

---

Indigenous Peoples and the United Nations: Human Rights as a Developing Dynamic

Author(s): Elsa Stamatopoulou

Source: *Human Rights Quarterly*, Vol. 16, No. 1 (Feb., 1994), pp. 58-81

Published by: The Johns Hopkins University Press

Stable URL: <http://www.jstor.org/stable/762411>

Accessed: 28-04-2017 19:26 UTC

---

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at  
<http://about.jstor.org/terms>



*The Johns Hopkins University Press* is collaborating with JSTOR to digitize, preserve and extend access to *Human Rights Quarterly*

# Indigenous Peoples and the United Nations: Human Rights as a Developing Dynamic <sup>1</sup>

*Elsa Stamatopoulou*

[J]ust because civilizations are mortal, that does not mean that we must kill them.

...

We have seen how a culture that is marginalized eventually disappears, and we know that when a community is left out of the mainstream of international life, it is very difficult for its members to preserve even the most elementary human rights.

Boutros Boutros-Ghali<sup>2</sup>

## I. INTRODUCTION

The General Assembly of the United Nations proclaimed 1993 the International Year of the World's Indigenous People.<sup>3</sup> "It is a prerequisite for the fulfillment of the slogan of this year—A New Partnership—that we all combat our own racism and instead fight for the love of the complexity of the world."<sup>4</sup> The

---

1. This article is based on a paper given on 13 April 1991 at the Conference on Rhetoric and Rights of Identity held at the Centre for Historical Analysis, Rutgers University. The views expressed are those of the author, and do not necessarily represent the United Nations. The author is a jurist from Greece and is the Chief of the New York Office of the Centre for Human Rights and was, in 1983 and 1984, the Secretary of the UN Working Group on Indigenous Populations. She continues to be actively involved in the area of indigenous peoples' rights.

2. U.N. Doc. SG/SM/4878/Rev.1, 10 Dec. 1992, at 5.

3. G.A. Res. 46/128, U.N. GAOR, 46th Sess., at 1, U.N. Doc. A/RES/46/128 (1992).

4. Lars Emil Johansen, Premier of Greenland, Statement at the Opening Ceremonies of the International Year at UN Headquarters (10 Dec. 1992).

goals of the Year are to raise awareness about the situation of indigenous peoples and to increase the participation of indigenous peoples in all matters concerning them nationally and internationally. In the words of the resolution, "the Year is viewed as a first step towards mobilizing international technical and financial cooperation for the self-development of indigenous people and their communities."<sup>5</sup> If one recalls the efforts—albeit failed—by some Latin American states in 1983 to have 1992 proclaimed as "an international year of the discovery of America," one realizes the progress the United Nations and the world have made on the issue.<sup>6</sup>

Indigenous representatives at the UN Working Group on Indigenous Populations initiated the movement for the International Year of the World's Indigenous People. Due to their plans to celebrate the Quincentenary of Columbus, Spain and countries of the Americas blocked the initial proposal to hold the Year in 1992. Thus a compromise prevailed for 1993. At the opening ceremonies for the International Year on 10 December 1992, indigenous leaders addressed for the first time the UN General Assembly at a historic, symbolic, albeit informal meeting.

In June 1993, the World Conference on Human Rights urged states to ensure the full and free participation of indigenous people in all aspects of society, in particular in matters of concern to them. It also recommended to the General Assembly the proclamation of a decade of indigenous peoples and provided that in the framework of such a decade, the establishment of a permanent forum for indigenous people in the United Nations system should be considered.<sup>7</sup>

The International Year's theme, "Indigenous People: A New Partnership", is the product of debate, overt and covert, over the inclusion in the title of the term "peoples" or "people." The final choice of the latter and the debates in the Working Group on Indigenous Populations show that states are still fighting over a term that betrays their rigidity about recognizing self-determination for indigenous nations. This is not the only contentious issue.

Now the voice of indigenous peoples and the sense of moral responsibility of humanity for indigenous cultures, oppressed or annihilated, are revolutionizing the discussions about group versus individual rights,

---

5. G.A. Res. 46/128, *supra* note 2.

6. This initiative at the United Nations General Assembly failed largely thanks to the vehement opposition of African states which saw it as a proposal to celebrate colonialism in the Americas. The verbatim records of the General Assembly reflect the embarrassment caused by that initiative. U.N. Doc. A/37/PV. 83.

7. World Conference on Human Rights, The Vienna Declaration and Programme of Action, June 1993. U.N. Doc. DPI/1394-39399-August 1993-20M, at 51; *see also* World Conference on Human Rights, *Vienna Declaration and Programme of Action* at 18, U.N. Doc. A/Conf. 157/23(1993).

environment, development, and of course self-determination. One of the most fascinating areas of direct interaction between the United Nations and history is that of indigenous peoples and human rights. The human rights history of the organization itself has been the result of immense human suffering.

