

Thirteenth Session of the United Nations Permanent Forum on Indigenous Issues (UNPFII)

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May 14, 2014

Agenda Item 3: "Discussion on the Special Theme for the year: "Principles of good governance consistent with the UN Declaration on the Rights of Indigenous Peoples: articles 3 to 6 and 46"

**Intervention by the Haudenosaunee, Confederacy of Six Nations
North America**

Presented by Chief Oren Lyons (Onondaga Nation)

Principles of Good Governance

1. Thank you madam chair, congratulations as the 2014 Chair of the Permanent Forum. We bring you greetings from our Chiefs, Clanmothers, men, women and children of the Haudenosaunee. We hope this message finds you in good health and good spirits.

2. The Haudenosaunee is a federation of six original nations in Turtle Island known as the Western Hemisphere: from East to West - the Mohawk, Oneida, Onondaga, Cayuga, Seneca and Tuscarora, also known as the Six Nations Iroquois Confederacy. The Haudenosaunee are a constitutional democracy that has existed long before the creation of Canada and the United States of America. Over a thousand years ago on the shores of Onondaga Lake, in present day central New York, democracy was born, making ours one of the world's earliest and longest functioning democracies. We are governed by an ancient constitution known as *Gayanashagowa*, the Great Law of Peace, complete with a sophisticated system of checks and balances, our system influenced the early government of the United States as confirmed in a 1988 United States Senate resolution (H.CON.RES.331) which recognized Haudenosaunee influence on the US constitution. As affirmed in Article 3 of the UN Declaration on the Rights of Indigenous Peoples, affirming our right to self-determination and our right to determine our political status, we continue to maintain our traditional governance structure and we have never sold or otherwise relinquished our lands or rights to self-determination.

3. As Chiefs of these Nations, it is our duty to deal with international relations with other Nations and their organizations. We have been involved with dialogue with the various member nations and bodies of the United Nations over the decades and with the

League of Nations before the UN existed. We have maintained these nation-to-nation relationships as an active expression of our right to self-determination and our position has always been and continues to be that we are equal to all peoples and nations.

Our Right to Self-determination and the Seventh Generation

4. The Haudenosaunee continue to operate under our own set of laws as best we can in order to push forward traditional law and understanding for the benefit of the seventh generation to come. This type of exercise of our right to self-determination is affirmed in Article 4 of the UNDRIP and is consistent with other international conventions and treaties that promote the right to self-determination.

5. We were prominent during the development and the deliberation for adoption of the UNDRIP. We fought very hard for the inclusion of Article 3 which states, "*Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*" This wording is identical to the language of Article 1 of both Human Rights Covenants (A/RES/2200). We knew we were human beings however the Universal Declaration on Human Rights (A/RES/217) did not apply to us, we were not considered a '*peoples*'. Article 4, the right to self-government, is what we have been conducting for millennia, and we continue to maintain our traditional governance structure. Article 5, the right to maintain our distinct political, legal, economic, social and cultural institutions is how we have always conducted ourselves. Article 6, the right to a nationality, is based on our final determination of who is a citizen and who is not a citizen in our respective Nations. We have this system in place under our constitution.

Territorial Integrity of Indigenous Nations and Permanent Observer Status

6. We wish to respond to Article 46 of the UNDRIP, part of the special theme of this year's Thirteenth Session of the UNPFII. As Indigenous Nations and Peoples, we have our own territorial integrity. We continue to exercise our inalienable and inherent right to self-determination by traveling freely through our own traditional territories. This is our collective right as Indigenous Nations and Peoples as affirmed in Article 36, and addressed in the Permanent Forum's report of the ninth session from the Permanent Forum on Indigenous Issues, 2010 (E/2010/43-E/C.19/2010/15) paragraph 98 which states: "*The Permanent Forum recommends that the Governments of Canada and the United States address the border issues, such as those related to the Mohawk Nation and the Haudenosaunee Confederacy, by taking effective measures to implement article 36 of the United Nations Declaration on the Rights of Indigenous Peoples, which*

states that Indigenous peoples divided by international borders have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with our own members as well as other peoples across borders". We take note that neither of the state parties has addressed the recommendation made by the Permanent Forum on Indigenous Issues in 2010.

7. In December 2010, a 15 page statement entitled "Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples." In this document the U.S. presented a new form of the right to self-determination, which they referred to as the right to "internal self-determination." The right to self-determination is a unitary one that has not been sub-divided into internal and external components in either conventional or customary international law. This notion of a lesser degree of self-determination for Indigenous Peoples is in violation of the Charter of the United Nations and other UN conventions and treaties.

8. In line with our inalienable right to self-determination, as affirmed in UNDRIP Article 3, we note that since 1923 and 1977, the Haudenosaunee and other traditional governments have pioneered the Indigenous presence at the United Nations and other international venues, leading to the adoption of the UN Declaration on the Rights of Indigenous Peoples in 2007 by the UN General Assembly. Throughout these decades of work traditional Indigenous governments have been advocating for a proper status within all UN processes. It should be noted that the same traditional governments never referred to themselves as NGOs or domestic dependent nations.

