



THE PRESIDENT
OF THE
GENERAL ASSEMBLY

16 February 2017

Excellency,

I have the honour to transmit herewith a letter, dated 15 February, 2017 from the Advisers of the consultation process concerning the ways to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them, transmitting the updated version of the elements paper to serve as a basis for discussion during the consultations taking place from 27 to 28 February and the schedule for those days.

I express my appreciation for your delegation's constructive engagement and support provided to the Advisers thus far and I encourage you to continue doing so in the upcoming meetings.

Please accept, Excellency, the assurances of my highest considerations.

A handwritten signature in black ink, appearing to read 'Peter Thomson'.

Peter Thomson

All Permanent Representatives and
Permanent Observers to the United Nations
New York

New York 15 February 2017

Excellency,

With the reference to your letters dated 28 September, 18 October and 2 and 23 December 2016 and 23 January 2017 with respect to the consultation process associated with Indigenous peoples' participation in the United Nations, we are pleased to send you an updated version of the elements paper to serve as a basis for discussion during the forthcoming consultations on 27 to 28 February 2017.

The final compilation and addendum (A/70/990) is available in all official UN languages at: www.undocs.org/a/70/990. The elements paper for discussion during the consultations is attached to this letter. Updated information on the consultation process, including the elements paper, is also available at the consultation process website:

<https://www.un.org/development/desa/indigenouspeoples/participation-of-indigenous-peoples-at-the-united-nations.html>

We wish to note that we have attempted to include a variety of proposals received during this consultation process in the elements paper, while also narrowing down possible options within the mandate of the General Assembly. We have taken into account that there is considerable support for some of the proposals presented in the elements paper, yet have recognized that the support is not uniform.

Also, we are happy to inform you that we are pleased with how the consultations proceeded during the previous session on 30 January to 1 February and wish to convey our appreciation to the participants of the consultations for their constructive approach to the discussions. It is our view that a successful outcome can only be achieved in partnership together with Member States and Indigenous Peoples. It is therefore important that the process remains inclusive and that the views of the Indigenous peoples are heard before the decision is made by the General Assembly. We encourage Member States to continue consulting with Indigenous Peoples in their regions.

After the consultations of 27 and 28 February it is our aim to circulate a draft text, so it is important to hear concise views on the elements during the consultations. Participants are requested to keep their comments brief and addressing directly the issue at hand.

The schedule of the forthcoming consultations on 27 to 28 February 2017 is as detailed below:

Monday 27 February

10 AM - 1 PM Bilaterals with Member States and Indigenous peoples

3 PM - 6 PM Bilaterals with Member States and Indigenous peoples

Tuesday 28 February

- 10 AM - 11:30 AM Consultations: segment 1: Decision, current practices, venues of participation
- 11:30 AM - 1 PM Consultations: segment 2: Participation modalities
- 3 PM - 4:30 PM Consultations: segment 3: Selection mechanism
- 4:30 PM - 6 PM Consultations: segment 4: Selection criteria

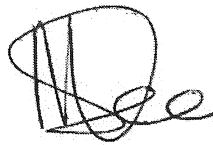
The actual consultations on 28 February will take place in Conference Room 2 at United Nations headquarters. Delegations wishing to schedule a bilateral meeting with the advisors on 27 February are requested to contact Helena.vuokko@formin.fi to schedule a time and place for a meeting.

We are looking forward to continual engagement on this important subject with all stakeholders and to your continued support.

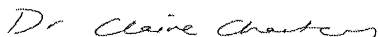
Please accept, Excellency, the assurances of our highest consideration.



Ambassador Kai Sauer
Permanent Representative of Finland
to the United Nations



Ambassador Martha Ama Akyaa Pobee
Permanent Representative of Ghana
to the United Nations



Dr. Claire Charters



Prof. James Anaya

Elements for discussion during the 71st Session of the General Assembly

February 2017

Element

Content

Background

Commitment to respect, promote and advance the Declaration on the Rights of Indigenous Peoples, especially Indigenous peoples' rights to self-determination and to participate in decision making that affects them, as reflected in particular in articles 3, 5, 18, 19, 20, 32, 33, 39, 41 and 42.

To recall Human Rights Council resolution 18/8, which requested the Secretary-General, in cooperation with the Office of the High Commissioner for Human Rights, the Office of Legal Affairs and other relevant parts of the Secretariat, to prepare a detailed document on the ways and means of promoting participation at the United Nations of recognized indigenous peoples' representatives on issues affecting them, given that they are not always organized as non-governmental organizations, and on how such participation might be structured, drawing from, *inter alia*, the rules governing the participation in various United Nations bodies by non-governmental organizations (including Economic and Social Council resolution 1996/31) and by national human rights institutions (including Human Rights Council resolution 5/1 of 18 June 2007 and Commission on Human Rights resolution 2005/74 of 20 April 2005), and to present it to the Council at its twenty-first session.

