

Fourteenth Session of the United Nations Permanent Forum on Indigenous Issues (UNPFII), 20 April - 1 May 2014, United Nations Headquarters, New York, NY, USA

Item 8: Future work of the Permanent Forum

Joint Intervention: The American Indian Law Alliance; the Onondaga Nation; the Seventh Generation Fund for Indigenous Peoples; Tonatierra; Community Legal Resources Centre; Southern Diaspora Research and Development Center; the Ingrid Washinawatok El-Issa Flying Eagle Woman Fund for Peace, Justice and Sovereignty; Loretto Community; Neighbors of the Onondaga Nation (NOON); WESPAC Foundation; and the Connie Hogarth Center for Social Action.

Presented by Ms. Betty Lyons (Onondaga Nation), 29 April 2015, UN Headquarters

Presented by the American Indian Law Alliance (AILA)

www.ailanyc.org

Current and Historical Context

1. Indigenous Nations and Peoples came to the UN in 1977, in part to have our nation-to-nation treaties upheld by UN bodies. Some of those courageous leaders are still with us today, and are still fully engaged in the fight to have our treaties upheld. We felt that this international forum would be one place to ensure enforcement of treaties between our Indigenous Nations and UN member states.
2. We recall the statement of Ms. Navi Pillay, former UN High Commissioner for Human Rights affirmation that *“treaties remain the cornerstone for the protection of the identity, land and customs of indigenous peoples, determining the relationship they have with the State.”*¹
3. The Haudenosaunee is a government whose treaties with the United States, Canada and other powers, are important valid living documents that shaped the foundation of the relationship between our respective Nations.
4. With that current and historical context, we take note of the studies presented today, including the comments by Permanent Forum Member Mr. Alvaro Esteban Pop, the “Report of the study into cross-border issues, including recognition of the right of indigenous peoples to trade in goods and services across borders and militarized areas” (E/C.19/2015/9) presented by Forum Member Ms. Megan Davis, and the “Study on the treatment of traditional knowledge in the framework of the United Nations Declaration on the Rights of Indigenous Peoples and the post-2015 development agenda” (E/C.19/2015/4) presented by Forum Member Ms. Maria Eugenia Choque Quispe.

¹ Statement from Navi Pillay, former UN High Commissioner for Human Rights marking the International Day of the World's Indigenous Peoples on August 9, 2013: <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13610&LangID=E>>.

Regarding the situation of indigenous peoples and their participation in democratic societies and the electoral process²

5. The Onondaga Nation and many other Indigenous Nations of Turtle Island practiced a consensus-based democracy long before the arrival of Europeans. Thomas Jefferson, one of the so-called “founding fathers” of the United States of America, credits what US colonialists referred to as the Iroquois Confederacy, properly known as the Haudenosaunee Confederacy, with the concepts of democratic government and the union of independent states.
6. The Onondaga Nation is the model for best practice for self determination and good governance. Many treaties have been made between our peoples addressing these issues. First, the Guswenta or Two Row Wampum Belt, made between the Haudenosaunee and the Dutch in the 1600's. It describes how two different peoples and citizens would travel side by side, never interfering in each other's governments. We would keep our traditions, customs and government in our canoe and the Dutch would keep their customs, traditions and government in their boat, never passing laws against one another. We would coexist with one another in a way of peace traveling down the river of life. Later, the French (13 June 1717), the English (24 September 1664) and Americans agreed to the principles of the Two Row and it became the basis for all subsequent treaties.³
7. We note that the Onondaga Nation does not accept funding from the US Federal Government, with the exception of the funding and services through our existing treaties. Citizens of the Onondaga Nation do not vote in the election process of the US; as we have our own system of government that has been handed down generation to generation from time immemorial.
8. We are now experiencing the United States Federal Government trying to control our government by imposing taxes on our sovereign territories. The Onondaga Nation uses the monies gained through our businesses to fund a variety of programs and services for the citizens of the Onondaga Nation such as: home building and reparations, Elders programs, youth programs, language program, drug and alcohol rehab facility, family services, employee assistance, job training and placement, energy assistance, waterworks, Nation Fire station with first responders, the Onondaga Nation Arena, Iroquois Nationals Lacrosse Team, all sports programs, as well as assistance to all nations of the Haudenosaunee to name a few.
9. Our right to self determination and governance is ours and non-negotiable. For thousands of years we have had no problem in determining who we are. The suggestion and perception that UN member states somehow have the right to determine who we are and how we live is yet another example of the legacy of the Doctrine of Discovery.

