Oceti Sakowin Oyate

Wowasi Luta Wowapi

RED SPIRIT PAPER AND PLAN OF ACTION OF THE TREATY COUNCILS OF THE OCETI-SAKOWIN OYATE

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I. Introduction

A. Sovereign First Nation of the Očhéthi Šakówiŋ Oyáte

The Oyáte of the Očhéthi Šakówiŋ are the Peoples of the Seven Council Fires, a First confederation of the Bdewákaŋthuŋwaŋ (Mdewakanton), the Waȟpéthuŋwaŋ (Wahpeton), the Waȟpékhute (Wahpekute), the Sisíthuŋwaŋ (Sisseton), the Iháŋkthuŋwaŋ (Yankton), the Iháŋkthuŋwaŋna (Yanktonai), and the Thíthȟuŋwaŋ (Teton or Lakȟóta) Oyátes (nations) that existed as a fully separate sovereign and independent, and equal, nation occupying Makȟóčhe Wašté (referred to as "the Great Plains" by the wašíču (white people)) and the Mníšoše (called the "Missouri River" by the wašíču) basin before the arrival of the wašíču nations and people from Europe to Khéya Wíta (Turtle Island, named "North America" by the wašíču) beginning in the wašíču year of 1492. The ancestral territories of the Očhéthi Šakówiŋ stretch from what is now known as the Great Lakes to the Great Plains and Canada to Mexico.

The Očhéthi Šakówiŋ Oyáte since time immemorial has been a separate Peoples possessed of inherent sovereignty and a common ancestry and of its own spirituality, language and dialects (Lakȟóta, Dakȟóta, Nakȟóta), ways, culture and traditions, knowledge, science and technology, economy, history, territory, lands, natural resources, waters, laws and norms, governance, leaders, warriors, and of the capacity to enter into relations with other nations. *See*, wašíču international law, Vienna Convention on the Law of Treaties ("VCLT"), art. 6 (May 23, 1969), 1155 U.N.T.S. 331; Montevideo Convention on the Rights and Duties of States (December 26, 1933), art. 1 (signed by the United States on December 26, 1933, and ratified by the US Congress on July 13, 1934, as part of the Supreme Law of the United States under article VI, clause 2 of its Constitution (1788)) (regarding the definition of a nation state). According to the declarative theory of statehood under wašíču international law, recognition by other sovereign states is not a requirement for the existence of a sovereign state. Lauterpacht, Hersch, Recognition in International Law (2012), at 64.

Following the "discovery" of Khéya Wíta by Christopher Columbus in 1492, nations of Europe engaged in centuries of imperial and colonial invasion, expansion, and domination into the territories of First Nations. Mílahaŋska (the United States of America) is an empire, a successor imperial and colonial state, successor to the unlawful colonial invasions, occupations, and rule of England, France, Spain, and Russia over hundreds of sovereign First Nations of Khéya Wíta and an unlawful colonizer, occupier, and ruler itself of those and other First Nations.

The Očhéthi Šakówiŋ Oyáte existed as a fully separate sovereign and independent, and equal, nation before and after the Louisiana Purchase of 1803 by which the United States purchased from France its interest in territory encompassing the territory and lands of the Oyáte. France did not own, had not settled, and did not possess the territory or lands of the Oyáte and therefore, even under the laws of the wašíču, it could not and did not sell to the United States something it did not own. VCLT, art. 34; *Island of Palmas (Miangas) Case / Netherlands v. United States*, 2 U.N. Rep. Int'l Arbitral Awards 829 (Hague Permanent Court of Arbitration, 1928). The failure of the Louisiana Purchase to transfer to the United States the territory and lands of the Oyáte was subsequently acknowledged formally by the United States by its acts of entering into the Fort Laramie Treaties of 1851 and 1868 with the Oyáte as the sovereign authority over the same territory and lands.

As acknowledged by the colonial power's own high court, the United States Supreme Court, the Očhéthi Šakówiŋ Oyáte existed as a fully separate sovereign and independent, and equal, nation before the declaration of 1776 that founded the colonial power, the United States of America. *See*, Michigan *v. Bay Mills Indian Community*, 134 S.Ct. 2024, 2030 (2014). The Očhéthi Šakówiŋ Oyáte (and its ošpáyes) was recognized by the United States as a separate, independent and equal sovereign confederated nation in many treaties including those of September 23, 1805; July 19, 1815; June 1, 1816; June 22, 1826; July 5, 1825; July 16, 1825; August 19, 1825; July 15, 1830; September 10, 1836; November 30, 1836; September 29, 1837; October 21, 1837; July 23, 1851; August 5, 1851; September 17, 1851; June 19, 1858; October 10, 1865; October 14, 1865; October 19, 1865; October 20, 1865; October 28, 1865; and April 29, 1868. *See*, VCLT, Article 2(1)(a). VCLT, art. 6 ("Every state possesses capacity to conclude treaties."). Upon ratification by the Congress of the United States, each of these treaties with the

Očhéthi Šakówiŋ Oyáte or its ošpáyes became part of the Supreme Law of the United States of America. Constitution of the United States, art. VI, clause 2.

