



## Fourth World Nations in the United Nations?

By Rudolph Rýser, PhD

The United Nations will in its 70th General Assembly consider a resolution on the modalities, criteria, and policies for the participation of indigenous institutions in the UN Organization. It will decide whether representatives of nations will in fact become active and consequential participants in the General Assembly. Furthermore, the decision will affect the Economic and Social Council, the various standing committees, and perhaps treaty bodies as well. That this decision will be made comes more than 370 years after the formation of the modern state system—that essentially denies the political legitimacy of Fourth World nations. That lack of political legitimacy may change significantly in 2017.

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) provided a key principle asserting that indigenous peoples must participate in decision-making that affects their interest and their rights on the international stage. The principle is supposed to apply to the centralized governments of UN Member States as well. In 2014, the World Conference on Indigenous Peoples (WCIP) set out specific mandates for the UN as measures to implement key principles such as the right of free, prior, and in-

formed consent that indigenous nations should enjoy. This right, the principle affirms, must be applied in advance of international bodies and states' governments producing policy and practices in legislation, administration, and judicial matters. Political legitimacy may come to Fourth World nations in 2017. The active process of considering and implementing direct and consequential participation of indigenous nations and other indigenous institutions in the deliberations of the United Nations began in

2014. The long process may be finally settled in September 2017.

Accountability for implementing the UNDRIP by the United Nations is led by the President of the UN General Assembly. There is no enforcement of any agreement that requires states' governments to implement the same provisions now so actively pursued by the UN General Assembly President. Yet, it cannot be denied that legitimate steps are being taken to invite the 1.3 billion<sup>1</sup> indigenous peoples of more than 6,000 nations into the international community as active participants.

Throughout eighteen months, the UN General Assembly President has engaged in consultations with indigenous non-governmental organizations and a small number of indigenous governments and states' governments. The purpose is assess what steps can be taken to "enable the participation of indigenous peoples' representatives and institutions in meetings of relevant UN bodies on issues affecting them."<sup>2</sup> What is actually meant by this expression is yet to be determined, but it is an effort following the principle enunciated in the UN Declaration on the Rights of Indigenous Peoples Article 18:<sup>3</sup>

*Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own*

*indigenous decision-making institutions.*

This effort to "enable" nations to participate in dialogue and negotiations with other nations, UN Member States and representatives of multi-lateral organizations is laudable. But, there is a rather long history in the international community of excluding the voice of the world's nations from international decisions. Given this history (parts of which I recount below), we will do well to keep a skeptical eye on the process even as deliberate steps are taken to advance the process begun by the UN General Assembly and its presidents.<sup>4</sup>

Will Fourth Nations "join" the United Nations with the ability to veto UN decisions or Member State decisions that may have an adverse effect on the rights and interests of a nation or various nations? Will these nations only be permitted to offer their views, but not negotiation decisions? Can the United Nations, other multi-lateral "state" bodies and UN Member States act reliably and honorably to respect Fourth World nation's rights and authorities to block decisions or advance decisions in accord with the principle of free, prior and informed consent? Will UN Member States accept the denial of consent (access to

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3. UN General Assembly (2007). United Nations Declaration on the rights of Indigenous Peoples. UN General Assembly: New York.

4. The UN conducted a Plenary Session of the UN General Assembly in September 2014 giving the two-day session the title of World Conference on Indigenous Peoples. The one-day session devoted to considering the language of an "Outcome Document" urged Member States to mandate specific actions to implement the UN Declaration on the Rights of Indigenous Peoples." The "action plan" included a mandate for the UN to identify a way for indigenous peoples to participate in "relevant UN bodies on issues affecting them" and underscored the importance of the principle of Member States and the UN itself to obtain the free, prior and informed consent of indigenous institutions in advance of approving policies or practices that affect the rights and interests of any particular indigenous nation or nations.

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1. The United Nations claims that there are 370 million indigenous peoples, but this figure is used as a matter of bureaucratic blindness resulting from some states such as Russia and China claiming they have no indigenous peoples and the United States claiming that only the American Indians, Alaskan Natives and Hawaiians it recognizes can be counted. (In the US the recognized population is about 1.7 million whereas the actual self-identifying population is in excess of 5 million people.)  
2. Letter from UN General Assembly President Mogens Lykketof, 27 April 2016 to "All Permanent Representatives and Permanent Observers to the United Nations. New York.

forests for development, storage of nuclear waste, for example) if that is the decision of a Fourth World nation?

The following discussion examines some relatively significant markers in international relations between Fourth World nations and international states. I briefly review the development of nations' laws and the modern state; and clarify the difference between nations and states and their respective political legitimacy in international law. I consider the UN General Assembly President's consultations on the topic of enabling indigenous nations and other institutions to participate in UN meetings on issues affecting them. Finally, I offer specific proposals made to the UN President and to the UN Permanent forum on Indigenous Issues that will be submitted to the United Nations General Assembly 70th Session for consideration in 2017.

