

# THE INDIGENOUS PEOPLES' GUIDE TO THE UNITED NATIONS

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**Tips and Tools for American Indian, Native  
Hawaiian & Alaska Native Leaders, Lawyers, and  
Community Members**



**THE IMPLEMENTATION PROJECT**

# INTRODUCTION

*The Indigenous Peoples' Guide to the United Nations* is a publication of The Implementation Project (TIP), a joint initiative of the University of Colorado School of Law and the Native American Rights Fund (NARF) dedicated to advancing education and advocacy regarding the United Nations Declaration on the Rights of Indigenous Peoples.

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## PREVIOUS PUBLICATIONS:

*A Call to Action for Inspired Advocacy in Indian Country: Implementing the United Nations Declaration on the Rights of Indigenous Peoples in the United States* (2019).

*The Tribal Implementation Toolkit* (2021).

*Native Hawaiian Rights and the UN Declaration on the Rights of Indigenous Peoples: A Toolkit for Advocacy and Diplomacy* (forthcoming).

*The Law Students' Guide to the United Nations Declaration on the Rights of Indigenous Peoples* (forthcoming).

*Operationalizing FPIC in the Context of Conservation and Development: Indigenous Peoples' Rights to Land, Water, and Territories* (forthcoming).

## DISCLAIMER:

This publication, *The Indigenous Peoples' Guide to the United Nations*, is available to the general public. This document provides educational information regarding the United Nations Declaration on the Rights of Indigenous Peoples and United Nations processes. It is not legal advice. You should consult competent legal counsel for legal advice rather than rely on *The Indigenous Peoples' Guide to the United Nations*.

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# EXECUTIVE SUMMARY:

## Sovereignty and Solidarity at the United Nations

American Indians, Alaska Natives, and Native Hawaiians participate in United Nations processes to advance Indigenous Peoples' rights both globally and at home. Successful international engagement requires a significant investment of time and energy, undertaken over many years. The Guide aims to demystify the institution and give Indigenous leaders, lawyers, and community members the tools to get started.

**WHAT:** Founded in 1945, the United Nations is an international organization, comprised of 193 countries or "Member States" headquartered in New York. The UN is responsible for peace, security, and human rights globally. It hosts meetings and processes specifically devoted to Indigenous Peoples, and others focused on topics like intellectual property, climate change, religious freedoms, and health care. Some UN bodies issue reports or studies, while others facilitate the negotiation of treaties or instruments. All are focused on global standards for cooperation and the well-being of people, albeit within a State-centric framework

**WHY:** At UN meetings, Member States take positions affecting Indigenous Peoples. When Indigenous leaders, lawyers, and community members are in the room, they learn how domestic concerns are shaped by international dynamics, act in solidarity with other Indigenous Peoples, and hold the United States, Canada, Mexico, and other States accountable.

**WHO:** Indigenous leaders, lawyers, and community members may personally attend various UN meetings if they register appropriately (though some meetings require special status). The registration process varies by meeting and, while the Guide provides general information, it is best to check UN websites for current rules and processes.

**WHEN:** Subscribe to the email lists of The Implementation Project (<https://un-declaration.narf.org>) and Indigenous Peoples' Centre for Documentation, Research and Information (DOCIP) (<https://www.docip.org/en/>) to receive notice of upcoming meetings and plan an annual set of engagements based on your Tribe's or organization's needs. If you're just getting started, one obvious highlight is the Annual Session of the UN Permanent Forum on Indigenous Issues, usually occurring the last two weeks of each April.

**PREPARATION:** One seasoned UN participant has said there is "an entire ecosystem of things you do before the meetings." While the style of advocacy will depend on the specific venue, it is always good to study the program of work in advance and prepare for the various forms of input required by reviewing agendas, joining with allies on 2-3 minute interventions, and scheduling meetings off the agenda.

**STUDIES AND REPORTS:** In addition to in-person attendance, Indigenous Peoples often submit statements, reports, and input to UN monitoring processes and studies to ensure their perspectives are part of the record. As detailed later in the Guide, submissions usually do not require in-person attendance and may result in studies and reports Indigenous Peoples can use later in advocacy.

**FINALLY:** Participating at the UN is not like going to the U.S. Congress or the Supreme Court. The institution defies most U.S.-based expectations about hierarchy, time, and outcomes. Attendees will meet people wearing traditional dress and speaking languages from all corners of the earth. Some will have a status akin to elected tribal leaders; others may not. Everyone is trying to be heard, and it only works if participants listen to one another and forge long-term commitments.





*Participants during the opening of the 21st session of the Permanent Forum on Indigenous Issues.  
Photo Credit: UN / Manuel Elías*

*The United Nations reports that Indigenous Peoples' represent more than 5,000 different cultures worldwide, in 90 countries around the world, accounting for nearly 5% of the world's total population and nearly 20% of the land mass. Sami, Nenets, Khoi-San, Karen, Maya, Mapuche, Karelian, Ainu, and Baka are only some Indigenous Peoples whom you will meet and work with at the UN.*

# CHAPTER ONE: INTRODUCTION

Indigenous Peoples' concerns are local, national, and global in nature.<sup>1</sup> *The Indigenous Peoples' Guide to the United Nations* (the Guide) focuses on international engagement at the United Nations (the UN), with specific attention to opportunities and challenges for American Indian, Alaska Native, and Native Hawaiian leaders, lawyers, and community members.

The Guide is a publication of The Implementation Project (TIP), a joint initiative of the Native American Rights Fund (NARF) and the University of Colorado Law School, to advance education and advocacy using the United Nations Declaration on the Rights of Indigenous Peoples. Founded in 1970, NARF has long been representing the National Congress of American Indians in UN processes, while Colorado Law is a leading institution for research and teaching in American Indian and Indigenous Peoples' Law. Although the Guide is intended for a general audience of Indigenous leaders, lawyers, and community members, it also reflects the current experiences of TIP's community partners. The Guide does not provide an exhaustive treatment of Indigenous Peoples at the UN, whether in the past, present, or future. There is a very rich literature on this topic and we hope the Guide might inspire others, whether practically or scholarly minded.<sup>2</sup>

The UN is an international organization founded to promote peace, security, and human rights. It was created to set a new path for engagement following the horrors of World War II. The UN's founding document is a Charter that creates the structure of the organization and the terms by which Nation States may become members.<sup>3</sup> Member States, numbering 193, including the United States, meet at the UN to negotiate and develop agreements regarding issues affecting them. With headquarters in New York City and Geneva, Switzerland, the UN influences human rights, cultural protections, economic development, biodiversity measures, and other matters around the world.

While the Guide focuses on contemporary events, Indigenous Peoples have been participating in international diplomacy since before the UN was even founded. In 1923, Deskaheh (Levi General), a Cayuga Chief of the Haudenosaunee Confederacy, was selected as its ambassador to pursue international assistance from the predecessor to the UN (the League of Nations), including putting a stop to Canada's violations of Haudenosaunee Treaty Rights. It is commonly stated that the Haudenosaunee confederation of six independent nations was the first true League of Nations. Deskaheh, accompanied by international lawyer George Decker, traveled to the League's headquarters in Geneva, but was denied entrance on the grounds that the Haudenosaunee Confederacy was not a member of the League. Deskaheh then submitted a petition for membership.<sup>4</sup> While the petition was never formally presented to the League and his entry was never granted, Deskaheh continued to speak forcefully about the Confederacy's issues throughout Geneva and won support from the Netherlands, Estonia, Ireland, Panama, and Persia.<sup>5</sup>

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1 The United Nations capitalizes the terms "Indigenous Peoples" and "Member States." The Guide follows that practice, except when directly quoting documents with different usages.

2 See, e.g., S. James Anaya, *Indigenous Peoples in International Law* (2d Ed. 2004); J. Marshall Bier, *Indigenous Diplomacies* (2009); James (Sa'ke'j) Youngblood Henderson, *Indigenous Diplomacy and the Rights of Peoples: Achieving UN Recognition* (2008); *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples* (Claire Charters and Rudolfo Stavenhagen eds., 2009); *Reflections on the UN Declaration on the Rights of Indigenous Peoples* (Stephen Allen and Alexandra Xanthaki, eds., 2011); Charmaine White Face and Zumila Wobaga, *Indigenous Nations' Rights in the Balance: An Analysis of the Declaration on the Rights of Indigenous Peoples* (2013); Sheryl Lightfoot, *Global Indigenous Politics: A Subtle Revolution* (2016).

3 See United Nations, *Charter of the United Nations*, Oct. 24, 1945, 1 UNTS XVI.W.

4 Historical Process at the United Nations, <https://www.docip.org/en/oral-history-and-memory/historical-process/>.

5 "The Last Speech of Deskaheh," <http://rochester.indymedia.org/node/878>.



Deskaheh died upon returning to the U.S., still believing that to promote peace, the larger nations of the world should stand up for and defend the rights of smaller nations like his.

Generations later, Levi General's great-granddaughter Karla General, a Mohawk attorney assisting dozens of Indigenous nations with the Indian Law Resource Center, participated in the development of the 2014 World Conference on Indigenous Peoples Outcome Document and attended follow-up meetings of the Human Rights Council and the General Assembly.<sup>6</sup>

In 2023, the City of Geneva and the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP or Expert Mechanism) celebrated the 100 year anniversary of Deskaheh's visit. Yet the work begun by Levi General remains unfinished, as the current Deskaheh (Steve Jacobs) is still unable to address the Human Rights Council or the UN General Assembly in his capacity as a representative of the government of the Haudenosaunee Confederacy (see discussion of The Movement for Indigenous Peoples' Enhanced Participation at the UN on page 10).



*Haudenosaunee delegations to the League of Nations in 1923 and to the United Nations in 2023.*

*Archival 1923 photo: City of Geneva/ Library of Geneva. Photo of 2023 delegation credit: Marjorie Skidders*

Quite a bit has happened since Deskaheh first visited Geneva.<sup>7</sup> In 1945, the United Nations took the place of the League of Nations. Founded as an institution for multilateral cooperation and the protection of minorities, the UN is dedicated to peace, security, and human rights among all the world's peoples. Despite the UN's organization as a State-centric institution, Indigenous Peoples have been making inroads since the beginning. Leaders such as Philip Deere (Muscogee (Creek) Nation), Oren Lyons (Onondaga), and Thomas Banyaca (Hopi) attended UN meetings in the 1970s-1990s. Indigenous women have a long history of diplomacy at the UN, with Pat Bellanger (Ojibwe), Marie Sanchez (Northern Cheyenne), and Madonna Thunder Hawk (Cheyenne River Sioux) attending sessions early on to call attention to environmental issues, as well as forced sterilization and other conditions facing people living on reservations.<sup>8</sup>

<sup>6</sup> Statement of Karla E. Kawenniiostha General, 36th session of the Human Rights Council, Indian Law Resource Center, (Sept. 20, 2017), <https://indianlaw.org/sites/default/files/KGeneral%20HRC%20Panel%20Statement.pdf>.

<sup>7</sup> For a timeline of Indigenous Peoples' involvement at the United Nations, see *Indigenous Peoples at the United Nations*, UN: Dep't of Economic and Social Affairs, <https://www.un.org/development/desa/indigenouspeoples/about-us.html>.

<sup>8</sup> Indigenous women and the UN System, <https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/indigenous-women.html>.

Several intertribal organizations and advocacy organizations helped amplify Indigenous voices. In 1974, more than 5,000 individuals from 98 Indian Nations founded the International Indian Treaty Council (IITC) at a meeting on the Pine Ridge Reservation. In 1977, IITC was recognized as a Non-Governmental Organization (NGO) with consultative status to the United Nations Economic and Social Council, and it has had a tremendous presence at UN meetings for nearly fifty years. Another important organization, the Indian Law Resource Center, was founded in 1978, to represent Indian Nations and Indigenous Peoples in the U.S. and throughout the Americas, before various UN bodies, the Organization of American States, and elsewhere.



*Delegation of the International Indian Treaty Council to the International Conference on Discrimination Against Indigenous Populations in the Americas, Geneva (1977). Photo courtesy of International Indian Treaty Council.*

Dating back to these early years, many tribal governments and organizations such as the American Indian Movement and National Indian Youth Council, were also attending UN meetings, alongside counterparts—Ainu, Australian Aboriginal, Cree, Inuit, Maya, Miskito, Maori, Ogoni, Sami, San, Tuareg, and many others—from all regions of the world. Again, a full history is beyond the scope of this publication, and we recognize a great debt of gratitude to the ancestors who laid the path for current and future generations.

Responding in part to the presence of Indigenous leaders in Geneva, José R. Martínez Cobo, the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, published his *Study on the Problem of Discrimination Against Indigenous*

*Populations* in 1981, laying the intellectual and institutional framework for specialized consideration of Indigenous Peoples' issues at the UN.<sup>9</sup> Subsequently, in the 1980s, 1990s, and 2000s, the Working Group on Indigenous Populations shepherded discussions, drafts, and negotiations of a draft international instrument on Indigenous Peoples' rights.

In 2007, following decades of work, the UN General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples (the Declaration), which sets forth a global consensus on the application of universal human rights in the Indigenous Peoples' context.<sup>10</sup> The Declaration recognizes that Indigenous Peoples have individual and collective rights to life, security, family, privacy, self-determination, and equality, as well as to land, religion, culture, language, and all of the other rights essential to human dignity. The U.S. expressed support for the Declaration in 2010. In the 2014 Outcome Document of the World Conference on Indigenous Peoples, all 193 UN Member States pledged to take measures to “achieve the ends” of the Declaration both at home and abroad.<sup>11</sup>

<sup>9</sup> Martínez Cobo Study, UN: Dep't of Economic and Social Affairs (Sept. 8, 2014), <https://www.un.org/development/desa/indigenouspeoples/publications/2014/09/martinez-cobo-study>.

<sup>10</sup> G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007).

<sup>11</sup> G.A. Res. A/69/2, ¶ 7, 8 (Sept 25, 2014).





As a long-term elected leader of the Quinault Tribe and past-President of the National Congress of American Indians, Fawn Sharp has participated throughout the UN system, including at meetings of the Permanent Forum, the Framework Convention on Climate Change, the World Economic Forum, and many others.

