

RESOLUTION OF THE
INTERGOVERNMENTAL RELATIONS COMMITTEE
OF THE NAVAJO NATION COUNCIL

21ST NAVAJO NATION COUNCIL - THIRD YEAR, 2009

AN ACTION

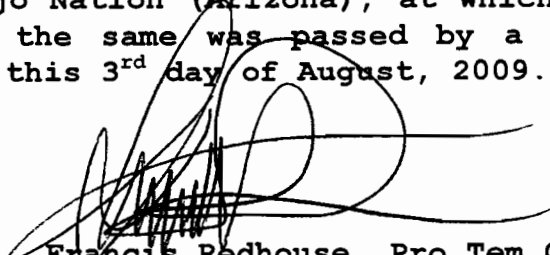
RELATING TO INTERGOVERNMENTAL RELATIONS; SUPPORTING THE
NAVAJO NATION HUMAN RIGHTS COMMISSION'S POSITION STATEMENT
ADVOCATING FOR SPECIAL RECOGNITION STATUS OF THE NAVAJO
NATION BEFORE THE UNITED NATIONS

BE IT ENACTED:

1. The Navajo Nation hereby supports the position statement by the Navajo Nation Human Rights Commission requesting special recognition by the United Nations of the Navajo Nation as set forth in the position papers, in the form of Exhibit "A".
2. The Navajo Nation hereby accepts the Navajo Nation Human Rights Commission report "Adopting and Recommending Position Statements Regarding the United Nations Recognition for the Navajo Nation", in the form of Exhibit "B".
3. The Navajo Nation hereby authorizes the Navajo Nation Human Rights Commission, and their designees, to advocate for the special recognition status of United Nations Permanent Observer for the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Intergovernmental Relations Committee of the Navajo Nation Council at a duly called meeting held at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 9 in favor, 0 opposed, this 3rd day of August, 2009.





Francis Redhouse, Pro Tem Chairperson
Intergovernmental Relations Committee

Motion: Thomas Walker, Jr.
Second: LoRenzo C. Bates

1 PROPOSED STANDING COMMITTEE RESOLUTION
2 21st NAVAJO NATION COUNCIL -- Third Year, 2009

3 INTRODUCED BY

4 
5 
6 (Prime Sponsor)

7
8 TRACKING NO. 0420-09

9 AN ACTION

10 RELATING TO INTERGOVERNMENTAL RELATIONS;
11 SUPPORTING THE NAVAJO NATION HUMAN RIGHTS COMMISSION'S POSITION
12 STATEMENT ADVOCATING FOR SPECIAL RECOGNITION STATUS OF THE NAVAJO
13 NATION BEFORE THE UNITED NATIONS.

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**Resolution of the
Navajo Nation Human Rights Commission of the
Navajo Nation**

**Approving and Stating the Policy Position of the Navajo Nation Regarding the
Special Recognition of the Navajo Nation as it Participates in the United Nations
Organisms**

WHEREAS:

1. Pursuant to 2 N.N.C. § 920, the Navajo Nation Human Rights Commission (herein referred to as the "Commission") is established in the Legislative Branch as an entity of the Navajo Nation government; and
2. Pursuant to 2 N.N.C. § 921, the Commission is organized to operate as a clearinghouse entity to administratively address discriminatory actions against citizens of the Navajo Nation, and to interface with the local, state, federal governments and with national and international human rights organizations; and
3. The United Nations has worked for decades with respect to recognizing and advancing the rights of indigenous peoples worldwide. On September 13, 2007, the United Nations General Assembly formally adopted the Declaration on the Rights of Indigenous Peoples. This pronouncement is deemed the international legal standard by which nation/states, such as the United States of America, are to openly work together with indigenous peoples to acknowledge, safeguard, and advance the inherent right of indigenous peoples to self-determination; and
4. The Navajo Nation began participating informally in the negotiations of the United Nations draft declaration on the rights of indigenous peoples at Geneva, Switzerland through designated delegations comprising of the President of the Navajo Nation, Speaker of the Navajo Nation Council, the Chief Justice of the Navajo Nation Supreme Court and several Council delegates who presented interventions declaring the Navajo Nation's existence since time immemorial and proposing language to the draft declaration on the rights of indigenous peoples that would specifically protect and nurture the welfare of the Navajo people for future generations; and
5. The Navajo people have well established international relationships with foreign governments and have actively participated as a sovereign nation in international treaty negotiations with Spain, Mexico and the United States of America; and
6. Pursuant to Navajo oral history, the hero twins Born for Water and Monster Slayer traveled a great distance to negotiate with the Creator and original sovereign, the Sun, to secure not only the right to live among the four sacred mountains but also the right to exercise complete self-determination encompassing all matters concerning the Navajo people. Upon their return to the lands between the four sacred mountain, the twins

eradicated the ills of Navajo society and protected the Navajo people as they assumed their inherent right to exist as a nation among nations; and

7. 144 nations have acknowledged the right of all indigenous peoples to self-determination, to develop their own forms of government and to govern their own affairs just as the Navajo Nation does by voting in favor of the United Nations Declaration on the Rights of Indigenous Peoples. Unfortunately, these indigenous nations are not formally recognized as nation/states like those that are members of the United Nations nor are they recognized as non-government organizations like those entities that do not represent governing bodies and are not comprised of elected officials; and
8. The Navajo Nation has formally articulated its position on the United Nations' recognition of the Navajo Nation and other indigenous nations, in light of the United Nations Declarations on the Rights of Indigenous Peoples, the Navajo Nation Human Rights Commission deems that the 144 world nations that voted in favor of the United Nation's Draft Declaration on the Rights of Indigenous Peoples have recognized that the Navajo Nation is a nation/state.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Nation Human Rights Commission hereby approves and states that Exhibit "A", the Report on the United Nations' Recognition of the Navajo Nation, and Exhibit "B", "Policy and Position Statement", are the policy and position statements of the Navajo Nation and further recommends that the Navajo Nation actively seek United Nations status as a Permanent Observer and Member Nation State of the United Nations.
2. The Navajo Nation Human Rights Commission of the Navajo Nation further recommends that Report on the United Nations' Recognition of the Navajo Nation and the Policy and Position Statement be submitted through the appropriate Navajo Nation legislative process for the Intergovernmental Relations Committee of the Navajo Nation Council review, approval and adoption of Exhibits "A" and "B" and also recommend that the Navajo Nation seek United Nations status as a Permanent Observer Status and Member Nation State of the United Nations as the official position of the Navajo Nation.

C E R T I F I C A T I O N

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Human Rights Commission at a duly called meeting at Prewitt, Navajo Nation (NM) at which time a quorum was present and that same was passed by a vote of 2 in favor, and 0 opposed, this 22nd day of July, 2009.


 Duane H. Yazzie, Chairperson



Navajo Nation Council

NNHRC/Report 03/2009
July 22, 2009

NAVAJO NATION HUMAN RIGHTS COMMISSION
First Commission
2008-2012

**ADOPTING AND RECOMMENDING POSITION STATEMENTS
REGARDING THE UNITED NATIONS
RECOGNITION FOR THE NAVAJO NATION**

Introduction

Purpose

The purpose of this report is to determine if the Navajo Nation should be granted recognition by the United Nations ("UN") in order for the government of the Navajo Nation to represent its people within the UN system. This report will examine: (1) how the Navajo Nation is able to participate in the UN discussions relative to the rights of indigenous peoples; (2) what are the critical UN and international document relative to the rights of Navajo people; (3) what is the process for obtaining recognition from the UN; and (4) why is recognition needed from the UN and its importance for the Navajo Nation. This report shall conclude with recommendations as to what type of recognition the Navajo Nation should seek from the UN and the steps that are necessary to obtain this recognition.

Significance

The question of whether an Indigenous nation should be recognized by the UN is a question that has not been carefully examined by scholars. This report is unique as it specifically considers the question of whether the Navajo Nation should be granted special recognition by the UN. Because this is a question of first impression, the implications of the findings are uncertain.

There will also be a need for further research to consider points that are not specifically covered by this report. This report, by its very nature is an applied study in that it will be used by the Navajo Nation Human Rights Commission (“Commission”) to deliberate priorities and initiatives regarding the Navajo Nation’s relationship to the UN and whether it is important for the Navajo Nation to focus on building and strengthening its international ties.

Scope

Document Analysis is a method of reviewing and analyzing organizational and other types of documents to pull together facts and formulate conclusions about a hypothesis. The hypothesis of this report is: the Navajo Nation should receive special recognition by the United Nations as a Permanent Observer. Key documents from the UN, the Navajo Nation and international agreements were analyzed to gather facts about the entities, the UN-Navajo Nation relationship, and the human and indigenous rights of Navajo Nation and its people.

Twenty-three (23) key documents were reviewed and analyzed for this study. The following is a short descriptive list of those documents:

1. *United Nations Charter* – The Charter of the UN (“Charter”) contains the purpose, principles, mandate, rules and procedures of the UN as an international organization. It also includes mandates, rules and procedures for all six (6) of its principal organs. The Charter contains a preamble, one hundred and five (105) articles and stipulations for membership into the UN.

2. *Universal Declaration of Human Rights* – The Universal Declaration of Human Rights (“Declaration”) is a standard of achievement for all people and all nations based on a philosophy that all human beings are born free and equal in dignity. The Declaration, consisting of a preamble and thirty (30) articles, lists the fundamental freedoms and inherent rights of all human beings

3. *International Covenant on Economic Social and Cultural Rights* – The International Covenant on Economic and Social and Cultural Rights (“Covenant”) is an international agreement that details specific economic, social and cultural rights for all people and their limitations. The Covenant is strengthened by an Optional Protocol for communications or complaints alleging violations of any of these rights. The Covenant contains a preamble and fifteen (15) articles.

4. *International Covenant on Civil and Political Rights* – The International Covenant on Civil and Political Rights (“Covenant”) is an international agreement listing specific inherent civil and political rights and their limitations. The Covenant is strengthened by an Optional Protocol for communications or complaints alleging violations of these rights. The Covenant contains a preamble and fifty-three (53) articles.

5. *International Convention on the Elimination of All Forms of Racial Discrimination* – The International Convention on the Elimination of All Forms of Racial Discrimination (“Convention”), signed on December 21, 1965, is an international agreement encouraging parties to eliminate racism and to promote harmony among all races. There are a total of one hundred and three (173) parties to the convention. Six (6) other countries have signed but not ratified the convention. Thirteen (13) members of the UN are not parties to the convention. The Committee on the Elimination of Racial Discrimination is responsible for monitoring the stipulations of the convention.

6. *Vienna Declaration and Program of Action* – The Vienna Declaration and Program of Action (“Declaration”) is a declaration that was adopted at the World Conference on Human Rights in 1993. The purpose of the Declaration is to reaffirm the Universal Declaration on Human Rights and the Charter of the United Nations. Its message is that all human rights are of equal importance.

7. *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* – The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities is a comprehensive statement about the rights of national or ethnic, religious and linguistic minorities.

8. *International Labor Organization No. 169* – The International Labor Organization No. 169, a revision of the Convention of 1957 adopted by the General Conference in 1989, is an international agreement concerned with indigenous and tribal peoples in independent countries.

9. *Declaration on the Rights of Indigenous Peoples* – The Declaration on the Rights of Indigenous Peoples (“Declaration”) is a comprehensive statement concerning the inherent rights of indigenous peoples to maintain and strengthen their own political and legal institutions, cultures and traditions, and to pursue their development - in accordance with - their own needs and aspirations. Similar to the Universal Declaration of Human Rights, the Declaration is a

standard of achievement for all nations with respect to the fundamental freedoms and inherent rights of indigenous people. The Declaration contains forty-six (46) articles.