## History as Prelude

Not since the 17th century have indigenous nations played a political role in the international dialogue about the destiny of human society. Nations dominated the world's discourse along with empires for centuries until the brief period between 1648 and 1848 saw the transformation of multinational communities into centralized states. In 1973 the human family almost silently, but perceptibly, began to open up to a renewed dialogue that would engage nations—fully 19 percent of the world's population—in a discussion about the rights and roll of all peoples in the international community irrespective of their size, history, language, or culture. With a simple decision to study the “situation of indigenous peoples” the United Nations Commission on Human Rights then designated José Martínez Cobo, as Special Rapporteur, to undertake the “Study of the Problem of Discrimination Against Indigenous Peoples.” At that point the UN began a more than forty-year process aimed at including

indigenous peoples in the global human rights regime.<sup>5</sup> Cobo's study became the foundational piece for the eleven-years of work by the UN Working Group on Indigenous Populations<sup>6</sup> and it was that body that wrote the first draft of the United Nations Declaration on the Rights of Indigenous Peoples. The UN Human Rights Council made modifications and then adopted the new Declaration and sent it finally to the UN General Assembly. The UN General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples in September 2007. As a result of a Plenary Session by of the UN General Assembly that would be called the World Conference on Indigenous Peoples in September 2014, the United Nations formulated a work plan for implementing principles and mandates contained in the UN Declaration.

Nations have throughout history sought to resolve disputes by diplomacy or by war to achieve a political end. As the Prussian General and military theorist Carl van Clausewitz (1780-1831) wrote in his volume *On War* (1832), “War is merely politics by other means.”<sup>7</sup> Before there were states or empires,

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5. Cobo, AM. (1983). Study of the Problem of Discrimination Against Indigenous Populations. United Nations Commission on Human Rights, Sub-Commission on the Prevention of Discrimination and Protection of Minorities. E/CN4/Sub.2/1983/21/Add.8. 30 September 1983. (Originally authorized by decision of the Sub-commission in 1971).

6. The United Nations Working Group on Indigenous Populations was established as a five-member body under the responsibility of the Sub-Commission on the Promotion and Protection of Human Rights that was the main subordinate body of the [Commission on Human Rights](#) (made defunct in 2006 and replaced by the Council on Human Rights – and elevation of the body in the UN system).

7. Clausewitz's original text in Chapter 1 Section 24 of *On War* was first translated into the English as, “We see, therefore, that war is not merely an act of policy but a true political instrument, a continuation of political intercourse carried on with other means. What remains peculiar to war is simply the peculiar nature of its means.” It was later translated as “War is merely politics by other means.” in the Princeton University Press edition in 1976.

there were mainly nations. Their contacts and struggles with each other essentially defined what would later be known as the law of nations that became the title even later for four books by the Saxon Minister to Bern, Switzerland, Emmerich de Vattel.<sup>8</sup> Vattel's Law of Nations essentially defined the structure of what is now the modern international environment. The first chapter of the first volume immediately defines "A nation or a state is, as has been said at the beginning of this work, a body politic, or a society of men united together for the purpose of promoting their mutual safety and advantage by their combined strength."<sup>9</sup> The first volume chapter spells out the roll of "public authority" as the sovereign power of a nation or a state, thus providing a clear understanding of how the "body politic, or society of men" exercise their will. The language of the 18th century provided for the existence of both nations and states and by virtue of this reality allowed that some entities were understood to be nations and yet others were understood to be states—both of equal authority. These ideas affirm that in modern international relations nations preceded states, but in time states achieved a new status with Vattel's work and yet others, as the 19th century approached with theorists such as Clausewitz.

### Between Nations and States

Nations are classically defined as "A people, or aggregation of men, existing in the form of an organized jural society, inhabiting a distinct portion of the earth, speaking the same language, using the same customs, possessing historic continuity, and distinguished from

other like groups by their racial origin and characteristics, and generally, but not necessarily, living under the same government and sovereignty."<sup>10</sup> This definition flows from Vattel's 1775 definition and draws on the *Latin* definition of *gent* (family, clan, people, folk), and *natio* (being born, tribe, the nation). In other words, "nation" in law and language defines the organic relationship between individuals comprising a "people." Fourth World nations are, therefore, Fourth World peoples.

