INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
OF THE ORGANIZATION OF AMERICAN STATES

Case No. 15.250

THE ONONDAGA NATION and THE HAUDENOSAUNEE

against

THE UNITED STATES OF AMERICA

The Onondaga Nation and the Haudenosaunee Confederacy

MOTION FOR RECONSIDERATION OF ADMISSIBILITY RULING ON THE VIOLATION OF THE RIGHT TO PROPERTY

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I. INTRODUCTION

1. By this Motion, the Onondaga Nation (the "Nation") respectfully requests that the Inter-American Commission on Human Rights (the "Commission") reconsider its ruling of May 12, 2023,[1] denying on the basis of *ratione temporis* the admissibility of the Petitioners' claim of violations by the United States of America of the Petitioners' collective human right to communal property protected by Article XXIII of the American Declaration on the Rights and Duties of Man ("American Declaration").

2. On the scope of the right to property, the Commission initially and rightfully rejected the specious assertion by the United States that the right does not include "collective interests of indigenous peoples."[2] The extension of this right under the American Declaration to the communal and collective interests of indigenous peoples in their territories and lands is the long-settled law of the Commission.

3. The Commission then concluded, however, at Paragraphs 41 and 42 of its Report on Admissibility [3] that the claim while having factual merit was precluded by the principle of *ratione temporis*:

> 41. The Commission observes that there is nothing in either the OAS Charter or the American Declaration that evinces any intention on the part of the State to be bound in relation to acts or facts that occurred ***and ceased to exist*** prior to acceding to the OAS Charter. There is no disagreement between the parties on the chronology of events that led to submission of the petition. Specifically, **the record clearly demonstrates that between 1788 and 1822, the state of New York wrongfully appropriated 2.5 million acres of land from the Onondaga Nation.** Assuming that the appropriation of the land represented *prima facie* violations of the American Declaration, the appropriation clearly originated prior to the State's accession to the OAS Charter. Moreover, the Commission further notes that the alleged misappropriation certainly occurred before 1965, the year in which the Commission was granted competence to review individual petitions.17 Accordingly, the Commission does not have competence *ratione temporis* to consider the alleged misappropriation of land (that took place that between 1788 and 1822).
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> 42. However, the Commission notes that the petitioners have also claimed a violation of their right to judicial protection and the right to equality before the la[w] arising from litigation that they unsuccessfully pursued between 2005 and 2013. To the extent that this claim was initiated

[1] IACHR, Rep. No. 51/23, Petition No. 624-14. Admissibility. The Onondaga Nation (United States). May 12, 2023, paras. 39-41.
[2] *Id.* at paras. 36-38.
[3] *Id.* (emphasis supplied).

and pursued after 1965, the Commission does have jurisdiction *ratione temporis* to consider it.

4. Despite holding that it could not consider the property claim, the Commission found the Petition admissible in relation to Articles II (equality before the law) and XVIII (right to fair trial / juridical protection) of the American Declaration regarding the discriminatory denial by the United States of judicial protection and adequate remedies for the same pre-1965 wrongful taking.[4]

II. THE RIGHT TO PROPERTY IS A *CONTINUING* VIOLATION

5. Respectfully, the Petitioners' believe that the Commission, after holding that the Petition clearly stated the wrongful appropriation of 2.5 million acres of land from the Onondaga Nation, failed to recognize the ***continuing*** nature of the violation and claim to the present day, and therefore erred in finding that the violation "ceased to exist" and was barred by the principle of *ratione temporis*.

6. As alleged at Petition Paragraphs 4 (continuing duty of the Nation to heal the land, protect it, and pass it on to future generations), 16 (Onondaga land, cultural life, spiritual life and physical well-being have been ***and are*** being adversely affected), 17 (disputed land contains many sacred sites and cultural places [and thousands of unmarked Onondaga graves] ***that are*** essential to the Onondaga way of life), 34 (the Onondaga Nation ***is*** in possession of only a small fraction *of its legally-protected territory*), 53-56 (loss of control over their lands has deprived the Onondaga people of food and other materials essential to their health and welfare and degraded their health [a continuing harm stated in the present tense]), 58-76 (severe, widespread, and *continuing* contamination[5] of Onondaga lands, waters, resources, and their environment), the losses by the Onondaga Nation and the Haudenosaunee Confederacy, peoples, and people of their territory, land, and resources from colonial takings and domination by the United States set forth *continuing violations, injuries, and harm*. For example, their ability to exercise sovereignty over their territory

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[4] *Id.* at paras. 43-49.

[5] Under the "continuing violations doctrine" and "repeated violations doctrine", toxic contaminations are *continuing* violations subject to remedies and liability for injuries suffered after a statute of limitations for prior wrongs that continue through a statute of limitations. *See,* Pablo A. Ormachea, "Moiwana Village: The Inter-American Court and the Continuing Violation Doctrine," 19 Harv. Hum. Rts. J. 283-288 (2006; Bonnie St. Charles, "You're on Native Land: The Genocide Convention, Cultural Genocide, and Prevention of Indigenous Land Takings," 121(1) CHICAGO J. OF INT'L LAW 227-262 (Article 7) July 12, 2020) *available at* https://chicagounbound.uchicago.edu/cjil/vol21/iss1/7/; Jeffrey B. Hall, Just a Matter of Time – Expanding the Temporal Jurisdiction of the Inter-American Court to Address Could War Wrongs," 14(4) LAW & BUS. REV. OF THE AMERICAS 679-698 (Article 3) (2008), *available at* https://scholar.smu.edu/cgi/viewcontent.cgi?article=1366&context=lbra; *See also*, e.g., Hamer v. City of Trinidad, 924 F.3d 1093, 1099-1104 (10th Cir. 2019); Cole v. Marathon Oil Corp., 711 Fed.Appx. 784, 786 (6th Cir. 2017) (toxic contamination); Nieman v. NLO, Inc., 108 F.3d 1546, 1555-1559 (continuing toxic contamination after cession of activity ("continuing trespass may be supported by proof of continuing damages and need not be based on allegations of continuing conduct); Loumiet v. U.S., 828 F.3d 935, 947-949 (D.C.Cir. 2016) (harm continues through denial of proper relief).

and lands, their ability to exercise their self-determination and governance over their territory, lands, and resources, their ability to benefit from their lands and resources economically, culturally, physically (health), and spiritually, the continuing occupation of their lands and territory by the United States and non-Onondaga, the continuing toxic contamination of their lands, territory, environment - and bodies - by or under the authorization of the United States, and their ability to be free of racism and ethnic discrimination and colonial domination and rule, are all continuing violations and harms.

III. CONTINUING VIOLATIONS DOCTRINE REGARDING DEPRIVATION OF PROPERTY RIGHTS

7. Continuing injuries and damages, including continuing violations and repeated violations arising from pre-limitations acts, is recognized under international and domestic law.

> The "continuing violations doctrine is well-established in international law, including case-law of the International Court of Justice, the European Court of Human Rights, the UN Committee on Human Rights (charged with monitoring the International Covenant on Civil and Political Rights) and the Inter-American Court of Human rights. It has been incorporated into the 1969 Vienna Convention on the Law of Treaties, as well as the International Law Commission's Draft Articles on the Responsibility of States for Internationally Wrongful Acts, adopted by the ILC in November 2001 and endorsed by the UN General Assembly.[6]

Article 14 of the ILC's Draft Articles on the Responsibility of States for Internationally Wrongful Acts endorsed by the UN General Assembly states: "Extension in time of the breach of an international obligation [...] (2) The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligations."[7] Article 15 declares:

> (1) The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is

[6] Eyal Benvenisti, Chaim Gans, Sari Hanafi, ISRAEL AND THE PALESTINIAN REFUGEES, 230-31 (2007).
[7] UN, General Assembly resolution 56/83, A/RES/56/83, 12 December 2001, containing International Law Commission ('ILC'), Responsibility of States for Internationally Wrongful Acts, Yearbook of the International Law Commission, 2001, vol. II, Part Two, Article 14 ('ILC Draft Code State Responsibility') (https://www.legal-tools.org/doc/jj4mjf/).

> sufficient to constitute the wrongful act. (2) In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.[8]

The European Court of Human Rights has established that the Court may "have regard to the facts prior to ratification inasmuch as they could be considered to have created a situation extending beyond that date or may be relevant for the understanding of facts occurring after that date."[9]

8. In the Case of the Moiwana Community v. Suriname[10] before the Inter-American Court on Human Rights, the indigenous petitioners contended that while the appropriation of the tribal territory and lands took place before the State's accession to the American Convention, the violation of the collective human right to property established in Article 21 of the Convention "is of a continuing nature" which preserves their claim.[11] The Court agreed:

> 134. Based on the foregoing, the Moiwana community members may be considered the legitimate owners of their traditional lands; as a consequence, they have the right to the use and enjoyment of that territory. The facts demonstrate, nevertheless, that they have been deprived of this right to the present day as a result of the events of November 1986 and the State's subsequent failure to investigate those occurrences adequately.
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> 135. In view of the preceding discussion, then, the Court concludes that Suriname violated the right of the Moiwana community members to the communal use and enjoyment of their traditional property. In consequence, the Tribunal holds that the State violated Article 21 of the American Convention, in relation to Article 1(1) of that treaty, to the detriment of the Moiwana community members.[12]

The wrongful deprivation and degradation of Onondaga territory, lands, waters, and resources, and the Petitioners' claims, continue and remain so long as the United States deprives the Onondaga Nation and its people of their territory, lands, and resources and is

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[8] ILC Draft Code of State Responsibility, *id.*, Article 15.
[9] Case of Skrzynski v. Poland, Application No. 38672/02, Judgment of 6 September 2007, para. 41.
[10] Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124, paras. 132-133.
[11] *Id.* at para. 122.
[12] *Id.* at paras. 134, 135.

not in conformity with its treaty and human rights based international obligations to protect them.