*Fawn Sharp speaking at the World Economic Forum 2023 Annual Meeting.  
Photo credit: World Economic Forum/Sandra Blaser*

Participating in international processes is a key component of holding the U.S. and other UN Member States accountable to the Declaration's standards and improving the situation of Indigenous Peoples in their home communities. Following in the footsteps of generations of advocates, Indigenous Peoples now have many opportunities to participate at the UN, and they all require significant investments of time, expertise, and resources. This Guide is not meant to be exhaustive but rather focuses on some of the opportunities most relevant to American Indians, Alaska Natives, and Native Hawaiians.<sup>12</sup>

## **WHY PARTICIPATE INTERNATIONALLY? ASSERTING A VOICE AT THE TABLE**

The United Nations is the world's leading institution devoted to peace, security, and human rights. In light of the demands on time, resources, and political capital, however, it is a fair question to ask why an Indigenous leader, lawyer, or community member would want to engage internationally.

Indigenous leaders increasingly consider international engagement crucial for the protection of sovereignty and self-determination. A number of issues facing American Indians, Alaska Natives, and Native Hawaiians are either international by nature or could benefit from law and policy measures inspired by international human rights standards. Indeed, one reason to attend UN meetings is to make statements, in front of the whole world community, exposing the ways in which the U.S. is treating Indigenous Peoples, as part of an overall strategy for redress or reform.

<sup>12</sup> One way to stay informed about UN activities relating to Indigenous Peoples is to visit the DOCIP website and subscribe to their email list. See DOCIP, <https://www.docip.org/en>. For an annual update on Indigenous Peoples' activities globally, see IWGIA, *The Indigenous World* (Dwayne Mamo ed., Elaine Bolton trans., 37th ed. 2023), <https://www.iwgia.org/en/resources/indigenous-world.html>.

**Certain matters are international by nature because they concern people and resources that cross borders**

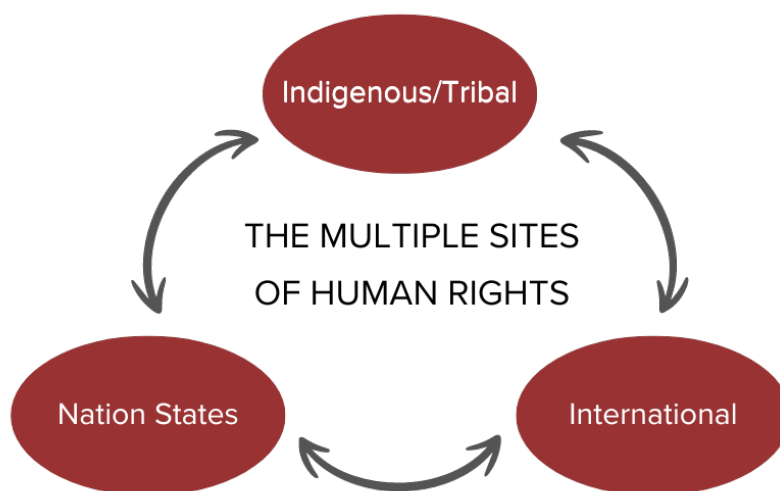
- International Repatriation
- Intellectual Property & Trade
- Migration & Borders
- Climate Change
- Global Health
- Multinational Development

**Other matters present opportunities for domestic law reform influenced by international standards**

- Religious Freedoms & Sacred Sites
- Consultation & Consent
- Treaty Rights
- Language Revitalization
- Land Recovery & Restitution
- Cultural Rights
- Self-determination

Indigenous Peoples may engage directly with a particular State about a certain issue, as many Indigenous Peoples have done over the course of centuries. As just one recent example, Native Hawaiians have worked to repatriate human remains directly from German museums.<sup>13</sup> Participation at the UN can help to amplify those interactions and allow for multilateral engagement with various States, UN agencies, and other Indigenous Peoples. For example, in another repatriation, the Yaqui People worked with the governments of Sweden, Mexico, and the U.S., as well as the Sami Parliament, the UN Expert Mechanism on the Rights of Indigenous Peoples, and the UN Permanent Forum on Indigenous Issues (UNPFII or Permanent Forum).<sup>14</sup>

The Implementation Project embraces a model of “multiple site engagement” in which advocacy in Indigenous, national, and international legal settings are all connected and mutually reinforcing.<sup>15</sup> An example is Cherokee Nation’s work on language rights through tribal law and programs, federal legislative and administrative advocacy, and participation in the UN’s International Decade of Indigenous Languages, described on page 12. While some of our previous publications focus on tribal and national government, this Guide emphasizes the international component.



American Indian, Alaska Native, and Native Hawaiian leaders are taking a seat at the international table, asserting their rights and responsibilities through global diplomacy, and working in solidarity with Indigenous counterparts from around the world.<sup>16</sup> The Guide supports those efforts.

<sup>13</sup> Catherine Hickley, *Native Hawaiians Collect Ancestors’ Skulls From European Museums*, N.Y. Times (Feb. 10, 2022), <https://www.nytimes.com/2022/02/10/arts/design/hawaii-remains-europe.html>. Edward Halealoha Ayau, together with Honor Keeler, and others have also long advocated in this space, along with countless Tribal Historic Preservation Officers, such as Vernelda Grant, San Carlos Apache Tribe.

<sup>14</sup> Isabella Grullón Paz, *A Chance Encounter Helps Return Sacred Artifacts to an Indigenous Group*, N.Y. Times (Jun. 19, 2022) <https://www.nytimes.com/2022/06/18/world/americas/indigenous-artifacts-sweden-museum.html>.

<sup>15</sup> Kristen A. Carpenter and Angela R. Riley, *Indigenous Peoples and the Jurisgenerative Moment in Human Rights*, 102 Calif. L. Rev. 173, 175-176 (2014).

<sup>16</sup> S. James Anaya, *International Human Rights and Indigenous Peoples* (2009).



*Delegations of the San Carlos Apache Tribe, Shawnee Tribe, Blackfeet Nation, Navajo Nation Human Rights Commission, and The Implementation Project, UN Permanent Forum (2023).*



## PRO-TIP

It can be difficult for an elected tribal leader to spend one to two weeks in New York, Geneva, Paris, or other locations for international meetings. Indigenous governments navigate these challenges in several ways. First, tribal leaders try to coordinate their presence with key agenda items and schedules of State representatives with whom they wish to meet. Second, some designate another representative (whether Vice-Chair, Ambassador, or Secretary of State) to represent the Tribe. Another approach is to coordinate among inter-tribal organizations to present collective positions. Given the long-term nature of international diplomacy, it is critical to develop strategies that are sustainable over time.



# CHAPTER TWO: STRUCTURE OF THE UNITED NATIONS

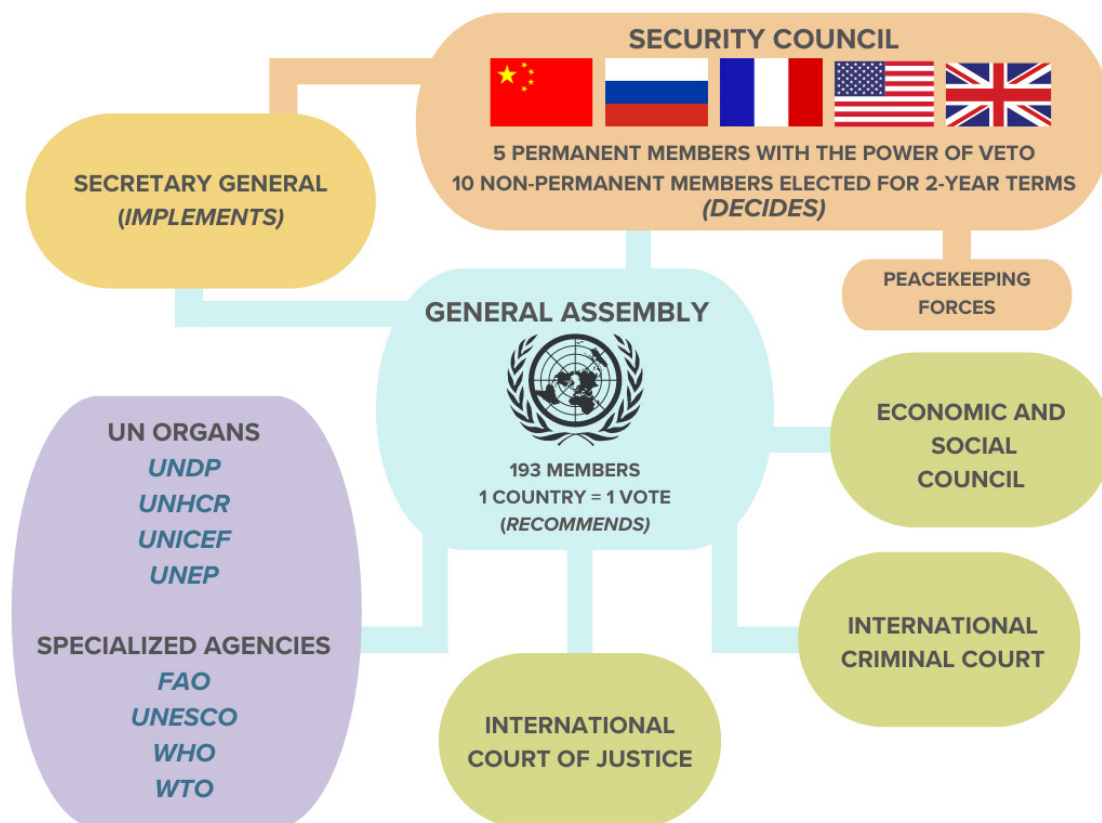
The United Nations is a large, bureaucratic organization with major offices in New York and Geneva, as well as agencies and programs in cities around the world. Its basic structure and governance are set forth in the UN Charter, which allocated responsibilities among certain bodies like the Security Council (responsible for maintenance of international peace and security) and the Economic and Social Council (addressing the world's economic, social, and environmental challenges). The Charter also explains how countries can become members. The UN is a State-centric organization and today there are 193 Member States with prerogatives to vote and speak in UN processes. These Member States are usually represented at the UN by diplomats, appointed by their home countries, who reside and work in national "missions" to the UN. The U.S. Mission to the UN, housed within the U.S. Department of State, serves as the U.S. delegation to the UN.



*Shawnee delegation with the U.S. Ambassador to the UN.*

"The Shawnee people have always been diplomats. Our international agenda calls on the United Nations to develop mechanisms for investigating and remedying the harms caused by federal Indian boarding schools in the United States and by similar institutions in other countries."  
-- Ben Barnes, President of the United Indian Nations of Oklahoma and Chief of the Shawnee Tribe

## THE UN SYSTEM



*Based on "Institutions and organisation of the United Nations" by [historicaire](https://shorturl.at/amtuz) (<https://shorturl.at/amtuz>).*

# THE MOVEMENT FOR INDIGENOUS PEOPLES' ENHANCED PARTICIPATION AT THE UN



*Heather Whiteman Runs Him serves on the Indigenous Coordinating Body, working to enhance Indigenous Peoples' participation at the United Nations.*

Currently, Indigenous leaders, lawyers, community members, and others can attend meetings of certain UN bodies under the credentials of a tribal government, Alaska Native village or corporation, or Native Hawaiian organization. These include the Annual Sessions of the Permanent Forum and the Expert Mechanism, and the process for registration for these and other such meetings is discussed in subsequent chapters.

Indigenous Peoples do not, however, have the same status as the countries or “States” that are members of the United Nations pursuant to its Charter. Therefore, Indigenous Peoples cannot usually attend, at least under their own government credentials, meetings of the General Assembly, Human Rights Council, or Economic and Social Council. In those venues, Indigenous Peoples can typically only participate under the auspices of a Member State or Non-Governmental Organization (NGO) with consultative status. For many Indigenous Peoples, these options are untenable and inconsistent with their right of self-determination recognized by the Declaration.

Globally, Indigenous Peoples have been lobbying for decades to establish an appropriate status at the UN. At the present time, this process is focused on acquiring an enhanced status at the Human Rights Council. Currently, a set of workshops are planned in Geneva to develop a Human Rights Council resolution setting forth the terms, criteria, and process for an enhanced status that can then be extended to other UN bodies. Indigenous Peoples may visit the Human Rights Council website for more information. In the meantime, some Indigenous organizations have investigated or obtained consultative status through the Economic and Social Council's (ECOSOC)<sup>17</sup> process.<sup>18</sup> Tribal governments and others have been active in expressing their views on this issue to UN bodies and to the U.S. State Department.

Indigenous leaders, lawyers, and community members are determined to participate in UN processes. The remainder of the Guide focuses on key points of connection, including Indigenous Peoples' Mechanisms, Treaty Bodies, and UN Agencies with special relevance in the struggle for Indigenous Peoples' rights.

Most Indigenous Peoples' engagements occur under the auspices of the General Assembly, Secretary General's Office, Principal Organs, or Specialized Agencies. The UN Permanent Forum on Indigenous Issues, for example, is a subsidiary body of the Economic and Social Council. The Expert Mechanism on the Rights of Indigenous Peoples and Special Rapporteur on the Rights of Indigenous Peoples both report to the Human Rights Council, which is a subsidiary organ of the General Assembly made up of 47 States that works to promote and



*Dalee Sambo Dorough, then-Chair of the UN Permanent Forum on Indigenous Issues, addresses the World Conference on Indigenous Peoples. Photo credit: UN Photo/Cia Pak*

<sup>17</sup> The UN Charter established ECOSOC in 1945 as one of the six main organs of the United Nations. For more information on ECOSOC, see Economic and Social Council, About Us, <https://www.un.org/ecosoc/en/content/about-us>.

<sup>18</sup> For more information on consultative status, see UN, Dept. of Econ. & Soc. Affairs, Working With ECOSOC: An NGOs Guide to Consultative Status (July 2018), <https://csonet.org/?menu=134>; UN, Dept. of Econ. & Soc. Affairs, Social Inclusion, *How to Apply for Consultative Status with ECOSOC?*, <https://ecosoc.un.org/en/ngo/apply-for-consultative-status>.

protect human rights around the world. The World Intellectual Property Organization (WIPO) and the United Nations Educational, Scientific, and Cultural Organization (UNESCO) are examples of Specialized Agencies.

