

To Establish a Congress of Nations and States (CNS)

By Rudolph C. Rýser, Ph.D.



A Cakchiquel family in the hamlet of Patzutzun, Guatemala. Photo: UN /F. Charton

In my book entitled, *Biodiversity Wars: Coexistence of Biocultural Collapse in the 21st Century* (DayKeeper Press, 2019)[1] I discuss at length the need for a renewed effort to identify and advance an analysis and proposals for new mechanisms to bridge the economic, social, political and cultural gap between Fourth World nations and the world's 203 states. I point to the ultimate necessity of establishing constructive mechanisms for cooperation between nations and states with an urgency that responds to the global emergency that is the impending environmental collapse threatening sustainable biodiversity and the diversity of Fourth World peoples. The threat I maintain is in no small measure the result of human waste and the promotion of unrestrained development and consumption that destroys life-supporting plants and animals and radically

alters the global climate. Central to all of this is a needed shift in international policy toward the respect and acceptance of Fourth World self-determination—the right of Fourth World peoples to exist—by states, corporations, trans-state religions, and non-governmental organizations. I propose the convening of a permanent Congress of Nations and States—an innovative international relations solution to long-standing disputes between Fourth World nations and the internationally recognized states. And further, I propose that this Congress authorize the establishment of an International Criminal Court on Genocide for Fourth World nations. These are central topics in my book, but here I wish to share an extract from a chapter focused on the development of the Congress of Nations and States.

The following extract from Chapter 4 of my book summarizes the process in 1992 of organizing and implementing a plan to establish the Congress of Nations and States with the newly formed government of the Russian Federation serving as the host. The Preparatory Committee had the states of Germany, Japan, and the United States as participants and the six Fourth World participating nations: Lummi Nations, San Blas Kuna, Saami, Tibet, Yakut-Sakah, and Maasai.

The Center for World Indigenous Studies collaborating with the then Seattle-based Foundation for International Cooperation and Development and the Moscow, Russia-based International Non-Governmental Association “Union of Lawyers took action to organize and convene a Congress of Nations and States. A series of historic events converged in 1991 and 1992 that prompted this extraordinary diplomatic effort intended to stage an international Congress hosted by the recently declared Russian Federation. The Union of Soviet Socialist Republics (USSR) had collapsed on 21 December 1991. This political event occurred after years of decline, and then suddenly, the USSR military fragmented and Fourth World nations withdrew their support of the “center”—the Kremlin. Lithuania, Estonia, Latvia, Ukraine, Tajikistan, Kazakhstan, Georgia, and Uzbekistan were among

the states that spun out of the USSR, taking with them many Fourth World nations.

The United Nations Working Group on Indigenous Populations, established in 1982, had completed ten years of public sessions in Geneva, Switzerland. That five-person Working Group met with representatives of hundreds of Fourth World nations at the Palais des Nations and heard their testimony. Hundreds of hours of testimony and recommendations resulted in the issuance of a draft Declaration on the Rights of Indigenous Peoples submitted to the Working Group’s parent body, the Sub-Commission on the Promotion and Protection of Human Rights. The “bi-polar” Cold War that had for so long after World War II dominated international relations was essentially dead. For a brief time, the international political system would become “multi-polar,” including the

internationally recognized indigenous nations. Indeed, state-based international policy leaders pronounced indigenous nations as a “subject” of international relations.

With a world in transition, it seemed an entirely appropriate time to initiate diplomatic action to establish a new international mechanism to bridge the now recognized gap (pointed out by the UN Declaration on the Rights of Indigenous Peoples) between the rights of Fourth World nations and the rights of internationally recognized states. Planners of the Congress reasoned that placing states and nations on the same political level to assess the potential for new rules of conduct that would respect the UN defined rights of indigenous peoples would go some distance to fill the gap between them.

The initiative required establishing an International Organizing Committee including six delegates representing Nations: Lummi Nation [United States] Yakut-Sakah [Russia] Maasai [Africa], Tibet [PR China], San Blas Kuna [Panama] and Saami [Sweden, Norway, Finland, and Russia]; and four delegates representing States: United States, Japan, Germany and Russia; and the three initiating non-governmental organizations serving as the Congress Secretariat.

Since the United Nations World Conference on Indigenous Peoples (2014) delegated the UN Secretary-General at paragraph 33 of the Outcome Document the responsibility to identify “ways to enable the participation of indigenous peoples’ representatives and institutions in meetings of relevant United Nations bodies on issues affecting them, including any concrete

proposals made by the Secretary-General....”

This directive is tantamount to establishing an international commitment by states and by indigenous nations to the principle of nations participating in international affairs on the same plain as states. A Congress of Nations and States fully conforms to the internationally agreed standards of indigenous nations and states acting on the same plane in the international sphere.