Against the background of the atrocities of World War II and of centuries of injustice and death for human beings around the world including indigenous peoples, the United Nations revolutionized international relations in the post 1945 era by including the promotion of human rights as one of its four basic aims. Barely a matter of adequate political interest in past centuries, human rights hardly figured in bilateral or multilateral treaties. Today the fate of human beings is no longer the prerogative of absolute state power, but the shared moral, legal, and political responsibility of the whole international community. Human rights are now codified as concrete international law in more than sixty international treaties and declarations. Now after long, engaged, and often ambivalent debates about the nature of human rights and cultural and other relativism, the human rights concept is emerging as a universal one.

Following the dynamism of history, the concept of human rights progressed together with international relations and multilateralism. The decolonization process in the United Nations emerged together with a new anti-colonial and anti-racist consciousness and discourse. While not included in the historic Universal Declaration of Human Rights in 1948, self-determination of peoples was included in 1966 as the common first article of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The recognition of the right of peoples to self-determination eventually shed new light on the rights of indigenous peoples and the rights of minorities, paving the road not only towards the acceptance of their identities by states, but also towards the strengthening of those identities.

In the early 1970s, states authorized the United Nations to conduct a "Study of the Problem of Discrimination Against Indigenous Populations." Possibly the states considered that the root of the evil, colonialism, was too far back in history to mean much in terms of accountability. Moreover, states may have thought that indigenous peoples themselves posed relatively little threat to the states' domination because they were either assimilated, annihilated, or simply oppressed and weak.

This opening of the United Nations to indigenous peoples did not merely coincide with the new or renewed activism of indigenous peoples in the 1970s, but also strengthened and, in certain instances, helped create indigenous identities. In a unique mode of creative interaction "with the peoples,"<sup>8</sup> the

---

8. The opening words of the United Nations Charter read "We, the peoples...."

United Nations took the unprecedented decision in the early 1980s to bend some of its own rules in order to open its door to a large number of indigenous peoples' representatives from around the world. These representatives now share the same international forum with state representatives and UN human rights experts and fight to shape their own future at that level as well. Today the United Nations advocates indigenous peoples' rights under the banner of universality, while helping to create a wave of voices for indigenous rights around the world.

The first part of this article places United Nations human rights action in historical perspective so that the efforts for recognizing indigenous rights are seen in a global context. The second part traces the specific steps of interaction between indigenous peoples and the United Nations human rights system and describes their mutual reinforcement towards the protection and promotion of indigenous rights. The third part briefly refers to some key issues in the international debates on indigenous peoples.

## II. UNITED NATIONS HUMAN RIGHTS ACTION IN HISTORICAL PERSPECTIVE

It is important to follow the development of international work on the human rights of indigenous peoples against the general United Nations human rights framework. The internationalization of human rights was hardly a given before 1945. In the past four centuries human rights were rarely the subject of bilateral or multilateral agreements, and efforts to include human rights in such agreements were limited. For example, the Treaty of Westphalia of 1648 recognized the principle of equality of rights for Roman Catholics and Protestants. In 1815, as a result of hard efforts by British anti-slavery organizations, the Final Act of the Congress of Vienna included provisions against the slave trade. It was not, however, until 1890 that the European powers, in the Brussels Act, agreed on specific means and enforcement measures to abolish slavery. As Hurst Hannum points out:

[I]ndigenous rights, unlike the rights of religious and other minorities, were never recognized as separate issues of international concern. In fact, apart from treaties to which Indian nations themselves were parties and the agreement which established the Inter-American Indian Institute in 1940, no multilateral treaty or agreement addressed the issue of indigenous rights per se prior to the adoption of International Labour Organisation (ILO) Convention No. 107 in 1957.<sup>9</sup>

---

9. Hurst Hannum, *New Developments in Indigenous Rights*, 28 VA. J. INT'L L. 652 (1988).

After the First World War, people mobilized around several human rights causes, including minority rights, racial equality, and working conditions. Yet the Covenant of the League of Nations, the precursor of the United Nations, did not include the protection of human rights among its aims. Also, in what was perhaps its greatest failure, the Covenant did not include issues of racial equality—one of the United Nations' major areas of activity today. In the 1920s, American Indians approached the League of Nations, but while their visit to Geneva attracted considerable attention, it produced no tangible results.

In 1945 the United Nations took a revolutionary step by including human rights in Article 1 of its Charter as one of its basic aims.<sup>10</sup> For the first time, human rights were elevated to a position of global concern. Since then, the organization has developed activities in three main areas: legislation, monitoring of implementation, and information, education, and advisory services, known as promotional activities.

