

**STATEMENT OF THE HAUDENOSAUNEE CONFEDERACY  
TO  
THE UNITED STATES STATE DEPARTMENT'S  
HUMAN RIGHTS LISTENING SESSION  
ALBUQUERQUE, NEW MEXICO, March 16, 2010**

We bring you greetings from the Haudenosaunee Confederacy Grand Council and our Six Nations' Councils of Chiefs, our Clan Mothers, our Faithkeepers and all of our people. We hope that this Statement finds you and your family in good health and we appreciate this opportunity to address this United States State Department's listening session, which is focused on evaluating the United States' efforts in meeting its human rights obligations, particularly in regards to the Indigenous Peoples, whose original territories have been surrounded by the United States. We acknowledge that this listening session is a good first step: and we also understand that this listening session is one part of the process of the United Nations Human Right Council's process of Universal Periodic Review.

The Haudenosaunee Confederacy was formed by our Peacemaker over 1000 years ago, according to our Gayanashagowa, or Great Law of Peace; and it is the oldest continuous democratic government in North America. Our system of confederated government was acknowledged as the model for your government by the United States Congress in 1987. <sup>1</sup>

**Adoption of the United Nations Declaration of Rights of Indigenous Peoples:**

We call upon the government of the United States of America (USA) to act in due haste to endorse the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), UN General Assembly Resolution 61/295, which was adopted by 143 member nations of the United Nations General Assembly on September 13, 2007. Currently only Canada, New Zealand and the USA stand against the UNDRIP, and Canada recently announced its intent to take steps to endorse the UNDRIP <sup>2</sup>. The endorsement of the UNDRIP by virtually every nation in the world is an historic acknowledgment of the human rights of Indigenous Peoples and a recognition that we have entered a new age—a time of reflection and correction of the wrongs of previous eras.

We urge the government of the USA to join us on a positive pathway forward together. Millions of Native Peoples here in the USA and around the world stood up with trust and faith in this Administration's message of true equality for all peoples. Therefore, we respectfully make the following recommendation: the USA should immediately endorse the United Nations Declaration of

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<sup>1</sup> See: Senate Concurrent Resolution 76; 100<sup>th</sup> Congress, First Session; 133 Congressional Record 12,214.

<sup>2</sup> See: Speech from the Throne of Governor General Michaëlle Jean, March 3, 2010.

Rights of Indigenous Peoples, to advance the collective and human rights and the right to sovereignty and self-determination of Native Peoples. We would also note that the UN Declaration on the Rights of Indigenous Peoples express the minimum standard of human rights. The social, cultural, economic, and political rights of the Haudenosaunee are not limited to the scope of the UN Declaration on the Rights of Indigenous Peoples.

Further, we urge the United States to ensure that all pending federal legislation and regulations, including those on climate change, protect indigenous peoples' human rights. For example, without clear requirements that countries seeking to combat deforestation respect the human rights of indigenous peoples, any effort by the United States to promote such activities will threaten the lives and livelihoods of some of the most vulnerable peoples in the developing world.

In addition to the Declaration on the Rights of Indigenous Peoples, existing international human rights norms provide a basis for addressing a number of concerns: for instance, the right to self-determination; the principles of free, prior and informed consent over our lands, territories and resources; and the affirmation of our "treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between Indigenous Peoples and states," as stated in the Preamble of the Declaration on the Rights of Indigenous Peoples.

The Universal Declaration of Human Rights, adopted in 1948, firmly establishes the fundamental principle that human rights and dignity are inherent, inalienable and equal for all members of the human family.