The day-to-day work of the United Nations is carried out by independent experts who are often volunteers, appointed on the basis of their training, impartiality, and subject matter knowledge, and by paid staff, usually known as members of the “Secretariat” of a particular office. For example, while EMRIP is comprised of seven independent unpaid experts appointed by the Human Rights Council, it is supported by the staff of the Office of the High Commissioner for Human Rights (OHCHR) Indigenous Peoples and Minorities Section.

The National Congress of American Indians, together with the Inter-Tribal Council of the Five Civilized Tribes,<sup>19</sup> has called on the U.S. to undertake certain measures to help tribal governments navigate the United Nations, as in the following excerpt:

**EXCERPT FROM THE NATIONAL CONGRESS OF AMERICAN INDIANS RESOLUTION #SAC-21-023**

TITLE: Calling on the United States to Take Action to Achieve the Objectives of the United Nations Declaration on the Rights of Indigenous Peoples

NOW THEREFORE BE IT RESOLVED, that in furtherance of the United States’ existing commitments described above, the National Congress of American Indians (NCAI) calls on the President of the United States to take action to achieve the ends of United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), in cooperation and consultation with Indigenous Peoples, as follows:

- (1) Develop a national action plan for achieving the ends of UNDRIP and apply it to US law and policy, including an immediate call for all federal departments and agencies to issue policies and internal guidance to achieve the ends of UNDRIP, and to report annually on their progress;
- (2) Appoint an Ambassador (or Special Envoy) for Global Indigenous Affairs to serve as head of mission and coordinate all international engagements by the United States in matters regarding Indigenous Affairs, including at the United Nations, the Organization of American States, and in bilateral and multilateral diplomacy with other national governments; and
- (3) Support the full and effective participation of Indigenous Peoples, through their own Tribal Nations, in all United Nations bodies, including but not limited to the General Assembly, Human Rights Council, UN Educational, Scientific, and Cultural Organization, World Intellectual Property Organization, World Health Organization, UN Framework Convention on Climate Change, Permanent Forum on Indigenous Issues, Expert Mechanism on the Rights of Indigenous Peoples, and other international and regional forums, including the Organization of American States;

<sup>19</sup> Inter-Tribal Council of Five Civilized Tribes, Resolution No. 21-32, *A Resolution Calling on the United States to renew its support of the United Nations Declaration on the Rights of Indigenous Peoples and to implement said Declaration*, Oct. 8, 2021.



Current relevant contacts within the U.S. State Department include the Senior Advisor for Global Strategy and International Indigenous Issues in the Office of the Special Representative for Racial Equity and Justice (SRREJ), and the Department also has a tribal consultation policy.<sup>20</sup>

## GOOD PRACTICE: LANGUAGE RIGHTS AT THE UN GENERAL ASSEMBLY AND CHEROKEE NATION



To raise awareness of the urgent need to preserve, protect, and revitalize Indigenous languages globally, the UN General Assembly proclaimed 2019 the International Year of Indigenous Languages. This initiative resonated with Cherokees whose remarkable language history includes Sequoyah's creation of a writing system in the 1820s and the flourishing of Cherokee law, literature, and education. Tragically, the Cherokee Nation was removed from its homeland via the Trail of Tears in the 1830s. In subsequent generations, English-only norms and institutions, including certain boarding schools, but also places of employment and government, further limited the

intergenerational transmission of the language. In the 1960s-70s, under the leadership of Principal Chief W.W. Keeler, language education and publication programs were well underway. By 2019, with only several thousand speakers, the Cherokee Nation committed itself to immersion schooling, master apprentice programs, news media, archival restoration, and services for speakers.

At the close of the International Year, Principal Chief Chuck Hoskin, Jr., Delegate to Congress Kim Teehee, and Director of Language Programs Howard Paden, attended a high-level meeting of the United Nations General Assembly. In a rare instance when an Indigenous leader directly addressed the General Assembly, Chief Hoskin spoke about the links between Indigenous identity and culture, Cherokee Nation's language revitalization work, and the need for national commitments. He joined Sami, Hawaiian, Cree, Maori, and other Indigenous leaders calling for a full decade of language activities. At the conclusion of the high-level meeting, the General Assembly proclaimed the International Decade of Indigenous Languages 2022-2032, calling on the entire world to engage in transformative change over the next ten years to restore Indigenous languages globally. Cherokee leaders then participated in UNESCO's international planning meetings, advocated for language rights legislation in both tribal and federal law, and provided interpreters to accompany elders seeking health care during the pandemic. The Inter-Tribal Council of the Five Civilized Tribes passed a resolution calling on the U.S. to support the decade.

In January 2022, the Cherokee Nation hosted the world's first launch event for the International Decade of Indigenous Languages. Language activists, teachers, and students from Peru, Russia, Australia, and throughout the U.S. gathered in Tahlequah, Oklahoma, to embark upon a new commitment to language revitalization. Chief Hoskin's remarks at this event were published in a publication entitled *Visions for the International Decade of Indigenous Languages 2022-2032*.<sup>21</sup> That same year, the Cherokee Nation opened the Durbin Feeling Language Center, a state-of-the-art facility for Cherokee education, media, and archives. Today, the Cherokee Nation is leading the Indigenous language movement tribally, nationally, and internationally.

20 Tribal Consultations, U.S. Dep't of State, (June 14, 2021), <https://www.state.gov/tribal-consultations> (summary); U.S. Dep't of State, 2021 *Plan to Implement Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*, <https://www.state.gov/wp-content/uploads/2021/10/DoS-Tribal-Consultation-Plan-2021-1.pdf> (full policy).

21 Principal Chief Chuck Hoskin Jr., Cherokee Identity, National Responsibility, and Global Solidarity: A Tribal Leadership View of the International Decade of Indigenous Languages, 34 Colo. Envtl. L.J. 121 (2023).

# CHAPTER 3: UN MECHANISMS DEVOTED TO INDIGENOUS PEOPLES

There are several platforms at the United Nations devoted specifically to raising the profile and addressing the issues of Indigenous Peoples. These include the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples, and the Special Rapporteur on the Rights of Indigenous Peoples.

## A. THE PERMANENT FORUM ON INDIGENOUS ISSUES

The United Nations Permanent Forum on Indigenous Issues (UNPFII or Permanent Forum) is a high-level advisory body to the Economic and Social Council (ECOSOC). The Forum was established in 2000 by resolution 2000/22, to advise ECOSOC on Indigenous issues in six areas: economic and social development, culture, the environment, education, health, and human rights.<sup>22</sup>

### THE MANDATE OF THE PERMANENT FORUM

In addition to its six mandated areas, the UNPFII also takes into account cross-cutting areas such as: children and youth, gender and Indigenous women, Indigenous Peoples and the 2030 Agenda, and Data and Indicators. With respect to these issues and areas, the Permanent Forum is mandated to:

1. Provide expert advice and recommendations on Indigenous issues to ECOSOC, as well as to programs, funds and agencies of the UN, through ECOSOC;
2. Raise awareness and promote the integration and coordination of activities relating to Indigenous issues within the UN system; and
3. Prepare and disseminate information on Indigenous issues.<sup>23</sup>

Pursuant to Article 42 of the Declaration, the Forum also promotes respect for and full application of the provisions of the Declaration.

### COMPOSITION OF THE PERMANENT FORUM

The Permanent Forum is composed of 16 independent experts serving three-year terms who may be re-elected or re-appointed once. Eight members are nominated by Indigenous Peoples' organizations and then appointed by the ECOSOC president. Eight members are nominated by States and then elected by ECOSOC.

The experts nominated by States draw from five regional groupings of States typically used at the United Nations: Africa; Asia-Pacific; Eastern Europe; Latin America and the Caribbean; and Western Europe and other States. The experts nominated by Indigenous Peoples draw from seven socio-cultural regions: Africa; the Arctic; Asia; Central and South America and the Caribbean; Eastern Europe, Russian Federation,

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<sup>22</sup> *Mandated Areas*, UN, <https://www.un.org/development/desa/indigenouspeoples/mandated-areas1.html>.

<sup>23</sup> Economic and Social Council Res. 2000/22 (July 28, 2000).

Central Asia and Transcaucasia; North America; and the Pacific; plus a rotating seat among Africa, Asia, and Central and South America and the Caribbean. It is helpful for Indigenous Peoples to become personally acquainted with all Permanent Forum members and especially those from their regions.

## WORK OF THE PERMANENT FORUM

The Permanent Forum decides annually on a theme and several topics for member studies. It works on these matters over the course of a year, presents them at an Annual Session, and reports to the Economic and Social Council. The Forum also holds coordination meetings with UN agencies, Member States, and others. While much of this work is internal, Indigenous Peoples may have the opportunity to influence and discuss the Forum's studies by invitation to an expert group or intersessional meeting.

## ANNUAL SESSION OF THE PERMANENT FORUM

The Forum presents its work during an Annual Session that typically occurs the last two weeks of April at UN Headquarters in New York City. As each Annual Session is different, participants will want to monitor the Session website for information about registration, the agenda, and other details. Typically, the Annual Session lasts two weeks and contains a full agenda of panel discussions, interactive dialogues, and other meetings in which Indigenous Peoples, States, UN Agencies, and others may attend and participate. Academic organizations may attend, but do not have speaking privileges from the floor. The Annual Session culminates in a report, published soon after the session, which is submitted to ECOSOC usually by September.

Participation at the Annual Session is generally in-person. Live-stream and recordings are often available on UN WebTV. The UN Voluntary Fund for Indigenous Peoples provides limited financial



*UN Permanent Forum Members Keith Harper and Geoff Roth chairing a session on North America (2023).*

support for Indigenous Peoples through grants to participate in UN Mechanisms. For more information, visit the Voluntary Fund website. Attendees may wish to consult the DOCIP website to learn about preparatory meetings of the Indigenous Peoples' Caucus and other resources for the Annual Session. The Implementation Project offers annual UNPFII preparatory webinars, with information about these available on the Project website (<https://un-declaration.narf.org>).



### **—Registration**

Signing up for the Annual Session is a two-part process for first-time registrants. First an entity, whether tribal government or otherwise, must set up a “profile” through an online system available at <https://indico.un.org/>.<sup>24</sup> Tribal governments and other Indigenous Peoples usually select the designation “Indigenous Peoples Organization” on the drop down menu of choices, though the options may evolve with the initiatives for enhanced participation. Once the entity has a profile in the system, including the identification of someone in the organization to serve as a “focal point,” other individuals may register for a particular meeting, such as the UNPFII Annual Session. Registration for the UNPFII is generally open from February to March or April. You will want to keep your registration material, including password, somewhere safe and accessible, so that it remains available from year to year.

### **—Getting Your Badge**

Following registration, attendees will receive an email confirmation. They should print out the email and bring it to New York with them with their passport or a government issued-ID like a driver’s license. Each person must go personally to the UN Badge Office before the Annual Session starts and present these materials to get the badge that provides UN access. Lines the morning of the first day of the session can be long, so please plan accordingly.

### **—Preparing for the Session**

The Forum will publish a number of preparatory materials on its website for each session. Study the Agenda and Programme of Work, identify agenda items of relevance to your Tribe or organization, and read materials such as draft studies. Decide who will speak on behalf of your Tribe or organization, prepare interventions, set up meetings, side events, and other activities to make the Annual Session worthwhile. Remember that this is a unique chance to meet with Indigenous Peoples from around the world, as well as Permanent Forum members and representatives of national governments. The U.S. is primarily represented by the State Department, and the Annual Session can present a good opportunity to raise issues with the U.S. both publicly on the floor of the session and privately in small group meetings.

### **—Interventions**

The Annual Session of the Forum provides opportunities for official “interventions” at various points on the agenda. An intervention is a two or three minute statement from the floor that identifies the speaker, expresses a concern related to the agenda item, and makes an “ask” or suggestion.

When considering what to include in an intervention, it is important to know the actions that the UNPFII can take under its mandate. The UNPFII: (1) provides expert advice and recommendations to the Economic and Social Council, programs, funds, and agencies of the United Nations; (2) prepares information on Indigenous issues; and (3) promotes respect for the Declaration on the Rights of Indigenous Peoples, among other things. Reviewing the mandate for the UNPFII will help focus the intervention so that it is oriented toward things that the UNPFII can do.

Your intervention may suggest to the UNPFII that it provide advice on a process affecting Indigenous Peoples within the UN. For example, the National Congress of American Indians and the Native American Rights Fund recently recommended that the World Intellectual Property Organization (WIPO), a UN agency, ensure opportunities for Indigenous Peoples to participate in negotiations of instruments on intellectual property. This type of ask can be particularly effective because it is within the purview of the

<sup>24</sup> For important information about accreditation and event registration at the UN, see *Participating in a UN Event*, UN: NGO BRANCH, <https://csonet.org/?menu=101>.

UNPFII to provide recommendations to UN agencies and in this case, it resulted in a positive result from WIPO.<sup>25</sup> Indigenous Peoples may also request actions from States. Such interventions can be powerful in the moment, especially if the State representative is in the room or has been working with Indigenous advocates on the issue. That said, the UNPFII is sometimes reluctant to “single out” a particular State and may end up generalizing the issue in its final report.

The opportunity to make an intervention on the floor of the session is exciting and empowering. The entire world community is listening. Yet the session is usually crowded and there is no guarantee that those in attendance will be called upon. There is also no guarantee the Forum will reference your intervention in its final report. Therefore, Indigenous Peoples and their support teams typically make sure to get their message out by submitting a written version to the Permanent Forum, as well as sending out press releases, arranging meetings with supporters, and arranging side events. Following the session, Indigenous Peoples often reference their interventions in tribal, federal, and international settings.

#### —List of Speakers

In order to be called on, you must sign up for the speakers list for each agenda item. The process for the speakers list is notoriously difficult and changes from year to year. As one veteran tribal leader has noted, even when the speaker list sign-up process is shared in advance, it may change on the day of any particular meeting, and so those supporting the tribal leader need to be onsite and prepared to adapt to changes!