The contribution of the United Nations to international law has been most pronounced in the area of human rights through the progressive development, over the last forty-five years, of more than sixty international conventions and declarations on human rights. The Universal Declaration on Human Rights, adopted in 1948, was the first achievement in this field. According to most, the Declaration has become part of international customary law through the international community's acceptance of it as law. Clearly, the concept of human rights, as seen by the United Nations, is dynamic, developing along with history and international relations. The gradual recognition of indigenous peoples' rights is one of the most pronounced

---

10. Article 1 of the UN Charter reads:

The Purposes of the United Nations are:

1. To maintain international peace and security...;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples...;
3. *To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;* and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends. (Emphasis added.)

Moreover, Article 55 of the UN Charter states:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: ...

- (c) universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

examples. The United Nations Working Group on Indigenous Populations is expected to complete the draft "Universal Declaration on the Rights of Indigenous Peoples" in 1993. At the same time, it should be emphasized that several other human rights treaties include provisions of immediate relevance to indigenous peoples. These include, for example, the Genocide Convention, the International Covenant on Economic, Social and Cultural Rights, and the Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of the Child.

Monitoring how governments implement their international human rights obligations is the second activity of the United Nations in the human rights field. It is an ambitious activity yet still based, partly due to its newness, partly due to political pressures, on quite imperfect structures. Monitoring is done, on the one hand, through the so-called "treaty bodies," i.e., committees of experts established under several human rights treaties and, on the other hand, through the Commission on Human Rights, its Sub-Commission on Prevention of Discrimination and Protection of Minorities, and their subsidiary organs. The General Assembly plays an important role in this field in giving general policy guidelines to the specialized human rights bodies.

A detailed description of the monitoring work of the United Nations in the human rights area is beyond the scope of this article, but a few remarks will underline its dynamic nature and relevance to indigenous peoples. While in the 1950s and 1960s the Commission on Human Rights considered discussion of specific allegations of human rights violations to be beyond its jurisdiction, now a significant number of special procedures have been created to deal precisely with such allegations. Enforced or involuntary disappearances, torture, summary or arbitrary executions, religious intolerance, mercenarism, arbitrary detention, and sale of children are areas where special procedures exist. Complaints can also be brought under a procedure dealing with gross and systematic violations of human rights, known as the "1503 procedure,"<sup>11</sup> under the Optional Protocol to the Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention against Torture and Other Degrading Treatment or Punishment. Human rights monitoring missions, some twenty-five annually at this point, are dispatched around the world—a practice that would have been inconceivable in the 1970s.

The posting of UN human rights monitors in El Salvador and Haiti and the dispatching of human rights missions to Latvia, Lithuania, Estonia, and Georgia within the framework of the Secretary-General's good offices have opened up new potential in the field of implementation. The active participation

---

11. Res. 503 (XLVIII), U.N. ESCOR, 48th Sess., at 9, U.N. Doc. E/4832/add.1 (1970).

of nongovernmental organizations (NGOs) in the human rights arena is crucial for the United Nations. Primarily NGOs do not have the same reluctance as states in bringing public attention to certain violations. NGOs also submit complaints, thus activating the human rights monitoring mechanisms. NGO presence has clearly more than doubled since the early 1980s, both at the meetings of the Commission on Human Rights and other human rights bodies and in terms of submission of complaints. The UN human rights monitoring mechanisms have often been used to protect indigenous persons. Factfinding missions under the special procedures of the Commission on Human Rights have been sent to a number of countries where indigenous peoples have been victims of human rights violations.

The Good Offices action of the Secretary-General in the area of human rights, little known due to its confidential nature, should also be mentioned. On many occasions, the Secretary-General has acted to reunite families or to save lives, including the lives of indigenous people.

The third area of UN activity in the human rights field, the promotional area, namely information, education, and advisory services, has been receiving renewed emphasis since 1987. The premise of this activity is that people have to know their human rights in order to seek them and that human rights ultimately have to be respected locally—therefore, the need for national institutions for the promotion and protection of human rights. The United Nations embarked on a World Information Campaign for Human Rights in 1988, on the fortieth anniversary of the Universal Declaration of Human Rights. The issuance of public information material, including audio-visual material, and the organization of seminars and conferences around the world are part of this effort. The Universal Declaration of Human Rights is being translated into many national and local languages, including recently the Mikmaq indigenous language. To date, the United Nations has prepared some 150 language versions of the Declaration. Moreover, the United Nations has also established human rights training courses for officials dealing with the administration of justice, encouraged formal and informal human rights education (i.e., at all school levels, at universities, and the community at large), and provided technical assistance for the drafting of new constitutions and legislation affecting human rights. The extraordinary number of demands made on the Centre for Human Rights, the focal point for human rights in the United Nations Secretariat, attests to the desire of governments and NGOs to become part of a universal human rights culture.