The 1648 Treaty of Westphalia<sup>11</sup> classically defines states in the international sense. As a treaty intended to end the Thirty Years War and regularize the economic policy of protection and public credit, it was essentially a policy of *fair trade* as opposed to *free trade*. In other words, the Treaty establishing the modern definition of the state created artificial structures to settle economic competitions that gave rise to war resulting from the Austrian Hapsburg Empires' predatory Central Banking controls in the 17th century. The Treaty established that a state shall have: 1. a sovereign independent of other sovereigns (§ 1), 2. an internal policing or military capacity to ensure security (§ 19), 3. recognition by other states (§ 2), 4. possess specific boundaries (§ 19), and 5. maintain the Catholic religion as chosen by the sovereign or a Protestant chosen by other sovereigns. Black's Law defines the *state* thusly: "A body politic, or society of men united together for the purpose of promoting their mutual safety and advantage, by the joint

8. Vattel, E de. (1758) *The Law of Nations or the Principles of Natural Law in Four Books*. Translated into English by Joseph Chity, Esq. (1833). The electronic edition © 2003, 2005 Lonang Institute.

9. p. 26

10. Black, HC (1910) *Black's Law Dictionary* (2nd Edition). West Publishing Company (Thomson Reuters: Minnesota).

11. Treaty of Westphalia," (<http://www.tufts.edu/departments/fletcher/multi/texts/historical/westphalia.txt>); "Das Verfassungswerk des Westfälischen Friedens 1748-1711," in Arno Buschmann, ed., *Kaiser und Reich: Klassische Texte zur Verfassungsgeschichte des Heiligen Römischen Reiches Deutscher Nation vom Beginn des 12. Jahrhunderts bis zum Jahre 1806* (Munich: Deutscher Taschenbuch Verlag, 1984), 285-590. Translation © David M. Luebke [based on the British Foreign Office translation of 1648]

efforts of their combined strength.”<sup>12</sup>

Plainly, one can see that while theorists and scholars recognize the precedent set by the nation, efforts to describe and explain the *state* are readily dependent on the definition of *nation*. While they are similar, they are not the same. The nation springs from the organic relationship between members of a *people* seeking security, whereas the state is a social construct resulting from agreements between warring parties eager to solve economic and religious problems—seeking security.

As centralized states began to assume major dominion over international relations by the middle 19th century (owing to their capacity to centrally control military and economic forces) the understanding of what a nation entails merged with the idea of the state, thus reducing the actual nations to subordinate parts of states. Thousands of nations became submerged in the struggles between newly formed states. They found themselves challenging long established empires (British, Russian, Spanish, Ottoman, Prussian, numerous African empires including the Buganda, and the Ethiopian Empire and the Qing Dynasty in China as well). As empires melted away by the beginning of and during the 20th century, states came into their full weight. The Great War provided the explosives to ignite destruction of virtually all recognized empires and Europe, Asia, Russia and eventually the United States of America imposed the system of states through the formation of the League of Nations (though the USA did not join).

Despite all of this rapid transformation of human societies into centralized states and subordinate *suzerains* the world continued to sustain the existence of thousands of nations—albeit submerged nations and bisected

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12. Black, HC (1910) Black's Law Dictionary (2nd Edition). West Publishing Company (Thomson Reuters: Minnesota)

nations by newly formed states' boundaries. Today, those nations comprise more than 1.3 billion people.<sup>13</sup>

More than ninety-three years have passed since the Haudenosaunee sent Cayuga Sachem Deskaheh to Genève, Switzerland to obtain membership in the League of Nations for his people.<sup>14</sup> The Cayuga Sachem's initial objective was to achieve restitution and settlement of a Haudenosaunee claim against the Commonwealth of Canada.<sup>15</sup> A jointly signed letter by Delegates from Estonia, Ireland, Panama, and Persia petitioned the Assembly to permit Haudenosaunee membership.<sup>16</sup> Through Canada's direct interference into the internal affairs of the Haudenosaunee and Britain's connivance in the international arena the League of Nations Council was prevented from actually considering the four state Haudenosaunee petition.

Again in 1945 the Haudenosaunee sought to petition the international state system for admission as a full member of the human family through the newly formed United Nations at the San Francisco organizational meeting. Once again, they were denied—even though the signatory states and the UN Charter explicitly affirmed, "...friendly relations between nations based on respect for the principle of

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13. This assertion originates with a 1990 estimate by the Center for World Indigenous Studies Fourth World Atlas Project that documented nations as small as 150 people to nations as large as 25 million. Linguists who have documented more than 7,000 different languages have largely confirmed the Center's documentation.

14. September 1923.

15. The Commonwealth existed under the tutelage of the British Crown and was not itself a state, but a political entity created by the United Kingdom. It would not become a state until 1982 when Pierre Trudeau "brought the Constitution home from England" while remaining a part of the British Commonwealth.

16. Lepage, P. (1994). "Indigenous Peoples and the Evolution of International Standards: A Short History." in *Aboriginal peoples: toward self-government*. Edited by Marie Léger; translated by Arnold. Montréal: Black Rose Books, pp. 3–6. ISBN 1-551640-11-2.

equal rights and self-determination of peoples.”