10. *Proposed American Declaration on the Rights of Indigenous Peoples* – The Proposed American Declaration on the Rights of Indigenous Peoples (“Declaration”) is a highly anticipated Inter-American legal instrument and standard of achievement recognizing, safeguarding and advancing the inherent rights of indigenous peoples throughout the Americas. The proposed Declaration contains twenty-seven (27) articles.

11. *New Spain’s Treaties with the Navajo Nation* – There are a total of three (3) international treaties that the Navajo Nation entered into with the country of Spain in 1805, 1819, and 1822. These international treaties protected the Navajo Nation’s right to their lands, located within the territory known then to Spain as New Mexico¹. These treaties also acted as peace agreements between the two separate and distinct sovereign nations.

12. *Mexico’s Treaty with the Navajo Nation* – There are a total of three (3) international treaties between the country of Mexico and the Navajo Nation that were entered into in 1823, 1824 and 1839. These treaties were entered into with Mexico instead of Spain because Mexico assumed control over the New Mexico territory². These treaties continued to serve as peace agreements between the two separate and distinct sovereign nations while recognizing the Navajo Nation’s control over their lands.

13. *United States Treaty with the Navajo Nation* – When the United States asserted its claim to what was considered the territory of New Mexico³; the Navajo Nation was required to negotiate with the United States. Thus, a series of international treaties were entered into in 1849, 1855 and 1861 between the two separate and distinct sovereign nations.

14. *Treaty of 1868* – the Treaty of 1868 is the final treaty between the Navajo Nation and a foreign nation, the United States. This treaty was entered into after the Navajos were relocated

¹ The name Nuevo México was first used by a gold mine explorer named Francisco de Ibarra who came to the region in 1563 and reported that he was in “a new Mexico.” On July 11, 1598 Juan de Oñate founded the first Spanish settlements in the region and became the first governor of the new Province of New Mexico. He officially established the name “New Mexico.”

² Following the Pueblo revolt resulting in the retreat of the Spanish, the eventual reconquest of the territory by the Spanish, and the 1810-1821 Mexican War of Independence control of the Province of New Mexico was passed to Mexico. The Mexican province of New Mexico included all of present-day New Mexico.

³ After the Mexican-American War from 1846-1848 and the Treaty of Guadalupe Hidalgo of 1848, Mexico ceded its control of New Mexico along with the entire region known today as California and the American Southwest. The United States purchased the rest of present-day New Mexico from Texas in the Compromise of 1850 and from Mexico in the Gasden Purchase of 1853. New Mexico became the 47th state of the Union on January 6, 1912.

to Fort Sumner, New Mexico by the United States' military. This treaty contains stipulations and conditions of peace between the two separate and distinct nations, including the cessation of war between the Navajo Nation and the United States and the right of the Navajo people to return to their original territory as a permanent home.

15. *Navajo Nation Code* – The Navajo Nation Code is the codified laws of the Navajo Nation.

16. *Diné Bi Beenahaz'áanii* – *Diné Bi Beenahaz'áanii* is the foundation of the Navajo people, Navajo law and the Navajo Nation. It embraces Navajo traditional law, Navajo customary law, Navajo natural and Navajo common law which is reflected in Navajo statutory and case-law.

Limitations

Because this report focuses primarily on documents from the UN and Navajo Nation, the unique political relationship between the Navajo Nation and the United States was not wholly considered. Documents impacting the political relationship between indigenous peoples, including the Navajo Nation, and the United States such as the United States Code Title 25, Public Law 93-638, and Public Law 83-280 were reviewed generally. A more extensive review and analysis of these and other documents are required to address issues arising out of the unique political government-to-government relation between the Navajo Nation and the United States

Overview of the United Nations

History

The United Nations, a unique international human rights organization, was established in 1945 replacing the League of Nations⁴ because it did not prevent World War II and was considered ineffective. On April 25, 1945, fifty (50) sovereign nations and a number of non-governmental organizations (“NGO”) drafted the United Nation’s Charter at the Conference on

⁴ The League of Nations is an intergovernmental organization formed at the 1919-1920 Treaty of Versailles. It had at the most fifty-eight (58) members. The mandates of the League were mainly to settle disputes between countries, affirm the rights of the new man (non-whites, women, soldiers), prevent war, and improve the global quality of life. The League did not have its own armed forces so it was unable to enforce its resolutions thereby proving ineffective, particularly in stopping the rise of the Axis powers in the 1930s. The United Nations replaced the League after World War II and inherited some of its organs.

International Organizations. The UN Charter was later ratified on October 24, 1945 by five (5) permanent members – France, the Republic of China, the Soviet Union, the United Kingdom and the United States. The following year fifty-one (51) nations attended the first meeting. Today there are one hundred and two (192) members with the last joining in 2006.

Functions

The UN responsibilities include security, peacekeeping, humanitarian assistance, human rights advocacy and social and economic development. In addition the UN conducts research topics within its Charter.

Organization

The UN is structured around five (5) principal organs – the General Assembly, the Security Council, the Economic and Social Council, the Secretariat and the International Court of Justice. The UN headquarters is located in New York City, New York but has offices located throughout the world, including Geneva, Switzerland, Vienna, Austria, and Nairobi, Kenya. There UN meetings and official documents are conducted and written in six (6) official languages.⁵

General Assembly

The UN's most important organ is the General Assembly. Led by an elected President and Secretary-General, the General Assembly convenes annually to vote on critical organizational issues.

Security Council

The Security Council is the UN's peacekeeping and security component with enforcement authority over members pursuant to Article 25 of the UN's Charter. The Security Council has fifteen (15) members, with five (5) permanent members – China, France, Russia, the United Kingdom and the United States – and the other ten (10) are elected every two (2) years; the presidency is alternated every month.

Economic and Social Council

The Economic and Social Council promotes international cooperation with respect to worldwide economic and social development. Its fifty-four (54) members are elected every three (3) years by the General Assembly; the President is elected annually from the 54 members and meets annually for four (4) weeks.

⁵ The six official languages of the United Nations are English, French, Russian, Spanish and Arabic.

International Court of Justice

The International Court of Justice replaced the Permanent Court of International Justice and deals with disputes among nations that implicates (i.e. ethnic cleansing and war crimes) pursuant to the Statue of the International Court of Justice.

The Secretariat

The Secretariat, led by the Secretary-General and staffed by a diverse group of international civil servants, assists other organs in coordinating and carrying out their initiatives.

Recognition by the United Nations

The UN can, after the appropriate application has been submitted, recognize an entity either as a member, permanent observer or consultative status with a range of privileges within the UN structure.

Member Status

UN members represent five (5) main organs and subsidiary organs, and have the right to sponsor resolutions or proposals, speak at the General Assembly and vote. Only a nation/state can obtain UN membership after submitting an application to the Secretary-General containing a declaration that the applicant nation/state agrees to the Charter's obligations pursuant to the UN Charter, Chapter II, Article 4. The application is then forwarded to the General assembly. If the General Assembly is not in session the application is then sent to each UN member. The Secretary-General then presents the application to the Security Council. If the Security Council deems the applicant qualified the applicant is recommend to the General Assembly for membership. If the General Assembly is satisfied that the applicant is qualified the matter is put to vote. Granting membership requires a two-thirds majority vote of the members present. The United States, France, the Republic of China, the United Kingdom and the Soviet Union are the only five (5) permanent UN members that can never be suspended or released.

The most recent nation/state to receive UN membership recognition was Montenegro. On June 4, 2006, Montenegro declared independence from Serbia in a parliament special session. On June 5, 2006, the President of the Montenegro applied for UN membership. On June 7, 2006, The Republic of Serbia declared its sovereignty and continued the membership of Serbia and Montenegro in the UN. On June 16, 2006, the Secretary-General forwarded Montenegro's

application through the membership process resulting in the General Assembly's decision to grant membership.

Permanent Observer

Entities granted Permanent Observer recognition has permitted representation in the five (5) main organs and their subsidiary organs that relate in some way to the Permanent Observer but do not have the right to vote. Permanent Observers can, however, address the General Assembly.

Entities wishing Permanent Observer recognition must submit, through a member sponsor, a proposed UN resolution in support of Permanent Observer recognition. The General Assembly can return the resolution with revision recommendations or immediately vote on the resolution and grant Permanent Observer recognition by a two-third majority vote of members present. Permanent Observers include liberation movements, intergovernmental organizations and special entities such as Palestine and the Holy See.

Palestine

Although Palestine is not presently considered a sovereign nation/state, the UN not only recognizes Palestine as a Permanent Observer but has also adopted Palestine's recent proposed resolution requesting additional privileges with the UN structure.⁶ After revising the proposed resolution twice, the UN granted Palestine request for additional privileges on July 13, 1998, in part because of the historical relationship between the UN and Palestine, Palestine's membership in international organs and Palestine's democratic history. On November 29, 1947, the UN first formally addressed Palestine when it passed a resolution recommending Palestine be partitioned into two separate and distinct nation/states - a Jewish State and an Arab State. Then on November 22, 1974, the UN granted Permanent Observer recognition to the Palestine Liberation Organization ("PLO"). On December 9, 1988, the PLO's status was determined by the UN that the PLO was entitled to have its communications issued and circulated as official UN documents. On December 15, 1988, officially recognized the State of Palestine and replaced the PLO within the UN structure. On November 9, 1994, the UN recognized Palestine again by naming Palestine as a Permanent Observer on a list of speakers for the General Assembly's special commemorative meeting for the UN's fiftieth anniversary. At the same time the UN recognized Palestine's membership in the Group of Asian States, the Economic and Social

⁶ United Nations Resolution 52/250 of 7 July 1998.

Commission for Western Asia, the League of Arab States, the Movement of Non-Aligned Countries, the Organization of the Islamic Conference, and the Group of 77 and China. On January 20, 1996, the UN recognized the Palestinian democratic elections and the establishment of Palestinian authority over the Palestinian occupied territory.

The Holy See

In 1964, the Holy See, like Palestine, also acquired UN Permanent Observer recognition. And, like Palestine, the UN considered the Holy See's diplomatic relations with various entities since medieval times and the Holy See's historical relationship with the UN. Unlike Palestine however, the Holy See submitted only one proposed resolution to the General Assembly because the Holy See's status as a sovereign nation/state goes unquestioned.

The term Holy See signifies the "supreme authority"⁷ of the Roman Catholic Church and the Pope as Bishop of Rome and the head of the Bishops' college. The Holy See is regarded as a sovereign entity and the central government of the Roman Catholic Church. Pursuant to "international law and in practice, [the Holy See] has a legal personality that allows it to enter into treaties as the juridical equal of a State and to send and receive diplomatic representatives."⁸ The Holy See represents the Vatican City State which was established in 1929 by the Lateran Treaty to "ensure the absolute and invisible independence of the Holy See" and "to guarantee to it an indisputable sovereignty in international affairs"⁹. The Vatican City "is the physical or territorial base of the Holy See, almost a pedestal upon which is posed a much larger and unique independent and sovereign authority/rule: that of the Holy See."¹⁰ The Lateran Treaty stipulates that the Holy See has extraterritorial authority over twenty-three (23) sites in Rome and five (5) Italian sites outside of Rome. Currently, the Holy See holds full diplomatic relations with 177 of the 192 UN members. The Holy See is also a member of the European Community, the Organization of American states, the African Unity, and other intergovernmental organizations. The UN has also recognized that since the Holy See was granted UN Permanent Observer recognition it "has always been invited to participate in the meetings of all the sessions of the

⁷ "A Short History of the Holy See's Diplomacy." Permanent Observer Mission of the Holy See to the United Nations. Website: http://www.holyseemission.org/short_history.html.

⁸ Id.

⁹ Id.

¹⁰ Id.

