



How Best to Support the Rights of Indigenous People

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Introduction

There are approximately 400 million indigenous people around the world. Most are the native people of an area of land that has been colonized and settled by others. Indigenous people follow traditional customs and traditions that differ from the dominant culture in their country, with their own claims to sovereign or autonomous rule. Often living in relative isolation, at significant disadvantage, they struggle to have a voice in their society. Many see their way of life jeopardized by the law, economics and trends of the societies that dominate their affairs.¹

The rights of indigenous peoples is a fundamental issue for the 193 Member States of the UN. They are in the UN because they are *Sovereign*, they recognize no higher authority. Acknowledging the rights of their indigenous people—often including their Sovereignty—means chipping away their own strength. This does not happen easily.

In 2007, the *Declaration on the Rights of Indigenous Peoples* was adopted by the United Nations (UN), establishing basic principles of defining indigenous groups, justifying their recognition and rights under international law.² But translating these principles into domestic law has been more difficult. And turning principles into actual policy often has proven highly controversial. There are multiple issues

involved in trying to determine how to best serve Indigenous people. How to help indigenous people without jeopardizing country sovereignty? When should the UN step in? Whose responsibility is it to make sure indigenous people rights are respected?

Covid-19 has made it even more apparent the disadvantages that indigenous people face. Virtually everywhere, indigenous people already were struggling with higher rates of illness, discrimination, and poverty. The Pandemic has made these situations worse and raised pressure for global action.

A sign of this new urgency came on 9 August 2021, when a virtual event was held to commemorate *The International Day of the World's Indigenous Peoples*. The event addressed issues related to indigenous people and Covid-19, and saw repeated demands for a new *social contract*, a new agreement between rulers and ruled. This would completely re-write the relationship between indigenous people and the states, making them former truly equal for the first time since outsiders conquered their lands, for many of them in the Fifteenth and Sixteenth Centuries.³

Background

Indigenous rights were traditionally overlooked by the international community, which focused

¹ United Nations. 'Indigenous People at the United Nations', United Nations, n.d., <https://www.un.org/development/desa/indigenouspeoples/about-us.html>

² *ibid.*

³ 'Leaving No One Behind: Indigenous peoples and the call for a new social contract', *United Nations Permanent Forum on Indigenous Issues*, 2021, https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2021/08/Concept-Note_Int_Day_2021.pdf

more on the rights of states to do as they pleased within their own sovereign territory. Instead, settler groups developed legal doctrines that justified suppression of the rights of indigenous people.

Denying sovereignty and sometimes even legal recognition to indigenous communities was especially important in settler countries like Australia, the countries of Latin America, New Zealand, South Africa, the United States, as well as Israel and to some extent Russia. Recognizing indigenous rights would weaken or undermine the legitimacy and authority of dominant settler communities.

President Woodrow Wilson's *14 Points* of 1918 justified American intervention in World War One on the basis of establishing *the right of national self-determination* for all peoples.⁴ While Wilson mostly meant the rights of Eastern Europe (then controlled by the Austria and German Empires), his idea won immediate support everywhere among peoples ruled by others.

In the United States, Wilson was heard by Haudenosaunee Chief Deskaheh (of the Tuscarora Reservation, New York), who travelled in 1923 from the United States to the League of Nations in Geneva (predecessor of the UN) to 'defend the right of his people to live under their own laws, on their own land, and under their own faith.'⁵ He was turned away by the League—where the US refused to allow him to speak—but began a struggle for indigenous recognition and self-rule that continues to this day.⁶



Newspaper photograph of Deskaheh, 1 January 1922. Wikipedia.

Current efforts to promote indigenous rights stem largely from 1981, when Jose R. Martinez Cobo (of Ecuador), the UN's Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, produced his *Study on the Problem of Discrimination against Indigenous Populations*. This offered a working definition of indigenous communities, peoples and nations:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the

⁴ 'Fourteen Points', *Wikipedia*, https://en.wikipedia.org/wiki/Fourteen_Points

⁵ *ibid*

⁶ *ibid*

basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions, and legal system.