Strong demands for new international policy in the highly specialized area concerning indigenous nations are being made by NGOs and indigenous peoples, as well as by state governments. The World Council of Churches (Geneva), the Anti-Slavery Society (London), International Working Group on Indigenous Affairs (Denmark), and Amnesty International (London), are among the NGOs pressing for new standards protecting the rights of indigenous nations. The Haudenosaunee (Six Nations Iroquois Confederacy), West Papuans, Yanomami, Cree, Quechua, Mapuche, Maori, and Chakma are among the indigenous nations playing an active role. Norway has been the most active state pressing for the formulation of an international declaration on “indigenous peoples’ rights.” Still, the Netherlands is perhaps the only state that is actively developing a new foreign policy based on evolving standards concerned with the rights of indigenous peoples.

The International Labour Organization

In 1959, ILO Convention 107 came into force. In addition to the 1944 Inter-American Treaty on Indian Life between the United States and seventeen South and Central American States,

Convention 107 was, until the Helsinki Act of 1975, the only other primary international instrument concerned with state government treatment of Fourth World nations as distinct peoples. Twenty-five state governments, including the United States, ratified the Convention 107.

The ILO is a tripartite organization controlled by state governments but involving delegate participation of labor unions and businesses. Its Secretariat decided that Convention 107 should be changed to correspond with the new international standards of the United Nations. The central issue motivating the Secretariat to push for revisions in Convention 107 was the belief that the language advocating assimilation of indigenous peoples into state societies was antiquated and should be changed to reflect modern political realities. The states had poorly formulated land rights provisions contained in Convention 107, causing ILO members to recognize that the terms of reference required updating. This movement for revision arose in conjunction with the growing visibility of indigenous peoples' concerns on the international plane and the greater clarity and importance of the United Nations efforts that

began in 1982 and the 1986 drafting of the U.N. Declaration on the Rights of Indigenous Peoples.

After two years of negotiations, a draft for a new ILO Convention, Convention 169, was tabled for final consideration in 1989. The three active groups that serve as members of the ILO who were permitted to engage in debate to determine the final Convention language were representatives of labor unions, businesses, and state governments. Only state governments had the power of decision to accept or not accept the proposed terms of reference. Representatives of Fourth World nations and indigenous peoples' organizations participated as observers, with the right to lobby official delegates, but no right to speak during the negotiations. [2] Andrew Gray reported that the representatives of four nations officially observing the ILO negotiations (Treaty Six Chiefs, the Federation of Saskatchewan Indians, the Four Directions Council of Canada, the Ainu of Japan, and the National Coalition of Aboriginal Organizations of Australia). Representatives of the World Council of Indigenous Peoples (WCIP), Nordic Saami Council, the Pacific Council of Indigenous Peoples, and the Indian Council of South America join the four nations. Also, the Coordinadora of the Amazon Basin, indigenous peoples of Brazil, Inuit Circumpolar Conference, and delegates of the Mohawk nation participated in what became known as the "Indigenous Peoples' Caucus."

Representatives of indigenous nations were not allowed to present their positions personally, so their views were represented at the negotiating table by Labour Union representatives and by delegations representing the states of Portugal,



Headquarters of the International Labour Organisation, 1966. Photo: UN

Colombia, and Ecuador. The business group representatives resisted all proposals for changes in the original language of Convention 169. Other participating states, including Peru, Argentina, Brazil, Venezuela, India, Japan, Canada, and the United States, formed into three mutually supportive blocs. The South American, Asian, and North American blocs formed with the intent to ensure that international standards remained well below the domestic state standards already set in the laws of each state. [3]

Among the leading issues concerning delegates were the questions of whether the revised Convention should use the term “peoples” or the term “populations” to describe the subject text. This subject also led to the questions of whether the revised Convention should use the term “self-determination” explicitly in the text. And the question of whether the revised Convention should use the word “land” or the term “territory” in the text proved demanding to the delegates. Finally, the delegates took up the question of whether the revised Convention should use the word “consent” or the term “consultation” in the text. [4] The choice of these particular terms would make the difference between an International Convention that enhanced the rights of indigenous peoples, or a Convention that had little political meaning, except as a cover for continued state exploitation of Fourth World peoples.

The representatives of Canada and the United States led diplomatic efforts to limit and narrow the terms of reference in the proposed text of Convention 169. These representatives worked to defeat the use of “peoples” as a term of reference,

advocating the word “populations” instead. [5] They argued, along with delegates from India and Venezuela, that the word “peoples” implied the right of secession from the state. Still, the term “populations” implies demographic units of “metropolitan state citizens.”[6] Further, they asserted that the right of self-determination granted to “peoples” would pose an unacceptable threat to the territorial integrity of the state, and, therefore, use of the term without qualifiers would be unacceptable. The term “peoples” constitutes a broader concept, presumably non-self-governing, and each “people” is presumably distinguishable from other “peoples” by virtue of language, culture, shared history, or a common heritage. Identification as a “people” is a requisite qualification for a nation to secure international guarantees of fair treatment in relation to state governments. [7]