Since then Haudenosaunee efforts to open the door to “...friendly relations between nations ....” some movement has occurred in international bodies granting a modicum of respect for nations.<sup>17</sup>

### UN Enabling Participation Consultations

The United Nations Declaration on the Rights of Indigenous Peoples was adopted including two operable principles:

*Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions. (Article 18)*

*and,*

*States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them. (Article 19)*

The United Nations decided in April 2010 to convene a Plenary Session of the General Assembly in September 2014 to consider specific measures intended to implement the

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17. Indigenous nations have participated in climate change negotiations (with very limited effect), changes in Intellectual Property Rights Convention protocols, development of the UN Declaration on the Rights of Indigenous Peoples, development of the International Labor Organization Convention 189 as a replacement for the 1950 convention, and with very limited influence development of the Inter-American Declaration on the Rights of Indigenous Populations.

UN Declaration on the Rights of Indigenous Peoples. In response the UN Permanent Forum on Indigenous Issues proceeded to take steps to organize participation in what would be called the World Conference on Indigenous Peoples.<sup>18</sup> Seven regions of the world were organized to produce recommendations to the UN General Assembly for agenda items and decisions.<sup>19</sup>

These principles were incorporated into the

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18. See: <http://www.un.org/en/ga/69/meetings/indigenous/#amp;panel1-1>

19. As a result of that invitation the UN Permanent Forum on Indigenous Issues put out a call through a Global Indigenous Peoples Coordinating Group to organize regional meetings of indigenous peoples (Africa, South and Central America, North America, Pacific Region, Asia, Arctic, Europe & Russia and two special bodies the Women’s Caucus and the Youth Caucus) to develop, over a period of two years, proposals for action issues to be considered by the World Conference. The regional meetings were held and more than 400 representatives from the regions and caucuses convened the Global Indigenous Preparatory Conference for the High Level Plenary Meeting of the United Nations that would be known as the World Conference on Indigenous Peoples in Sami Territory, Alta, Norway. The meeting produced the Alta Outcome Document on 12 June 2013 that including recommendations to the World Conference under four main themes:

- Indigenous Peoples’ lands, territories and resources
- United Nations system action for the implementation of the rights of indigenous peoples
- Implementation of the Rights of Indigenous Peoples
- Indigenous Peoples’ priorities for development (free, prior and informed consent).

Under Theme 2 the Alta delegates recommended to the UN General Assembly’ World Conference on Indigenous Peoples that it advance the proposition, “the creation of a United Nations body with a mandate to promote, monitor and review the implementation of the rights of Indigenous Peoples, including but not limited to those affirmed in the United Nations Declaration on the Rights of Indigenous Peoples, and that such a body be established with the full, equal and effective participation of Indigenous Peoples.” This specific recommendation was incorporated in the World Conference on Indigenous Peoples Outcome Document adopted by the UN General Assembly on 22 September 2014 stating: “[Members of the General Assembly] commit to consider, at the 70th session of the General Assembly” a plan and “any concrete proposals” to “enable the participation of indigenous peoples’ representatives and institutions” in meetings where decisions are being taken that affect the rights and interests of indigenous peoples.

Outcome Document of the World Conference on Indigenous Peoples.<sup>20 21</sup> Members States (except Canada) approved the document containing twelve specific UN Organization and Member States' commitments by consensus. These commitments include to:

- Consult and cooperate with indigenous peoples, appropriate measures at the central government level, including legislative, policy and administrative measure to achieve the ends of the UN Declaration on the Rights of Indigenous Peoples (7).
- Cooperate with indigenous peoples, through their own representative institutions, to develop and implement countrywide action plans, strategies, or other measures to achieve the ends of the UN Declaration on the Rights of Indigenous Peoples (8).
- Promote and protect the rights of indigenous persons with disabilities and improve their social and economic conditions (9).  
Work with indigenous peoples to disaggregate data as appropriate, or conduct surveys, and to use whole indicators of indigenous peoples' well being (10).
- Ensure equal access to high-quality education that recognizes the diversity of the culture of indigenous peoples (11).

- Ensure that indigenous individuals have equal access to the highest attainable standard of physical and mental health. (13)
- Promote the right of every indigenous child, in community with members of his or her group, to enjoy his or her own culture, professes and practices of religion and language (14).
- Support empowerment of indigenous women and their organizations (17).
- Intensify our efforts, in cooperation with indigenous peoples to prevent and eliminate all forms of violence and discrimination against indigenous peoples and individuals—in *particular, women, children, youth, older persons and persons with disabilities*—strengthening laws, policy and institutional frameworks (18). [Italics added]
- Develop with indigenous peoples concerned, *and where appropriate* policies, programs and resources to support indigenous peoples' occupations, traditional subsistence activities, economies, livelihoods, food security and nutrition (25). [Italics added]
- Consider, **at the 70th session of the General Assembly, ways to enable the participation of indigenous peoples' representatives and institutions in meetings of the relevant United Nations bodies on issues affecting them, including any concrete proposals made by the Secretary General** (33). [Emphasis added]
- Respect the contributions of indigenous to peoples to ecosystem management and sustainable development—including knowledge arising from hunting, gathering fishing, pastoralism and agriculture as well as their *sciences, technologies and cultures*. (35) [Italics added]

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20. High-level Meeting of the General Assembly: The World Conference on indigenous peoples: The World Conference on Indigenous peoples. 69/. 22 September 2014. UN Headquarters, New York City, NY.

