

36th session of the Human Rights Council

Annual half-day discussion on the rights of indigenous peoples

Theme: Tenth anniversary of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples

September 20, 2017 [9am-12p]

*Statement of Karla E. Kawenniostha General**

Mr. Chair, Excellencies, Delegates, Representatives:

She:kon sewakwekon. Kawenniostha ionkiats. My name is Karla General and my Mohawk name is Kawenniostha, which means “she brings good words.” I want to start this morning by asking a question: “Do you *really* believe that all peoples are entitled to equal protection of international law? Do you *really* believe that treaty pledges should be kept?” My great-grandfather asked the same question of nation-states in 1923. Indigenous peoples around the world deserve an answer, an affirmative answer, and one that is met with action.

It is such an honor to have the opportunity to address you today. It is actually quite remarkable. My great-grandfather was here in Geneva almost 100 years ago and attempted to do the same, but he was not allowed to address the League of Nations directly. My great-grandfather’s name was Levi General, Chief Deskaheh, he represented one of the oldest peoples and governments in the world – the Cayuga Nation of the Six Nations or Haudenosaunee – and his objective was to win support from the international community to stop the human rights violations his people were suffering.

We have come a long way since those dark times. In 2007, after 30 years of debate, the United Nations adopted its Declaration on the Rights of Indigenous Peoples. Adoption of the Declaration was a historic achievement and the most significant development in international human rights law in decades. And yet, we have many challenges ahead. Because it is also remarkable that, in 2017, almost a century after Deskaheh first attempted to address the world community, that authentic and representative indigenous voices are still denied access to the UN.

The Council and other UN bodies recognize that their existing rules do not generally permit the participation of indigenous peoples' governments at the UN as such, unless they are able to acquire consultative status as non-governmental organizations. But, indigenous governments are not NGOs.

To address this implementation gap, in 2014, member states committed at the World Conference on Indigenous Peoples to consider ways to enable the participation of indigenous peoples' representative institutions at the UN. After almost two years of consultations among indigenous peoples, member states, and UN bodies, and months of intergovernmental negotiations this summer, member states failed to reach consensus on a substantive resolution. On September 8, the General Assembly adopted a compromise resolution that simply encourages other UN bodies to enhance participation, delays a potential substantive decision in the General Assembly until its 75th session, and once again, deliberately denies the opportunity for indigenous governments to participate in matters affecting their interests at the international level.

This is the most pressing issue of our time. Without authentic indigenous voices, decisions made in international forums will not be responsive to the lived realities of indigenous peoples at home. If indigenous voices continue to be left out of decision-making, the most horrific rights violations of our times will continue – the killings of land defenders and human rights activists, the land grabs and rush for natural resources, the epidemic levels of violence against and trafficking of women and children, the movement of extractive industry to indigenous lands, and continued destruction of our cultural ways of living. And even when a domestic legal victory is achieved, its impact can be limited, because our rights are not always guaranteed when the rule of law does not exist for indigenous peoples. It is morally reprehensible that killings of indigenous peoples like those in the Amazon recently, continue to occur and continue to go on unprosecuted. Last year, as reported by the Special Rapporteur on the rights of indigenous peoples, 281 human rights defenders were murdered in 25 countries – more than double the number who died in 2014. Half of them were working to defend their land rights, indigenous and environmental rights. If indigenous peoples had a voice at the UN, they could tell you themselves that their situation

has improved very little in the ten years since adoption of the Declaration, because decisions continue to be made without the benefit of their views and experience. This has to change, and we, collectively, are in a position to help make that change. When indigenous voices are heard, debate and dialogue are strengthened, and proposed solutions are more responsive and effective.

Our indigenous youth have a significant role to play in this work. They are citizens of the world and citizens of our tribal nations, and they have much to contribute to the international dialogue on human rights. In the United States, youth under the age of 24 represent 40 percent of self-identified American Indians and Alaska Natives today, numbers that continue to grow as tribal communities become stronger, more self-determined, and provide more opportunities for their youth to contribute to the development of their nations. Yet, historical trauma, chronically underfunded programs, ineffective policies, and failure to meet trust responsibilities to tribes have all contributed to negative health, education, and economic disparities for American Indians and Alaska Natives. The Declaration provides the tools to change this narrative. Tribal nations have been working to incorporate the Declaration into their own tribal constitutions, statutes, and legal systems to better protect the human rights of their own citizens. And we see more and more indigenous youth stepping forward to better understand the international frameworks to strengthen their advocacy efforts and fight for the survival of their tribal nations, like efforts to oppose construction of the Dakota Access Pipeline at Standing Rock. We should be supporting and respecting these young leaders, including by providing the necessary seat at the table for their tribal governments at the UN.

The 2014 World Conference on Indigenous Peoples presented a rare opportunity to implement the Declaration; to make decisions that would effect positive change in the lives of indigenous peoples and curtail rights violations. Together with over 150 tribal nations and indigenous organizations, the Indian Law Resource Center advocated for concrete steps the UN could take to achieve the objectives of the Declaration. The Outcome Document reflected these proposals and achieved two important things: it *recommitted* member states to

the rights of indigenous peoples and it resulted in *new* commitments to establish international mechanisms to further implement the Declaration.