General Assembly”¹¹. The Holy See is also a party to various international instruments including the Vienna Convention on Diplomatic Relations, the Vienna Convention on the Law of Treaties, the Convention relating to the Status of Refugees and its Protocol, the Convention on the Rights of the Child and its Optional Protocols, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention for the Protection of Cultural Property in the Event of Armed Conflict, the Paris Convention for the Protection of Industrial Property, the Treaty on the Non-Proliferation of Nuclear Weapons and the Geneva Conventions and their Additional Protocols. In addition, the Holy See has representation in seven (7) UN subsidiary organs Permanent Observer recognition in eight (8) UN specialized agencies, Permanent Observer recognition in several regional intergovernmental organizations and in 1977, was requested by the Economic and Social Council to attend the regional commission sessions just as UN members. It should also be noted that the Holy See also provides periodic financial contributions to the UN.

Finally, while Palestine UN recognition remains in dispute, the Holy See has acquired all the rights of fully membership but elects to remain in Permanent Observer status and not seek voting rights.

Consultative Status

The lowest level of UN recognition is consultative status. The Department of Economic and Social Affairs describes consultative status as “a mutually beneficial working relationship with the United Nations...”¹² This relationship with the UN is for NGO’s and civil society organizations through the Economic and Social Council. The Department of Economic and Social Affairs explains that organizations in consultative status

make a contribution to the work programmes and goals of the United Nations by serving as technical experts, advisers and consultants to governments and Secretariat. Sometimes, as advocacy groups, they espouse United Nations themes,

¹¹ Paragraph 1, Resolutio A/58/L.64, Fifty-eighth session, Agenda item 59, Strengthening of the United Nations System, Draft resolution submitted by the President of the General Assembly, Participation of the Holy See in the work of the United Nations.

¹² Economic and Social Council Resolution 1297 (XLIV)

implementing plans of action, programmes and declarations adopted by the United Nations.¹³

To qualify for consultative recognition the entity must exist for a minimum of two (2) years prior to application, the entity must have a democratic decision-making process, the entity's activities must be relevant to the Economic and Social Council's work and the entity's financial contributions must come primarily from national affiliates, individual members or other NGO's. The entity seeking consultative recognition must submit a letter of intent to the NGO Section of the Department of Economic and Social Affairs on the entity's letterhead and signed by its' President or Secretary-General. An application will then be sent to the entity which must be submitted by June 1 in the year prior to when the entity hopes to achieve consultative status. The Committee on NGOs meets twice a year to review applications. If the entity qualifies, the Committee on NGOs recommends the applicant to an Economic and Social Council general meeting and every member of the Economic and Social Council must be present to make the final decision. There are presently 3,052 entities with consultative status recognition that participate in the Economic and Social Council and its subsidiary bodies by attending meetings, making oral interventions, submitting written statements on agenda items, at times proposing new agenda items and attending international conferences, General Assembly special meetings and meetings with other intergovernmental entities at the UN's invitation.

There are three (3) types of consultative status identified in Resolution 1996/31 of the Economic and Social Council as follows:

General Category

- Concerned with most of the activities of the Council and its subsidiary bodies.
- Can demonstrate to the satisfaction of the Council that they have substantive and sustained contributions to make to the achievement of the objectives of the UN.
- Closely involved with the economic and social life of the peoples of the areas they represent.
- Has considerable membership, broadly representative of major segments of society in a large number of countries in different regions of the world.

Special Category

¹³ Id.

- Has special competence in, and concerned specifically with, only a few of the fields of activity covered by the Council and its subsidiary bodies.
- Known within the fields for which they have or seek consultative status.

The Roster

- Can make occasional and useful contributions to the work of the Council or its subsidiary bodies or other UN bodies within their competence,
- May also include the qualification of being in consultative status or a similar relationship with a specialized agency or a UN body.

Indigenous Peoples' and the UN System

History of Recognition, Participation, & Partnerships for Indigenous Peoples

Although the historical relationship between indigenous peoples and the UN¹⁴ began when the UN was known as the League of Nations, it was not until decades later that the UN began to acknowledge indigenous peoples and their issues. In 1923, Haudenosaunee Chief Deskaheh traveled on behalf of his people to the League of Nations in Geneva to defend the Haudenosaunee's collective right to sovereignty and self-determination but was not allowed to speak. In that same year, T.W. Ratana, a Maori religious leader also traveled to Geneva to speak against the breaking of the Treaty of Waitangi between the Maori nation and the country of New Zealand but was also denied the right to speak. In 1982, the United Nations Economic and Social Council established the Working Group on Indigenous Populations of the Sub-Commission on the Promotion and Protection of Human Rights called the Sub-Commission on Prevention of Discrimination and Protection of Minorities because the UN recognized the need to take special measures that protected the rights of indigenous peoples worldwide.

In 1989, Chief Ted Moses, Grand Council of the Crees from Canada, became the first indigenous elected UN official at a UN meeting discussing the effects of racial discrimination against indigenous peoples and the economic and social issues of indigenous peoples. Indigenous peoples then increased their participation at the UN conferences. In 1992, indigenous peoples participated in the UN Conference on Environment and Development in Rio de Janeiro. In 1993, indigenous peoples attended the World Conference on Human Rights in Vienna. Some even

¹⁴ "About UNPFII and a brief history of indigenous peoples and the international system." United Nations Permanent Forum on Indigenous Issues. Website: <http://www.un.org/esa/socdev/unpfii/en/history.html>.

were provided the unique opportunity to address the conference. In 1995, indigenous peoples attended the World Conference on Women in Beijing. In 1996, indigenous peoples participated in the Social Summit and in 2001 attended the World Conference against racism in Durban, South Africa.

The UN also began to increase its recognition of indigenous peoples through a series of international observances. First, the UN declared 1993 the International Year of the World's Indigenous Peoples. The following year the General Assembly launched the International Decade of the World's Indigenous Peoples for 1995-2004. Then in 2004, the General Assembly launched the Second International Decade of the World's Indigenous Peoples for 2005-2015. The UN also established the Permanent Forum on Indigenous Issues on July 28, 2000 and adopted the Declaration on the Rights of Indigenous Peoples on September 13, 2007.

Today's Recognition, Participation, and Partnerships

Second Decade of the World's Indigenous Peoples

This is the fifth year of the UN's Second International Decade of the World's Indigenous Peoples. Indigenous peoples and their issues are being recognized worldwide through this international observance. The UN's goal is:

the further strengthening of international cooperation for the solution of problems faced by indigenous people in such areas as culture, education, health, human rights, the environment and social and economic development, by means of action oriented programmes and specific projects, increased technical assistance and relevant standard setting activities...¹⁵

The UN has detailed five (5) objectives to achieve this goal. First, the promotion of non-discrimination and the inclusion of indigenous peoples in the design, implementation and evaluation of international, regional and national process regarding laws, policies, resources, programs and projects. Secondly, the promotion of full and effective participation of indigenous peoples in decisions which directly or indirectly affect their life styles, traditional lands and territories, their cultural integrity as indigenous peoples with collective rights or any other aspect of their lives, considering the principle of free, prior and informed consent. Thirdly, redefining policies that depart from the colonial idea of equality to development policies that are culturally

¹⁵ Id.

appropriate and include the respect for cultural and linguistic diversity. Finally, the adoption of policies, programs, projects and budgets for protecting and improving the lives of indigenous peoples with concrete benchmarks and a particular emphasis on indigenous women and children that also have strong monitoring mechanisms and are accountable at the international, regional and national level under the theme of “Partnership for Action and Dignity.”¹⁶

Declaration on the Rights of Indigenous Peoples

The Declaration on the Rights of Indigenous Peoples,¹⁷ adopted on September 13, 2007, recognizes the collective and individual international human rights of indigenous peoples. Although the Working Group on Indigenous Populations of the Sub-Commission on the Promotion and Protection of Human Rights began discussing and drafting the declaration in 1985, the first draft was not completed until 1993. Two (2) years later, the Commission on Human Rights, a subsidiary Economic and Social Council organ (later replaced by the Human Rights Council under the General Assembly) established a working group of human rights experts that included more than one hundred (100) indigenous organizations, to review the draft. The Human Rights Council adopted the draft Declaration on the Rights of Indigenous Peoples on June 29, 2006 but decided on December 20, 2006 to defer consideration and action for further consultation. On June 29, 2007, the Human Rights Council adopted the Declaration on the Rights of Indigenous Peoples and on September 13, 2007 the Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly.

The Declaration on the Rights of Indigenous Peoples is a declaration commitment to protect the collective and individual human rights of indigenous peoples worldwide. These rights include the right to complete and full enjoyment, collectively and individually all the fundamental freedoms and human rights recognized by the UN Charter, the Universal Declaration of Human Rights and international human rights law. The Declaration on the Rights of Indigenous Peoples reaffirmed the self-determination right of indigenous peoples to freely determine their political status and to freely pursue their economic, social and cultural development. Moreover, indigenous peoples “have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they choose to, in the political and economic, social and cultural life of the

¹⁶ Id.

¹⁷ “Annex: United Nations Declaration on the Rights of Indigenous Peoples.” Resolution adopted by the General Assembly 61/295. United Nations Declaration on the Rights of Indigenous Peoples.

State.”¹⁸ The Declaration on the Rights of Indigenous Peoples requires meaningful consultation and fair partnerships when nation/states interact with indigenous peoples. While the Declaration on the Rights of Indigenous Peoples is not legally binding, it is an international standard for nation/states to achieve toward eradicating discrimination, marginalization and violations of the human rights of indigenous peoples worldwide.

Permanent Forum on Indigenous Issues

The establishment of the Permanent Forum was discussed at the 1993 World Conference on Human Rights in Vienna. The Working Group on Indigenous Populations, which included representation from indigenous peoples, was disturbed because there was limited indigenous people’s participation in the UN. Consequently, the UN was unable to appropriately address issues directly or indirectly impacting indigenous peoples. It was decided that the establishment of a forum was necessary. The discussion continued in June 1995 at a workshop in Copenhagen, Denmark. Participants included nation/state representatives, indigenous peoples and independent experts. Items discussed included which UN body would the forum report to; what would be the forum’s mandate; what activities would the forum undertake; how would indigenous peoples participate in the forum; and other administrative issues resulting in a written report which was forwarded to nation/states, indigenous peoples’ organizations, intergovernmental organizations and NGO’s. These entities were also invited to participate in a Permanent Forum workshop in Santiago, Chile in 1997 and three (3) years later the Permanent Forum was established.

The Mandate of the Permanent Forum¹⁹ is to:

1. Provide expert advice and recommendations on indigenous issues to the Council, as well as to programs, funds and agencies of the UN, through the Council.
2. Raise awareness and promote the integration and coordination of activities related to indigenous issues within the UN system.
3. Prepare and disseminate information on indigenous issues.

The Permanent forum has sixteen (16) independent experts that serve three-year terms as Members and can be re-elected or re-appointed at an additional term. The Members are determined two ways. The members that are nominated by governments are elected by the Economic and Social Council. The members that are nominated by indigenous organizations are

¹⁸ Article 5, United Nations Declaration on the Rights of Indigenous Peoples.

¹⁹ “Mandate.” United Nations Permanent Forum of Indigenous Peoples. Website: <http://www.un.org/esa/socdev/unpfi/en/history.html>.

appointed by the President of the Economic and Social Council. These members must represent seven (7) socio-cultural regions in order to give broad representation to the world's indigenous peoples. The members then have two-week sessions once a year.

