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**TESTIMONY OF FAWN R. SHARP, PRESIDENT, QUINAULT INDIAN NATION  
Before the Senate Committee in Indian Affairs'  
Oversight Hearing on  
"Setting the Standard: Domestic Policy Implications of the  
United Nations Declaration on the Rights of Indigenous Peoples"  
Thursday, June 9, 2011**

The Quinault Indian Nation applauds the decision of the United States to support the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). UNDRIP recognizes Indigenous rights in vital areas of self-determination, rights to lands, territories and natural resources, cultural rights, and the concept of free, prior, and informed consent for actions affecting indigenous peoples.

After several decades of debate and negotiation, the world community has now reached consensus on minimum standards for the survival, dignity, and well-being of indigenous peoples. Although the United States has a well earned record denouncing the human rights records of other states that violate the rights of peoples within their jurisdiction, it was not until 1975 that the U.S. and the Union of Soviet Socialist Republics concluded the Helsinki Accords. It is within the framework of those accords that the U.S. agreed to conduct its relations with Indian governments on a government-to-government basis and to implement policies consistent with the accords' Human Rights baskets. The U.S. Department of State was obliged to report to the Commission on Security and Cooperation in Europe (CSCE) about U.S. treatment of Indian peoples. In its 1979 report, the U.S. government submitted statements, which lend considerable weight and significance to UNDRIP.

The report included remarkable statements concerning the U.S. government's policy on Indian self-determination:

- [The policy] is designed to put Indians, in the exercise of self-government, into a decision-making position with respect to their own lives. (USA Helsinki Report to CSCE 1979, p. 149)
- The report further asserted that the state's relationship to Indian nations is one where "...the U.S. Government entered into a trust relationship with the separate tribes in acknowledgment, not of their racial distinctness, but of their political status as sovereign nations." (USA Helsinki Report to CSCE 1979)

At its core, UNDRIP is a vindication of long-standing U.S. human rights policy since President Woodrow Wilson introduced the concept of self-determination at the beginning of the 20<sup>th</sup> century. As the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples for the United Nations stated in his August 2008 report:

[The *Declaration*] "represents an authoritative common understanding, at the global level, of the minimum content of the rights of indigenous peoples, upon a foundation of various sources of international human rights law."

Last winter, President Obama announced the support of the United States for UNDRIP at a gathering of tribal leaders, finally embracing an international instrument that enshrines the very principles it claimed as relevant to the Helsinki Final Act of 1975.

Now that the United States has embraced UNDRIP, attention must turn to implementing its spirit and principles in domestic policy towards Indian nations. UNDRIP sets forth fundamental principles within an international framework which can guide political relationships between the United States and its indigenous peoples.

The Quinault and other Indian Nations of this country have experienced firsthand the loss of land and resources expropriated through force, coercion, fraud, treachery, and sometimes treaties, and continue to experience a sad legacy of devastation, frustration and despair left behind by a trail of broken promises and disregard for human rights of their peoples. Poverty, unemployment, and economic deprivation are extreme. Social systems are inadequate to provide basic health, education, and public safety. Tribal natural resources continue to be subject to colonial exploitation and deterioration from neglect.

I do not raise these points to dwell on the injustices of the past, but rather to express my opinion that full endorsement of the UNDRIP by the United States opens the way to embark on a path to forge a better future for the generations of tribal and non-tribal peoples to come; and constructive relations between Indian nations and the United States:

- Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of political states.
- Indigenous peoples have rights to lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
- Indigenous peoples and individuals are free and equal to all other peoples and have the right not to be subject to any kind of discrimination based on their indigenous origin or identity.
- Political states have the obligation to provide for substantive, good faith participation by indigenous peoples in legislative or administrative processes and measures which affect their rights and interests and to obtain their free, prior and informed consent.
- Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

- It must be understood, furthermore, that by endorsing UNDRIP, the United States took a key step to enable the United States government to constructively contribute to the current climate change negotiations. The U.S. government's foreign policy is now in line with its domestic pronouncements, providing a firm foundation upon which key implementation policies beneficial to both the U.S. and Indian Nations internally and externally can be built.

In appearing before the Committee today, I was asked to comment on four basic questions:

- (1) What's next now that there is a U.N. Declaration on the Rights of Indigenous Peoples?

The United States should adopt policies and enact legislation as necessary to effectuate the principles enunciated in the Declaration, particularly those relating to free, prior, and informed consent, protection of intellectual property rights.

- (2) What is good domestic policy? What are the benefits to Tribal governments, communities and citizens?

Good domestic policy for implementing the UN Declaration would reflect the unique body of law policy, and political relationships with the indigenous peoples of the United States. Good domestic policy would also affirm tribal jurisdiction over their lands, resources, and peoples, instead of the mish-mash created by the social engineering of the federal courts, Congress, and the federal Administration. Implementation of the UN Declaration would demonstrate the commitment and leadership of the United States to the world community.

- (3) How is it formulated?

Good domestic policy to implement the UN Declaration for application within the U.S. would be developed through government-to-government dialogue between Indian Nations. By "dialogue", I mean substantive discussion between sovereigns to resolve differences, not "consultation" which has been interpreted to enable the United States to unilaterally retain all decision-making power.

