



Center for World Indigenous Studies

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29 March 2016

## **Enabling Participation of Indigenous Constitutional and Customary Government in the UNO**

Written contribution to inform the electronic consultation as invited in  
A/RES/70.232

The Center for World Indigenous Studies Indigenous (CWIS) is an indigenous peoples' governed institution founded by the Conference of Tribal Governments in 1979 in Tumwater, Washington USA committed to advancing traditional knowledge through research, education and public policy development. CWIS serves indigenous governments and organizations worldwide and provides guidance to states' governments and multi-lateral organizations as well as the academic and professional communities when asked to do so. CWIS has played an active role in the development of language and studies in support of indigenous peoples concerned with climate change, intellectual property rights, bio-diversity, education, economic and social change, strategic and geopolitical relations as well as establishment of constructive relations between indigenous nations and nations and states. Our organization has actively participated in UN forums the UN Working Group on Indigenous Populations, Permanent Forum on Indigenous Issues, EMRIP, UN Declaration on the Rights of Indigenous Peoples, Convention on Biodiversity, Intellectual Property Organization, and the World Conference on Indigenous Peoples including the Outcome Document throughout the years.

We will discuss relevant matters under each of the four questions raised by the General Assembly President and the four advisers (Mr. Kai Sauer, Permanent Representative of Finland, Mrs. Martha Ama Akyaa Pobee, Permanent Representative of Ghana, Dr. Claire Charters from the Pacific region and Dr. James Anaya from the North American region). We offer an initial summary of our observations and then a more detailed discussion below the summary.

Essentially our goal and we believe the goal the President of the General Assembly should adopt is for indigenous peoples' constitutional or customary governments and institutions to directly participate in dialogue and decisions affecting their rights, interests and social, economic, political and strategic status among the world's peoples within the United Nations Organization. The Center for World Indigenous Studies supports formation of an organizational framework that permits such direct participation, but we also suggest that,

1. The **political identity of a people (nation)** sending a delegation must be part of the eligibility meaning they are a nation, community or society governed under constitutional or customary laws and that the people may be categorized as: Integrated or Absorbed, Autonomous, Associated, Independently Federated, Confederated, Independent Nation [not now an observer or member of the UN] (Black's Law define a nation as: aggregations of men and women, existing in the form of an organized jural society, inhabiting a distinct portion of the earth, speaking the same languages, using the same customs, possessing historic continuity, and distinguished from other aggregation of men and women, and generally but not necessarily living under the same government and sovereignty. Such a definition is quite different from the classic definition of a state).
2. **State recognition must not be a condition for eligibility** since such a condition will result in disallowing participation by 72% of the world's 1.3 billion indigenous peoples in a new UN framework. (While the UN asserts that there are 370 million indigenous people reflecting state definitions this is controversial, requiring State recognition a precondition will result in many states withdrawing their recognition to avoid indigenous peoples from participating in a UN Framework.
3. The **structure of a UN framework must include four delegation organizations** with one organization at the UN Headquarters (Geneva and other UN venues) accessible by the three other organizations, and delegation organizations and participation at the regional, sub-regional and local geographic levels. Such a "two tiered" framework will permit one small delegation body at the Headquarters level to which policies, interventions and issue declarations may be submitted from a "three tiered" regional, sub-regional and local level framework." Such a "1 plus 3 framework" will permit large indigenous nations and small indigenous nations access to the UN system at all four levels. Indigenous nation accessibility is possible through direct delegation presence at the UN Headquarters and other venues while ensuring a UN sanctioned and responding geographical framework at regional, sub-regional and local levels allowing multi-level access allowing for meaningful and effective participation. At present an estimated 6% of indigenous political entities have access to the UN headquarters (can afford to travel, are prepared to engage the UN system directly, have the capabilities to prepare interventions, or speak/write in UN languages).

4. **Indigenous nation delegations may speak or intervene at any level** concerning any topic deemed relevant to the interests or rights of each nation consistent with the right of free, prior and informed consent.
5. **Any delegation may originate an instrument of law or practice at any level** of the “1 plus 3” framework that must be considered at all superior levels and submitted to the Third Committee or the Economic and Social Council or other relevant UN agency or body for deliberation.