In addition to members, the Permanent Forum has a Secretariat. The Secretariat is charged with the following responsibilities²⁰:

1. Prepare for annual sessions of the Permanent Forum and provide support to the Members of the Permanent Forum throughout the year.
2. Advocate for, facilitate and promote the coordination of implementation within the UN system of the recommendations that emerge from each annual session and promote awareness of indigenous issues within the UN system, governments and broad public.
3. Serve as a source of information and a coordination point for advocacy efforts that relate to the Permanent Forum's mandate and the ongoing issues that arise concerning indigenous peoples.

An Inter-Agency Support Group was established to assist the Secretariat carry out its work and the Permanent Forum's mandate and to analyze recommendations from the Permanent Forum. The Inter-Agency Support Group issued a powerful statement regarding the Declaration on the Rights of Indigenous Peoples:

This landmark action of the United Nations bears political, legal, symbolic and moral significance, as well as constituting a crucial opportunity for the UN System and other inter-governmental organizations to critically reflect upon their engagement with indigenous peoples' issues and, according to Article 42 of the Declaration, to promote respect for and full applications of its provisions and follow-up its effectiveness. The [Inter-Agency Support Group] pledges to advance the spirit and letter of the Declaration within our agency's mandates and to ensure that the Declaration becomes a living document throughout our work.²¹

The Navajo Nation and the United Nations

History of Participation

²⁰ "Secretariat." United Nations Permanent Forum of Indigenous Peoples. Website: <http://www.un.org/esa/socdev/unpfii/en/history.html>.

²¹ "IASG/Inter-agency Support Group on Indigenous Issues." United Nations Permanent Forum of Indigenous Peoples website: <http://www.un.org/esa/socdev/unpfii/en/history.html>.

The Working Group on the Draft Declaration on the Rights of Indigenous Peoples

The historical relationship between the Navajo Nation and the UN began with the drafting of the Declaration on the Rights of Indigenous Peoples and can be traced through resolutions adopted by the Intergovernmental Relations Committee of the Navajo Nation Council. The first resolution titled “Supporting the Navajo Nation’s International Initiative”²² was adopted in 1995 “to ensure the presence and voice of the Navajo Nation”²³, a “separate and distinct” people that “possess the inherent right of self-government.”²⁴ The resolution identified several international issues that impacted directly or indirectly the Navajo people and declared “the time has come for the Navajo Nation to play a significant role on an international level in order to ensure that the rights and general welfare of the Navajo People are promoted, protected, honored and respected”²⁵ and that the Intergovernmental Relations Committee was “to play a significant role on an international level.”²⁶ Two representatives from the Legislative and Executive Branch and one representative from the Judicial Branch was authorized to travel to Geneva for the first meeting of the United Nations Human Rights Commission Working Group on the Draft Declaration on the Rights of Indigenous Peoples.

In 1996, Resolution IGRO-229-96, titled “Reaffirming the Support of the Navajo Nation’s International Initiative and Authorizing a Navajo Nation Delegation to Attend the Second Meeting of the United Nations Human rights Commission Working Group on the Draft Declaration on the Rights of Indigenous Peoples”, was adopted which recognized the Navajo Nation’s responsibility of “protecting the integrity of the treaties of 1849 and 1868 with the United States and its prior treaties with Spain and with the Republic of Mexico.”²⁷ The resolution also recognized the powerful statement enclosed in the preliminary report of Miguel Alfonso Martinez of Cuba, the Special Rapporteur appointed by the Sub-commission on the Prevention of Discrimination and Protection of Minorities, “European governments understood the indigenous peoples with whom they entered into treaties to be ‘states’ or ‘nations’ in the international sense”²⁸. The resolution also reported that “many American Indians and other indigenous peoples’ representatives and organizations commented positively on the important and influential

²² Resolution of the Intergovernmental Relations Committee of the Navajo Nation Council IGRN-246-95

²³ “Whereas”, Paragraph 1, Resolution IGRN-246-95.

²⁴ “Whereas”, Paragraph 3, Paragraph 4, Resolution IGRN-246-95.

²⁵ “Whereas”, Paragraph 8, Resolution IGRN-246-95.

²⁶ “Now Therefore Be It Resolved That”, Paragraph 1, Resolution IGRN-246-95.

²⁷ “Whereas”, Paragraph 9, Resolution IGRO-229-96.

²⁸ “Whereas”, Paragraph 11, Resolution IGRO-229-96.

participation of the Navajo Nation delegation at the first meeting”²⁹ and that the three (3) branches of the Navajo Nation government “are united in agreement that the Navajo Nation must continue to play a significant role in an international level in order to ensure that the rights and general welfare of the Navajo People are promoted, protected, honored and respected”³⁰ and that “Navajo Nation involvement and participation on an international level in the past year, particularly its participation in the first meeting of the Working Group, already has significantly impacted the United States government and the United Nations for the benefit of the Navajo people and other indigenous peoples throughout the world”³¹. The resolution declared that “it is in the best interests of the Navajo Nation and the Navajo People that the Navajo Nation ensures that the rights and general welfare of the Navajo People are promoted, protected, honored and respected through such significant involvement and participation on an international level”³² and authorized another delegation to attend the second meeting of the United Nations Human Rights Commission Working Group on the Draft Declaration on the Rights of Indigenous Peoples in Geneva.

In 1997, the resolution titled “Reaffirming Support of the Navajo Nation’s International Initiative and Authorizing a Navajo Nation Delegation to Attend the Third Meeting of the United Nations Human Rights Commission Working Group on the Draft Declaration on the Rights of Indigenous Peoples”³³ was adopted granting and authorizing another delegation to attend the third meeting of the Working Group.

While the author of this report did not have opportunity to review the 1998 resolution relative to the Navajo Nation’s continued participation in the drafting of the Declaration on the Rights of Indigenous Peoples, the resolution adopted in 1999 titled, “Reaffirming the Support of the Navajo Nation’s International Initiative Authorizing a Navajo Nation Delegation to Attend the Fifth Meeting of the United Nations Human Rights Commission Working Group on the Draft Declaration on the Rights of Indigenous Peoples”³⁴ references the resolution authorizing a Navajo Nation delegation to attend the fourth Working Group meeting in 1998 and confirms the

²⁹ “Whereas”, Paragraph 17, Resolution IGRO-229-96.

³⁰ “Whereas”, Paragraph 19, Resolution IGRO-229-96.

³¹ “Whereas”, Paragraph 20, Resolution IGRO-229-96.

³² “Whereas”, Paragraph 21, Resolution IGRO-229-96.

³³ Resolution IGRO-237-97.

³⁴ Resolution IGRAU-193-99.

delegation's attendance.³⁵ The resolution also references a March 3, 1995 document issued by the United States defending the Navajo Nation's participation as a recognized organization of indigenous peoples and authorizing a Navajo Nation delegation to attend the fifth Working Group meeting.

In 2000, the resolution titled "Reaffirming Support of the Navajo Nation's International Initiative and Authorizing a Navajo Nation Delegation to Attend the Sixth Meeting of the United Nations Human Rights Commission Working Group on the Draft Declaration on the Rights of Indigenous Peoples,"³⁶ was adopted reaffirming the Navajo Nation's role in important international discussion and authorizing another delegation to attend the sixth Working Group meeting.

In 2001, the resolution titled "Reaffirming Support of the Navajo Nation's International Initiative and Authorizing a Navajo Nation Delegation to attend the Seventh Meeting of the United Nations Human Rights Commission Working Group on the Draft Declaration on the Rights of Indigenous peoples,"³⁷ was adopted continuing the Navajo Nation's participation and authorizing another delegation to attend the seventh Working Group meeting.

In 2003, the resolution titled "Reaffirming Support of the Navajo Nation's International Initiative and Authorizing a Navajo Nation Delegation to Attend the Ninth Meeting of the United Nations Human Rights Commission Working Group on the Draft Declaration on the Rights of Indigenous Peoples"³⁸ was adopted, reporting very briefly on the delegation sent to the eighth Working Group meeting³⁹ and reaffirming the Navajo Nation's role and authorizing another Navajo Nation delegation to attend the ninth Working Group meeting.

The last resolution regarding the Working Group was titled "Relating to Intergovernmental Relations; Reaffirming Support of the Navajo Nation's International Initiative and Authorizing a Navajo Nation Delegation to Attend the Tenth Meeting of the United Nations Human Rights Commission Working Group on the Draft Declaration on the Rights of Indigenous Peoples."⁴⁰ It affirmed the Navajo Nation's role and authorized another delegation to

³⁵ The resolution recording this authorization to attend the fourth meeting of the Working Group in 1998 was not found among the resolutions kept by the Intergovernmental Relations Committee.

³⁶ See Resolution IGRS-214-00.

³⁷ See Resolution IGRD-318-01.

³⁸ See Resolution IGRS-174-03.

³⁹ The resolution recording this authorization to attend the eighth meeting of the Working Group in 2002 was not found among the resolutions kept by the Intergovernmental Relations Committee.

⁴⁰ See Resolution IGRS-140-04.

attend the tenth Working Group meeting. More importantly, it authorized the delegation to present specific recommendations and to outline issues such as the Navajo Nation's sovereign status, the Navajo peoples' inherent right of autonomy and self-determination, the inherent right of the Navajo Nation to be governed by Diné fundamental laws in accordance with the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights and the right to respect which should be afforded to all human beings.

The Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples

In addition to the Navajo Nation's committed involvement at the Working Group meetings on the Draft Declaration on the Rights of Indigenous Peoples the Navajo Nation has also participated in other UN activities. In 2002, Navajo Nation representatives attended the Permanent Forum on Indigenous Issues in New York City⁴¹. In 2008 the Navajo Nation formally recommended Mr. Lindsay G. Robertson for Expert Mechanism on the Rights of Indigenous Peoples⁴².

The International Telecommunications Union

In 2005, the Navajo Nation established a strong relationship with the International Telecommunications Union ("ITU"), the world communications regulatory agency for the UN at the UN's World Summit on the Information Society ("WSIS") Conference in Tunisia. The ITU and the Observatory for Cultural and Audiovisual Communication entered into a formal Memorandum of Understanding ("MOU") with the Navajo Nation on a communication initiative to extend internet services to all indigenous peoples. More importantly, for purposes of UN recognition, the Navajo Nation became the very first indigenous nation voting member of ITU.

In April 2006, Navajo Nation President Joe Shirley, Jr. ("Navajo Nation President"), chaired the "New Protagonists of the Global Challenge: Indigenous People and Local Communities" program at the sixth UN Infopoverity World Conference in New York City, New

⁴¹ See Resolution IGRF-17-02, "Selecting the Hon. Speaker of the Navajo Nation Council, Legislative Counsel Herb Yazzie and Hon. Chief Justice to Represent the Navajo Nation at the Permanent Forum on Indigenous Issues Meeting and Authorizing the Submission of the United Nations Voluntary Fund for Indigenous Populations Application Forms,"

⁴² See Resolution IGRMY-116-08 "Relating to Intergovernmental Relations; Recommending and Supporting the Candidacy of Mr. Lindsay G. Robertson for the Expert Mechanism on the Rights of Indigenous Peoples as Established by the United Nations Human Rights Council"

York⁴³. The Navajo Nation was recognized by the UN as a world leader combating poverty by providing free wireless and satellite Internet services to all Navajos within the Navajo Nation's territorial jurisdiction, and becoming one of the largest wireless communication networks in the world.