9. In a closely factually and legally analogous case on point, the United States raised an untimely *ratione temporis* objection in the case of Mary and Carrie Dann v. United States regarding the denial in the 1970s of the use by Western Shoshone people of treaty lands taken by the United States in 1872 in violation of an 1863 treaty.[13] As here, the Danns asserted among others violations (culture, self-determination) of their derivative right to property as Western Shoshone, the right to equality, and the rights to juridical protection and due process of law.[14] The Commission noted that the pre-1951 domestic tribunal (the Indian Claims Commission) decision which ratified the takings:

> ...applied to and **had effects upon the Petitioners well after the United States' ratification of the OAS Charter in 1951**, and indeed ***continue to do so***, and **consequently the State properly remains responsible for the effects of that application [by the tribunal] upon the petitioners to the extent they are inconsistent with the petitioners' rights under the American Declaration.**[15]

10. The Commission rejected the State's *ratione temporis* argument:

> As for the alleged impermissible inter-temporal application of law, the State's submissions in this regard rely upon the mistaken premise that the Commission is addressing a "previously existing situation" in evaluating the Danns' complaint. While it may be the case that the ICC process itself took place more than 30 years ago, ***the Petitioners' complaints concerning indigenous title to the property, including alleged improprieties in the ICC process, remained the subject of controversy and continued to affect the Petitioners' interests at the time their petition was lodged and continue to do so.***[16]

11. Like the situation in Dann, the Onondaga Nation and Haudenosaunee Confederacy and their people continue, after 1951, to suffer the effects of the violations of their Treaty and the takings and contaminations of their territory, lands, and resources.

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[13] Dann (2002), paras. 2, 3, 39-42, 166, 167, *supra* note 43.
[14] Dann (2002), paras. 44-75, *supra* note 43.
[15] Dann (2002), para. 166 (emphasis supplied), *supra* note 43.
[16] Dann (2002), par. 167 (emphasis supplied), *supra* note 43.

12. The Commission again addressed this issue regarding the rights of indigenous peoples in the 2013 merits decision in Kalina and Lokono Peoples v. Suriname.[17] In that case, the indigenous peoples asserted their collective rights to property, judicial personality, and judicial protection in failure of the State to recognize their judicial personality in its domestic laws its *denial of the ability of the indigenous peoples to protect their property rights and their ancestral lands including from land titles and licenses issued to non-indigenous settlers and extractive industries prior to Suriname's ratification of the American Declaration in 1987.*[18] Upon those facts, on the issue of *ratione temporis* the Commission affirmed its previous admissibility decision that it had jurisdiction over the alleged violations by the State "insofar as these events may be of a continuing nature."[19]

13. The Commission opined on this issue:

> [T]he Inter-American Court and the IACHR have consistently applied the international law principle that a State is generally not liable for acts or omissions that were consummated prior to its ratification of a treaty. However, it is also a principle of international law that if prior acts, or the effects of such prior acts or omissions, continue after the date of a State's ratification of or accession to the relevant treaty, the State can be internationally liable for violating that treaty. Thus, *if the effects of Suriname's issuance of land titles, the establishment of the Nature Reserves, and the granting of the mining concession before November 12, 1987 (the date of Suriname's accession to the American Convention) on the rights of the Kaliña and Lokono Peoples continued after that date, Suriname can be held liable for the effects caused by those acts after November 12, 1987.*[20]

14. Similarly, the Onondaga Nation and the Haudenosaunee Confederacy have alleged post-Declaration continuing impacts from pre-Declaration-ratification land takings (analogous to the issuance of land titles and the establishment of Nature Reserves in Kalina) and the licensing of industries that contaminated Onondaga lands (analogous to the granting of mining concessions in Kalina) for which the United States "can be held liable for the effects caused by those acts after [the State's ratification of the Declaration]" which, here, was on June 19, 1951.

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[17] IACHR, Report No. 79/13, Case No. 12.639. The Kalina and Lokono Peoples (Suriname). Merits. 18 July 2013, paras. 72-76.
[18] Kalina, para. 2, 71.
[19] Kalina, para. 72, *citing* IACHR Report No. 76/07, The Kaliina and Lokono Peoples (Suriname). Admissibility. 15 October 2007, para. 48 (emphasis added).
[20] Kalina, para. 74 (emphasis supplied).

15. Specifically, the Commission in Kalina cited to the effects of State pre-Declaration claims of State land ownership, issuance of "long-term leases or land titles" to land ownership issued to non-Kalina/Lokono, as well as its licensing of extractive industry on ancestral lands, that continued after the ratification date *as long as they continued to be in effect ("revoked or otherwise left without effect") and deprived the indigenous peoples from exercising legal title over them.*[21]

16. In the Zaida Torres case cited in the Admissibility Response of the United States, the Commission considered claims arising out of the United States taking between 1941 and 1947 of most of the Puerto Rican island of Vieques for military purposes during the Second World War.[22] The military use and contamination of the island continued until 2003 and – like the Onondaga (Petition, paragraphs 53-75) - impacted the health of the island's residents, including the Petitioners, throughout that period.[23] The Commission ruled that it did have jurisdiction *ratione temporis*.

17. In the matter at bar, the negative effects of the takings and contamination of Onondaga and Haudenosaunee territory, lands, and resources, and their exclusion from their territory and the benefits of their lands and resources, continue and will continue until they are returned, or some other effective remedy is reached. As the Commission concluded in Kalina:

> Accordingly, the IACHR considers that the issuance of individual land titles, leaseholds and long-term leases to non-indigenous persons, the establishment and administration of the Nature Reserves, and the granting of the mining concession, as well as their effects, *have continued after Suriname's accession to the Convention, and continue to the present.* Therefore, the IACHR has jurisdiction *ratione temporis*, and Suriname can be held liable for violations of the [treaty] if the effects of these acts and omissions infringe upon the Kaliña and Lokono's rights.[24]

18. Contrary to the authority cited by the United States (Response, p. 9, n. 37), neither the events (the takings, contaminations, colonial rule) nor the effects of such events "ceased to exist" prior to 1951.[25] Therefore, the effects of the Treaty violations, takings,

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[21] Kalina, para. 75.
[22] Torres, para. 46.
[23] Torres, paras. 2-21.
[24] Kalina, para. 76, applying the principle to the American Convention (emphasis added).
[25] The United States cites to the case of I/A Court H.R., Alfonso Martin Del Campo Dodd. Mexico. Preliminary Objections, Judgment of 3 September 2004. Ser. C. No. 133, para. 85. That case involved claims from some allegedly arrested, tortured, and held for murder prior to the ratification of the American Convention by Mexico. As the claims and injuries all occurred and the violations "ceased to exist" prior to ratification, the Commission applied the *ratione temporis* to those claims. The facts of that case are clearly distinguishable from those asserted by Petitioners here.

and contamination of Onondaga and Haudenosaunee territory, lands, and resources are **continuing** and United States can and should be held liable for its violations of their rights secured by the American Declaration.

IV. STATE ACTS PURSUANT TO "FEDERAL INDIAN LAW" ARE UNLAWFUL MANIFESTATIONS OF COLONIALISM

19. The political and factual premise of these past and continuing wrongful takings and occupation of Onondaga and Haudenosaunee territory, lands, and resources by the United States is the imposed and unlawful colonial relationship and domination of the United States over the Onondaga Nation and the Haudenosaunee Confederacy expressed in the domestic law of the United States, known as "federal Indian [colonial] law" that was imposed upon the Petitioners in the original and continuing wrongful appropriations and subsequent occupation and exploitation of their territory and lands and the racially discriminatory denial of juridical protection and an effective remedy that is set forth in the Petition. Petition, paras. 76-82, 98-136.

20. At the core of Petitioners' claims is the failure of the colonial power, the United States, to provide any legal remedy, let alone an equal, fair, adequate, and effective one, under its domestic law for the unlawful taking of Onondaga property - its territory, land, and resources. See, Petition Paragraphs 3 and 4. The domestic law of the United States purportedly governing the Petitioners, "federal Indian law", arose out of the colonial relationship imposed by the United States upon preexisting indigenous nations and peoples for the purpose of subjugating indigenous peoples and nations to colonial rule and to legitimize the colonizer's claims to and exploitation of indigenous territories, lands, and natural resources. Paragraphs 76 through 80.

21. The United States does not dispute that at the time of the invasions of the America by the imperial nations of Europe and long before the formation of the United States, indigenous nations and peoples (including the Petitioners) "were self-governing sovereign political communities"[26] which engaged in war with the invading powers including the United States, in negotiations between sovereign powers, and in the treaty-making of sovereign nations.

22. At the time of the concoction of federal Indian law in three decisions by US Supreme Court Chief Justice John Marshall some 50 years after the creation of the United States and over 350 years after Columbus's arrival in the Caribbean, the United States had only shortly before entered into treaties with the Onondaga Nation and the Haudenosaunee

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Neither the violations here or their effects "ceased to exist" before the date of the entry into force of the American Declaration or OAS Charter with respect to the United States. VCLT, art. 28.

[26] *See*, United States v. Wheeler, 45 U.S. 313, 322-323 (1978).

and was still entering into many treaties with other sovereign indigenous nations. The doctrines Marshall concocted *post-facto* to justify assuming colonial authority admitted that the United States's domestic, colonial, federal Indian law is premised on legal fictions and "extravagant pretensions"[27] that apply *only* ("*sui generis*"),[28] to the "Indian"[29] nations and peoples that pre-existed the United States and the invasion of the Americas by the imperial nations of Europe. Federal Indian law is the manifestation of racist colonial law by an occupying colonial State.

