

# *The State Constitution v. the National Constitution: Original Nations’ “Sovereignty-Building” Projects in Asia, North America, and Beyond*

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## **Abstract**

Historical tensions and conflicts have existed between the nation and the state across the globe for centuries. These antithetical geo-political entities have also erected Constitutions of their own to assert their sovereignty and independence. The paper then explores the constitutional activism by the nation to attain its sovereignty and the right to self-determination from the state supervision. The paper specifically interrogates recent efforts by the Nation of Lakota in North America, and its constitutional activism and the attempts to secede from the US jurisdiction in order to declare the nation’s independence. The paper provides the critical investigation of an array of both domestic and international laws used by the Nation of Lakota in order to complete the withdrawal of its political ties and legal obligation from the US territory. The paper concludes by discussing the ongoing constitutional activism by multiple nations in Asia and other regions of the world in an effort to attain their sovereignty and independence within, and even beyond, the respective state systems.

**Keywords:** the Constitution, the state, the nation, international law, sovereignty, Original Nation Approaches to International Law (ONAIL)

## 1. INTRODUCTION

The Constitution represents the corpus of fundamental legal principles by which the power of the state is established, limited, and defined. According to Aristotle, the most desirable Constitution is the one that allows each and every citizen to attain a life of excellence and complete happiness. Aristotle’s conception of the Constitution has generated extensive philosophical discussions on the varied forms of political governance, ranging from a small “City-Polis” such as ancient Athens, to one of today’s “mega-states,” such as the US, Russia,

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and the People's Republic of China, among others, in which hundreds of millions of peoples are incorporated into a single corpus of political and judicial order.<sup>1</sup>

The adoption of a Constitution has come to generate significant discussions among indigenous nations and semi-autonomous communities around the world. While many of them have been historically "conquered" by, and internally colonized within, the powerful state system, many have also decided to adopt their own Constitutions, in parallel to the "over-arching" state Constitution. Some of the notable independent communities that have decided to erect their own Constitutions are: (1) the principalities of Kashmir in India, Kurdistan in Iraq, and Palestine in Israel; (2) Catalonia in Spain, Bavaria in Germany, and other autonomous communities in Europe; and (3) the Lakota, Iroquois, Seminole, and other indigenous nations in North America.<sup>2</sup> These substate communities have adopted, in a sense, "bifurcated" Constitutions in an effort to protect their political autonomy, preserve human dignity, and maintain cultural and biological diversities in their ancestral homelands in the presence of state domination.

Despite the ongoing tensions arising from "double" constitutional manifestations of the state and the nation, a revolutionary moment came on 17 December 2007, when the Nation of Lakota submitted a declaration of independence to the US State Department in Washington, DC and officially proclaimed it would "secede" its national territory from US jurisdiction.<sup>3</sup> The Lakota Constitution was amended to substantiate the severance of the Lakota Nation, facilitate the nation's unilateral withdrawal from all treaty obligations with the US government, and establish the independent nation of the Republic of Lakotah.<sup>4</sup> To assert its national independence and its free association with the US, Lakotah also subscribed to an array of renowned international laws and legal doctrines, including the 1803 Louisiana Purchase Treaty, the Lakota Nation's 1851 and 1872 Treaties signed with the US, the 1969 Vienna Convention on the Law of Treaties (VCLT), and finally the 2007 UN Declaration of the Rights of Indigenous Peoples (UNDRIP).

The territorial holding of the Lakota Nation has encompassed five US states, including most of North and South Dakota, Nebraska, Wyoming, and Montana. Its geographical secession has created a huge "hole" in the middle of the US federal system. In order to obtain international recognition of its independence, Lakotah also sent copies of its declaration of independence to the embassies of Bolivia, Venezuela, Chile, South Africa, Ireland, East Timor, and other governments.<sup>5</sup> Despite their diplomatic efforts, however, no UN Member State has yet recognized the Republic of Lakotah as an independent nation. Lakotah's effort for sovereignty, however, has begun to encourage and ignite other

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1. Ginsburg (2012), p. 11 ("Most societies of any scale have constitutions in the Aristotelian sense of *politeia*, defined as a set of fundamental legal and political norms and practices that are constitutive of the polity").

2. See Vanhullebusch (2015). Western Sahara in Northern Africa and Kosovo in Southern Europe have also adopted their Constitutions. They have been struggling to gain their independence.

3. Harlan (2007). The Lakota delegation included Russell Means, the renowned co-founder of the American Indian Movement (AIM) and the prominent indigenous leader of the Oglala Sioux Tribe of the Pine Ridge Indian Reservation in South Dakota; Phillis Young, the co-founder of Women of All Red Nations; Gary Rowland, a leader of the Chief Big Foot Riders in Wounded Knee, South Dakota; and Duane Martin Sr, the Rapid City Native activist, along with other distinct Indian members and supporters.

4. See the Constitution of the Oglala Sioux Tribe of the Pine Ridge Reservation (2008).

5. Harlan, *supra* note 3.

nucleated communities around the globe to seek to attain the right to self-determination and political independence from their respective state systems.

In 2012, the government of Puerto Rico followed in Lakotah's footsteps in holding a national referendum to gain independence from the US government. Similar to the historical experience of Lakotah and other indigenous nations in North America, people of Puerto Rico were militarily overwhelmed by the US in 1898 and have been fighting for their political independence for decades. While the 2012 referendum failed, the UN Special Committee has requested the US government in 2016 to expedite the political process to allow "Puerto Rico people to take decisions in a sovereign manner, and to address their urgent economic and social needs."<sup>6</sup> Outside of North America, the regions of Donetsk and Lugansk have declared independence from Ukraine,<sup>7</sup> followed by Veneto in Italy in 2014.<sup>8</sup> The Kurdistan region of Iraq in the Middle East and the province of Catalonia in Spain, respectively, ran a referendum of independence in 2017 and both were overwhelmingly supported by their peoples.<sup>9</sup> In 2018, New Caledonia declared independence from France, although its popular decision was denied by the French government.<sup>10</sup> Many nations and self-governing territories have also adopted their own Constitutions to assert their political independence and the right to self-determination.<sup>11</sup>

This paper examines the contours of the historical path through which the original and indigenous nations have relied on the Constitution and political rights under international law to assert their independence from the state. First, the paper provides definitions of differing concepts of the nation and the state. The rhetorical conflation of these two geo-political entities has led to the misrepresentation and mischaracterization of predatory policies of the state, on one hand, and the state's coercive subjugation of the substate, yet culturally cohesive autonomous communities, on the other. It is important to acknowledge that many nations, including indigenous communities, aboriginal societies, and nucleated autonomous regions, had existed for centuries prior to the domination by the modern state system.<sup>12</sup> The interchangeable use of the nation, the state, or the nation-state has obfuscated the history of the nation and their struggles against the political, social, and military encroachment of the state system.