The right to self-determination is affirmed in Article 1 in common of the two international Human Right Covenants : International Covenant on Civil and Political Rights (1966) USA signed and ratified and the International Covenant on Economic, Social and Cultural Rights (1966) which the USA signed in 1977 but has not ratified. Article 1. in both those covenants reads:

All peoples have the right of self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. (Article 3 in the UNDRIP)

### **Our Right to Sovereignty and Self-Determination is Acknowledged and Protected by our Treaties with the United States:**

We remind the USA that the Haudenosaunee hold some of the earliest Treaties made by your government: the 1784 Treaty of Fort Stanwix, the 1789 Treaty of Harmor and the historic 1794 Treaty of Canandaigua. These Treaties were made in the spirit of our first treaty with the European settlers: the Guswenta, or Two Row Wampum, an agreement of mutual respect and non-interference we made with the Dutch in 1613, as they first entered our territory.

The Treaty of Canandaigua is still acknowledged and celebrated every year on its anniversary, November 11<sup>th</sup>, by our respective governments. As recently as February of this year, the United State Department of Justice re-affirmed the continued validity of the Treaty of Canandaigua in an

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*Amicus* brief it filed in New York State Court of Appeals, in support of the Cayuga Nation, by positively reaffirming that the Treaty is still valid and that the Cayuga Nation reservation recognized in the Treaty has not been disestablished.

**220 Years of Human Rights Violations against Indigenous Peoples in the United States:**

The Haudenosaunee have faithfully complied with our Treaties, unfortunately the same can not be said for the USA.

*The Policy of Removal:*

The USA was founded upon discriminatory theories such as “manifest destiny,” which were interpreted to justify removal of Native Peoples from their homelands. The governmental policy of removal was formalized by the May 28, 1830 enactment of the Indian Removal Act, which called for the systematic removal of all Native Peoples from the East to the west of the Mississippi River. (Violation of Articles 13 and 26 of UNDRIP.) The repercussions of this policy and its implementation continue to be felt through out Indian Country.

Prior to the arrival of the Europeans, tens of millions of Native Peoples lived in what is now the United States. By 1900, our numbers had been reduced to approximately 250,000. This decimation of our populations was accomplished in many ways, which included: wars, disease, famine, and forced assimilation.

*Cultural Genocide:*

Assaults against our peoples and cultures continued throughout the twentieth century. One of the most pernicious examples was the system of boarding schools where our children were forcefully removed from their native communities, hundreds or thousands of miles, to government and church run boarding schools, to be “cleansed” of their language and culture, so that they could be “civilized” or assimilated into the dominant culture. This was done to “kill the Indian, but save the child.” A shocking percentage of the children who were taken to boarding schools died from famine, disease or physical abuse. The trauma from these boarding schools is still reverberating within our families. (Violation of Articles 8 (1),15 and 31 of UNDRIP.)

*The Doctrine of Christian Discovery, the Foundation of United States Indian Law:*

We also suffer from discriminatory legal doctrines that underlie contemporary United State Indian law. Among the most damaging of these is the 15<sup>th</sup> century “doctrine of Christian discovery,” which claims that Europeans acquired rights over lands used and occupied by indigenous peoples, simply by virtue of their Christianity. The earliest expressions of the doctrine labeled the indigenous peoples of the Western hemisphere and elsewhere as heathens, savages and pagans.

Further, the United States Supreme Court cases adopting such ideology and language continue to be the current law in the courts of the United States today. We call upon the government of the USA to denounce this doctrine and to work with us to purge it from the courts.

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For a more complete discussion of this “doctrine” and its original and fundamental role in United States Indian law, we would rely upon the recent paper, *Impact on Indigenous Peoples of the International Legal construct known as the Doctrine of Discovery, which has served as the Foundation of the Violation of their Human Rights*, a Preliminary Study submitted by Tonya Gonnella Frichner, Special Rapporteur for the North American Region, on February 3, 2010, to the United Nation Permanent Forum on Indigenous Issues,.

*The Use of “Equitable Doctrines” by United States Courts to Deny our Treaty Rights:*

Recent federal court cases have twisted the notion of “equity” and used it to deny our Nations their rights to land and to sovereignty. In March of 2005, in the case of *City of Sherrill vs. Oneida Indian Nation*, 544 U.S. 197 (2005), the United States Supreme Court ruled that the Oneida Nation could not exercise sovereign jurisdiction over land it held within the Canandaigua Treaty protected area.