23. The first underlying colonial doctrine of federal Indian law is referred to as the "**Doctrine of Discovery**" by which the territories long occupied by "Indian" nations and peoples, including the Onondaga and the Confederacy, are legally deemed to be *terra nullius*, vacant lands open for taking, exploitation, and occupation by the first imperial European Christian nation to "discover" them.[30] Chief Justice Marshall held: "So far as respected the authority of the crown, no distinction was taken between vacant lands and lands occupied by the Indians."[31] He rested his decision upon White, European cultural, and Christian supremacy: "the character and religion of its inhabitants afforded an apology for considering them as a people over whom the superior genius of Europe might claim an ascendency."[32] In reaching this legal fiction, Justice Marshall reasoned that indigenous peoples did not claim, own, their lands under European property law because of their customary law of a spiritual, familial, relationship and belief that no one could "own" the earth.[33] According to Marshall, legal title to land was acquired by cultivation, a European property law concept foreign to Indians. Rather, the Indians "held their respective lands and territories each in common, ...there being among them no separate property in the

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[27] Johnson v. M'Intosh, 21 U.S. 543, 590, 591 (1823) ("fiction", "pretense", "extravagant pretensions", "pompous" colonial claims); Worcester v. Georgia, 21 U.S. 515, 544 (1832) ("extravagant and absurd idea").

[28] M'Intosh, 21 U.S. at 591-2 ("some new and different rule"); Cherokee Nation v. State of Georgia, 30 U.S. 1, 2, 17 (1831) ("They may more correctly perhaps be denominated domestic dependent nations."); *also*, Wenona T. Singel, "Indian Tribes and Human Rights Accountability," 49 San Diego L. R. 567, 594 (" The Court therefore created a sui generis category to define the political status of Indians as retaining rights of inherent self-government yet still dependent upon and subordinate to the ultimate power of the federal government.").

[29] The term "Indian" is an exonymic racial and ethnic branding of indigenous peoples of the Americas by European racial, cultural, and religious supremists, imperialists, and colonialists which denies the sovereign status of the indigenous nations and peoples the Americas and demeans them as lesser nations, peoples, and human beings. It is used here and elsewhere in this submission in its imperial / colonial sense.

[30] M'Intosh, 21 U.S. at 595 (doctrine of discovery of uninhabited lands "principle of universal law").

[31] M'Intosh, 21 U.S. at 596; Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 283-85 (1955) (the United States has no legal liability for the taking of unrecognized Native territory).

[32] M'Intosh, 21 U.S. at 573, 589. This repeated the original rationale and authority of racial, cultural, and religious supremacy from the Universal Church over 300 years earlier for the colonization of the Americas and Africa by Christian European empires. Id., 21 U.S. at 574 (citing to the Papal Bulls of 1455 (Romanus Pontifex) and 1493 (Inter Caetera). The Church recently repudiated the Doctrine and contends that these Papal documents were misconstrued and improperly manipulated for political purposes by competing colonial powers. "Joint Statement of the Dicasteries for Culture and Education and for Promoting Integral Human Development on the 'Doctrine of Discovery,' 30.03.2023," https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2023/03/30/230330b.html.

[33] M'Intosh, 21 U.S. at 570 (citing to John Locke's theory on property).

soil."[34] Justice Marshall further opined that Indians, as "uncivilized" "savages" and "heathens" (non-Christians), were required to give way and relinquish their lands to the ***superior race, civilization, culture, and religion*** of the imperial nations of Europe.[35]

24. Marshall ruled that Indian nations possessed a "right of occupancy and use", but not fee ownership and that such right was subject to the extinguishment of that bare usufructuary right at any time by the unfettered will of the United States.[36]

25. The United States purported to succeed to the colonial ownership of its imperial European predecessors and expanded its domain as a colonial nation over indigenous nations on its own.[37] The United States in its relationship to Indigenous nations and peoples is a successor colonial and colonial State and empire.

26. This Doctrine of Imperial Theft is still the current and controlling law of the United States in its relationship with the Onondaga Nation, the Confederacy, and other Native nations and peoples.[38] Everything flows from that continuing colonial relationship. Petition Paragraphs 76 through 79.

27. The second colonial doctrine of federal Indian law is known as the "**trust doctrine**" by which as a matter of judicial fiat "Indian" nations and peoples, as so-called incompetent uncivilized heathen savages, are declared to be "dependent" "domestic" nations (and peoples), wards of the colonial guardian (ruler), self-entitled as "the Great White Father" while in a "state of pupilage".[39]

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[34] M'Intosh, 21 U.S. at 549-50.

[35] M'Intosh, 21 U.S. at 573, 596; Special Rapporteur of the Permanent Forum on Indigenous Issues, *Preliminary Study of the Impact on Indigenous Peoples of the International Legal Construct Known as the Doctrine of Discovery*, Econ. & Soc. Council, U.N. Doc. E/C. 19/2010/13 (Feb. 4, 2010) (by Tonya Gonnella Frichner). *See also, generally*, Robert A. Williams, THE AMERICAN INDIAN IN WESTER LEGAL THOUGHT: THE DISCOURCES OF CONQUEST (1990); Steven T. Newcomb, PAGANS IN THE PROMISED LAND (2008).

[36] M'Intosh, 21 U.S. at 574, 588, 590, 596, 603 ("the Indian inhabitants are to be considered merely as occupants ...incapable of transferring absolute title to others."); see also, e.g., Oneida County, N.Y. v. Oneida Indian Nation of New York State, 470 U.S. 226, 233-34 (1985) ("It was accepted that Indian nations held 'aboriginal title' to lands they had inhabited from time immemorial. [citation omitted] The 'doctrine of discovery' provided, however, that discovery nations held fee title to these lands, subject to the Indians' right of occupancy and use."); United States v. Dion, 476 U.S. 734, 738 (1986) ("It is long settled that the provisions of an act of Congress ...must be upheld by the courts, even in contravention of express stipulations in an earlier treaty with a foreign power. This Court applied that rule to congressional abrogation of Indian treaties in Lone Wolf v. Hitchcock, [187 U.S. 553, 566 (1903)]." Citations omitted.).

[37] M'Intosh, 21 U.S. at 580-89.

[38] City of Sherrill, N.Y. v. Oneida Indian Nation of New York, 544 U.S. 197, 203 n. 1 (2005); Oneida, 470 U.S. at 233-34 (1985).

[39] Cherokee Nation, 30 U.S. at 17 ("They may more correctly perhaps be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will... [T]hey are in a state of pupilage. Their relations to the United States resemble that of a ward to his guardian. They look to our government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the President as their great father."); Ex parte Kan-gi-shun-ca, 109 U.S. 556, 568-69 (1883) ("They were nevertheless to be subject to the laws of the United States, not in the sense of citizens, but, as they had always been, as wards, subject to a guardian, not as individuals, constituted as members of the political community of the United States, with a voice in the selection of representatives

28. The concoction of a relationship of tutelage colonialism by the colonial power deprived all "Indian" nations and peoples of their international personality.[40] By imposing as a matter of domestic law a trust relationship upon indigenous nations and peoples, the United States assumed authority to act in the stead of its purportedly incompetent indigenous wards over their residual lands, resources, and other assets.[41] For example, the United States today holds in trust, controls and manages, over 56 million acres of Native land.[42] Under domestic trust law, the ward's legal personality is largely denied in favor of the guardian.[43] The trust relationship is effectively a means by which the colonial power maintains its continuing dominance and control over Native nations and people and their lands, natural resources, and other assets.[44] Indigenous nations and people are the only race, ethnicity, peoples, and nations subject to trust domination and deprivation of the independent legal persona and rights by the United States.

29. As the colonial ruler and assumed "guardian", the United States assumes "**plenary power**" over Indian nations and peoples and their property and assets, the third colonial doctrine of federal Indian law.[45] Petition Paragraph 80. "As we have often noted, *Indian tribes occupy a unique status under our law. At one time they exercised virtually unlimited power over their own members as well as those who were permitted to join their communities. Today, however, the power of the Federal government over the Indian tribes*

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and the framing of the laws, but as a dependent community who were in a state of pupilage, advancing from the condition of a savage tribe to that of a people who, through the discipline of labor, and by education, it was hoped might become a self-supporting and self-governed society.")

[40] Cherokee Nation, 30 U.S. 1. The US Congress sealed the deprivation of an international persona of indigenous nations with the Act of 1871 which declared the "[n]o Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power whom the United States may contract by treaty" and ended the practice of treaty-making between the US and indigenous nations. Indian Appropriations Act, 41st Congress, Sess. III, Ch. 119-120 (March 3, 1871), 25 U.S.C. Sec. 71.

[41] United States v. Sioux Nation of Indians, 448 U.S. 371, 409 n. 26 (1980); Seymour v. Superintendent of Washington State Penitentiary, 368 U.S. 351, 356 1962);

[42] US Dept. of the Interior, "Native American Ownership and Governance of Natural Resources," Nat. Res. Revenue Data (accessed January 26, 2023), https://revenuedata.doi.gov/how-revenue-works/native-american-ownership-governance/#:~:text=In%20general%2C%20most%20Native%20American,Native%20American%20tribes%20and%20individuals..

[43] United States v. White Mountain Apache Tribe, 537 U.S. 465, 474 n. 3 (domestic trust law provides "all of the necessary elements of a common law trust, there is no need to look elsewhere for the source of a trust relationship. We have recognized a general trust relationship since 1831.")

[44] Nadeau v. Union Pac. R. Co., 253 U.S. 442, 445-46 (1920) (affirming US power over indigenous lands); *see also*, Secretary, US Department of the Interior, *Reaffirmation of the Federal Trust Responsibility to Federally Recognized Indian Tribes and Individual Indian Beneficiaries*, Order No. 3335 (August 20, 2014).

