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Intervention of the American Indian Anti-Defamation Council (AIADC), 215 West Fifth Avenue, Denver, Colorado, 80204, USA presented by Professor Glenn T. Morris.

Madame Chair, distinguished members of the Working Group, indigenous colleagues, and dedicated friends: as this is the first time that I have requested the floor at this session of the Working Group, I would like, on behalf of the American Indian Anti-Defamtion Council (AIADC), and its executive director, Mr. Russell Means, to congratulate you Madame Chair, on your re-election as Chair, and to commend the Working Group for its dedicated work. I would like to inform the Working GHroup that I am in attendance in more than one capacity, but that for the purposes of this intervention, I am representing the American Indian Anti-Defamation Council.

Madame Chair, the AIADC would like to inform the Working Group of three important ongoing or recent developments in the United States that implicate its work, especially regarding the Draft Declaration on the Rights of Indigenous Peoples, the Treaty Study, and the International Year of Indigenous People.

First, we have been requested by the Dsi Tsi Stas (Northern Cheyenne) Task Force of Traditional Chiefs and Military Societies to apprise this esteemed body of plans to begin or expand coal strip mining on and around their traditional homeland and territories. Specifically, these traditional people are combatting the construction of a new railroad line along the Tongue River in Montana, and the new construction or expansion of coal strip mines, being advanced by 197 transnational and other non-inidgenous corporations and interests. On 8 May 1992, it was revealed, without any notice to the traditional Cheyennes, that the United States government was proceeding with the process of granting leases and other licenses for the purposes outlined above.

Commencing in the 1950's, the Northern Cheyenne Nation began being victimized by deliberate, often collusive, policies of transnational corporations and various U.S. federal agencies. During the 1970's, a federal plan called for the construction of forty coal-fired electrical power plants on or near the traditional territories of the Northern Cheyenne Nation. The electricity was to be transmitted to urban areas hundreds of miles away, leaving the Cheyennes with a polluted and despoiled environment.

The current plan, which is outlined in documents already transmitted to the Secretariat of the Working Group, is especially interesting when viewed in connection with other U.S. legislation. In 1990, the U.S. passed the Clean Air Act Amendments, legislation with the normally laudable goal of improving air quality standards throughout the United States. In this case, however, the law requires coal-fired electrical plants, primarily in eastern metropolitan areas, to reduce their air pollutants substantially. This requires the burning of low-sulfur coal, resulting in coal mining corporations to pressure the United States to open federal lands, in this case Northern Cheyenne lands, to increased coal exploitation. These activities create enormous pressure on, and irrevocable damage to, the traditional economy, social, cultural and political institutions of the Cheyenne, and directly implicate at least fifteen different paragraphs of the Draft Declaration. These developments are also occurring in violation of the 1868 Fort Laramie Treaty, signed between the United States and the Cheyenne Nation. This case indicates the sophistication with which states can wrap themselves in the rule of Western law and simultaneously permit and justify the destruction of indigenous peoples.

In a related vein, the Abenaki Nation of Missisquoi, which has requested that we transmit information to you regarding its case, reveals even more troubling and pernicious problems. On 12 June 1992, the Supreme Court of the State of Vermont in the U.S., ruled that the aboriginal title and associated rights of the Abenaki Nation had been extinguished by the "increasing weight of history," and the "intent to extinguish by assertion of dominion over the area." Outlining the state of aboriginal title law in the United States in 1992, the Court wrote:

> Even though aboriginal title has been deemed "as sacred as the fee simple of the whites," Mitchel, 34 U.S. (9 Pet.) 711, 746 (1835), it may nevertheless be taken without compensation. Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 279 (1955). The federal policy is that extinguishment occur through negotiation rather than by force, but an extinguishment by force is valid. See United Sates v. Gemmill, 535 F.2d 1145, 1148 (9th Cir. 1976) (extinguishment need not be accomplished by treaty or voluntary cession because the "relevant question is whether the governmental action was intended to be a revocation of Indian occupancy rights, not whether the revocation was effected by permissible means"). The manner, time, and conditions of extinguishment are determined by the sovereign. Buttz v. Northern Pacific R.R., 119 U.S. 55, 66 (1886). Extinguishment is irrevocable; once it takes place, Indian title cannot be revived.
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> Vermont Supreme Court
> No. 90-512 12 June 1992

It continued by saying that, "The Abenaki's claim that they never abandoned the area and that they were never completely removed, had no effect on a finding of an intent to assert complete control over the area in a manner adverse to the Abenaki."

