



THE PRESIDENT
OF THE
GENERAL ASSEMBLY

23 December 2016

Excellency,

I have the honour to transmit herewith a letter, dated 22 December 2016, 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 30 January to 1 February 2017.

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 22 December 2016

Excellency,

With the reference to your letters dated 28 September, 18 October and 2 December 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 30 – 31 January and 1 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 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 14 and 15 December and wish to convey our appreciation to the participants of the consultations for their constructive approach to the discussions.

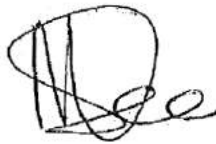
The schedule of meetings on 30 January to 1 February will be circulated in January before the meetings and updated to the consultation process website. It is our view that in addition to the consultations held with all participants, sufficient time should also be allocated for bilateral meetings with interested Member States and Indigenous peoples.

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

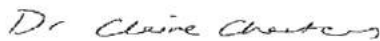
Please accept, Excellency, the assurances of our highest consideration.



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

December 2016

Element	Content
Background	<p>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.</p> <p>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.</p> <p>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.</p> <p>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 geopolitical 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.</p> <p>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).</p>

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 General Assembly shall consist of all the Members 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 peoples' representative institutions to include 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.

The selection of Indigenous peoples' representative institutions for consultative status with the General Assembly does not imply recognition of those institutions for any other purpose.

Current practices

The distinct modalities of participation of Indigenous representative institutions with consultative status 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

Indigenous peoples' representative institutions in consultative status with the General Assembly may participate in all meetings of the General Assembly (also closed meetings), its subsidiary bodies and conferences convened by the General Assembly on issues affecting indigenous peoples. [convergence of opinion but does not reflect the view of all]

The granting of consultative status for Indigenous peoples representative institutions with the General Assembly shall not undermine the inter-governmental nature of the United Nations or the General Assembly.

Recalling the above, invites all bodies of the United Nations, including the Human Rights Council and the Economic and Social Council and their subsidiary bodies, United Nations programmes, funds and specialised agencies to enhance the participation of Indigenous peoples' representative institutions on issues affecting them. Of particular importance in the Human Rights Council is the dialogue with the Special Rapporteur on the Rights of Indigenous Peoples and the annual half-day discussion on the rights of indigenous peoples.

Participation modalities

At a minimum, participation by Indigenous peoples' representative institutions in consultative status would include, within practical constraints, the opportunities to speak at relevant meetings of the General Assembly and its subsidiary bodies, and the opportunity to provide written information relevant to those meetings.

The additional modalities of Indigenous peoples' representative institutions' participation in meetings of the General Assembly and its subsidiary bodies might be varied as determined appropriate by the chair of each meeting. The chair should take into account the right of Indigenous peoples to participate in decision making on issues affecting them, as well as the inter-governmental nature of the General Assembly/United Nations.

In particular, modalities of participation in the deliberations in the General Assembly Third Committee under the agenda item on Rights of Indigenous Peoples and the dialogue with the Special Rapporteur on Rights of Indigenous Peoples should be - in addition to the right to speak and providing written information - as broad as possible, ensuring maximum interactivity with Member States and UN mechanisms participating in these deliberations.

The allocation of speaking slots for the Indigenous peoples' institutions participating in meetings of the General Assembly or its subsidiary bodies 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.

In determining the additional content of Indigenous peoples' participatory rights in a given meeting, the chair should take into account the nature of the matter at hand and the need to provide opportunities for Indigenous peoples from all regions to effectively participate in decision making affecting them.

The participation in the General Assembly should also include:

- specific seating arrangements to enable the presence of the delegates of Indigenous Peoples' institutions;
- Precedence over NGO's on issues concerning Indigenous Peoples

With respect to the invitation to the Human Rights Council, the Council is encouraged to consider as good practice and example the unique participatory rights for National Human Rights Institutions at the Human Rights Council, in particular with respect to their participation in Universal Periodic Review and the consideration of country visit reports by Special Procedures.

Selection mechanism

Establish a new mechanism to select the Indigenous peoples' representative institutions that will have consultative status with the General Assembly. This 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 cultural/social regions of the world, in consultation with Indigenous peoples' institutions from the regions; and seven experts shall be appointed by a vote of General Assembly, with one from each of the five UN-recognised geographical regions of the world and two additional experts from regions determined on a rotational basis. Gender balance shall be taken into account when appointing the fourteen experts.

OR Establish a selection mechanism made up of state-appointed experts/state representatives (one state's view).

OR Establish a small body potentially 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. (On this there have been comments that existing mechanisms would not be sufficient.)

Decision-making regarding selection of which indigenous peoples' representative institutions qualify for indigenous peoples' consultative status shall be open and public.

OR Decision making should be closed but reasoning should be provided to the public.

The selection committee should meet up to [X] days a year, allowing for flexibility in accordance with the number of applications for Indigenous peoples' consultative status over time.

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

An objective is to minimise the financial implications of the selection process.

The General Assembly may reserve the right to approve the selection of the Indigenous peoples' representative institutions. Must be an open and transparent procedure based on the application of objective criteria [set out below].

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 peoples' 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 peoples' representative institutions at United Nations meetings and to facilitate their broad based participation.

Selection criteria

Indigenous peoples' institutions selected for consultative status should be *genuinely representative* of one or more people, tribe, community or nation that qualify as *indigenous*.

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

Application process to meet the relevant criteria should not be overly onerous and should promote efficiency.

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:

- self-identification – essential factor;

and:

- state recognition (a significant but not a determinative factor. If an Indigenous representative institution is recognized by the state, selection processes might be expedited);
- history of dispossession;
- 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;
- have entered into treaties, agreements or other constructive arrangements;
- recognition as Indigenous by other Indigenous peoples historically and/or now.

Responding to the applications received, the selection mechanism will take into account the need for participation by Indigenous peoples' representative institutions from all regions of the world.

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

- authority under Indigenous law and customs;
- democratic election as the representative body;

Relevant evidence may include written documentation and oral testimony. Evidence must not be so difficult to establish as to limit ability of an Indigenous peoples' representative organization to obtain indigenous peoples' consultative status.

Encourage Indigenous peoples' representative institutions to consult with women and persons with disabilities, as well as include them on their delegations.

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 and to take into account the sovereignty and territorial integrity of states.

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