The President of the General Assembly has suggest that our proposals could address, inter alia, the following elements:

**(a) Procedures and modalities that will make the participation of indigenous peoples’ representatives meaningful and effective;**

Please note our submission under (b) and

**(b) Criteria for determining the eligibility of indigenous peoples’ representatives for accreditation as such;**

We suggest that Indigenous peoples’ representatives may be determined eligible if representing a nation (as defined herein) to be accredited as an “Observer Indigenous Nation” to engage in activities appropriate to the United Nations Organization. The criteria follows:

**CWIS Principle:** A political entity functioning under constitutional or customary law exercising inherent governing powers and thereby representing a distinct population must be considered *eligible* to send delegates to the United Nations Organization.

Each may be considered for purposes of eligibility a “nation” consistent with this definition: A people, or aggregation of men and women, existing in the form of an organized jural society, inhabiting a distinct portion of the earth, speaking the same languages, using the same customs, possessing historic continuity, and distinguished from other aggregation of men and women, and generally but not necessarily living under the same government and sovereignty (adapted from Black’s Law Dictionary (Garner 2014)). Each Indigenous Nations may be considered eligible without regard to economic, social, or cultural capacities or size of population or size of territory.

The political identity of each indigenous governing authority may fall into one of the following categories discussed in *Indigenous Nations and Modern States* (Ryser 2012), but defined below):

1. Integrated or absorbed Nation, Community or Society (As determined by the nation itself and historical and political circumstances)

2. Autonomous Nation (As determined by the nation itself by way of a public declaration or intergovernmental agreement with another nation or a state.)
3. Associated Nation (As determined by the nation itself according to a treaty or other constructive arrangement with nation or state)
4. Independently Federated Nation (As determined by the nation itself and its subordinate entities)
5. Confederation (As determined by the nations allied as such)
6. Independent Nation (As determined by a plebiscite, intergovernmental agreement, or international declaration--applying the definition for nation herein)

All having been thus categorized shall have political equality within the context of the United Nations organizational framework.

**CWIS PRINCIPLE:** Each must be recognized as an organized jural society, inhabiting a distinct portion of the earth (whether in a fixed territory, transit territory, overlapping territory due to population transit, or seasonal territory whether recognized or not recognized by other nations or states) without regard to economic or political capacity or territorial or population size. On this basis each must be enjoy political equality with all other political parties.

**(c) Nature and membership of a body to determine the eligibility of indigenous peoples' representatives for accreditation;**

**Nation, Community or Society**

**Indigenous peoples constitute individual nations, communities or societies**

A people, or aggregation of men and women, existing in the form of an organized jural society, inhabiting a distinct portion of the earth, speaking the same languages, using the same customs, possessing historic continuity, and distinguished from other aggregation of men and women, and generally but not necessarily living under the same government and sovereignty (adapted from Black's Law Dictionary (Garner 2014)).

An Indigenous nation may be defined as a non-state political community constituted as a people, an aggregation of men and women existing in the form of an organized jural society (constitutional or) inhabiting a distinct portion of the earth (fixed territory, nomadic, shifting with seasons or other climatic circumstances, etc), speaking the same language or languages, using the same customs, possessing historic continuity and distinguished from other aggregations of men and women, and generally but not necessarily living under the same constitutional or customary government with inherent powers.

**Language:**

According to our estimates the vast majority of the world's 7,097 languages (according to the Linguistic Society of America and the 19th Edition of Ethnologue) 5,000 are languages spoken by indigenous peoples as a first language. Shared language is a key

determinant of the existence of a nation of people. Therefore, it is realistic to suggest that there are at least 5,000 indigenous nations in the world in Africa, (30%), Americas (15%), Asia (32%), Europe (4%) and the Pacific (19%). Accordingly

### **Customs:**

Customary laws guide many peoples throughout the world providing exacting practices and the ability to sanction. Rautenbach classically observers, “Customary law generally deals with private relationships and therefore operates in the private sphere only. It pertains to limited areas of law, such as family law, law of property, law of delict, traditional leadership and courts ...” (Rautenbach 2008) and may be reasonably relied on to satisfy representations by indigenous governments acting under constitutional and customary law.