### III. INDIGENOUS PEOPLES' RIGHTS AND IDENTITIES

States have not always accorded indigenous peoples a distinct status, unlike the legal treatment of other ethnic or religious groups. Distinct status to other



ethnic groups has generally been the result of conflicts that have involved two or more states and has been used as a mechanism of keeping the peace between such states. This is demonstrated in the 1923 Treaty of Lausanne between Greece and Turkey. Distinct legal status has been used by imperial authorities as a tool for administrative efficiency and control, such as at the Ottoman Empire or, to a certain extent, in the Soviet Union.

A distinction, however, has been made internationally between indigenous peoples and minorities, a point discussed later in this article. Two broad categories of legal treatment for indigenous peoples can be distinguished:<sup>12</sup>

(a) "[T]he state accords indigenous inhabitants a special legal status intended to protect them and free them from certain civil obligations, but which also limits their enjoyment of certain rights."<sup>13</sup> For example, in Paraguay before 1980 the great majority of Indians were not full citizens.<sup>14</sup> A similar status existed in Brazil. In Canada and the United States, Indians on reservations are self-governing for certain purposes, but Indian activities remain under federal jurisdiction.<sup>15</sup>

(b) The state provides special services or programs for indigenous groups within an overall context of legal equality, such as in Argentina, Australia, Finland, and Japan.<sup>16</sup>

Many governments based their policies on the assumption that indigenous peoples' cultures and languages would disappear through integration and assimilation by the dominant culture—what modern political science calls "the nation state."<sup>17</sup> Therefore, states have not tolerated the assertion of indigenous identities through language and indigenous-controlled education.<sup>18</sup> Such cultural intolerance, forced conversion into the religion of the dominant community, pressure to abandon traditional ceremonies, seizing of indigenous lands, and outright terrorization and killings have been the order of the day for millions of the world's indigenous people.<sup>19</sup>

Against this somber background, the United Nations era spread its dictum of universal applicability of human rights. No government denies in theory that universal human rights apply equally to indigenous and non-indigenous people. Besides, it has become clear that special problems of indigenous people and their own sense of identity require the recognition of

---

12. Hannum, *supra* note 7, at 655-57, also referring to the United Nations Study on Indigenous Populations.

13. *Id.* at 655.

14. *Id.* at 656.

15. *Id.*

16. *Id.*

17. *Id.* at 656-57.

18. *Id.* at 657.

19. *Id.*, citing 5 UN Study on Indigenous Populations, U.N. Sales No. E.86.XIV.3, at 11-13, 15-21 (1986); also appears as U.N. Doc. E/CN.4/Sub.2/1986/7/Add.4.

additional human rights and the detailing and analysis of already existing ones.

Bolivia was the first voice in the United Nations era to express the need for special attention to indigenous peoples. In 1949, Bolivia proposed the creation of a subcommission of the United Nations Social Commission to study "the situation of the aboriginal population of the American continent."<sup>20</sup> Faced with serious opposition, however, the final resolution called upon the Economic and Social Council to undertake a study of "the situation of the aboriginal populations...of the *States of the American continent requesting such help*."<sup>21</sup> Several countries objected even to this decision (United States, Brazil, Chile, France, Peru, and Venezuela) and "effectively banned any such studies unless requested by affected member states."<sup>22</sup>

The next significant development at the international level was the International Labour Organisation's adoption of Convention 107 entitled "Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries" in 1957. Criticized since then as assimilationist by many indigenous peoples, Convention 107 was amended in 1989 and is now known as Convention 169, entitled "Convention Concerning Indigenous and Tribal Peoples in Independent Countries." It entered into force in September 1991. Yet unlike the UN practice of adopting human rights treaties by consensus and thus strengthening their global validity, at the International Labour Organisation forum almost every article of Convention 169 was voted on and the participation of indigenous representatives during the elaboration of the new treaty was poor.

Back within the UN framework, a series of developments paved the way to a spiraling interaction between states and indigenous nations in years to come. In 1960 the United Nations adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples<sup>23</sup> which recognizes the right of peoples to self-determination. While leaving the interpretation of the term "peoples" to the regional checks and balances of power, the United Nations did include self-determination as a fundamental human right in the first article of both the International Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights.

In the meantime, the United Nations intensified its activities against racial discrimination. Anti-colonial and anti-racist rhetoric multiplied as newly independent states took their place within the "community of States."

---

20. *Id.* at 657.

21. *Id.*, citing G.A. Res. 275 (III), U.N. GAOR, 3d Sess., at 19, U.N. Doc. E/CN.4/Sub.2/1986/7/Add.4(1949) (emphasis added).

22. *Id.* at 657-58.

23. G.A. Res. 1514 (XV), U.N. GAOR, 15th Sess., at 66 U.N. Doc. A/4684 (1960).

In 1965 the Convention on the Elimination of All Forms of Racial Discrimination was adopted, establishing the first international human rights treaty monitoring mechanism. Problems facing indigenous peoples started figuring strongly in UN debates.

