

**Pacific Indigenous Peoples Preparatory meeting for the  
World Conference on Indigenous Peoples  
19 - 21 March 2013, Sydney Australia**

**Agenda Item: Review of involvement by Indigenous Peoples in the UN System**

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**Permanent Forum on Indigenous Issues  
'Welcome to the Family of the UN'  
July 2003**

"You have a home at the United Nations ... you will make an immense contribution to the Organization's mission of peace and governance."

This message was delivered on 24 May 2002, by the UN Secretary General, to delegates of Indigenous Peoples in New York, at the first session of the Permanent Forum on Indigenous Issues.

The Secretary General's speech, delivered at the closing ceremony on the last day of the two-week session, reflected our own expectations that the inaugural gathering of the new UN body, the Permanent Forum on Indigenous Issues, will be remembered as a milestone in modern international history.

To understand the significance of the Permanent Forum it is important to first examine the existence of Indigenous Peoples and the nature of relationships between Indigenous Peoples and the modern nation states of the world.

It is estimated that there are between 300 million and 500 million Indigenous people living in every geographical and climatic region of the world.

For example, there are the Inuit peoples of the frozen Arctic, and the Saami peoples in Scandanavia. There are the San or the Bushmen of Southern Africa, the Maasai and Samburu of East Africa and the Imazighen (Berbers) of arid North Africa. In South Asia there are many tribal peoples such as the Jummas and the Jarawa Peoples, and forest dwellers and island peoples in the archipelagos of southeast Asia and Indonesia.

The Aboriginal peoples in Australia are one of many Indigenous Peoples living in or around the Pacific region. There are many Melanesians nations and peoples of the western Pacific, Polynesian nations and peoples of the southern and eastern Pacific including the Maori in New Zealand, the Ainu of Japan. In the Americas we are familiar with the many native American peoples of North America, but there are also diverse peoples in central and South America, including the Awa, Enxet, Guarani, Yanomami and Wichi.

This is but a brief account of the Indigenous Peoples of the world. As Indigenous Peoples we have identifying characteristics that clearly distinguish us from other populations and nation states. In general these distinguishing features are racial, linguistic, social, ideological, political, economic and religious.

Our claim to a global identity is based upon our ancient cultures and viable relationships with our territories, in contrast to the modern political entities of nation states and consumer cultures. However our identity can also be attributed to a history of oppression and the blatant inequalities that have been allowed to develop, establishing the vast gap of disadvantage for Indigenous Peoples compared to other Peoples of the world.

Indigenous Peoples claim the distinction of being the 'first peoples' of the world, successful in maintaining throughout the history of humankind civilised social order, natural laws and a benign relationship with our environment. Our societies are complex and resilient, but at the same time they can be extremely vulnerable to exploitation and domination.

European colonisation of the world, later intermixed with imperialism and industrialism, and followed by the re-order triggered by the modern global wars, have resulted in the modern political states. These political institutions are founded in the integrity of geographical boundaries between peoples, the rights of peoples to self-determination, the universality of human rights, and international order through the United Nations.

In the aftermath of World War II, the period when the modern political order was largely determined, many new nations were created, and fundamental principles regarding international relationships were established. Colonial empires were disbanded and dependent territories progressively evolved into nation states. International codes and standards were identified and treaties became the means of establishing global order.

We should note that after the Great War, or World War I, attempts to establish human rights and anti-discrimination standards in the League of Nations failed due to lack of international goodwill. However the events and aftermath of World War II made these standards imperative and many peoples of the world demanded recognition of their right to self-determination, and the means to exercise that self-determination, and a world free of racial discrimination.

Indigenous Peoples, although almost universally the victims of colonialism, imperialism and war, did not have a place in shaping these events or determining the outcomes.

Some Indigenous Peoples were fortunate to achieve nationhood and independence, but usually where there was no claim to their resources. This particularly was a phenomenon in the Pacific region where island populations of Indigenous Peoples achieved statehood. Their claims for independence were probably less a factor in their achievement of self-determination than the international pressures for de-colonisation and the absence of sufficient economic incentives for continuing European domination.

Thus extremely small and isolated populations achieved nation status – Fiji, Vanuatu, Solomon Islands, Tonga etc. - and the right to participate in international affairs, particularly in the United Nations. These examples can be regarded as exceptional and do not provide the precedent for all Indigenous Peoples to have recognition as independent states. However they do provide the argument that there is no rule preventing Indigenous Peoples having the right to self-determination, statehood and a role in international affairs.

Have Indigenous Peoples sought independence? This question is easily answered in contemporary times, for the many international meetings that have been held in the past three decades, on the topics of elimination of racism, human rights, environmental protection and development, have been ringing with the demands of self-determination for Indigenous Peoples.

It has not been just a recent outcry. The world has at least some exposure to the opposition posed by Indigenous Peoples to their colonial domination. The histories of the seventeenth, eighteenth and nineteenth centuries are filled with one-sided accounts of the genocide, murders and brutality used to steal wealth, capture territories and force dominion over Indigenous Peoples. Even the most romantic 'western' movie cannot conceal the efforts made by the native Americans to protect their sovereignty and rights to property.

However a gap exists in the historical record about the struggle by Indigenous Peoples to maintain sovereignty over their lands. The first half of the twentieth century does appear to be missing accounts of the struggle for Indigenous freedoms. This is a phenomenon worthy of further study, as it is period which I believe leads to the assumption by nation states of their acquisition of sovereignty over Indigenous Peoples and our lands.