Under the wašíču's law of treaty interpretation, since the United States composed the treaties and drafted them only in English, by the rule of *contra proferentem* the language of the colonial power and foreign to the leaders and people of the Očhéthi Šakówiŋ Oyáte, "treaties with the Indians must be interpreted as they would have understood them." *Choctaw Nation v. Oklahoma*, 397 U.S. 620, 631 (1970); *also, Worcester*, 31 U.S. 515, 552; *Jones v. Meehan*, 175 U.S. 1, 5 (1899); *R. v. White*, CarswellBC 212 (BC CA 1964) at 125 ("The language used in treaties with the Indians should never be construed to their prejudice.").

By Article V of the Fort Laramie Treaty of September 17, 1851, 11 Stat. 749, with the Očhéthi Šakówiŋ Oyáte, the United States recognized and acknowledged the territory of the Očhéthi Šakówiŋ Oyáte and its sovereignty over its territory. By Article XVI of the Fort Laramie Treaty of 1868, 15 Stat. 635, with the United States, the Očhéthi Šakówiŋ Oyáte again retained and secured against the United States its sovereignty over its territory and lands, including the "Unceded Territory." The sovereign territory of the Očhéthi Šakówiŋ Oyáte acknowledged by the United States by the Ft. Laramie Treaty of 1851 is described by Article V therein as follows:

> The territory of the Sioux or Dahcotah Nation, commencing the mouth of the White Earth River, on the Missouri River: thence in a southwesterly direction to the forks of the Platte River: thence up the north fork of the Platte River to a point known as the Red Bute, or where the road leaves the river; thence along the range of mountains known as the Black Hills, to the head-waters of Heart River; thence down Heart River to its mouth; and thence down the Missouri River to the place of beginning.

By the Ft. Laramie Treaty of 1868, Articles II and XVI, the United States "solemnly" agreed that "no persons" without the prior consent of the Očhéthi Šakówiŋ Oyáte "shall ever be permitted to pass over, settle upon, or reside in the territory described in this article …."

Neither treaty provided for any right of abrogation in any party to the treaty. Rather, Article XII of the Ft. Laramie Treaty of 1868 expressly provided and agreed that no further cession of any Sioux territory or lands could be made by the Očhéthi Šakówiŋ Oyáte "unless [by **treaty**] executed by at least three fourths of all the adult male Indians, occupying or interested in same."

The Očhéthi Šakówiŋ Oyáte and its ošpáyes and people have for over 200 years resisted the unlawful incursions of agents of the United States and settler colonialists and the United States itself onto the territory and lands of the Oyáte and engaged in protracted conflict and war with the United States including the First Sioux War of 1854 to 1856, the Dakota War of 1862, the Colorado War of 1863 to 1865, the Sioux War of 1865, Red Cloud's War from 1866 to 1868, the Great Sioux War of 1876, the Ghost Dance War of 1890, and the Wounded Knee Occupation of 1973. The many invasions and incursions into and upon the territory of the Očhéthi Šakówiŋ Oyáte have been by the United States and its military, agents, and settler colonialists in violations of many treaty obligations of the United States which have resulted in unjust wars by the United States against the Očhéthi Šakówiŋ Oyáte and its opsayes and people. Under the wašíču's own law of nations, unjust wars are unlawful and condemned. No perpetrator of an unjust war may take and keep any territory, lands, or resources of another nation and must restore all territory and lands taken and make total reparations and fully compensate the victim nation and people for all harms inflicted thereto. Vattel, Book III, chap. XI ("An unjust war gives no right whatever."); United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005); M. Cherif Bassiouni, "International Crimes: Jus Cogens and Obligatio Erga Omnes," 59(4) *Law and Contemporary Problems* 63, 68 (1996) (war crimes are *jus cogens*); Grigory I. Tunkin, "Jus Cogens in Contemporary International Law," 3 *U. Tol. L. Rev.* 107, 117 (1971) (same).

The many invasions and incursions into and upon the territory of the Očhéthi Šakówiŋ Oyáte have been by the United States and its military, agents, and settler colonialists are exercises of colonial rule by a dominant nation over another nation which was illegal under the Law of Nations in 1823, 1831, 1832, 1851, 1868, and 1877 as it has remained to be illegal – and condemned - under modern international law. Vattel, Book III, chap. XIII, secs. 193, 194, 196, 197, 201 (on the law of conquest); chap. XI (on unjust war); UN Res. 1514; Montevideo Convention, art. 11 (condemning acquisition by use of force). As long as they continue to resist in any form, as has the Oyáte of the Očhéthi Šakówiŋ, the people subjected to unlawful rule by the perpetrator of an unjust war are in a state of perpetual war against the imperial or colonial ruler. Vattel, Book III, chap. XIII, sec. 201.

The usurpation of the sovereignty of the Očhéthi Šakówiŋ Oyáte by unjust war was and is a war crime. *Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties*, Paris Peace Conference (1919).

The United States Supreme Court by the Marshall Trilogy, *Johnson v. M'Intosh*, 21 U.S. 543, 568, notes h and I, 571, note k (1823); *Cherokee Nation v. Georgia*, 30 U.S. 1, 53 (1831); and *Worcester v. Georgia*, 31 U.S. 515, 520, 561 (1832), created an institutionalized legal façade, known as "federal Indian law," for its unlawful invasion, taking, and ethnic cleansing of the territories and lands and resources of sovereign, and its imperial and colonial rule and forced assimilation, of the surviving First Nations and their peoples by the United States and its settler colonialists. The Marshall Trilogy and federal Indian law impose racist and illegal foundational doctrines of imperial and colonial domination known as "discovery," "trust authority," and "plenary power" over First Nations and Native peoples as incompetent savage wards of the United States and as "domestic, dependent, nations" possessed of only an extinguishable-at-will "right of occupation" of their ancestral territories and lands.