² Special thanks to Rick Chavolla (Kumeyaay) Board Member, American Indian Community House, for his editing and drafting assistance.

³ UNDRIP Article 37 point 1 states: *Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.*

Border Issues facing the Haudenosaunee

10. Our right to pass over the imposed border freely is protected by Article III of the 1794 Jay Treaty, which guaranteed “Indians dwelling on either side” of the imposed international boundary the right “freely to pass and repass by land or inland navigation” into either Canada or the United States. (8 Stat. 116.) Haudenosaunee citizens have traveled using our own passports and identification cards. The term “freely” in the Jay Treaty means that burdensome documentation requirements cannot be lawfully imposed without our free, prior and informed consent. We appreciate the attention paid to the issues facing our brothers of the Mohawk Nation in the report presented by Forum Member Ms. Megan Davis, as well the attention paid in previous UN reports.⁴
11. Our right to carry our own documentation is part of our right to self determination. We call upon the US Federal Government to move quickly to finalize the Memorandum of Agreement we have drafted together regarding the secure, upgraded ID cards we have produced. Our travel must not be restricted and our passports must be recognized by all member states. Recognition of our passport is essential for our ability to conduct international trade and commerce, to ensure economic development and the full exercise of our economic, social, and cultural rights.

Border Issues facing the Maasai Peoples⁵

12. The American Indian Law Alliance is alarmed at the continued evictions and threats of evictions of Indigenous communities in Tanzania and Kenya ostensibly for conservation purposes and extractive industries development. The Maasai have suffered immensely and continue to suffer. The UN Special Rapporteur on the Rights of Indigenous Peoples communicated to the governments of Tanzania and Kenya on these issues in September 2010 and in 2014 respectively but to date, the atrocities continue. We request that both Tanzania and Kenya respect Maasai and other Indigenous communities rights to their land and resources. The two countries should also adopt development and conservation approaches that entrench rights and give the communities greater control of their resources. We further request the current UN Special Rapporteur on the Rights of Indigenous Peoples, with the assistance the Office of the High Commissioner of Human Rights, to follow up on the implementations of the recommendations of Former UN Special Rapporteur on the Rights of Indigenous Peoples Professor James Anaya communications to the two countries. We also urge UN Resident Coordinators in both countries to engage indigenous communities in the design and implementation of the post 2015 development agenda. We note the just concluded dialogue between the World Bank and Indigenous Peoples and urge the World Bank to facilitate, as a matter

⁴ See the “Report of the study into cross-border issues, including recognition of the right of indigenous peoples to trade in goods and services across borders and militarized areas” (E/C.19/2015/9) presented by Forum Member Ms. Megan Davis. See also paragraphs 50 & 95 of the “Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, Addendum: The situation of indigenous peoples in Canada” presented on 4 July 2014 to the Twenty-seventh session of the Human Rights Council, under Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development (A/HRC/27/52/Add.2). See also the recommendations of the final report of the Ninth Session of the UNPFII (E/2010/43, para. 98) calling for implementation of article 36 of the UNDRIP in relation to the Mohawk Nation and the Haudenosaunee Confederacy.