At the same time, through a new procedure, the United Nations revolutionized its relations with the nongovernmental world. The Economic and Social Council decided to accord special rights of participation in its work to NGOs interested in and in the position to contribute to the work of the Council and its subsidiary bodies.<sup>24</sup> Shortly thereafter, the Council also decided to enlarge the mandate of the Commission on Human Rights by enabling it to examine, on a case by case basis, specific allegations of human rights violations submitted by individuals and NGOs.<sup>25</sup>

As more voices were raised against the plight of indigenous peoples, a major breakthrough occurred in 1970. The Economic and Social Council requested the Sub-Commission on Prevention of Discrimination and Protection of Minorities, a sub-organ of the Commission on Human Rights, to prepare a Study on the Problem of Discrimination Against Indigenous Populations.

Prepared under the name of Jose R. Martinez Cobo of Ecuador, as Special Rapporteur, this monumental and historic study took thirteen years to complete. The most voluminous United Nations study in the human rights area, it comprises twenty-four documents,<sup>26</sup> themselves based on thirty-seven monographs on countries from all parts of the world. The drafting process of this study was a key to the development of relations between the United Nations and indigenous peoples. It contributed significantly to the assertion by indigenous peoples of their own identities at the international level under the flag of universal human rights. A major consideration was that the study also had to reflect the views and aspirations of indigenous peoples about their own fate.

For this to occur, the drafter had to overcome not only the political and bureaucratic obstacles that were to be expected, but also the relative immaturity and weakness of the indigenous movement. In the early 1970s, the indigenous movement had basically just started in North America, Australia, and the Nordic countries of Europe. Had the United Nations study been completed within four or five years, the normal time for most such studies, the force of its conclusions and recommendations—no matter how progressive—would have stumbled into an historic vacuum. Thus the weak international indigenous movement could not have sustained the momentum

---

24. Res. 1296 (XLIV), U.N. ESCOR, 44th Sess., at 21, U.N. Doc. E/4548 (23 May 1968).

25. Res. 1503 (XLVIII), *supra* note 11.

26. The final version is contained in U.N. Doc. E/CN.4/Sub.2/1986/7 and Add.1-4. The conclusions and recommendations of the study, in Addendum 4, are also available as a United Nations sales publication (U.N. Sales No. E.86.XIV.3).

and pressed for concrete follow-up. Tribute and respect must be paid in this regard to Augusto Wilemsen Diaz, who was the substantive drafter of the study as a staff member of the United Nations Centre for Human Rights and who handled the drafting process with extraordinary sensitivity and wisdom.<sup>27</sup>

The process of preparing the study created new bonds and alliances among indigenous peoples, who realized that they shared problems from similar historic injustices and that they had to act together at the international level. The first international meetings of indigenous peoples took place in 1977 in Alaska, Sweden, and Switzerland.<sup>28</sup>

As the UN study neared completion, the Economic and Social Council created the Working Group on Indigenous Populations, a sub-organ of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1982. The Working Group had a two-fold mandate: (a) to review annually recent developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous peoples; and (b) to develop international standards regarding the human rights of indigenous peoples.<sup>29</sup> Composed of five human rights experts of the Sub-Commission from different regions of the world, and not a monitoring human rights body, very few state and nongovernmental representatives initially attended the Working Group. It became clear early in the process that no meaningful work could be accomplished by the Working Group if it did not hear directly from those most concerned, the indigenous peoples themselves. In a step unprecedented before and after in the United Nations, the Working Group agreed that representatives of indigenous peoples and organizations, even those not fulfilling the formal requirement of "consultative status with the Economic and Social Council," as per ECOSOC Resolution 1296 (XLIV), could directly participate in the debates of the Working Group.<sup>30</sup> This extraordinary procedure received the acquiescence of the parent bodies of the Working Group—the Sub-Commission, the Commission on Human Rights, and the

---

27. Augusto Wilemsen Diaz, a Guatemalan jurist, now retired from the United Nations, is considered "the father" of the United Nations Working Group on Indigenous Populations. He is currently Chairman of the United Nations Voluntary Fund for Indigenous Populations.

28. Hannum, *supra* note 9, at notes 44, 45, and 46.

29. Res. 1982/34, U.N. ESCOR, 1st Regular Sess., at 26, U.N. Doc. E/1982/82.

30. The informal presence in 1982 and 1983 of indigenous representatives among the public of the meetings of the Working Group and the moral pressure which this presence exercised, prompted the Working Group to decide that starting in 1984 the "doors" of the Working Group would be opened to hear such representatives. This decision was never formalized in writing and did not include the right for indigenous representatives to submit written statements and to have them translated into all the official UN languages and appear as UN documents. At the early stages of this novel procedure, several governmental observers of the Working Group including Brazil and Peru, at different times threatened to discontinue according this privilege to indigenous representatives by intervening at the higher bodies, namely the Commission on Human Rights and the ECOSOC. However, this never materialized.