The Vermont Supreme Court reached this conclusion despite the fact that the trial court had found that the ABenakis had lived in their territories continuously from at least 9300 B.C. to the present.

The Abenaki case is extremely dangerous to indigenous people when viewed in the context of other cases, e.g., the Western Shoshone case discussed previously by both the National Indian Youth Council and the Indian Law Resource Center, because, again, it reveals how a state can manipulate its own municipal law standards to create the illusion of the rule of just legal princles, while effecting the shameless, and illegal theft of indigenous peoples' land and rights.

The particular problem in this case, although troubling in its own rights and context, is even more disturbing for the example that it sets for other states, especially those that are the successors to the English common law system. In the past, U.S. judicial opinions from the Cherokee Cases of the 1830's to Tee-Hit-Ton and others in the 20th cenury, have been exported to other countries and jurisdictions with disasterous consequences for inidgenous peoples. We would hate to see this practice continue with the Abenaki case. Unfortunately, the scenario worsens by the day. Coupled with the Abenaki decision is an opinion of the Assistant Secretary of the Interior for Indian Affairs, the head of the U.S. Bureau of Indian Affairs. In June, 1992, the BIA decided, in the case of the Miami Nation of Indiana that the executive branch of government could vest itself with the authority literally to exterminate, in an administrative sense, any indigenous nation. The U.S. euphemistically calls this process "termination," and heretofore had reserved the "right" to the U.S. legislature.

These decisions by the United States will result not in understanding and the promotion of peaceful and respectful relations between peoples. Rather, they will promote conflict, acrimony and instability. They promote disrespect for the rule of Western law, and expose the absolute ignorance and disrespect of the United States for the law ways and traditions of indigenous peoples. Through these decisions, the United States places itself in direct and unapologetic opposition to the international standards evolving in this and other international bodies regarding indigenous peoples.

Finally, and directly impinging on the International Year of Indigenous People in 1993 as it applies to the United States, and related to the juridical, social and cultural mileu that has spawned the previous examples, the U.S. has an unique, or perhaps more accurately, peculiar, national practice.

On the second Monday of each October, roughly corresponding to October 12, the U.S. celebrates Columbus Day as a full-fledged national holiday. Facially, this act and activity might seem trivial or harmless at best, and silly at worst, and members of this important body might ask why such a matter should be raised here.

The AIADC contends that the use of a state apparatus for the promotion of national holidays, festivals, the construction

of monuments, or other acts that serve to celebrate, either explicitly or implicitly, the genocide and colonization of indigenous peoples is tantamount to the promotion of race hate and racism against indigenous peoples. As you know, such acitivity is proscribed by several international instruments, and is recognized as promoting intolerance and discrimination.

In the case of the U.S.'s Columbus Day, when indigenous peoples have approached state and federal officials to request repeal of the holiday because of its adverse effect on the condition of indigenous peoples through the celebration of an ideology that champions colonialism and the destruction of indigenous peoples, we are not only rebuked and villified, but public and private officials promise even larger, "massive" celebrations in this, the 500th anniversary of the invasion of our homelands.

When an ideology that elevates to national hero status the architect of indigenous genocide, it infests the fabric of society. Schoolchildren, from the time time that they can reason, are inculcated with the notion that theft equals righteousness, colonialism equals liberation, that indigenous peoples were and are savages, and that Euro-American superiority has been vindicated through the colonialism of the Western Hemisphere. This holiday promotes the idea that indigenous peoples are inferior, and consequently, promotes racial intolerance, or worse, it promotes and justifies deliberate policies of indigenous dispossession and destruction - such as those that litter the entire political and legal landscape of the United States.

We implore this Working Group, in this historic year, to stand with indigenous peoples in the Americas. We implore you, in this 500th anniversary of the commencement of the American Holocaust, to speak clearly and unambiguously in opposition to all celebrations, festivals and other official acts that actively or tacitly celebrate the colonization of our territories and peoples.

We especially implore you to communicate to the observer government of the United States, at the threshold of the International Year, that the continuation of displays and holidays such as Columbus Day are racist expressions that are unacceptable and incompatible with evolving international norms and standards that should be defining the relationship between indigenous peoples and states as we enter the 21st Century.

Thank you, Madame Chair.