21. In April at the request of the government of Bolivia the United Nations Third Committee agreed by consensus to convene a United Nations Plenary Session to be named the World Conference on Indigenous Peoples to consider an action plan to implement the 2007 Declaration. At the request of the UN General Assembly President and Member States' governments, Indigenous peoples were invited to begin organizing their participation or contributions to the UN Plenary Session that would be scheduled for September 2014.



It is noteworthy that the Outcome Document paragraphs specifically identifiable with UN Member States and not specifically an action by the UN Organization (7, 8, 9, 10, 11, 13, 14, 17, and 25) fall to the UN Member States' governments and tangentially to the UN itself. Despite this, the primary work focusing on implementing the UN Declaration has fallen to the United Nations organization. The UN can only implement if the Member States agree. There is no current documentation indicating the extent to which states' governments have implemented the nine specific commitments.

Following the UN General Assembly Mandate Para. 33, General Assembly President Mogens Lykketoft (Denmark) organized a four-member advisory body to compile proposals and recommendations submitted between March 2016 and July 2016 as a special electronic consultation concerning the enabling of indigenous peoples to participate in the United Nations. The advisors were to include Permanent Representatives to the UN Ambassador Kai Sauer (Finland) and Ambassador Martha Arna Akyaa Pobee (Ghana); joined by Professor Claire Charters (Ng̃ti Whakaue/ Australia) and former UN Special Rapporteur on the Situation of Indigenous Peoples Professor James Anaya (Apache and Purépeche).

After three consultations ending in April 2016, the Advisory Panel had received twenty-six statements and submissions concerning the topic of "enabling indigenous peoples' participation in the United Nations." Of these submissions the Advisory Panel received documents distributed between nations, states, and non-governmental organizations illustrated in Table 1 (at right):

While five states delivered statements to the UNPGA invitation to consult on the question of enabling indigenous participation in the United Nations, six nations and fifteen non-

governmental organizations were among the contributors." In other words, the consultation conclusions drawn up by the UNPGA Advisors in July 2016 essentially reflected comments and suggestions from written submissions from March 2016 through April 2016 and then during "face-to-face" consultations on 11 May and two additional face to face consultations on 18 May and 30 June of 2016. In addition the UNPGA Advisors held meetings with UN Special Rapporteur on the Rights of Indigenous Peoples (Victoria Tauli-Corpus),<sup>22</sup> Mr. Alexey Tsykarev, Chairman-Rapporteur of the Expert Mechanism on the Rights of Indigenous Peoples;<sup>23</sup> and unspecified members of the UN Permanent Forum on Indigenous Issues and representatives of UN Member States.

The UNPGA Advisors outlined in general terms divided opinions between states' government representatives and the views of nations and most of the non-governmental organizations. Negotiations will be needed to settle the sometimes wide held views. The focus of comments and recommendations emphasize were submitted under four focal criteria:

1. Procedures and modalities that will make the participation of indigenous peoples' representatives meaningful and effective.

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22. Special Rapporteur on the Rights of Indigenous Peoples reports to the Council on Human Rights, seeks to promote "good practices" by states governments dealing with indigenous peoples and assesses human rights violations and conducts studies on the rights of indigenous peoples. Ms. Tauli-Corpus is the former president of Tebtebba Foundation (Indigenous Peoples' International Centre for Policy Research and Education) in the Philippines. (See: <http://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/SRIPeoplesIndex.aspx>)