States’ governments deliberately worked to limit the use of the term “peoples”—as a term of reference to identify the subject of Convention 169 that was titled, “Indigenous and Tribal Peoples Convention.” The states intended to limit the number of nations entitled to exercise a claim to self-determination. In the attempt to create a new meaning for “peoples” in international law, states’ governments included a disclaimer in the final text of the new Convention:

[t]he use of the term ‘peoples’ in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law. [8]

The pattern of confusion and the constant shifting of positions exhibited by the United States and Canadian representatives during

the debate on the term “peoples” continued during the debates over the reference terms “land,” “territory,” “self-determination,” and “consent and consultation.”[9] Representatives of Fourth World nations lobbied for the use of the term “territories” to cover all lands and resources belonging to the particular people,[10] while Canadian and U.S. representatives, along with other resistant states, viewed the use of “territories” as a threat to a state’s integrity.[11] After two days of debate and negotiations, Article 13 of the revised text read:

[i]n applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of the relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship. [12]

A second paragraph immediately followed this paragraph: “[t]he use of the term ‘lands’ in Article 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.”[13]

By introducing the term “territories” in Article 13, the drafters avoided inserting the term in Article 14, which dealt with the rights of ownership and possession of land for people who traditionally occupied it.[14] Similar efforts were made to emphasize the difference between “consult” and its more active counterpart, “consent,” and the term “self-determination” was completely left out of the text in favor of indirect references.

The effect of the United States and other states’ demands for language adjustments was to prevent the advancement of international law protecting the rights of Fourth World peoples and affirming the right of self-determination. After completing the revision process Convention 169 was opened for ratification by ILO member states, Mr. Lee Sweptston of the Secretariat addressed the United Nations Working Group on Indigenous Populations: [15]

[a]n effort was made at every stage to ensure that there would be no conflict between either the procedures or the substance of the ILO Convention and the standards which the UN intends to adopt. Thus, the ILO standards are designed to be minimum standards, in the sense that they are intended to establish a floor under the rights of indigenous and tribal peoples and, in particular, to establish a basis for government conduct in relation to them. [16]

In essence, states’ governments led by the United States government extended state-based international law in ILO Convention 169 to deny Fourth World peoples the rights granted to “peoples” in existing international agreements and laws. Rights recognized for Fourth World peoples under the ILO would remain under the control of states. Representatives of states’ governments would continue to block any effort to extend the right of self-determination to Fourth World nations. However, their compromises in language may still open future possibilities for changed practices.

Obstruction in the Draft UN Declaration on the Rights of Indigenous Peoples

In 1986, the U.N. Working Group on Indigenous Populations officially requested that the Commission on Human Rights grant the Working Group full responsibility for drafting and introducing the Draft U.N. Declaration before the General Assembly. The initial impetus for developing such a declaration had come from a combination of sources. Strong encouragement came to the Working Group from Human Rights Commission Special Rapporteur Jose R. Martinez Cobo.[17] His twelve-year study and recommendations from the World Council of Indigenous Peoples[18] adoption of resolutions calling for the enactment of new international laws to protect nations,[19] and an International Conference of NGOs sponsored by the U.N. Economic and Social Council, Sub-Committee on Racism, Racial Discrimination, Apartheid, and Decolonization of the Special Committee on Human Rights in 1977[20] combined to reinforce Cobo's 1981 recommendations. With these political pressures, the U.N. Working Group on Indigenous Populations' favorable embrace of the job of formulating a Declaration.

As work continued on the development of this document of international consensus concerning accepted standards for the rights of indigenous peoples, key terms of reference in its text have become central to a growing debate. ILO Convention 169 played an important role in the evolution of the draft U.N. Declaration on the Rights of Indigenous Peoples. By July 1993, five of the 144 member ILO states had ratified

Convention 169.[21] Despite the relatively low level of interest by state governments, Convention 169 nevertheless became the authoritative influence to support arguments for limiting the meaning of the terms "peoples," "territories," "self-determination," and "self-government" in the Draft U.N. Declaration.[22] The more restricted meanings, states such as the United States and Sweden argued, should be included in the Draft U.N. Declaration. Many states' governments participated in the formulation of the Draft U.N. Declaration, along with hundreds of representatives of Fourth World nations. The work of the representatives of the United States, Sweden, Canada, Australia, New Zealand, Japan, and the Peoples Republic of China should be recognized as attempts to limit international terms of reference in connection with Fourth World nations. These states, beginning in 1986, began working to prevent the U.N. Declaration on the Rights of Indigenous Peoples and its fully adopted language in 2007 from including critical terms of reference such as "peoples" and "self-determination." In other words, these states worked to impose limitations on customary international law in an apparent effort to prevent Fourth World peoples from obtaining international political status—leaving them under the control of states.

