

FORMS OF MEMBERSHIP ON UN BODIES¹

Members of UN bodies sit in either of two capacities:

- a) As representatives of States or;
- b) As individuals acting in their personal capacity.

Bodies such as the Commission on Human Rights, for example, are comprised of member States. The members of this body are the States themselves. The individuals sent by States as their representatives have no formal membership on the Commission.

These representatives act in their diplomatic capacity; that is, they receive instructions from the member States that they represent, and those instructions guide their behaviour as members of the concerned body.

On the other hand, bodies such as the Human Rights Committee are comprised of members who act in their personal (individual) capacity.² However, they serve in their personal capacity, which means that they act autonomously, rather than on the basis of instructions received from States.

The Human Rights Committee membership consists in the names of individuals rather than States.

¹ This paper was authored by Bob Epstein at the request of participants of the Workshop on the establishment of a Permanent forum for Indigenous Peoples in the UN System, Copenhagen 7-8 January 2000.

² These members are elected (in this example) by States.

The Copenhagen meeting³ recommended that the proposed Permanent Forum for Indigenous Peoples be comprised of members serving in their personal capacity.

The explanation for this is self-evident: Since members of UN bodies can only sit either as individuals or as States, and since the indigenous organizations and peoples are not recognized in the UN system as States, the only remaining option is for them to sit as individuals. In the UN system, persons named as individuals (that is, not acting on the basis of instructions received from States) serve in their personal capacity.⁴

Certain *ad hoc* committees of ECOSOC have been made up of a mix of members, some serving as representatives of States, and others consisting of experts or personalities nominated by States, but serving in their personal capacity. Permanently established bodies, however, consist entirely either of States or individuals.

In the case of the proposed Permanent Forum for Indigenous Peoples, while it is conceivable that the members could comprise a mix of both individuals and States, it is difficult to imagine a workable deliberative process given such composition of the membership, where the State members act only upon received instructions.

³ Workshop on the establishment of a Permanent forum for Indigenous Peoples in the UN System, Copenhagen 7-8 January 2000.

⁴ It should be noted that for the purposes of this brief paper, I am concerned only with the membership of UN bodies themselves. We are all aware that meetings of various bodies may be attended by others who have some limited participatory role: observer States, UN agency representatives, NGOs, experts, guests, and so forth. These various attendees, however, are not members of these bodies, and may not vote or participate formally in arriving at consensus.

If the Permanent Forum were to be comprised of individuals acting in their personal capacity, the Forum would have the characteristics of a non-political body. Persons named, nominated, or elected to the Forum would act in their personal capacity.

This means that their decisions would not be dictated by either the State or the indigenous institution or people that nominated or elected them.

Two separate concerns were raised regarding the effect of this situation at the Copenhagen meeting:

- a) The issue of responsibility to the indigenous constituency that put forward the name of a particular member, and;
- b) The question of the authority and significance of a UN body where members were elected in their personal capacity.

With regard to the issue of responsibility (a), it is clear that the indigenous peoples expect the indigenous members of the Permanent Forum to be responsive to their own indigenous constituencies, their issues, needs, and interests. Nevertheless, it is well understood that the limited number of members who will comprise the Permanent Forum will preclude the possibility of formal representation of each and every indigenous organization or people.

This means that the indigenous members, while being unable to formally represent all of the world's indigenous peoples, must nevertheless, make a best effort, morally and ethically, to represent the interests and needs of indigenous peoples generally.

Similar constraints will apply to the members nominated by States, which will be unable to name a sufficient number of members to represent each of their interests.

Certainly, the issue of responsibility to the indigenous constituency will become a moral and intellectual burden upon the indigenous members, but not an enforceable or legally binding constraint on their membership or deliberation. However, one may ask: If there were to be some form of political control from the indigenous constituency, who would exercise it, and how? This issue may best be resolved through an effective nomination process that clearly establishes the concept of responsibility to the world's indigenous peoples.

The authority and significance of the Permanent Forum (b) will not be adversely affected by the capacity in which the members serve. We have many examples of other UN bodies that amply demonstrate this point.

The Human Rights Committee is the quasi-judicial body that has oversight regarding State compliance with the International Covenant on Civil and Political Rights. It is also the tribunal that judges complaints under the Optional Protocol. It is comprised of members acting in their personal capacity.

The Sub-Commission on the Promotion and Protection of Human Rights (formerly, the Sub-Commission on Prevention of Discrimination and Protection of Minorities) is comprised of expert members elected by the Commission on Human Rights. This is the body that approved the draft Declaration on the Rights of

Indigenous Peoples. The members serve in their personal capacity.

The 15 members of the International Court of Justice (World Court) serve as judges on the court acting in their personal capacity. This permits them to exercise judicial independence without interference or undue influence from member States.

Other examples could be given of important UN bodies comprised of members serving in their personal capacity. There is no reason to suppose that the non-political status of the proposed Permanent Forum would compromise its effectiveness.

In any case, it is clear that the UN is very unlikely to approve a Permanent Forum for Indigenous Peoples whose members would have the same status as member States.⁵ It would seem unproductive to insist on this kind of membership when there appears to be little likelihood of achieving this result, and no discernible advantage for the indigenous peoples were that outcome to be achieved.

⁵ Such status would involve the UN extending the recognition of State sovereignty to the indigenous peoples' organizations.