Any and all power of the United States in its relations with other sovereign nations is and always has been constrained by international law, the "law of nations," and any and all exercise of power of the United States government additionally arises from and is subject to its own Constitution. *See*, Constitution of the United States, Article 6, clause 2; VCLT, arts. 26 and 27; UN Resolution 2625 (1970); *M'Culloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819).

The Marshall Trilogy and the past and continuing colonial rule of the United States over First Nations was and is in gross violation of the wašíču's own international law. *See*, Emer de Vattel, The Law of Nations (1758) ("Vattel"), Book II, Chapter IV (sovereignty and independence of nations), chap. VII, sec. 93 (violation of territory); and Book III, Chapter IX (war, things belonging to the enemy), chap. XI (unjust war), chap. XIII (acquisitions by war and conquest); and Charter of the United Nations, art. 73 (October 24, 1945, 1 UNTS XVI) ("UN Charter"); UN General Assembly Resolution 1514 (Declaration on the granting of independence to colonial countries and peoples) (December 14, 1960) (condemning and calling for an immediate end to colonialism in all its forms and manifestations) ("UN Res. 1514"); International Convention on the Elimination of All Forms of Racial Discrimination, United Nations, Treaty Series, vol. 660, p. 195 (December 21, 1965) ("ICERD") (incorporating UN Res.

1514 and recognizing colonialism as a form or manifestation of racism) (signed by the US President in 1966 and ratified by the US Congress in 1994, thereby becoming the "Supreme law" of the United States).

The imposition of federal Indian law, and in particular its three fundamental doctrines, upon First Nations is an institutional and systemic implementation of the continuing policy of slow genocide and ethnic cleansing by a settler colonial state, the United States, in violation of the wašíču's own principles of international law. *See*, Convention on the Prevention and Punishment of the Crime of Genocide, UN General Assembly Resolution 260(III) (December 9, 1948) ("Convention on Genocide"); UN Res. 1514; ICERD. Under the wašíču's own principles of international law, freedom from genocide in any form or manifestation, freedom from ethnic cleansing, freedom from ethnocide and cultural genocide, freedom from forced assimilation, freedom from colonialism in any form or manifestation, freedom from racism in any form or manifestation, and the collective right of a peoples to self-determination, are each a *jus cogens* rule, a peremptory norm, that is accepted by the international community of states as a fundament norm to which no derogation is permitted and of which no treaty or law is required to establish it. UN Charter, art. 1, para. 2; ICERD, art. 1, para. 1 (and General Comment No. 12 by the UN Human Rights Committee ("UN HRC") thereto); Convention on Genocide; UN Res. 1514 (1960); UN Declaration on the Rights of Indigenous Peoples, G.A. Decl. 61/295 (September 13, 2007) ("UN DRIP") (signed by the United States on December 16, 2010); Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, International Court of Justice (Advisory Opinion, February 25, 2019 (Separate Opinion of Judge Robinson); *Western Sahara*, International Court of Justice (Advisory Opinion, October 15, 1975); *Zhang v. Zemin*, NSWCA 255 (2010). Under the wašíču's principles of international law, if a new preemptory norm of general international law ("*jus cogens*") emerges, any existing treaty which is in conflict with that norm becomes void and terminates. VCLT, art. 64.

The three foundational doctrines of federal Indian law were created by the imperial high court as "*sui generis*" law, meaning the law was specially created to apply only to "Indian" nations. *Johnson v. M'Intosh*, 21 U.S. 543; *Cherokee Nation v. Georgia*, 30 U.S. 1; and *Worcester v. Georgia*, 31 U.S. 515. As a race-based discriminatory law, a judicially created apartheid, these foundational doctrines of federal Indian law were and are gross violations of the

international law of the wašíču, specifically the "principle of equal rights and self-determination of peoples" contained in article 1, section 2, of the UN Charter, and in articles 2 and 3 of the UN DRIP, and the ICERD; and as found by the Decision of the United Nations Committee on the Elimination of Discrimination in *Western Shoshone v. United States*, Early Warning and Urgent Action Procedure, 1(68) (2006).

Under the international law of the wašíču, no state authority or regime may be recognized by the international community when such authority is premised upon racism, ethnic cleansing, force, or treaty violations. *See*, UN Resolutions 216 and 217 (1965) (condemning racist Rhodesia); UN Security Council Resolution 514 (1983) (condemning Turkey's attempted annexation of part of the Republic of Cyprus in violation of treaties); UN Security Council Resolution 787 (1992) (condemning ethnic cleansing in Bosnia and Herzegovina); UN General Assembly Resolution 68/262 (2014) (affirming the territorial integrity of Ukraine in response to Russia's purported annexation of part of Ukraine, Crimea, in violation of treaties); *also*, article 11 of the Montevideo Convention (non-recognition of territorial acquisitions obtained by use of force or any effective coercive measure).