To constrain the meaning of terms such as "self-determination," the representative of the U.S. government speaking before the U.N. Working Group on Indigenous Populations urged Working Group members to characterize "the concepts of "self-determination," "peoples," and "land rights," as "desired objectives rather than

rights” in August 1992.[23] Kathryn Skipper, a member of the U.S. delegation, expressed serious questions about the definition of “indigenous peoples” as a term of reference in July of 1993. [24] Discussing provisions of the Draft U.N. Declaration, she said:

[t]he draft declaration does not define ‘indigenous peoples.’ Hence, there are no criteria for determining what groups of persons can assert the proposed new collective rights ... [W]e are concerned that in some circumstances, the articulation of group rights can lead to the submergence of the rights of individuals.[25] The position of the U.S. government set the tone of state delegation interventions with the intent of narrowing and limiting the meaning of terms of reference in the same way as Convention 169.[26]

Dr. Rolf H. Lindholm, on behalf of the Swedish government, amplified the U.S. government’s serious questions by specifically urging the narrow application of the term “peoples.” Stating that the Swedish government “favors a constructive dialogue between governments and indigenous peoples,” Lindholm nevertheless called for “consensus language” that would make the Draft U.N. Declaration acceptable to various bodies within the United Nations system, including the General Assembly. [27] Lindholm called for a consensus understanding regarding the reference term “self-determination.” Lindholm averred:

[i]t is important that we recognize in this context, as we have in others, that the concept, as used in international law, must not be blurred. It is, therefore, necessary to find another term in

the declaration, or to introduce an explanatory definition such as that included in ILO Convention No. 169, which provides that “[t]he use of the term ‘peoples’ in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.”[28]

Fourth World nations’ representatives participating in the proceedings argued that it was necessary to maintain the term “peoples” to remain consistent with existing international laws. In particular, the language originally proposed in 1987 representatives stressed: “[i]ndigenous nations and peoples have, in common with all humanity, the right to life, and to freedom from oppression, discrimination, and aggression.”[29]

As to the efforts of state governments aimed at narrowing the meaning of the word “peoples,” the Chairman of the U.N. Working Group on Indigenous Populations, Erica-Irene Daes, responded:

[i]ndigenous groups are unquestionably “peoples” in every political, social, cultural, and ethnological meaning of this term. It is neither logical nor scientific to treat them as the same “peoples” as their neighbours, who obviously have different languages, histories, and cultures. The United Nations should not pretend, for the sake of a convenient legal fiction, that those differences do not exist. [30]

She offered moreover, “[t]he right of indigenous peoples to self-determination should comprise a new contemporary category of the right to self-determination.”[31] Fourth World

nation delegates moreover argued the need to introduce their paragraph on the subject of self-determination that stated:

[a]ll indigenous nations and peoples have the right to self-determination, by virtue of which they have the right to whatever degree of autonomy or self-government they choose. This includes the right to freely determine their political status, freely pursue their own economic, social, religious, and cultural development, and determine their own membership and/or citizenship, without external interference.[32]

The Canadian, Japanese, Brazilian, and U.S. objections to the use of “self-determination” as a term of reference in the Draft U.N. Declaration flew in the face of eighty years of expanding usage of the term in the international arena. In the case of the United States, objections to the term contradicted the long-standing Indian affairs policy that affirmed the sovereignty of Indian nations as well as their right to self-determination. As a response to general state objections to the use of this term in association with Fourth World nations, delegates of indigenous nations at the 12th Session of the U.N. Working Group on Indigenous Populations authorized the preparation and distribution of the International Covenant on the Rights of Indigenous Nations[33] for direct ratification by nations all over the world. Fourth World nations shared the paragraph on self-determination in this Covenant:

Indigenous Nations have the right of self-determination, in accordance with international law, and by virtue of that right they freely

determine their political status and freely pursue their economic, social and cultural development without external interference.”[34]

The United States and other states have had to contend with the consequences of their obstruction to the application of international principles to Fourth World nations. Numbers of nations proceeded to implement their plans of action to change their political status from “incorporated peoples” to self-governing nations. Of perhaps greater importance is the growing movement by Fourth World nations to take international law into their own hands by actively formulating new laws such as the International Covenant on the Rights of Indigenous Nations.

The International Mechanism we worked very hard to formally establish in 1992 with Fourth World nations, states, and non-governmental organizations may now find much more acceptability in the international arena. The real experience all parties have now had working for constructive policy and legal changes. The United States, Canada, Australia, Russia, and other states sought and achieved a measure of success obstructing the incorporation of language opening Fourth World nations to exercise the free right of self-determination in new international laws. Language (specifically the uses of “peoples,” territory, and “collective”) in the International Labor Organization Convention 169 and the UN Declaration on the Rights of Indigenous Peoples sought by Fourth World nations would not have explicit meaning for nations’ claims to self-determination in state-based international law. Extensive diplomatic interactions between nations and states over the past 28 years have

begun to weaken state obstruction. Still, the states of Spain, Iraq, Syria, Turkey, Pakistan, India, the United States of America, Australia, and Canada persist in their obstruction by blocking self-determination initiatives.