Jose R. Martinez Cobo

The report notes that historical continuity may consist of the continuation, for an extended period reaching into the present of one or more of the following factors:

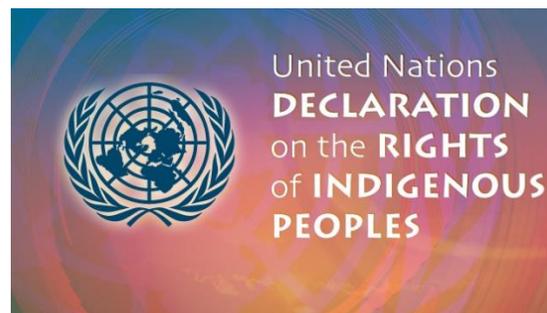
- Occupation of ancestral lands, or at least of part of them;
- Common ancestry with the original occupants of these lands;
- Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, lifestyle, etc.);
- Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main,

preferred, habitual, general or normal language);

- Residence on certain parts of the country, or in certain regions of the world;

Defining indigenous was an essential legal step to granting rights. Responding to this study, in 1982 the *UN Working Group on Indigenous Populations* was created by the Economic and Social Council (ECOSOC). This working group helped to draft the *United Nation Declaration of the Rights of Indigenous People* (UNDRIP). This was passed by the General Assembly as resolution 61/295 in 2007. It passed with 143 Member States in favor, 4 against (Australia, Canada, New Zealand and the United States), 11 abstentions and 34 Member States absent.⁷

Opposition, abstention and absence indicated substantial misgivings, especially from countries with large indigenous populations who thought the Declaration went too far, and from others who thought it did not go far enough.



In the General Assembly, it often seems like everything is about the Middle East. Among the

⁷ 'General Assembly Adopts Declaration on Rights of Indigenous Peoples', *United Nations*, 13 September 2007,

<https://www.un.org/press/en/2007/ga10612.doc.htm> .

Member States *abstaining*: Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa, Ukraine.

Member States *absent*: Chad, Côte d'Ivoire,

Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gambia, Grenada, Guinea-Bissau, Israel, Kiribati, Kyrgyzstan, Marshall Islands, Mauritania, Montenegro, Morocco, Nauru, Palau, Papua New Guinea, Romania, Rwanda, Saint Kitts and Nevis, Sao Tome and Principe, Seychelles, Solomon Islands, Somalia, Tajikistan, Togo, Tonga, Turkmenistan, Tuvalu, Uganda, Uzbekistan, Vanuatu



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most outspoken supporters of the declaration was the Observer Delegation of Palestine. For many UN Member States, the essential indigenous issues are the rights of Palestinian people of the Occupied Palestinian Territories (as they are officially known in the UN) and Arab Residents of Israel, seen as an oppressed indigenous people. They include 1.9 million Palestinians living in Israel, 5.6 million official refugees, most in Arab countries, and 4.7 million living under some degree of Israeli authority in the West Bank and Gaza.

Palestinian leaders and their supporters in the Arab Bloc and Non-Aligned Movement (NAM) insist the Declaration justifies full legal recognition of Palestinian sovereignty under the Two State Solution. Israel was not present to vote on the Declaration, and questions its validity.⁸

Current Issues

‘Despite all the positive developments in international human rights standard-setting, indigenous peoples continue to face serious human rights abuses on a day-to-day basis.’⁹ Some common issues include violence, loss of land, and resources, forced assimilation, racism, criminalization of protestors, and accusations of terrorism.¹⁰

Around the world, Indigenous people are continuously forced to leave the land they live on. Governments and organizations come into their land to mine it for natural resources, to create human free zones for conservation

purposes, and to expand urbanization for dominant cultures. The artwork and other creative resources are also stolen from indigenous people without compensation. Also, indigenous people are often not afforded the same rights as the dominant culture, and are often treated unequally in disputes.¹¹

When a dominant culture takes over the lands of an indigenous group it is at a great cost. Oftentimes people are killed and for those who survive this can disassemble their whole society as they are forced to move on or integrate. Languages, cultures, a sense of belonging, and traditions are lost in the process. Also, with the loss of resources indigenous people become impoverished and more health concerns arise.¹² Governments need to take positive action to build a line of communication with indigenous groups to cohabitate peacefully. However, this often is not the case. In some countries, governments are treating those who speak out as criminals, and little if any changes are being made.¹³

Covid-19 has made life even more difficult for indigenous people. Not only are people for indigenous communities being affected by the virus at alarming rates they are also being forced out of their lands at an increasing rate due to the need to try to rebuild economies.