I do not intend, in this essay, to tackle this issue of where sovereignty lies, or why Indigenous Peoples have the right to self-determination. My argument is that there has clearly been an uninterrupted struggle by Indigenous Peoples to maintain identity and autonomy.

The lack of historical account, in the early twentieth century, of the Indigenous struggle is attributable to the widespread policies of 'exclusion' and 'assimilation' that followed the domination of the peoples and the lands. These policies were a consequence of the exploitation phase where lands and resources were acquired through force and compulsion.

Under the policy of exclusion, Indigenous Peoples were treated as 'aliens' within the state. Where our territories were not under claim by the state, the Indigenous population may have been ignored, or subjected to a territorial boundary which would identify the state's interests and non-interests. Where territories were under claim, the Indigenous population would be annihilated, removed, restricted or restrained. As these procedures required formal endorsement by the state, they led to the establishment of 'reserve lands' and 'protectors'.

Indigenous Peoples were thus effectively excluded from the state while their lands and resources were included. In compatibility with this territorial and economic policy the state would contemplate the 'assimilation' of the population, relying upon the assimilation of the individual. To effectively implement an assimilation policy, the state needed to establish control over the population as a race, to restrict the freedoms of the population and to denigrate and deny Indigenous identity.

During the first half of the twentieth century Indigenous Peoples all around the world were thus imprisoned. At a period of time when much of the world was being redefined by industry, technology and new economic developments, Indigenous Peoples were suffering a dark period of our existence. Our social systems were being disrupted, our governance and political institutions were being overlaid by alien religious orders, our leaders were being outlawed in foreign legal frameworks and our children were being removed and re-educated for assimilation.

However, in spite of the apparent lack of historical accounts of Indigenous Peoples' claim to sovereignty, there were still clear signs that the struggle for autonomy continued. During the period of the League of Nations there are at least four separate occasions when representatives of Indigenous Peoples sought to gain recognition of their existence and inherent rights before the international organization.

The first of these cases occurred in 1924.

Levi General, born in 1872, became chief of the Younger Bear clan of the Cayuga Nation, one of the six nations of the Iroquois Confederacy in north America. He was fluent in all six languages of the Iroquois, and was an eloquent speaker. His title became Deskaheh. The Iroquois believed their rights of sovereignty were recognised and protected in international law, in the 1794 Jay Treaty and the 1814 Treaty of Ghent, signed between Great Britain and the United States of America.

'The United States of America engage to put an end immediately after the ratification of the present treaty to all hostilities with all the tribes or nations of Indians with whom they may be at war at the time of such ratification, and forthwith to restore to such tribes or nations, respectively, all the possessions, rights and privileges which they may have enjoyed or been entitled to in one thousand eight hundred and eleven, previous to such hostilities, against the United States of America, their Citizens and subjects, upon the ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly, and

His Britannic Majesty engage on His part, to put an end, immediately after the ratification of present treaty, to all hostilities with all the tribes or nations respectively, all the possessions, rights and privileges which they may have enjoyed or been entitled to in One Thousand Eight Hundred and Eleven, previous to such hostilities, provided always that such tribes or nations shall agree to desist from all hostilities against His Majesty and His subjects, upon ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly.'

*Article 9, Treaty of Ghent (1814), signed after the War of 1812 between Great Britain and the United States of America*

Following World War I, the Canadian Government proposed to alter the legal foundation and status of governance for the Iroquois, using the Indian Act. Deskaheh

was strongly opposed to any loss of rights for the Iriquois and was motivated to seek international support for the Iriquois cause.

Deskaheh signed a petition to the Governor General of Canada, recalling Great Britain's commitment to Indian autonomy. When this received no response he undertook, in 1921, to sail to Great Britain, using a Six Nations passport, to seek an audience with King George V. His audience was refused and he returned home.

Deskaheh continued on with his international quest. In particular he was inspired by the creation of the international League of Nations which, in the words of President Woodrow Wilson, was meant to be a guarantee to 'great and small states alike'.

'A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike. In regard to these essential rectifications of wrong and assertions of right we feel ourselves to be intimate partners of all the governments and peoples associated together against the Imperialists.'

*Woodrow Wilson, 'Speech on the Fourteen Points' (1918), Congressional Record, 65th Congress 2nd Session, 680-681pp.*

Deskaheh arrived in Geneva, Switzerland, in late 1923 and for a year prepared petitions and held meetings with officials and representatives. Although he received popular support from some governments and the European public he failed to gain enough support to address the League of Nations. Some countries, such as Estonia, Ireland, Panama and Persia gave their support to Deskaheh's cause but Great Britain, also representing Canada at the League of Nations, had the issues taken off the Leagues' agenda.

'My appeal to the Society of Nations has not been heard, and nothing in the attitude of Government does not leave me any hope.'

*Letter from Deskaheh to the editor of a Swiss journal, November 1924*

'We appealed to Ottawa in the name of our right as a separate people and by right of our treaties, and the door was closed in our faces. We then went to London with our treaty and asked for the protection it promised and got no attention. Then we went to the League of Nations at Geneva with its covenant to protect little peoples and to enforce respect for treaties by its members and we spent a whole year patiently waiting but got no hearing.'

*Radio speech on 10 March 1925, Rochester Radio, from 'DESKAHEH - Iroquois Statesman And Patriot' booklet published by Akwesasne Notes - Mohawk Nation*

Coincidentally, at the same time that Deskaheh was lobbying for native American rights in Geneva, a delegation from the Maori of New Zealand also arrived in Geneva to seek audience with the Secretary-General of the League of Nations.