To further recall Human Rights Council resolution 21/24, by which the Council notes with appreciation the report of the Secretary-General on the ways and means of promoting participation at the United Nations of indigenous peoples' representatives on issues affecting them (A/HRC/21/24) and invited the General Assembly to consider this issue.

To take note of the outcome document of the Alta Conference (A/67/994, annex), in which indigenous peoples and nations representing the seven global socio-cultural regions, including representatives of the women's caucus and the youth caucus, made collective recommendations for consideration at the United Nations high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples and called for, at a minimum, an observer status for Indigenous Peoples within the United Nations system.

To recall the decision of the General Assembly, in the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, by which it committed to consider ways to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them, including any specific proposals made by the Secretary-General in this regard (PP 8 of GA resolution 70/232).

To further recall General Assembly Resolution 70/232 of 23 December 2015 (in particular OP 19), in which the General Assembly requested the President of the General Assembly to conduct, within existing resources, timely, inclusive, representative and transparent consultations with Member States, indigenous peoples' representatives and institutions from all regions of the world, and existing relevant mechanisms of the United Nations, on the possible measures necessary, including procedural and institutional steps and selection criteria, to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them, and also requests the President to prepare a compilation of the views presented during the consultations, including good practices within the United Nations regarding indigenous peoples' participation, which will form the basis for a draft text to be finalized and adopted by the Assembly during its seventy-first session.

To reaffirm the sovereignty and territorial integrity of States as set out in the Charter of the United Nations as well as in article 46 of the Declaration on the Rights of Indigenous Peoples.

To reaffirm that in accordance with the Charter of the United Nations the members of the General Assembly and the United Nations are the Member States of the United Nations.

Noting that existing procedures for participation by entities other than Member States within the United Nations system do not adequately enable Indigenous peoples' right to participate in decision making affecting them, as explained in the report of the Secretary-General on the ways and means of promoting participation at the United Nations of indigenous peoples' representatives on issues affecting them (A/HRC/21/24).

Understanding that any new modalities of participation or status for Indigenous peoples within the United Nations system should not undermine existing modalities of participation of Indigenous peoples, Indigenous non-governmental organisations, individuals and other non-state actors in the United Nations, including in the Permanent Forum on Indigenous Issues and in the Expert Mechanism on the Rights of Indigenous Peoples.

Encourages Indigenous representative institutions to include youth, women and persons with disabilities on their delegations to the United Nations.

Seeks to ensure that Indigenous peoples from all regions of the world have the opportunity to participate in the United Nations.

Decision

Establish a distinct status for Indigenous peoples' representative institutions (to be called the "Indigenous representative institutions") to enable Indigenous peoples' effective participation in relevant meetings of United Nations bodies on issues affecting them.

The selection of Indigenous representative institutions for a distinct status within the United Nations does not imply recognition of those institutions [under international or domestic law or policy] for any

purpose other than participation in meetings of relevant United Nations bodies on issues affecting them.

The granting of Indigenous representative institutions status shall not undermine the inter-governmental nature of the United Nations including the General Assembly.

Current practices

The distinct modalities of participation of Indigenous representative institutions do not affect the established practice by which other entities, such as NGOs with ECOSOC consultative status, participate in UN meetings, or by which Indigenous peoples, organizations and individuals participate in sessions of the Expert Mechanism on the Rights of Indigenous Peoples and the Permanent Forum on Indigenous Issues.

Venues of participation

Chapeau

Recalling the above, urges the General Assembly and its subsidiary bodies (including the Human Rights Council), and the Economic and Social Council and its functional commissions, United Nations programmes, funds and specialised agencies to enable the participation of Indigenous representative institutions on issues affecting them.

Options presented/proposed:

Indigenous representative institutions may attend [or observe] all meetings of the General Assembly and its subsidiary bodies on issues affecting Indigenous peoples, in accordance with the modalities established herein.

Member states may invite the Indigenous representative institutions to attend [observe] private meetings.

OR:

Indigenous representative institutions may attend all public plenary meetings of the General Assembly on issues affecting them and meetings of the General Assembly's second committee and the third committee, and may participate in those meetings in accordance to the modalities established herein.