Second, the historical evolution of the national Constitution vis-à-vis the state Constitution is examined. Here, the paper focuses on the Lakota Constitution and its

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6. United Nations (2016).

7. Aljazeera (2014).

8. RT (2014).

9. Chulov (2017).

10. Lyons (2018).

11. The Constitution of the Commonwealth of Puerto Rico was ratified by Puerto Rico's electorate in a referendum on 3 March 1952. The Constitution of the Donetsk People's Republic was adopted by the Supreme Council of the Donetsk People's Republic on 14 May 2014. Iraq's 2005 Constitution recognizes an autonomous Kurdistan region in the north of the country, run by the Kurdistan Regional Government. For the Kurdish Regional Constitution, see Kelly (2010). The first Constitutions of Catalonia were created in 1283. See Vargas (2018), p. 25. Other nations and self-governing territories that have their own Constitutions include the Cayman Islands, Bermuda of Gibraltar in the UK; Greenland and Faroe Islands in Denmark; Aruba, Curacao and Sint Maarten in the Netherlands; and Puerto Rico and the Virgin Islands in the US.

12. The differing views of the evolution of the state and the nation were presented by anthropological scholars, including Pierre Clastres and James C. Scott. They argued that many nation peoples had originated in the state system and created their own independent communities in highlands and/or deep jungles in order to evade the state overreach. See Clastres (1989); Scott (2010).

2008 Amendment. The third section examines the legal rationales that the original nation has relied on in withdrawing all of its obligation from the state system in order to achieve independence and sovereignty. The fourth section examines the Constitutions adopted by other nations in North America, including the Iroquois Confederation and the Seminole Nation, as well as many nations in regions of Asia, such as Indonesia, Myanmar, India, and others. This section delineates the nations' attempts to attain their sovereignty in multiple regions of the world. The last section contemplates the future of nations and their constitutional movement around the globe, and explores the legal path towards the recognition of sovereignty for the nations and other self-governing communities.

## 2. THE NATION VERSUS THE STATE

The US is often referred to as a nation, state, nation-state, country, or even empire<sup>13</sup>; indigenous communities such as the Lakota are characterized as a nation, tribe, or even tribal society. The conflation and misrepresentation of varied “collectivist” groups and geopolitical entities have led to the misunderstanding of the concepts of the nation and the state.

### 2.1 *The Nation*

The “nation” refers to the culture-bound territory of a common people and the peoples themselves, not the political apex of the bureaucratic government or its centralized system of authoritarian political structure.<sup>14</sup> A “nation” also refers to a cultural territory made up of communities of unconstrained, “self-identifying” individuals who are sufficiently conscious of their common ancestral value of history, tradition, ideology, language, religion, and memory. Using this definition, the Lakota people belong to the nation, in which they possess shared psychological bonds that are strongly attached to the historically interconnected, culture-bound territory. The Iroquois and Seminoles, among others in North America, also represent nation peoples who are bound by a strongly shared sense of cultural, historical, and ideological commonality. In this paper, the term “indigenous nations” is used interchangeably with “original nations” or simply “nations.” It is important to acknowledge that indigenous and original nations existed long before the advent of the modern state system that was externally brought, created, and imposed through European colonial policies and imperial ventures in North America and then around the globe.

The US Census Bureau has reported that 6.7 million people in the US, or 2% of the total population, identify as Native American or Alaska Native. As of May 2016, the US recognized a total of 567 Indian nations—326 of them with their own national homelands in the areas of Indian reservations, federal reservations, and off-reservation trust lands.<sup>15</sup>

Reaching beyond North America, the UN reported in 2010 that there were approximately 370 million indigenous people occupying 20% of Earth's planetary surface, and that there

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13. See Webb (2004); Bender (2006); Agonito (2011), p. 101 (“Congress passed legislation permitting the army to recruit twenty-five hundred cavalry and build two new forts in Lakota country”); Sprague & Sprague (2015); Andersson (2019).

14. See Fukurai (2019).

15. US Census (2017).

were 5,000 culturally distinct communities across the world.<sup>16</sup> While these original nations still retain legal title deeds to their homelands, the UN reported that these lands were often leased out by the state as mining or logging concessions for corporate profits without prior or sufficient consultation with original nations and peoples, leading to environmental degradation of the ancestral homeland and the destruction of self-sustaining ecosystems.<sup>17</sup> As a result, original nation peoples make up nearly 15% of the world's poorest populations.<sup>18</sup>

Another research report estimated that there were nearly 7,500 nations and that the majority of these are located in Asia and the Pacific.<sup>19</sup> Research on original nations in Europe has indicated that nearly 110 culturally and socially independent nations currently exist, but that many are neither politically nor legally recognized by their state governments or by international organizations such as the UN and its agencies.<sup>20</sup> A total of 160 countries have distinct multi-ethnic communities within their respective state borders that make up at least 1% of their state populations, and many of them have been involved in struggles to preserve the territorial and cultural integrity of original nations and ancestral lands from encroachment by the state.<sup>21</sup> Lastly, while the original nation and peoples have gained increased recognition of their human and environmental rights at the international level,<sup>22</sup> especially after the passage of the UNDRIP in 2007, many decisions and directives enacted at the international level have not been respected or implemented at the state level, and the nations' voices are often marginalized, if heard at all, by their own governments.

## 2.2 *The State*

The concept of the state is distinctly different from that of the nation and was largely created as an outward manifestation of "state-building" ventures and imperial expansion throughout the world.<sup>23</sup> The emergence of the modern state and its centralized governmental system involves the expansive history of Anglo-European colonialism and imperialism projected upon a multiplicity of non-consenting original nations and peoples in a great many regions. Since no nation or peoples have willingly relinquished their own culture, identity, history, and language, the state system has been unilaterally imposed upon the non-consenting nation peoples through war, conquest, slavery, and genocide, in combination with the system of state-enforced assimilation policies and hegemonic forms of indoctrination that often justified their "benevolent" policies in relation to what were viewed as the benighted, uncivilized, and backward nations and their populace. Because there is little or no degree of commonality of culture, identity, tradition, and history between the subjects and the colonizers, the state must necessarily be a

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16. United Nations (2010).