The Očhéthi Šakówiŋ Oyáte existed as a fully separate sovereign and independent, and equal, nation before and after the creation of "federal Indian law" by the United States. The Očhéthi Šakówiŋ Oyáte was not a party to any of the Marshall trilogy matters and, under the wašíču's own law the wašíču's high court had no jurisdiction over the Očhéthi Šakówiŋ Oyáte or over the territory or sovereignty of the Oyáte and those decisions and the legal fictions, the three fundamental doctrines of federal Indian law, created in those decisions by the wašíču's high court, nor any decisions of any wašíču's lower court subsequently imposing the Marshall decisions and colonial doctrines, were and are not binding upon the Oyáte.

Under the *lex loci rei sitae* (law of the place) principle of international law of the wašíču and the law of the United States, the law to be applied to the nature and scope of the rights of a nation to a territory and the lands and natural resources and waters found therein is the law of the sovereign occupying that territory, the Očhéthi Šakówiŋ Oyáte, and not the imperial or colonial power. *See, e.g., United States v. Crosby,* 7 Cranch., 175 (1812) ("[T]itle to land can be acquired and lost only in the manner prescribed by the law of the place where such land is situate."). Under the law of the Očhéthi Šakówiŋ Oyáte, the United States of America had and has no

standing nor jurisdiction to assert any claim to or ownership of, or authority over, any of the territory or lands or natural resources or waters found within the boundaries of the territory of the Očhéthi Šakówiŋ Oyáte.

The opinions and rulings of the United States Supreme Court, acts of the United States Congress, and any exercise of executive colonial authority by the Executive Branch and the agencies of the United States, as a matter of the law of the Očhéthi Šakówiŋ Oyáte and of the wašíču's international law, are not legally binding upon the Očhéthi Šakówiŋ Oyáte or its ošpáyes any more than they are legally binding upon Mexico or Canada unless consented to by the other sovereign.

B. The Illegal Taking of Pahá Sápa

Following the discovery of gold in the sacred Pahá Sápa (referred to by the wašíču as "the Black Hills"), in 1874 by a large US military expedition led by General George Custer which entered Očhéthi Šakówiŋ Oyáte territory under false pretext, the US government abandoned its treaty obligation to preserve the integrity of Oyáte territory from trespassing prospectors and settlers. *United States v. Sioux Nation of Indians*, 448 U.S. 371, 376-79 (1980); *also*, *The Case of the S.S. Lotus, France v. Turkey* (1927) (the *Lotus* case), P.C.I.J., Ser. A, No. 10 (holding by the Permanent Court of International Justice that "the first and foremost restriction imposed in international law upon a State is that – failing the existence of a permissive rule to the contrary – it may not exercise its power in any form in the territory of another State.").

In 1876, the US government declared that people from the Očhéthi Šakówiŋ Oyáte found lawfully within the "unceded" Oyáte territory in Nebraska to be "hostiles" and engaged in a war campaign against them. *Id*., 448 U.S. at 379. The next year after unsuccessful attempts to negotiate the cession of the Pahá Sápa by the Očhéthi Šakówiŋ Oyáte, the United States in an unlawful exercise of colonial authority attempted a wrongful taking through the ratification of a fraudulent treaty that opened up for wašíču invasion and settlement the Pahá Sápa and other territory and lands of the Oyáte, including the Article XVI Unceded territory and lands. Act of February 28, 1877, 19 Stat. 254; *Sioux Nation*, 448 U.S. at 381-84, 424.

After over a century of challenges by the Očhéthi Šakówiŋ Oyáte to this unlawful attempted abrogation of the Treaty of 1868, the United States Supreme Court in 1980 admitted

that the 1877 treaty was fraudulent, but held that the Congressional ratification of the fraudulent treaty was an "effective" – not express – "abrogation" of the 1868 Ft. Laramie Treaty. *Sioux Nation*, 448 U.S. at 382-83. The Court then ruled that the Act of 1877 was a "taking" by the United States under its colonial "plenary" power over Indian nations and awarded the Očhéthi Šakówiŋ Oyáte purported "just compensation" for the theft of its ancestral, treaty protected, territory, lands and natural resources. *Id*., 448 U.S. at 410-12, 423-24.

Treaties obtained by fraud, corruption, coercion, by the threat or use of force, or conflicting with a preemptory norm of general international law ("*jus cogens*") are void or voidable as a principle of international law. VCLT, arts. 49, 50, 51, 52, 53.

The Očhéthi Šakówiŋ Oyáte has not given up its claim to its treaty lands and territory, has rejected and refused to accept the colonial high court's decision as lawful or the court's award as fair or full compensation, and demanded, and continues to demand the relinquishment of their territory and lands from colonial rule and occupation by the United States. *See, e.g., Hearing Before the Select Committee on Indian Affairs, United States Senate*, 99TH Cong., 2d Sess., S. 1453 (Sioux Nation Black Hills Act); *Oglala Sioux Tribe of the Pine Ridge Indian Reservation v. U.S. Army Corps. of Eng'rs*, 570 F.3d 327 (D.C. Cir. 2009).