On 12 September 1924, Mr T. W. Ratana, a Maori political and religious leader, and Mr Moko met with a League official who recorded in a memo that the delegation was bringing Maori concerns over land in New Zealand. Ratana claimed that the 1840 Treaty of Waitangi had been violated. They had taken their grievance to the New Zealand government but failed to get satisfaction. They wanted their claims to be submitted to the League of Nations but their case does not appear to have been accepted for consideration. Ratana returned to New Zealand and said that, in his

international delegation to the King of Great Britain and the League of Nations, he had been treated as a beggar.

In 1926 the United States of America received a petition from the Miskito Indians of Central America to have their case taken before the League of Nations. They sought international remedy to the breaches of the Miskito Convention, and international treaty between three governments.

'Thirty two years of the most humiliating experience that has never before befallen a nation has been our lot since the incorporation of our race and territory under the terms of the Miskito Convention by the Republic of Nicaragua.

This Covenant which was witnessed and signed by the representatives of the United States Government and also by those of the British, is the ground on which we base our complaint, and also the proof of our argument. ...

We continue to plead our cause for we are confident that it is Just, and in our appeal to the United States, which is also a member of the League of Nations, we are assured that the articles embodied in this universal contract may be practically applied ... we cannot under existing conditions assimilate or amalgamate with the people of Latin civilization, therefore we are looked upon and treated as enemies by them, which is in direct opposition to the terms of the Miskito Convention.'

*George A Hodgson, Miskito Indian Patriotic League, letter to the Secretary of State, United States of America, 10 February 1926*

The fourth case relates to the Aboriginal peoples in Australia. In 1938, the Australian nation was celebrating its 150th year of 'settlement' dating from the landing of the British 'First Fleet'.

Aboriginal leaders, led by William Cooper and Bill Ferguson of the Australian Aborigines League (later to become the Aboriginal Progressive Association), had prepared a national 'Day of Mourning' to coincide with the Australian celebrations. This protest highlighted Aboriginal concerns about exclusion and unjust treatment by the State governments of Australia. Until then the Australian Constitution prevented the national government making laws or taking jurisdiction over Aboriginal people. This provision in the Constitution remained ensconced until 1967.

The 1938 public protest followed other previous efforts by William Cooper to change the relationship between Aborigines and the State. In 1935 he petitioned for Aboriginal seats in Parliament and a national department for Aboriginal affairs. The government rejected the request because it was unconstitutional. The petition was addressed to King George V but the government refused to hand it on.

Then, later in 1938, the Aborigines Progressive Association sent a letter to the President of the League of Nations calling for the organization to adjudicate the interests of Aboriginal people.

'Owing to the illtreatment of the aborigines through-out Australia in the past and the recent happenings in Darwin & knowing that the League of Nations has a mandate over the Northern Territory we appeal to you in the interest of our down-trodden natives to exercise you mandated authority in the cause of justice.'

*Aborigines Progressive Association, letter to League of Nations, 4 July 1938*

There is no record of any reply to this letter from the League of Nations office.

The messages to the League of Nations from Indigenous Peoples are clear enough. Indigenous Peoples of different cultures and in different locations of the world, acting independently to their circumstances, were asserting a right to be heard and to be considered by the international community. These voices represented only a proportion of the Indigenous Peoples in the same circumstances. Many Indigenous Peoples did not have the means to identify an appellant body outside of their captured existence, or to make representations to that body.

The lack of response from the League of Nations to Indigenous Peoples may be of little relevance now but it is worth noting that the League had at least more exposure to the issues of 'peoples' rights and could have been more perceptive of, and responsive to, Indigenous Peoples concerns.

The United Nations has been until recently less concerned with the assertions made by Indigenous Peoples for the exercise of the right of self-determination.

Henry Reynolds, historian, argues that the League of Nations gave a lot of thought to the lot of minorities while the United Nations, until recent years, emphasized the rights of individuals and the rights of states, but assumed no other entities existed in between to have rights.

'The creation of new states out of the ruins of the Turkish and Austro-Hungarian empires produced the situation where many national minorities found themselves imprisoned within the new countries dominated by majorities which were, as often as not, traditionally hostile to them. So the League of Nations negotiated a whole series of minority treaties to ensure the cultural survival of the minorities. They were about groups, not about individuals. They were about minority rights... So in 1927 it was possible to consider separatism as a serious consideration. By 1967 the emphasis was on assimilation and integration.'

*Henry Reynolds 'Aborigines and the 1967 Referendum: Thirty Years On', Department of the Senate Occasional Lecture Series, Parliament House, Australia, 14 November 1997*

Even though evidence exists that Indigenous Peoples were endeavouring to use the international arena to create a consciousness of their legitimate existence it was not until the period after World War II that the 'winds of change' began to occur. In the aftermath of the war the world became more intolerant of class inequalities in societies, and inequalities generated through racial and ethnic prejudice.

At the international level there were a number of factors which led to increased activism by Indigenous Peoples.

The first and obvious of these factors was the universal commitment to anti-racism and human rights, gelled within the opposition and combating of Nazi Germany and its policies of racial superiority.

Another factor, linked to the strong humanitarian sentiment, was the desire to de-colonise the populations of the world and to establish the right of self-determination for peoples.

The International Labour Organization (ILO) also had been working for many decades, since the days of the League of Nations, on establishing suitable labour standards where the interests of ethnic groups, tribal peoples and Indigenous Peoples were threatened by expansionist economic developments, such as the exploitation of forests and minerals.