17. *Ibid.*

18. *Ibid.*

19. Griggs & Hocknell (1995).

20. Griggs (1992).

21. Fearon (2003), p. 195.

22. This is true, especially after the UN has adopted the UNDRIP in 2007.

23. See Scott, *supra* note 12. The term "state-building" or "state-making" has been used by Scott to designate the collectives of people who evaded the state encroachment in order to maintain their autonomy and freedom from the state-imposed taxation, conscription, and persecution.

“legal construction,” in which nation peoples were brought into the bondage of “multi-ethnic” or “multicultural” collectives by a network of coercive legal mechanisms and authoritarian institutions. By these definitions, the US remains as the state, not the nation, as it has captured a multiplicity of internally colonized nation peoples, as well as coercively “imported” African slaves and descendants within its state borders.

As a geo-political invention, the US has created new scripts and invented stories of history, geography, map, and imagined memories in order to justify that its birth, history, expansion, and the growth of its artificial structure have pre-existed, pre-dated, precluded, and, most significantly, prevented all nations’ historical claims to their ancestral land, culture, tradition, resources, and knowledge of the land. The US Supreme Court, in *Johnson v. M’Intosh* in 1823, for example, reiterated the state claim to land titles using the discovery doctrine in North America, thereby invalidating the aboriginal claim to their ancestral homeland.

The state has also relegated nation peoples to a vilified and marginalized status, such as that of ethnic minorities, religious groups, separatists, rebels, or even groups of “terrorists” who took up arms against the state intrusion and invasion of their homeland, including Geronimo, Black Hawk, Chief Joseph, Sitting Bull, and Tecumseh, to name just a few aboriginal resisters in North America.<sup>24</sup> Given the multiplicity of “ethnic” and cultural minorities and autonomous nucleated communities, the state also promotes the policy of multiculturalism, in which multiple “ethnic minorities” with different cultural practices and traditionally deviated backgrounds were forcibly integrated into the prevailing programme of dominant cultural practices, institutional arrangements, and existing laws of adoption and assimilation.

Since the state is an artificial legal entity, historical analysis has shown that the life cycle of the state autonomy has often been ephemeral and many states that had been created through imperial construction disappeared into the dustbin of history. For instance, many state systems evolved after the disintegration of mega-state geo-political entities into smaller sectors of independent polity, such as the 1991 dissolution of the Union of Soviet Socialist Republics into 15 former Soviet republics and the violent deconstruction of former Yugoslavia into six “smaller” state systems in the 1990s and early 2000s.<sup>25</sup>

### 3. THE HISTORY OF THE 1936 LAKOTA CONSTITUTION AND ITS AMENDMENT IN 2008

The nation has been historically bound on the basis of a long history of culture, identity, ideology, and tradition closely tied to the land. The nation has rarely required a constitutional mandate to set up externally imposed judicial institutions or legal mechanisms in order to maintain its cultural integrity and its territorially bound ideology. Nonetheless, it became increasingly common for the nation to produce its own “Constitution” in order to assert its independence and insist on the right to self-determination, especially after the nation was

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24. See Dunbar-Ortiz (2018), p. 29. (The colonizers were met with resistance with “[indigenous] leaders such as Buckongehelas of the Delaware; Alexander McGillivray of the Muskogee-Creek, Little Turtle and Blue Jacket of the Miami-Shawnee alliance; Joseph Brant of the Mohawk, and Cornplanter of the Seneca, as well as the great Tecumseh and the Shawnee-led confederation in the Ohio Valley.”)

25. Fukurai, *supra* note 14.

forcefully incorporated into the state system. In North America, it is important to recognize that the Constitution adopted by the nation did not arise from the nation's original initiative, but in response to changing contexts.

In 1934, the US enacted the Indian Reorganisation Act (IRA) to provide the indigenous nations with the opportunity to draft and ratify their Constitutions in order to incorporate the nation into the political and legal matrix of the state system. The Office of Indian Affairs (OIA), a precursor to the Bureau of Indian Affairs (BIA), first promoted the adoption of the Constitution of the nation and drafted the legal constitutional template in the 1930s. The OIA-drafted Constitution had "standardized" narratives of preamble, articles, and sections without the specificity of indigenous nations or territorial districts so that the nation's identity and demographic information could be easily inserted into the model Constitution.

On 14 December 1935, the OIA-drafted Constitution of the Lakota Nation was placed on the referendum, ratified, and put into effect on 15 January 1936.<sup>26</sup> The Constitution was written in conformity with the OIA model of the Indian government and transferred the core of political power away from the traditional tribal council to the state agencies. Article IV, "Powers of the Council," for example, stipulated that the council power was "subject to any limitations imposed the statutes of the Constitution of the US and subject further to all express restrictions on such powers contained in this Constitution and the attached Bylaws."<sup>27</sup> Article IV(c) further required that the power of the tribal council be subject to the statutes of the federal law in order:

to approve or veto any sale, disposition, lease, or encumbrance of tribal lands, interest in lands, or other tribal assets which may be authorised or executed by the Secretary of the Interior, the Commissioner of Indian Affairs, or any other authorised official or agency of [the state] government, provided that no tribal lands shall ever be leased for a period exceeding five years, sold or encumbered except for governmental purposes.<sup>28</sup>

The Constitution thus ensured indigenous compliance with US law and any decisions on their property, economic transactions of land or resources, as well as any business activities within the indigenous territory had to seek approval from the state. The Constitution further stipulated that the tribal council must "advise the Secretary of the Interior [of the US government] with regard to all appropriation estimates or Federal projects . . . prior to the submission of such estimates to the Bureau of the Budget and [the US] Congress."<sup>29</sup> Its preamble also required that any decisions made by the Lakota Nation council must follow US federal law, stating that:

We . . . promote the general welfare, conserve and develop our lands and resources, secure to ourselves and our prosperity the power to exercise certain rights of home rule not inconsistent with Federal law and our treaties, and in recognition of God Almighty and His Divine Province.<sup>30</sup>

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26. Lee (2013), p. 62. The tribal members of the Lakota Nation, such as the Oglala Sioux, Cheyenne River, Rosebud, Lower Brule, and Standing Rock, had each adopted the similar Constitutions. This paper specifically focused on the Oglala Sioux Tribe of the Lakota Nation and their efforts to create the Constitution and later amend to remove the constitutional compliance to the US government.