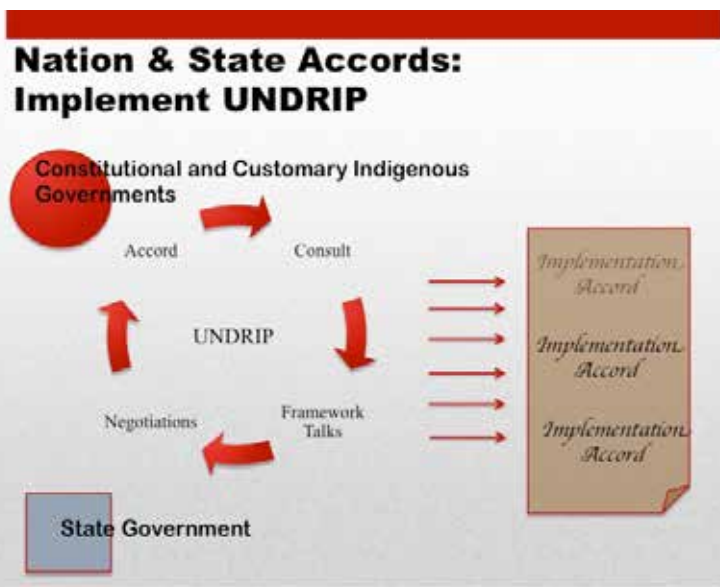
23. The Expert Mechanism on the Rights of Indigenous Peoples was established under the Council on Human Rights in 2007 with five members. Mr Alexey Tsykarev is from the Karelia Republic in the Russian Federation.



Fourth World Nations in the United Nations?

Table 1: Nation, State & Contributors to 2016 UNGA Consultations

Type	Number	Identity	State of Origin
Nations	6	Inuit Circumpolar Council	Denmark
		Maritime Aboriginal Peoples Council – Intergovernmental Body	Canada
		Sami Parliament & Sami Parliamentary Council	Finland, Norway, Sweden
		Vagahau Niue Trust and Pacific Women’s Indigenous Network – Free Associated	New Zealand
		Wakerahkats:te, Iakoiane Mohawk Nation (SKennen Aken:hak)	Canada/USA
		Yamasi	USA
States	5	Australia	Australia
		El Salvador	El Salvador
		Kingdom of Denmark	Denmark
		Russian Federation	Russian Federation
		The United States of America	USA
NGO	15	Association of American Indians	USA
		Center for World Indigenous Studies	USA
		Confederación Nacional de Mujeres Campesinas Indígenas Originarias de Bolivia	Bolivia
		Confederación Sindical única de Trabajadores Campesinos de Bolivia (CSUTCB)	Bolivia
		Council for the Rights of the Saraguro People	Ecuador
		El Tambo, Huanacayo	Peru
		Elleyada, Autonomous non-profit organization (Republic of Sakha-Yakutia)	Russian Federation
		Indian Law Resource Center	USA
		Indigenous Peoples Conferences	The Philippines
		International Indian Treaty Council	USA
		National Congress of American Indians, Native American Rights Fund (Joint Statement)	USA
		Saami Council	Finland, Russia, Norway & Sweden
		Sámi Education Institute	Sweden
Southeast Indigenous Peoples’ Center (Yamasi)	USA		
West Papua Interest Association	Indonesia		



2. Criteria for determining the eligibility of indigenous peoples' representatives for accreditation.
3. Nature and membership of a body to determine the eligibility of indigenous peoples' representatives for accreditation.
4. Details of the process, including the information required to be submitted to obtain accreditation as an indigenous peoples' representative.

The Advisors reported in July 2016 the general flow of opinions, comments, and suggestions indicating from time-to-time that there “is a convergence,” but often indicating that there are significant differences in the submis-

sions. The Advisors summarized their findings and here (Table 2, pp. 77-80) I condense them to indicate their emphasis.<sup>24</sup>

It remains unclear at the publication of this article whether Fourth World nations will be engaged in negotiations among themselves, with non-governmental organization, or with states' governments to settle differences as to Fourth World nation participation. It may be that the UN Member States will finally decide that it is “their” organization and they should decide who could participate. It may be that since some indigenous nations are larger than many UN Member States in population, they may be recognized to have a significant part in deliberation about their participation. The exchanges with the UNGAP Advisors clearly suggests there are wide differences in perspective and positions between Fourth World nations and some Member States. Yet, it is also apparent that there are some criteria for participation where there is agreement or near agreement that can serve as a basis for further discussion.

One thing is quite certain; the questions will not actually be *(continues on page 78)*

24. Condensed from the United Nations from the Advisors' report to the General Assembly; “Compilation of views on possible measures necessary to enable the participation of indigenous peoples' representatives and institutions in relevant United Nations meetings on issues affecting them, and of good practices within the United Nations regarding indigenous peoples' participation.” UN General Assembly (27 July 2016) A/70/990 70th Session.