When ILO Convention 107 was adopted in 1957 it became the first international instrument to recognise the right of ownership of tribal and Indigenous Peoples over their traditional lands. Although some provisions of the convention would not meet contemporary standards for recognition of Indigenous rights it has stood as a cornerstone of international policy, and as a reference point for Indigenous representatives in the post-war years.

The civil rights movement in the United States of America was a clear sign of the momentum by the population, now referred to as civil society, for worldwide changes in race relations. During the 1960s and 1970s the battle against racial and gender discrimination took hold and led to the breakdown and removal of unfair laws and practices, and challenged any overt signs of racism.

The rapid growth of Indigenous organizations and increased political activism soon resulted in national organizations, international linking of Indigenous Peoples and Indigenous organizations registering with the United Nations agencies. One of the first Indigenous organizations to be recognised by the United Nations as a non government organization, in 1977, was the International Indian Treaty Council. But this was not the first organization.

In 1974 the National Indian Brotherhood, under the leadership of George Manuel, became the first Indigenous NGO to the United Nations. George Manuel had benefited and learnt from the experience gained in developing the NIB as a pan-aboriginal organization across Canada, from his earlier failed attempts in the 1960s to gain access and influence in the UN headquarters in New York, and from his participation on Canadian Government delegations to international meetings and events.

After successfully organising the national profile of the Indigenous rights movement Manuel set his focus upon the international developments.

The first meeting of the World Council of Indigenous Peoples occurred in 1975, hosted by the National Indian Brotherhood. The meeting was held in Port Alberni in British Columbia, Canada. Indigenous Peoples from 24 different countries around the world attended the first General Assembly.

'Now, we come from the four corners of the earth,  
we protest before the concert of nations  
that, 'we are the Indigenous Peoples, we who  
have a consciousness of culture and peoplehood...'



We vow to control again our own destiny and  
recover our complete humanity and  
pride in being Indigenous People.'

*Extract from Declaration, WCIP First General Assembly, Port Alberni, BC Canada,  
October 1975*

The meeting was organized around topics to be discussed in workshop and plenary sessions. These topics included representation at the United Nations, the Charter of the World Council of Indigenous People, social, economic and political justice, cultural identity, and land and natural resources.

By the end of the week the participants had confirmed the common interests of the Indigenous Peoples around the world and agreed to continue a strategy of active participation in the United Nations.

The second General Assembly of the WCIP was held in Kiruna in Samiland, Sweden. This meeting continued the unification of the international cause of Indigenous Peoples. The representations were increased by greater participation from the Indian peoples of Latin America.

Professor of Law, Douglas Sanders, made the observation that a dichotomy of interests existed for the Indigenous Peoples represented at the WCIP meeting. He distinguished between the experiences of the Indigenous Peoples colonized by Nordic/Anglo powers and the experiences of the Indigenous Peoples in Latin America. Sanders saw significance in the international perspectives from delegations whose members faced imprisonment and torture upon their return from the WCIP General Assembly.

'The Sami, the North American Indians, the Maoris and the Australian Aborigines could understand each other's situation quite easily. But the relationships between those groups and their national governments were paradoxical, perhaps incomprehensible to the delegates from most of Latin America.

Correspondingly, the political tension within which Indian organizations functioned in Latin America was difficult for the other delegates to appreciate... The basic elements of indigenous culture were mutually understood - but the political differences between governments in Latin America and the industrialized west had given the two groups of delegates radically different experiences with national governments.

The early delegations to England from British Columbia and New Zealand were experiments in political action. It can be argued that the delegations mistook the locus of power. They relied on colonial myths and symbols, misunderstanding the realities of the political system with which they had to deal.

Will the work of the World Council, accredited to the United Nations, simply prove to be another symbolic exercise that cannot produce results?'

*Prof. Douglas Sanders, 'The Formation of the World Council of Indigenous Peoples',  
Paper, April 1980*

Prof. Saunders questions on the potential of the World Council to achieve international results. This question was posed soon after the second General Assembly of the World Council. Since 1980 the World Council has faded from view,

although the organization still exists, and international focus has shifted to the United Nations meetings where large numbers of Indigenous Peoples delegates have been active in international developments.

The participation of Indigenous Peoples in United Nations' meetings by the end of the twentieth century is a stark contrast to the first half of the century, when Indigenous delegations failed to glean any response to their representations.

The primary reason for the successful participation lies with the United Nations' own commitment to recognise the contribution to international affairs from non government sources. This recognition is incorporated in the UN Charter.

'The Economic and Social Council may make suitable arrangements for consultation with non-government organizations, which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the member of the United Nations concerned.'

*UN Charter, Article 71*

While a number of NGOs were given accreditation since 1948, there existed tensions in the earlier years of the United Nations over the meaning of Article 71, and 'Cold War manouvers' meant that accreditation of NGOs was an uncertain process. In 1968 the rules for accreditation were reviewed and ECOSOC Resolution 1296 then became the basis for establishing accreditation criteria. Under the new arrangements any organization seeking consultative status to ECOSOC must have appropriate goals, have a representative and international character, and democratic authority to speak for the members of the organization.

In the 1970s and 1980s a number of Indigenous organizations did receive consultative status, even though not all of these organizations were international bodies. What these organizations do share, as a general or broad characteristic, is a capacity to represent Indigenous Peoples at a 'peoples' level. The number of Indigenous NGOs participating at the UN forums is steadily increasing, but the accreditation for these organizations is occurring through another mechanism, which will be discussed a bit later in this chapter.