- (4) What has not been addressed in the federal policy? How have Tribal efforts for economic development and commerce been impacted?

I am unaware of a federal policy that has been adopted to implement UNDRIP. In the United States, implementation of UNDRIP must occur within the historical context of treaties, reserved rights, and judicial decrees

However, it must be recognized and understood that despite its frequent protestations against other states' governments deem dismissive of human rights norms, the political, administrative, and legal arms of the United States government have kept American Indian nations in a state of perpetual dependency. Tribal communities suffer from a legacy of over a hundred and fifty years of political and economic oppression.

The long-term economic and social future of Indian nations is dependent on maintaining access to sufficient quantities of traditional foods and medicines both inside and outside the boundaries of reserved territories. In accord with the Stevens' Treaties signed by Indian nations and ratified by the U.S. Senate, Indian nations reserved the right and privilege to hunt, fish, and gather resources to maintain tribal life ways. The United States Congress should in accord with Article 3 of these and similar treaties affirm the authority of Indian nations to regulate and manage tribal hunting and gathering activities to promote our social and economic well being implementing clauses in Article 24 and 26 of the UNDRIP. New legislation respecting these two Articles of UNDRIP and clauses contained in treaties concluded between Indian nations and the United States should bar federal, state, county and local governments from interfering with Indian nations' exercise of reserved rights.

The U.S. Senate should consider and enact legislation that ensures that all American Indians, Alaskan Natives and Native Hawaiians are able to access and benefit from financial and technical assistance in the future available to indigenous peoples from states' governments and multi-lateral agencies acting in support of indigenous peoples as a result of international cooperation and agreements thereby implementing Article 23 and Article 39 of UNDRIP.

For Indian nations of the U.S., UNDRIP's general principles must be implemented under conditions where lands and resources are held in trust for the benefit of Indians by the U.S. The trust status protects these resources from alienation to some degree, but it also imparts special fiduciary obligations on the U.S. which increase transaction costs for both the beneficiaries and trustee, and imposes difficult challenges for securing loans to finance economic development activities.

Lastly, the jurisdictional morass resulting from social engineering by Congress and the Courts must be rectified. Tribal sovereign powers need to be affirmed. Jurisdictional conflicts and voids have created a no-man's land on reservations where the power to govern depends on the type of land ownership, the nature of offenses, and the tribal affiliation of the offenders. For regulation of commerce, jurisdictional problems have increased the difficulty of controlling development and business activities within reservation boundaries and created a difficult social environment that has rendered tribal members extremely vulnerable to victimization by drug and alcohol abuse and domestic violence.

(5) Tribal concerns and views on Commerce, Environmental Stewardship on federal lands and Tribal Economic Development and Trade.

The Senate with the free, prior and informed consent of affected Indian governments should recognize the right of Indian nations to freely trade and conduct commerce without interference by U.S. government agencies provided that Indian nations conduct trade and commerce consistent with agreed international trade and commerce statutes implementing clauses in Article 21 (2), Article 36 and Article 37 of UNDRIP.

Regarding environmental stewardship, there is a long, sad history of Tribal needs and interests falling victim to policy and economic decisions made by federal and state jurisdictions. Tribes are suffering environmental injustice as their rights to self-determination over their lands, resources, and peoples have often been sacrificed to benefit non-tribal interests – for instance tribal prerogatives are being denied to compensate for environmental degradation caused by non-tribal development. At Quinault, because of extensive and intensive non-Indian logging of old growth forests, species like the marbled murrelet and northern spotted owl have become listed under the ESA. This has led to the imposition of restrictions on tribal activities, resulting from the loss of tens of millions of dollars in stumpage revenues, loss of businesses and jobs in the community, and devaluation of trust assets. An additional concern is that our reservation homeland that was set aside for our exclusive use and occupancy is becoming a refuge for ESA-listed species because of continuing environmental deterioration elsewhere. Displacement of environmental costs onto tribes is not limited to reservation lands. Desires to provide additional protection for non-Indian lands in the Chehalis Basin, dams and levees are being proposed without adequate consideration to the threats that these structures pose to habitat critical to sustaining treaty-protected fishery resources that are central to QIN's economy and way of life.

This travesty must end. Implementation of UNDRIP should include provisions that protect territorial dominion of Tribal governments over their lands and resources.

Finally, I wish to recommend that the U.S. Senate consider and enact an appropriation of \$12 million annually for ten years to support American Indian, Alaskan Native and Native Hawaiian delegations to participate in international conferences, workshops, seminars, and intergovernmental consultations as an International Development initiative promoting indigenous peoples' dialogue and agreements advancing trade, commerce, and improved understanding concerning intellectual property rights, biological diversity, climate change, and opportunities for economic cooperation thus implementing clauses in Article 3, Article 18, Article 19, Article 23, Article 29 (1) of UNDRIP.

Many of these recommendations align with consensus views of indigenous nations and organizations in the international community. I have attached two documents which lend context. Annex A is a joint statement entitled: "Implementation of the UN

Declaration on the Rights of Indigenous Peoples: Positive Initiatives and Serious Concerns" and Annex B entitled: "Open-Ended Ad Hoc Intergovernmental Committee for the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization."

I thank the Committee on Indian Affairs for its invitation to provide testimony regarding implementation of the clauses and sections of UNDRIP for consideration.