Treaties between sovereign nations are not governed by principles of domestic law, let alone that of a colonial power, but by international law grounded on the fundamental principle of *pacta sunt servanda*, that treaties must be obeyed. *See*, VCLT, arts. 26 and 27; UN Resolution 2625; *M'Culloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), *see also,* Constitution of the United States, art. VI, clause 2. This principle has been acknowledged by the United State in regards to treaties with indigenous nations, including as a signatory state to the UN DRIP, art. 37, sec. 1 ("Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements, and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements."). *See also*, Indian Appropriation Act of March 3, 1871, 16 Stat. 566, Rev. Stat. Section 2079, 26 U.S.C. Section 71; and *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020).

Even when provisions of a treaty allow a party to unilaterally withdraw from the agreement, the withdrawing state is not released from obligations that occurred, nor excused from violations that existed prior to the date that its withdrawal took effect. *See*, VCLT, art.

70(1), 1155 U.N.T.S. at 349. Unilateral withdrawal as here from treaties that do not contain exit provisions may be a breach of the treaty, particularly where treaty provisions expressly foreclose unilateral withdrawal by the parties – "absolute and undisturbed use and occupation," "no persons …shall *ever* be permitted to pass over, settle upon, or reside in the territory described in this article" (1868 Treaty, art. II) (emphasis supplied). VCLT, art. 56 (an agreement "which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal …."); *see also, e.g.*, U.N. Human Rights Commission, 53rd Sess., General Comments under article 40, paragraph 4, of the International Covenant on Civil and Political Rights ("ICCPR"), General Comment No. 26(61), at 102 ¶s 1-5, U.N. Doc. A/53/40 (1998) (signed by the United States on October 5, 1977, and ratified by its Congress on June 8, 1992, as part of the Supreme Law of the United States).

Abrogation of the 1868 Treaty whether express or implied would merely place the parties, the Očhéthi Šakówiŋ Oyáte and the United States, in the position they were in under the Fort Laramie Treaty of 1851, prior to the abrogation. The abrogation of the 1868 Treaty would withdraw the provision under Article XVII abrogating and annulling all prior treaties and agreements. For these reasons, the abrogation of the 1868 Treaty by the United States would not result in any taking of any territory or lands of the Očhéthi Šakówiŋ Oyáte retained and secured by the Fort Laramie Treaty of 1851.

C. Other Illegal Takings by Acts of Congress

By the Indian Appropriation Act of March 3, 1871, the Congress of the United States declared that "no Indian nation or tribe" would be recognized "as an independent nation, tribe, or power with whom the United States may contract by treaty" and thereby ended treaty making between any First Nation and the United States of America. As a matter of the wašíču's own international law, the United States may choose to recognize or not to recognize another sovereign nation or state, but lacks the authority and jurisdiction to determine as a matter of international law the existence or sovereignty of another nation or state, including the Očhéthi Šakówiŋ Oyáte. Montevideo Convention, art. 1; Lauterpacht, Hersch, Recognition in International Law (2012), at 64.

Under the law of the Očhéthi Šakówiŋ Oyáte and under the wašíču's own law of nations and international law, as previously stated, and under the express requirement set forth in Article XII of the Ft. Laramie Treaty of 1868, transfers of territory or lands by one nation to another nation may be accomplished as a matter of law only by **treaty** between both sovereign nations. VCLT, art. 2(1)(a); Jean S. Pictet, *Commentary – The Geneva Convention of 12 August 1949* 275 (1958). As the Act of March 3, 1871, terminated treaty-making by the United States with all First Nations, no further transfers or cessions of the territory or lands of any sovereign First Nation to the United States, including that of the Očhéthi Šakówiŋ Oyáte, could occur after March 3, 1871. All non-treaty takings or cessions of any First Nation territory or lands to the United States after that date would be void *ab initio* as a matter of law.

Further, the Act of March 3, 1871, expressly provided that despite the termination of treaty-making with Indian tribes or nations by the United States "no obligation of any treaty lawfully made and ratified prior to March 3, 1871, shall be hereby invalidated or impaired." Thus, under its own law, the United States remained obligated and bound by all of the provisions of the Ft. Laramie Treaties of 1851 and 1868, including the requirement of Article XII of the Ft. Laramie Treaty of 1868 that there could be no further cessions of any territory or lands of the Očhéthi Šakówiŋ Oyáte without the consent of three-quarters of the adult males of the Oyate. *McGirt v. Oklahoma* (2020).

In 1887, the Congress of the United States, exercising unlawfully imposed plenary power over First Nations and their peoples, passed the General Allotment Act, also called the Dawes Act, to break up communal First Nation lands into individual family holdings and separating of the remaining lands as "surplus lands" for alienation from Native title in further violation of the Ft. Laramie Treaty of 1868. 25 U.S.C. ch. 9, § 331 et. seq.; also, *McGirt v. Oklahoma* (2020).

Two years later, in 1889, Congress passed another act under its unlawful assumed plenary power (just months before North and South Dakota were admitted to the Union) which partitioned Očhéthi Šakówiŋ Oyáte (the Great Sioux Reservation), creating five smaller reservations and provided for the allotment of the communally-held Očhéthi Šakówiŋ Oyáte lands again in violation of the Ft. Laramie Treaty of 1868. Act of March 2, 1889, 25 Stat., 888; *McGirt v. Oklahoma* (2020).