It is relevant to discuss the more recent developments within the United Nations to promote the role of civil society. Part of the reason for the recent boom in NGO activity is that Western Governments are financing them in a process of privatisation of government functions. Also NGOs are becoming more important as a source of information to the UN, and are correspondingly more demanding of governments at the international level.

NGO participation soared with the global conferences of the 1990s, particularly the UN Conference on Environment and Development, or Rio Conference, in 1992, and many international interests, such as the environment, information and intellectual property, are perhaps less the active domain of governments than they are of civil society. One other development is the increased exchange of personnel between governments and NGOs.

It would be misleading to attribute the momentum of increased participation by Indigenous Peoples to the UN Charter and NGO policy alone. Indigenous Peoples have been developing this momentum for the past century, and it is coincidental that opportunities existed through concurrent developments in the UN.

The use of the term 'non government organization' has met with resistance by Indigenous delegations because they have stressed their populations' status as 'peoples' is diminished, and 'non government' is an incorrect description. They claim that participation in the United Nations as 'Indigenous Peoples' delegations is the legitimate arrangement.

It might be argued this is a pedantic point, and that the members of the United Nations would not share this view of the delegations and their 'organizations' or constituents. However it is important to see that there is a consistency between these contemporary delegations by Indigenous Peoples to the UN and the past delegations to the League of Nations.

The key to the induction of delegates of Indigenous Peoples into UN processes lies in three particular developments.

The first of these is Resolution 34 passed by ECOSOC at its 28th Plenary meeting on 7 May 1982. The resolution established an expert 'Working Group on Indigenous Populations' under the Sub-Commission on Prevention of Discrimination and Protection of Minorities, to meet for five days annually, and consult with governments and Indigenous Peoples.

The resolution identified four reasons for establishing the Working Group. These reasons included the 'urgent' need to protect rights, the concern that recourse is needed at the international level to promote and protect rights for Indigenous Peoples, and the conclusions reached, by the Sub-Commission, that the plight of Indigenous peoples is of a serious and pressing nature and special measures are urgently needed.

The noteworthy part of this resolution is that it was passed by the states at ECOSOC level. While a number of states may have felt threatened by Indigenous policies being discussed at the international level, and opposed Indigenous delegations participating in UN forums, the human rights agenda of the UN left little room for these concerns to be voiced openly.

The second development was the establishment of a voluntary trust fund to assist Indigenous delegations to participate in the meetings of the Working Group on Indigenous Populations. This decision was made by the General Assembly in Resolution 40/31, passed on 13 December 1985, and was regarded as a significant step to increase Indigenous participation in the forum of the Working Group.

The third development, contributing to the new relationship forming between Indigenous Peoples and the United Nations, was the ECOSOC decision in 1995 (E/CN.4/RES/1995/32) to extend consultative status to more Indigenous groups to participate in the elaboration of a declaration on the rights of Indigenous Peoples. The Sub-Commission on Prevention of Discrimination and Protection of Minorities

had previously reported that there were twelve Indigenous organizations with ECOSOC NGO consultative status.

Clearly this decision in 1995, to extend a special consultative status, was appropriate to ensure Indigenous Peoples would have sufficient status to negotiate with States on the form and content of any declaration on Indigenous rights. The mechanism to establish this access was to use the NGO provisions specified in Article 71 of the UN Charter and ECOSOC Resolution 1296 of 1968. However the status afforded under the 1995 resolution was to allow the accredited organizations to participate in the Working Group on the Draft Declaration.

These organizations, once accredited under Resolution 1995/32, did not have same access as afforded to other accredited NGOs to participate in the sessions of ECOSOC, the Commission on Human Rights or the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. This has not been discriminatory as the organizations have not sought participation through this process, although there is an increasing call for more Indigenous organizations to hold full ECOSOC NGO accreditation. This call unfortunately coincides with the UN's own concern to review the number and quality of NGO accreditations.

The three developments, the establishment of the Working Group on Indigenous Populations, the voluntary trust fund, and the special accreditation of Indigenous groups, have had the combined effect of bringing Indigenous Peoples to the United Nations. Thus the ambitions of the pre-WWII delegations to gain access to the international organization, originally the League of Nations, has been realised in the 1980s and 1990s.

The Working Group on Indigenous Populations sessions have become popular for Indigenous Peoples to attend and participate. Held in July of each year, and for a duration of five working days, the Working Group session sees over 600 delegates arrive from almost every region on earth. The Working Group, which consists of five experts appointed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, sits as a panel, and listens to the many delegates presenting submissions under the themes and agenda items of the session.

The primary concern of the Working Group was to 'give special attention to the evolution of standards concerning the rights of indigenous populations'. (ECOSOC Resolution 1982/34) This task led almost immediately to the development of a draft declaration on the rights of Indigenous Peoples.

The draft declaration prepared by the Working Group, and recommended to the Sub-Commission, carried two central concepts. The Indigenous populations are 'peoples', in the terms of the United Nations charter and conventions, and the rights of Indigenous Peoples are 'collective' rights. These concepts are regarded as intrinsic by the Indigenous delegations, but the States have not been prepared to reach a consensus on these challenging concepts.

More recently the states have softened their positions on collective rights, and the focus of international dialogue on Indigenous rights is now centred on 'peoples'. The

states concern is over the wording of Article 3 of the draft declaration which reads 'Indigenous Peoples have the right to self-determination'.

Whether Indigenous Peoples are 'peoples' is repeatedly debated at the Working Group and other UN forums, and this issue continues to be at the nub of the relationship between Indigenous Peoples and the states. But while the stand-off continues other developments are occurring in areas of interest to Indigenous Peoples.