Role of the United Nations

The General Assembly Fourth Committee (Special Political and Decolonization) and the UN Human Rights Council (HRC) are the

⁸ Havatzelet Yahel, ‘Israel and International Law: The Indigenous Concept in Supreme Court Rulings’, *Israel Studies*, Vol. 26, No. 1 (Spring 2021), <https://www.jstor.org/stable/10.2979/israelstudies.26.1.09>

⁹ United Nations. “Mandated Areas-Human Rights.” <https://www.un.org/development/desa/indigenoupeoples/mandated-areas1/human-rights.html>

¹⁰ *ibid*

¹¹ First People’s WorldWide. “The Challenges We Face.” <http://www.firstpeoples.org/the-challenges-we-face.htm>

¹² *ibid*

¹³ United Nations. “Mandated Areas-Human Rights.” <https://www.un.org/development/desa/indigenoupeoples/mandated-areas1/human-rights.html>



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principal actors when it comes to the rights of Indigenous Peoples. The Fourth Committee normally passes resolutions mandating the HRC to investigate or examine specific issues, or consider specific recommendations. Fourth Committee also can appeal directly to the UN Member States.¹⁴ The HRC works to try and facilitate communication between indigenous groups and their countries' governments, and offers guidance on how to assist indigenous people.¹⁵

Another part of the United Nations that plays an important role in Indigenous Rights is the United Nations Environment Program. This organization recognizes the importance of including Indigenous peoples in conservation efforts. Indigenous people live in balance with the nature around them and oftentimes when changes are made to the land they occupy this hurts both them and the environment for everyone as a whole. By working with indigenous people who can learn tools to better conserve the natural resources we have left.¹⁶

UNDRIP is a framework followed by the UN since 2007 that tries to outline the best policies to ensure equal rights for indigenous people. However, despite the UN's best efforts, there are limitations to what they can do. UNDRIP is more of a suggestion for the government to follow. The UN does not have the authority to

hold countries accountable for not following the guidelines expressed within the framework.¹⁷

United Nations Actions and Resolutions

One of the first noticeable actions taken by the United Nations in regard to indigenous peoples was the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007. In 2018, the United Nations met to reaffirm UNDRIP.¹⁸ Since then other policies have come into place to try and help protect the rights of indigenous groups.

Since 2014, the *World Conference on Indigenous People* meets to discuss ways to improve policies and highlight areas of concern. In 2021 they met virtually and discussed the effects of COVID-19 and the importance of Indigenous people having a voice in decision making processes. In recent years many governments have tried to make efforts to include indigenous peoples and make up for actions committed in the past, but other countries are still have not acknowledged individuals outside the dominant culture.¹⁹

In 2019, the General Assembly announced 2022-2032 as the *Third International Decade of Languages*, an effort to try and promote the

¹⁴ "Indigenous Peoples and the United Nations Human Rights System" PDF File. United Nations Human Rights.

<https://www.ohchr.org/documents/publications/fs9rev.2.pdf>

¹⁵ United Nations. "Your Human Rights-IPeoples." <https://www.ohchr.org/en/issues/ipeoples/Pages/IndigenousPeoplesIndex.aspx>

¹⁶ "Indigenous peoples and the nature they protect." Nature Action. 8 June 2020. <https://www.unep.org/news-and-stories/story/indigenous-peoples-and-nature-they-protect>

¹⁷ USAID. 'Indigenous Peoples'. <https://www.usaid.gov/environmental-policy-roadmap/indigenous-peoples>

¹⁸ United Nations. "Rights of Indigenous Peoples" Resolution Adopted by the 3rd Committee." 3 December 2018.