Doctrine of Discovery

9. We take note of "A Study on the impacts of the Doctrine of Discovery on indigenous peoples, including mechanisms, processes and instruments of redress, with reference to the Declaration, and particularly to articles 26-28, 32 and 40" (E/C.19/2014/3) authored by our friend and relative Grand Chief Ed John, North American Representative to the UN Permanent Forum on Indigenous Issues.

10. We recognize the Doctrine of Discovery and its long-term effects on our peoples led to the atrocities we faced in residential and boarding schools, both in Canada and the U.S. We take note of the upcoming report and recommendations of the Truth and Reconciliation Commission of Canada, including the leadership of Chief Wilton Littlechild (Cree), former North American Representative to the UN Permanent Forum on Indigenous Issues and current chair of the Expert Mechanism on the Rights of Indigenous Peoples. We further take note of the apologies extended to Indigenous

Peoples by Australia, Canada and New Zealand regarding their implementation of boarding schools within their respective countries.

11. The installation of the Carlisle Indian Industrial School in Pennsylvania, USA in 1879 was the initiative of Richard H. Pratt, a U.S.A. Colonel in the U.S. Army who promoted the philosophy of, "Kill the Indian and save the man"; this idea of social engineering would be called brain washing by today's standards and has yet to be addressed by the U.S. government. Therefore, we request a study on the boarding schools of Indigenous children and youth in the United States.

12. We also wish to bring attention to the "Preliminary study on the impact on indigenous peoples of the international legal construct known as the Doctrine of Discovery" (E/C.19/2010/13) presented at the Ninth Session authored by Tonya Gonnella Frichner, Esq. (Onondaga Nation), former North American Representative to the UN Permanent Forum on Indigenous Issues. We recognize the legal construct known as the Doctrine of Discovery has global implications. As established in the preliminary study and reaffirmed in the more recent study, the Doctrine of Discovery has been invoked as a justification for the ongoing exploitation of our lands, territories and resources and directly violates Article 7 paragraph 2 of the UNDRIP.

Extractive Industries & Our Responsibility to Mother Earth

13. Indigenous cultures and identities are synonymous with our lands. We recognize that our Indigenous relatives are struggling against the extraction of resources on their lands, including mega-projects such as hydroelectric dams, hydraulic fracturing (hydrofracking), the Keystone XL pipeline and other pipelines and the contamination of the tar sands in Alberta, Canada. These threats are in direct violation of the UNDRIP.

14. We also recognize the global threat of climate change and we affirm the recent fifth assessment report of the Intergovernmental Panel on Climate Change (IPCC) "Climate Change 2014: Mitigation of Climate Change. Working Group III Contribution to the IPCC 5th Assessment Report - Changes to the underlying Scientific/Technical Assessment" (WGIII: 12th/Doc. 2a, Rev.2) Climate change is already negatively affecting Indigenous Peoples globally. As we stated in 2000 at the UN Peace Summit, "*The ice is melting in the north.*" Furthermore, In yesterday's New York Times front page, "Scientist's Warn of Rising Oceans From Polar Melt." Two independent studies by two groups of scientists find Global Warming fuels loss of Ice Sheets in the west Antarctic. According to the studies "a large section of the mighty west Antarctic ice sheet has begun falling apart and its continued melting now appears to be unstoppable..." These two scientific papers released yesterday by the journals Science and Geophysical Research Letters came to similar conclusions by different means.

15. In Haudenosaunee territory we continue to work for the cleanup of our territories as affirmed under Article 3 of the UNDRIP. We are working for the cleanup of Onondaga Lake and Onondaga Creek to restore them back to their pristine condition. Onondaga Lake, located northwest of Syracuse, NY, in our traditional territories, is a sacred site for our peoples. Onondaga Lake is severely polluted and is listed by the United States Environmental Protection Agency (EPA) as a highly contaminated superfund site. It is one of the most polluted bodies of water in North America. The actions and the non-compliance of the industries responsible for this destruction are in direct violation of our rights affirmed in UNDRIP.

16. The Onondaga Nation has begun to pursue the cleanup unilaterally, without the assistance of the United States Environmental Protection Agency (EPA) or the industries responsible for this toxic destruction.

17. We wish to remind states of Article 29 of the UNDRIP which establishes that Indigenous Peoples “have the right to the conservation and protection of the environment.” We draw upon the “Follow-up report on Indigenous Peoples and the right to participate in decision-making, with a focus on extractive industries” (A/HRC/21/55) authored by Professor James Anaya, Special rapporteur on the rights of indigenous peoples. ‘In many cases, industry and government regulators have refused to take responsibility for their participation in the contamination of Indigenous lands, territories and waters and must be held accountable for their actions.’