⁵ More information on the border Issues facing the Maasai can be found at the blog of the Community Legal Resources Centre, www.communitylegalresources.wordpress.com.

of urgency, dialogue between the two governments and indigenous peoples and linkages with the private sector for partnerships to support indigenous peoples natural resource based enterprises.

13. We also note that climate change is worsening conditions for pastoralists in both Kenya and Tanzania. As already noted by UNEP in the Post- 2015 development agenda, pastoralism is the most sustainable food system on the planet. However, it requires mobility to thrive as noted in the report. We note with concern Tanzania's increasing harassment of Maasai from Kenya grazing livestock in areas adjacent to their territories in Tanzania. Tanzania should note that the Maasai in both countries share strong family ties and their livelihoods are mutually dependent. We therefore call upon UNEP and both Kenya and Tanzania in cooperation with the Maasai in both countries to develop an ecosystem wide grazing program in the border area in the spirit of the East African Community Protocol that provides for the free movement of persons between the two countries.

Traditional Knowledge

“Traditional knowledge is knowledge concerning the environment in which indigenous peoples live which is passed on from one generation to another in written and oral form on the basis of their own cultural codes.”⁶

14. We believe that the traditional knowledge we possess as Indigenous Peoples from our traditional teachings is of paramount importance to the well being of Mother Earth. Our direct relationship with Mother Earth is one that is deeply culturally rooted in our being. We must obey natural law, as it is supreme. As Tonya Gonnella Frichner said “Mother Earth is a relative not a resource.”⁷ We as Indigenous Peoples have a mandate to speak for all things that cannot speak for themselves, the air, water, the animals, plants and birds. They are screaming and people are not listening so I will scream for them. The time has passed to change what is happening to our Mother. The effects of climate change will be the great equalizer and we will all feel the wrath.
15. The Onondaga Nation is a global leader on speaking for our Mother Earth. We were a leader regarding the ban on fracking in New York State. The Onondaga Nation coordinated community meetings and demonstrations to show the effects of this destructive process while educating and working side by side with our neighbors. We are happy this collaborative effort has brought about a ban on fracking in New York State.
16. These important studies discussed today are indicative of the essential work of the UNPFII and are of paramount importance within the UN system. This work cannot be limited or reduced. We strongly support the work of the UN Permanent Forum on Indigenous Issues and Permanent Forum Members that have committed, dedicated and volunteered their time, working for the advancement of and human rights for all

⁶ Paragraph 31 of the “Study on the treatment of traditional knowledge in the framework of the United Nations Declaration on the Rights of Indigenous Peoples and the post-2015 development agenda” (E/C.19/2015/4) presented by Forum Member Ms. Maria Eugenia Choque Quispe.

⁷ Tonya Gonnella Frichner (Onondaga Nation) statement to the 4th Interactive Dialogue of the General Assembly on Harmony with Nature, 22 April 2014, <http://www.harmonywithnatureun.org/content/documents/251Frichner-statement.pdf>.

Indigenous Nations and Peoples. I would personally like to thank you all for your hard work.

Recommendations:

1. All deliberations concerning Indigenous Peoples must include the full, effective, equal participation of all Indigenous Peoples in line with the UNDRIP. Indigenous Peoples have a voice and we must be recognized as our own experts in any forum concerning us.
2. We cannot allow procedures that will allow for states to move disputes regarding our rights to our lands, territories and resources from international processes to domestic judicial and political forums. History repeatedly demonstrates that many member states are incapable of legal, ethical and moral actions when regarding Indigenous Nations and Peoples. Member states are continually falling short of their legal obligations, through treaties, agreements and other constructive arrangements.
3. We call upon the United States and all other member states to fully recognize and accept our Haudenosaunee passports when traveling internationally and when we are returning to our Nations.
4. The United Nations Declaration on the Rights of Indigenous Peoples, which is an integral, international human rights instrument that recognizes the individual and collective rights of Indigenous Peoples, including the right of self-determination, must be implemented, upheld, enforced and eventually elevated to a Covenant.