*Marvin Weatherwax, Chairman of the Council of Large Tribes and Councilmember of the Blackfeet Tribal Business Council, called on the U.S. to meet treaty obligations to Tribes, return lands taken for boarding schools, protect sacred sites on public lands, and address public safety on reservations. (UN Permanent Forum 2023).*

*Photo credit: Brend Norrell, Censored News*

Typically, participants visit the Annual Session’s website to learn whether sign up for the list will be in-person or online, what time and date to sign up, and whether the speaker (versus another person in the delegation) needs to be personally present for sign up. Even when an individual manages to sign up, it is difficult to know when they will be called on, if at all. Speakers are expected to be in the room for the entire 2-3 hour agenda item, prepared to give their statement when their name or organization is called.



## PRO-TIP

**The speakers list is usually the busiest on the opening days of the Annual Session. On the one hand, it’s exciting to be there for the opening. But if speaking from the floor is very important, consider looking ahead to the Wednesday/Thursday agenda items or the second week of the session. For in-person sign up, bring water, snacks, and extra people to take turns in the line, while having the “speaker” close by if needed.**

25 To find past UNPFII recommendations, see *UNPFII Recommendations Database*, UN, <https://unpfii.desa.un.org/recommendations>.

From a tribal leader’s perspective, the speakers list process can be frustrating. The chair of the agenda item may seem to jump around the list as they try to achieve regional balance among Indigenous Peoples, and alternate between States and others, all while knowing they will rarely be able to call on everyone. Set expectations accordingly and have back-up plans in case you don’t get called on, whether that be pivoting to speak on a different agenda item at a later time, holding a press conference or side event, sending out the statement by email, or all of the above. You may also consider collaborating with other Tribes or entities to deliver a joint statement, which may increase your chances of getting called on to speak.

### —Side Events

Another way for Indigenous Peoples to participate and have extended discussions about specific topics at the UNPFII is by hosting a “side event,” which is usually a panel discussion or meeting organized by participants instead of the United Nations itself. During each UNPFII session, there are multiple side events, giving tribal leaders and others a chance to share information and raise awareness of issues of importance to them. Side events may be registered with the UN body or occur outside the UN premises, off-site. Information will be available on the home page of the UNPFII Annual Session. For side events occurring on-site, space is limited and proposals that relate to the session’s Programme of Work and have multiple co-sponsors are often prioritized. It is important to keep in mind that participants at the UNPFII come from many different Indigenous communities and countries that speak many different languages. DOCIP provides opportunities to request interpreters in advance.<sup>26</sup>

### —Hallway Conversations and Coffee Meetings

In addition to official interventions and side events, the Permanent Forum affords many opportunities to talk informally. Sometimes a five- or ten-minute meeting can be long enough to secure support for a position from a UNPFII Member, Special Rapporteur, State representative, or fellow Indigenous leader. The culture of the Forum encourages these impromptu meetings, although advance preparation may be desirable if you want to be sure of getting on someone’s schedule. Even if you don’t speak someone’s language or have access to official interpreters, you may be able to enlist the assistance of another Forum attendee to act as an impromptu interpreter.

## ANNUAL REPORTS OF THE FORUM

The Annual Session culminates in a report, which is submitted to ECOSOC and can be found on each year’s Session page. The Forum also publishes studies and reports by members and maintains a recommendations database.



Following Bay Mills Indian Community President Whitney Gravelle’s intervention during the 2023 session, the UNPFII issued the following in its report:

*“The Permanent Forum calls upon Canada to re-examine its support for the Enbridge Line 5 oil pipeline, which jeopardizes the Great Lakes in the United States. The pipeline presents a real and credible threat to the treaty-protected fishing rights of Indigenous Peoples in the United States and Canada. The Permanent Forum recommends that Canada and the United States decommission Line 5.”*

-- Report on the twenty-second session (17–28 April 2023).

*Photo credit: Whitney Gravelle*

<sup>26</sup> *Frequently Asked Questions*, DOCIP, <https://www.docip.org/en/misc/faq>.





# ACTING IN SOLIDARITY

Some Indigenous Peoples travel for days from remote parts of the world to attend UN meetings and may be risking their lives to speak truth to the world community. Take the opportunity to meet Indigenous Peoples from other regions, offer support, and make plans for collaboration.

## B. THE EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES

The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP or Expert Mechanism) was established by the Human Rights Council in 2007 under A/HRC/RES 6/36, as amended in 2016 by A/HRC/RES 33/25.

### EMRIP'S MANDATE

EMRIP has two primary responsibilities: (1) to advise the Human Rights Council on the situation of Indigenous Peoples worldwide, and (2) to assist Member States, Indigenous Peoples, and other stakeholders in realizing the aims of the Declaration on the Rights of Indigenous Peoples.<sup>27</sup> EMRIP also helps to coordinate among UN agencies.

### COMPOSITION OF EMRIP

EMRIP is comprised of seven independent expert members appointed by the President of the Human Rights Council, according to criteria set forward by the Council in Resolution 5/1 (June 18, 2007). One member is selected from each of the following socio-cultural regions: Africa; the Arctic; Asia; Central and South America and the Caribbean; Eastern Europe, Russian Federation, Central Asia, and Transcaucasia; North America; and the Pacific. Each member serves a staggered, three-year term and may be reappointed once. Tribal leaders, lawyers, and community members may wish to become acquainted with EMRIP members, especially those from their own regions, to discuss areas of concern.<sup>28</sup>

### THE WORK OF EMRIP

#### —Studies and Reports

EMRIP delivers advice to the Human Rights Council through studies and reports conducted each year, as well as in-person seminars, intersessional meetings, and the Annual Session in Geneva. Calls for Input on studies and reports are announced with deadlines and submission instructions on the EMRIP website. American Indian, Alaska Native, and Native Hawaiian organizations, governments, and individuals, as well as scholars and other stakeholders, are all welcome to contribute, ensuring that EMRIP's reports are informed by their perspectives. EMRIP reports have covered topics such as cultural heritage, right to health, business, repatriation, self-determination, children's rights, Free Prior and Informed Consent (FPIC), and borders and migration. EMRIP's studies and reports contribute to

<sup>27</sup> *Expert Mechanism on the Rights of Indigenous Peoples*, UN Human Rights Office of the High Commissioner, <https://www.ohchr.org/en/issues/ipeoples/emrip/pages/emripindex.aspx>.

<sup>28</sup> For information on the selection process, including opportunities to apply, see *Information on the Selection and Appointment Process for Independent United Nations Experts of the Human Rights Council*, UN Human Rights Council, <https://www.ohchr.org/en/hr-bodies/hrc/sp/basic-information-selection-independent-experts>.

understanding of the Declaration by elaborating on its articles and identifying both challenges and good practices in advancing its aims. These documents, which are all available on the EMRIP website, can be cited by Indigenous Peoples' lawyers in Indigenous, national, and international venues, as well as by scholars in their research.

### —Country Engagements

Under its mandate, EMRIP also undertakes “country engagements” in which it assists Indigenous Peoples, States, and others in addressing certain problems or challenges, particularly through a solution that advances the Declaration. Preparing a request for country engagement may require months or even years of sustained work, possibly culminating in a country visit by EMRIP to meet with the requestor and other stakeholders. EMRIP uses methodologies such as the facilitation of dialogue, provision of technical advice, and coordination among UN agencies to help participants develop practical solutions to challenges facing Indigenous Peoples. EMRIP has undertaken country engagements on multiple issues ranging from assistance with advice on Sami political rights in Finland to Indigenous Peoples' rights to health during the COVID pandemic in Brazil. Information about country engagement requests, as well as documents associated with past country engagements, are available on EMRIP's website.

### —How to Request Country Engagements

**For the most up-to-date information on requesting a country engagement, visit EMRIP's website. The following guidance is based on what is on the EMRIP website at the time of this publication.** Requests by Indigenous Peoples, States, and others should include the following information: (1) Requesting institution/organization; (2) Name of contact person(s); (3) Description of the situation; (4) Steps that have been taken to address the issue, including any domestic remedies; (5) Expected action by and technical advice to be supplied by the Expert Mechanism; (6) Whether State authorities or other stakeholders have been consulted about or informed of the request submitted to the Expert Mechanism; (7) Proposed time frame; and (8) Any other relevant information.

Requests for country engagement should reference specific articles of the Declaration and articulate ways in which EMRIP could assist with practical solutions to a specific problem. The requestor should consider specific modalities, such as facilitating dialogue, providing technical advice, and coordinating with UN agencies, to the extent they may be useful. Requestors may wish to study past materials on country engagements and speak with EMRIP members or the Secretariat before submitting their request. If EMRIP decides to accept a country engagement proposed by Indigenous Peoples, it will inform the Member State through a collaborative process.



“After 90 years of struggle, EMRIP helped bring the Swedish government to the table and facilitated a repatriation agreement based on the Declaration and Yaqui law. Our sacred Maaso Kova came home to the Kolensia society in 2023.”

-- Peter Yucupicio, Chairman of the Pascua Yaqui Tribe

*Yaqui Leaders Vancouver, B.C., Canada (2020).*

Submit Country Engagement Requests in Writing or by Email to: Expert Mechanism on the Rights of Indigenous Peoples, United Nations Office of the High Commissioner for Human Rights, 1211 Geneva 10, Switzerland, [expertmechanism@ohchr.org](mailto:expertmechanism@ohchr.org)

### ***—What Happens During a Country Engagement?***

If EMRIP decides to accept a request under its mandate, it will contact the requestor and relevant parties, including the State. Members will then work with participants to develop a plan for EMRIP's country visit, which will be commemorated in "terms of reference." The nature of the request will guide EMRIP's approach. For example, in a country engagement to help implement Mexico City's new constitution in 2018, EMRIP first studied the constitution in light of the Declaration and important issues in Mexico City. Once in Mexico, EMRIP members and OHCHR staff visited Indigenous villages and urban communities to become familiar with local conditions, held open meetings to hear concerns, met with Mexico City leadership, offered a training session with municipal departments that administer Indigenous affairs (education, health, etc.), and concluded by publishing an advisory note. While the two main modalities for EMRIP engagement are facilitation of dialogue and provision of technical advice, requestors may also invite the following:

- Collection of good practices, lessons learned, challenges, and testimonies;
- Increasing awareness of the Expert Mechanism mandate, studies, reports, advice, and goals of the Declaration;
- Promoting understanding of the Declaration at the country level;
- Providing States and specific government officials with methods of implementing thematic advice issued by the Expert Mechanism;
- Dissemination of the Expert Mechanism's studies and advice and the best practices of stakeholders;
- Support with follow-up of Universal Periodic Review and treaty body recommendations;
- Policy dialogue with stakeholders;
- Meetings and interviews with stakeholders;
- Facilitation and promotion of dialogue through information, interpretation, technical legal advice, providing knowledge, and similar means; and
- Site visits; trainings; and public lectures.

### **EMRIP'S ANNUAL SESSION**

EMRIP generally meets in July of each year at the Palais des Nations in Geneva, Switzerland. Annual Session information is available on the EMRIP website, which will link to the same registration system used for the Permanent Forum at <https://indico.un.org/> (see Ch. 3(A) on the Permanent Forum for registration details). It is important to have a photo and passport to register, and to know which of the following registration designations is applicable for you: States, Indigenous Peoples Organizations, Academic Organizations, or Media. Participation is generally in-person; however, live-stream and recording of the sessions are available on UN WebTV.

Before attending EMRIP, review the items within the annual "Programme of Work" and draft interventions accordingly. The information about interventions, the speakers list, setting expectations, and amplifying the message provided in Ch.3(A) on the Permanent Forum generally applies to the EMRIP session as well. Attendees can also propose side events at EMRIP. Again, much of the information from the discussion of the Permanent Forum applies, and participants are encouraged to visit the EMRIP and DOCIP websites for information specific to each session.





“COLT is committed to holding the U.S. accountable for violating tribal treaty rights and the harms perpetuated by the federal Indian boarding schools. We will go wherever we need to protect our people and lands. Our presence at the United Nations is part of an advocacy strategy at the tribal, federal, and international levels to advance our sovereignty and human rights.”

-- Lisa White Pipe, Coalition of Large Tribes Treasurer and Rosebud Sioux Tribe Councilwoman

*Councilwoman Lisa White Pipe, Jennifer Weddle, and Bo Bearshield at the 16th Session of the United Nations Expert Mechanism on the Rights of Indigenous Peoples, Geneva (2023).*

## ANNUAL REPORTS OF EMRIP

Following the Annual Session, EMRIP submits a report to the Human Rights Council, in time for the Council’s September session. These reports can be found, along with topical studies and country engagement materials, on the EMRIP website.

## C. SPECIAL RAPPOREUR ON THE RIGHTS OF INDIGENOUS PEOPLES

The Human Rights Council’s “special procedures” refer to independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective.<sup>29</sup> Special procedures mandate holders include various special rapporteurs who work in the fields of religious freedoms, race and racism, torture, and cultural rights, among others. First appointed in 2001, the Special Rapporteur on the Rights of Indigenous Peoples focuses on the rights of Indigenous Peoples worldwide.<sup>30</sup>



RODOLPHO STAVENHAGEN (2001-08)

*Photo credit: UN Photo/Pierre-Michel Virot*



S. JAMES ANAYA (2008-14)

*Photo credit : UN Photo/Paulo Filgueiras*



VICTORIA TAULI-CORPUZ (2014-20)

*Photo credit: UN Photo/JC McIlvaine*



JOSÉ FRANCISCO CALÍ TZAY (2020-PRESENT)

*Photo courtesy of International Indian Treaty Council*

<sup>29</sup> *Special Procedures of the Human Rights Council*, UN Human Rights Office of the High Commissioner, <https://www.ohchr.org/en/special-procedures-human-rights-council>.

<sup>30</sup> DOCIP, Special Rapporteur on the Rights of Indigenous Peoples: Information Guide 1 (April, 2019), <https://www.ohchr.org/en/publications/training-and-education-publications/guide-no-1-united-nations-guide-indigenous-peoples>.