Economic and Social Council—and has been followed since. Thus, while in 1982 and 1983 only some fifteen NGO representatives participated, by 1993 the participation rose to over 400. This group was composed of representatives of indigenous peoples, indigenous peoples' organizations, human rights organizations, experts on human rights, and individual scholars and activists.

Indigenous representatives come to the Working Group from all parts of the world, although participation from Africa is very recent and scarce. The UN Study on Indigenous Populations had recommended that a separate report be prepared for the indigenous people of Africa, but this never materialized. At the second session of the Working Group in 1983 an NGO came, intending to present the case of the Eritreans, but was persuaded that the Working Group was not the appropriate forum for this. A similar approach was taken when the PLO originally showed interest in the Working Group.

The Working Group, which meets every year for two weeks in Geneva, Switzerland at the end of July, has become a major international forum for indigenous peoples' rights because of the increasing pressure and participation of indigenous nations and organizations. Through their participation in the Working Group, many indigenous organizations have strengthened their indigenous identity by sharing the same forum as state representatives and UN human rights experts. They have the opportunity to inform the Working Group directly about the problems they are facing and to express their opinion about what the Declaration on the Rights of Indigenous Peoples should contain.<sup>31</sup> In 1985 the United Nations set up a Voluntary Fund for Indigenous Populations to facilitate the travel to Geneva of indigenous representatives who would otherwise not be able to participate in the Working Group. The fund sponsors some thirty such representatives annually.

A major benefit that indigenous peoples draw from their participation at the UN Working Group and, of course, at other major indigenous conferences, is the strength that accompanies the awareness of common problems, common struggles, and international solidarity. Indigenous leaders whose communities are impoverished, marginalized, and often persecuted find a supportive audience at the international level and are strengthened by common goals and strategies.

It is interesting to note that in this process the universality of international human rights norms is not at stake. The representatives of numerous indigenous cultures identify common problems such as land, non-observance of treaties by states, and cultural oppression, and talk about their similar values and vision of the world, for example, attachment to and respect for nature, and community solidarity. They similarly espouse the human rights principles

---

31. The most recent draft as it now stands is reproduced in the 1992 report of the Working Group on Indigenous Populations (U.N. Doc. E/CN.4/Sub.2/1992/23).

and norms of the Universal Declaration of Human Rights. Through the ten years of participation in a framework set by states (i.e., the United Nations) and exposure to the rhetoric of International Law, also a creation of states, indigenous people recognized their own aspirations in the universal human rights norms. Indigenous people have criticized governments and measured governmental practices against those norms. The problem, as they see it, is that governments violate the Universal Declaration of Human Rights regarding indigenous people. Indigenous representatives do not question the values of the Universal Declaration of Human Rights, but seek their application in their own situation.

#### **IV. SOME KEY ISSUES IN INTERNATIONAL DEBATES ON INDIGENOUS PEOPLES**

Much of the discussion on the human rights of indigenous peoples over the past ten years has focused on issues linked with their identities. Apart from their demand for respect for their fundamental right to life and the end to genocidal practices, indigenous representatives have stressed the importance of self-definition, the respect for their land and natural resources, the honoring of treaties and other agreements that indigenous peoples concluded with states and, in differing degrees, the right to self-determination. A text of the draft "Universal Declaration on the Rights of Indigenous Peoples" largely reflects indigenous participation and the views of the UN expert members of the Working Group. With a few exceptions, the participation of states in the drafting process has been sparse. Although some thirty states attend the Working Group every year, they appear to be mainly concerned with answering the criticisms of indigenous organizations rather than with the elaborating on the draft Declaration. Clearly, states intend to intervene actively in the process once the draft Declaration leaves the Working Group of UN independent human rights experts and reaches the Commission on Human Rights, an intergovernmental forum that the states can control more directly. In 1993 the Working Group completed the draft Declaration.

##### **A. Definition of Indigenous Populations**

The working definition originally proposed by the United Nations Study on Indigenous Populations linked the concept of indigenous populations to the history of classical colonialism.

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

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

- (a) Occupation of ancestral lands, or at least of part of them;
- (b) Common ancestry with the original occupants of these lands;
- (c) Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, life-style, etc.);
- (d) 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);
- (e) Residence in certain parts of the country, or in certain regions of the world;
- (f) Other relevant factors.

On an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group).

