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LEGISLATIVE COUNCIL

Tenth Session of the United Nations Permanent Forum on Indigenous Issues
New York, May 16 to 27, 2011

Agenda Item 8: Future work of the Permanent Forum

STATEMENT OF THE SENECA NATION OF INDIANS

May 25, 2011

Delivered by Nikki Seneca, Seneca Nation of Indians

Honorable Chair and esteemed Members of the Permanent Forum,

The Seneca Nation of Indians thanks you for the opportunity to take part in the tenth session of the Permanent Forum. This is the first session that a delegation from our Council has attended, and we welcome the opportunity to join with the many distinguished delegations of Indigenous peoples at the international level to affirm our rights as a sovereign Indigenous nation.

We are very proud of the on-going participation by Seneca Nation youth at the Permanent Forum sessions. They are joining the international community at a time when the *Declaration* has been adopted by the UN and supported by the United States. The future work that lies ahead for them, and for all of us, is achieving compliance with the *Declaration*, so that the rights and obligations it contains are respected and fulfilled.

Acting in our capacity as a self-determining people and as a sovereign nation, in the 18th century the Seneca Nation signed a series of Treaties with the United States that ensured our exclusive ownership and governance of our territories. In the Treaty of Canandaigua of 1794, the United States acknowledged the Seneca Nation's right to the "free use and enjoyment" of Seneca lands in exchange for the Seneca Nation's promise of peace and friendship with the United States. The Seneca Nation negotiated these Treaties as a strong, sovereign nation living alongside the border of a young and vulnerable United States.

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When the Seneca Nation and the United States signed the Treaties, both Treaty partners understood they were entering the Treaties on a Nation-to-Nation basis. At the same time that Treaty-making was taking place, the Supreme Court of the United States was applying the Law of Nations to our Treaties. For instance, in 1832 Chief Justice Marshall affirmed that a Treaty with an Indigenous nation was the same as a Treaty with any other sovereign Nation.¹

The highest Courts in New Zealand, Canada and Australia have all acknowledged that Chief Justice Marshall's decisions regarding the relationship between Indigenous peoples and the State were based upon principles of international law.

Honorable Chair, Members of the Permanent Forum,

We testify that the United States has not respected or honored its historic Treaties with the Seneca Nation. For instance, in the 1960s, the United States built the Kinzua dam and flooded one third of our Allegany territory, territory that was guaranteed to us under our Treaties. It did so without our consent and in the face of our opposition, and for the benefit of non-Seneca communities down river built within naturally occurring flood zones. The United States' dam construction activities forced the relocation of 600 people whose homes were where the dam reservoir now sits; ten thousand acres of our land once rich in forests, wildlife and crops remain under water. This was an egregious breach of our Treaty rights which was unfairly upheld by the United States Supreme Court. The current flooding of the Mississippi and its tributaries is met with sympathy and prompt government remedial action. Our lands meanwhile lie beyond our reach and our economic use – a state sanctioned taking.

Does the Constitution of the United States not provide that Treaties are the supreme law of the land? Does international law not require the State to honor and respect our Treaty?

The continued violation of our Treaties demonstrates that respect for Treaty rights and States' obligations to respect and honor Treaties should remain an integral part of the Permanent Forum's future work.

Our culture, society and economy are threatened by the failure of our Treaty partner to live up to the legally binding promises it made to us under our Treaties. We are here at the Permanent Forum to remind our Treaty partner that "might does not make right" and that international law holds States accountable for observing their obligations.

It is clear that Indigenous peoples need an impartial and fair dispute resolution mechanism that uses international law to address Treaty violations.

We request that the Permanent Forum recommend that the Expert Mechanism on the Rights of Indigenous Peoples act on the conclusions of the First and Second United Nations Seminar on Treaties, Agreements and other Constructive Arrangements between States and Indigenous Peoples, to examine the international nature of Indigenous-State Treaties and provide recommendations for developing a mechanism at the international level for resolving conflicts arising from Treaties.

¹ *Worcester v. Georgia*, (1832) 31 U.S. (6 Pet.) 515, 559-60.

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Respect for Treaty rights entails respect for all the rights contained in the *Declaration*, in particular, Indigenous peoples' rights to self-determination, culture, lands, territories and resources and the right to development.

The Seneca Nation has the capacity to develop a strong economy that would support and nurture the social and cultural well-being of our people. However, our Treaty partner has often acted to prevent our right to economic development.

The right to development is a key aspect of Treaty rights. Article 37 should be read with Article 20 (the right to engage freely in all economic activities) and Article 21 (the right, without discrimination, to the improvement of economic and social conditions). It should be interpreted in conjunction with Article 32, Indigenous peoples' right to freely dispose of their natural wealth, which is also guaranteed by the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and the right to development contained in the *Declaration on the Right to Development*.

The Seneca Nation requests that the Permanent Forum continue to support the development of the legal framework for the implementation of Article 37 of the *Declaration*, with a particular emphasis on the interaction between Treaty rights and Indigenous peoples' right to development.

When President Obama announced the United States' support of the *Declaration* in December 2010, he stated that what mattered most were actions to match the words of the *Declaration* and that he hoped "that we are seeing a turning point in the relationship between our nations."

In addition to the recommendations above, the Seneca Nation respectfully requests that the Permanent Forum make the following recommendations:

- 1. Encourage the United States to move forward with the implementation of the *Declaration* so that its adoption does represent a turning point for the respect of the rights of Indigenous peoples.**
- 2. Urge the United States to honor and respect its Treaty obligations with Indigenous peoples, which includes respecting the right to economic and social development and the right to develop natural resources, and to work with its Treaty partners to implement the *Declaration* as equals, on a Nation-to-Nation basis.**
- 3. Recommend that States that have Treaties with Indigenous peoples commit to implementing the *Declaration* with their Indigenous Treaty partners as equals, using the Treaties as a framework for the implementation.**
- 4. We join with the other distinguished delegates who have requested that the Permanent Forum continue its call for the 3rd UN Seminar on Treaties, Agreements and Other Constructive Arrangements to be held in 2012 with the support of the Office of the High Commissioner for Human Rights.**

Thank you.