## THE SPECIAL RAPPORTEUR'S MANDATE

The Special Rapporteur on the Rights of Indigenous Peoples is mandated to “gather, request, receive and exchange information and communications from all relevant sources” concerning human rights violations against Indigenous Peoples as well as to “formulate recommendations and proposals ... to prevent and remedy” such violations. The Special Rapporteur works cooperatively with States, Indigenous Peoples, UN Agencies, and others, and helps to promote the Declaration. The Special Rapporteur’s mandate was updated most recently by the Human Rights Council in 2022, pursuant to A/HRC/RES/51/16.

## THE WORK OF THE SPECIAL RAPPORTEUR

The Special Rapporteur engages governments and other actors to promote domestic legal and policy reforms and administrative practices to implement the Declaration and related human rights standards.

### **—Communications Alleging Violations of Human Rights**

One of the Special Rapporteur’s main tasks is to receive and assess written communications alleging specific violations of the human rights of Indigenous individuals and groups. If a communication contains sufficient and credible information, such that intervention may be useful, the Special Rapporteur may decide to take action.

### **—How to Submit a Communication to the Special Rapporteur**

**For the most up-to-date information on submitting a communication to the Special Rapporteur, visit the Special Procedures website.<sup>31</sup> The following guidance is based on what is on the website at the time of this publication.** Communications alleging human rights violations may be submitted online using the Special Procedure Submission form (available on the Special Procedures website) or via mail to OHCHR-UNOG, 8-14 Avenue de la Paix, 1211 Geneve 10, Switzerland. In general, communications sent should include the name of the alleged victim or victims, as well as the circumstances violating their human rights. A communication may be sent despite the failure of a State to ratify a specific international or regional human rights treaty. The victim is not required to have exhausted all domestic remedies. Compilations of communications are published in a report prepared for the Human Rights Council (which will include letters sent and may include the victim’s name, unless this has been withheld, or the victim is under 18 years of age).

### **—Action on Communications**

The Special Rapporteur may address a communication by sending letters to governments, companies, the military, or others to address: (1) past human rights violations; (2) on-going/potential human rights violations; or (3) legislation, policies, or practices in violation of human rights laws and standards. The Special Rapporteur has no domestic or international law enforcement authority. However, the Special Rapporteur may call on authorities to stop or investigate activities that violate human rights. Further actions by the Special Rapporteur may include a site visit to investigate a situation and provide detailed findings and recommendations which are made public.

### **—Studies and Country Reports**

In addition to addressing specific alleged human rights violations, the Special Rapporteur examines and reports more generally on the human rights situations of Indigenous Peoples in selected countries.

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<sup>31</sup> *What are Communications?*, UN Human Rights Office of the High Commissioner, <https://www.ohchr.org/en/special-procedures-human-rights-council/what-are-communications>.

These country assessments typically involve site visits in which the Special Rapporteur seeks to interact with major relevant governmental authorities and institutions, visit with a range of Indigenous Peoples and organizations, and conduct research. The information results in a published report identifying both positive developments and ongoing challenges on a country-wide basis, along with conclusions and recommendations guided by the Declaration and other human rights instruments. Country assessments of this type have been conducted with regard to Australia, Bolivia, Botswana, Brazil, Canada, Colombia, Chile, Ecuador, Guatemala, Kenya, Mexico, Nepal, New Zealand, the Philippines, and South Africa. American Indian, Alaska Native, and Native Hawaiian advocates may be particularly interested in S. James Anaya, Country Report on the Situation of Indigenous Peoples in the United States (2012) and Victoria Tauli-Corpuz, Report of the Special Rapporteur on the Rights of Indigenous Peoples on her mission to the United States (2017). The Special Rapporteurs' Thematic Reports have covered topics ranging from the situation of Indigenous women and girls to green financing.<sup>32</sup> Thematic reports by the Special Rapporteur have had significant impact in domestic judicial decisions, international jurisprudence, and the development of industry standards. For an important example, see S. James Anaya, Thematic Report, Extractive Industries and Indigenous Peoples (2013).<sup>33</sup>

## **ANNUAL REPORTS OF THE SPECIAL RAPPORTEUR**

The Special Rapporteurs' annual reports to the Human Rights Council and General Assembly can be found on the mandate's website. Several are instructive for Indigenous Peoples' rights in the U.S.

For example, in his 2012 Report to the Human Rights Council, Special Rapporteur S. James Anaya reported on "Case no. USA 1/2011. The situation of Native Americans in relation to artificial snowmaking from recycled wastewater in the San Francisco Peaks." The matter concerned the proposed use of reclaimed wastewater for commercial ski operations in the San Francisco Peaks in Arizona, a site considered sacred by the Navajo Nation, Hopi Tribe, and several other Indigenous Peoples. Special Rapporteur Anaya noted the Tribes' allegations of interference with religious practice and U.S. obligations under relevant sources of international law, in particular the religious freedom provisions of the International Covenant on Civil and Political Rights, which he raised in communications with the U.S.. While the U.S. responded, it did not, in the Special Rapporteur's view, show how the government's actions met U.S. obligations to protect the religious freedoms of Indigenous Peoples as a matter of international law. Special Rapporteur Anaya noted that the U.S. decision to expand snowmaking on the Peaks had been undertaken without the free, prior, and informed consent of the affected Indigenous Peoples.<sup>34</sup>

These reports and communications are all highly relevant, not only to the ongoing management of the San Francisco Peaks, but also Indigenous Peoples' religious freedoms at other sacred sites. For example, the U.S. currently plans to transfer Chích'il Bł Dagoteel, or "Oak Flat," the site of Apache girls' coming of age ceremonies, to a multinational company whose copper mining activities will destroy the site and make it impossible to conduct religious practices tied to the place. Following on the analysis and reasoning in the Special Rapporteur's report—and after several disappointing losses in the U.S. courts—the Apache people have brought their case for the universal human right to religion in various UN bodies. The full body of S. James Anaya's work as Special Rapporteur may be found at <https://unsr.jamesanaya.org/>.

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32 Annual Thematic Reports, <https://www.ohchr.org/en/special-procedures/sr-indigenous-peoples/annual-thematic-reports>.

33 Gina Cosentino, Governing the Global Commons: How UNSR Anaya's Study on Extractive Industries Can Inform a New Global Human Rights Regulatory Regime for Transnational Conservation NGOs Operating on Or near Indigenous Territories, 32 Ariz. J. Int'l & Comp. L. 209 (2015).

34 S. James Anaya, Case no. USA 1/2011, A/HRC/18/35/Add.1, <https://delos-initiative.med-ina.org/wp-content/uploads/2020/05/Special-Rapporteur-report-s-francisco-peaks.pdf>.





## THE SPECIAL RAPPORTEUR AT STANDING ROCK



*Dave Archambault II, former Chair of the Standing Rock Sioux Tribe, with Tim Coulter (Citizen Band Potawatomi), Executive Director of the Indian Law Resource Center, at the UN Human Rights Council (2016).*

*Photo courtesy of Indian Law Resource Center.*

UN Special Rapporteur on the Rights of Indigenous Peoples Victoria Tauli-Corpuz made an official country visit to the U.S. in 2017. This country visit occurred at the same time as thousands of Indigenous people and allies camped out near the Standing Rock Sioux Reservation trying to protect water, land, and burial sites from destruction by the Dakota Access Pipeline. Standing Rock Sioux Chairman Dave Archambault had recently travelled to the United Nations in Geneva to bring attention to these issues.

Once in the U.S., the Special Rapporteur observed “the long history of land and resource dispossession” contributing to many present-day issues faced by Native Americans. Invoking the United Nations Declaration on the Rights of Indigenous Peoples, supported by the U.S. since 2010, the Special Rapporteur drew attention to the safeguard of “free, prior, and informed consent” which should operate to protect Indigenous Peoples’ rights to land, water, culture, and religion in development matters. However, in the case of the Dakota Access Pipeline, the Special Rapporteur pointed out that Tribes were excluded from consultation during the planning stages of the project and that the Army Corps of Engineers ignored the statements made by Tribes against the project. The Special Rapporteur later pointed out in a statement that Indigenous women were at risk from sexual assault and violence from extractive industries, and that excessive force was used by law enforcement to suppress opposition to the pipeline.

Country visits are important opportunities to bring forward specific violations of human rights that are experienced by Indigenous Peoples. The observations of the Special Rapporteur and information collected can help document and address these human rights violations, and also inform subsequent diplomacy at the UN.

# CHAPTER 4: HUMAN RIGHTS TREATY BODIES

While much of this Guide focuses on the Declaration, there are several human rights treaties developed by the UN. Each of these treaties is binding on the States that formally subscribe to them. These treaties include the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Covenant on Civil and Political Rights (ICCPR); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the Convention on the Rights of Persons with Disabilities; and the International Convention for the Protection of All Persons from Enforced Disappearance.

Human rights treaties are typically monitored by “treaty bodies.” These are committees of independent experts who are nominated and elected by State parties. The two treaties most often invoked by Indigenous Peoples are the ICERD, which is monitored by the Committee on the Elimination of Racial Discrimination, and the ICCPR, which is monitored by the Human Rights Committee. These treaties and treaty bodies are discussed in more detail below.

In submissions to treaty bodies, Indigenous Peoples and advocates should reference treaty terms and facts showing violations of treaty-guaranteed rights. While the Declaration is not the primary instrument of advocacy in treaty bodies, some treaty bodies reference the Declaration as an interpretive device for understanding the application of treaties in the Indigenous Peoples’ context. Indigenous Peoples can study and advance this practice through their own advocacy.

## TREATY BODY BASICS

Treaty bodies perform a number of functions in accordance with the provisions of the treaties that established them. OHCHR Fact Sheet 30 provides a comprehensive overview of the treaty body system. The U.S. is generally subject to the provisions of all treaties it has ratified, including reporting and other procedures specified in the treaties. The U.S. has ratified, for example, the Convention on the Prevention and Punishment of the Crime of Genocide, the ICCPR, ICERD, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In several instances, noted below, the U.S. has ratified a treaty but not an accompanying protocol and therefore is not subject to certain monitoring mechanisms, such as individual complaints under the ICCPR. Practice before treaty bodies requires a careful study of these issues; this chapter provides only an introduction.

## STATES PARTIES’ REPORTS

When a State ratifies a treaty, it has a legal obligation to implement the rights recognized in that treaty. Each State is typically under an obligation to submit periodic reports to the relevant treaty body on how the State is implementing these rights.

In addition to States parties’ reports, the treaty bodies may receive information on a country’s human rights situation from other sources, including international and national civil society organizations, UN entities, other intergovernmental organizations, professional groups, and academic institutions. In the light of all the information available, the relevant treaty body examines the report in the presence of its delegation.

Based on this constructive dialogue, the Committee publishes its concerns and recommendations, referred to as “concluding observations”.

## **INDIVIDUAL COMPLAINTS**

Several of the treaty body committees can receive petitions from individuals. An individual who claims that their rights under a treaty have been violated by a State party to that treaty may bring a communication before the relevant committee, provided that the State has recognized the competence of the committee to receive such complaints, and that domestic remedies have been exhausted.

## **COUNTRY INQUIRIES**

Several of the treaty bodies (when the relevant Optional Protocol enters into force) may initiate country inquiries if they receive reliable information containing well-founded indications of serious, grave, or systematic violations of a treaty in a country.

## **GENERAL COMMENTS AND DAYS OF GENERAL DISCUSSION**

The treaty bodies solicit input, organize discussion days, and publish their interpretation of the content of human rights provisions (known as general comments or general recommendations) on thematic issues or methods of work.

## **NGO AND CIVIL SOCIETY ENGAGEMENT WITH TREATY BODIES**

Civil society actors and non-governmental organizations have a key role to play in assisting treaty bodies to fulfill their mandates effectively.

## **A. COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (CERD OR THE COMMITTEE)**

The U.S. has signed and ratified the International Convention on the Elimination of All Forms of Racial Discrimination (1965), which calls on States to prohibit discrimination on the basis of race. General Comments to the Convention have long articulated the Convention’s applicability to the situation of Indigenous Peoples, with attention to equality, cultural identity, political participation, and other rights including occupancy, use, and ownership of lands traditionally owned by Indigenous Peoples.<sup>35</sup>

CERD has an early warning/urgent action process for use in cases of imminent racial discrimination. Submissions under this process are reviewed by the Committee and can result in a decision from CERD urging the State party to take certain measures to protect Indigenous rights. Examples include CERD’s decision in the famous Western Shoshone case, calling on the U.S. to take measures to protect the aboriginal title of elders Mary and Carrie Dann.<sup>36</sup> CERD has also issued decisions under this process in matters involving Native Hawaiian, Gwich’in, and Anishinaabe communities in the U.S. Recently, CERD cited not only the Convention but also the Declaration on Indigenous Peoples’ cases. CERD has called on Canada, for example, to “ensure meaningful consultations with First Nations on ... [certain] issues, in accordance with the Convention and with the United Nations Declaration on the Rights of Indigenous Peoples, in particular the principle to obtain the free, prior and informed consent of indigenous peoples before adopting and implementing legislative or administrative measures that may affect them.”<sup>37</sup>

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35 Comm. on the Elimination of Racial Discrimination, General Recommendation 23, the Rights of Indigenous Peoples, UN Doc. A/52/18, Annex V (1997) reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.6 at 212 (2003), <https://tbinternet.ohchr.org>.

36 Comm. on the Elimination of Racial Discrimination, Early Warning and Urgent Action Procedure: Decision 1(68) – United States of America, March 10, 2006, UN Doc. CERD/C/USA/DEC/1 (2006).

37 Letter from Verene Shepherd, Chair, Comm. on the Elimination of Racial Discrimination, to Leslie E. Norton, Permanent Rep. of Canada to the UN Office, at 2 (Dec. 2, 2022).



Beyond specific cases, CERD Member States must also submit reports on their progress in complying with the Convention every four years, pursuant to Article 9. The reporting process includes several steps, with options for a standard and simplified reporting process. Through opportunities for “civil society”, Indigenous Peoples may participate in national reporting preparations or submit alternative reports (sometimes called “shadow reports”) to share their own viewpoints and information in conjunction with the reporting process.<sup>38</sup>

The Committee’s 2022 concluding observations on the U.S. included the following excerpt on Indigenous Peoples’ issues:<sup>39</sup>

**UNITED NATIONS** **CERD/C/USA/CO/10-12**  
**COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION**  
**Concluding observations on the combined tenth to twelfth reports of the United States of America (2022)**

...