Section 3 of the Act of March 2, 1889 established the Standing Rock Reservation keeping Íŋyaŋwakağapi Wakpá (what is called the Cannon Ball River by the United States) as the northern boundary of the Standing Rock Reservation while not diminishing the northern boundary of the Očhéthi Šakówiŋ Oyáte (Great Sioux Nation) at the Heart River.

The United States and its Congress lacked and lacks lawful authority to "create" such "reservations" because it cannot "reserve" to any First Nation land that it does not lawfully own, physically occupy, or possess. *Island of Palmas (Miangas) Case / Netherlands v. United States*, 2 U.N. Rep. Int'l Arbitral Awards 829. Treaties of cession made with First Nations are not reservations of ancestral lands and territory by the United States *for* First Nations, but are reservations by First Nations of ancestral lands and territory *from* transfer to the United States. *See*, *United States v. Winans*, 198 U.S. 371, 381 (1905).

By the Acts of April 23, 1904, 33 Stat. 254, of March 2, 1907, 34 Stat. 1230, and of May 30, 1910, c. 260, 36 Stat. 48, the Congress of the United States in violation of the law of the Očhéthi Šakówiŋ Oyáte and the law of nations and international law, as well as Section XII of the Ft. Laramie Treaty of 1868, and through the unilateral exercise of unlawfully assumed and imposed plenary power, further diminished the territory and lands of the Rosebud Indian Reservation.

All of the aforesaid non-treaty Acts of Congress and the United States taking or receiving any territory or lands of the Očhéthi Šakówiŋ Oyáte as secured by the 1851 and 1868 Ft. Laramie Treaties, including but not limited to all of the allotment acts, were unlawful and invalid at the time of the purported taking. *McGirt v. Oklahoma* (2020). Additionally, the non-treaty taking of any lands within the territory of the Očhéthi Šakówiŋ Oyáte did not diminish the territory or the territorial boundaries of the Oyáte or its authority over its territory. *McGirt v. Oklahoma* (2020).

D. Further Unlawful Invasions of Očhéthi Šakówiŋ Oyáte Territory

To the Očhéthi Šakówiŋ Oyáte, the 1851 Ft. Laramie Treaty and the 1868 Ft. Laramie Treaty are sacred declarations, agreements, and guarantees of that Nation and the United States of America regarding the relations and conduct of those nations and their peoples.

Included within those rights and benefits is the right expressly secured by Article III of the 1851 Ft. Laramie Treaty by which "the United States bind themselves to protect the aforesaid Indian nations against all depredations by the people of said United States, after the ratification of this treaty." Further included within those rights and benefits is the right expressly secured by Article I of the 1868 Ft. Laramie Treaty which in accordance with the traditional law of the Očhéthi Šakówiŋ Oyáte and with the law of nations pertaining to territorial integrity and national sovereignty required any non-member of the Nation to obtain consent of the Nation and forbid the illegal entry of such persons, referred to as "Bad Men," onto the territory and lands of the Očhéthi Šakówiŋ Oyáte who committed "any wrong upon the person or property of the Indians." *See, Elk v. United States*, 70 Fed.Cl. 405, 407 (Fed.Cl. 2006).

Like all sovereign nations and peoples, the Očhéthi Šakówiŋ Oyáte possessed and have at all times possessed as a matter of law a right to demand free, prior, and informed consent as to any legislative or administrative measures taken by another nation, including the United States, that may affect it or its people. UN DRIP, art. 19, art. 32; ILO Convention 169, art. 6, sec. 2 and art. 26, sec. 2 (1989); *also*, *Saramaka People v. Suriname*, IACHR (Nov. 28, 2007), Series C No. 72, ¶s 130, 131, 133 – 192, 194, Relief ¶s 5, 8 (*citing*, Article 32 of the UN DRIP and ILO Convention 169). Under the wašíču's own international law, every peoples and nation possess and have the right to exercise permanent sovereignty over their own natural wealth and resources and it is the obligation of every state to respect the sovereign right of every other nation to dispose of its own wealth and its natural resources. UN General Assembly Resolution 1803 (XVIII) (December 14, 1962); UN General Assembly Resolution 1515 (XV) (December 15, 1960); UN DRIP, arts. 26, 32.

It is a well-known prophecy of the Oyáte that a Zuzeca Sapa, black poisonous snake, would come among the people. In 2016, the United States issued permits for the construction of the Dakota Access Pipeline across the treaty lands of the Očhéthi Šakówiŋ Oyáte. On March 29, 2019, the President of the United States issued a permit for the construction of the TransCanada Keystone Pipeline across the treaty lands of the Očhéthi Šakówiŋ Oyáte. Neither the Očhéthi Šakówiŋ Oyáte, nor the reservation, the Standing Rock Sioux Nation (aka "Standing Rock Sioux Tribe"), closest to the lands affected by the Dakota Access Pipeline, or the Rosebud Sioux Nation (aka "Rosebud Sioux Tribe"), closest to the lands affected by the Keystone Pipeline, gave

any consent to the construction of the Pipelines across the Unceded Lands or any of the other territory or lands of the Očhéthi Šakówiŋ Oyáte and have, instead, strongly opposed these incursions and trespasses upon their territory and lands. Beginning in the 1980s and continuing to date, the United States has unlawfully permitted the construction and operation of an *in situ* uranium mining operation near Crow Butte, a site sacred to the people of the Očhéthi Šakówiŋ and other Native people which is within the treaty lands territory expressly reserved by the Očhéthi Šakówiŋ Oyáte from cession to the United States by Article XVI of the Ft. Laramie Treaty of 1868.

