Indigenous Peoples’ Rights under International Law

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1 Introduction

This note reviews New Zealand's state practice regarding Indigenous peoples' rights under international law in 2016 and traces key international developments concerning those rights. In 2016, New Zealand supported pioneering efforts to improve Indigenous participation in the United Nations ("UN") and revisions to the mandate of the UN Expert Mechanism on the Rights of Indigenous Peoples ("EMRIP") to promote implementation of the UN Declaration on the Rights of Indigenous Peoples ("UNDRIP"). New Zealand also showcased its domestic efforts to give effect to Māori rights before international fora. Indigenous peoples contributed to the operationalisation of the UN General Assembly’s ("GA") Sustainable Development Goals ("SDGs") and the UN Framework Convention on Climate Change's ("UNFCCC") Paris Agreement. Voluntary guidelines regarding Indigenous peoples drafted under the Convention on Biological Diversity ("CBD") attracted controversy. Nationally, developments of international significance included Matike Mai Aotearoa releasing its report on constitutional transformation for Aotearoa and the Waitangi Tribunal's report on the Trans-Pacific Partnership Agreement ("TPPA"). The UN Human Rights Committee and the UN Committee on the Rights of the Child ("CRC") critically commented on the human rights situation of Māori. Various international bodies were also attentive to Indigenous peoples’ rights in the course of their work.

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Developments in Relation to International Resolutions, Recommendations and Other Forms of Non-binding or Soft Law Instruments

2.1 Indigenous Peoples’ Participation in the UN

During 2016, groundbreaking consultations continued through the President of the UN GA on measures to enable the participation of Indigenous peoples’ representatives and institutions in the meetings of UN bodies affecting them. The consultations focused primarily on participation within the UN GA, a body that has historically been restricted to the participation of states and international organisations. The President of the GA’s consultations are being guided by two Indigenous advisors who are prominent legal scholars – Claire Charters (from Aotearoa) and James Anaya (from the United States) – and two state advisors. Consultations with representatives of Indigenous peoples, states and UN institutions were held between March and June 2016 with a compilation of the views expressed during the consultations released subsequently. The consultations then moved to an inter-governmental phase, with the first of these consultations taking place in December. An Elements for Discussion document was prepared by the President of the GA’s advisors to assist these consultations. The document reflects the emerging agreement that Indigenous participation in the GA should generally include the opportunity for Indigenous organisations to speak and provide written contributions. It also promotes equitable participation by Indigenous peoples from different regions and outlines possible options for identifying eligible Indigenous organisations.

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4 Rights of indigenous peoples, GA Res 70/232, UNGA, 70th sess, 82nd plen mtg, UN Doc A/RES/70/232 (23 December 2015) [19].


6 Compilation of views on possible measures necessary to enable the participation of indigenous peoples’ representatives and institutions in relevant United Nations meetings on issues affecting them, and of good practices within the United Nations regarding indigenous peoples’ participation, UN GAOR, 70th sess, Agenda Item 69(a), UN Doc A/70/990 (25 July 2016).