27. Constitution of the Oglala Sioux Tribe of the Pine Ridge Reservation (1935).

28. *Ibid.*

29. *Ibid.*

30. *Ibid.*

In 2008, one year after Lakotah submitted its declaration of independence to the US government, the Lakota Constitution was amended to remove all of the constitutional provisions that required indigenous compliance with US federal laws and institutions. For example, “Oaths of Office” for Article III was amended to eliminate the duty of an elected or appointed officer to pledge “himself to support and defend the Constitution of the United States and this [Lakota] constitution and by-laws.”<sup>31</sup> The amendment also removed constitutional provisions that required the Lakota’s compliance with regulations of the US Department of Interior, the BIA, and other state agencies.<sup>32</sup>

The amendment also strengthened constitutional compliance with renowned international law and pronouncements, such as the 1969 VCLT, in order to ensure the rights of the indigenous nation and peoples under international law as required by the UNDRIP. Furthermore, the amendment ensured the rights of Lakota peoples to “support and defend this [Lakota] Constitution and . . . the human rights of other peoples as recognized in international law and treaties.”<sup>33</sup>

#### 4. LEGAL FOUNDATIONS FOR NATIONAL INDEPENDENCE: THE CASE OF THE REPUBLIC OF LAKOTAH

Lakotah has relied on an array of legal foundations to assert its sovereignty and independence. These include: (1) the 1803 Louisiana Purchase Treaty signed by the US and French governments<sup>34</sup>; (2) the 1969 VCLT; (3) the 1960 UN Declaration on the Granting of Independence to Colonial Countries and Peoples; and (4) the 2007 UNUNDRIP. Lakotah further cited other legal instruments to solidify their assertion of autonomy, to ensure the nation people’s human dignity, and to protect the bio-diversities of the ancestral land from the state encroachment, including: (1) the 1776 US Declaration of Independence; (2) the 1787 US Constitution; and (3) US Supreme Court decisions in the 1820s and 1830s.

##### 4.1 *The 1803 Louisiana Purchase Treaty*

Lakotah critically examined the US signing of the Louisiana Purchase Treaty with France in order to restore its legal status as a sovereign nation. In 1803, the US purchase of the Louisiana Territory, which stretched from the southern Louisiana border at the Gulf of Mexico to the northern border of Canada, doubled the US territorial assets overnight.<sup>35</sup> The US purchase of the Louisiana Territory, however, did not mean that the US purchased from France the legal title to Indian lands. The intergovernmental purchase agreement simply meant that France would not compete with the US in making land treaties with the Indian nations that lay within the Louisiana Territory, including the Lakota Nation.

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31. *Ibid.*

32. *Ibid.*

33. *Ibid.*

34. Louisiana Purchase Treaty (1803), Art. III.

35. France was forced to sell its territorial holding, after the African revolutionary slave army led by General Henri Kristof had seen a decisive victory over French troops in 1803. In order to finance its imperial ventures in the remaining colonies in the Caribbean and Europe, France sold the Louisiana Territory to the US government. See Horne (2015).



Article III of the Louisiana Purchase Agreement stipulated that:

the inhabitants of the ceded territory shall be incorporated into the Union of the United States . . . and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.<sup>36</sup>

Lakotah argues that the requirement of the treaty to incorporate indigenous nations into the union would be binding on the US government, not the indigenous nation, such as the Lakota Nation, which was not a party to the treaty.

The treaty's requirement regarding the admission of nations into the union had also been challenged by US officials. For example, then-President Thomas Jefferson considered the treaty as unconstitutional, arguing that:

the Constitution has made no provision for our holding foreign territory, still less for incorporating foreign [indigenous] nations into our Union. The Executive in seizing the fugitive occurrence which so much advances the good of their country, have done an act beyond the Constitution.<sup>37</sup>

Prominent Massachusetts Senator Timothy Pickering questioned whether the indigenous nation would be incorporated into the union and launched a campaign to sabotage the treaty. He stated:

it is declared in the third article (of the treaty) that the inhabitants of the ceded territory shall be incorporated into the Union of the United States. But neither the President and Senate, nor the President and Congress are competent to such an act of incorporation.<sup>38</sup>

In addition to the question of the treaty's constitutionality, Lakotah rejected the option to join the union and declared the restoration of its original and "pre-treaty" rights. Furthermore, it was argued that, since Lakotah was not a direct party to the treaty, the nation could not be bound by it against its will, even though it had agreed to obtain benefits from it. Specifically, Lakotah people were "in a class of clearly intended third party beneficiaries of the Article III,"<sup>39</sup> so that Lakotah "shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess," as stipulated in Article III of the treaty.<sup>40</sup>

#### 4.2 *The 1969 Vienna Convention on the Law of Treaties*

Lakotah also relied on the 1969 VCLT to withdraw all treaty obligations that they had signed with the US government. The Nation of Lakota had signed the first treaty with the US government in 1851 at Fort Laramie, Wyoming, which ensured that both the US and the Lakota Nation "do hereby covenant and agree to abstain in future from all hostilities whatever against each other, to maintain good faith and friendship in all their mutual intercourse, and to make an effective and lasting peace."<sup>41</sup> The Nation of Lakota was then formed from

36. Louisiana Purchase Treaty (1803), *supra* note 34.

37. Kloppe (2015) (citing the letter written by Jefferson to Kentucky Senator John Breckinridge, 12 August 1803).

38. Geer (1904), p. 210.

39. Republic of Lakotah (2008).

40. Louisiana Purchase Treaty (1803), *supra* note 34.

41. Treaty of Fort Laramie (1851), Art. 1.

multiple indigenous communities, such as Brule, Oglala Sioux, Miniconjou, Yanktonai, Hunkpapa, Blackfeet, Cuthead, Two Kettle, Sans Arcs, Santee, and Arapaho.<sup>42</sup> The US, however, failed to abide by their agreement and continued to violate the 1851 treaty through their continuous military excursions and invasions of indigenous territories. After the US was defeated once more by indigenous warriors, the US proceeded to sign the Treaty of Fort Laramie in 28 April 1868. The US again promised that “from this day forward all war between the parties [of the US and the Lakota Nation] to this agreement shall forever cease.”<sup>43</sup> The US Senate then moved to ratify the 1868 treaty on 16 February 1869.<sup>44</sup> The treaty officially recognized the Nation of Lakota with the status of protection guaranteed under Article VI of the US Constitution.<sup>45</sup>