Taking the internet communications initiative a step further, the Navajo Nation signed a MOU with the Brazilian Inter-Tribal Committee to participate in a \$25 million project to provide internet services to 1,100 Brazilian indigenous communities. Other international partners to this project to build an Observatory for Cultural and Audiovisual Communication ("OCCAM") facility on the Navajo Nation that delivers video distance education via satellite to indigenous peoples include the Latin American Technological Information Network, the Brazilian Ministry of Communications, Anatel and the Brazilian Ministry of External Affairs. Navajo Nation President described the Navajo Nation's participation in this project as follows: "This facility will be staffed by Navajo employees and volunteers and will be used to honor the languages, values and traditions of all indigenous peoples while providing distance education, economic opportunity, health, e-government programs and emergency and disaster management."⁴⁴

In April 2007, the Navajo Nation President chaired the "New Solutions for the Needs of Disadvantaged Communities" program at the 7th UN Infopoverty World Conference in New York City, New York and described the Internet technology and communications progress, and the benefits it has for indigenous people around the world. Navajo Nation President spoke of the partnership between the Navajo Nation, the International Communications Union and OCCAM, and the plans to open an international office for indigenous nations in Window Rock, Arizona. Ernest Franklin, Executive Director of the Navajo Nation Telecommunications Regulatory Commission, who also attended the UN Conference said, "There is not another Native American tribe or organization in the world that is coming close to taking the kind of leadership position that the Navajo Nation is."⁴⁵

In July of 2007, Navajo Nation President announced the creation of the OCCAM-Navajo Indigenous Center for Excellence on the Navajo Nation at the UN Economic and Social Council

⁴³ "Navajo Nation Joe Shirley, Jr., chairs United Nations conference on eradicating poverty: Says Navajo model of Internet technology availability is key," (New York, New York). The Navajo Nation Office of the President and Vice President Press Release, April 20, 2006.

⁴⁴Id.

⁴⁵ "Navajo President Joe Shirley, Jr., addresses international UN conference on information, communication, technology," (New York, New York). Press Release of the Office of the President & Vice President, April 24, 2007.

in Geneva, Switzerland and described the intent of the Navajo Nation to create international partnerships with other nation/states:

We can no longer wait for others to determine the future of our people. We cannot allow politics or personal issues to hinder the hope of our children's future. We will continue to work with other world leaders on government-to-government basis so that we can help them understand that the Navajo people play an important part of the 5-fingered people of the world.⁴⁶

In Geneva, the Navajo Nation President also described how necessary it is for the Navajo Nation to form partnerships with international entities such as the United Nations:

Being able to stand on our own two feet is the definition of true sovereignty. We have to become part of the world to do this. We can no longer wait for Washington or other state leaders to help us. We have to look to ourselves and go to the world. This is why I'm in Geneva."⁴⁷

Today's Avenues of Representation and Participation

At the present time, there are three (3) basic mechanisms through which the interests of Navajos are represented in the UN: (1) the United States as a permanent member, (2) a variety of indigenous NGO's in consultative status, and (3) the Permanent Forum on Indigenous Issues. Each of these mechanisms affords the Navajo Nation limited representation and does not reflect the best interests of Navajo people on most occasions.

Representation by the United States

The representation provided by the United States ("US"), as a permanent member of the UN, on behalf of Navajos is generally included with the US comprehensive representation of all US citizens. Basically, the only representation that Navajos receive from the US is limited to their status as citizens of the US and not as indigenous peoples with the inherent collective right of self-determination. Because every Navajo has the right as a US citizen to participate in the federal, state and local electoral process, each Navajo also has the right to present issues and

⁴⁶ "President Shirley Meets with the United Nations Economic and Social Council Where Creation of an Indigenous Center for Excellence on the Navajo Nation is Announced," (Geneva, Switzerland). Press Release of the Office of the President & Vice President, July 6, 2007.

⁴⁷ Id.

concerns to their elected representative. The US appoints some of the same elected representatives to participate in the UN system. In addition, the Navajo Nation has the ability to approach elected officials who also participate in the UN system to present issues. However, the US representatives have a primary responsibility of protecting the national interests of the US which often conflict with the interests of the Navajo Nation, especially when the issues involve jurisdiction and natural resources. The interests of the Navajo Nation and other indigenous peoples are marginalized and left buried beneath the collective voice of non-indigenous US citizens.

Representation by Non-governmental Organizations

Non-governmental organizations such as the National Congress of American Indians (“NCAI”) that have UN consultative status also serve as a limited avenue through which the interests of Navajo Nation may be represented. However, because NCAI holds itself out as a representative of all Native American Indians, its interests conflicts with the Navajo Nation. In fact, in 2001 the Navajo Nation adopted a resolution⁴⁸ informing the US that NCAI does not represent the Navajo Nation and to obtain the official positions, goals and priorities directly from the Navajo Nation. “While the National Congress of American Indians (NCAI) is not an elected body of tribal leaders; is not a representative Congress of all American Indians, and does not develop positions which constitutes a consensus of federally recognized Indian tribes, the Navajo Nation perceives that the United States Congress often considers NCAI positions to be the consensus position of the elected tribal leaders of federally recognized Indian tribes.”⁴⁹ The specific interests, concerns, rights and well-being of Navajos are overlooked, ignored and/or substituted by the interests of other indigenous peoples or the collective interests of the US government.

Allowing entities, such as NCAI, to hold themselves out as representatives of the Navajo Nation and its peoples clearly ignores the inherent sovereignty of the Navajo Nation and the collective right of the Navajos to self-government and self-determination.

Representation by the Permanent Forum of Indigenous Peoples

The Navajo Nation is also represented in the UN through the Permanent Forum of Indigenous Peoples (“PFII”) but do not individually participate in the PFII. Sixteen (16)

⁴⁸ See Resolution IGRMA-94-01, “Advising the United States Government That the Navajo Nation Is Not Represented by the National Congress of American Indians (NCAI).”

⁴⁹ Id.

independent experts are appointed to carryout the PFII work. Eight (8) of the independent experts nominated by five (5) regions recognized by the UN: Africa; Asia; Eastern Europe; Latin America and the Caribbean; and, Western Europe and Other States. The Navajo Nation is represented by Western Europe and other States appointment. In addition, indigenous organizations are authorized to nominate the eight (8) remaining experts.

The PFII, however, represents the interests of all indigenous peoples through providing expert advice and recommendations on indigenous issues to the Economic and Social Council; creating awareness and promoting the integration and coordination of significant activities within the UN; and, organizing and distributing information on indigenous issues. The disadvantage with the PFII representation is equivalent to the same representation of the US and the NGO's. PFII representation is limited to the forum itself. The PFII tries to protect the rights of the world's indigenous peoples making it impossible for the PFII to exclusively protect the interests of the Navajo Nation.

Separate UN Recognition

The Navajo People and Self-Representation

Oral Stories

“Indigenous peoples around the world have sought recognition of their identities, their ways of life and their right to traditional lands, territories and natural resources; yet throughout history, their rights have been violated. Indigenous peoples are arguably among the most disadvantaged and vulnerable groups of people in the world today.”⁵⁰ Navajos have represented themselves as a distinct and unique people since time immemorial. The oral narratives are shared among Navajos and are passed down from one generation to another. The narrative of Nayenezgani (Monster Slayer) and Tohbachischin (Born for Water), Changing Woman's twin sons (“Hero Twins”), and their journey to their father's home ⁵¹ clearly describes the Navajos' struggle to preserve their human right to self-determination.

⁵⁰ “About UNPFII and a brief history of indigenous peoples and the international system.” United Nations Permanent Forum on Indigenous Issues. Website: <http://www.un.org/esa/socdev/unpfii/en/history.html>.

⁵¹ “Navajo Creation Myth: The Story of the Emergence.” Website: <http://www.sacredtexts.com/nam/nav/ncm/ncm4.htm>.

As the narrative explains, Bigochiddy⁵² informed the Hero Twins that they must seek out their father - the Creator; the Sun. Bigochiddy gave the older twin the rainbow and the younger twin a ray of light to help them on their journey. He ordered the Hero Twins to only take the flint armor, the lightening arrows, the stone knife, the big cyclones, the big hail, and the powerful cigarette from the Sun. Without their mother's knowledge the Hero Twins journeyed to the Sun only to be tested by their father.

After passing the test, the Sun, convinced that the Hero Twins were his, asked them why they were there. The Hero Twins told their father that they wanted to slay monsters that were plaguing their people. The Sun then took them to different rooms in the house where he showed them different things like rainbows, plants, clothing and jewelry. The Hero Twins refused all those material possessions. Then the Wind (a Spiritual-Being) reminded the Hero Twins of what Begochiddy instructed them to bring. The Hero Twins then asked for these things. At first the Sun said these were dangerous weapons and did not want to give them up. However, after careful consideration the Sun granted the Hero Twins request and showed them how to use them. The Hero Twins then shared how they would slay the monsters but before the Hero Twins left with these weapons, the Sun killed the Giant (a Spiritual-Being) for them. The Hero Twins returned with the scalp of the Giant and Begochiddy was pleased with their accomplishments.

The Hero Twins then defeated the other monsters with the weapons their father gave them. This narrative describes the inherent right to self-determination and to live freely.

Treaties with New Spain

In 1805, the Navajo Nation and New Spain entered into an international treaty presenting evidence that Navajos are a unique and distinct people asserting their right of self-determination.⁵³ Equally important was the recognition by New Spain that Navajos held themselves as a sovereign nation. The Governor of New Mexico, Joaquin Real Alencaster, reported: "I have agreed upon peace with the principal leaders of the Navajo Nation."⁵⁴ Governor

⁵² Begochiddy is the blue-eyed and yellow-haired god whose mother is a Ray of Sunlight and whose father is Day light. He was one of the six beings that existed at the beginning and he created the four worlds through which the Navajo people have passed through.

⁵³ Governor Joaquin Real Alencaster to Salkcedor, May 15, 1805; Translation by David M. Brugge and Harrison Lapahie Jr., "New Spain's Treaty with the Navajos, 1805," website: <http://www.lapahie.com/Treaties.cfm>. See also: David E. Wilkins, *The Navajo Political Experience*, (Diné College Press: Tsaile, Arizona), 1999; J. Lee Correll, comp., *Through White Men's Eyes: A Contribution to Navajo History* (Navajo Times Publishing Co.: Window Rock, Arizona), 1976; and Bill Acrey, *Navajo History: The Land and The People* (Rio Grande Press, Inc.: Shiprock, New Mexico), 1979.

⁵⁴ Id.

Alencaster also stated: "...they are to be made to understand that the violation of the referred conditions and to which fulfillment remains obligatory to the Nation in general, will be held to be formal declaration of War, and it will be attacked suddenly in order to destroy it entirely."⁵⁵

Governor Alencaster went on to explain: "... all the Nations that are at Peace practice not doing damage to those that have entered in the Province of other Nations or Bands who are their enemies..."⁵⁶

The Spanish Governor also references Navajo as a nation:

[The Navajo] should take great care to collect all the cattle and horses and mules that they encounter with brands in the Province, that they consented that all the Nation would meet and obedience to Cristobal, and to his lieutenancies, would be re-established, that they would take of collecting the few or many that they might encounter to let them know the value of conserving the Peace.⁵⁷

The governor once again writes "the Nation" when referring to the Navajo.

The Navajo Nation and New Spain entered into a second treaty in 1819 recognizing the inherent sovereignty of the Navajo Nation⁵⁸. In the Treaty of 1819, Viceroy Count of Venadito, Interim-Governor of New Mexico, Facundo Melgares, declares: "Agreement of peace with the Navajo Nation between the Governor of the Province of New Mexico, the principal leader of said nation, the Peace Chief and three captains."⁵⁹ Melgares officially recognized the various Navajo leaders and "the Navajo Nation." Melgares continued in his outline of the treaty conditions, including the appointment of "A general of the Navajo Nation" and recommended that "the general will be the captain, Joaquin, due to his abilities and friendship with the Spaniards or another whom the tribe might name, proposing as many captains as might be sufficient to govern the different families or bands..."⁶⁰ In this manner, New Spain recognized the inherent sovereignty of the Navajo Nation and their right to self-determination by selecting

⁵⁵ Id.