[45] Cherokee Nation, 30 U.S. at 30 ("The power given in this clause [to make all needful regulations and rules respecting the territory of the United States, including Indian lands] is of the most plenary kind."; Lone Wolf v. Hitchcock, 187 U.S. 553, 564-67 (1903); Wilson v. Omaha Indian Tribe, 442 U.S. 653, 657 n. 1 (1912) (plenary authority over Indian lands incident to the trust authority over Indian nations and peoples).

is plenary."[46] Under the Plenary Power Doctrine, the United States exercises complete and absolute power over Indian nations and peoples.[47]

30. By this assumed power, combined with its trust authority, the United States at its sole discretion creates, limits, and denies juridical personality and legal remedies to indigenous nations and peoples and imposes its will on indigenous nations, peoples, territory, lands, and natural resources in the service of its colonial interests and rule.[48] The United States claims the assumed plenary authority to violate at will and with impunity treaties with indigenous nations,[49] to extinguish indigenous territories,[50] and even to terminate the legal identities of indigenous nations and peoples.[51]

31. As recently as 2020, the Supreme Court of the United States acknowledged the use of such plenary power in the violation of treaties with an indigenous nation, the destruction of its traditional governance and judiciary, the theft of most of its lands, and the current legal power of the United States to extinguish at will the remaining territory of the indigenous nation.[52] No other race, ethnicity, peoples or nations are subject to the plenary power of the United States.

32. It was under this assumed plenary power over the Onondaga Nation and the Confederacy that the United States ignored its treaty obligations (Petition Paragraphs 35 through 52 and 76 through 97), designed and limited the only legal and insufficient remedies available to the Petitioners (Paragraphs 89 through 125), and licensed and facilitated the toxic contamination of the Onondaga Nation's ancestral lands (Paragraphs

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[46] Nat. Farmers U. Ins. Companies v. Crow Tribe of Indians, 471 U.S. 845, 851 (1985) (emphasis supplied).

[47] United States v. Wheeler, 435 U.S. 313, 319 (1978) (The United States possesses an "all-encompassing federal power" over Indian tribes "in all matters."

[48] See, e.g., Sioux Nation, 448 U.S. 371; Santa Clara Pueblo v. Martinez, 436 U.S. 49, 56-57, 58 (1978) (The United States possesses "plenary authority to limit, modify or eliminate the powers of local self-government which the tribes otherwise possess. ...This aspect of tribal sovereignty, like all others, is subject to the superior and plenary control of Congress."); South Dakota v. Yankton Sioux Tribe, 522 U.S. 329, 343 (1998) (Reaffirming that the United States possesses plenary power over all Indian affairs, including the power to modify or eliminate tribal rights – including the rights to property, lands, natural resources and territory.)

[49] Sioux Nation, 448 U.S. 371; United States v. Dann, 470 U.S. 39 (1985); The Cherokee Tobacco, 78 U.S. 616, 620 (1928).

[50] See, e.g., Sioux Nation, 448 U.S. 371; Rosebud Sioux Tribe v. Kneip, 430 U.S. 584 (1977); Tee-Hit-Ton, 348 U.S. 272.

[51] Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 169 n. 18 (1982) ("The United States retains plenary authority to divest the tribes of any attributes of sovereignty."); United States v. Wheeler, 435 U.S. 313, 319 (1978) ("Congress has plenary authority to legislate for Indian tribes in all matters, including their form of government"); Board of Comm'rs of Creek County v. Seber, 318 U.S. 705, 716 (1943); Termination Act of 1953, House Concurrent Resolution 108, 67 Stat. B132 (United States terminated the Klamath Nation and the Menominee Nation, along with over 100 other indigenous nations, by Act of Congress).

[52] McGirt v. Oklahoma, 140 S.Ct. 2452, 2481-82 (2020) (Congress remains free to withdraw an Indian reservation secured by treaty at any time).

57 through 75). This exercise of White, European and Christian supremacy, federal Indian law, has been described as "conquest by law."[53]

V. COLONIALISM, IN ALL OF ITS FORMS AND MANIFESTATIONS, IS A CONTINUING AND UNLAWFUL VIOLATION OF COLLECTIVE HUMAN RIGHTS

A. The United States Imposes Colonial Authority Over the Onondaga Nation

33. The past, present, and continuing acts of the United States set forth in Petitioners' Petition, including a denial of Petitioners' right to property, are those of a colonial occupier and ruler claiming ownership of the lands of, and exercising plenary power over, the Onondaga Nation and the Confederacy, and their people, territory, lands, and resources.

34. Petition Paragraphs 16 through 33 and 53 through 56 set forth the pre-colonial existence of the Onondaga peoples and sovereign Nation, their pre-colonial existence as a member nation in the Haudenosaunee Confederacy, and their pre-colonial occupation of their ancestral territory for over one thousand years.

35. Paragraphs 5, 20, 27 through 33, and 83 through 86, relate the formal recognition by the United States of the Onondaga Nation and the Haudenosaunee Confederacy as sovereign, independent, nations and of their territories in three treaties by which the United States committed to protect and secure the Onondaga and the Confederacy in their territory and property.

36. Petition Paragraphs 24 through 26 describe the unlawful invasion of Onondaga and Confederacy territories and the massacres of their people by European and American colonists and in Paragraphs 34 through 52 the unlawful and purported taking of their territories, lands, and natural resources by a subdivision of the United States, the state of New York ("New York").

37. Paragraphs 5 and 76 through 136 set forth the exercise of colonial power embodied in "federal Indian law" to cover for the abject failure of the United States to meet its treaty obligations to protect the Onondaga Nation and Confederacy from such takings by its subdivision.

38. Some of the attendant past, present, and continuing harms the people of the Nation have suffered in addition to the loss of their territory, lands, and natural resources are described in Paragraphs 4 and 53 through 56, including their separation from their traditional hunting, gathering and fishing areas, the deprivation of food and other resources

[53] Alexis de Tocqueville, "Future of Three Races – Part III" in DEMOCRACY IN AMERICA (1835), Chap. XVIII, a-b; Lindsay G. Robertson, CONQUEST BY LAW (2005).

necessary for their well-being and survival, the separation from their sacred lands where their ancestors are buried, the interference with their sacred duty to care for ancestral lands and gravesites, and the severe harm to their culture and survival.

39. Paragraphs 57 through 75 relate the subsequent and continuing exploitation and severe contamination of Onondaga lands and people by extractive industries licensed by the United States and New York.

B. Colonialism Is Not An Event: It Is a *Continuing* Structure of Domination Over a Subordinate Nation

40. The *ratione temporis* ruling of the Commission in this matter on the violation of Petitioners' right to property makes a fundamental error in treating the wrongful colonial taking and occupation as an "event." Colonialism is the act of power and domination of one nation, by acquiring or maintaining full or partial control over another sovereign nation.[54] As the late Professor Patrick Wolfe opined in his seminal essay, "Settler Colonialism and the Elimination of the Native," colonialism is not an "event," it is a structure.[55] In other words, the policies, programs, and acts of a colonial state, like the United States, and its institutions regarding colonized peoples are structurally and institutionally infused with continuing colonial domination and racial / ethnic discrimination.

C. Colonialism, In All Its Forms and Manifestations, Is Condemned and Unlawful

41. Colonialism "*in all its forms and manifestations*" has been condemned by the members of United Nations for over 70 years.[56] In 1952, for example, in regard to colonized peoples and citing the UN Charter's provision for the "equal rights of peoples," the United Nations General Assembly acknowledged that "the right of peoples and nations to self-determination is a prerequisite to the full enjoyment of all fundamental human rights."[57]

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[54] Cornell Law School, "colonialism," Legal Information Institute, https://www.law.cornell.edu/wex/colonialism.

[55] Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," 8(4) J. of Genocide Res. 387-409 (December 2006), 388; *see also*, J. Kehaulani Kauanui, "'A Structure, Not an Event': Settler Colonialism and Enduring Indigeneity," 5.1 Emergent Crit. Analytics for Alt. Humanities (Spring 2016) (noting the continuing nature of the colonization of indigenous peoples), www.csalateral.org/issue/5-1/forum-alt-humanties-settler-colonialism-enduring-indigeneity-kauanui/.

[56] United Nations (General Assembly), *Declaration on the Granting of Independence to Colonial Countries and Peoples*, 14 December 1960, A/RES/1514(XV) (UNGA Res. 1514) (emphasis supplied); UN General Assembly, *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter*, 15 December 1960, A/RES/1541(XV); UN General Assembly, *The situation with regard to implementation of the Declaration on the granting of independence to colonial countries and peoples*, 27 November 1961, A/RES/1654(XVI).

[57] United Nations (General Assembly), *The right of peoples and nations to self-determination*, 16 December 1952, A/RES/637(VII).