For example, the Working Group members have completed extensive and expert studies on the relationship between Indigenous Peoples and Land, on Treaties, and on Heritage Protection. These documents have been added to the knowledge base of the UN and the findings remain a point of reference for UN business. In addition to the expert papers the Working Group has been successful in having theme discussions at each of its sessions, and sometimes these themes are directly linked to other major activities occurring within the UN major organization.

In Year 2002 the Working Group convened its twentieth session, a milestone representing a significant era of Indigenous participation in the UN. The list of developments over that twenty year period looks impressive.

- Document - Study on treaties, agreements and other constructive arrangements between States and indigenous populations. (E/CN.4/Sub.2/1999/20)
- Document - Final working paper - Indigenous peoples and their relationship to land (E/CN.4/Sub.2/2001/21)
- Document - Report of the Special-Rapporteur on the Protection of the heritage of indigenous people (E/CN.4/Sub.2/1996/22)
- Structure - Voluntary Trust Fund for Indigenous Peoples
- Structure - Open Ended Inter Sessional Working Group on the Draft Declaration on the Rights of Indigenous Peoples
- Structure - Appointment of Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people
- Event – International Year for the World's Indigenous Peoples (1993)
- Event - International Decade for World's Indigenous Peoples (1995-2004)

However impressive these achievements may be, there is also a negative side to these two decades.

The Working Group on Indigenous Peoples is a body of experts who are themselves non-Indigenous, the Special Rapporteur on Indigenous People is non-Indigenous, and the secretariat supporting the Working Group has, until recently, been made up

almost entirely of non-Indigenous staff. This lack of Indigenous personnel is not in itself a problem, however it can be a problem if the delegations do not have, or lose, trust in these institutions.

The Working Group meetings are large forums and the many participants are competing for a few minutes on the agenda to present their interventions. These interventions are almost always extremely important to the delegates themselves but can be easily 'lost' in the processes of the Working Group and beyond. Most interventions do not get direct responses.

A large proportion of the delegates to the Working Group sessions are presenting complaints and grievances about treatment by states. These interventions, of complaints about States, are discouraged by the Working Group, with every sympathy for the delegates' situation, as the body does not have, and can not have, a complaints process.

The large volume of information presented during the week session of the Working Group does not make it to the Working Group report. The Working Group is focussed upon key issues and strategies and may disregard much of the intervention information. Therefore the delegates who come to sessions seeking redress to crises in their communities will be extremely disappointed with the process.

The Working Group is, itself, little more than a sub-group of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The Sub-Commission is made up of 'human rights experts' who are not representatives of states, although they are selected from regions. It is possible that state affiliations may exist. The Working Group members are appointed from within the body of experts in the Sub Commission.

In practice, the Working Group was, for Indigenous participants, a funnel for information into the UN system with little capacity for the Indigenous participants to define actions and stimulate UN responses. The power still rested with the States, largely uninhibited by Indigenous voices in the main organs of the UN.

The distance between the Working Group on Indigenous Populations and the General Assembly was vast in distance, communications and time. The Working Group met in Geneva while the General Assembly met in New York. A resolution from the Working Group would take nearly eighteen months if it were to reach the General Assembly – the Working Group will hold another meeting in that time. The Working Group is four-levels below the General Assembly, as shown:

General Assembly

Economic and Social Council (ECOSOC)

Commission on Human Rights

Sub-Commission on Promotion and Protection of Human Rights

Working Group on Indigenous Populations

If certain States want to dampen an initiative from the Working Group they simply need to do nothing, by not proposing a resolution at the Commission, ECOSOC or General Assembly, or draft and advocate a passive, perhaps-qualified resolution. It is not clear whether this actually happened but there were very few resolutions which arose from the Working Group and were advanced through the system.

Each year the General Assembly would consider and endorse resolutions supporting the International Decade of Indigenous Peoples and note the work being undertaken on the Draft Declaration on the Rights of Indigenous Peoples. However the General Assembly did not deal with specific issues of concern raised by Indigenous Peoples.

The atmosphere of States' complacency, if it existed, would have been jolted in June, 1993, at the World Conference on Human Rights, when the Vienna Declaration and Programme of Action supported a new structure in the UN - a Permanent Forum on Indigenous Issues.

The call for action from the World Conference was finally met in July 2000 when ECOSOC adopted the recommendation from the Commission on Human Rights to establish the Permanent Forum (ECOSOC Resolution 2000/22). The resolution was adopted by consensus.

The Permanent Forum is the first permanent structure in the UN where States' and non-State representatives (in this case, Indigenous Peoples representatives) hold equal status. The other significant factor is that the Permanent Forum is established as an subsidiary mechanism to ECOSOC, at a much higher level in the UN than the Working Group.

Under the terms of the ECOSOC resolution, the Permanent Forum consists of sixteen members. Half of the members are elected by ECOSOC from nominations received from governments. The President of ECOSOC appoints the other eight members from nominations received from Indigenous Peoples.

Although States usually consider regional representations based upon five UN regional groups, the Indigenous Peoples caucus chose to nominate representatives based upon seven geographical regions and use one position to rotate in key regions for additional representation.

The ECOSOC resolution called for representatives to be appointed on the basis of broad consultations with Indigenous organizations and to take into account the diversity and geographical distribution of the populations.

Communications between groups on these nominations also called for gender balance in the nominations. Unfortunately only two women were nominated and appointed for the available Indigenous representatives positions and, with the four women elected by ECOSOC, a total of six women are appointed to the sixteen positions.

The clear majority of the experts on the Permanent Forum are Indigenous persons.