Instead of ruling on the issues briefed by the parties in that case, the Court held that various “equitable” doctrines, taken together, prevented the Oneidas from asserting sovereign authority over their own territory. Laches, acquiescence and impossibility barred sovereignty, according to the Court, which found most critically that Oneida sovereignty was too “disruptive” to non-Indians.

Three months later, in July of 2005, the United States Second Circuit Court of Appeals used the *Sherrill* decision as the basis to dismiss the Cayuga Nation land claim (*Cayuga Nation of New York vs. Pataki*, 413 F. 3d 266 (2<sup>nd</sup> Cir. 2005.)) The District Court had found that New York State had knowingly violated the Constitution, treaties and federal law when it took Cayuga lands in the 1790s and early 1800s; and had awarded the Cayugas \$247 million in damages. The Circuit ignored these findings of historic wrongs and treaty violations, saying it would be too “disruptive” for the Cayugas to assert their rights, again using laches, acquiescence and impossibility; as well as the fact that very few Cayuga citizens were left living in their homeland after removal.

These court actions, are denials of the treaty and human rights of the Haudenosaunee and must be corrected. (Violation of Articles 28, 37 and 40 of UNDRIP.)

*Border Crossing:*

Haudenosaunee territorial holdings predate those of the United States and Canada, as well as their constituent states and provinces. Borders were arbitrarily imposed through the middle of our territories by colonial powers. Today, Haudenosaunee territories are surrounded by New York State, Wisconsin and the Provinces of Ontario and Quebec in Canada, and most of our member Nations include several geographically distinct communities. Many Haudenosaunee territories are located on or near the boundary between the United States and Canada, and because our ways require frequent travel within and among our communities, we must cross this boundary often. In some cases, such border-crossing is required several times a day. For example, the Mohawk community of Akwesasne straddles the US/Canadian border, and Akwesasne Mohawks routinely cross back and forth over the border to go to work, take their children to school, obtain health care, and for other purposes.

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Our right to pass over this border freely is protected by Article III of the 1794 Jay Treaty, which guaranteed “Indians dwelling on either side” of the international boundary the right “freely to pass and re-pass by land or inland navigation” into either Canada or the United States. (8 Stat. 116.)

For many years, Haudenosaunee citizens have traveled using our own passports and identification cards. In our view, the term “freely” in the Jay Treaty means that burdensome documentation requirements cannot be lawfully imposed without our consent. Our right to carry our own documentation is a part of our right to self-determination. In recent years, we have worked hard to ensure that the federal government continues to respect our right to carry our own documentation.

We are encouraged by the United States efforts to date to work towards the acceptance of our ID cards for border-crossing purposes, and we call upon the federal government to move quickly to finalize the Memorandum of Agreement we have drafted together regarding the secure, upgraded ID cards we will produce. In addition, we call upon the United States to fully recognize and accept our Haudenosaunee passports for travel into the United States. (Violation of Articles 33 and 36 of UNDRIP.)

**Recommendations:**

1. We call upon the government of the United States of America (USA) to act in due haste to endorse the United Nations Declaration on the Rights of Indigenous Peoples.
2. We call upon the government of the USA to ensure that all pending federal legislation and regulations, including those on climate change, protect indigenous peoples' human rights.
3. We call upon the government of the USA to denounce the doctrine of discovery and to work with us to purge it from the federal and state courts of the USA.
4. We call upon the federal government to move quickly to finalize the Memorandum of Agreement we have drafted together regarding the secure, upgraded ID cards we will produce.
5. We call upon the United States to fully recognize and accept our Haudenosaunee passports for travel into the United States.

Let us all put our good minds together to find the answers that are best for all and for the seven generations yet to come.

Dawnaytoh,  
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(315) 469-4717

and via the Onondaga Nation's website: [www.onondaganation.org](http://www.onondaganation.org)

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