The General Assembly in its Resolution of December 14, 1960 (UNGA Resolution 1514), reaffirmed the UN Charter's proclamation in 1945 of "the equal rights of ...nations large and small," acknowledged that "all peoples have an ***inalienable*** right to complete freedom, the exercise of their sovereignty and the integrity of their national territory, recognized "that the peoples of the world ardently desire the end of colonialism in all its manifestations," and proclaimed "the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations."[58] UN General Assembly declared that "[t]he subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights [and] is contrary to the Charter of the United Nations" and, further that "[a]ll peoples have the right to self-determination, by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."[59] On December 10, 2020, the UN General Assembly resolved its "Fourth International Declaration for the Eradication of Colonialism," reaffirming "its determination to continue to take all steps to necessary to bring about the complete and speedy eradication of colonialism."[60]

36. In 1965, the UN General Assembly adopted the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD") which the United States has signed and ratified.[61] The Convention expressly acknowledged that "the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that [UNGA Resolution 1514] ...has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end."[62] It affirmed the "necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations," and declared that "there is no justification for racial discrimination, in theory or in practice, anywhere."[63] The "State Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of elimination racial discrimination in all its forms"[64] and to "guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law."[65]

37. The UN Committee on the Elimination of Racial Discrimination ("UNCERD"), tasked with enforcing the ICERD, in 1997 issued General Recommendation XXIII

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[58] UNGA Res. 1514, preamble paras. 1, 6, 11, and 12 (emphasis supplied); United Nations, Charter of the United Nations (UN Charter), 24 October 1945, 1 UNTS XVI, preamble paras. 1, Art. 1(2).
[59] UNGA Res. 1514, Arts. 1 and 2.
[60] United Nations (General Assembly), *Fourth International Declaration for the Eradication of Colonialism*, 10 December 2020, A/RES/75/123.
[61] United Nations (General Assembly), *International Convention on the Elimination of All Forms of Racial Discrimination* (1965) (ICERD), Treaty Series 660, 195 (signed by the United States in 1966 and ratified in 1994).
[62] ICERD, preamble paras. 3.
[63] ICERD, preamble paras. 4.
[64] ICERD, Art. 2, Sec. 1.
[65] ICERD, Art. 5.

affirming that "discrimination against indigenous peoples falls under the scope of the Convention and that all appropriate means must be taken to combat and eliminate such discrimination."[66]

38. On March 3, 2006, The UNCERD issued a decision affirming that the domestic law of the United States regarding Indigenous land rights "did not comply with contemporary international human rights norms, principles and standards that govern the determination of indigenous property interests, as stressed by the Inter-American Commission on Human Rights in the case *Mary and Carrie Dann versus United States* (Case 11.140, 27 December 2002)." [67] The Committee held that actions taken by the United States regarding Indigenous ancestral lands violated the State's "obligation to guarantee the right to everyone [including the Western Shoshone indigenous nation] to equality before the law in the enjoyment of civil, political, economic, social and cultural rights, without discrimination based on race colour, or national or ethnic origin, ...in particular their right to own, develop, control and use their communal lands, territories and resources."[68] In so ruling, the UNCERD recognized, as stated in the ICERD Preamble and in General Recommendation 23, that the surviving and continuing colonial relationship between States and Indigenous peoples and nations is a racist and unlawfully discriminatory one.[69]

39. The following year, in 1966, the UN adopted the International Covenant on Civil and Political Rights ("ICCPR") which the United States has also signed and ratified (but has failed its *erga omnes* obligation to implement).[70] The Covenant again secured civil and political rights including those set forth in the Universal Declaration of Human Rights. Particularly, it acknowledged and secured the fundamental collective right of peoples, specifically colonized peoples, to self-determination and to life, liberty, security, dignity, and equality.[71]

40. Under State polices of US exceptionalism and exemptionism, including in this matter (Response, pages 10-12, note 2, 41, 46 – 49, 59 (Attachment 5), 68), the United

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[66] UN Committee on the Elimination of Racial Discrimination (UNCERD), *General Recommendation No. 23, Rights of indigenous peoples*, U.N. Doc. A/52/18, annex V at 122 (1997).

[67] UNCERD, Western Shoshone National Council v. United States of America, Early Warning and Urgent Action Procedure, Decision 1(68), 8 March 2006.

[68] UNCERD Western Shoshone, para. 7.

[69] *See also*, Mabo v. Queensland, High Court of Australia, HCA 69; 166 CLR 186 (8 December 1988) (Mabo I) (applying the ICERD in ruling that the denial of the recognition of customary indigenous land rights was racially discriminatory and a violation of the ICERD), *cited* in IACHR, Report No. 75/02, Case No. 11.140. Merits. Mary and Carrie Dann (United States). December 27, 2002 (Dann 2002), para. 58, n. 16. *See also*, Bethany R. Berger, "Red: Racism and the American Indian," 56 U.C.L.A. L. Rev. 591 (2009).

[70] United Nations (General Assembly), *International Covenant on Civil and Political Rights* (1966) (ICCPR), Treaty Series, vol. 999, p. 171 (signed by the United States in 1977 and ratified in 1992).

[71] ICCPR, Arts. 1(1), 1(3), 2(1), 5 (self-determination); Art. (6) (life); Art. 9(1) (liberty, security); Arts. 7 and 10(1) (dignity); Arts. 3, 14(1), 26 and 27 (equality).

States has persistently refused to adopt and implement these and many other human rights treaties and instruments or accept their applicability in attempts to avoid State responsibility for its own human rights violations.

D. Continuing Colonial Rule Over Indigenous Peoples Is Condemned by the UN Declaration on the Rights of Indigenous Peoples

41. Most recently, in 2007, the UN General Assembly issued the Declaration on the Rights of Indigenous Peoples.[72] The United States was one of four successor colonial States of imperial Great Britain as the *only* member States of the UN to vote against the UNDRIP. Later, as the very last holdout of 192 member States, the United States approved it on January 12, 2011, with reservations and a signing statement rendering its approval meaningless, a political stunt by a colonial ruler, in that it declared that the United States would interpret the Declaration as aspirational only, non-binding, and consistent with its federal Indian law.[73]

42. The UNDRIP does not establish or state any new rights for indigenous peoples, but instead declares the existing rights of peoples to apply equally to indigenous peoples, "in accordance with the UN Charter." Borrowing from the Charter, it declares that "*indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination*, in the exercise of their rights, in particular that based on their indigenous origin or identity."[74] From the ICERD, the UNDRIP notes that "*all doctrines, policies and practices base on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and social unjust.*"[75]

43. Notably, the UNDRIP expressly acknowledges *indigenous peoples as victims of "colonization and disposition of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance to their own needs and interests.*"[76] It declares that "indigenous peoples have the right to self-determination" by which "they freely determine their political status and freely pursue their economic, social and cultural development."[77] It declares that "indigenous peoples have the *right to the **full enjoyment**, as a collective or as individuals, of all human rights and*

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[72] United Nations (General Assembly) *Declaration on the Rights of Indigenous Peoples*, G.A. Decl. 61/295 (September 13, 2007) ("UNDRIP").
[73] United States, "Announcement of U.S. Support of United Nations Declaration on the Rights of Indigenous Peoples," https://2009-2017.state.gov/documents/organization/154782.pdf.; US Response, note 48, also note 59 (Attachment 5).
[74] UNDRIP, Art. 2, also, preamble paras. 2 and 5 (emphasis supplied); UN Charter, preamble paras. 1, Art. 1(2) (emphasis supplied).
[75] UNDRIP, preamble paras. 4; ICERD, preamble paras. 6 (emphasis supplied).
[76] UNDRIP, preamble paras. 6, also, Arts. 7(2), 8, 10, 14 (emphasis supplied).
[77] UNDRIP, Arts. 3 and 20, also, preamble pars. 16 and 17.

fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law,"[78] including – "as minimum standards"[79] - the rights to "the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired," to "recognition, observance and enforcement of treaties," to indigenous governance and customary law, to free, prior and informed consent, to an indigenous nationality, to dignity, to indigenous culture and spirituality, to not to be subject to forced assimilation or destruction of their culture, to life and health, and to effective remedies to protect their rights.[80] The claims of the Onondaga Nation and Haudenosaunee Confederacy herein state violations by the United States of each of these human rights.

E. Colonialism Is Condemned As Unlawful by the Inter-American System

44. Organization of American States ("OAS") human rights instruments also define and secure these rights of indigenous nations and peoples of the Americas. The OAS Charter of 1948, signed and ratified by the United States,[81] affirms "international law" as the standard of State conduct, including "the faithful fulfillment [by member States] of obligations derived from treaties and other sources of international law."[82] It endorses "social justice" and proclaims the "fundamental rights of the individual without distinction as to race, nationality, creed, or sex."[83]

46. The 1948 American Declaration of the Rights and Duties of Man ("American Declaration"), with the OAS Charter as the primary instrument controlling this matter, secures among other rights the rights to life, liberty, security, equality, religion and spiritual development, property, heath, education, culture, a juridical personality, and governance.[84]

47. The American Convention on Human Rights ("American Convention") of 1969, signed but not ratified by the United States,[85] elaborates on the OAS Charter, the

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[78] UNDRIP, Art. 1 (emphasis supplied).
[79] UNDRIP, Art. 43.
[80] UNDRIP, art 26, also, 32 (property and resources); Art. 37, also. preamble pars. 7 and 8 (treaties); 4, 18, 20(1), 32, 33, 34, 35 (governance); art 27 (customary law); Arts. 10, 19, 32(2) (free, prior, and informed consent); Arts. 6 and 9, also, Art. 33 (nationality); Art. 15 (dignity); Arts. 11, 12, 13, 16, 24(1), 25, 31, 34 (culture and spirituality); Art. 8(1) (freedom from forced assimilation and culturecide); Art. 7 (life); Arts. 24 and 29 (health); Arts. 8(2), 11(2), 15(2), 20(2), 26(3), 28, 31(2), 38, 40 (effective remedies).
[81] Signed on April 30, 1948, and ratified by the US Senate on June 15, 1951.
[82] Organization of American States, *Charter of the Organisation of American States* (OAS Charter), 30 April 1948, Arts. 3(a), 3(b).
[83] OAS Charter, Arts. 3(j), 3(l).
[84] Inter-American Commission on Human Rights, *American Declaration of the Rights and Duties of Man*, 2 May 1948, Art. 1 (life); Art. 2 (equality); Art. 3 and preamble paras. 4 and 5 (religion / spirituality); Art. 11 (health), Art. 12 (education); Art. 13 and preamble para. 5 (culture); Art. 17 (juridical personality); Art. 19 (nationality); Art. 20 (governance); Art. 23 (property).
[85] Organization of American States, *American Convention on Human Rights*, 22 November 1969. The United States signed the treaty on June 1, 1977, and pursuant to Article 32 of the VCLT as a signatory must refrain from acts that violate the object and purpose of the treaty. *Supra* note 51.

