

MEMBER RESERVATIONS

Cheyenne River
Crow Creek
Fort Peck
Lower Brule
Pine Ridge
Rosebud
Standing Rock
Santee

BLACK HILLS SIOUX NATION TREATY COUNCIL PINE RIDGE AGENCY, SD

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Resolution of the **Black Hills Sioux Nation Treaty Council** **Rejection of the United States' Statement** of

U.S. Support for the United Nations Declaration on the
Rights of Indigenous Peoples

Owe Aku International Justice Project, with the support of the Black Hills Sioux Nation Treaty Council, is pleased that the United States announced its "support" of the United Nations Declaration on the Rights of Indigenous Peoples on December 16, 2011. Although, the United States was the last country in the United Nations to do so, with the "support" of the United States, the Declaration now enjoys, at least nominally, universal support amongst the world family of nations, including the Lakota Oyate. As newcomers to North America, where Lakota people have lived for thousands of generations, it is only right and fitting that the American people and their government acknowledge their hosts on this continent in a respectful way by supporting our international and inherent rights to land, territory, water, culture, sovereignty, self-determination and the enforcement of treaties. We would like to believe that this "support" of the Declaration means a time is coming when the United States, like the Lakota Nation, respects and honors all the treaties that have been made between our two nations.

However, a positive reaction to U.S. support did quickly turn to disappointment. We were dispirited by the unreasonable and inequitable limitations and qualifications placed on the Declaration by the United States in its official statement. In the first paragraph of the "support" statement they make it is clear that the Declaration is in no way a legal document, nor are they bound by it.

“The United States supports the Declaration, which—while not legally binding or a statement of current international law—has both moral and political force.”¹

Despite the President’s optimistic public speech introducing U.S. support, in nearly every sentence of the statement where “support” is indicated, there is a significant qualification or denial placed upon the tenets set forth in the Declaration.

[The Declaration] expresses aspirations of the United States, aspirations that this country seeks to achieve within the structure of the U.S. Constitution, laws, and international obligations, while also seeking, where appropriate, to improve our laws and policies.²

Which begs the question: under what circumstances would it be inappropriate to improve law and policy? Given the lessons of history, it is clear that not improving laws and policies in the U.S. is often considered inappropriate if it extends equal rights and justice to American Indian peoples and nations. In their statement that purports to “support” the Declaration, they reiterate the U.S. has done nothing but justify continuance of discriminatory policy.

The world has long recognized that the United States has lost any moral authority it may have ever claimed with regards to human rights or even the international laws of aggression and peace. This statement is further indication that, rather than leading in the work in human rights, the United States prefers to arrogantly stand outside the circle of nations while demanding that others conform to policies the U.S. is happy to violate.

They even manage to get in a comment that reduces ~~Native Americans~~ American Indians (and probably, more significantly, our lands and territories) to an exclusive right of dominion. Apparently the State Department and the President are comfortable referring to American Indians in a subservient, unequal and even proprietary manner.

“...few have been more marginalized and ignored by Washington for as long as Native Americans—our First Americans.”

Not “the First Americans” or simply “First Americans”, but “our First Americans.” This is hardly an accident given the obvious swarm of lawyers that combed through the document adding the numerous limitations.

¹ *Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples Initiatives to Promote the Government-to-Government Relationship & Improve the Lives of Indigenous Peoples*, p. 1

² *Id.* p. 1

“The decision by the United States to support the Declaration was the result of a thorough review of the Declaration by the relevant federal agencies.”³

In his remarks in November during Native American Heritage month, he acknowledged that:

“While we cannot erase the scourges or broken promises of our past, we will move ahead together in writing a new, brighter chapter in our joint history.”⁴

We would respectfully suggest that a good start at moving ahead would be to honestly endorse the Declaration, recognize the human rights of Indigenous peoples, and honor the hundreds of treaties that have been broken. As it stands, the U.S. support of the Declaration is a meaningless shell that permits the American people and their government to continue the colonial policies it has practiced with respect to American Indian peoples since the newcomers, the United States, established its own right to self-determination. To expect that we, as Indigenous peoples, would accept anything less is a barely veiled attempt to deny our humanity and to try to somehow convince people that our rights are somehow separate and, in fact, unequal to, those of all the world's other peoples.

Further evidence of this attitude continues in the most alarming part of the statement of support when the U.S. states:

*“The United States is therefore pleased to support the Declaration’s call to promote the development of a **new and distinct international concept of self-determination specific to indigenous peoples**. The Declaration’s call is to promote the development of a concept of self-determination for indigenous peoples that is different from the existing right of self-determination in international law.”⁵*

This is nothing more than saying that, as Indigenous peoples, we are NOT entitled to the same rights as other peoples. By adding their own unilateral spin on the Declaration, as though it were a Fox News story, they are stating that the Declaration indeed supports US Federal Indian policy, colonization, disenfranchisement from resources, and isolation from ecological and economic self-determination.