Soon after the US Senate had ratified the treaty, in the 1870s, George Custer and his US military cavalries led the violent invasion of the Lakota Nation, including the resource-rich Black Hills, which was the most sacred site in the Lakota territory. The US invasion was assisted by hundreds of gold seekers and European settlers, provoking yet another war between the US and the Lakota Nation. Today, the US continues to ignore the treaty obligations, to illegally occupy the ancestral homeland, and to violate collective rights of ownership titles to ancestral homelands, cultural integrity, and the right to self-determination.<sup>46</sup>

In order to restore the original status of independent nation, Lakotah cited Article 49 of the 1969 VCLT, which stipulates that “if a State has been induced to conclude a treaty by the fraudulent conduct of another negotiating State, the State may invoke the fraud as invalidating its consent to be bound by the treaty.”<sup>47</sup> Article 60(1) further specifies that “a material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.”<sup>48</sup> Lakotah has argued that the US government has materially and willingly breached its treaties with Lakota Nation.

The US has failed to respect the treaties and continued to disregard the Lakota Nation as a sovereign entity of an equal legal standing. Rather, the US has misrepresented the Lakota Nation as a “domestic dependent nation,” which was similar to the subordinate status of the Cherokee Nation, as declared by the US Supreme Court in *Cherokee Nation v. Georgia*, 30 US 1, 19 (1831), in which the court had characterized the Indian nations as internally colonized “dependent nations.” With respect to the federal case involving the Sioux of the Lakota Nation, the US Supreme Court further ruled in *United States v. Sioux Nation of Indians* (1980) that “a more ripe and rank case of dishonorable dealings will never, in all probability, be found in our [legal] history.”<sup>49</sup> Such a characterization symbolized that the state party to a treaty could not unilaterally diminish the status of the indigenous nation, thereby constituting a fraud in the inducement, giving Lakotah the option to withdraw from the treaties with the US government. On the day of Lakotah’s declaration of independence in December

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42. *Ibid.*

43. Treaty of Fort Laramie (1868), Art. 1.

44. *Ibid.*

45. US Constitution, Art. VI.

46. Mort (2018).

47. United Nations (1969), VCLT, Art. 49.

48. *Ibid.*, VCLT, Art. 60(1).

49. *Case United States v. Sioux Nation of Indians*, No. 79-639, p. 448 U.S. 371, 388 (1980).

2007, Lakotah announced that such a fraud had been committed by the US and invalidated the Lakota treaties with the US government.<sup>50</sup>

#### 4.3 *The 1960 UN Declaration on the Granting of Independence to Colonial Countries and Peoples*

Lakotah also invoked the 1960 UN Declaration on the Granting of Independence to Colonial Countries and Peoples in order to bring a speedy and unconditional end to all practices of colonial projects and coercive policies imposed by the US. Lakotah has also insisted on the restoration of fundamental human rights and human dignity to all indigenous nations large and small, in North America and beyond.<sup>51</sup>

Lakotah has insisted that their independence was long overdue because of the suffering of their people from US policies of forced assimilation programmes, residential school requirements, forced sterilization, genocide, and economic devastation. These predatory policies have precipitated the devastation of the nation peoples, including: (1) a life expectancy of less than 44 years—the lowest of any country in the Western Hemisphere, including Haiti; (2) 300% higher infant mortality rate than the US average; (3) 150% higher teenage suicide rate than the US average; (4) over 90% of indigenous adults with drug and alcohol addiction; (5) 500% higher rate of cervical cancer than the US average; and (6) 800% higher rate of diabetes than the US average.<sup>52</sup> In terms of diseases, other health devastations have been observed, including an 800% higher tuberculosis rate than the US average. The Federal Commodity Food Program, such as the Food Distribution Program on Indian Reservations (FDPIR), has led to higher sugar food intakes and continues to lead to the deaths of Indian people through diabetes and heart diseases.<sup>53</sup>

Paralleling the devastation of its indigenous lives, nation peoples have been subjected to economic devastation as well, including: (1) 97% live below the poverty line; (2) the majority of families are without heating oil, wood, or running water; (3) the median income is approximately \$2,600 (US) to \$3,500 (US) per year; (4) one-third of homes are without sewage systems and basic clean water; (5) 40% of households are without electricity; (6) 60% of households are without a telephone; (7) 85% is the unemployment rate; and (8) an average of 17 people live in each family household, with up to 30 people living in a home that was built for six to eight people.<sup>54</sup>

Lakotah's ancestral lands have also been targeted by state-supported corporate projects. Lakotah's Oglala Sioux, for example, has been fighting against the National Regulatory Commission (NRC) that granted the uranium-mining licence to Canada's Azarga Uranium Corporation for the 10,000-acre Dewey Burdock project site, which was located on the unceded 1868 Ft. Laramie Treaty land adjacent to the Pine Ridge Indian Reservation.<sup>55</sup> The Standing Rock Sioux Indian reservation in North Dakota has also been fighting to prevent the \$3.8 billion (US) construction of the Dakota Access Pipeline (DAPL)

50. Republic of Lakotah, *supra* note 39.

51. *Ibid.*

52. *Ibid.*

53. *Ibid.*

54. *Ibid.*

55. Nauman (2019).

by Energy Transfer Partners in their homeland. The group of indigenous “water protectors” and their supporters were met by the scores of private security personnel of the firm called “Tiger Swan.” This private security firm was founded in Dallas, TX in 1995 as a US Military and State Department contractor to facilitate the fight in the global war on terror. In this case, security personnel unleashed concussion grenades, sonic weapons, rubber bullets, water cannons, attack dogs, and other military-style counter-terrorism measures against water protectors.<sup>56</sup>

Given the long history of social and economic policies that have devastated nation peoples and their lands, Lakotah argues that “the subjection of people to alien subjugation, domination and exploitation [by the US] constitutes a denial of fundamental human rights,” echoing the language from the 1960 UN Declaration on the Granting of Independence.<sup>57</sup> Lakotah has insisted on the development of self-sufficiency, the restoration of the right to self-determination, and the preservation of cultural and biological diversity of their ancestral homeland apart from the state-assisted, ecologically unsustainable, corporate projects, and exploitation.