American Declaration, and the Universal Declaration in securing, among other rights, the rights to a juridical personality, to life, dignity, liberty, security, religion, nationality, property, governance, equal protection, and effective remedies.[86]

48. More specifically, in 2013 the OAS issued the American Convention Against All Forms of Discrimination and Intolerance ("ACADI") declaring that "[e]very human being is equal under the law and has a right to equal protection against any form of discrimination and intolerance in any sphere of life, public or private," and that "[e]very human being has the right to the equal recognition, enjoyment, exercise, and protection, at both the individual *and collective* levels, of all human rights and fundamental freedoms enshrined in ...the international instruments applicable to the State Parties."[87] Among other obligations, this Convention requires States to prevent, eliminate and prohibit "[a]ny restriction on the enjoyment of human rights enshrined in applicable international and regional instruments and in the jurisprudence of international and regional human rights courts."[88]

49. The OAS issued a companion treaty, the American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance ("ACARD") recognizing that "the inherent dignity and equality of all members of the human family are basic principles of the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination"[89] It reaffirmed "the resolute commitment of the member states of the Organization of American States to the complete and unconditional eradication of racism, racial discrimination, and all forms of intolerance."[90] It declared that "such discriminatory attitudes are a negation of universal values and the inalienable and infrangible rights of the human person and principles enshrined [in those and other instruments]."[91] It expressly recognized that "the victims of racism, racial discrimination, and other related forms of intolerance in the Americas" include indigenous peoples, and that they may be, individually or *collectively*, victims of "multiple or extreme forms of racism" driven by a combination of factors such as race, color, national or ethnic origin, and called for the implementation and enforcement of the ICERD in the Americas.[92] The Convention again declared as protected the rights to equality

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[86] American Convention, Arts. 3 and 25 (juridical personality); Arts. 4(1) (life); Arts. 5 (degrading treatment); Art. 7(1) (liberty and security); Art. 12 (religion); Art. 20 (nationality); Art. 21 (property); Art. 23 (governance); Art. 24 (equal protection).

[87] Organization of American States, *American Convention Against All Forms of Discrimination and Intolerance* (ACADI), 5 June 2013, Arts. 2 and 3 (emphasis supplied).

[88] ACADI, Art. 4(viii).

[89] Organization of American States, *American Convention Against Racism, Racial Discrimination, and Related Forms of Intolerance*, 5 June 2013, preamble paras. 1 and 2.

[90] ACARD, preamble para. 2.

[91] ACARD, preamble para. 2.

[92] ACARD, preamble para. 6, 7, 9, 12 (emphasis supplied).

under the law, to equal protection against racism, racial discrimination, and related forms of intolerance in any sphere of life, public or private, and to "the equal recognition, enjoyment, exercise, and protection, at both the individual and *collective* levels, of all human rights and fundamental freedoms enshrined in their domestic law and international law applicable to the State Parties."[93] It obligated all states to undertake to prevent, eliminate, and prohibit all acts and manifestations of racism and racial discrimination.[94]

50. Three years later, in 2016, the OAS adopted the American Declaration on the Rights of Indigenous Peoples.[95] The Declaration acknowledges the colonization of indigenous peoples: "*indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and the dispossession of their lands, territories and resources.*"[96] It noted "*the importance of eliminating all forms of discrimination that may affect indigenous peoples ...and the responsibility of States to combat them.*"[97] It secured, as "minimum standards," the rights of indigenous peoples to self-determination, to the individual and *collective* full enjoyment of all human rights and fundamental freedoms recognized by OAS and UN human rights instruments and international law, to nationality, juridical personality, governance, customary law, property, culture, integrity, spirituality, health, survival as indigenous peoples, freedom from racism, and effective remedies.[98] The United States has neither signed nor ratified the ACADI, the ACARD, or the ADRIP.

F. Concocted Exclusions of Colonial States From Compliance With International Obligations to Decolonize Are Unlawful and Unenforceable

51. The United States and the other colonial States concocted an interpretation of the collective human right to self-determination, known as the "Blue Water" or "Salt Water" thesis, as a geographical excuse from their *erga omnes* decolonization obligation as to any nation or peoples found within their claimed colonial boundaries.[99] UN Resolution 1541 (1960), for example, included "geographical distinctness" as a factor in determining whether or not a peoples fell within the scope of a State's obligation under

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[93] ACARRD, Arts. 2 and 3.
[94] ACARRD, Art. 4.
[95] Organization of American States, *American Declaration on the Rights of Indigenous Peoples* (ADRIP), 15 June 2016.
[96] ADRIP, preamble para. 5 (emphasis supplied).
[97] ADRIP, preamble para. 13 (emphasis supplied).
[98] ADRIP, Arts. 3 (self-determination), 5 (all fundamental and human rights), 6 (collective rights), 8 (nationality and culture), 9 (juridical personality), 10, 13 – 18, 25, 28 (culture and cultural identity and integrity), 10 and 11 (against ethnocide and genocide), 12 (freedom from racism), 16 (spirituality), 18 and 19 (health), 19, 25 (property and resources), 21 and 23 (governance), 22 (customary law), 33 and 34 (effective remedies).
[99] Bruce Robbins, "Blue Water: A Thesis," Rev. of Int'l Amer. Studies 8(1), summer 2015; Chidi Oguamanam, "Protecting indigenous knowledge in international law: solidarity beyond the nation-state," *Law Text Culture*, vol. 8 (2004), pp. 196-197; Sheryl Lightfoot, David MacDonald, "The UN as Both Foe and Friend to Indigenous Peoples and Self-Determination," in Jakob R. Avgustin, "The United Nations: Friend or Foe of Self-Determination?," E-Int'l Relations (2020), at pp. 32-46.

Article 73(5) of the UN Charter information on the conditions of a colonized peoples.[100] This is reflected in their invocation of the right of nations to threats indigenous full self-determination poses to their "territorial integrity" in every decolonization instrument.[101] It effectively relegates indigenous nations and peoples to autonomy and a lesser right of self-determination than that of other peoples.

52. However, this self-serving concocted contention has no basis in law, history, or fact. It is the United States, its colonial predecessors, and other colonial powers that, by definition, invaded, violated, and, as colonial rulers and occupiers, continue to violate the territorial integrity of the acknowledged first nations and peoples of the Americas, including that of the Onondaga and the Haudenosaunee Confederacy. Such purported colonial exclusions from State er*ga omnes* obligations violate not only fundamental / inalienable and human rights but also directly conflict with the UN and OAS Charter provisions on equality of *all* peoples and nations and on the territorial integrity of *all* nations (including the indigenous, first, nations and peoples of the Americas like the Onondaga Nation and Haudenosaunee Confederacy) in status and human rights under international law.

53. Article 103 of the UN Charter specifically provides for the supremacy of the Charter over any conflict of State obligations under any other international agreement. Even UN Ambassador Eleanor Roosevelt remarked at the time of the 1952 UN Resolution on the right of self-determination and colonized peoples: "If a right is valid for one group of peoples, it is equally valid for all peoples."[102]

54. This exclusionary thesis concocted by continuing colonial States is expressly directed at original, first, nations and peoples found within the States' claimed boundaries, and, as such, is a racist doctrine that denies and limits the rights of "Indian" and other indigenous nations and peoples to self-determination and their own territorial integrity (and their attendant fundamental and human rights). Colonial States should not and cannot benefit from their unlawful acts to avoid their responsibilities under international law.[103]

G. Colonialism and Racism Violate Fundamental Rights That Are the Basis for Human Rights Obligations, Including the Right to Property

[100] United Nations (General Assembly), *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter*, 15 December 1960, A/RES/1541(XV), Annex, Principle V. The United States was a member of the Special Committee of Six (States) that drafted the Resolution which it then voted against despite the Salt Water thesis exclusion. UN Doc. A/4526, 3 October 1960.

[101] *See*, UNGA Res. 1514, proclamation para. 6; UNGA Res. 1541; Annex, Principle IV; UNDRIP, Art. 46; ADRIP, Art. 4, Vienna Declaration, Art. 2, para. 3.

[102] United Nations (General Assembly), Record, 7th Sess., 16 December 1952, para. 151.

[103] *See*, Catherine J. Iorns, "Indigenous Peoples and Self-Determination: Challenging State Sovereignty," 24 Case Western Reserve J. of Int. L. 199-348 (1992), 255-256, n. 264.

55. Colonialism, and racism, in *any* "form or manifestation" by their very definitions violate the fundamental ("inalienable") rights to life (i.e., genocide, ethnocide, right to collective existence)[104], liberty (i.e., freedom from alien domination or rule)[105], security (i.e., freedom from territorial invasion, theft of lands and resources, alien rule)[106], dignity (i.e., denial of sovereignty and nationality, culturecide)[107], and equality (expressed collectively)[108] of nations and peoples[109], to "complete freedom of peoples"[110], "the exercise of their sovereignty"[111], and "the integrity of their national territory"[112].