**Indigenous Peoples**

49. The Committee notes the steps taken by the State party with regard to the rights of indigenous peoples, including the adoption of Executive Order 13647 on “Establishing the White House Council on Native American Affairs”, of 26 June 2013, in which it was recognized that restoring tribal lands through appropriate means helped foster tribal self determination, and the President’s Memorandum on “Tribal consultation and strengthening nation-to-nation relationships”, of 26 January 2021, which highlighted as priorities respect for tribal sovereignty and self-governance, commitment to fulfilling treaty responsibilities to tribal nations, and consultation with tribal nations. However, the Committee is concerned at:

- (a) Allegations indicating a lack of measures taken by the State party to honour the bilateral treaties that it has entered into with indigenous peoples, and lack of consultation on their implementation;
- (b) The obstacles to the recognition of indigenous peoples, including the high costs and burdensome procedures;
- (c) The restrictive interpretation of the principle of free, prior and informed consent, and the lack of timely and meaningful consultation with indigenous peoples;
- (d) The negative impact of, inter alia, extractive industries, infrastructure projects, border walls and fences on indigenous peoples’ rights and way of life, as exemplified by the situations that the Committee has considered under its early warning and urgent action procedure regarding the Western Shoshone, Native Hawaiian, Gwich’in and Anishinaabe indigenous peoples;
- (e) The lack of adequate measures and funding to address [the] crisis concerning missing and murdered indigenous people (arts. 5 and 6).

50. Drawing the attention of the State party to the United Nations Declaration on the Rights of Indigenous Peoples, and to the recognition by the Human Rights Council that the legacies of colonialism have a negative impact on the effective enjoyment of all human rights and that indigenous peoples were victims of colonialism and continue to be victims of its consequences, the Committee recommends that the State party:

<sup>38</sup> Hurst Hannum, S. James Anaya, Dinah Shelton, and Rosa Celorio, *International Human Rights: Problems of Law, Policy, and Practice* 449-458 (7th ed. 2023).

<sup>39</sup> Comm. On the Elimination of Racial Discrimination, Concluding Observations on the Combined Tenth to Twelfth Rep. of the U.S., ¶49, UN Doc. CERD/C/USA/CO/10-12 (Sep. 21, 2022), <https://www.ohchr.org/en/documents/concluding-observations/cerdcu-saco10-12-concluding-observations-combined-tenth-twelfth>.

- (a) Take further measures to honour the treaties that it has entered into with indigenous peoples, and significantly strengthen mechanisms for consultation with indigenous peoples on the implementation of these treaties, with a view also to settling disputes concerning land rights;
- (b) Eliminate undue obstacles to the recognition of indigenous peoples;
- (c) Guarantee, in law and in practice, the principle of free, prior and informed consent in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and other relevant international standards, and the right of indigenous peoples to be consulted on any legislative or administrative measure that may affect their rights;
- (d) Take measures to effectively protect the rights of indigenous peoples from any adverse impact of extractive industries and infrastructure projects, and specifically address the situations that the Committee has considered under its early warning and urgent action procedure;
- (e) Take additional measures and provide adequate funding to implement statutes and policies that address the crisis concerning missing and murdered indigenous people.

## B. HUMAN RIGHTS COMMITTEE (HRC OR THE COMMITTEE)

The International Covenant on Civil and Political Rights (ICCPR) was adopted in 1966, as one of two treaties giving effect to the Universal Declaration of Human Rights. Widely ratified by states including the U.S., the ICCPR commits States to respect civil and political rights including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights, and rights to due process and a fair trial. The ICCPR is monitored by the Human Rights Committee, another body of experts.

In early cases the HRC struggled to find a basis in the ICCPR for Indigenous rights. The U.S. has not ratified the first Optional Protocol of the ICCPR, and is therefore not subject to adjudication of complaints, thus these cases arose from other States, including Canada, Finland, New Zealand, and France.<sup>40</sup> Fruitful arguments have been brought under Article 27, which reads:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to these minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

The HRC's comment 23 on Article 27 recognizes that "positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion, in community with the other members of the group."<sup>41</sup> Accordingly, in *Lovelace v. Canada*, the HRC wrote that a Canadian law denying a Maliseet woman the right to live on her reserve following her marriage to a non-Indian violated Article 27 of the ICCPR because it prevented her from enjoying her culture and language with other Maliseets.<sup>42</sup>

<sup>40</sup> *Ominayak (Lubicon Lake Band) v. Canada*, Comm'n No. 167/1984, UN Doc. CCPR/C/38/D/167/1984 (1990) (Indigenous leader, as an individual, could not assert right of self-determination and Committee could not decide whether Lubicon Band constituted a people under the Optional Protocol).

<sup>41</sup> UN Human Rights Comm., General Comment No. 23(50) (Art. 27), UN Doc. CCPR/C/21/Rev.1/Add.5, at 2-4 (1994).

<sup>42</sup> *Lovelace v. Canada*, Comm'n No. 24/1977, UN Doc. CCPR/C/13/D/24/1977 (1981).

Recently the HRC, like CERD, has begun to cite the Declaration in ways that are advancing understandings of Indigenous Peoples' human rights. In a pair of cases involving the Sami Parliament of Finland, the HRC extensively cited the Declaration's articles 8 (right not to be subject to cultural assimilation), 9 (right to belong to a community), and 33 (right to determine membership) in support of findings that, by extending the pool of eligible votes for elections of the Sami Parliament, Finland improperly interfered with the Sami peoples' rights to political participation and to minority rights under ICCPR Articles 25 and 27.<sup>43</sup> As a result, the HRC wrote: "The electoral process for the Sami Parliament accordingly must ensure the effective participation of those concerned in the internal self-determination process, which is necessary for the continued viability and welfare of the indigenous community as a whole."<sup>44</sup>

The U.S. is not subject to the HRC complaints procedure, but it is bound pursuant to Article 40 to prepare periodic reports to the HRC regarding its progress in meeting the terms of the Covenant. The U.S. recently submitted its 2023 report, which contained a section on Indigenous Peoples.<sup>45</sup> As with reports to CERD and other treaty bodies, there are opportunities for civil society organizations to participate in preparation and follow-up to reports, and Indigenous Peoples often submit information.<sup>46</sup>



*Delegation of Indigenous cultural rights advocates to the United Nations. Photo taken at the Tillman Chapel at the Church Center for the United Nations, May 2014.*

43 Sanila-Aikio v. Finland, Commc'n No. 2668/2015, Nov. 1, 2018, UN Doc. CCPR/C/124/D/2668/2015 (2019); Käkkäläjärvä v. Finland, Commc'n, No. 2950/2017, Nov. 2, 2018, UN Doc. CCPR/C/124/D/2950/2017 (2019).

44 Käkkäläjärvä, supra note 43, at 14.

45 U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Fifth Periodic Rep. by the U.S. Under Art. 40 of the Covenant on Civ. and Pol. Rts., <https://www.state.gov/fifth-periodic-report-by-the-united-states-of-america-under-the-international-covenant-on-civil-and-political-rights/>.

46 Office of the United Nations High Commissioner for Human Rights (OHCHR), Reporting Under The International Covenant On Civil And Political Rights: Training Guide, at 10, UN Doc. HR/P/PT/23, Sales No. E.21.XIV.2 (2021) <https://www.ohchr.org/sites/default/files/Documents/Publications/Reporting-ICCPR-Training-Guide.pdf> ("Reports should also include information on: (a) Any mechanism developed at the national level to ensure follow-up to the previous concluding observations, including information on the involvement of civil society in the preparation of the report").





## UNIVERSAL PERIODIC REVIEW

Established in March 2006 by the UN General Assembly in resolution 60/251, the Universal Periodic Review (UPR) is designed to prompt, support, and expand the promotion and protection of human rights in every country.

Conducted by the Human Rights Council, the UPR process calls for each UN Member State to undergo a peer review of its human rights records every 4.5 years. The UPR provides each State the opportunity to:

Report on actions it has taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights; and Receive recommendations, informed by multi-stakeholder input and pre-session reports, from UN Member States for continuous improvement.

Since the first periodic review in 2008, all 193 UN Member States have been reviewed three times.

In one recent example, the Bay Mills Indian Community joined fifty other tribal governments and First Nations calling for Canada to cease human rights violations associated with the Line 5 oil pipeline. Indigenous Peoples can follow the work of the UPR, which reviews 42 States each year, in order to track when submissions are due, at <https://www.ohchr.org/en/hr-bodies/upr/upr-sessions>.

For recent reports on the United States, including points on Indigenous Peoples, see <https://www.ohchr.org/en/hr-bodies/upr/us-index>.

# CHAPTER 5: UNITED NATIONS AGENCIES

There are more than a dozen agencies in the United Nations system. This chapter discusses two, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) and the World Intellectual Property Organization (WIPO), which are deeply involved in Indigenous Peoples' intellectual and cultural property issues. Others which may impact Indigenous Peoples include the World Health Organization, World Bank, and Food and Agriculture Organization, but they are beyond the scope of this Guide.

## A. UNITED NATIONS EDUCATIONAL, SCIENTIFIC, AND CULTURAL ORGANIZATION

UNESCO was established in 1946 to contribute to the UN's objectives of peace and security "by promoting collaboration among the nations through education, science and culture." A Member State organization, UNESCO is based in Paris and has a number of conventions, programs, and initiatives within its purview. Comprised of 194 members, including the U.S. which recently rejoined after a hiatus, UNESCO's governance occurs through a General Conference, Executive Board, and other bodies.<sup>47</sup>

UNESCO's work often intersects with Indigenous Peoples, particularly in the area of culture. In 2018, to coordinate these activities, UNESCO published its *Policy on Engaging with Indigenous Peoples* and committed to implementation of the Declaration on the Rights of Indigenous Peoples.<sup>48</sup> The Policy identifies a Focal Point and Working Group on Indigenous Peoples. Additionally, UNESCO attends the UN Inter-Agency Support Group on Indigenous Issues, which provides an opportunity for agencies to hear from Indigenous Peoples' mechanisms and coordinate among secretariats. UNESCO has a Goodwill Ambassador for Indigenous Peoples and participates in the UN's System-Wide Action Plan for Indigenous Peoples.

### ***Repatriation of Cultural Properties***

In 1970, UNESCO's General Conference adopted the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970 Convention).<sup>49</sup> The Convention urges State Parties to take measures to prohibit and prevent the illicit trafficking of cultural property, and also provides for return and restitution in some cases, including through direct agreement by States. The UNESCO Intergovernmental Committee can facilitate bilateral negotiations between States concerning requests for the return and restitution of cultural property.<sup>50</sup> The Convention is widely ratified and the U.S. is a party with domestic implementing legislation in the form of the Cultural Property Implementation Act of 1987. The State Department's Bureau of Educational and Cultural Affairs seeks to support the efforts of American Indian Tribes, Alaska Natives, and Native Hawaiians to repatriate ancestral remains and cultural items from other countries.

Many Indigenous Peoples seek repatriation directly to them, rather than to the States in which they live.<sup>51</sup> The 1970 Convention does not explicitly mention repatriation to Indigenous Peoples. In light of the

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47 UNESCO, Constitution (June, 23, 2023), <https://www.unesco.org/en/legal-affairs/constitution>.

48 UNESCO, UNESCO Policy on Engaging with Indigenous Peoples (2018).

49 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 UNTS 23.

50 UNESCO, About 1970 Convention, <https://en.unesco.org/fighttrafficking/1970>.

51 For information about Indigenous Peoples' advocacy in the realm of international repatriation, see Edward Halealoha Ayau & Honor Keeler, *Injustice, Human Rights, and Intellectual Savagery: A Review*, H-SOZ-KULT (Apr. 14, 2017) ("International repatriation is both a cultural duty and a human right that arises from the historic progression of injustices perpetrated against Indigenous people"); Honor

thousands of human remains and ceremonial objects held around the world, and rights to repatriation recognized in the Declaration, UNESCO has been urged by the Expert Mechanism and others to create a mechanism for Indigenous Peoples to seek redress.<sup>52</sup> In the case of the Yaqui Maaso Kova, EMRIP noted:

A request for repatriation to the Swedish National Museums of World Culture could occur pursuant to the UNESCO 1970 Convention, article 15, which permits special agreements for restitution between parties regarding cultural property removed from their territories before the entry into force of the Convention, and UN Declaration on the Rights of Indigenous Peoples article 12, which recognizes the right of indigenous peoples to the use and control of their ceremonial objects, and that states shall seek to enable the access and/or repatriation of ceremonial objects in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.<sup>53</sup>

While the Yaqui repatriation was facilitated by EMRIP, not UNESCO, that case could suggest ways in which to apply the 1970 Convention and the Declaration together in Indigenous Peoples' cases.

In some cases, the U.S. has invoked the Convention to seek international repatriation of Indigenous Peoples' human remains and funerary objects taken long ago.<sup>54</sup> Fortunately, in the U.S. the Native American Graves Protection and Repatriation Act of 1990 normally requires that once such items are in the possession of federal agencies, they must be repatriated to Tribes. Additionally, the STOP Act of 2022 prohibits the export of certain sacred Native American items and increases penalties for stealing and illegally trafficking tribal cultural patrimony. In many other countries, however, there is no domestic law requiring a State that receives Indigenous human remains or cultural objects to return them to Indigenous Peoples, nor are there sufficient restrictions on imports and exports of Indigenous Peoples' cultural properties.<sup>55</sup>

### **World Heritage Sites Program**

In 1972, UNESCO's General Conference adopted the Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention). The Convention sets forth a process for designating landmarks or areas with cultural, historical, scientific, or other forms of significance of outstanding value to humanity. They include ruins, historical structures, buildings, cities, deserts, forests, islands, lakes, monuments, mountains, and wilderness areas. As of 2023, UNESCO had designated 1,157

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Keeler, *Indigenous International Repatriation*, 44 Ariz. St. L.J. 703 (2012). See also UN Expert Mechanism on the Rights of Indigenous Peoples, Promotion and protection of indigenous peoples' rights with respect to cultural heritage, Rep. of the Expert Mechanism on the Rights of Indigenous Peoples, UN Doc A/HRC/30/53 (2015).