First Congress of Nations and States 1992

Fundamental political changes in states' political conduct over the previous decade revealed a shift in the world community from bi-polar (Cold War Structure) to a multi-polar power structure following the collapse of the Soviet Union. The diffusion of power into many power centers destabilized many states and opened new international conflicts; at the same time, it created new conditions for forming new and more constructive international political relations. New approaches in their dealings with indigenous peoples (nations) challenged states as well as emerging political powers such as China, the European Union, and Middle Eastern states. This climate of instability took its toll on states and nations: There were 77 interstate and intra-state wars taking place around the world in 1992 due to either conflicts between nations or between nations and states. The former Soviet Union was fertile ground for such conflicts as Fourth World nations engaged in political maneuvers to step away from the Kremlin.

The Russian Federation recognized 78 nations within the territory of the former Soviet Union whose political, economic, cultural, and social rights were considered an important priority for the future of the reformed state led by the Yeltsin



Heiltsuk chiefs ceremoniously in an international gathering of maritime indigenous nations of the Pacific Rim. Photo: UN /John Isaac.

government. The problems seen in Russia were not unique. Nations and States experienced these concerns in almost every part of the world.

In January 1992, the Russian government recognized the need to address these issues and proposed an international conference[35] on the legal aspects of the free development of nations, and specifically on the economic, social, cultural, political, strategic and geographic relations between nations and between nations and states. The Congress of Nations and States

(CNS) initiative intended to create a confluence of nations' and states' representatives to jointly formulate and agree to new methods to resolve disputes and identify constructive pathways for future relations.

In July of 1992, the Russian government designated a spokesman to present the Congress of Nations and States initiative to the United Nations Working Group on Indigenous Populations, where it was enthusiastically supported. Simultaneously, the Supreme Soviet of the Russian Federation issued invitations to the states' governments of Japan, Germany and the United States, and the nations' governments of Saami, Maasai, Lummi, San Blas Kuna, Yakut-Sakah and Tibet, to serve on the Preparatory Committee. The Preparatory Committee would plan and convene the Congress of Nations and States. Because the goal of this Congress was to discuss means of resolving disputes and not to solve specific conflicts, the member nations, and states of the Preparatory Committee were chosen to avoid the discussion of individual disputes. This approach, planners thought, would for broad representation of the issues, which are of most significant concern to nations and states.

In early October 1992, a delegation from the Russian Parliament, headed by Mr. Yuri Yarov, the Vice Premier of the Russian Federation, met with the United States Department of State, the U.S. Congress, and the U.S. Bureau of Indian Affairs and with the Senate Select Committee on Indian Affairs. The government of the United States had officially confirmed its participation. All invited nations agreed to participate, and confirmation was pending from the governments

of Japan and Germany. In short order, both Japan and Germany agreed to participate.

In addition to these nation and state representatives, the United Nations' Office on Human Rights (HRO) and the International Labour Office (ILO), along with other multi-lateral non-governmental organizations agreed to participate as official observers of the Preparatory Committee. The Center for World Indigenous Studies (CWIS), the Foundation for International Cooperation and Development (FJCD), and the International Non-governmental Association "Union of Lawyers" (Union of Lawyers) were to serve as administrative bodies for the Congress.

Russia's Endorsement: Trebkov Presentation before the UN Working Group

The Russian government directed Mr. Serge Kossenko, Counsellor of the Permanent Mission of the Russian Federation at the United Nations to introduce Mr. A. Trebkov to present the plans for the Congress before the Tenth Session of the Working Group on Indigenous Populations (20-31, July 1992). Mr. Trebkov was a representative of the International non-governmental association, the Union of Lawyers in Moscow, Russia. In his statement, he said, "The process of democratic reforms in Russia has led to a radical change in the approach to the needs of indigenous peoples. One of the results of these changes is the law "Fundamentals of the legal status of national minorities, elaborated and approved in the first reading by the Supreme Soviet of the Russian Federation."



Nenets women at dancing ceremony, Pechora Delta, Nenets Autonomous Region, Russia. Photo: GRID-Arendal

Mr. Trebkov continued,

“We see the significance of the proposed Congress being that the representatives of central governments and the representative of indigenous populations will be equal participants. * * * The Congress will hopefully develop new approaches to the discussion of the problems of national minorities, have a long-term favorable impact on the development of events in many countries and contribute to the progressive codification of international law and national legislation, and provide a stimulus for constructive collaboration of national minorities and state governments. * *

* It is planned that within the framework of the

Congress a number of protocols on the relations between indigenous populations and states in economic, political, social and strategic spheres should be discussed and hopefully agreed upon.”

The United Nations Assembly room, where the Working Group met with as many as 600 indigenous delegates roundly applauded Trebkov’s presentation.