This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference.<sup>32</sup>

From the beginning, the Working Group on Indigenous Populations adopted a flexible, progressive approach to definition, because the information brought before it included situations, such as the tribal peoples of Bangladesh and India, that could not be included in the historical context of classical colonialism. The same is true about the appearance of African indigenous representatives before the Working Group in recent years, such as the Touareque from Mali; Kwanyama Tribe and the Rehoboth Baster Community of the Republic of Namibia; Ogoni from Nigeria; Minorities Twa Du from Rwanda, East Pastoralist, Hadzabe People, Korongoro Integrated Peoples Oriented to Conversation and Tanganikeld People from Tanzania; the Southern Sudan Group; and the Sengwer Cherangany Cultural Group and Maa Development Association from Kenya.<sup>33</sup> China, India, Bangladesh, and

---

32. 5 UN Study on Indigenous Populations, *supra* note 17, at 50-51.

33. U.N. Doc. E/CN.4/Sub.2/1993/36, 41th Sess., at 4; E/CN.4/Sub.2/1990/62, 42d Sess., at 4; E/CN.4/1991/40/Rev.1, 43d Sess., at 3; E/CN.4/1992/33, 44th Sess., at 3 and E/CN.4/Sub.2/1883/29/45th Sess., at 5.

originally, the Soviet Union fiercely resisted this approach, denying that they had any indigenous peoples on their territory.<sup>34</sup> In fact, countries that sought to undermine the drafting of a declaration on indigenous peoples' rights insisted on adopting a definition of indigenous peoples first. When this proved to be extremely difficult, these countries suggested an indefinite postponement of any work on the substance of the declaration. Yet the United Nations in its forty-five-year-old history has not defined "minorities" nor "peoples" and this lack of definition was not crucial for its failures or successes in those domains.

Indigenous representatives themselves have denied the need for a definition, nationally or internationally, and insist on self-definition. The present draft Declaration on the Rights of Indigenous Peoples<sup>35</sup> does not include an international definition, thus recognizing the right to self-definition and the peoples' right to determine their own membership. Article 8 of the draft provides that: "Indigenous peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such."<sup>36</sup> ILO Convention 169, in Article 1, states the following in the form of definition:

This Convention applies to:

(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

Indigenous peoples, it should also be underlined, reject their equation with minorities, and one of the reasons is that in several states they constitute majorities. This distinction was also accepted by Jules Dechenes, Member of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, who presented a proposal on the definition of the term "minority" in 1985.<sup>37</sup>

---

34. *Id.*

35. U.N. Doc. E/CN.4/Sub.2/1992/33.

36. *Id.* at 53.

37. The paper prepared by Judge Jules Dechenes, Canadian expert of the Sub-Commission, appeared in U.N. Doc. E/CN.4/Sub.2/1985/31. See in particular 6-7.



On 24 October 1991, United Nations Day, the Home Rule Parliament of Greenland adopted a resolution reiterating the distinction between indigenous peoples and minorities as follows:

It is important that the world's indigenous peoples have fundamental human rights of a collective and individual nature. Indigenous peoples are not, and do not consider themselves, minorities. The rights of indigenous peoples are derived from their own history, culture, traditions, laws, and special relationship to their lands, resources and environment. Their basic rights must be addressed within their values and perspectives.<sup>38</sup>

The 1989 UN Seminar on the effects of racism and racial discrimination on the social and economic relations between indigenous peoples and states included the following:

(k) Indigenous peoples are not racial, ethnic, religious and linguistic minorities;

(l) In certain States the indigenous peoples constitute the majority of the population; and in certain States indigenous peoples constitute the majority in their own territories.<sup>39</sup>

Indigenous representatives always stress that they are "peoples" and not merely "populations" or "groups." Having become familiar with modern international law, they are well aware that the right to self-determination is recognized for "peoples." In any case, many of them in the past were viewed by states as sovereign nations and thus several treaties were concluded with them.

The terms "native," "indigenous," "aboriginal," "tribal," or "Indians" are used almost interchangeably because all of them have the imperfection of having been given by outsiders. The names that indigenous peoples call themselves (Yanomami, Sioux, Penan, etc.) and in most of their languages mean "human being." Indigenous representatives often prefer the generic term "people of the land."

## B. The Right to Land and Natural Resources

Considered by indigenous peoples as a means of both physical and cultural survival, respect for their right to land is a fundamental concern that they consistently bring to international fora. Apart from their deeply rooted

---

38. Quoted in "Status and Rights of the James Bay Crees in the context of Quebec's Secession from Canada," submission to the Commission on Human Rights, February 1992, at 63.

39. U.N. Doc. E/CN.4/1989/22, ¶¶ 40 (k) & (l), at 11.

philosophy of respect for the earth and all living things, indigenous peoples also advance their concept of communal ownership of the land which is quite different from the concept of private property under contemporary legal doctrine.

Far from being only past history, the seizure of indigenous lands by states continues, as well as their seizure through state-condoned private actors. Even today, environmentally disastrous practices of states or private companies exploit and devastate indigenous lands. Ancestral sacred cultural sites are still inaccessible to those who revered them since time immemorial, some of them open only to tourists. And, still today, hundreds of thousands of indigenous people around the world are obliged to flee their territories, and die or find themselves as destitute refugees or slum dwellers at the outskirts of cities.