### **Territory:**

Indigenous nations occupy fixed territories, traverse lands forming a linear territory as in nomadic territories, seasonal territories where a nation moves from one territory to another to benefit from seasonal changes for food, protection, and climatic conditions. That Indigenous nations engage in a variety of land uses forming different territories must be taken into consider and their use of lands on the earth must not be cause for discrimination preventing their accreditation having fully recognized representatives in deliberations about their rights and interest in a manner consistent with their free, prior and informed consent.

The political identity of each indigenous people may fall into one or the following establishing eligibility for an Organization of Indigenous Observer Nations (OION) that includes an Observer Indigenous Nations’ Council (OINC) including 18 members that functions at the UN Headquarters and a Observer Indigenous Nations Assembly (OINA) operating at the regions, sub-regional and local levels:

1. **“1 plus 3”** representative Organization of Indigenous Observer Nations (OION) established locally, sub-regionally, regionally and UN headquarter body defined structure would be organized form the ground up.
  - a. Local: A body that is constituted by nations, communities and societies themselves, constituted by neighboring nations, communities and societies with technical support offered by the United Nations including self-defined representatives or participation per constitutional or customary laws from locally defined region. Eligibility and number of representatives to the local body may be determined by rules and protocols established by indigenous nations participating at the local level provided that each representative or delegation of representatives has been designated by the constitutional or customary governing body of an indigenous nation as defined herein.
  - b. Sub-regional: A body containing participants from the locally defined constituent structures according to participant specifications -- this body may receive direct reports, requests from the United Nations and receives

reports, request and directions from the local constituent bodies. *Eligibility and number of representatives to the Subregional body may be determined by rules and protocols established by indigenous nations participating at the local level provided that each representative or delegation of representatives has been designated by the constitutional or customary governing body of an indigenous nation as defined herein.*

- c. Regional: This body may include participants from sub-regional and local political entities (that may have territories located across states' boundaries) serving as a forum receiving requests, recommendations and reports from the Local Bodies and Sub-Regional Bodies. Parties negotiate and ratify reports, statements and interventions prepared for submission to a UN body. *Eligibility and number of representatives to the local body may be determined by rules and protocols established by indigenous nations participating at the Regional level provided that each representative or delegation of representatives has been designated by the constitutional or customary governing body of an indigenous nation as defined herein.*
- d. UN **Organization of Observer Indigenous Nations (OOIN)**: This overall body is organized by geographic area and designated by the Regional Bodies in consultation with each other where representation is drawn from defined geographic regions in each continent irrespective of state boundaries (accommodating indigenous nations, communities or societies that have been geographically bifurcated or whose traditional territories have been divided by states' boundaries. In North America (Canada, México, USA) for example there may be as many as 23 distinct geographic regions that may include as many delegations with membership for each geographic region determined proportionately--three representative for each region. Each cluster of regions would repeat this process. By the process a total of 1002 representatives will be recognized as eligible to to serve as regional delegations proportionately representing each region. Therefore North America would designate 69 eligible delegates, South America would designate 72 delegates, Central America would designate 30 delegates and so on as indicated in the table below.
- e. The 1 plus 3 Organization of Observer Indigenous Nations (OOIN) provides for the 18 member Observer Indigenous Nations Council that allows for direct communications at the United Nations Headquarters level (1) and the Observer Indigenous Nations Assembly provides direct participation at the regional, sub-regional and local levels. These may be designated as the Observe Indigenous Nations Organization containing the Observe Nations Council and the Constituent Assembly
  - i. The 18 member **Observer Indigenous Nations Council (OINC)** should include representatives of regions by continent (delegations of 2 each) with a body of 18 that functions at the UN Headquarters level. It constitutes a forum at which all 18 members may exercise a vote or act with in *consensus and with the agreement of the*

*assembly of the whole invite interventions from any of the representatives from the Observer Nations Council.*

- ii. **Observer Indigenous Nations Assembly (OINA)** could have as many as 1002 delegates from 378 (estimated) sub-geographic regions that in the aggregate enjoys the direct participation or engagement by sub-regional and local bodies of the OINA.
- iii. Together these bodies facilitate the direct participation of up to 5000 indigenous nations and 1.3 billion people speaking 7,096 languages.