52 UN Human Rights Council, Repatriation of Ceremonial Objects, Human Remains and Intangible Cultural Heritage Under the United Nations Declaration on the Rights of Indigenous Peoples, Rep. of the Expert Mechanism on the Rights of Indigenous Peoples, UN Doc. A/HRC/45/35 (Oct. 2, 2020). Expert Mechanism on the Rights of Indigenous Peoples, Technical Advisory Note – Repatriation Request for the Yaqui Maaso Kova (June, 16, 2020).

53 Expert Mechanism on the Rights of Indigenous Peoples, Technical Advisory Note – Repatriation Request for the Yaqui Maaso Kova (June, 16, 2020), <https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/EMRIP/Session12/MaasoKova.pdf>.

54 *Press Release*: Native American Ancestral Remains Repatriated from the National Museum of Finland to Mesa Verde, US EMBASSY IN FINLAND, <https://fi.usembassy.gov/press-release-native-american-ancestral-remains-repatriated-from-the-national-museum-of-finland-to-mesa-verde>; U.S. Dep't of State, Bureau of Educational and Cultural Affairs, *Protecting Native American Heritage*, <https://eca.state.gov/cultural-heritage-center/native-american-cultural-heritage>.

55 The Routledge Companion to Indigenous Repatriation: Return, Reconcile, Renew (Cressida Fforde, C. Timothy McKeown & Honor Keeler eds., 2020).



“Oak Flat is a holy site, an area of irreplaceable beauty akin to a church, no different than the Wailing Wall, Temple Mount, Australia’s Juukan Gorge, or Mecca’s Kaaba. Apache people have lived, prayed, and died at Oak Flat from time immemorial.”

-- Chairman Terry Rambler, San Carlos Apache Tribe, in statement to UNPFII

*At the UN Permanent Forum in 2023, the San Carlos delegation, together with Indigenous Peoples from Australia, brought attention to the destructive activities of mining companies in their territories.*

World Heritage Sites (900 cultural, 218 natural, and 39 mixed properties) that exist across 167 countries. The World Heritage Convention is overseen by the World Heritage Committee, which is composed of 21 countries elected by the State Parties.<sup>56</sup> Many World Heritage Sites are within Indigenous Peoples’ territories, places where they continue to live, worship, gather foods, and engage in cultural practices. To provide input on the nomination and management of World Heritage Sites, Indigenous delegates to UNESCO formed the International Indigenous Peoples’ Forum on World Heritage in 2017.<sup>57</sup> The World Heritage Site program appears to bring about both positives and negatives for Indigenous Peoples.<sup>58</sup> In recent examples, such as the Kaeng Krachan Forest Complex in Thailand, Indigenous Peoples have been evicted from their lands, or even disappeared or murdered, in events leading up to a World Heritage Site nomination.<sup>59</sup> More positively, several tribal governments in the U.S. led efforts to have the Hopewell Ceremonial Earthworks designated a World Heritage Site in 2023.<sup>60</sup>

In 2023, the UNPFII issued a direct request to UNESCO to address Indigenous Peoples’ sacred sites, as follows:

The Permanent Forum calls upon UNESCO, including its Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage, to step up its policies, safeguards and actions on the protection of Indigenous Peoples’ tangible and intangible cultural heritage. UNESCO safeguards that reflect robust free, prior and informed consent protocols, as prescribed by the United Nations Declaration on the Rights of Indigenous Peoples, could contribute to the prevention of the destruction and desecration of Indigenous Peoples’ lands and sites by public and private enterprises. Examples include mining activities of the company Rio Tinto on the ancient Aboriginal site Juukan Gorge in Western Australia and the sacred Oak Flat of the San Carlos Apache Tribe in Arizona, United States of America.<sup>61</sup>

56 Stefan Disko, UNESCO’s World Heritage Convention, in *The Indigenous World 2022*, 788 (Dwayne Mamo ed., Elaine Bolton trans., 36th ed. 2022).

57 The International Indigenous Peoples’ Forum on World Heritage, <https://iipfwh.org>.

58 *Indigenous Peoples’ Rights and UNESCO World Heritage Sites*, IWGIA (2022).

59 *UNESCO World Heritage Committee Tramples on Human Rights*, IWGIA (July 28, 2021).

60 Hopewell Ceremonial Earthworks, <https://whc.unesco.org/en/list/1689/>.

61 UNPFII, Report on the Twenty-Second Session, ¶ 92, UN Doc. E/2023/43-E/C.19/2023/7 (17–28 April 2023).



### ***International Decade of Indigenous Languages 2022-2032***

Indigenous Peoples' languages are extremely vulnerable to dormancy after centuries of assimilation and discrimination all over the world. The UN General Assembly proclaimed the period between 2022 and 2032 as the International Decade of Indigenous Languages (IDIL or the Decade), to draw global attention to the critical situation of Indigenous languages and to mobilize stakeholders and resources for their preservation, revitalization and promotion.<sup>62</sup> The General Assembly further designated UNESCO the lead agency for the Decade. The IDIL is an opportunity to realize Indigenous Peoples' rights to "revitalize, use, develop, and transmit their languages" to future generations under the Declaration. Similarly, this is the time to pressure States to recognize these rights, remedy past harms, and fund education and media in Indigenous languages. The General Assembly resolution calls on national governments to work with Indigenous Peoples to address the aims of the Decade.

The IDIL is governed by a Global Task Force of State and Indigenous leaders, along with participation by UN mechanisms and others.<sup>63</sup> Indigenous Peoples from each region designate three members of the Global Task Force and may also be represented by individuals on UNESCO's Ad Hoc Committee on IDIL.

Key insights of the IDIL include that language rights are human rights and that Indigenous Peoples cannot fully enjoy basic human dignity, such as rights to life, health, speech, voting, and religion without access to their languages. At the same time, Indigenous Peoples' languages are facing a resurgence in international diplomacy, economic development, understanding biodiversity, and addressing climate change. Working with international counterparts in the Indigenous Peoples' language movement can help to elevate local concerns, increase awareness, and develop solidarity.

UNESCO maintains an extensive website for IDIL which includes a Global Action Plan as well as several National Action Plans. UNESCO has convened conferences and meetings all over the world to promote Indigenous Peoples' language rights. American Indians, Alaska Natives, and Native Hawaiians are already participating in these meetings, as well as serving on UNESCO's Global Task Force for the Decade. Indigenous Peoples throughout the world are urged to join the online community for IDIL by registering their names, organizations, and events on the website: <https://idil2022-2032.org/>.

Former EMRIP Chair, TIP Co-Director, and University of Colorado Law Professor Kristen Carpenter addresses the High Level Closing of the International Year of Indigenous Languages, Los Pinos, Mexico (2019).



62 Rights of Indigenous Peoples, A/Res/74/135.

63 UNESCO, <https://en.unesco.org/idil2022-2032/globaltaskforce>.

### ***Convention for the Safeguarding of the Intangible Cultural Heritage (2003)***

UNESCO administers the Convention for the Safeguarding of the Intangible Cultural Heritage of 2003. Its purposes are (1) to safeguard the intangible cultural heritage; (2) to ensure respect for the intangible cultural heritage of the communities, groups and individuals concerned; (3) to raise awareness at the local, national, and international levels of the importance of the intangible cultural heritage, and of ensuring mutual appreciation thereof; and (4) to provide for international cooperation and assistance. It has 180 State parties, of which the U.S. is not one. Opportunities for Indigenous Peoples' participation in programs growing out of the Convention are noted on UNESCO's website.<sup>64</sup>

## **B. WORLD INTELLECTUAL PROPERTY ORGANIZATION**

The World Intellectual Property Organization (WIPO), established in 1967, is a self-funded, specialized agency of the United Nations with 193 Member States, including the United States. WIPO provides a forum for negotiating new international intellectual property laws. Its mission is to lead the development of an international intellectual property system that “enables innovation and creativity for the benefit of all.”<sup>65</sup>

In 2000, WIPO established the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). The IGC engages in “formal, text-based negotiations aimed at developing legal instruments for the protection of Indigenous Peoples' and local communities' traditional knowledge, traditional cultural expressions and genetic resources.” The IGC usually meets several times a year, at the WIPO headquarters in Geneva.<sup>66</sup>

While existing intellectual property laws may in some cases provide protections for Indigenous Peoples' Traditional Knowledge (TK), Traditional Cultural Expressions (TCEs), and Genetic Resources (GRs), most fall outside the scope of these protections. In the negotiations at the IGC, Indigenous Peoples assert that the safeguard of free, prior, and informed consent must be applied to their intellectual property rights and cultural heritage, and advocate for inclusion of language recognizing and protecting their rights in the legal instruments under negotiation. Issues such as cultural appropriation, misappropriation, and the illicit use of Indigenous songs, ceremonies, designs, art, culture, medicinal knowledge, and heritage are often cited. Many of these issues are addressed in the Declaration, including Article 31, which recognizes Indigenous Peoples' rights to maintain, control, protect, and develop their cultural heritage, traditional knowledge, and traditional cultural expressions.

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<sup>64</sup> Living Heritage and Indigenous Peoples, UNESCO, <https://ich.unesco.org/en/indigenous-peoples>; Jonathan Liljeblad, The Convention for the Safeguarding of the Intangible Cultural Heritage (CSICH) and the Control of Indigenous Culture: A Critical Comment on Power and Indigenous Rights 26, Wm. & Mary J. Women & L. 281 (2020).

<sup>65</sup> Inside WIPO, World Intellectual Property Organization <https://www.wipo.int/about-wipo/en>.

<sup>66</sup> Sue Noe, World Intellectual Property Organization, in *The Indigenous World 2022* 830, 831-33. (Dwayne Mamo ed., Elaine Bolton trans., 36th ed. 2022), <https://www.iwgia.org/en/resources/publications/5503-the-indigenous-world-2022.htm>.

<p><b>TRADITIONAL KNOWLEDGE</b></p> <p>“Traditional Knowledge” (TK) generally refers to technical know-how, skills and practices developed, utilized and passed down within a traditional context. Examples include medicinal, agricultural and ecological knowledge, as well as methods for doing things such as weaving and constructing housing.</p>	<p><b>TRADITIONAL CULTURAL EXPRESSIONS</b></p> <p>“Traditional cultural expressions” (TCEs) are the myriad forms in which traditional culture is expressed. Examples include music, dance, stories, art, ceremonies, designs and symbols.</p>	<p><b>GENETIC RESOURCES</b></p> <p>“Genetic resources” (GRs) refers to material having actual or potential value found in plants, animals or micro-organisms. Examples include medicinal plants, agricultural crops and animal breeds. Intellectual property issues arise in cases of inventions utilizing genetic resources and/or associated traditional knowledge.</p>
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Accreditation to the IGC is a streamlined process.<sup>68</sup> Indigenous representatives participate in the IGC as observers and may choose to participate collectively in an *ad hoc* Indigenous Caucus. The Caucus meets daily, and often multiple times per day, during each IGC session, and delivers opening and closing statements. The Caucus may make interventions from the floor of the IGC and may propose modifications to the text under negotiation, as may individual Indigenous representatives. Proposed modifications are incorporated into the draft text if they receive the support of at least one Member State. In addition, the Caucus has traditionally had a role beyond that of other observers, including the ability to nominate representatives to participate in the various IGC working methodologies, such as *ad hoc* expert groups, informal negotiations, and small contact groups.

The weekend before each IGC session, the WIPO Secretariat provides support for a one- or two-day Indigenous Consultative Forum to facilitate the Indigenous Caucus preparation for participation in the session. During IGC sessions, WIPO invites a panel of Indigenous experts to present on relevant topics. The current IGC mandate for 2024/2025 explicitly calls on the WIPO Secretariat to facilitate the effective participation of Indigenous Peoples in WIPO’s normative work related to GRs, TK, and TCEs, and provides that representatives of Indigenous Peoples will be invited to participate in *ad hoc* expert groups in line with past practice of the Committee.<sup>69</sup>

<sup>67</sup> Adapted from Sue Noe, World Intellectual Property Organization, in *The Indigenous World 2022* 830, 831-33. (Dwayne Mamo ed., Elaine Bolton trans., 36th ed. 2022).

<sup>68</sup> WIPO, *Frequently Asked Questions – Accreditation to the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)*, [https://www.wipo.int/export/sites/www/tk/en/igc/docs/accreditation\\_faq.pdf](https://www.wipo.int/export/sites/www/tk/en/igc/docs/accreditation_faq.pdf). Accreditation to the WIPO General Assembly is more complicated, and must be submitted to the WIPO Secretariat, but is not necessary for participation in the IGC.

<sup>69</sup> WIPO, *Rep. on the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)*, Sixty-Fourth Series of Meetings, Agenda Item 15(v), (July 6-14, 2023), <https://www.wipo.int/export/sites/www/tk/en/igc/docs/igc-man-date-2024-2025.pdf>.





*Frank Ettawageshik co-chaired the Indigenous Caucus at the 37th IGC (2018). Photo credit: WIPO/Emmanuel Berrod*



*On July 18, 2023, at the 16th Session of the UN EMRIP in Geneva, Switzerland, NARF Staff Attorney and TIP Co-Director Sue Noe, on behalf of NCAI, advocated for EMRIP's support for the meaningful participation of Indigenous Peoples in the upcoming Diplomatic Conference on Genetic Resources and Associated Traditional Knowledge.*



WIPO also organizes various intersessional activities that take place throughout the year involving Indigenous Peoples. These include WIPO-sponsored seminars, information sessions, trainings, and invitations to submit comments for various processes and studies. WIPO's website (<https://www.wipo.int/tk/en/indigenous/>) provides information specifically oriented toward Indigenous Peoples' concerns about intellectual property, including customary law, traditional knowledge, genetic resources, and traditional cultural expressions.

WIPO has established its own Voluntary Fund to assist with the participation of Indigenous Peoples. Applications must be submitted and received by WIPO at least 60 days before the session which precedes the session for which funding is sought.<sup>70</sup> All funding is dependent on donations, and the WIPO Voluntary Fund is frequently depleted.