Nonetheless, even dismissing their redefinition of self-determination and the removal of Indigenous peoples from the rights granted to all other peoples in the world, the U.S. limits even their own narrow definition of self-determination to federally recognized tribes. This, then, makes the Declaration simply another manipulation in their policy of

³ *Id.* p. 1

⁴ *Id.* p. 1

⁵ *Id.* p. 3

domestication, assimilation and colonization of American Indian peoples. There is no change here.

“The Declaration’s concept of self-determination is consistent with the United States’ existing recognition of, and relationship with, federally recognized tribes as political entities that have inherent sovereign powers of self-governance.”⁶

Self-governance refers only to BIA tribal councils that were installed unilaterally by the United States government,⁷ and owe allegiance and are dependent on Washington’s programs regarding Indian lands and resources. Their statement on the Declaration actually uses many pages to list the programs they use in this process.

In the section entitled “Protection of Native American Lands and the Environment”⁸ they actually state that although “

“some of the most grievous acts committed by the United States and many other States against indigenous peoples were with regard to their lands, territories, and natural resources” ... “the United States understands these provisions to call for the existence of national laws and mechanisms for the full legal recognition of the lands, territories, and natural resources indigenous peoples currently possess. ... [The U.S.] “intends to continue to work so that the laws and mechanisms it has put in place to recognize existing, and accommodate the acquisition of additional, land, territory, and natural resource rights under U.S. law function properly and to facilitate, as appropriate, access by indigenous peoples to the traditional lands, territories and natural resources in which they have an interest.” [Emphasis added.]

It would be difficult to insert more qualifications and references to U.S. authority over American Indian people. Fortunately this is a written statement, otherwise the wagging of the “forked tongues” would be visible from a satellite in outer space. Part of the rights under US law for “tribes” is to have land acquired and held in trust.

⁶ *Id.* p. 3

⁷ Even though the U.S. held elections on the institution of tribal councils, at Pine Ridge it never passed, but was forced upon the people. This does not demonstrate a right to self-determination under international law.

⁸ *Id.* p. 6

The Obama Administration claims they have acquired over 34,000 acres of land in trust⁹ on behalf of Indian tribes. They indicate that this is a good thing without acknowledging that these lands were illegally taken in the first place through treaty violations and/or the impacts of genocidal policies. What is not added to the back-patting is that “land in trust” merely continues the same policy of trust land that is given to mining, ranching, and other corporate interests, instead of stewardship by Indian peoples as clearly outlined in the Declaration. They even cite the case, *City of Sherrill v. Oneida Indian Nation*¹⁰ in which they deny treaty rights based on the Doctrine of Discovery.¹¹ This is hidden under the guise of protecting tribal lands, a clear distortion of the truth.

*“The United States has also sought to protect tribal lands, and tribal jurisdiction over those lands, in several other court cases, including the City of Sherrill v. Oneida Indian Nation...”*¹²

Paternalism and colonization are clearly evident again in their discussion of their “training program” for Indians to prepare us “to manage their own natural resources.” An ironic concept since, for thousands of years, Indian nations were capable of managing our resources without U.S. interference. Indeed, it is that very interference which made it necessary for the Declaration to include numerous articles on the rights of Indigenous peoples to manage, access, conserve and use our resources according to our traditions and customs.

⁹ *Id.* p. 6

¹⁰ *City of Sherrill v. Oneida Indian Nation of New York*, 125 S. Ct. 1478, 148384 (2005).

¹¹ United Nations, E/C.19/2010/13, Preliminary study of the impact on indigenous peoples of the international legal construct known as the Doctrine of Discovery Submitted by the Special Rapporteur, ¶ 49.

“That the Doctrine of Discovery is still being used as an active legal principle by the United States Supreme Court in the twentieth-first century is revealed in the case City of Sherrill v. Oneida Indian Nation of New York⁵⁸ decided in March 2005, exactly 50 years after the Tee-Hit-Ton ruling. The case involved a dispute over taxation of ancestral lands of the Oneida Indian Nation. During oral arguments, it became clear that the case would hinge on whether, in the opinion of the Court, the Oneida Indian Nation “has sovereignty status” with regard to the ancestral lands the Oneida Nation had reacquired. To contextualize the Court’s decision and to decide the sovereign status of the Oneida Indian Nation, the Supreme Court relied upon the Doctrine of Discovery. This is revealed in footnote number one of Justice Ruth Bader Ginsberg’s decision for the Court majority: “Under the ‘Doctrine of Discovery’”, wrote Justice Ginsberg, “... fee title to the lands occupied by Indians when the colonists arrived became vested in the sovereign — first the discovering European nation and later the original states and the United States”. As documented by this preliminary study, the Supreme Court’s reference to the Doctrine of Discovery places the context for the Court’s decision in Sherrill v. Oneida Indian Nation of New York within the Framework of Dominance, dating back to the era of the Vatican papal bulls.”