#### 4.4 *The 2007 UNDRIP*

After many decades of international advocacy and organizing movements in order to restore and establish the individual and collective rights of indigenous peoples and nations around the world, the UN finally adopted the UNDRIP on 13 September 2007. Soon after the UN’s historical pronouncement, Lakotah swiftly moved to strengthen their quest for national independence by adopting UNDRIP’s language. Article 3, for example, stipulated that “Indigenous 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.”<sup>58</sup> Similarly, Article 8 specified that “indigenous people and individuals have the right not to be subjected to forced assimilation or destruction of their culture.”<sup>59</sup> With respect to right to the lands, Article 8, section 2 specified that the state shall provide effective mechanisms for prevention of, and redress for, “any action which has the aim or effect of dispossessing them of their lands, territories or resources.”<sup>60</sup> Similarly, Article 26 stated that “indigenous peoples have the right to the land, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.”<sup>61</sup> Lastly, UNDRIP recognized the nation’s right to reach a fair resolution of its disputes with the state. Article 40 specified that “indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States.”<sup>62</sup>

The US assimilation policy has had a devastating impact on the eradication of Lakota cultures, such as reducing the speakers of native Lakota language to a mere 14%, thereby

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56. Democracy Now (2017).

57. United Nations (1960).

58. United Nations (2007).

59. *Ibid.*, UNDRIP, Art. 3.

60. *Ibid.*, UNDRIP, Art. 8, section 2(b).

61. *Ibid.*, UNDRIP, Art. 26.

62. *Ibid.*, UNDRIP, Art. 40.

bringing the peril of language extinction and cultural ways of life.<sup>63</sup> Similarly, the US policy on the use of blood quantum to determine “tribal nation” identity has threatened the viable identity of indigenous nations, including the Lakota Nation. While each indigenous nation in North America may be free to define their own rules in determining the criteria for national identity and membership, two-thirds of all federally recognized tribal nations have relied on a blood quantum in their national membership criteria, with one-quarter blood degree being the most frequent minimum requirement. The blood-quantum method used by the government has been a double-edged sword in racial politics in the US; for example, it has historically ensured that any percentage of African blood automatically categorized an individual as Black, thereby perpetuating the system of race-based segregation of African descendants. However, the same blood lineage could possibly lead to the elimination of indigenous identity, as many generations of intermarriages and adoptions between indigenous families and immigrant communities have led to the “diminishing” nature of Indian “blood,” and the nation’s continued reliance on a “blood-quantum threshold” may eventually guarantee the legal extinction of identity of the Indian peoples and nations. Today, the recognition of Lakotah’s right to determine its membership and right to self-determination is crucial. UNDRIP stipulates the right of indigenous people to belong to an indigenous nation in accordance with the traditions and customs of the nation, not the blood lineage, thereby rejecting the history of the US’s invasive policies in the determination of indigenous identity.<sup>64</sup>

#### *4.5 Constitutions, the Declaration of Independence, and US Supreme Court Rulings*

Lakotah also relied on US laws to rationalize its timely withdrawal from its treaty obligations with the US government. As stated earlier, the US Constitution stipulates that all treaties between sovereign nations are “supreme Law of the Land.”<sup>65</sup> Similarly, when the states of Montana, North Dakota, and South Dakota, in which the Lakota Nation lay, were admitted into the union, the Enabling Act of 1889 Law allowed the state incorporation into the US, with the requirement that:

the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title . . . to all lands lying within said limits owned or held by any Indian or Indian Tribes.<sup>66</sup>

This “disclaimer” provision of the Act was repeated in other state Constitutions, including Wyoming, in which the Lakota Nation also lay.<sup>67</sup> The Lakota Nation had never agreed that it would “forever disclaim all right and title,” relinquish its sovereignty, or give up the rights

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63. Republic of Lakotah, *supra* note 39.

64. United Nations, *supra* note 58, Art. 9 (“Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right”).

65. US Constitution, Art. VI.

66. Act of 22 February 1889, Chapter 180. §4, 25 Stat. 676, 677; Mont. Const. ord. 1 (1889); Mont. Const. Article.1 (1972).

67. Wyoming Constitution, Art. 21 § 26.

to ancestral lands. Thus, the US government has never had claim to homelands held by the Lakota Nation.

Lakotah also challenged the legacy of the US government and its judiciary's pronouncement of their "self-proclaimed" plenary power over Indian affairs in North America. The jurisprudence rationalizing the violation of treaty obligations with indigenous nations emerged from a trilogy of opinions authored by Justice John Marshall in the 1820s and 1830s. His decisions in *Johnson v. McIntosh* in 1823, *Cherokee Nation v. Georgia* in 1831, and *Worcester v. Georgia* in 1832 set important precedents in the US government's handling of Indian affairs. As stated earlier, Marshall's *Cherokee Nation* ruling asserted the indigenous nations as "domestic dependent nations" whose relation to the US resembled that of a ward to his guardian, thereby justifying the US assertion of its plenary power.<sup>68</sup> Subsequently, the US government moved to forcibly remove the Cherokee and virtually all indigenous nations in the East Coast onto reservations west of the Mississippi River. Such government decisions were clear violations of its treaty obligations with indigenous nations.

As repeatedly asserted, Lakotah has never relinquished its sovereignty and the right to its homeland despite the US's repeated attempts to diminish its sovereignty. Lakotah has now legally and lawfully withdrawn from all treaties and agreement with the US, and Lakotah's status shall remain the same as it was before the 1803—that is, a sovereign nation with its people to be "predecessor sovereign" owner of traditional Lakota territory that enjoyed "beneficially of all the protections," as the Louisiana Purchase Treaty had powerfully proclaimed.

Lastly, Lakotah has cited the 1776 US Declaration of Independence to finalize the severance of all of its political ties that had long connected Lakotah to the US. The declaration stipulated that:

when in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another . . . [and] a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.<sup>69</sup>

Lakotah has argued that they provided an array of international law and legal doctrines, as above-specified, as the compelling evidence and supporting documents to spell out all "the causes" as prescribed in the declaration. Lakotah has thus concluded that they have successfully impelled Lakotah to the separation and finalized the complete and permanent dissolution of all "political bands" with the US.