Member states may invite Indigenous representative institutions to attend private meetings.

Indigenous representative institutions may participate in additional meetings on issues affecting them in the General Assembly and its subsidiary bodies (for example other committees) when invited to do so by the President of the General Assembly after consultation with Member States and members of the selection mechanism. Decisions may be determined annually when the General Assembly's agenda is finalized AND/OR on an ad hoc basis.

AND:

Indigenous representative institutions may attend conferences convened by the General Assembly on issues affecting Indigenous peoples, in accordance with the modalities established by the General Assembly for those meetings.

Urges also that in the separate modalities for conferences convened by the General Assembly Indigenous representative institutions are granted similar participatory rights as established herein.

AND/OR:

Urge the Economic and Social Council to enhance the participation of Indigenous representative institutions in all meetings on issues affecting them including in all its functional commissions.

Urge the Economic and Social Council to provide Indigenous representative institutions adequate time to make statements and separate seating.

Participation modalities

At a minimum, attendance by Indigenous representative institutions at relevant United Nations meetings will include, within practical constraints, opportunities to speak and the opportunity to provide and distribute written information.

In accordance with the UN Charter and to reflect the inter-governmental nature of the United Nations, Indigenous representative institutions will not be permitted to vote, to raise points of order, to co-sponsor resolutions, to move amendments to resolutions, have the right of reply, or submit resolutions.

Additional forms of participation of Indigenous representative institutions in relevant United Nations meetings can be approved by Member States on an ad hoc basis [such as the right to initiate agenda items, the right to co-sponsor any resolution related to Indigenous peoples] where the meeting has a specific focus on issues affecting Indigenous peoples, such as the General Assembly Third Committee agenda item on Rights of Indigenous Peoples and the dialogue with the Special Rapporteur on Rights of Indigenous Peoples.

The allocation of speaking slots for the Indigenous representative institutions attending meetings of the United Nations should be done in a balanced way, taking into account the efficient functioning of the United Nations processes, geographic representation and fairness between all participants.

Selection mechanism

Chapeau

Establish a new mechanism to select the Indigenous representative institutions for participation at the United Nations.

Gender balance, and the desirability of including youth and persons with disabilities, shall be taken into account when appointing members to the selection body.

The General Assembly retains the final authority to approve the selection of Indigenous representative institutions.

Potentially a non objection procedure could be explored.

Options presented include:

The selection mechanism will be a committee made up of fourteen experts on the rights of Indigenous peoples. Seven shall be appointed by the President of the General Assembly from each of the Indigenous socio-cultural regions of the world, in consultation with Indigenous peoples' institutions from the regions; and seven shall be appointed by the President of the General Assembly from each of the Indigenous socio-cultural regions of the world, in consultation with Member States.

OR

The Selection mechanism will be a committee comprised of equal numbers Indigenous peoples' representatives and Member State representatives, OR of equal numbers of experts appointed by Indigenous peoples and Member State representatives, based on regional representation from the 7 indigenous socio-cultural regions.

OR

The selection mechanism will be a committee comprised of [smaller number of] experts on the rights of Indigenous peoples with an equal number of Member State and Indigenous proposed members. [potentially might include members of existing Indigenous mechanisms such as the PFII, the EMRIP and the Voluntary Fund on Indigenous Peoples].

OR

The selection mechanism will be comprised of, for example, the Chairs of the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples, and the Voluntary Fund for Indigenous Peoples as well as members of the bureau of the Third Committee.

OR

The Voluntary Fund for Indigenous Peoples will fulfill the role of the selection mechanism [increase size to 7?].

OR

The selection process will be comprised of three stages, namely: first, review by [7] experts selected by the President of the General Assembly based on proposals by Indigenous peoples and taking into account the 7 socio-cultural Indigenous regions [or the Voluntary Fund for

Indigenous Peoples] to advise the decision in the following phase; second, decision by [7] state experts/representatives selected by the President of the General Assembly taking into account the 7 socio-cultural Indigenous regions; and finally by adoption by the General Assembly.

OR

The selection mechanism will be made up of [X] state-appointed experts/state representatives.

OR

Selection by a domestic/national body comprised of equal numbers of Indigenous peoples' nominated members and state nominated members or any domestic body/procedure/legislation/policy already established for this purpose (a domestic body not necessary where Indigenous peoples' organisations and institutions are constitutionally, legally and/or politically acknowledged), followed by review by a selection mechanism at the UN level [see options above].

Working methods:

Subject to this resolution, the selection mechanism should determine its own working methods, guided by the need for financial responsibility, fairness and efficiency.

