Neogezhik and the Treaty No. 3 Elders know to be true is "kii ta wi'in", the concept in our language, that the Treaty retains Anishinaabe ownership of the land. It allows the newcomers to use the land only, not the natural resources, and only at the goodwill of the Anishinaabeg. We are the guardians, the custodians, the trustees for all that the Great Spirit has given us." (T.P. Kinew January 1993)

Robert C. Greene has compiled the research and archival documents in this submission and his father Robin R. Greene was a Grand Chief of the Grand Council of Treaty No. 3 for many years and during the repatriation of the Canadian Constitution in 1980’s, Chief Robin Greene made several trips to Geneva Switzerland to make presentations to the United Nations on the treaty issues and the constitutional process in Canada. He also tried to meet with Her Majesty the Queen of United Kingdom to no success. When Robin Greene was chief of his community of Iskatewizaagegan No. 39 Independent First Nation he was arrested and sent to jail for advocating for justice when the province of Ontario closed the fisheries for the Shoal Lake area.

National mechanisms and problem-solving approaches – recommendations from the Report of the Royal Commission on Aboriginal Peoples 1991:

With respect to the historical treaties, the Commission recommends that:

2.2.2

The parties implement the historical treaties from the perspective of both justice and reconciliation.

1. Justice requires the fulfilment of the agreed terms of the treaties, as recorded in the treaty text and supplemented by oral evidence.
2. Reconciliation requires the establishment of proper principles to govern the continuing treaty relationship and to complete treaties that are incomplete because of the absence of consensus.

2.2.3

The federal government establish a continuing bilateral process to implement and renew the crown’s relationship with and obligations to the treaty nations under the historical treaties, in accordance with the treaties’ spirit and intent.

2.2.4

The spirit and intent of the historical treaties be implemented in accordance with the following fundamental principles:

1. The specific content of the rights and obligations of the parties to the treaties is determined for all purposes in a just and liberal way, by reference to oral as well as written sources.
2. The Crown is in a trust-like and non-adversarial fiduciary relationship with the treaty nations.
3. The Crown’s conflicting duties to the treaty nations and to the Canadians generally is reconciled in the spirit of the treaty partnership.
4. There is a presumption in respect of the historical treaties that
* Treaty nations did not intend to consent to the blanket extinguishment of their Aboriginal rights and title by entering into the treaty relationship.
* Treaty nations intended to share the territory and jurisdiction and management over it, as opposed to ceding the territory, even where the text of an historical treaty makes reference to a blanket extinguishment of land rights; and
* Treaty nations did not intend to give up their inherent right of governance by entering into a treaty relationship, and the act of treaty making is regarded as an affirmation rather than a denial of that right.

2.211

The following matters be open for discussion in treaty implementation and renewal and treaty-making processes:

* Governance, including justice systems, long term financial arrangements including fiscal transfers and other intergovernmental arrangements;
* Lands and resources
* Economic rights, including treaty annuities and hunting, fishing, and trapping rights;
* Issues included in specific treaties (for example, education, health, and taxation); and
* Other issues relevant to treaty relationship identified by either party.

2.213

The royal proclamation and companion legislation in relation to treaties:

1. Establish a Crown Treaty Office within a new Department of Aboriginal Relations; and
2. Direct that office to be the lead Crown agency participating in a nation-to-nation treaty processes.

With regard to provincial and territorial responsibilities, the Commission recommends that:

The governments of the provinces and territories introduce legislation, parallel to the federal companion legislation, that

1. Enables them to meet their treaty obligations;
2. Enables them to participate in treaty implementation and renewal processes and treaty-making processes; and
3. Establishes the institutions required to participate in those treaty processes, to the extent of their jurisdiction.
4. Each province and territory establish a Crown Treaty Office to enable it to participate in treaty processes.

The governments of Canada, relevant provinces and territories, and Aboriginal and treaty nations establish treaty commissions as permanent, independent, and neutral bodies to facilitate and oversee negotiations in treaty processes.

* Commissions to have permanent administrative and research staff, with full independence from government and from Aboriginal and treaty nations
* Commissions to monitor and guide the conduct of the parties in the treaty process to ensure that fair and proper standards of conduct and negotiation are maintained.
* Commissions to supervise and facilitate cost sharing by the parties.
* Commissions to provide mediation services to the parties as jointly requested.
* Commissions to provide remedies for abuses of process.

A recommendation by the Commission that a Tribunal be established for Aboriginal Lands and Treaties