In addition, WIPO sponsors the WIPO Indigenous Fellowship Program, through which Indigenous individuals have the opportunity to work at WIPO's Traditional Knowledge Division. Additional information may be found at <https://www.wipo.int/tk/en/indigenous/fellowship/>.

A major development in the IGC's work occurred in 2024, when the WIPO General Assembly convened a Diplomatic Conference resulting in the adoption of the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge (GRATK Treaty). The GRATK Treaty is the first WIPO treaty to reference Indigenous Peoples explicitly. It also contains a reference to the Declaration, a requirement that patent applicants "disclose" GRATK provided by Indigenous Peoples, and a provision encouraging Indigenous Peoples' participation in the Treaty assembly. As of summer 2024, the GRATK Treaty has thirty-five State signatories, but the U.S. has not yet signed. The Treaty will enter into force after at least 15 States have deposited instruments with WIPO indicating their consent to be bound by the Treaty. Negotiations on the TK and TCEs draft instruments will continue in the IGC.



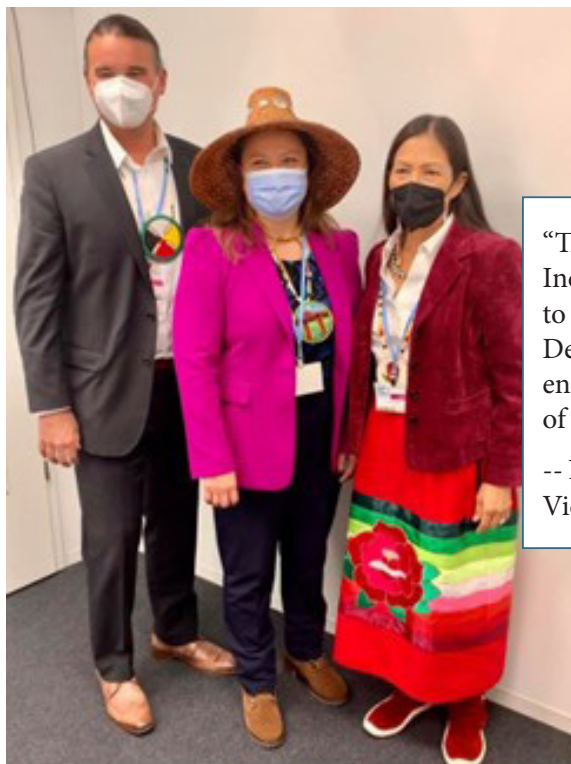
*Kumu Hula Dietrix Jon Ulukoa Dubaylonsod delivering an intervention at the World Intellectual Property Organization. Photo credit: WIPO*

<sup>70</sup> *Participating in the IGC*, WIPO, <https://www.wipo.int/tk/en/igc/participation.html>.

# CHAPTER 6: THE CONVENTION ON BIOLOGICAL DIVERSITY AND THE UN FRAMEWORK CONVENTION ON CLIMATE CHANGE

Indigenous Peoples are “among the first to face the direct consequences of climate change, owing to their dependence upon, and close relationship with the environment and its resources.”<sup>71</sup> Climate change exacerbates the difficulties already faced by Indigenous Peoples, including political and economic marginalization, loss of land and resources, human rights violations, discrimination, and unemployment. In addition, the world faces the possibility of the loss of one million species of plants and animals, with Indigenous Peoples suffering disproportionately from this loss. In recognition of these dangers, the UN General Assembly passed resolution A/76/L.75 recognizing the human right to a clean, healthy, and sustainable environment.

The two leading instruments in climate change and the environment are the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change. Each is governed by a Conference of the Parties (COP), which meets on a regular basis, and has subsidiary bodies dealing with technical advice and implementation. Indigenous Peoples have been involved at many stages of climate change and environmental advocacy at the UN and this chapter provides only the briefest overview.



“The world can’t solve the climate crisis without Indigenous Peoples. We call on the United States to join us as partners in implementing the UN Declaration on the Rights of Indigenous Peoples, ensuring our rights to land, water, and the safeguard of FPIC.”

-- NCAI then-President and Quinault Indian Nation Vice President Fawn Sharp

*Assistant Secretary Bryan Newland, NCAI then-President Fawn Sharp, and Interior Secretary Deb Haaland at COP 26, Glasgow, Scotland.*

<sup>71</sup> UNPFII, Indigenous Peoples Indigenous Voices Backgrounder, Climate Change and Indigenous Peoples, [https://www.un.org/esa/socdev/unpfii/documents/backgrounder%20climate%20change\\_FINAL.pdf](https://www.un.org/esa/socdev/unpfii/documents/backgrounder%20climate%20change_FINAL.pdf).

## A. CONVENTION ON BIOLOGICAL DIVERSITY

Adopted in 1992 and ratified by 196 nations, the Convention on Biological Diversity (CBD) is a multilateral treaty promoting the conservation, restoration, and sustainable use of biological diversity, as well as the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. Its objective is to encourage actions that will lead to a sustainable future.<sup>72</sup>

Although the United States signed the CBD in 1993, Congress has never ratified the Convention. However, the United States may attend CBD meetings as an observer.

Among many bodies that provide recommendations to the CBD COP, the Working Group on Article 8(j) generally meets once every two years to provide advice for decisions on issues related to traditional knowledge and genetic resources. Indigenous Peoples, businesses, civil society, scientists and other relevant organizations, once accredited, may participate as observers in all CBD COP, subsidiary, and *ad hoc* bodies. The COP meets every two years as a plenary to review the recommendations provided by the intersessional processes to make final decisions. These decisions set up budgets for work and work programs on specific topics under the Convention (e.g., the management of marine and coastal waters for biodiversity conservation and the control and management of invasive species).

Article 8(j) of the CBD addresses State obligations related to the traditional knowledge, innovations, and practices of Indigenous Peoples. The Convention also contains relevant State obligations under 10(c), 17.2 and 18.4. Article 8(j) states:

Each Contracting Party shall...Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

The CBD framework makes significant decisions that are creating international environmental law around issues related to biodiversity, ecosystems, conservation, sustainable use, and benefit sharing that have the potential to affect Indigenous Peoples everywhere. The CBD mechanism is getting better about recognizing Indigenous Peoples' rights, and has just adopted the Kunming-Montreal Global Biodiversity Framework (KMGBF), a 30-year vision for conserving life on Earth. The KMGBF recognizes a rights-based framework for decision making, including incorporating Indigenous Peoples' rights. Indigenous Peoples can also participate by attending the subsidiary, *ad hoc* and expert bodies, as well as by making submissions to the Secretariat for the formulation of advice to the COP.

The CBD, like most UN treaties, is not self-implementing. Implementing it requires domestic actions by States to incorporate the provisions into their own laws. While not a ratifier of the CBD, the U.S. has signed the treaty, which, in customary international law, elevates its commitment to taking actions consistent with the treaty. The Convention thus influences U.S. policy and decisions. It is also a forum to put pressure on the U.S. to comply with international law, policies, and standards.

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72 Convention on Biological Diversity, June 5, 1992, 1760 UNTS 69.

Another important international instrument, the CBD's Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization (2010), includes important protections for Indigenous Peoples. Thus far, it has been ratified by 131 countries. However, the United States as a non-signatory to the CBD has neither signed nor ratified the Nagoya Protocol. The Nagoya Protocol "applies to the same [genetic resources] covered by the CBD, and to [traditional knowledge] associated with those [genetic resources], with provisions on access, benefit sharing, and compliance."<sup>73</sup> Of particular interest to Indigenous Peoples, the Nagoya Protocol requires State parties to enact domestic rules requiring third-party users of genetic resources associated with traditional knowledge to obtain prior, informed consent from the relevant Indigenous groups and engage in benefit-sharing arrangements with mutually agreed-upon terms.

There are a number of helpful resources available to Indigenous Peoples at the UN related to biological diversity. The Access and Benefit-sharing Clearing-House was developed to aide in information sharing and to help facilitate implementing the Nagoya Protocol.<sup>74</sup> The *Global Biodiversity Outlook* is a publication of the Convention on Biological Diversity, created by the COP. It provides reports and information on biodiversity and implementation of the CBD.<sup>75</sup> The Local Biodiversity Outlooks provides information about the work of Indigenous Peoples and local communities to implement the Sustainable Development Goals, the Paris Agreement (discussed in the next section) and the CBD.<sup>76</sup>

## B. UN FRAMEWORK CONVENTION ON CLIMATE CHANGE

The UN Framework Convention on Climate Change (UNFCCC) grew out of the 1992 UN Conference on Environment and Development, informally known as the Earth Summit, held in Rio de Janeiro, Brazil. The Convention was entered into force in 1994 to combat human interference in the climate system, and the UNFCCC secretariat was established in Bonn, Germany. In 2015, the UNFCCC adopted the Paris Agreement in which the nations of the world agreed to attempt to hold global temperature rise to no more than 1.5 degrees Celsius above pre-industrial levels. At the UNFCCC, Indigenous Peoples formed the International Indigenous Peoples Forum on Climate Change in 2008. Known informally as the Indigenous Caucus, it is one of nine official constituencies of the UNFCCC. Indigenous representatives from all seven socio-cultural regions participate in the caucus, and all are welcome. Status as an official constituency gives the caucus the opportunity to address UNFCCC negotiations. An important success was achieved in getting a preambular provision in the Paris Agreement acknowledging that Parties should "when taking action to address climate change, respect, promote and consider their respective obligations on human rights, ... [and] the rights of indigenous peoples..." That said, a constant effort is needed to ensure that this promise is respected in the UNFCCC itself. The UNFCCC during COP 26 (Glasgow) came under sharp criticism by Indigenous Peoples and others who condemned the UNFCCC for the lack of Indigenous involvement and input in COP 26.<sup>77</sup>

73 Ruth L. Okediji, *Grafting Traditional Knowledge onto a Common Law System*, 110 GEO L.J. 75, 82 (2021).

74 *The Access and Benefit-Sharing Clearing-House* (ABSCH), Convention on Biological Diversity, <https://absch.cbd.int/en/> (ABSCH is a function of the Nagoya Protocol, and as of publication, the United States, Canada, Australia, and New Zealand are not signatories of the Nagoya Protocol).

75 GBO-5 About, Convention on Biological Diversity, <https://www.cbd.int/gbo5/about>.

76 *Local Biodiversity Outlooks 2*, Convention on Biological Diversity, <https://www.cbd.int/gbo5/local-biodiversity-outlooks-2>.

77 COP26: *Indigenous Peoples, Protests, and a Call to End the War on Nature*, UN NEWS (Nov. 6, 2021) <https://news.un.org/en/story/2021/11/1105102>.



In 2015, the Local Communities and Indigenous Peoples Platform (LCIPP) was formed “to strengthen the knowledge, technologies, practices, and efforts of local communities and Indigenous Peoples related to addressing and responding to climate change, to facilitate the exchange of experience and the sharing of best practices and lessons learned on mitigation and adaptation in a holistic and integrated manner and to enhance the engagement of local communities, and Indigenous Peoples in the UNFCCC process.”<sup>78</sup> Indigenous Peoples may participate at LCIPP events, submit an event for inclusion in the LCIPP events calendar, and access LCIPP resources through the portal at <https://lcipp.unfccc.int/get-involved>.

A Facilitative Working Group (FWG) was created in December 2018 to oversee work of the LCIPP. Its functions are related to: (1) traditional knowledge; (2) capacity for engagement; and (3) climate change policies and actions. The FWG has 14 representatives (seven representatives of Parties and seven representatives of Indigenous Peoples organizations). The Indigenous representatives are chosen one each from the seven UN socio-cultural regions; Africa; Asia; Central and Eastern Europe, Russian Federation, Central Asia and Transcaucasia; Central and South America, and the Caribbean; North America; the Arctic; and the Pacific.<sup>79</sup> The FWG is trend-setting in that, for the first time in a UN body, the Indigenous Peoples unilaterally choose their own representatives without the need for approval from the UNFCCC.



*Andrea Carmen, Dalee Sambo Dorough, and other members of the Facilitative Working Group of the Local Communities and Indigenous Peoples Platform at COP 26.*

<sup>78</sup> Overview, United Nations Framework Convention on Climate Change: Local Communities and Indigenous Peoples Platform Web Portal, <https://lcipp.unfccc.int/lcipp-background/overview>.

<sup>79</sup> *LCIPP Facilitative Working Group*, United Nations Framework Convention on Climate Change, <https://lcipp.unfccc.int/facilitative-working-group-fwg/facilitative-working-group>.

## CHAPTER 7: INDIGENOUS YOUTH AT THE UN

The youth are the future. While Indigenous youth may participate at the UN as part of other delegations or initiatives, there are several special opportunities available to them.

### —*The Global Indigenous Youth Caucus*

Bringing together Indigenous youth from various States, organizations, socio-economic, and cultural backgrounds, the Global Indigenous Youth Caucus was founded in 2006. It convenes during the annual session of the Permanent Forum to discuss various issues and concerns of Indigenous youth worldwide. Increasingly the Caucus makes statements at various sessions throughout the UN system. For more information about the Caucus, see <https://www.globalindigenouyouthcaucus.org/>.

### —*The Indigenous Fellowship Programme*

Indigenous youth have opportunities not only to participate in the Caucus but also to seek training through UN programs, including the Indigenous Fellowship Programme, based in the Office of the High Commissioner on Human Rights (OHCHR) in Geneva. See <https://www.ohchr.org/en/about-us/fellowship-programmes/indigenous-fellowship-programme>.

### —*The International Human Rights Framework for Indigenous Children and Youth*

The rights of children and youth are treated extensively in the Declaration, as well as in the Convention on the Rights of the Child, which has been ratified by 196 parties, but not the U.S. For resources see <https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/children-and-youth.html>.

John Petoskey, a citizen of the Grand Traverse Bay Band of Odawa Indians, was selected to participate in the Indigenous Fellowship Programme at the OHCHR in Geneva in 2019. He made a statement at the Expert Mechanism's Annual Session calling for redress of tribal treaty rights.







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