The selection mechanism will be guided by the need for geographical and regional balance among the institutions granted Indigenous representative institution status. To this end, it will seek to ensure commensurate representation from each Indigenous socio-cultural region.

Decisions of the selection mechanism must be transparent and based on the application of objective criteria [set out below]. Applicants that are denied status may re-apply.

Decision making should be closed to enable a full and frank assessment but reasoning should be provided to the public when an applicant institution is denied Indigenous representative institutions status.

The selection committee should meet up to [X] days a year, allowing for flexibility in accordance with the number of applications for Indigenous representative institution status over time. Meetings could be immediately prior or subsequent to relevant meetings at the UN (for example the permanent forum session) for cost efficiency. Videoconferencing should be made use of whenever possible.

The selection mechanism should be supported by the secretariat to the Permanent Forum on Indigenous Issues. The Secretary-General is requested to provide the necessary resources for this purpose.

The Secretary-General is requested to make every effort to enhance and streamline as appropriate Secretariat support arrangements, to improve practical arrangements on such matters with greater use of modern

information and communication technology, establishment of an integrated database of indigenous representative institutions, wide and timely dissemination of information on meetings, distribution of documentation, provision of access and transparent, simple and streamlined procedures for the attendance of indigenous representative institutions at United Nations meetings and to facilitate their broad based participation.

State involvement in selection:

Where a state either recognizes the Indigenous representative institution as a matter of domestic law or policy, or does not object to the designation as an Indigenous representative institution, designation will be expedited.

Relevant member states might be notified when there is an application from an institution and invited to provide comment/information with respect to the applicant.

If a state raises concerns with the designation of an institution as an Indigenous representative institution, especially on the basis of that it implicates their territorial integrity, an appeal process could be envisaged.

Selection criteria

Indigenous representative institutions selected for status as such should be *genuinely representative* of one or more people, [tribe], community or nation that qualifies as *indigenous*.

General criteria for establishing representation and qualification as indigenous shall be flexibly applied [for the selection mechanism to develop through its practice].

Application process should not be overly onerous and should promote efficiency.

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Determination of whether or not a people, [tribe], community or nation is in fact Indigenous should be made recognising the diversity of circumstances around the world and taking into account the various historical and cultural backgrounds.

Specific factors are to be flexibly considered in accordance with current practice within the United Nations system and in light of the United Nations Declaration on the Rights of Indigenous Peoples.

Relevant factors include:

Options:

- o self-identification; and

- state recognition.

In addition, in cases where the peoples are not recognized by the state as Indigenous, the selection mechanism will objectively assess the peoples against the following criteria:

- history of dispossession and/or colonisation;
- a unique relationship with lands, territories and resources;
- cultural distinctiveness including Indigenous languages;
- the exercise of collective rights;
- the practice of self-government;
- traditional authority under Indigenous law;
- occupation of ancestral lands, or at least part of them, territories and resources over a long period of time; often reflected in prior occupancy;
- have entered into treaties, agreements or other constructive arrangements;
- recognition as Indigenous by other Indigenous peoples historically and/or now;

Institutions seeking selection as indigenous representative institutions must show persuasive evidence that they are the legitimate representative of an Indigenous people, [tribe] community or nation.¹ Relevant evidence might include but is not limited to the following:

- authority under Indigenous law and customs;
- election as the representative body.
- permanent physical presence of the institution and its personnel within the territory of the people, [tribe], community or nation they represent and the representative institution should be based there;

Relevant evidence may include written documentation and, where appropriate, oral testimony. Evidence must not be so difficult to establish as to limit the ability of an Indigenous representative institution to obtain this status.

The aims and purposes of Indigenous representative institutions selected for status as such shall be in conformity with the spirit, purposes and principles of the Charter of the United Nations and should pursue the goals of promotion and protection of human rights.

Selection as an Indigenous representative institution should not extend to institutions that represent groups that only qualify as ethnic or national minorities and should be guided by the need for peace as well as the sovereignty and territorial integrity of states.

Once selected, the Indigenous representative institutions shall have full authority to select their own delegates.

Indigenous representative institutions are encouraged to consult with women, youth and persons with disabilities, as well as include them on their delegations.

¹ Tribal peoples and Indigenous peoples as referred to in for example ILO convention 169.

Review

The arrangements for enhancing Indigenous peoples' participation in the United Nations, including venues, modalities, the selection mechanism and selection criteria are to be reviewed in [X] years with a view to assessing whether they adequately ensure Indigenous peoples' participation in the United Nations.