<https://www.un.org/development/desa/indigenouspeoples/news/2018/12/rights-of-indigenous-peoples/>

¹⁹ 'Leaving No One Behind: Indigenous peoples and the call for a new social contract.' The United Nations Permanent Forum on Indigenous Issues. https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2021/08/Concept-Note_Int_Day_2021.pdf



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preservation of indigenous language.²⁰ Then in 2020, the General assembly decided they would have an event in 2022 to launch the International Decade of Languages.²¹

Country and bloc positions

African Union: In 2001, the Working Group of Indigenous Peoples (WGIP) was created by the African Commission on Human and Peoples' Rights (ACHPR). The 2007 UNDRIP framework has been adopted by the African Union as a whole, but there are many African Member States that oppose it or are not ready to accept it as written. Their main objection stems from the definition of 'indigenous', which they suspect privileges specific groups in their multi-ethnic societies, and the fear of increased ethnic tensions. Some feel that there should be a unified Africa, and that all Africans are indigenous.²²

Many communities have suffered greatly during the COVID-19 pandemic. Indigenous people have more difficulty getting resources needed to protect themselves from the virus, and closures of local markets have affected their daily lives. The WGIP has reached out to the various member states to try to make suggestions on how to assist indigenous people by asking them to create documents in native languages, and to invite indigenous people to join in on committees.²³

²⁰ United Nations. "General Assembly Adopts 60 Third Committee Resolutions, Proclaims International Decade of Indigenous Languages, Covering Broad Themes of Social Equality." 18 December 2019. <https://www.un.org/press/en/2019/ga12231.doc.htm>

²¹ United Nations. "General Assembly Adopts 48 Third Committee Resolutions, Proclaims International Day for People of African Descent, Covering Broad Themes of Human Rights". 16 December 2020. <https://www.un.org/press/en/2020/ga12304.doc.htm>

In 2020, the chair of the WGIP highlight key areas involving indigenous people within the African continent. Botswana, for example, returned ancestral lands belonging to the Khwe San, and the Congo had put into place 6 out of 11 decrees related to indigenous people that was drafted in 2011. Major disputes over which groups to recognize, and how to recognize them, continue in some of the continent's largest countries, including Democratic Republic of Congo, Ethiopia, Kenya, Nigeria and South Africa.

China: In 2007, China voted for UNDRIP; however, then disavowed obligations under the declaration on the basis that the government recognizes no indigenous peoples in China. Instead, China has 55 officially recognized *ethnic minority groups*.

China adopted the UNDRIP declaration, but allows its own interpretation for implementation. While it supports the principles of the declaration, China maintains all states have sovereign rights to interpret it according to their own national law. The Chinese government in Beijing is generally supportive of indigenous rights, but will insist on exceptions on the grounds of national unity and national security. It expects other UN Member States to do the same.

²² African Commission on Human and Peoples' Rights. 'Working Group on Indigenous Populations/Communities and Minorities in Africa'. <https://www.achpr.org/specialmechanisms/detailmeh?id=10>

²³ IWGIA. 'The Indigenous World 2021: African Commission on Human and Peoples' Rights'. 18 March 2021. <https://www.iwgia.org/en/ip-i-iw/4260-iw-2021-african-commission-on-human-and-peoples-rights.html>



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Indigenous groups that are currently struggling within China are Xinjiang Uighurs, Mongolians, and Tibetans.²⁴ Uighurs by far are a group that is seeing the most attention worldwide. The Chinese government has aggressively acted to control its Uighurs population, on the grounds that they include Muslim separatists and terrorists. Their basic human rights appear to be undermined, with perhaps a million interned in government-run facilities, and many of the rest under police and intelligence agency supervision.²⁵

Another recent issue in China relates to recent policies regarding Hong Kong which is home to at least 4 different indigenous groups: Punti, Hakka, Hoklo and Tanka. On 30 June 2020, China implemented a national security law that would drastically change its previous relationship with Hong Kong. The law was put into place after the political protest of 2019 that called out the Chinese government. After the security law was put into place massive changes occurred in Hong Kong such as school curriculum being forced to change, changes to government, and less rights to freedom of speech that were previously enjoyed.²⁶

European Union: The European Union, committed to the principle of rule of law, is a supporter of UNDRIP and measures to ensure its principles are strengthened in international and domestic law. In 1988, the working document ‘On support for Indigenous Peoples in the

development co-operation of the Community and Member States’ was created. This means including indigenous people in decision-making when development projects affect the land they occupy.