56. Colonialism is itself a violation of the fundament rights of self-determination[113] and of peoples to be free of subjection to alien subjugation, domination, or exploitation,[114] and of racial or ethnic discrimination in any form or manifestation[115]. By virtue of the fundamental right of peoples to self-determination, "they freely determine their political status and freely pursue their economic, social and cultural development."[116]

57. From these fundamental rights are derived the collective rights of indigenous peoples and nations to a juridical personality[117], an indigenous nationality[118], territory (collective property)[119], free, prior and informed consent as to all matters that affect them, customary governance and laws[120], natural resources[121], culture and religion[122] and an

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[104] *Universal Declaration of Human Rights* (UDHR), GA Res. 217A(III), UNGAOR, 3rd Sess., Supp. No. 13, UN Doc. A/810 (1948)71, Art. 3; *ICCPR*, Art. 6(1).
[105] UDHR, Art. 3; UNGA Res. 1514, preamble, para. 11 ("complete freedom"); ICCPR, preamble paras. 3, Art. 9(1).
[106] UDHR, Art. 3; ICERD, Art. 5(b); ICCPR, preamble paras. 1 and 2 (the "inalienable rights of all members of the human family" "derive from the inherent dignity of the human person), Art. 9(1).
[107] UDHR, Arts. 5 and 6; ACARD, Preamble paras. 1 and 2 (affirm same in UDHR, the American Declaration, American Convention, and the ICERD); ICERD, preamble paras. 1-2; ICCPR, Arts. 7 and 10; ICESCR, Preamble paras. 1 and 2.
[108] UDHR, Arts. 1, 2, and 7; ICERD, preamble paras. 1-3, Art. 5(a); ICCPR, Arts. 3, 14(1), and 26.
[109] UN Charter, Preamble, para. 1 Art. 1(2); UNGA Res. 1514, preamble, paras. 1.
[110] UN Charter, Preamble, para. 1, Art. 1(2); UNGA Res. 1514, preamble para. 11.
[111] UN Charter, Preamble, para. 1, Art. 1(2); UNGA Res. 1514, preamble para. 11.
[112] UN Charter, Preamble, para. 1, Art. 1(2); UNGA Res. 1514, preamble para. 11.
[113] Vienna Declaration, Art. 2, paras. 1 and 2; UNGA Res. 1514, preamble para. 2, Art. 2; ICCPR, Art. 1; UN Charter, Art. 1(2).
[114] UNGA Res. 1514, preamble para. 1, Art. 1; ICERD, preamble paras. 4.
[115] ICERD, preamble pars. 5-13, Arts. 1-7.
[116] ICCPR, Art. 2; UNGA Res. 1514, Art. 2.
[117] ICCPR, Art. 16.
[118] UDHR, Art. 15, 21; ICERD, Art. 5(d)(iii).
[119] UDHR, Art. 17; ICERD, Art. 5(d)(v).
[120] UDHR, Art. 21; ICERD, Art. 5(c); ICCPR, Art. 25.
[121] UNGA Res. 1514, paras. 8; UN General Assembly, Permanent sovereignty over natural resources, 14 December 1962, A/RES/1803(XVII).
[122] UDHR, Art. 27; ICERD, Art. 5(e)(vi); ICCPR, Art. 18.

indigenous education[123], economic security[124], health (clean environment)[125], effective remedy for acts violating fundamental rights[126], etc.

58. Those fundamental rights and their derivative rights are reasserted in varying forms in the OAS Charter, the American Declaration, the American Convention, the ACADI, the ACARD, the ADRIP, and UN human rights instruments, including the UN Charter, the UDHR, the ICERD, the ICCPR, the ICESCR, the UN DRIP, and UNGA Resolution 1514. Colonialism violates each of the aforesaid rights. These fundamental and derivative rights are implicated in the claims of the Onondaga Nation and the Confederacy asserting primary violations under the American Declaration of their rights to property (Article XXIII, Petition paragraphs 142-150), equality (Article II, Petition paragraphs 151-159), and to Judicial Protection and Due Process (and Effective Remedy) (Article XVIII, Petition paragraphs 160-181).

59. US exceptionalism and exemptionism today regarding the fundamental and human rights of indigenous peoples are the progeny of the doctrines of race, cultural, and religious supremacy of imperial Europe that were used to justify the initial invasions, takings, and colonization of the territories of indigenous peoples expressed by the Papal Bulls[127] and the Marshall opinions creating federal Indian law.[128] Despite these attempts to avoid its international human rights responsibilities as a colonial and racially-discriminatory State, it is still bound by fundamental ("inalienable") rights, *jus cogens* norms, and customary international law; and under the Vienna Convention on the Law of Treaties whereby the United States is "obliged to refrain from acts which would violate the object and purpose of a treaty when ...it has signed the treaty."[129]

H. Colonialism Violates Treaty Obligations to Indigenous Nations to Secure and Respect Their Territories and Lands

60. As declared in the Vienna Declaration and recalled in the American Declaration on the Rights of Indigenous Peoples, human rights do not stand alone but are universal,

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[123] UDHR, Art. 26; ICERD, Art. 5(e)(v).
[124] UNGA Res. 1514, preamble, para. 8.
[125] UDHR, Art. 25, ICERD, Arts. 5(a) and (e)(iv).
[126] UDHR, Arts. 8 and 10; ICERD, Art. 6; ICCPR, Art. 2(3).
[127] *Supra* notes 6, 8, 12, 14.
[128] *See*, Julian Go, "The Provinciality of American Empire: 'Liberal Exceptionalism' and U.S. Colonial Rule, 1898-1912," 49(1) Comparative Studies in Soc. & Hist. 74-108 (2007); Jorge Gonzalez Jacome, "Exceptionalism as a Colonial Tool in Modern International Law," 10 Int. Law: Rev. Colombia Derecho Int. Bogata, 15-42 (November 2007); Jojo Aoah, "American Exceptionalism as a Basis for the American Consciousness," E-International Relations (January 13, 2021), www.e-ir-info/2021/01/13/american-exceptionalism-as-a-basis-for-the-american-consciousness/.
[129] United Nations, *Vienna Convention on the Law of Treaties* ("VCLT"), 1155 U.N.T.S. 331 (May 23, 1969), Art. 18(a); IACHR, Rep. No. 3/87, Case No. 9647. Admissibility. James Terry Roach (United States). September 22, 1987, paras. 37(b) and 37(c); *"Other treaties" subject to the consultative jurisdiction of the Court (Art. 64 American Convention on Human Rights*). Advisory Opinion OC-1/82. September 24, 1982, paras. 33 and 45 (following Article 32 of the VCLT).

inseparable, and interdependent under international law.[130] For example, the "legacies of colonialism" have been recently recognized by UN Human Rights Council as having negative impacts on the enjoyment of human rights.[131]

61. The loss and subsequent exploitation and contamination of treaty secured "property," the first cited American Declaration violation, is based upon the failure of the United States to honor its treaty obligations and protect the Petitioners from takings by its subdivision, New York state, and the invasion and settlement of their territory by the non-Onondaga / non-indigenous citizens of the United States. The loss of property (the lands, natural resources, and territory of a sovereign nation) by its nature results in and implicates violations of many fundamental and human rights including the rights to territorial integrity from the ownership claim of the United States and the state of New York and the invasion of their lands by settlers and private industries, the right to liberty from being deprived of access to their territory, lands, and resources, the right to self-determination (sovereignty) from the taking and invasion of their territory by another nation, the right to security from the loss of the lands and resources for their economic and physical well-being, the rights to religion / spirituality and to liberty from the separation of the Onondaga and Haudenosaunee from their sacred lands and ancestors, the right to health from the loss of their access to traditional medicines and ceremony and to a clean environment from the toxic contamination of their treaty lands, the right to culture from the taking's interference with the practice of their culture and spirituality and the implementation of their customary laws, the rights to culture and education from the overwhelming invasion of their territory and lands by European settlers and the takings as part of a United States policy of forced assimilation, culturecide, and ethnocide, and so on.

I. Violations of Petitioners' Rights to Judicial Protection and Due Process Also Violate Petitioners' Intwined Right to Property

62. The Petitioners' third claim of a violation of the American Declaration, the rights to judicial protection and due process, is found in the persistent and protracted US violations of treaty obligations and the failure of the legal system of the United States to afford the Onondaga Nation and Haudenosaunee Confederacy an effective remedy for the taking of their property. This violation of the American Declaration resulted in continuing aforesaid violations of the right to property as well as the rights to a juridical personality, to an international personality and recognition and enforcement of their treaty rights, to an indigenous nationality, to the recognition and enforcement of Onondaga and Haudenosaunee customary law, and to the right of fee, prior and informed consent.

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[130] Vienna Declaration, Art. 5; ADRIP, preamble para. 11.

[131] United Nations (Human Rights Council), *Negative impact of the legacies of colonialism on the enjoyment of human rights*, 8 October 2021, A/HRC/RES/48/7.

63. The remaining cited American Declaration violation, the right to equality, is the fundamental and human rights violation that underlies the other two listed violations as they are manifestations of colonial domination and racial discrimination based on the sole fact that the Onondaga and the Haudenosaunee are "Indians," indigenous nations and peoples.

J. The States' Institutionalized Colonialism and Racism Was the Instrument Employed by It to Deny the Petitioners' Right to Property

64. In rejecting the "fundamental / inalienable right" of indigenous nations and peoples to self-determination and governance, the State's high court remarked that the United States "in the exercise of its plenary power of Indian affairs, may restrict the retained sovereign powers of the Indian tribes."[132] Even that Court has acknowledged: "It is settled that the unique status of Indian tribes under federal law permits the Federal Government to enact legislation singling out tribal Indians, legislation that might otherwise be constitutionally offensive."[133]

65. The United States is a persistent outlier in the acknowledgement and respect of human rights and compliance with its *erga omnes* obligations. Over the past 60+ years, the United States is the *only* State out of some 180 voting UN member States which has voted against *all* of the hundreds of decolonization instruments adopted by the UN General Assembly.[134]

66. It is the application of colonial, racist, constitutionally offensive, federal Indian law, and the violation of the fundamental rights of the Onondaga Nation and the Haudenosaunee Confederacy, that form the basis for the claims against the United States asserted herein, including the continuing violations of their collective right to property.