The appointments are for a three-year period. Given the difficulties experienced in generating and determining regional nominations from the Indigenous Peoples, and difficulties and controversy over gender-balance, it can be expected that a much more competitive process will occur in Year 2004 when the next round of appointments is to occur.

Other decisions made in relation to the structure of the Permanent Forum are that the meetings will be held over a period of ten working days per year; the meetings will be rotated between New York and Geneva; and a secretariat is to be established, based in the Department of Economic and Social Affairs (DESA), New York.

The latter aspect, regarding a secretariat, was subject to further consideration by the General Assembly due to the budget processes and the limitations on new expenditures. The General Assembly approved six positions for the secretariat but identified funding for only three positions. Funding for the other positions will be determined in later considerations of the UN budget, and may be subject to the outcomes of the review of various UN structures and arrangements concerned with Indigenous Peoples issues.

To ensure that Indigenous Peoples have access to the Permanent Forum, the United Nations has agreed to adopt the same accreditation procedures for the Permanent Forum as for the Working Group on Indigenous Populations.

In addressing the first session of the Permanent Forum and to welcome the members and observer delegations, the President of ECOSOC described the establishment of the Permanent Forum as 'a great victory and a cause for celebration'. He referred to his senior role during the 1993 World Conference on Human Rights in Vienna, when the Permanent Forum was recommended, and expressed great satisfaction that the work of the Permanent Forum is about to commence.

'The Permanent Forum is an innovative organ. It is characterised by its unique membership, composed of indigenous and non-indigenous experts, and by the principle of inclusion of all concerned in its work. Since the work of the Permanent Forum is open to all indigenous representatives, whether or not they belong to organizations accredited with ECOSOC, we can conclude that we have created a very open, transparent and participatory body.'

*Mr Ivan Simonovic, President of ECOSOC, Speech, Permanent Forum on Indigenous Issues, 13 May 2002*

The work of the Permanent Forum had to be decided by the expert members in order to proceed with business in an orderly way, and to ensure that the Permanent Forum established its credentials securely in the high echelons of the United Nations.

On 14 February 2000, the UN High Commissioner for Human Rights, Mary Robinson, set out her ideas for the role and modus operandi of the Permanent Forum. Ms Robinson was addressing the second meeting of the Open-Ended Working Group on the Permanent Forum on Indigenous Issues, a working group set up by the Commission on Human Rights to prepare concrete proposals on the establishment of the Permanent Forum.



Her statement referred to the growing agenda in the UN relating to Indigenous Peoples. She reminded participants that the International Decade of the World's Indigenous People had generated a number of programmes and activities but there was no formal mechanism for sharing information and experiences, and for coordinating and strengthening the activities of interest to Indigenous Peoples.

'To the extent possible, the Office of the High Commissioner actively works with sister organizations within the UN system. Cooperation has led to fruitful results and a number of UN organizations – ILO, UNESCO, WHO, UNDP, the World Bank, WIPO and several others – are committed to activities benefiting indigenous communities within their areas of competence. However, a formal UN body in which all interested parties, including governments, indigenous peoples, UN specialised agencies, NGOs experts and others, able to discuss all relevant matters such as health, education, development, environment and human rights will contribute to a more transparent and coordinated institutional approach by the international community. I may add that I believe that the forum will help to rationalise and make more efficient system-wide efforts to address indigenous concerns.'

*Mary Robinson, High Commissioner for Human Rights, Speech to 2nd meeting of Working Group on the Permanent Forum on Indigenous Issues, 14 February 2000*

The resolution establishing the Permanent Forum states that the mandate is to 'discuss indigenous issues within the mandate of the Council relating to economic and social development, culture, the environment, education, health and human rights'.

In accordance with this phrasing the Permanent Forum structured its agenda to deal with the categories as established in the resolution. The first session was divided into five topics of Economic and Social Development, Environment, Education and Culture, Health, and Human Rights.

Each topic was introduced by presentations from the UN and international agencies concerned with the topic. This process helped participants to identify the relevant agencies and gain an understanding of the current activities and programmes undertaken by the agencies.

The expert members of the Permanent Forum then each had opportunity to make statements, ask questions and otherwise respond to the presentations. The UN and international agencies responded as required to these experts.

The Indigenous representatives at the first session of the Permanent Forum, estimated to be approximately 300 persons, then could present their submissions to the Permanent Forum on the relevant topic.

As the topic concluded, a member of the Permanent Forum who was appointed to the task of noting the submissions, gave a summary of the discussions and issues raised under the topic. This summary provided the expert members and the participants a preliminary indication of the final reporting to be made on the topic and an opportunity to consider what recommendations might be adopted by the Permanent Forum on the topic.

After two weeks of meetings, the first session of the Permanent Forum had obviously collected much information and innovations on the topics, as well as proposals and aspirations for the continued work of the Permanent Forum. All participants were left with the wonder of how the Permanent Forum might cope with the volume of input and the range of the topics and discussion, and translate the material into useful resolutions and recommendations for consideration by ECOSOC.

Earlier fears by some Indigenous Groups, that the Permanent Forum would be criticised for lack of organization and lack of purpose and direction had quickly melted away during the course of the meeting. The UN agencies and international organizations had responded to the Permanent Forum and it seemed that the Permanent Forum was well capable of communicating its role and importance across to these other bodies.

The question still remains however, how will the Permanent Forum cope with its responsibilities. The key factors are the resources that are at hand to the Permanent Forum and the degree of cooperation afforded by the other agencies.