The EU has a long history of supporting indigenous rights and, since 2010, designates specific funds annually to facilitate the participation of indigenous groups in UN meetings. This support has supported over 5000 indigenous leaders and 3000 indigenous organizations to participate in UN proceedings related to indigenous issues.¹⁶ Within the EU itself, there are a number of recognized indigenous groups, most notably in its northernmost states such as the Sami people who inhabit Arctic regions. The EU has worked to accommodate the unique needs of its indigenous groups.

The EU wants the rights of indigenous people included in conversations with neighboring countries in issues concerning politics and human rights. In 2014, A study was conducted related to Indigenous people and human rights within Europe. Finally in 2018, The UN passed a resolution that covered topics such as land grabbing, human rights, and overall protection of indigenous People.²⁷ Through the COVID-19 Pandemic the EU has continued to aid Indigenous Peoples, and upheld their commitment to protecting the environment as well.²⁸

²⁴ Michael Davis, ‘China and the UN Declaration on the Rights of Indigenous Peoples: The Tibetan Case’, 27 May 2014. <https://www.e-ir.info/2014/05/27/china-the-un-declaration-on-the-rights-of-indigenous-peoples-the-tibetan-case/>

²⁵ IWGIA. ‘The Indigenous World 2021: China’. March 18, 2021. https://www.iwgia.org/en/china/4211-iw-2021-china.html#_ftn10

²⁶ Yeung, Jessie. ‘One year after Hong Kong’s national security law, residents feel Beijing’s

tightening grip’. CNN. 29 June 2021.

<https://www.cnn.com/2021/06/29/asia/hong-kong-nsl-one-year-intl-hnk-dst/index.html>

²⁷ Docip. ‘The European Institutional System’, <https://www.docip.org/en/indigenous-peoples-at-the-eu/the-eu-system/>

²⁸ IWGIA. ‘The Indigenous World 2021: European Union engagement with Indigenous Issues’, 18 March 2021. <https://www.iwgia.org/en/ip-i-iw/4266-iw-2021-european-union-engagement-with-indigenous-issues.html>



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Non-Aligned Movement: The Non-Aligned Movement, the UN's largest voting bloc with 120 Member States, is generally in favor of UNDRIP, but also insist on preservation of national sovereignty, and in practice tends to favor the dominant people within their countries. In 2016, the NAM conference covered many topics of concern dealing with Indigenous rights. They made a commitment to work to improve the lives of indigenous people by working to help protect their cultural heritage and ways of life. They also agree to support the outcomes of the 2014 World Conference on Indigenous Peoples.²⁹

The major exception on which Member States of the Non-Aligned Movement agree is the right of Palestine to self-rule and sovereignty. This often is their go-to issue, the one issue on which agreement is easiest. Other specific issues, such as the rights of groups like the Kurds (a minority in Iran, Iraq, Syria and Turkey) or the rights of religious minorities, get less attention

Russia: With its vast territory, much of it conquered in the 18th and 19th Centuries, Russia has large numbers of indigenous groups. Russia has 40 groups officially recognized as indigenous. Although Russia does recognize the basic rights of its indigenous peoples, it does not recognize the principle of Free, Prior and Informed Consent. Russia did abstain from voting on UNDRIP in 2007.