### **Organization of Observer Indigenous Nations (OOIN)**

CONTINENT	Regions	**OINAs	*OINC	Distribution
North America	23	69	2	6.0%
South America	24	72	2	6.3%
Central Am/Caribbean	10	30	2	2.6%
Africa	73	219	2	19.00%
Asia	65	195	2	17.00%
South Asia	55	165	2	15.00%
Northern Africa/Eastern Meditera	42	126	2	11.00%
Pacific	72	84	2	19.00%
Europe	14	42	2	4.00%
totals	378	1002	18	100%

\* Observer Indigenous Nations Council (OINC)

\*\* Observer Indigenous Nations Assembly (OINA)

Based on Regional organizations and Language distribution

***(d) Details of the process, including the information required to be submitted to obtain accreditation as an indigenous peoples' representative.***

We offer the above formation of the Organization of Observer Indigenous Nations (OONI) as the mechanism for initially determining the eligibility representatives to obtain accreditation to the OONI and thus the UNO provide that the following additional criteria are required for both representatives to the Observer Nations Council and all three levels of the Observer Indigenous Nations Assembly:

1. The delegate is authorized by virtue of constitutional or customary law of the represented nation indicated by either a written instrument in the nation's language or an instrument of a symbolic nature in the form of a pendant, pouch, or other symbol previously and officially identified and submitted to the regional, sub-regional or local assemblage by the governing authority and vouched by another member of the delegation.
2. The delegate provides evidence of personal identity or whose identity a member of the delegation vouches for; and the regional, sub-regional or local assembly formally documents the identity.
3. The regional body submits written or symbolic evidence of delegation identities and authorizations to the Observer Nations Council and this information is duly recorded by the United Nations at the UN Headquarters whereupon when a delegated official attends forums at the United Nations Headquarters or other venues, the identity of that person may be affirmed based on records so assembled.

This eligibility process (determined in the organizational framework) and accreditation process (determined at the Observer Indigenous Nations Council level and the UN) will establish accreditation for the 18 member Observer Indigenous Nations Council and the 1002 member Observer Indigenous Nations Assembly (at the Regional, sub-regional and local levels) democratically representing the estimated 5000 indigenous nations.

**Further CWIS Observations:**

The rational for both the Organization of Indigenous Observer Nations and the 1 plus 3 organizational framework maximizes the potential participations of indigenous nations large, medium and small with various social, economic, political and cultural capacities. We suggest that after the first ten years of the Organization of Indigenous Observer Nations operation that the organization undergo evaluation to improve its functions and capacities to maximize the prospect that indigenous nations that chose to participate in the United Nations Organization will have the greatest possibility to engaged in decisions and dialogue with peoples around the world on matters that affect their rights and



interests in accord with the principle of free, prior and informed consent with the least prospect of discrimination against them.

## **Here are additional notes that inform our presentation:**

### **A. CWIS OBSERVATIONS:**

Several thousand indigenous nations, communities and societies dot the continents with an estimated global aggregate population of 1.3 billion people (Fourth World Mapping Project, 1992). UN member states recognize 370 million people, but the difference of nearly a billion people is due to states' government policies and definitions. The Center for World Indigenous Studies geographic study of nations around the world revealed that the combined populations of Bhil, Mio, Uyghur, Naga, Navajo, Cherokee,

In the United States alone there are at least 550 "unrecognized tribes" and 567 tribes bringing the total number of tribes to more than 1,117 distinct political entities.

In Canada there are 600 First Nations/bands, but 3,100 reserves.

South Sudan boasts 59 indigenous nations with a combined population of 9.9 million.

Indigenous peoples in the Arctic region are estimated at 3,989 million people.

The Peoples' Republic of China has 55 indigenous nations and unrecognized peoples with a combined population of 115 million.

India has the distinction of including Adavisis (including more than 8 million Bhil (in 15 distinct nations) with a combined population of more than 84 million included in 635 specific cultural entities while other distinct indigenous nations including Nagas (Garo, Kachari, Kuki, Mikir, and Naga) that are a bifurcated population between India and Burma of more than 4 million). Other nations such as Tamal with a population of more than 117 million in India and 2.3 million more in Sri Lanka further expand the total of indigenous peoples in India and nearby countries.

As one can readily see the populations of indigenous peoples in India, Sri Lanka, Burma, PR China, and South Sudan alone combine to constitute 316 million people or 86% of the 370 million claimed by the United Nations. The essential question is how many political entities are indigenous political entities and how are they characterized?