Table 2: Nation & State UN Participation Consultation Perspectives: Advisor's Summary

Focal Criteria	Nation Perspectives (including NGOs)	State Perspectives (including NGOs)
1	The need for enhanced forms of participation for indigenous peoples in UN bodies affecting them	Support expressed for a separate category of participation in the UN-the UN system does not naturally or sufficiently accommodate the participation of indigenous peoples as indigenous peoples in UN bodies
Potential Agreement	Indigenous peoples' participation at the UN should not fall below that of ESOSOC-accredited non-governmental organizations and, further, should not in anyway undermine existing unique procedures permitting the participation of indigenous peoples' organizations in the Expert Mechanism on the Rights of Indigenous Peoples and the Permanent Forum on Indigenous Issues.	General Agreement
	Focus in this process is on the establishment of a new and unique category for indigenous peoples' participation in the General Assembly. Advice received indicates that the General Assembly has the authority to do so *** it is potentially discriminatory to exclude indigenous peoples from an invitation to observe the General Assembly when other non-state actors have an invitation to observe the General Assembly. *** these issues can be managed just as the participation of non-state-actors is managed in, for example, the ECOSOC and Human Rights Council and their respective subsidiary bodies. For example, spaces for indigenous peoples' speaking in the General Assembly might be managed by procedures setting out specific times and a set number of speaking spots for accredited observer Indigenous peoples' organizations. These speaking slots might be, under one suggestion, allotted by regions (understood from an indigenous-regions viewpoint).	Granting of observer status in the General Assembly should be confined to states and to those intergovernmental organizations whose activities cover matters of interest to the Assembly *** the need for coherence and consistency in treatment of non-state actors and their rights to participate in the UN as well as how a new category might impact on the participation of indigenous groups and/or NGOs in the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples. *** Indigenous peoples are not states and thus should not be accorded a so-called "permanent observer status", which is similar to the view that the intergovernmental nature of the UN, and in particular participation in the General Assembly, should be maintained.
	Almost all issues addressed in the UN affect indigenous peoples. Many also maintain that indigenous peoples' representative institutions and organizations should have the right to participate in all UN bodies which indigenous peoples themselves judge to affect their interests. *** the need to ensure that indigenous peoples' representative institutions from all regions have in practice and in principle the same rights and capacity to participate in the UN.	Some are of the view that mechanisms to enable unique forms of participation for indigenous peoples should be first established in only some UN bodies such as the ECOSOC, the Human Rights Council and their subsidiary bodies. *** The clearer and stricter the rules and procedures to accredit indigenous peoples' institutions the more likely there would be agreement on enhanced levels of indigenous institutions' participation in the higher-level UN bodies such as the General Assembly.

Table 2: Nation &amp; State UN Participation Consultation Perspectives: Advisor's Summary

(2 of 4 pages)

Focal Criteria	Nation Perspectives (including NGOs)	State Perspectives (including NGOs)
2	<p>Specific forms of indigenous participation in the General Assembly should be consistent with those of the vast majority of current holders of observer status in the General Assembly, namely inter-governmental and other organizations. This would include, for example, the right to speak, but not the right to reply, the right to take initiatives or the right to vote. Others referred to the need for adequate seating and access to documents for indigenous peoples' representative institutions. *** specific times and a set number of speaking spots for accredited observer indigenous peoples' institutions could be created. *** Indigenous peoples should be including in resolution drafting and negotiation sessions in all relevant bodies of the UN. *** that indigenous representative institutions should be afforded some priority as representatives of peoples when issues especially relevant to indigenous peoples are addressed</p>	<p>Indigenous peoples should not be included in formal meetings for drafting negotiations on resolutions in the General Assembly context. *** Indigenous peoples' institutions should not take priority over ECOSOC accredited non-governmental organizations in speaking order or seating arrangements in the ECOSOC or Human Rights Council. ***</p>
Potential Agreement	<p>At a minimum, indigenous peoples' modalities of participation at the UN should not fall below that of ESOSOC accredited non-governmental organizations.</p>	<p>At a minimum, indigenous peoples' modalities of participation at the UN should not fall below that of ESOSOC accredited non-governmental organizations.</p>
3	<p>Establishment of a new body to recognize and accredit indigenous peoples' representative institutions as eligible for a new category of participation. Suggestions in this regard included that the new body would consist of both Indigenous peoples representatives and states or, alternatively, indigenous and state appointed independent experts *** new accrediting body be balanced by geographic area – including equality in membership of individuals from the global North and global South – and gender representation.</p>	<p>To qualify as an indigenous peoples' representative institution, state approval must first be obtained *** the accreditation body be composed of mainly states and/or the use of a "non-objection" procedure. *** a two-step process with recommendations from a new Indigenous accreditation body being reviewed by the General Assembly with the final decision resting with the General Assembly.</p>
4 Partial Agreement	<p>Qualification for a new category of participation should center on indigenous peoples' representative institutions. *** institutions should be limited to indigenous governance institutions while others express that such representative institutions should be understood broadly and flexibly to include different types of organizational structures.</p>	<p>Qualification for a new category of participation should center on indigenous peoples' representative institutions.</p>

Table 2: Nation & State UN Participation Consultation Perspectives: Advisor's Summary

(3 of 4 pages)