#### *4.6 Lakotah's Impacts on Other Nationalist Movements in North America*

Immediately after the declaration of independence, Lakotah urged the US to enter into bilateral diplomatic governmental negotiation.<sup>70</sup> Unless the US entered into immediate diplomatic and peaceful negotiations, Lakotah declared it would unilaterally impose liens on real-estate transactions in the five-state area of the homeland.<sup>71</sup> Lakotah's revolutionary

68. See Shevory (1994).

69. US Declaration of Independence (1776).

70. Lakota Freedom Delegation (2007).

71. *Ibid.*

action and its declared secession from the US have ignited other secessionist movements in North America.

The Alaskan Independent Party and its chair, Lynette Clark, have supported and congratulated Lakotah for its secession from the US.<sup>72</sup> The Alaska Independence Party was originally founded with the goal of attaining the state of Alaska. After Alaska's 1958 admission to the union, the party's objective shifted to the issue of secession, to the attainment of an internationally recognized sovereign statehood.<sup>73</sup> The Second Vermont Republic (SVR), another secessionist political group, also announced its support for the Republic of Lakotah. The SVR was founded by former Duke University economics professor Thomas Naylor in order to restore what was formerly known as "Vermont Republic"—the independent nation that declared independence in 1777 from the British colony of Quebec and the American states of New York and New Hampshire. Vermont Republic had also drafted its own Constitution that prohibited slavery, granted suffrage to non-landowning males, and established free public education, before its annexation to the US in 1791. The SVR's Vermont Declaration of Independence stated that the secession of Vermont from the US is of eminent importance, as "Vermont has been dragged into the quagmire of affluenza, technomania, megalomania, globalisation, and imperialism by the US government in collaboration with corporate America."<sup>74</sup>

## 5. THE CONSTITUTION OF THE STATE VERSUS THE CONSTITUTION OF THE NATION IN NORTH AMERICA, ASIA, AND BEYOND

The "Constitution-making" efforts of Lakotah and other indigenous nations in North America have differed greatly from those of the US and modern states in Europe. The US Bill of Rights, for example, was adopted to prevent excessive governmental intrusion into the individual lives of citizens. However, such a formal apex of authoritarian institution and hierarchical government did not exist in the Lakota Nation, as its political decisions were made by consensus of the people who participated in culturally bound, collective activities. Private property was strictly limited to horses, blankets, tools, and weapons, while food was shared by all, and the land was owned communally and preserved as hunting grounds.<sup>75</sup>

One recent attempt to draft a declaration of independence of indigenous nations in North America was facilitated by prominent Indian activist Russell Means and other members of the American Indian Movement (AIM) in June 1974. The purpose was to create a horizontally connected alliance of indigenous nations and peoples in North America and beyond. They had successfully organized an "international" conference of 3,000 people representing 97 nations, created the International Indian Treaty Council (IITC), and adopted the

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72. Clark (2007).

73. See Mackenzie (2005), p. 88 (in 1973, Joe Vogler, "the well-known contrarian who founded the Alaska Independence Party . . . circulated a petition calling for Alaska's secession from the United States. He organised the Alaskans for Independence to actively pursue secession while he continued work with the Alaskan Independence Party to question the legitimacy of the 1958 Statehood Act").

74. Vermont Declaration of Independence (1777).

75. See Fenelon (1998).

“Declaration of Continuing Independence.”<sup>76</sup> Its declaration demanded that the US respect Article VI of its Constitution and:

recognizes treaties as part of the Supreme Law of the United States. We will peacefully pursue all legal political avenues to demand United States recognition of its own Constitution in this regard, and thus to honor its own treaties with Native Nations.<sup>77</sup>

Furthermore, the IITC charged the US with:

gross violation of our International Treaties [including] the “wrongfully taking” of the Black Hills from the Great Sioux Nation in 1877 . . . [and] the forced march of the Cherokee people from their ancestral lands in the state of Georgia to the then- “Indian Territory” of Oklahoma, . . . The treaty violation, known as the “Trail of Tears,” brought death to two-thirds of the Cherokee Nation during the forced march.<sup>78</sup>

In 1977, the IITC became the first indigenous non-governmental organization to be recognized by the UN with consultative status with the UN Economic and Social Council.

Some of the IITC members had also moved to create and ratify their own Constitutions in North America. The six nations of the Iroquois Confederation decided to transform their oral tradition of the Great Law of Peace into an English-transcribed written document with 117 separate articles and provisions in 1915, asserting the long powerful history of their independence and autonomy in North America.<sup>79</sup> In 1924, the US had passed the American Indian Citizen Act to force the naturalization of all Indians and incorporate them into the US dominion. However, this “forced” assimilation policy was rejected by the indigenous nations, including the Iroquois Confederation, which immediately sent letters to the president and Congress, respectfully declining US citizenship and insisting on its own constitutional independence and freedom.<sup>80</sup> In 1987, in what seemed to many an ironic gesture, the US Senate finally recognized the significant contribution that the Iroquois Confederation had made in the early formation of the US government, including the powerful impact of Iroquois’ Great Law of Peace on the drafting of the US Constitution.<sup>81</sup> In 2013, the Dutch government celebrated the 400th anniversary of the Two Row Wampum Treaty with the Iroquois Confederacy, which the two governments originally signed in 1613. The anniversary celebration with the Dutch government has also signified the Iroquois’ right to native land rights, the conservation of environmental protection, and the preservation of cultural and biological diversity of the ancestral homeland.<sup>82</sup> Besides the Iroquois Confederation, other indigenous nations have also approved new Constitutions of their own to preserve their sovereignty and sanctity of their ancestral homelands, including the Seminole in 1969, Cherokee in 1976, Muscogee (Creek) in 1979, Chickasaw in 1983, and Choctaw in 1984.<sup>83</sup>

In order to preserve the bio-diversity of indigenous homelands and protect the self-sustainable culture of indigenous nations and peoples, environmental groups and ecological

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76. IITC (1974).