Onondaga Land Rights Action

18. We take note of the “Study on best practices and examples in respect of resolving land disputes and land claims, including consideration of the National Commission on Indigenous Peoples (Philippines) and the Chittagong Hill Tracts Land Dispute Resolution Commission (Bangladesh) and the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples’ Rights” (E/C.19/2014/4) We support the emphasis on “the customs, traditions and land tenure systems of the Indigenous concerned” as required under Article 26 (3) of the UNDRIP, as referenced in paragraph 41.

19. We would like to present our own Onondaga Land Rights Action as an example of best practices in good governance of Indigenous Peoples seeking protection of our lands, territories and resources.

Petition with the Inter-American Commission on Human Rights

20. In particular, we highlight our Petition recently filed with the Inter-American Commission on Human Rights of the Organization of American States, filed April 15, 2014 after having exhausted all legal remedies within the U.S. Federal judicial system and the last step in this process was the denial of certiorari by the U.S. Supreme Court. We were advised by the U.S. District Court of Appeals of the Second Circuit on 12 October 2010, that it is 'too late' for our Land Rights Action. The archaic concept of 'laches' was applied by the court, claiming we waited too long and it is too late to seek justice and our claim would be 'disruptive' on our neighbors, the non-Indigenous community. However the claim that it would be 'disruptive' is untrue and not an adequate rationale. In reality the Haudenosaunee protested the taking of our lands since the beginning of the illegal thefts of our lands and territories as is our right. We ask if it is 'too late' for a healing between our people? Too late to cleanup the waters, lands and air? Too late to save the birds and animals that are dying? We hope not, because we've always believed that we can have healing between our people and others. It's time to let the history be known and acknowledge what happened between our people.

21. Concerning our inherent rights to our lands, territories and resources, we wish to comment on "A study on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples, focusing on a potential voluntary mechanism to serve as a complaints body at the international level, in particular for claims and breaches of indigenous peoples' rights to lands, territories and resources at the domestic level" (E/C.19/2014/7). Paragraph 30 of the study concedes that the Declaration on the Rights of Indigenous Peoples has a "non-treaty status." The Declaration is by definition also not a Convention. This study cites no historical precedent for the approval or the application of an optional protocol for a Declaration, such as the UNDRIP. The possible implications for Indigenous Peoples need further discussion and deliberation. Of additional concern for indigenous peoples is that optional protocols are voluntary mechanisms, which exist for Conventions under the UN system. An optional protocol for the UNDRIP, without any historical guidelines or precedents, may allow procedures for states to move disputes regarding lands, territories and resources from international processes to domestic judicial and political forums.

Protectors of Mother Earth

22. For the Haudenosaunee, mandates regarding our environment are ancient laws handed down from one generation to the next. These teachings are basic principles of

respect, conservation and appreciation. We recognize other forms of life inhabiting the earth have a reason to be here just as much as we, each has duties that keep the rest of creation in a reciprocal balance. Humans are but a part of the natural world and Mother Earth is a relative, not a resource. For this reason, we continue to operate under our traditional mandate to be protectors of Mother Earth, and to preserve the land, water and our fellow creatures for the seventh generation.

Therefore; we make the following recommendations:

23. We request a study on the boarding schools of indigenous children in the United States and around the world. The removal of Indigenous children from their families and communities was legislated through the authorization of the state with its root in the Doctrine of Discovery. As described by Chief Ed John, who personally experienced this as a child. These children suffered injustices, violations and persecutions. Recognizing the impact of the Doctrine of Discovery and the specific impacts on Indigenous Peoples, in particular we take note of its effect on Indigenous youth, which includes high rates of youth suicides, the apprehension of indigenous children from their families, and poor access to education.

24. Regarding extractive industries, we recommend that international industries, corporations and business enterprises, operating or seeking to operate in Indigenous territories, endorse the United Nations Declaration on the Rights of Indigenous Peoples and operate in accordance with its principles. That states insures stringent regulations of international corporations, regarding extractive practices, policies and processes to protect the health of peoples, flora, fauna, water, air and lands that are crucial to our survival as a species.

25. Regarding the Onondaga Nation's unilateral cleanup of our territories, we recommend the cleanup of Onondaga Lake and Onondaga Creek be viewed as a best practice of Indigenous governance and we recommend other Indigenous Nations and Peoples look at the cleanup as a possible model for cleanups in other Indigenous territories.

26. Regarding the implementation of the United Nations Declaration on the Rights of Indigenous Peoples and recognition of the universal right to self-determination, we recommend that the claim that self-determination is somehow different for Indigenous Peoples, as asserted by some member states, be strongly rejected as untrue, discriminatory on its face and inconsistent with the United Nations Charter and established international law. Indigenous Peoples are equal to all other peoples.