It recognizes the rights of Indigenous Minority People, but this does not cover all Indigenous

Peoples living in the country. Due to farming of resources many Indigenous Peoples lands are affected. Government policies do little to protect their rights in these situations. In addition, most projects are done without getting consent from Indigenous Peoples, and previous laws that would have protected them are now being altered or ignored. On 14 August 2020, the UN Committee on Civil and Political Rights/Human Rights Committee created a list of Issues on the Russian Federation. This list included topics such as asking prior consent when performing activities that involved them, ensuring their rights, and recognizing other groups that are not currently recognized.³⁰

United States: The United States originally refused UNDRIP in 2007, but agreed to accept it conditionally—not legally—in 2010. As of January 2020, 547 tribes were recognized in the US, but many still go unnoticed by the federal government. Indigenous rights can fluctuate drastically depending on who is President. During the Biden administration, there has been mostly positive support. Biden appointed the first indigenous person in charge of the Bureau of Indian Affairs.³¹

COVID-19 had an especially strong impact on some native American tribes. In general, native tribes were affected by the virus more than other Americans. This is mainly due to poor access to health care generally; clinics are few and hospitals distant. The loss of elderly meant potential loss of native language, as the elderly often were the keepers of such knowledge.³²

²⁹Margarita, B.R., '17th Summit of Heads of State and Government of the Non-Aligned Movement'. 17-18 September 2016. 189-191

http://cns.miis.edu/nam/documents/Official_Document/XVII-NAM-Summit-Final-Outcome-Documents-ENG.pdf

³⁰ IWGIA. "The Indigenous World 2021: Russian Federation". 18 March 2021.

<https://www.iwgia.org/en/russia/4246-iw-2021-russian-federation.html>

³¹ IWGIA. "The Indigenous World 2021: The United States of America". 18 March 2021.

<https://www.iwgia.org/en/usa/4253-iw-2021-usa.html>

³² *ibid.*



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Some proposals for action

In 2020, a call to action was endorsed by the UN System Chief Executives Board for Coordination (CEB). “The call to action affirms the Executive Heads’ commitment to supporting Member States in the promotion, protection and realization of the rights of indigenous peoples and redoubling efforts to ensure collaborative and coherent United Nations system action to support the rights and well-being of Indigenous Peoples.”³³

Addressing dispossession of indigenous communities: Ensuring indigenous people do not lose their land, or can get it back, is a major problem area. Land law in most countries means once land is lost, new owners have to agree to sell or be compensated. Change is controversial, divisive and expensive.

But dispossession of ancestral land is major issue to be faced. Although this is covered within UNDRIP, the lack of enforcement mechanisms and incomplete implementation at the state level result in rights violations of indigenous communities. The UN Permanent Forum on Indigenous Issues should specifically address the vast difference between Member States’ agreement to UNDRIP in rhetoric versus real world implementation.

Emphasizes inclusion of indigenous groups in climate change policy: Because climate change has an especially great impact on indigenous peoples, it is vital to ensure these groups are represented and included in discussions regarding climate change and other environmental issues.

Promote Dialogue on Indigenous Issues: Since 1993, the UN has made a significant transition from leaving indigenous issues to Member States to placing them on the international stage. In the past two decades there has been progress towards recognizing the status of indigenous peoples worldwide and creating special protection guidelines within the construct of UNDRIP. This important progress, however, is under attack in some areas and incomplete in others. As a result, it is paramount that the UN continue to consider indigenous issues and to consult indigenous groups on a wide array of topics on which these groups have unique interests and insights.

Mandate the UN Human Rights Council to monitor concerns of indigenous marginalization: Although UNDRIP is not legally binding, it would be beneficial to develop a body to monitor areas of concern for indigenous groups facing challenges of systematic marginalization such as lack of access to education, healthcare and employment. By monitoring situations of concern and increasing international awareness, there is an opportunity for the UN to pressure states to alter their behavior and advance the principles within UNDRIP.

Focus not on universal principles, but the rights and needs of specific indigenous groups in specific countries: Above all, the Member States of the NAM might agree to recognize the Palestinian people of the Occupied Palestinian Territories (as they are officially known in the UN) and Arab Residents of Israel as an indigenous group, to be offered specific support by the United Nations. Such a resolution would bring strong opposition from the United States, which only supports Israel, and other countries who would view this as a distraction.

³³ ‘Indigenous People at the United Nations’, United Nations, n.d.,

<https://www.un.org/development/desa/indigenouspeoples/about-us.html>



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