



Statement by a Tribal Member of the Central Sierra Band of  
the Me-wuk People of the California cultural area, U.S.A.

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Madame Chairperson, distinguished representatives of Indigenous Peoples, and supporting NGOs I firstly wish to express my thanks to our Creator for our relations throughout creation and for the opportunity to express ourselves in the presence of my indigenous sisters and brothers of this forum.

I am a Tribal Member of the Central Sierra Band of Me-wuk of California, Son of Carol Ann Mangaoang and Ernest M. Rodriguez. My name is Ernest Michael Rodriguez.

I must, at this time, clarify, that I speak before you as a concerned member of a California Native Tribe and to further emphasize that I am not speaking as a representative of my People nor of the NGO for which I have previously represented throughout the duration of this 1992 session of the UNWGIP.

The issue I bring to the attention of this UNWGIP is that of the 18 unratified treaties made with the various respective tribes (100's of them) of the California cultural area within the United States. California was "annexed" to the United States from Mexico in 1848 without the consent of the Indigenous Peoples residing throughout this territory nor of the territories which would later become the states of Arizona, New Mexico, Texas, and parts of Utah. However, in these territories the rights of the indigenous peoples to their traditional territorial integrities was provided through the 1848 Treaty of Guadalupe Hidalgo. Specifically, through a provision by "right of occupation." I note here that I consciously lend affirmation and support to the statements of my friends Roseanne Olguin - National Chairwoman on behalf of the Chicano Human Rights Council and Jack Jones Representative of the Dine Nation in the state of Utah, in specific reference to their statements of the implications of the 1848 Treaty of Guadalupe Hidalgo to Indigenous Peoples.

In California, immediately upon the illegal appropriation of "title" to the territory discussions were had throughout the haphazard governing institutions which existed there. Pursuant to the stipulations regarding the protection of the Indigenous Peoples' titles to lands negotiations initially included the invitation, although not participation of, the Indigenous Peoples. However, upon equally immediate agreement of the future politicians of the state of California the Indigenous Peoples were excluded from all other negotiations and it was passed into law that Indigenous Peoples had no claims for protection nor even acknowledgement under California state law. This decision was supported by the U.S. Federal Government in Washington D.C.

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However, in 1850-1851, U.S.- appointed Commissioners were sent out, with Federal budgets, to engage upon negotiations with the Indigenous Peoples of California for the rights to their lands through treaties. The process was prolonged due to the state of communication given the terrain and expanse of land between Washington D.C. and California. Hundreds of traditional tribal leaders endorsed each the respective international agreements pursuant to the concerns which existed within the respective regions, California being a vast territory. I point out that these international "agreements" were signed under situations of duress as the concern of the respective traditional tribal leaders was for the survival of their Peoples. The situations that existed were those of imposed starvation through traditional harvest deprivation and wanton massacres of entire Peoples due to the lack of concern and generally of law enforcement itself. It was common for the U.S. Federal Government to subsidize the slaughter of the Indigenous Peoples by reimbursement to impromptly organized posses for expenses accrued. I repeat that the Indigenous Peoples were denied protection under the law.

The treaties were made and later unratified by the U.S. Senate due largely to the pressure of California state Representatives and Senators who were, in turn, responding to the demand for settlers demand for land, gold, timber, etc. The other motivation, contained within documentation of the U.S. Senate was a concern not to affirm the international legal status of the Indigenous Peoples, although the mere act of negotiation did affirm such a fact, as if it needed further affirmation. Thus the Indigenous Peoples were removed from their lands and the treaties were deliberately sealed away within the National Archives, not to be discovered for another 50 years.

The illegality of this process was later confirmed by the United States itself when, on August 16, 1946 "Indian Claims Commission" was "created" as a post hoc attempt to portray a veneer of legality to U.S. appropriations of Indigenous Peoples Territories, which may accurately be described as violations upon the "territorial integrity" of these Peoples, respectively. Pursuant upon the research of the Indian Claims Commission it was confirmed that the entire state of California had never actually been "annexed" into the United States and moreso that the Indigenous Peoples of the respectively contiguous territories still possessed full rights to sovereignty throughout their traditionally occupied territories.

Indigenous Peoples of the United States, Native American Indians if you will, are well aware of the horrendous tendency toward abrogation of international agreements and, within the currently existing international system, of their reluctance to ratify treaties. (since about 1871) It has been the case that the sole international agreement that the U.S. has ratified is the United Nations Charter. Due to its ratification, the UN Charter is the "law of the land" within the US judicial system. Moreover, I would like to refer to Chapter IX, Articles 55 and 56 of the UN Charter Under International Economic and Social Cooperation, wherein:

#### Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;

- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observation of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

#### Article 56

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

I point out that this document and these Articles in particular are reinforced and further elaborated upon by the International Bill of Human Rights, which is widely accepted as customary law with all the implications of this concept including *jus cogens* status.

For further emphasis I will comment that most California Indigenous Peoples still reside within their traditional territories as they have since time immemorial. The fact is that as Indigenous People have always done we have adapted to our environment, and in this case, to an especially hostile incursion upon and development/destruction throughout our territories. We do, however, proceed through life striving to keep a balanced spiritual existence despite the forces continually imposed upon a society that has forced us away from our languages, will not allow us full "religious" freedom, minimal educational opportunities, no rights to territorial integrity, and a total lack of representation within the political system. And on top of these policies of the State and Federal Governments we are forced to pay the respective taxes and thus to subsidize their continually attempted oppression/suppression of the spirit and physical. (mentioned separately for clarification and not to connote them as separate realities for Indigenous Peoples)

The fact will never change that this statist system of international negotiation and what has come to be generously termed international "law" is an imposition upon the laws, politics, economies, multilingualistic and territorial integrity of ancient indigenous international relations. However, I must implore to the UNWGIP that the case of the 18 unratified treaties made with the Indigenous Peoples of California be fully researched with specific regard to the process of annexation of territories without due consent and included within the analysis the consideration of the long-sought after realization of the unacceptability of the concept of *terra nullius* as supported within Australian legal case decision. And as far as the exhaustion of domestic remedies may be invoked I feel that adequate review of the creation U.S. Indian Claims Commission as well as its provisional guidelines exhibited through its respective procedures of resolution will be suffice to have fulfilled such efforts. And noted should be the fact that domestic remedies are unable to resolve international territorial disputes confirmed by treaties.

In closing I would like to recommend that assistance be provided toward accomplishment of the vast scope of the tasks that have been entrusted to the Special Rapporteur in lieu of the inherent complexities involved in such a study of treaties and especially due to the importance of synchronizing the completion of this study with the consideration of the Declaration of Indigenous Rights.