⁵⁶ Id..

⁵⁷ Id.

⁵⁸ Treaty of August 21, 1819; Translation by David M. Brugge and Harrison Lapahie Jr., "New Spain's Treaty with the Navajos, 1819," website: <http://www.lapahie.com/Treaties.cfm>. See also: David E. Wilkins, *The Navajo Political Experience*, (Diné College Press: Tsaile, Arizona), 1999; J. Lee Correll, comp., *Through White Men's Eyes: A Contribution to Navajo History* (Navajo Times Publishing Co.: Window Rock, Arizona), 1976; and Bill Acrey, *Navajo History: The Land and The People* (Rio Grande Press, Inc.: Shiprock, New Mexico), 1979.

⁵⁹ Id.

⁶⁰ Id.

their own leader. In addition, New Spain recognized the Navajo Nation's system of governance by acknowledging the Navajo "families or bands" as a nation. Approving the treaty, Viceroy Count of Venadito said:

...I have received the agreement of peace executed with the Navajo Nation by Lieutenant-Colonel Don Facundo Melgares, Interim-Governor of the Province of Mexico, and having understood its different articles. I have come to approve in the name of the King, Our Lord (May God keep him) said agreement in all its parts, and I have ordered that for greater authority and firmness it be published in the gazette of this government, advising Your Excellency for your knowledge, and remitting ten copies so that giving six to the principal persons of the Navajo Nation, two might remain in that general headquarters and the other two with the government of New Mexico for its proper conversation and fulfillment...⁶¹

The last recorded treaty between the Navajo Nation and New Spain was entered in 1822. Governor Facundo Melgares declared: "Agreement of peace with the Navajo Nation between the Governor of the Province of New Mexico, the principal leader of the aforesaid, and two headmen."⁶² In the first article, the governor "conceded [the Navajo Nation] peace and friendship in the name of the Emperor"⁶³ and "...at the request of the Navajos...The Navajos remain at liberty to trade and travel in the Province."⁶⁴

These three (3) international nation to nation treaties with Spain clearly provide evidence that the inherent right of Navajo sovereignty and self-determination was recognized.

Treaties with Mexico

The first treaty between the Navajo Nation and Mexico was entered in 1823. Although the treaty declared that the agreement was "the best celebration of peace with the Navajo tribe"⁶⁵

⁶¹ Id.

⁶² Treaty of October 29, 1822; Translation by David M. Brugge and Harrison Lapahie, Jr., "New Spain's Treaty with the Navajos, 1822," website: <http://www.lapahie.com/Treaties.cfm>. See also: David E. Wilkins, *The Navajo Political Experience*, (Diné College Press: Tsaile, Arizona), 1999; J. Lee Correll, comp., *Through White Men's Eyes: A Contribution to Navajo History* (Navajo Times Publishing Co.: Window Rock, Arizona), 1976; and Bill Acrey, *Navajo History: The Land and The People* (Rio Grande Press, Inc.: Shiprock, New Mexico), 1979.

⁶³ Id.

⁶⁴ Id.

⁶⁵ Treaty of Feb. 12, 1823; Translation by David M. Brugge and Harrison Lapahie, Jr., "Mexico's Treaty with the Navajos, 1823," website: <http://www.lapahie.com/Treaties.cfm>. See also: David E. Wilkins, *The Navajo Political Experience*, (Diné College Press: Tsaile, Arizona), 1999; J. Lee Correll, comp., *Through White Men's Eyes: A*

and that “the Senores Captain Don Bartolome Baca and Don Antonio Sandoval signed this in the name of General Joaquin and his tribe,”⁶⁶ the treaty also referred to Navajos as a sovereign nation. In reference to the captured prisoners, “...[the Navajos] claimed those of their nation.”⁶⁷ The Navajo Nation and Mexico entered into a second treaty in 1824 which states: “At Jemez, on January 20, 1824, 14 articles of peace, the result of a meeting held at Isleta in December of 1823, were signed by Jose Antonio Vizcarra, Bartolome Baca, and Antonio El Pinto, ‘General’ of the Navajo Nation...”⁶⁸ The treaty continues “[i]n accordance with the New Mexicans’ Christian duty they urge the pagan nation to embrace the Holy Faith of their own free will.”⁶⁹

The last treaty between the Navajo Nation and Mexico was entered in 1839 which states: Having repeatedly petitioned the said Tribe through their envoys, and finally the Chieftain Cayetano, being one of the most important of the said Nation, coming with 6 of the principal leaders and having spoken to me in the name of the entire Nation that they desire to be given the terms which the Governor of New Mexico may wish, in view of their humiliation and what appears to be good faith, he (Cayetano) has agreed to present them to me with the chieftains and other notables of the Nation, concerning this very interesting affair, and after some difference we have agreed to the following articles...⁷⁰

Although the international treaties entered into by the Navajo Nation were becoming more unfair, ignoring the rights of Navajos, the Navajo Nation continued to be recognized as a sovereign nation represented by leaders of their own choosing, able to enter into international

Contribution to Navajo History (Navajo Times Publishing Co.: Window Rock, Arizona), 1976; and Bill Acrey, *Navajo History: The Land and The People* (Rio Grande Press, Inc.: Shiprock, New Mexico), 1979.

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ *Tratados de paz*, Jemez, Jan. 20, 1824 – free translation from Reeve, 1971, pp. 244-245; cited in McNitt, 1972, p.66 & n.66, Harrison Lapahie Jr., “Mexico’s Treaty with the Navajos, 1824,” website: <http://www.lapahie.com/Treaties.cfm>. See also: David E. Wilkins, *The Navajo Political Experience*, (Diné College Press: Tsaille, Arizona), 1999; J. Lee Correll, comp., *Through White Men’s Eyes: A Contribution to Navajo History* (Navajo Times Publishing Co.: Window Rock, Arizona), 1976; and Bill Acrey, *Navajo History: The Land and The People* (Rio Grande Press, Inc.: Shiprock, New Mexico), 1979.

⁶⁹ Id.

⁷⁰ Translation from Jenkins & Minge, pp. 51-52, Harrison Lapahie, Jr., “Mexico’s Treaty with the Navajos, 1839,” website: <http://www.lapahie.com/Treaties.cfm>. See also: David E. Wilkins, *The Navajo Political Experience*, (Diné College Press: Tsaille, Arizona), 1999; J. Lee Correll, comp., *Through White Men’s Eyes: A Contribution to Navajo History* (Navajo Times Publishing Co.: Window Rock, Arizona), 1976; and Bill Acrey, *Navajo History: The Land and The People* (Rio Grande Press, Inc.: Shiprock, New Mexico), 1979.

agreements with other sovereign nations and engage in international affairs such as trade and intercourse with other sovereign nations.

Treaties with United States

The first treaty between the Navajo Nation and the US was entered in 1850. While the Treaty of 1850 did not specifically address the Navajos as a nation it did continue to recognize the territorial jurisdiction of the Navajo Nation. Article 9 states: "...it is agreed by the aforesaid Navajos that the Government of the United States shall, at its earliest convenience, designate, settle, and adjust their territorial boundaries..."⁷¹

The second treaty between the Navajo Nation and the US was entered in 1855. The treaty was presented by David Meriwether, saying,

I have come here to meet the Navajos, and I am glad to see so many present. I am glad the Navajos and the whites have been at peace so long a time and hope they will remain at peace. I have come to see you and agree upon a country the Navajos and whites may each have, that they may not pasture their flocks on each other's lands. If we have a dividing line so that we know what each other's country is, it will keep us at peace.⁷²

Through Meriwether, the US recognized the Navajo Nation's right to their country and expresses a desire to have an agreement allowing each distinct and sovereign nation their own territory free from external interference. The treaty begins by saying: "...David Meriwether, sole Commissioner, duly appointed for that purpose on the part of the United States and the undersigned chiefs, captains, and headmen, of the Navajo tribe or nation of Indians; they being thereto duly authorized and acting for and in behalf of their respective bands."⁷³ Also under the first article it continues to state, "Peace, friendship, and amity shall forever hereafter exist

⁷¹ Navajo Nation Code 9.Stat.974. See also: Harrison Lapahie Jr., "U.S. Treaty with the Navajos, 1849," website: <http://www.lapahie.com/Treaties.cfm>; David E. Wilkins, *The Navajo Political Experience*, (Diné College Press: Tsaille, Arizona), 1999; J. Lee Correll, comp., *Through White Men's Eyes: A Contribution to Navajo History* (Navajo Times Publishing Co.: Window Rock, Arizona), 1976; and Bill Acrey, *Navajo History: The Land and The People* (Rio Grande Press, Inc.: Shiprock, New Mexico), 1979.

⁷² Lapahie Jr., Harrison, "U.S. Treaty with the Navajos, 1855," website: <http://www.lapahie.com/Treaties.cfm>. See also: David E. Wilkins, *The Navajo Political Experience*, (Diné College Press: Tsaille, Arizona), 1999; J. Lee Correll, comp., *Through White Men's Eyes: A Contribution to Navajo History* (Navajo Times Publishing Co.: Window Rock, Arizona), 1976; and Bill Acrey, *Navajo History: The Land and The People* (Rio Grande Press, Inc.: Shiprock, New Mexico), 1979.

⁷³ Id.

between the United States of America and the Navajo tribe or nation of Indians...”⁷⁴ Three years after the Treaty of 1855 an armistice was signed to end the war that raged between the Navajo Nation and the US despite the Treaty of 1855. The armistice states: “We the undersigned chiefs and principal men of the Navajo Nation agree and consent in the name of their nation and sign our names before witnesses that we act in good faith and sincerity by so doing.”⁷⁵ This armistice was quickly followed by a third treaty, the Treaty of 1858, to address Navajos both as “tribe” and “nation.” The opening statement writes:

...Col. J.L. Collins, Supt. Of Ind. Affairs for the Territory of New Mexico, acting for and on behalf of the United States, have agreed that peace shall be restored to the Navajo tribe of Indians, and when all terms are fully complied with on the part of the said Indians, friendship and amicable relations shall again exist between the United States and the Navajo Nation.⁷⁶

A fourth treaty between the Navajo Nation and the US was entered in 1861 that recognized Navajos as “the Navajo Nation.” It also recognized the Navajo system of self-governance by acknowledging their “Navajo Chiefs.” However, as the power of these foreign governments increased the protection of the inherent right of Navajo, self-determination began to diminish. Article 5 states:

The Navajo Chiefs shall immediately collect their people and establish them in the country west of Fort Fauntleroy, and until it is otherwise stipulated none of them will be allowed to live or graze their flocks in the country east of that post. If any are found in that country they will not be entitled to protection but will be regarded and treated as enemies, and it is understood that the Navajo Chiefs will, as soon as it is practicable, and the necessary arrangements can be made, establish

⁷⁴ Id.

⁷⁵ Lapahie Jr., Harrison, “U.S.A.’s Armistice with the Navajos, 1858,” website: <http://www.lapahie.com/Treaties.cfm>. See also: David E. Wilkins, *The Navajo Political Experience*, (Diné College Press: Tsailé, Arizona), 1999; J. Lee Correll, comp., *Through White Men’s Eyes: A Contribution to Navajo History* (Navajo Times Publishing Co.: Window Rock, Arizona), 1976; and Bill Acrey, *Navajo History: The Land and The People* (Rio Grande Press, Inc.: Shiprock, New Mexico), 1979.