Indeed, violent contentions between nations and states tend to be more multi-dimensional. They are more likely to be rooted in territoriality and political status issues with a major secondary component emphasizing economics (Ryser 2012).

The present Declaration constrains the right of self-determination, imposing limitations on the right of Fourth World peoples to freely chose their own political status and

political future without external interference. In other words, the states have agreed that they will seek to limit the political mobility of Fourth World nations. They will prevent them from pursuing their own political future without state control (Ryser 2012).

**We propose that candidates for participation as observer peoples qualify in part according the following political status criteria:**

**Political status:**

In recognition of standard international law and Vattel's Law of Nations (Vattel 1758) there can be many different forms of political status for peoples, but the Law of Nations specifies three primarily: Absorbed, Associated or Independent. We note that in the last two hundred years or so other forms of political status have evolved and are recognized by states' governments and the United Nations as appropriate political forms of human organization internationally. We offer a variation on these forms owing to the existence of evolved political status forms enjoyed by indigenous nations some of which having evolved in political form into recognized states in the United Nations itself. We suggest that such political status forms as we list below have already come into being and should naturally be taken into consideration when accrediting representatives from indigenous nations as Observer Indigenous governments within a framework we outline in this submission.

**Integrated Nation**

Characteristics:

- *No internal sovereignty and no external sovereignty.*
- *Participation or sharing in political instruments of state or dominant nation.*
- *Exercise delegated powers of government.*
- *Constitutionally defined or impliedly understood to be an integral part of state domain or a dominant nation's domain.*
- *Limited inherent collective rights--individual and group rights defined in state constitution or reduced rights as a result of unstated principles.*
- *Full economic dependency.*

*Integration into a state has rarely occurred as a result of a nation expressing formal consent. Often, peoples who have been integrated without their consent are defined as minorities, ethnic groups, or sub-state populations. Though it is inaccurate to define nations as any of these, states' governments express a preference for such terms even though nations (generally) do not.*

**Autonomous Nation**

- *Governing authority delegated to nation from state--and inherent internal sovereignty.*
- *Limited external sovereignty.*
- *Limited collective rights--State constitution may define individual and collective rights.*

- *Partial economic self-sufficiency.*

*A nation may be associated by customary practice or formal contractual instrument with another nation (protected status) or under a suzerain relationship with another nation or a state. A “band” or community or extended family may fall under a protected status to an Associated nation or in a relationship to a suzerain state.*

### **Associated Nation**

- *Exercise inherent powers of government—full or partial internal sovereignty.*
- *Exercise collective rights*
- *Government to government relations with nations and states—limited external sovereignty.*
- *Constitutional and/or Customary laws regulating civil matters, but may not exercise authority over criminal matters.*
- *Partial economic self-sufficiency.*

*A nation may be associated by customary practice or formal contractual instrument with another nation (protected status) or under a suzerain relationship with another nation or a state. A “band” or community or extended family may fall under a protected status to an Associated nation or in a relationship to a suzerain state.*

*The Lummi Indian Nation is located near the northwest border of the United States and Canada. It is a wholly likely candidate to blaze a new pathway in the political relations between Indian nations and the United States. In 1990, the Lummi Indian Nation became one of the four Indian nations to first negotiate bi-lateral or multi-lateral treaties with the United States government—none have done so since 1871. The agreement they and the Quinault, Hoopa and Jamestown S'Klallam individually negotiated was the first in a series of new agreements to aid these Indian nations to resume the exercise of self-government. After concluding negotiations of a Compact on Self-Governance with the United States government, the Lummi became one of the first Indian nations in North America to formally affirm a relationship with a state with the political characteristics of an associated nation.*

### **Independently Federated Nation**

- *Exercise inherent powers of government - varying degree of negotiated internal sovereignty.*
- *Government to government relations with nations and states - varying external degree of sovereignty.*
- *Constitutional or customary laws exercised over civil and criminal matters*
- *Substantial economic self-sufficiency engaging in independent economic relations.*

*Nations having this status are virtually independent nations, not independent states. If there were no state system, these nations would be regarded as independent political personalities with strong cultures, which define the political, social and economic*