'The Chairman of the first session of the Permanent Forum, Ole Henrik Magga, said that the first session had been a success and that it was evident from the testimonies heard during the two weeks that Indigenous Peoples remain among the most marginalised in the world and were among the poorest of the poor. Indigenous Peoples were engaged in an ongoing battle for the continuous existence of their cultures.

He declared that Indigenous Peoples must never give up the fight for equality and justice, but stressed that for the Forum to become a true vehicle for the advocacy of Indigenous rights, it was essential to remain action-oriented and focus on the solutions, rather than on the problems. He stressed that this session was historical, in that, for the first time, Indigenous Peoples and governments met on a truly equal basis to address mutual concerns and that past experiences showed that without the full, equal and effective participation of Indigenous Peoples themselves, it was not possible to adequately address their concerns.'

*IWGIA Report on First Session of the Permanent Forum on Indigenous Issues,  
IWGIA*

IWGIA, a key NGO active in Indigenous forums, concluded in its report of the first session that it still remains to be seen whether the Permanent Forum is going to receive adequate funding to satisfactorily fulfil the task entrusted to it by ECOSOC. IWGIA noted a lack of high level representation from the States to the first session, and considered that State delegations kept a low profile in the proceedings. The UN agencies and programmes, IWGIA said, clearly remained sceptical about the role of the Permanent Forum and that a solid effort would be needed to 'break down the walls' to the dominant UN organs.

Another discerning participant, Kenneth Deer, editor of The Eastern Door newspaper, but better known in international circles for his previous roles as Chairman of the Indigenous Caucus, wrote of promising outcomes for the Permanent Forum.

'There is no other body quite like it in the entire UN at such a high level. It is the only one where Indigenous persons have equal status to other international experts. It is

not a seat in the UN General Assembly but it's a notch closer. To get a seat in the UN is a totally political process which would require the acceptance as a member from all the member states of the UN; not likely at this time. But the Permanent Forum is useful in bringing our concerns to the highest levels of the UN. Hundreds of interventions by Indigenous representatives flooded the forum's speakers lists. It was clear from the start that Indigenous spokespersons have high expectations for this UN body. Others were not so sure that the Forum would work well in our favour. Some feel that the Forum is a trap where Indigenous concerns would be subverted by the government-elected experts on the Forum. But that did not happen at this first meeting. As a matter of fact, several of the government experts were Indigenous themselves and were very supportive of Indigenous Peoples and their plight....

In conclusion, the Permanent Forum on Indigenous Issues was more successful than some had hoped and not as successful for some others. It did not end up in a deadlock between Indigenous and non-Indigenous Forum members. Everyone seemed to have a deep interest in trying to resolve the longstanding grievances of Indigenous Peoples, The proof, however is still in the pudding and the forum will be judged by the impact it will have on the UN system, a system entrenched in its ways and difficult to move. But with the support of friendly governments and the support of the Secretary General, Kofi Annan, we can hope that the UN will move in a positive direction to improve the conditions which Indigenous Peoples live in throughout the world.'

*Kenneth Deer, article, The Eastern Door, Vol 11, No. 19, Kahnawake, 31 May 2002*

The most stirring words in support of the Permanent Forum and its future came from the Secretary General of the United Nations, Mr Kofi Annan, when he gave the closing speech.

'On the first day of your session last week, the President of the Economic and Social Council greeted you with the words, 'Welcome to the United Nations family'. I would like to reiterate that sentiment, and say to all the world's Indigenous Peoples: 'You have a home at the United Nations'... On behalf of the United Nations family, I would like to pledge our strong commitment to your cause and your concerns.'

*Kofi Annan, UN Secretary General, Speech to Permanent Forum on Indigenous Issues, New York, 24 May 2002*

The revolutionary change has come. It is early days. The future success of the Permanent Forum on Indigenous Issues is still at risk. The future can be reliant upon personalities. But it is now time to look to the future and plan for the work to come.

Madam Erica-Irene Daes, the former Chairperson of the Working Group on Indigenous Populations, is one person who is committing herself to the highest cause of Indigenous Peoples, even in retirement. Madam Daes has already looked ahead and identified the key tasks ahead, based upon her experiences in the Working Group on Indigenous Populations and her lobbying within the corridors of the UN for the successful establishment of the Permanent Forum.

'The recently established Permanent Forum for Indigenous People should consider playing a constructive role regarding problems pertaining to land and resource rights and environmental protection. In particular, consideration should be given to the following:

- The creation of a fact-finding body, with a mandate to make site visits and to prepare reports concerning particular indigenous land and resource issues,
- The creation of an indigenous land and resource ombudsman or office which could provide response, mediation and reconciliation services;
- The creation of a complaint mechanism or procedure for human rights violations that pertain to indigenous land and resource situations;
- The creation of a body with 'peace-seeking' powers to investigate, recommend solutions, conciliate, mediate and otherwise assist in preventing or ending violence in situations regarding indigenous land rights;
- The creation of a procedure whereby countries would be called upon to make periodic reports with regard to their progress in protecting the land and resource rights of indigenous people.'

*39-40pp. para. 152, 'Indigenous Peoples and Their Relationship To Land', U.N. Doc. E/CN.4/Sub.2/2000/25, by Special Rapporteur Erica-Irene Daes*

We have a home in the United Nations. The Permanent Forum is a huge achievement. For the United Nations there is still much to be achieved for Indigenous rights. For Indigenous Peoples there is much work yet to be done in the international arena. But at least we can look back to the endeavours of Deskaheh and his contemporaries, and feel some sense of satisfaction and accomplishment.