One such mechanism is the Expert Mechanism on the Rights of Indigenous Peoples, which the Council decided to strengthen last year, providing it with new authority to address human rights violations. A Declaration will not go very far unless it has a serious implementing and monitoring body. The Mechanism can become the credible independent body that can monitor and report on states' compliance with the Declaration and that can engage with local actors to ensure recommendations by international bodies and mechanisms are respected and fulfilled. The Mechanism can issue status reports and studies on indigenous peoples' rights globally and on good practices regarding efforts to achieve the goals identified in the Declaration based on information and recommendations received from member states, indigenous peoples, and others. The body can report to the Council the necessary facts and information to respond seriously and effectively to rights violations and implementation failures. Beyond reporting, the body can seek, gather, and disseminate information about implementation and violations of indigenous rights by participating in regional or national gatherings of indigenous leaders and by actively seeking information from indigenous communities. The Mechanism can provide advice to member states and indigenous peoples about technical matters, like how states can develop new laws to protect indigenous rights or to eliminate harmful elements already in domestic law – elements like those that leave indigenous land and resources without protection or indigenous women and girls without justice when they are targeted for sexual assault, violence, or trafficking.

The Mechanism is also able to assist states with implementation of existing recommendations of treaty bodies and the Universal Periodic Review, and to coordinate its work with other UN bodies and special procedures. Such collaboration is critical. The Special Rapporteur on the rights of indigenous peoples is just one person. The Mechanism is now seven and can provide the necessary support to work across UN agencies and bodies to bring indigenous rights to full fruition, and to translate its mandate into institutional practices and procedures that will improve the lives of indigenous peoples and advance the

objectives of the Declaration at the international level. To be successful, the Mechanism will need adequate technical and financial capacity, and it will need the support of member states, the Human Rights Council, and of indigenous peoples, nations, and communities. The grave and urgent situation indigenous peoples are facing demand UN attention to redouble efforts to increase awareness of the Declaration and to encourage the Mechanism to utilize its new mandate to respond aggressively to rights violations.

Implementation of the Declaration and the Outcome Document are an ongoing challenge that will take time. It is the work of generations, and it is essential the information and tools to continue the work are passed on to our youth. Indigenous youth, along with their leaders, must be aware of their rights, educated about the international human rights system, and trained to utilize opportunities like those provided by the World Conference to implement their rights. Indigenous youth must be ready to stand alongside their elders and continue the work of their ancestors who worked tirelessly to exercise their rights and to win recognition of those rights by the international community. The best path forward in the implementation work is to open the door of the UN to responsible genuine indigenous leaders accountable to their people and communities. Behind credible indigenous leaders, there are more indigenous youth, more advocates, more indigenous voices, ready and eager to participate and contribute to the work of the United Nations.

The Declaration has empowered indigenous peoples to speak out and to stand up, and it has provided a platform for indigenous peoples to come together to call for much-needed changes in the laws and policies, and institutional practices and behaviors, that have hindered and discriminated against indigenous peoples for far too long. Now, we have the tools to determine when our rights are violated and to pursue remedies and reparations – we have a measuring stick and a guiding compass. Yet, for the Declaration to become more than a set of guiding principles and aspiration, it will need mechanisms for implementation at the local, regional, and international levels; most importantly, it will need the respect and recognition of your governments. Let us work together to ensure the principles

and purposes of the Declaration and the UN Charter are met and that all peoples are entitled to the equal protection of international law. Niawenkowa.

*Karla E. General (Mohawk) is a Staff Attorney at the Indian Law Resource Center (Center) in Washington, D.C. Founded in 1978, the Center is a nonprofit law and advocacy organization established and directed by American Indians. The Center provides legal assistance to indigenous peoples in the Americas who are working to protect their lands, resources, human rights, environment, and cultural heritage. Karla serves as the project director for the Center's *World Conference on Indigenous Peoples* and the *American Declaration on the Rights of Indigenous Peoples* projects, which work to assist indigenous peoples to realize their human rights and to implement international law and human rights instruments such as the United Nations Declaration on the Rights of Indigenous Peoples and the American Declaration on the Rights of Indigenous Peoples. Karla also contributes to the Center's domestic litigation and law reform projects, including the *Safe Women, Strong Nations* project which works to end violence against American Indian and Alaska Native women and its devastating impacts on Native communities. Mrs. General is Deer Clan and was raised on the Akwesasne Mohawk Territory. She earned her Juris Doctor with a Certificate in Global Law and Practice from Syracuse University College of Law and Master's degree in Sociology from the Maxwell School in 2010. She received her Bachelor of Arts in Government and Sociology *cum laude* from Saint Lawrence University in Canton, New York, in 2007. Karla is licensed to practice law in New York, is a member of the Native American Bar Association of DC, and serves as an Associate Justice on the St. Regis Mohawk Tribal Appellate Court.