Endorsement by the United States: Secretary of State

The United States government gave its blessing to the Congress of Nations and States in a letter from US Department of State Assistant Secretary of State for European and Canadian Affairs Thomas M.T. Niles to Deputy Chairman of the Supreme Soviet of Russia, Yuriy Voronin declaring,

“As you know, United States policy regarding the resolution of such conflicts [referring to Russian conflicts with Georgia, Tajikistan, Nagorno-Karabakh, and Yugoslavia] is founded upon peaceful negotiation rather than military confrontation. * * * I therefore strongly endorse your objective of exploring a new international framework for relations between nations and states, based upon the Helsinki Final Act [1975]. * * * I have requested our Embassy in Moscow to represent the Government of the United States when your conference convenes in early 1993.”

Senator Daniel K. Inouye’s endorsement of the Congress

Acting in his capacity as Chairman of the Senate Select Committee on Indian Affairs Senator Daniel K Inouye sent a letter on October

7, 1992, to Secretary of State Lawrence S. Eagleburger where he wrote,

I enthusiastically endorse the Russian government's initiative to convene a Congress of Nations and States. It seems to me that the United States government should welcome this opportunity to demonstrate its commitment to new international efforts to directly address innovative approaches to conflict resolution between Nations and States. The Congress of Nations and States is, I believe, just such an approach. I have received a personal invitation from the Chairman of the Russian Supreme Soviet, Ruslan Khasbulotov, to attend a session of the Congress, and I hope to be able to participate."

Senator Inouye's letter continued,

"My colleagues on the Select Committee on Indian Affairs join me in urging an affirmative response to the Russian invitation, and a commitment of \$250,000 as our contribution in support of planning and convening the Congress."

National Congress of American Indians Endorsement of the Congress

Under the leadership of National Congress of American Indians President Gaiashkibos, the NCAI Executive Committee adopted its resolution DC-92-77 declaring,

... throughout the world, there are numerous conflicts between nations and nations and states, which causes [sic] instability in the social, legal political, and economical climates of the global * * * a call to convene a First Congress of Nations and States to directly address the need of

governments of both nations and states to meet to deliberate, and to act on new international conventions concerning resolution of disputes between nations and nations and nations and states is absolutely essential in light of the current inability of the United Nations forum to officiate such peaceful resolutions under its current institutional format * * * ... the NCAI supports the First Congress of Nations and States and endorses the Plan of Action developed to secure the goals and objectives." [Executive Council, 49th Annual Convention 11-16, 1992, Crystal City, Virginia].

With endorsements from Russia, the United States, the US Senate Committee, and the National Congress of American Indians as well as the governments of Germany, Japan, Lummi Nation, Maasai, Saami, San Blas Kuna Yakut-Sakha and Tibet it was possible to declare further plans for the Congress.

The Preparatory Committee will meet early in 1993 to initially select states' and nations' representatives for service on the five working groups and assign to them the development of protocols relating to the following subjects:

1. Economic Relations: the term "economic," in the context of the working group, shall encompass, but not be limited to, distribution of goods and services; use and regulation of natural resources; environmental administration, regulation, and policy; banking and finance; trade and commerce development.

2. Political Relations: the term political, in the context of the working group, shall encompass, but not be limited to a framework for government-to-government relations;

governmental authority; the exercise of jurisdiction; representation in government, civil and political rights; human rights; law and justice; and refugee and settlement populations.

3. Social & Cultural Relations: the terms social and cultural, in the context of the working group, shall encompass, but not be limited to matters of education; health and health services; printed, electronic communications and telecommunications; technology; social systems; articles of patrimony; art and artifacts of historical merit; religious rights; and rights to knowledge.

4. Strategic Relations: the term strategic, in the context of the working group, shall encompass, but not be limited to location of military facilities, maneuvers, and testing; nuclear/environmental restoration and waste management and disposal; energy resource and administration, management, and regulation; shipping routes; and space access and administration.

5. Geographic Relations: the term geographic, in the context of the working group, shall encompass but not be limited to regional and global locations of states and nations.

The universal significance of CNS is that it presents a distinct and unprecedented opportunity to encourage democracy and stability in multi-national states. Many of these states face either the possibility or the reality of fragmentation. States participating in CNS will demonstrate an increasing willingness to address disputes with indigenous peoples in a

constructive and non-violent manner, thereby enhancing governmental legitimacy in the eyes of those peoples and increasing the chances of their continued cooperation and stability. Nations participating in CNS will find universally acknowledged avenues by which they will be able to present their positions, whereas before, there were no such means. Here, the nations will participate in the creation of the CNS protocols, an act, which will enhance nation legitimacy within the eyes of the state governments while simultaneously enabling the nations to trust the protocols as fitting their needs. The successful conduct of the CNS and negotiation of its protocols could promote the likelihood of stability and advancement of representational government in multi-national countries.

The CNS answers the demand to address issues openly, which can no longer be ignored or discussed unilaterally. The failure to consider and acknowledge the loss of life, rights, territories, and livelihood of nations by states and the international community does nothing but exacerbate the situation until it reaches the point of economic and political instability and bloodshed on both sides. It has proven ineffectual for nations to meet with nations to discuss conflicts with states, or for states to unilaterally decide their policies toward the nations within their territories. The international community, which abounds with institutions and agreements tailored to the old bi-polar system, is now reaching for a new understanding of conflicts between nations and states. Together, through the Congress of Nations and States, nations and

states may be able to create means of communing and resolving these issues.

