

**United Nations Permanent Forum on Indigenous Issues  
Sixteenth Session**

**New York, 24 April- 5 May 2017**

**Dialogue with the Special Rapporteur on the rights of Indigenous Peoples and the Chair of the Expert Mechanism on the Rights of Indigenous Peoples with regard to Indigenous human rights defenders**

**Intervention by the International Indigenous Cultural Exchange presented by: Pat Kincaid'**

I want to address the human rights violations surrounding the Dakota Access Pipeline issues in the unceded territories of the Great Sioux Nations which is protected by the 1851 Fort Laramie Treaty. Also, the rule of International law requiring "free and prior informed consent" is in violation by the United States regarding the Dakota Access Pipeline issue

I want to share with the United Nations how the United States validates these human rights violations of International law, and these violations of the Constitution of the United States in order to promote the interests of the transcontinental energy companies and the mechanisms used to implement these human rights violations.

The first mechanism, called the Doctrine of Discovery, is a tool used by the United States Supreme Court to 1) give themselves adjudicatory jurisdiction to decide all matters in our Indigenous Peoples' territories, and 2) reduce our status from an "International Actor" to that of a "Domestic Dependent Nation."

However with the Doctrine of Discovery comes the concept of "aboriginal title," which expresses that all natural resources (including minerals) are collectively owned by the Indigenous Peoples who have inhabited the territory. Therefore, the United States Supreme Court created the 2<sup>nd</sup> mechanism, called the "Plenary Power Doctrine" to remove the aboriginal title of natural resources owned by the Indigenous Nations.

The 1851 Fort Laramie Treaty, which was made on equal footing between the Great Sioux Nations and the United States, is proof that the Great Sioux Nations are as much as an International Actor as the United States.

Therefore, the United Nations should validate the Indigenous Nations the same way they validate the United States status. To not do so, would appear only to be based on the color of Indigenous Peoples' skin.

The United States Congress passed the National Environmental Policy Act in 1969, which is a good example of the Plenary Power Doctrine and requires that all Indigenous Nations which have a political relationship with the United States get "adequate consultation."

However, **the Great Sioux Nations or any other Indigenous Nation that has a political relationship with the United States is not asking for "consultation" because "consultation" is the human rights violation that replaces "consent."** Therefore, when our Indigenous Peoples hear the United Nations interchange the phrase "free and prior informed consultation" with "free and prior informed consent," it is very disturbing for us.

The second point that I would like to make is that the United Nation's report on the Dakota Access Pipeline issue only addressed the concerns of the colonized governments of the Indigenous Peoples of the Great Sioux Nation. It did not address the government of the Great Sioux Nations that signed the 1851 treaty; it did not address the Indigenous Peoples and water protectors who suffered multiple human rights violations such as medics and peaceful protestors being shot by rubber bullets, gas canisters, and compression grenades. These are Geneva Convention violations.

Furthermore, it did not address the Indigenous media who was exercising their United States Constitution's first amendment right to freedom of speech and had thefts of expensive media equipment, in violation of the 4<sup>th</sup> Amendment of the United States Constitution.

For example, many drone operators who were covering these human rights violations were arrested and charged with crimes. Shawn Turgeon (Prolific the Rapper), a journalist using a drone, was arrested on felony charges for objectively covering the human rights violations being committed on the water protectors, who were protecting the water of the United States' citizens and the Great Sioux Nation Peoples. He faces seven years in Prison for protecting water.

In lieu of the facts articulated herein, the following recommendations are requested:

- 1) We ask the United Nations treat the Great Sioux Nations and all other Indigenous Nations on equal footing with the United States based on the 1851 Treaty as proof of Indigenous Peoples being international actors using international instruments. This Treaty is an international instrument made between international actors. To not validate the Indigenous Nations when such a valid international document is binding under International law and the United States law can only be perceived as a racist reasoning.
- 2) Also, we ask that the United Nations, in their next forum, discuss with all Indigenous Peoples what the definition of "free and prior informed consent" is. To hear the United Nations interchange the phrases "free and prior informed consent" with "free and prior informed consultation" is not allowing the Indigenous Nations to define their definition of "consent" and imposes the concept of something much less – consultation which is a human rights violation.