In 2009 and continuing to date, the United States has unlawfully permitted construction and operation of an *in situ* uranium mining operation known as "Dewey Burdock" in the sacred Hé Sápa (Black Hills) on treaty lands and territory secured by the Očhéthi Šakówiŋ Oyáte from cession to the United States by Ft. Laramie Treaties of 1851 and 1868 and wrongfully and unlawfully taken and occupied by the United States. *United States v. Sioux Nation of Indians*, 448 U.S. 371, 382-83. Neither the Očhéthi Šakówiŋ Oyáte, nor the reservation, the Oglala Lakota Nation, (aka "Oglala Sioux Tribe") closest to the lands affected by these uranium mines, gave any consent to the construction of the mines on the treaty lands or any of the territory or lands of the Očhéthi Šakówiŋ Oyáte and have, instead, strongly opposed these incursions and trespasses upon their territory and lands. The United States is considering licensing or permitting other mines and extraction of minerals and wealth from Hé Sápa and the Treaty lands of the Očhéthi Šakówiŋ Oyáte.

The permitting of these pipelines and mines by the United States and the invasion of and trespass upon the territory of the Očhéthi Šakówiŋ Oyáte, including but not limited to the Unceded Lands, was and is a violation of the law of the Očhéthi Šakówiŋ Oyáte, of the 1851 and 1868 Ft. Laramie Treaties and of the Treaty obligation of the United States to forbid entry of "bad men" onto Oyáte territory, and of international law, including the sovereign rights of the Očhéthi Šakówiŋ Oyáte to territorial integrity, to self-determination, and to free, prior, and informed consent.

E. Denial of Governance

Under the international law of the wašíču, all peoples, including the peoples of First Nations and all Native peoples, are possessed of the inherent collective and *jus cogens* right of self-determination by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development. ICCPR, art. 1; UN DRIP, arts. 1, 2, and 3; UN Res. 1514.

From the time of its creation in 1776 and continuing at least through 1970s, the United States as an imperial and colonial ruler had an official policy of slow genocide and ethnocide through the forced assimilation of the people of First Nations accomplished by the numerous allotment acts, including but not limited to the destruction of traditional communal title, and the imposition of non-traditional private property ownership upon Native people and First Nations of their lands and natural resources, the extermination of traditional food sources including **tȟatȟáŋka (buffalo), the kidnapping and brain-washing of Native children, the outlawing and limiting of Native spiritual practices, the destruction of Native languages (linguicide), the theft of Native children and adoption to non-Native families, the relocation of Native families away from First Nation territories, the unilateral imposition of US citizenship** upon Native peoples by the Indian Citizenship Act of 1924, 43 Stat. 253, imposition of recognition requirements and citizenship laws for Native nations, the destruction and dictation of Native economies, the dictation of Native rights, imposition of state laws and jurisdiction and citizenship on First Nation territory and people, and other such colonial conduct.

Part and parcel and a primary goal of forced assimilation by the United States of First Nations and Native people was and is the diminishment and control of the exercise of sovereignty by First Nations over their own territory and people. This was accomplished primarily through the Indian Reorganization Act of June 18, 1934, 48 Stat. 984 ("IRA"), which coerced the destruction of traditional ways of First Nation governance and replaced it with a Westernized, corporate, non-Native, form of governance chartered by and placing the First Nation and its people further under the control of the United States as the colonial ruler, with the IRA government and Native leaders acting as *de facto* agents of the United States in the rule over, exploitation of, and assimilation of Native nations and people and their natural resources and water.

The coerced adoption of IRA governance and constitutions by the Reservations created by the Act of March 3, 1889, further undermined Oyáte unity and solidified both the territorial and jurisdictional diminishment of the Očhéthi Šakówiŋ Oyáte, its sovereignty, its people, and its spirit and culture, in gross violation of the inherent sovereignty of the Oyáte and of virtually all of the collective and individual human rights recognized as possessed by all peoples and people under the international law of the wašíču for their survival and well-being. *See also, McGirt v. Oklahoma* (2020) (noting that the extinguishment and replacement of Native governance was a treaty violation by the United States); *Harjo v. Kleppe*, 420 F.Supp. 1110, 1130 (D.D.C. 1976) (invalidating as "bureaucratic imperialism" the federally appointed government of a Native nation which replaced the traditional form of governance).

As a matter of the wašíču's international and domestic law, the extinguishment of a government does not extinguish the nation. Jean Bodin, *Six Books of the Commonwealth* 56 (1955); Frank Sargent Hoffman, *the Sphere of the State or the People of a Body-Politic* 19 (1894); Quincy Wright, "The Status of Germany and the Peace Proclamation," 46(2) *Am. J. Int'l L.* 299, 307 (Apr. 1952); *McGirt v. Oklahoma* (2020).