Organizing NGOs planned for the first general session of the Congress of Nations and States to convene in Moscow May 17- 21, 1993. The purpose of this general session was to define and agree upon the terms of reference to be used in discussions at the CNS. And the plan called for drafting new protocols, and to decide on the scope of the five protocols. Additionally, the CNS would define and agree upon the long-term purpose and aims of the Congress of Nations and States. Representatives from all nations and all states were invited to participate in this session and its deliberations In today 's unprecedented climate of volatile nation-nation, and nation to state relationships. The success of this global stabilization initiative would be a profound accomplishment for every nation and state involved.

And then the United States backed out at the last minute.

After months of organizing with the Preparatory Committee, the politics of the American government's Department of State Legal Affairs Department stepped in during meetings in Washington, DC to undermine the very constructive process by injecting its opposition to the Congress. A decision in the US State Department brought the Congress to a halt despite all appropriate agreements between states' parties and Fourth World nations. The US government's action pulled the CNS up short despite endorsements and approvals by

the United States Secretary of State Lawrence S. Eagleburger, the US Senate's Senator Daniel K. Inouye. Also, the leader of the Russian Federation Supreme Soviet Ruslan Khasbulatov, and the Foreign Ministers of Germany and Japan joined six nations and the non-governmental organization. The US State Department Legal Affairs attorney's objected to Indigenous nations working and being recognized on the same plane as states' governments. The United States political representatives withdrew from talks, the Russian Federation was embarrassed, and Germany wondered "what happened!" And Japan breathed a sigh of relief. The Fourth World nations parties simply stepped back accepting that the United States had blocked the most promising new international effort at constructive cooperation between peoples and states since the League of Nations (the United States would not participate in that body either).

Fourth World nations actively engaged the international community ruled under state-based laws to encourage the United Nations Human Rights Commission to authorize a study of the "situation of indigenous populations" in the early 1970s triggering the Cobo Study released in 1981. The Congress of Nations and States process in 1992 was a watershed moment that followed "turning point events" including formation of the World Council of Indigenous Peoples in 1975 in Port Alberni, Canada, the Geneva Conference led by indigenous delegations from the Western Hemisphere in 1977, the establishment of the UN Working Group on Indigenous Populations in 1982 and the issuance of the Draft Declaration

on the Rights of Indigenous Peoples to the UN Human Rights Commission. These landmark events sandwiched hundreds of international meetings of Fourth World nations and sub-regional meetings of the United Nations, considering specific issues affecting the existence and rights of Fourth World nations.

Twenty-eight years after the original Congress of Nations and States Plan of Action was developed and implemented with broad political support in 1992, the prospect exists once again to convene the Congress under a somewhat different political environment. Since the early 1970s, Fourth World peoples' organizations

have been formed as international bodies, regional organizations, and country-specific organizations. These organizations have developed and issued a significant collection of policy recommendations, declarations of action, and reports refining Fourth World nations' political, economic, social, cultural, and security terms of reference. The experience and influence of Fourth World nations and their diplomatic representatives in the international theatre reflect their proactive intentions to engage states and their institutions on the same political plain. A second Congress of Nations and States initiative began in 2019.

REFERENCES

[1] You can begin reading the book from the first sections on <https://www.cwis.org/books/biodiversity-wars/> But for now, you can get a preview here.]

[2] See Andrew Gray, Report on International Labor Organization Revision of Convention 107, 1989 INT'L WORKGROUP FOR INDIGENOUS AFF. [hereinafter Report on Revision of Convention 107].

[3] See id

[4] See id

[5] See id

[6] This argument is significant since it is the basis for using the word "indigenous" as a term demonstrating the domestic identity of peoples under the control of a state. The term had the effect of indirectly classifying Fourth World nations as sub-populations or minorities within a state.

[7] Aureliu Cristescu, Special Rapporteur to the U.N. Commission on Human Rights, gives a clear and incisive history of the term's usage in the UN system. See Historical and Event Development, *supra* note 1.

[8] ILO Convention 169, *supra* note 53, at 1385.

[9] See Report on Revision of Convention 107, *supra* note 54.

[10] They noted that the strongest part of the 1957 Convention was Article 11: "[t]he right of ownership, collective or individual, of the members of the population concerned over the lands which these populations traditionally occupy shall be recognized." ILO Convention 107, *supra* note 52, at 256.

[11] See Report on Revision of Convention 107, *supra* note 54

[12] ILO Convention 169, *supra* note 53, at 1387.