⁷⁶ Lapahie Jr., Harrison, “U.S.’s Treaty with the Navajos, 1858,” website: <http://www.lapahie.com/Treaties.cfm>. See also: David E. Wilkins, *The Navajo Political Experience*, (Diné College Press: Tsailé, Arizona), 1999; J. Lee Correll, comp., *Through White Men’s Eyes: A Contribution to Navajo History* (Navajo Times Publishing Co.: Window Rock, Arizona), 1976; and Bill Acrey, *Navajo History: The Land and The People* (Rio Grande Press, Inc.: Shiprock, New Mexico), 1979.

their people permanently in Pueblos or settled communities, where peaceable avocations may be pursued without interruption or molestation.⁷⁷

In prior treaties the Navajos retained the right to live freely in their own country.

Treaty of 1868

The last treaty between the Navajo Nation and the US was entered in 1868 which continues to remain in effect although it is increasingly challenged, neglected and breached by the US. In this treaty the Navajo Nation is referred to as either “Indian,” “tribe,” or “Navajo tribe of Indians.” The introductory statement to the treaty is the only site where the Navajo Nation is referred to as “the Navajo nation.” The document in its entirety contains thirty (30) references to the Navajo Nation as “Indians,” twelve (12) as “tribe,” and four (4) as “tribe of Indians.”

However, the Treaty of 1868 clearly recognized the collective right of Navajos’ inherent right to sovereignty and self-determination:

No future treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force against said Indians unless agreed to and executed by at least three-fourths of all the adult male Indians occupying or interested in the same; and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his rights to any tract of land selected by him as provided in article 5 of this treaty.⁷⁸

This treaty preserves the right of the Navajo Nation to land, free and informed consent, the inherent right of self-determination through its collective, and the right of self-governance through its “elected” leadership.

Navajo Nation Contemporary Government

The Navajo peoples have since time immemorial held themselves out as a separate and distinct people with the inherent right to sovereignty, self-governance, self-determination and the

⁷⁷Lapahie, Jr. Harrison, “United States Treaty with the Navajos, 1861,” website: <http://www.lapahie.com/Treaties.cfm>. See also: David E. Wilkins, *The Navajo Political Experience*, (Diné College Press: Tsailé, Arizona), 1999; J. Lee Correll, comp., *Through White Men’s Eyes: A Contribution to Navajo History* (Navajo Times Publishing Co.: Window Rock, Arizona), 1976; and Bill Acrey, *Navajo History: The Land and The People* (Rio Grande Press, Inc.: Shiprock, New Mexico), 1979.

⁷⁸ Navajo Nation Code 15.Stat.667. See also: “U.S.-Navajo Treaty of 1868,” website: <http://reta.nmsu.edu/modules/longwalk/lesson/document/treaty.htm>.

right to enter international agreements. This birthright continues to be recognized, respected and practiced today as memorialized by fundamental documents such as the Navajo Nation Code⁷⁹ and its statutory mandate of Diné Bi Beenahaz'áanii (Navajo Fundamental Law).

Diné Bi Beenahaz'áanii is comprehensive and embraces Navajo Traditional, Customary, Natural and Common Law. Diné Bi Beenahaz'áanii preserves the inherent right of sovereignty, the right of self-governance and self-determination, the right to enter intergovernmental relationships and agreements with other sovereign nations, and the right and freedom to choose leaders of their own choice: "It is the right and freedom of the Diné to choose leaders of their own choice; leaders who will communicate with the people for guidance; leaders who will use their experience and wisdom to always act in the best interest of the people; leaders who will also ensure the rights and freedoms of generations yet to come..."⁸⁰

Diné Bi Beenahaz'áanii reaffirms the inherent right of Navajos to develop their own form of governance, including the present three branch government. Diné Bi Beenahaz'áanii reaffirms the inherent right of the Navajo people to represent their own interests, needs and to establish relationships.

Rights for Navajo People

The foundation of the Navajo Nation's inherent right to represent its own interests, to self-governance and self-determination is found in the oral narratives of the Navajo people, the international treaties which the Navajo Nation has entered with other distinct and separate sovereign nations and in the governing laws and documents of the Navajo Nation. Additional support is found in international agreements and declarations of the UN such as, but not limited to, the Declaration on the Rights of Indigenous Peoples.

There are five (5) primary themes articulated in various international agreements and declarations. The first theme is the right to self-determination, which is stipulated to in Article 1

⁷⁹ The Navajo Nation Code is yet another fundamental legal document which foremost establishes the sovereignty of the Navajo Nation through the governance of the three branches of the Navajo Nation government. The Navajo Nation Code serves as the rule of law, containing stipulations relating to such state issues such as membership in the Navajo Nation, the Navajo Nation's sovereign immunity, the work and ethnics of governmental bodies and the regulation of resources under the control of the Navajo Nation (i.e. land). This Code is the act of self-governance and self-determination and the establishment of the Navajo Nation government within this Code is the act of self-representation. The United States government recognizes this code as the rule of law for the Navajo people and should thus be recognized by the United Nations likewise. The very existence of this Code supports any exercise of the Navajo Nation to assert its right to self-determination, self-governance and self-representation.

⁸⁰ Navajo Nation Code 1.Stat.201, 202, 203, 204,205,206; See also: Resolution CN-69-02, "Amending Title 1 of the Navajo Nation Code to Recognize the Fundamental Laws of the Diné"; and "The Fundamental Laws of the Dine," website: <http://www.navajocourts.org/dine.htm>.

of the International Covenant on Economic, Social and Cultural rights, Article 1 of the International Covenant on Civil and Political Rights, Article I-2 of the Vienna Declaration and Program of Action, and Article 3 of the UN Declaration on the Rights of Indigenous Peoples. Self-determination is fundamental to all human and indigenous rights. Navajos carry out self-determination through a democratic process of electing their leadership, through a governmental system of a three (3) branch government and a legislative process that adopts official Navajo Nation priorities and initiatives based upon the best interests of the Navajo people.

The second theme is the right to full and equal enjoyment of human rights and fundamental freedoms. Article 1 of the Universal Declaration on Human Rights, Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination, Article I-19 of the Vienna Declaration and Program of Action, and Article 3 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities all state that all people have the right to the full and equal enjoyment of human rights and fundamental freedoms.

The third theme is the right to be a separate and distinct people. Article 27 of the International Covenant on Civil and Political Rights, Articles I-19, I-20, I-24, and II-B-26 of the Vienna Declaration and Program of Action, Articles 1, 2, 4 and 5 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Article 8 of the International Labor Organization Convention No. 169, and Articles 5, 8, 20, and 34 of the UN Declaration on the Rights of Indigenous Peoples state that all indigenous peoples' have the right to exist as separate and distinct people.

The fourth theme is the right to full and free participation. Articles I-20 and II-B-3 of the Vienna Declaration and Program of Action, Articles 2 and 4 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Articles 2, 5, 6 and 7 of the International Labor Organization Convention 169, and Articles 18 and 19 of the UN Declaration on the Rights of Indigenous Peoples recognize the right of the Navajo Nation to directly participate in matters that impact Navajos. This participation is expressed as genuine consultation and the power to make decisions.

The last theme is balancing the unique rights of Navajos with the collective rights of all indigenous peoples. Article 4 of the International Labor Organization Convention No. 169 and Article 46 of the UN Declaration on the Rights of Indigenous Peoples cautions that special measures or rights of minorities or indigenous peoples recognized should not take away from the

rights of other people. These five (5) themes strengthen the Navajo Nation's right to be recognized by the UN for purposes of advocating the best interests of Navajos. By giving special UN recognition to the Navajo Nation, the UN would indeed fulfilling their obligation to ensure special measures are taken to preserve, protect and promote the inherent right of Navajos.

Navajo Nation to Seek Permanent Observer Status

Since time immemorial, the protection of the civil and human rights of Navajo people has been the priority of the Navajo Nation. Oral narratives illustrate how Navajos have always chosen their own leaders and representatives, and how Navajos have always protected these rights to maintain and improve the well-being of the Navajo people. The international treaties between the Navajo Nation, Spain, Mexico and the US provide evidence of the inherent collective right of the Navajo people to hold themselves out as a separate and distinct nation. In addition, Navajo Nation resolutions provides evidenced of the Navajo Nation's commitment to carry out its birthright as a sovereign government, to advocate on the best interests of all Navajos, and to preserve, protect and promote the inherent rights of Navajos. As a final point, international agreements and declarations also support that a special UN recognition be granted to the Navajo Nation. The fact that the UN has declared a responsibility to ensure special rights and measures are afforded to Navajo people as citizens, minorities and indigenous people of the US and the UN is required to take an active role to preserve, protecte and promote the Navajo Nation's inherent right to sovereignty, self-determination and self-governance .

However, the question remains: "What type of recognition should the Navajo Nation seek?" After thorough review and careful analysis of available relevant international, federal and Navajo Nation documents it is the recommendation of this report that the Navajo Nation seeks permanent observer status.

The Navajo Nation is presently a democratic three-branch government with authority over peoples, lands and resources and not a non-governmental social organization. The Navajo Nation in fact is a unique entity. The Navajo Nation is sovereign but maintains a government-to-government relationship with the US. Permanent observer status is, thus, the best fit for the Navajo Nation.

It is unfortunate that the Navajo Nation is not presently recognized as a nation/state in the same manner as the US or Montenegro. However, the Navajo Nation is not seeking to secede

from the territorial jurisdiction of the US nor is the Navajo Nation seeking full member status at this time. It is extremely doubtful that such status would be granted even if requested.

In light of the Navajo Nation's unique historical relationship with the international community, its governmental authority over peoples, lands and resources, and the UN's commitment to recognize the inherent right of indigenous peoples to self-determination and self-governance, it is critical to compare the Navajo Nation to other entities with special UN recognition such as Palestine and the Holy See.

Just as Palestine and the Holy See provided evidence of their historical relationship with the UN and other international entities when they sought special UN recognition, the Navajo Nation's historical relationships with international sovereign nations and the UN have been described in this report. This history includes narratives of the Navajo people, international agreements between the Navajo Nation and other sovereign nations, the Navajo Nation's participation in UN organs, including the drafting of the Declaration on the Rights of Indigenous Issues, and the voter member status in the International Telecommunications Union.

The Navajo Nation should expect many challenges on becoming a UN permanent observer and should engage in additional research to identify a prepared response to these anticipated challenges, which would include resistance from the US, from other federally recognized Indian nations, from NGO's, and individual Navajos who may see this initiative as a conflict with their own interests.

Additional challenges may be found in international agreements and declarations which endorse the US as a member nation/state with specific responsibility to preserve, protect and promote the rights of Navajo people. It is also foreseeable that the US will demand to consult with the Navajo Nation and declare that it has exclusive authority to represent Navajo people as US citizens. It is important to note that the Permanent Forum on Indigenous Issues' and others representing Indigenous peoples in the United Nations system indicate some resistance to advancing indigenous peoples' issues. Chairman Victoria Tauli Corpuz of the Permanent Forum on Indigenous Issues noted on the establishment of the Permanent Forum on Indigenous Issues:

We had to forge partnerships with sympathetic governments who were willing to sponsor the resolutions and proposals supporting the Permanent Forum up to the General Assembly sessions. We had to address the fears of other governments who were hostile to the idea of the existence of such a body. But most

importantly, we also had to convince our colleagues in the indigenous peoples' movement that this is a body which can help us further bring our issues into the global arena and we had to unite among ourselves on how this will be shaped.⁸¹

Therefore, the Navajo Nation should prepare for resistance when applying for permanent observer status. To prevent discouragement and to remain resolved, the Navajo Nation should focus on how UN permanent observer status will benefit Navajo generations to come.

Conclusion and Recommendations

Conclusion

The objective of this report was to carefully review and analyze the various types of UN recognitions and to recommend whether or not the Navajo Nation should seek UN recognition. It is hereby determined that it is in the best interests of the Navajo Nation, as history has proven that the Navajo people have always represented themselves as a sovereign nation with the inherent right of self-determination and self-governance, to seek special UN recognition as a Permanent Observer.