¹² *Supra* p. 6, Announcement of the U.S. on the Declaration

“Sixteen different tribes, from Maine to Alaska, participated this summer in the Department of the Interior’s Bureau of Indian Affairs Water Training Program. The Training Program is taught by instructors from several Department of the Interior bureaus. The program strengthens tribal governments and prepares them to manage their own natural resources with qualified tribal government employees who have the necessary expertise to help alleviate the shortage of technical expertise on Indian reservations.”¹³

This statement demonstrates how the U.S. utilizes its own self-proclaimed “laws” to deprive us from the protection of international human rights. This particular example of an agency program designed to “*enhance tribal self-determination*” is particularly ill conceived given the fact that mining projects that are contaminating water and adding deadly heavy metals and chemicals to the ground water throughout treaty territory, are being supported and encouraged by the United States government. “Tribal self-determination” has resulted in water contamination over the objections of Indian nations that are wholly inconsistent with the Declaration.

As to redress, their qualifications are even more imperial and reflect the same attitude used since 1776. The various cases and acts that they cite as enhancing tribal authority actually only enhance federally recognized tribes continued dependence on the federal government and an inability to act under the provisions of self-determination set forth as it is defined in the Declaration.

“The United States will also continue to implement the many U.S. laws that require the agreement of federally recognized tribes or indigenous groups before certain actions can be taken or that require redress for takings of property.”¹⁴

Although they state that they are pursuing efforts to implement laws that “require redress for takings of property,” they go on to list a series of “new offices to ensure proper implementation of their consultation policies.” Consultations do not address the taking of property, the violation of treaties or the blatant disregard for basic human rights when it comes to Indian people in the U.S.

“Tribal” self-determination is a tool designed by the United states that allows them to control the tribes and then allows them to legitimize their actions of treaty violations. On the contrary, self-determination is not a concept to be defined by the United States, its President, its Congress or its people. It is an international legal concept that all member nations of the UN adhere to and understand.

“[The policies being adopted by the U.S.] demonstrate not only that the United States has a well-developed court system that provides a means of

¹³ *Id.* p. 4

¹⁴ *Id.* p. 5

redress for many wrongs suffered by U.S. citizens, residents and others – including federally recognized tribes and indigenous individuals and groups -- but also that redress is available from the U.S. Congress under appropriate circumstances. The United States will interpret the redress provisions of the Declaration to be consistent with the existing system for legal redress in the United States, while working to ensure that appropriate redress is in fact provided under U.S. law.”¹⁵

Again this is a distortion of the reality of the lives of Indian peoples who find themselves living within U.S. established borders. As pointed out in many studies and the interventions and testimonies before the United Nations by Indigenous peoples in many different international forums, neither recourse nor redress can be found within the domestic legal systems of the United States. On the contrary, the United States’ history with respect to American Indian nations and peoples, as well as its contemporary dominion of land and resources, also provide ample evidence of the inadequacies of U.S. domestic policies towards Indian peoples.¹⁶

United States support of the Declaration is, in fact, harmful when looked at carefully and analyzed under the guiding principles underpinning purpose of the Declaration. Because of its paternalistic and unsupported separation of Indigenous peoples from the same rights afforded to all other peoples, the “support” by the United States, should be seen as a warning to Indigenous peoples of true American intentions. Despite their ongoing belief in some kind of moral authority when it comes to rights, especially, human rights, the United States on behalf of its people, continues to stand outside the family of nations and insists that other nations adhere to international law and standards, while they arrogantly interpret everything from torture to colonization in terms of their interests alone. The Black Hills Sioux Nation Treaty Council rejects the “support” provided by the United States in its entirety and stand by the principles of international law to which all peoples are entitled and to which all peoples owe a duty to responsibly act according to those laws and principles.

Therefore, be it resolved that:

The Black Hills Sioux Nation Treaty Council calls upon the United States of America to adopt the Declaration on the Rights of Indigenous Peoples without inserting unilateral qualifications, limitations, and abrogations that clearly stand in violation to internationally binding treaties, international treaty law, and international human rights laws and standards.

The Black Hills Sioux Nation Treaty Council further calls upon the United States of America to adopt the Declaration on the Rights of Indigenous Peoples in solidarity with

¹⁵ *Id.* p. 8

¹⁶ See: *Towards the International Court of Justice, An Analysis of the Case of the Black Hills Sioux Nation Treaty Council on the violations of the Fort Laramie Treaty of 1868: The Legal and Historical Basis for International Adjudication*, Owe Aku International Justice Project, 2011.

the United Nations' member nations that have endorsed it uncompromisingly. By inserting unilateral qualifications, limitations and abrogations, the United States of America steps away from the other nations of the world, including the Lakota nation, who seek peace, security and the rule of international human rights standards to bring equality applicable to all peoples. Anything less only demonstrates a U.S. belief that it is not bound by international law nor that it should be held to the same standards of human rights adopted by all other nations.

The Black Hills Sioux Nation Treaty Council calls upon the world family of Indigenous and non-Indigenous nations to stand with it in urging the United States to reconsider its position and apply equitable, just and legitimate standards in the same way the rest of the United Nations' members have accepted and adopted the Declaration.

C-E-R-T-I-F-I-C-A-T-I-O-N

I, the undersigned Secretary of the Black Hills Sioux Nation Treaty Council, do hereby certify that the above resolution has been approved by consensus of the Oglala Delegation of the Black Hills Sioux Nation Treaty Council, effective January 19, 2011

ATTEST:

Chief Oliver Red Cloud, Itacan

Frederick Cedar Face, Secretary