Focal Criteria	Nation Perspectives (including NGOs)	State Perspectives (including NGOs)
	<p>Disagree with any attempt to define indigenous peoples or their institutions in any way. *** Many indigenous peoples have multiple representative institutions within and across states and regions. There are often layers of representation that include local, regional, state and international levels</p>	<p>Indigenous peoples' representative institutions are required, citing ILO Convention No 169 criteria. ** * if states have a greater or final say in determining accreditation, there is less of a requirement for a definition</p>
<p>Partial Agreement</p>	<p>Indigenous peoples and their representative institutions need to be distinguished from non-governing organizations, organizations composed of indigenous voluntary members or non-indigenous peoples' organizations. The point was made that it would undermine indigenous peoples' governing institutions if other types of indigenous organizations were entitled to the same category of participation. *** global indigenous peoples' institutions such as indigenous women and youth organizations should be eligible for enhanced participation in the UN system.</p>	<p>Indigenous peoples and their representative institutions need to be distinguished from non-governing organizations, organizations composed of indigenous voluntary members or non-indigenous peoples' organizations. The point was made that it would undermine indigenous peoples' governing institutions if other types of indigenous organizations were entitled to the same category of participation. *** global indigenous peoples' institutions such as indigenous women and youth organizations should be eligible for enhanced participation in the UN system.</p>
<p>Difference between indigenous representatives</p>	<p>Should be confined to governance institutions, including governing councils, parliaments, and traditional authorities, while others claim that not all indigenous peoples' representative institutions can be accurately described as governing, in some cases because of the impact of colonization and/or dispossession, and should not be denied eligibility as a result. Some maintain that eligibility should extend to organizations that represent more than one indigenous people.</p>	<p>That eligibility does not extend to indigenous organizations that may be able to apply for ECOSOC accreditation as non-governing organizations but that do not actually represent indigenous peoples. Another expressed the view that one indigenous people might be represented by more than one indigenous peoples' representative institution and that there should be flexibility in accommodating multiple forms of indigenous peoples' organizational structures.</p>
<p>Partial Agreement</p>	<p>State recognition of an organization as representative of an indigenous people, although a relevant factor, should not be a prerequisite for eligibility for accreditation as an Indigenous peoples' representative institution. Many took the view that a necessary factor for qualifying as an Indigenous peoples' representative institution is that they genuinely represent one or more people/s that self-identifies as Indigenous. Other factors cited as relevant include that the institution represent a people with ancestral connections with their lands, territories and resources, who share history, language and culture, who exercise the collective rights of the people and who have the authority to practice self-government and, where relevant, who have entered into treaties, agreements or other constructive arrangements</p>	<p>State recognition of an organization as representative of an indigenous people, although a relevant factor, should not be a prerequisite for eligibility for accreditation as an Indigenous peoples' representative institution. Many took the view that a necessary factor for qualifying as an Indigenous peoples' representative institution is that they genuinely represent one or more people/s that self-identifies as Indigenous. Other factors cited as relevant include that the institution represent a people with ancestral connections with their lands, territories and resources, who share history, language and culture, who exercise the collective rights of the people and who have the authority to practice self-government and, where relevant, who have entered into treaties, agreements or other constructive arrangements</p>

Table 2: Nation & State UN Participation Consultation Perspectives: Advisor’s Summary

(4 of 4 pages)

Focal Criteria	Nation Perspectives (including NGOs)	State Perspectives (including NGOs)
	<p>Indigenous peoples’ representative institutions should have the exclusive authority to designate their own individual representatives in accordance with their own procedures but the said representatives should have appropriate credentials from the institutions that they represent. Similarly, there is support for the view that their own constituents should recognize Indigenous representatives as such.</p>	<p>Indigenous peoples’ representative institutions should have the exclusive authority to designate their own individual representatives in accordance with their own procedures but the said representatives should have appropriate credentials from the institutions that they represent. Similarly, there is support for the view that their own constituents should recognize Indigenous representatives as such.</p>
	<p>Requested more information about the financial implications of the proposals to enhance indigenous peoples’ participation at the UN pointing out that the budgetary implications of enhanced participation need to be considered. Others considered that, while relevant, the financial implications should not be a stumbling block on the road to enhanced participation for indigenous peoples at the UN.</p>	

On the basis of what the General Assembly President’s Advisors concluded, it may be fair to note that if there were negotiations between Fourth World nations representatives and UN Member States’ representatives about the proposals there may be potential agreement in two areas, partial agreement in three areas and diametric opposition on one topical proposal. That results in five of twelve areas where there is a possibility for discussion and seven topical areas where there is fundamental disagreement. This could be an opening for negotiations “if there are negotiations.”

resolved in one year - or even ten. It is clear, however, that Fourth World nations are moving to obtain a seat at the table to participate in dialogues with other nations and with states to assess what is to be done to achieve war and peace. ■

About the Author



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