67. Colonialism, and racism, in *any* "form or manifestation" by their very definition violate the fundamental ("inalienable") rights to life (i.e., genocide, ethnocide, right to collective existence)[135], liberty (i.e., freedom from alien domination or rule)[136], security

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[132] Washington v. Confederated Bands and Tribes of Yakima Indian Nation, 439 U.S. 463, 501 (1979).
[133] Yakima Indian Nation, 439 U.S. at 500-01.
[134] The UN General Assembly condemned colonialism and has made calls for decolonization every year since UNGA Resolution 1514 in 1960, approximately 150 times over 63 years. Each year the member States of the General Assembly with near unanimity have endorsed the call while the United States stands alone as the only State to have voted against every single one. The great global call to immediately end and eradicate all forms and manifestations of colonialism and racism threatens the continuing colonial rule, domination, and exploitation by the United States over the Onondaga Nation and the Haudenosaunee Confederacy and other indigenous peoples and nations. *See*, UNGA decolonization resolutions for the following sessions (United Nations Digital Library, "Voting Data" word search – "colonial").
[135] American Declaration, Arts. I and XI; *Universal Declaration of Human Rights* (UDHR), GA Res. 217A(III), UNGAOR, 3rd Sess., Supp. No. 13, UN Doc. A/810 (1948)71, Art. 3; *ICCPR*, Art. 6(1).
[136] UDHR, Art. 3; UNGA Res. 1514, preamble, para. 11 ("complete freedom"); ICCPR, preamble paras. 3, Art. 9(1).

(i.e., freedom from territorial invasion, theft of lands and resources, alien rule)[137], dignity (i.e., denial of sovereignty and nationality, culturecide)[138], and equality (expressed collectively)[139] of nations and peoples[140], to "complete freedom of peoples"[141], "the exercise of their sovereignty"[142], and "the integrity of their national territory"[143]. Colonialism is itself a violation of the fundament rights of self-determination[144] and of peoples and to be free of subjection to alien subjugation, domination, and exploitation[145] and racial or ethnic discrimination in any form or manifestation[146].

68. The American Convention on Racism acknowledged that racially "discriminatory attitudes are a negation of universal values and the inalienable and infrangible rights of the human person and the purposes and principles enshrined in the Charter of the Organization of American States, the American Declaration on the Rights and Duties of Man, the American Convention on Human Rights, ...the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination ...."[147]

69. These are the existential "essential rights of man" the protection of which is the purpose and goal of the American Declaration.[148] The Declaration then[149] directs: "The international protection of the rights of man should be the principle guide of an evolving American law." The Declaration affirms the rights to freedom and equality, "in dignity and in rights", "being endowed by nature."[150] The rights asserted in the Petitioners' First and Second Claims, the Onondaga Nation's and peoples' rights to property (territorial integrity, security, life) and equality assert fundamental, inalienable, infrangible, rights.

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[137] American Declaration, Arts. VIII, IX, XI; UDHR, Art. 3; ICERD, Art. 5(b); ICCPR, preamble paras. 1 and 2 (the "inalienable rights of all members of the human family" "derive from the inherent dignity of the human person"), Art. 9(1).

[138] American Declaration, Arts. V, XII; UDHR, Arts. 5 and 6; ACARD, Preamble paras. 1 and 2 (affirm same in UDHR, the American Declaration, American Convention, and the ICERD); ICERD, preamble paras. 1-2; ICCPR, Arts. 7 and 10; ICESCR, Preamble paras. 1 and 2.

[139] American Declaration, Art. II; UDHR, Arts. 1, 2, and 7; ICERD, preamble paras. 1-3, Art. 5(a); ICCPR, Arts. 3, 14(1), and 26; IACHR, Report No. 125/12, Case 12.354. Kuna Indigenous People of Madungandi and Embra Indigenous People of Bayono and Their Members (Panama). November 13, 2012, para. 288.

[140] UN Charter, Preamble, para. 1 Art. 1(2); UNGA Res. 1514, preamble, paras. 1.

[141] American Declaration, Arts. III and IV; UN Charter, Preamble, para. 1, Art. 1(2); UNGA Res. 1514, preamble para. 11.

[142] American Declaration, Art. IV; UN Charter, Preamble, para. 1, Art. 1(2); UNGA Res. 1514, preamble para. 11.

[143] UN Charter, Preamble, para. 1, Art. 1(2); UNGA Res. 1514, preamble para. 11.

[144] Vienna Declaration, Art. 2, paras. 1 and 2; UNGA Res. 1514, preamble para. 2, Art. 2; ICCPR, Art. 1; UN Charter, Art. 1(2).

[145] UNGA Res. 1514, preamble para. 1, Art. 1; ICERD, preamble paras. 4.

[146] ICERD, preamble pars. 5-13, Arts. 1-7.

[147] ACARD, Preamble para. 2.

[148] American Declaration, Whereas paras. 1 and 2.

[149] American Declaration, Whereas para. 3.

[150] American Declaration, Preamble para. 1.

70. The Declaration proclaims that the "fulfillment of duty", the *erga omnes* responsibility of member States to protect fundamental rights, including the United States, "is a prerequisite to the rights of all."[151] It declares that a State's "[d]uties of a juridical nature presuppose others of a moral nature which support them in principle and constitute their basis."[152] It recognizes that the human right to an effective remedy, the right to judicial protection and due process asserted in the Petitioners' Third Claim, the "right to have rights", is essential to the protection of fundamental rights. This right speaks not only to the failure of the colonial State's domestic law set forth by the Onondaga Nation and Haudenosaunee Confederacy Petition and their Third Claim, but also to the responsibility and "duty" of this body, the Organization of American States and its Inter-Commission on Human Rights, to protect those rights and bind the obedience of the United States under the OAS Charter and Declaration.

71. The Declaration concludes by proclaiming "spiritual development" as "the supreme end of human existence and the highest expression thereof" and that "it is the duty of man to serve that end with all of his strength and resources."[153] It acknowledges "culture" as the "highest social and historical expression of that spiritual development" and that "it is the duty of man to preserve, practice and foster culture by ever means within his power."[154] These are mandates by the OAS General Assembly and its member States, including the United States, to all OAS members and its institutions, including the Commission. They should guide the Commission in the interpretation of the Declaration in its application to this matter and in construing the obligations of the United States thereunder.

72. Very significantly, the Commission in Dann "emphasized" the great importance of these provisions on spirituality as expressions by the OAS of "the very purposes underlying the Declaration."[155] The Commission recognized that the indigenous peoples of the Americas, including here the Onondagas and Haudenosaunee, are "spiritual" peoples having a spiritual relationship with and responsibility to their ancestral lands. The Commission opined that it was required to respect these very purposes of the Declaration in interpreting the American Declaration "so as to safeguard the integrity, livelihood and culture of indigenous peoples through the effective protection of their individual and collective human rights"[156] "The Inter-American Court of Human Rights has similarly recognized that for indigenous communities the relation with the land is not merely a

[151] American Declaration, Preamble para. 2.
[152] American Declaration, Preamble para. 3.
[153] American Declaration, Preamble para. 4.
[154] American Declaration, Preamble para. 5
[155] Dann (2002), para. 131, *supra* note 43.
[156] Dann (2002), para. 131, *supra* note 43.

question of possession and production but has a material and *spiritual* element that must be fully enjoyed to preserve their cultural legacy and pass it on to future generations."[157]

73. This union of the fundamental rights to the free exercise of religion (spirituality), to property, to territorial integrity, to health, and to culture, freedom, and the enjoyment of life, is the essence of the Onondaga and Haudenosaunee right to property, Petitioners' First Claim.

IV. CONCLUSION

74. The Commission in Dann concluded that "the State failed to ensure the Danns' right to property under conditions of equality contrary to Article II, XVIII and XXIII of the American Declaration in connection with the Western Shoshone ancestral lands.[158] An equally if not more compelling case of the State's violations of these same human rights is set forth in the Petition of the Onondaga Nation and Haudenosaunee Confederacy in this matter.

197. The federal colonial Indian law of the United States, most particularly its Plenary Power doctrine, by denying or substantively limiting adequate remedies to Indigenous nations and peoples, operates as a "self-amnesty" whereunder the colonial State may act with a self-endowed impunity in the widespread systemic violations of the human rights of the Onondaga Nation and Haudenosaunee Confederacy. The Commission and Court have uniformly condemned State "self-amnesty" practice of institutionalizing obstacles to accountability for human rights violations.[159]

198. The State's conduct towards and rule over the Onondaga and Haudenosaunee is a colonial one, condemned under international law and by the community of nations, the General Assembly of the United Nations, in all its "forms and manifestations" for over 70 years. Fairness and justice call for the exposure, ending, and remediation of the colonial thefts and contamination – continuing to this day – of Onondaga and Haudenosaunee property and attendant serious collective human rights violations.

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[157] Dann (2002), para. 131 (emphasis supplied) (*citing among other authorities*, Article 13 of the ILO Convention (No. 169) which provides that "[i]n applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship."), *supra* note 43.

[158] Dann (2002), para. 172, *supra* note 43.

[159] *See*, IACHR Cases 10.147. 10.181, 10.240, 10.262, 10.309, 10.311; IACHR, Report No. 28/92, OEA/Ser.L/V/II.83, doc. 14, corr.1 (1992-93) (Argentina); ICHR Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374, 10.375; IACHR Report No. 29/92, OEA/Ser.L/V/II.83, doc. 14, corr.1 (1992-93) (Uruguay); *also*, I/A Court H.R., *Almonacid v. Chile.* Judgment of 26 September 2006. Ser. C No. 154, paras. 111, 119; I/A Court H.R., *Barrios Altos v. Peru.* Judgment of 14 March 2001. Series C No. 75, paras. 41, 42. *Also*, Christina Binder, "The Prohibition of Amnesties by the Inter-American Court of Human Rights," 12(5) German L. J. 1203 (2011).

199. For the foregoing reasons, the Onondaga Nation and Haudenosaunee Confederacy request that the Commission find their Petition meritorious and issue a report setting forth all the facts and applicable law, declaring the United States to have violated the rights secured to them by the American Declaration of the Rights and Duties of Man. The Petitioners further request that the Commission thereupon order and recommend such other remedial measures and mechanisms as it may find necessary, just, and appropriate under international law as requested in the Petition.

Signed this 14th day of September, 2023.

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