[13] *Id.*

[14] See *id.*

[15] The United Nations Working Group on Indigenous Populations was established in 1982 after NGOs and representatives of indigenous peoples urged the establishment of a United Nations mechanism to examine the situation of indigenous peoples. The Sub-Commission on Prevention of Discrimination and Protection of Minorities proposed in its resolution 2 (XXXIV) of Sept. 8, 1981, the establishment of the working group. The Commission on Human Rights endorsed the Sub-Commission's proposal in its resolution 1982/19 of Mar. 10, 1982. The United Nations Economic and Social Council formally authorized in its resolution 1982/34 of May 7, 1982, the Sub-Commission to establish annually a working group to meet for the purposes of reviewing developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous peoples, and examining the evolution of standards concerning the rights of indigenous peoples.

[16] Lee Swepston, Paper Presented to the Working Group on Indigenous Peoples (July 31, 1989) (International Labour Organization, on file with author).

[17] See generally Study of the Problem of Discrimination Against Indigenous Populations, *supra* note 51.

[18] The World Council of Indigenous Peoples (WCIP) was formed in 1975 under the Presidential leadership of Grand Chief George Manuel at Port Alberni, Canada, at a conference hosted by the Sheshaht Band of the Nuuchah-nulth. Representatives at the founding sessions included 260 delegates from Fourth World nations in Argentina, Australia, Bolivia, Canada, Colombia, Ecuador, Finland, Greenland, Guatemala, Mexico, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Sweden, and the United States. They produced some of the most detailed policy initiatives the international community had experienced. The WCIP was dissolved in 1996 after having produced numerous policy resolutions on self-determination, genocide, trans-national corporations, mineral extraction, economics, social policy, political development, and security.

[19] See World Council of Indigenous Peoples, Resolution of 1975; see also World Council of Indigenous Peoples, Resolution of 1977 (available at the Center for World Indigenous Studies on file).

[20] International NGO Conference on Discrimination Against Indigenous Populations, Geneva, Switzerland (Oct. 1977). The Conference produced policies from an Economic Commission, Social and Cultural Commission, Legal Commission, and issuing a Resolution containing 22 parts to a Program of Action principally focused on political, legal, social, cultural, and economic concerns of western hemisphere Fourth World nations. The Conference also issued the Declaration of Principles for the Defense of the Indigenous Nations and Peoples of the Western Hemisphere.

[21] As of 1 January 2020, a total of 23 states had ratified the ILO Convention 169, not including the United States, Canada, Australia, Russia, China, South Africa, United Kingdom, France, and Germany.

[22] The Organization of American States cited the ILO Convention 169 as the rationale for its narrow application of the terms peoples and territory in the American Declaration on the Rights of Indigenous Populations (June 15, 2016).

[23] Discrimination against Indigenous Peoples, *supra* note 51, at 14.

[24] Kathryn Skipper, Statement Before the United Nations Working Group on Indigenous Populations, 11th Sess. (July 12, 1993) (on file on file with the Center for World Indigenous Peoples).

[25] *Id.*

[26] Ryser, R. Indian Nations & United States Debate Self-Determination and Self Governance at the United Nations (July 18-31, 1993) (unpublished paper, on file with the Center for World Indigenous Peoples).

[27] Rolf H. Lindholm, Statement Before the United Nations Working Group on Indigenous Populations, 11th Sess. (July 12, 1993).

[28] *Id.*

[29] Declaration of Principles on Indigenous Peoples, (as amended). Adopted by a Consensus of Indigenous Peoples' Organizations Meeting at Geneva, 27-31 July 1987. U.N. Doc. E/CN.4/Sub.2/1987/22/Annex V.

[30] Erica-Irene A. Daes, Discrimination Against Indigenous Peoples, Explanatory Notes Concerning the Draft Declaration on the Rights of Indigenous Peoples, U.N. ESCOR, 45th Sess., Agenda Item 14, at 2, U.N. Doc. F/CN.4/Sub.2/1993/26/Add.1 (1993).

[31] *Id.* at 3.

[32] Declaration of Principles on Indigenous Peoples, *supra* note 77.

[33] International Covenant on the Rights of Indigenous Nations. Initialed on 28 July 1994 (Crimean Tartars, Numba People of Sudan, Treaty Six First Nations, Opethesah First Nation, West Papua Peoples Front/OPM) this new international instrument as the culmination of nearly twenty years of meetings between indigenous delegations striving to formulate new language to instruct international law concerning the conduct of relations between indigenous nations and between indigenous nations and states. The Covenant draws on evolving language offered in meetings concerned with social, economic and political relations as well as strategic and cultural issues. Materials generated by meetings organized by the World Council of Indigenous Peoples, International Indian Treaty Council, South American Indigenous Regional Council, Central American Indigenous People's Organization, North American Indigenous Peoples' Regional Council (comprised of representatives from the National Indian Brotherhood, the First Nations Assembly and the National Congress of American Indians) formed the terms of reference framing the Covenant.

[34] *Id.*

[35] The Center for World Indigenous Studies developed the plan and its non-governmental organization partners carried it forward to the Russian Supreme Soviet.

Originally published in:

Ryser, R. (2020). To Establish a Congress of Nations and States (CNS). *Fourth World Journal*, 19(2), 77-94