77. *Ibid.*

78. *Ibid.*

79. See Wolfe & Favor (2015).

80. Heath (2018).

81. *Ibid.*

82. Gadoua (2013).

83. Work (2010), p. 133.



activists began to work closely with indigenous nations and peoples. In 2016, the Ho-Chunk Nation of Wisconsin voted overwhelmingly to amend its own Constitution to enshrine the Rights of Nature, and became the first nation in the US to establish that “ecosystems and natural communities within the Ho-Chunk territory possess an inherent, fundamental, and inalienable right to exist and thrive.”<sup>84</sup> With the input and support of environmental activists, its constitutional amendment contained provisions that prohibited “Frac-sand” mining, fossil-fuel extraction, and genetic engineering as violations of the Rights of Nature.<sup>85</sup> In 2017, environmental groups and the Ho-Chunk Nation decided to file a lawsuit against the Wisconsin Department of Natural Resources, challenging the agency’s decision to allow frac-sand mining in the nation’s ancestral homeland.<sup>86</sup>

The Nation of Inuit in Northern Canada has also begun to collaborate with environmental groups and progressive politicians to preserve the sanctity of their homeland and protect it from state-sponsored corporate exploitation. Inuit people have lived in the territory of *Nunavut*, *Nunavik* in northern Quebec, and *Nunatsiavut* and *NunatuKavut* in Labrador. In 1993, the Nation of Inuit successfully reclaimed its ancestral homeland in the Eastern Arctic called *Nunavut* (which translates as “our land” in *Inuktitut*) from the Canadian government. In 1999, the official map of Canada was redrawn, and the Northwest Territories were divided into two territories to recognize the creation of the independent area of *Nunavut*, which now comprises the eastern half of the former Northwest Territories.<sup>87</sup> The Nation of the Inuit also ratified their Constitution in 2005. The Constitution was first adopted in 2002 by the Inuit in Labrador, called the Labrador Inuit Association (LIA), and was put into effect in 2005.<sup>88</sup>

The independent movements to preserve the indigenous culture and sanctity of the ancestral lands began to accelerate more rapidly in Asia, where the majority of indigenous nations in the world currently live and where many have long been struggling for their independence and sovereignty. Through many years of armed struggles and negotiations with the state, seven indigenous nations in Myanmar in 2017 finally earned the right to draft their own Constitutions for equality and the right to self-determination. These nations include Kachin, Karen, Arakan, Mon, Shan, Chin, and Karenni.<sup>89</sup> In India, besides Kashmir, other nations also continue to struggle for independence and the right to self-determination, including Nagaland, Punjab, and West Bengal.<sup>90</sup> Indonesia has multiple indigenous nations that are currently struggling to attain the right to self-determination, such as Aceh, Kamitantan, South Moluccas, Minahasa, Riau, and West Papua.<sup>91</sup>

In January 2019, West Papua submitted a petition signed by 1.8 million Papuans to the UN High Commissioner for Human Rights to assert their independence, secede from Indonesia, and attain the right to self-determination.<sup>92</sup> West Papua is rich with natural

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84. Ho-Chunk Nation (2015).

85. *Ibid.*

86. Magnus (2017).

87. Kulchyski (2017).

88. See Borrows (2010).

89. Zaw (2017).

90. See Kim (2019).

91. See Aveling & Kingsbury (2003).

92. UNPO (2019).

resources and has operated the world's largest gold mine and second largest copper mine.<sup>93</sup> State-supported, unsustainable corporate projects have led to mass deforestation of native trees in their homeland and native people have been exploited for cheap labour, as they still remain one of the poorest peoples in Asia.<sup>94</sup> Similar to the exploitive history of Lakotah in North America, the Republic of West Papua of Western New Guinea, which was formerly an independent nation, has been claimed by Indonesia since 1963. West Papua has also drafted a Constitution, which consists of 15 chapters, 54 sections, and two orders, to assert their independence and sovereignty.<sup>95</sup> West Papuans' struggle to assert their human rights, human dignity, and the right to self-determination continues today in Asia.

## 6. CONCLUSIONS

In delivering Lakotah's declaration of independence to the US State Department, Lakotah delegation leader Russell Means argued that "this is a historic day for our Lakota people. US colonial rule is at its end." Garry Rowland, a former indigenous representative to the UN, also declared that:

today is a historic day and our forefathers speak through us. Our forefathers made the treaties in good faith with the sacred *Canupa* and with the knowledge of the Great Spirit. They [i.e. the US government] never honored the treaties, that's the reason we are here today.<sup>96</sup>

After much fanfare, accolades, and admiration from a wide spectrum of political organizations, however, the declaration of independence by the Republic of Lakotah in 2007 has been largely ignored by the US, as well as by the UN and its Member States. In 2010, Russell Means stated that the Republic of Lakotah would submit the report of the instances of human rights violation by the US, "directly to the UN Human Rights Council, not to be filtered or sanitized by the [US] State Department," arguing that "our report will indicate that the United States never intended to abide by the terms of the treaties, and has violated them consistently from the time of the signing to the present."<sup>97</sup> He also stated that:

the Republic of Lakotah will report to the [Human Rights] Council and to the world, the exercise of its own rights under principles of international law . . . [which] allows the Lakotah to return to our status *quo ante* position prior to the signing of the treaties, . . . [and] the United States withdraw its presence from our homeland.<sup>98</sup>

Even some members of the Nation of Lakota expressed scepticism about its independence and successful secession from the US.<sup>99</sup> Means, a long-time indigenous activist who helped form the AIM, died in 2012, before the Republic of Lakotah was formerly recognized in the international community.<sup>100</sup>

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93. Sobel (2019).

94. *Ibid.*

95. Flassy (2019), p. 75.

96. Lakota Freedom Delegation, *supra* note 70.

97. Means (2010).

98. *Ibid.*

99. Toensing (2008).

100. McFadden (2012).

Similar to Lakotah's historical struggles in North America, many nations and semi-autonomous nucleated communities around the globe have also been struggling to assert indigenous title to the homeland and the right to self-determination. In recent years, the efforts of nation peoples, environmental groups, and progressive activists have led to the creation of "rights-based" Constitutions, referring to the Rights of Nature and/or Mother Earth, in order to ensure the preservation of what little remains of unmolested environment and ecosystems. For example, in 2008, Ecuador became the first state to amend its Constitution to recognize the Rights of Nature, enshrining the inherent rights of ecosystems to protect them from human and corporate exploitation.<sup>101</sup>

Indigenous rights are closely tied to the rights of ecosystems and the preservation of biological diversity that native peoples often depend upon in their subsistence culture and tradition. Many nations have begun to draft their own Constitutions and to create constitutional amendments to suit their ecological objectives in preserving the ancestral environment. Such a "Constitution-making" project has been observed in North America, Asia, and around the world, and it is our hope that the nation's constitutional activism will lead to the creation of more robust legal mechanisms to ensure the respect for human rights and human dignity of nation peoples, thus preserving cultural and biological diversities in the nation's ancestral homelands that future generations of both the nation and the state will surely require for their survival in coming decades and beyond.

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101. Biggs, Goldtooth, & Orielle Lake (2017).

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