The UN currently recognizes other entities such as nation-states, intergovernmental organizations, NGO's and other special entities and some special entities are recognized as permanent observers. While Navajos, as citizens of the US, can participate in UN organs and be heard through the US, NGO's and the PFII, these entities also represent other indigenous and non-indigenous peoples. Therefore, the Navajo people cannot expect that their specific interests be protected by the US or other UN entities as their interests generally conflict with the interests and rights of the Navajo people.

The recommended UN recognition that the Navajo Nation should seek is permanent observer status because the Navajo Nation is not recognized as a nation-state by other UN members, the Navajo Nation is not seeking to secede from the territorial jurisdiction of the US and the Navajo Nation is not a NGO as required for consultative status. Instead, the Navajo Nation is similar to Palestine and the Holy See in that like Palestine and the Holy See, the

⁸¹ Corpuz, Victoria T, "In Larger Freedom: The Challenge of Partnerships from Indigenous Peoples' Perspectives." Speech presented at the 58th Annual DPI/NGO Conference, United Nations, New York, 7-9 Sept. 2005. Website: http://www.un.org/esa/socdev/unpfii/documents/speech_vtc_sept05.doc.

Navajo Nation exercises jurisdiction over peoples, lands and resources. The Navajo Nation has a long history of international relations, including relations with the UN and other sovereign nations and intergovernmental organizations, a number of international agreements and declarations that support the Navajo Nation's right to self-governance, self-representation and self-determination. While there will always be challenges, the Navajo Nation must focus on how acquiring UN permanent observer status will preserve, protect and promote the rights of future generations of Navajo people.

Recommendations

1. Educate Navajo people, Navajo leaders and the non-Navajo general public about the need for UN recognition and emphasize how increased UN participation will preserve, protect and promote the inherent right of Navajo sovereignty, self-determination and self-governance.
2. Identify human right activists, organizations and nation/states that will support special UN recognition of the Navajo Nation. Seek UN permanent observer recognition because there is precedent with recognizing UN permanent observer status of Palestine and the Holy See. Be mindful of the number of years it took for the adoption of other indigenous initiatives such as the adoption of the UN Declaration on the Rights of Indigenous Peoples and the establishment of the Permanent Forum on the Rights of Indigenous Peoples.
3. Be mindful of historical opposition to previous indigenous initiatives such as the UN Declaration on the Rights of Indigenous Peoples and the Permanent Forum on the Indigenous Issues.
4. Be mindful of the historical relationship between the US and identify the reasons given by the US for not signing the UN Declaration on the Rights of Indigenous Peoples Issues.
5. Consider international agreements and declarations that support nation/state's responsibility over indigenous peoples' issues within their territorial boundaries. Expand upon the current research on the historical participation of the Navajo Nation in the UN and other international activities.

EXHIBIT "B"

Policy and Position Statement Regarding the Special Recognition of the Navajo Nation as it Participates in the United Nations' Organisms

The Navajo Nation supports international policies and practices that holds the United Nations ("UN") and its member nation/states accountable for their commitments to preserve, protect and promote the inherent right of indigenous peoples to sovereignty, self-determination and self-governance. The Navajo Nation supports seeking UN special recognition.

Brief Statement of Problem

The question of whether the Navajo Nation should be provided special UN recognition, equivalent to other entities, is a question that has not been addressed by scholars. The UN, a unique international organization, was established in 1945 after the Second World War to replace the League of Nations ("League").

The League was regarded as useless because it failed to carry out its only mandate: prevent future wars. On April 25, 1945, fifty (50) nations and a number of non-governmental organizations ("NGO") drafted the UN Charter at the UN Conference on International Organization. On October 24, 1945, the UN Charter was ratified by five (5) permanent member nation/states – France, the Republic of China, the Soviet Union, the United Kingdom and the United States of America ("USA"). A year later, fifty-one (51) nations were represented at the UN's first annual meeting. Today, there are one hundred and two (192) members with the latest joining in 2006.

The UN's most important responsibilities are security and peacekeeping, providing humanitarian assistance and protecting human rights, and social and economic development. In addition, the UN is committed to conducting research on topics within the scope of its UN Charter, advancing decolonization initiatives and acting as an international observer during conflict between nations.

The UN is organized around five (5) principal organs: 1) the General Assembly, 2) the Security Council, 3) the Economic and Social Council, 4) the Secretariat, and 5) the International Court of Justice. Its headquarters is located in New York City, New York, USA and has offices in Geneva, Switzerland, Vienna, Austria, and Nairobi, Kenya. There are six (6) official languages used in UN meetings and official documents. The UN has three (3) types of special recognition: 1) member, 2) consultative status, and 3) permanent observer. Each type is provided a range of rights and privileges within the UN. Each type has its own particular application process and requirements.

UN Member Nation/State Recognition

UN member nation/states are provided the greatest rights and privileges. These rights include the right to vote, the right to sponsor resolutions and proposals, the right to speak at the General Assembly on any topic, and the right to be represented in the five (5) main organs and their subsidiary organs such as commissions, committees and councils. The most recent member of the UN is the nation/state of Montenegro on June 16, 2006.

UN Consultative Recognition

The type of UN recognition with the least amount of rights is consultative status. The Department of Economic and Social Affairs describes consultative status as “a mutually beneficial working relationship with the United Nations...” This relationship with the UN is primarily for NGOs through the Economic and Social Council (“ECOSOC”). The Department of Economic and Social Affairs explains that organizations in consultative status “make a contribution to the work programmes and goals of the United Nations by serving as technical experts, advisers and consultants to governments and Secretariat. Sometimes, as advocacy groups, they espouse UN themes, implementing plans of action, programmes and declarations adopted by the United Nations.” NGOs with UN consultative status participate in ECOSOC and its subsidiary bodies by attending meetings, making oral intervention statements, submitting written statements on agenda items, on occasion propose new ECOSOC agenda items and attend international conferences, General Assembly special sessions, and meetings with other intergovernmental bodies at UN invitation. Currently there are 3,052 organizations in consultative status with the UN.

UN Permanent Observer Status

UN permanent observer recognition possesses greater rights than NGOs with UN Consultative recognition. UN Permanent Observers have the right to speak at the General Assembly but they do not possess the right to vote. UN Permanent Observers also possess the right to representation in any of the five (5) main UN organs and any subsidiary organs that are of concern to their entity. Entities that have been given permanent observer status include intergovernmental organizations, liberation movements, and special entities such as Palestine and the Holy See.

While the unique interests of the Navajo Nation and the Navajo people could be advanced at the UN and its organs through the USA or an NGO with UN consultative recognition or the Permanent Forum on Indigenous Issues, it is extremely unlikely given that these entities also represent the interests of other indigenous peoples or in the case of the USA, other non-indigenous people that consistently conflict with the best interests of the Navajo peoples. Consequently, the Navajo Nation’s interests are not well served and the Navajo peoples relying on these other entities to set aside their own self-interests, are denied their inherent right to speak collectively as an indigenous nation/state through their elected representatives.

Policy Position

The long-term solution for ensuring the best interests of Navajo Nation are properly advanced at the UN and its organs is for the Navajo Nation to seek some type of formal UN special recognition. The Navajo Nation government is, and always has been, the rightful representative of the Navajo people. The Navajo Nation has the inherent right of sovereignty, self-determination and self-governance as proven by the Navajo Nation’s historical intergovernmental relations with other separate and distinct sovereign nations; validated by international treaties with Spain, Mexico and the USA; and, confirmed by

international legal documents such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the UN Declaration on the Rights of Indigenous Peoples and the proposed American Declaration on the Rights of Indigenous Peoples.

Although the Navajo Nation is within the exterior boundaries of a UN member nation/state (USA), it clearly meets the legal requirements necessary to be recognized as a nation/state. The Navajo Nation is geographically separate with defined territorial boundaries and the Navajo people are ethnically and culturally distinct from all other peoples.

The Navajo Nation, through treaties, established a political government-to-government relationship with the USA and transferred large amounts of land and other natural resources in exchange for peace, protection and other services. Consequently, the USA has a recognized treaty and trust responsibility to the Navajo Nation and the Navajo people. For example, while the Navajo Nation has the ability to generate monies for its national budget, these monies are insufficient to adequately address critical services such as health, education, public safety, social and economic development, and infrastructure development. The USA, because of its treaty and trust responsibilities, provides additional financial assistance to the Navajo Nation directly through P.L. 93-638 Contracts or through its political subdivisions as grants. However, because the inherent right of the Navajo Nation and the Navajo people to preserve, protect and promote their sovereignty, self-determination and self-governance conflicts with the USA's historical assimilative practices and policies, these external funds come with conditions mandating waivers of Navajo sovereignty and relinquishment of Navajo jurisdiction which openly violates the Navajo human rights.

Like Palestine, the Navajo Nation is not recognized as a wholly independent nation/state at this time. Like Palestine, the Navajo Nation must continuously struggle to maintain control over its people, lands and resources. Like the Holy See, the Navajo Nation is not seeking full UN member recognition at this time. Like the Holy See, the Navajo Nation is not demanding a right to vote at the General Assembly. Like the Holy See, the Navajo Nation is not calling for secession from the within the nation/state it is located. Like the Holy See, the Navajo Nation is not demanding to terminate its unique political government-to-government relationship with the USA.

Therefore, like Palestine and the Holy See, the Navajo Nation calls for UN permanent observer recognition to independently represent and advance its own best interests; to directly participate in international discussions and initiatives that impact the Navajo Nation and the Navajo People; to fully implement the international legal standards to preserve, protect and promote the Navajo people's inherent right of self-determination and social and economic development; and in support thereof declares the following:

- It is the policy of the Navajo Nation to vigorously seek special recognition from the UN through its well-established practices and procedures.

- It is the policy of the Navajo Nation to enthusiastically educate the Navajo people, Navajo leaders and the non-Navajo public regarding the Navajo Nation's need for special recognition from the UN by emphasizing where the Navajo Nation fits into the whole world order and how a special recognition from the UN will benefit the Navajo Nation, the Navajo peoples and the USA.
- It is the policy of the Navajo Nation to actively identify and negotiate with its allies, partners and fellow human right activists to bring together potential sponsors and supporters of a future draft resolution to the General Assembly seeking UN special recognition on behalf of the Navajo Nation.
- It is the policy of the Navajo Nation to be mindful of the number of years it took for other types of indigenous initiatives such as the adoption of the UN Declaration on the Rights of Indigenous Peoples, the establishment of the Permanent Forum on the Rights of Indigenous Peoples, and remain steadfast and focused on the benefits an UN special recognition will bring to the Navajo people.
- It is the policy of the Navajo Nation to be mindful of the challenges and opposition to past indigenous initiatives, and in order to meet these challenges and respond to any opposition to the Navajo Nation initiative to achieving UN special recognition.
- It is the policy of the Navajo Nation to conduct scholarly research on areas such as the historical participation of the Navajo Nation in international activities and the UN, e.g. attendance at meetings, sessions and conferences and actively participating in UN negotiations for purposes of supporting UN special recognition.
- It is the policy of the Navajo Nation to make decisions having to do with its inherent right to sovereignty, self-determination and self-governance with complete confidence that it will obtain UN special recognition.
- It is the policy of the Navajo Nation to adopt all laws, rules and regulations, or ordinances with complete confidence that it will obtain UN special recognition.
- Ultimately, it is the Navajo Nation's official position that the UN, its member nation-states, and other entities with special recognition, officially recognize the Navajo Nation as a member nation/state and diplomatically act toward the Navajo Nation as a sovereign nation with the inherent right of sovereignty, self-determination and self-governance for purposes of advancing the interests of the Navajo Nation and the Navajo people.