II. (Wowashi) Plan of Action for Restorative Justice

To break the bonds of colonial rule and unite and restore the full sovereignty of the Očhéthi Šakówiŋ Oyáte over all territory defined by the Ft. Laramie Treaty of 1851 the Treaty Councils of the Oyáte propose the following wowashi (plan of action):

A. Wóopȟe (Lakȟóta Customary Law)

- Restoration of and respect for the primacy of wóopȟe, the traditional customary law of the Očhéthi Šakówiŋ Oyáte in the constitutions and courts of the confederated Oyáte and its member Oyátes and Ošpáyes under Wakȟáŋ Tȟáŋka, wólakȟota, and the čhaŋnúŋpa.
- Restoration of the traditional customary governance of the Očhéthi Šakówiŋ Oyáte in all matters common to its member Oyátes and Ošpáyes.
- Restoration of the traditional customary selection of wóitȟaŋčhaŋ (representatives and leaders) of the Očhéthi Šakówiŋ Oyáte through thiyóšpayes.

- Rejection of the colonial domination and rule of the United States and its subdivisions over the Očhéthi Šakówiŋ Oyáte, including the so-called doctrines of discovery, trust authority, and plenary power.
- Implementation by the Očhéthi Šakówiŋ Oyáte of inherent sovereign authority over all of Oyáte territory, including but not limited to any and all use or development of its lands, water, minerals, and airspace and the conduct of persons, corporations, and any other entity occurring within its territory.

B. Law of Nations (Nation-to-Nation Relationship)

- Demand through international tribunals and forums the honor and respect by the Mílahaŋska (United States of America) of the Očhéthi Šakówiŋ Oyáte as an independent sovereign nation state having an international persona.
- Contest through international tribunals and forums the continuing imperial and colonial domination and rule by Mílahaŋska of the Očhéthi Šakówiŋ Oyáte and its member Oyátes and Ošpáyes.
- Demand through international tribunals and forums the full respect and enforcement by Mílahaŋska of all treaties with the Očhéthi Šakówiŋ Oyáte and its member Oyátes and Ošpáyes according to the laws of the Oyáte and the international law of treaties between nations as equals.
- Demand through international tribunals and forums that matters and disputes between the Očhéthi Šakówiŋ Oyáte and Mílahaŋska, and other nations and states, be resolved by treaties as between nations as equals.
- Demand through international tribunals and forums the return by Mílahaŋska to the Očhéthi Šakówiŋ Oyáte of all territory and lands, including but not limited to the sacred Pahá Sápa, the Unceded Lands, all territory and lands taken through allotment, and all territory and lands taken after March 3, 1871, within the boundaries defined by the Ft. Laramie Treaty of 1851.
- Demand through international tribunals and forums full reparations for all harms of any kind or nature suffered by the Očhéthi Šakówiŋ Oyáte as a result of the imperial and colonial occupation and rule of the Oyate by the Mílahaŋska
- Demand through international tribunals and forums recognition of the collective human and sovereign right of Očhéthi Šakówiŋ Oyáte to free prior and informed consent to any

and all matters within its territory, including the Dakota Access and Keystone Pipelines and the Crow Butte and Dewey Burdock uranium mining and other extractive activities.

- Demand through international tribunals and forums full reparations for all harms of any kind or nature suffered by the Očhéthi Šakówiŋ Oyáte as a result of the imperial and colonial occupation and rule of the Oyate by Mílahaŋska.

C. Laws of the United States

- Assert the inherent sovereign independent national status and authority of the Očhéthi Šakówiŋ Oyáte in any and all courts and matters of Mílahaŋska (the United States of America).
- Demand in any and all courts, Congress, agencies, and matters of Mílahaŋska the full respect and enforcement by Mílahaŋska of all treaties with the Očhéthi Šakówiŋ Oyáte and its member Oyátes and Ošpáyes according to the laws of the Oyáte and the international law of treaties between nations as equals.
- Reject and dispute in any and all courts, Congress, agencies, and matters of Mílahaŋska, the colonial domination and rule of Mílahaŋska and its subdivisions over the Očhéthi Šakówiŋ Oyáte, including the so-called doctrines of discovery, trust authority, and plenary power.
- Demand in any and all courts, Congress, agencies, and matters of Mílahaŋska, respect of the sovereign authority of the Očhéthi Šakówiŋ Oyáte and its member Oyátes and Ošpáyes of their right to free prior and informed consent and exclusive right to regulate any and all activities that occur within its territory, including but not limited to the use and development of its lands, water, air, and other natural resources.
- Demand in any and all courts, Congress, agencies, and matters of Mílahaŋska the return by Mílahaŋska to the Očhéthi Šakówiŋ Oyáte of all territory and lands, including but not limited to the sacred Pahá Sápa, the Unceded Lands, all territory and lands taken through allotment, and all territory and lands taken after March 3, 1871, within the boundaries defined by the Ft. Laramie Treaty of 1851.
- Demand in any and all courts, Congress, agencies, and matters of Mílahaŋska full reparations for all harms of any kind or nature suffered by the Očhéthi Šakówiŋ Oyáte as a result of the imperial and colonial occupation and rule of the Oyate by the Mílahaŋska

- Demand in any and all courts, Congress, agencies, and matters of Mílahaŋska that matters and disputes between the Očhéthi Šakówiŋ Oyáte and Mílahaŋska, and other nations and states, be resolved by treaties as between nations as equals.

ADOPTED THIS ____ DAY OF JUNE, 2024.

SIGNATURES:

Name:	**Treaty Council/Ošpáye/Oyáte:**
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Name:	**Treaty Council/Ošpáye/Oyáte:**