*framework for human organization in relation to the land and territory. In the modern political environment, these nations have chosen to live in co-existence with states, and do not seek to compete with the state. The country of Catalonia in Spain is an example of a nation with this status. Other nations either seeking this status or which have achieved it include the Massai (Kenya), Balochis (Pakistan), Standing Rock Sioux (U.S.A.), Kurds (Turkey, Syria, Iraq, Iran), the Basque of Euzkadi (Spain), the Faeroees of the Faeroe Islands (Denmark), Tartars of Tartaristan (Russian Federation) and the many nations of West Papua (U.S. of Indonesia). The nations with this status exercise their inherent powers of government and varying degrees of negotiated internal sovereignty. They also conduct formalized government-to-government relations with other nations and states and consequently carry out varying degrees of external sovereignty.*

### **Independent Nation-State**

- *Exercise constituted powers of government.*
- *Full internal sovereignty and full external sovereignty.*
- *Economic dependency.*

*Nations seeking or achieving the status of an independent nation-state are growing in number in the international arena. One or more nations forming a state as a result of mutual consent of the governed have all of the qualities of an independent nation and independent state. Examples of nation-states include: Iceland, Vanuatu, Kiribati, Kuwait, Yemen, Eritrea, San Marino, Andorra, Liechtenstein, and Brunei. Nations that seek to achieve or have achieved the status of nation-state include: Federation of Micronesia, Kurdistan (Turkey, Syria, Iraq, Iran), East Timor (Portugal, Indonesia), Kanakia (France), Nagaland (India), Sahrawi (Morocco), Tibet (Peoples Republic of China), Palau (U.S.A.), Somaliland, and Karen (Burma and Thailand).*

We further offer these reflections in support of our proposal:

The UN Declaration on the Rights of Indigenous Peoples declares that self-determination for Fourth World nations means:

Article 4: Indigenous peoples, in exercising their right to self determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

### **B. CWIS OBSERVATION:**

Self-determination has no meaning unless it recognizes the right of a people to freely choose their own political status — their own political future. Absent this recognized fundamental right as peoples and human beings, Fourth World nations are left to the political, economic and security whims of arbitrary state power.

### **C. CWIS OBSERVATION:**

1. The lessons we must collectively learn from the experience of political events since 1948 include these:
2. The state system is not perfect; it is an experiment in human problem solving that does not always lend itself well to solving problems for all of humanity.
3. Nations are natural human organisms that persist and must have an acknowledged place as active participants in international intercourse coexisting with states.
4. Where states exist and serve the needs of human society they should be nurtured and celebrated, but where states fail to serve the needs of human society, they should be allowed to disassemble in a planned process which permits the nations within to systematically reassume their governing responsibilities.
5. If a state is no longer viable politically and economically and does not have distinct nations within it, its structure should be replaced temporarily with international supervision followed by the formation of an internationally recognized variant of human organizational structures deemed appropriate to the extant human cultures and geography of an area, such as a trust territory, freely associated state, commonwealth, or other configuration established for a protected population; such a non-self-governing status must have the potential to be changed to a self-governing status in the future.
6. Nations that do not wish to remain within an existing state must have the logical option of changing their political status through peaceful negotiations; and nations, which choose not to leave a state, should be permitted to exercise self-governing powers appropriate to their scale and to their proximity to the problem requiring governmental decisions.

#### **D. CWIS OBSERVATION:**

The International Covenant on the Rights of Indigenous Nations signed by indigenous nations in 1994 declares that self-determination for Fourth World nations means:

Para. 3 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.

#### **Conclusion:**

Our discussion for that calls for establishment of a Organization of Observer Indigenous Nations within the United Nations Organization representing up to 5000 nations and an estimate 1.3 billion indigenous people fully responds to the UN General Assembly Presidents request for comments and suggestions and furthermore responds to the UN Declaration on the Rights of Indigenous Studies principle on free, prior and informed consent as well as self-determination; and in addition our presentation responds to the World Council on Indigenous Peoples Outcome Document commitments of UN Member States.

We stand ready to enter into further exchanges to clarify, amplify or adjust these comments and discussion points when the President request or the advisors request

**Endnotes:**

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Submitted by on behalf of CWIS

A handwritten signature in black ink, appearing to read 'Rudolph C. Ryser', with a stylized flourish at the end.

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