While land and natural resources are for indigenous peoples a matter of life or death, both physically and culturally, they are at the same time at the center of states' perceived economic, political, and even military interests. Therefore, while states under international and other pressure will more easily agree to respect indigenous languages or religions, land and natural resources will continue to be the battlefields of the dirty and undeclared wars against indigenous peoples.

The revised ILO Convention No. 169 provides, in Article 14, that: "1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised...; 2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession."<sup>40</sup> Article 15 provides that: "1. The rights of the peoples concerned to the [natural] resources pertaining to their lands ...shall be specially safeguarded. These rights include the right of these peoples to participate in the [use], management and conservation of these resources."<sup>41</sup> The ILO Convention does not recognize the exclusive right of indigenous peoples to the natural resources of their land.

The United Nations draft Declaration on the Rights of Indigenous Peoples stipulates in article 25: "Indigenous peoples have the right to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal areas, and other resources which they have traditionally owned or otherwise occupied or used, and to uphold their responsibilities to future generations in this regard."<sup>42</sup> Moreover the draft recognizes that:

---

40. International Labour Organisation, Convention No. 169, art. 14.

41. *Id.* at art. 15.

42. Working Group, *supra* note 31, at 48.

Indigenous peoples have the right to own, develop, control and use the lands and territories including the total environment of the lands, air, water, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally occupied or otherwise used. This includes the right to the full recognition of their own laws, traditions and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with alienation of or encroachment upon these rights.<sup>43</sup>

The draft Declaration also calls for the restitution of the lands or, where this is not possible, establishes the right to just and fair compensation for lands, territories, and resources that have been confiscated, occupied, used, or damaged without their free and informed consent.<sup>44</sup> The draft also includes a prohibition of military activities and the storage and disposal of hazardous materials on indigenous lands unless specifically agreed upon.<sup>45</sup>

The requirement of genuine participation of indigenous peoples in any decisionmaking process regarding their lands and material resources within the state in which they live is a fundamental principle underlying all the relevant articles of the draft Declaration. In fact, the issue of full participation of indigenous peoples in the dominant society and of true power-sharing has been a crucial demand that their representatives have always emphasized at international fora.

### C. The Right to Practice Indigenous Cultures

Twelve of the forty-five articles of the draft Declaration on the Rights of Indigenous Peoples refer to the right of indigenous peoples to assert their cultural identity and practice their traditions, including their religion, languages, and arts and the traditional right to maintain and develop their cultural structures and institutions. The draft Declaration proclaims the indigenous peoples':

[C]ollective and individual right not to be subjected to ethnocide and cultural genocide, including prevention of and redress for (a) any action which has the aim or effect of depriving them of their integrity as distinct societies, or of their cultural values or ethnic identities; (b) any action which has the aim or effect of dispossessing them of their lands, territories or resources; (c) any form of population transfer which has the aim or effect of violating or undermining any of their rights; (d) any form of assimilation or integration by other cultures or ways

---

43. *Id.* at art. 23.

44. *Id.* at art. 28.

45. *Id.* at art. 28.

of life imposed on them by legislative, administrative or other measures, and (e) any form of propaganda directed against them.<sup>46</sup>

The right to land and natural resources is inextricably linked with the right of indigenous peoples to survive as such. Indigenous culture, religion, and spirituality are so connected with the land that deprivation of land is tantamount to deprivation of indigenous identity and culture.

The draft Declaration declares access to all levels of education and the establishment and control of their own educational systems and institutions to be fundamental rights of indigenous peoples.<sup>47</sup> At the same time, the right is recognized "to have the dignity and diversity of [indigenous] cultures, traditions, histories and aspirations appropriately reflected in all forms of education and public information."<sup>48</sup> The use of and access to all forms of mass media in the indigenous languages is also established as a right.<sup>49</sup>

The draft Declaration also calls for the recognition of the full ownership, control and protection of the cultural and intellectual property of indigenous peoples. Indigenous peoples "have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs and visual performing arts."<sup>50</sup> A UN study is now under way by the Chairperson of the Working Group on Indigenous Populations, Erika-Irene Daes, the Greek human rights expert of the Sub-Commission, on Ownership and Control of the Cultural and Intellectual Property of Indigenous Peoples.<sup>51</sup>

The debates at the Working Group and their reflection in the draft Declaration have treated indigenous cultures and traditions as living and dynamic. References are repeatedly made to the right not only to preserve but also to develop past, present, and future manifestations of indigenous cultures.

The Working Group, implicitly more than explicitly has asked whether universal human rights norms developed by the United Nations apply within indigenous communities and how conflicts between universal norms and indigenous traditions are solved. Hannum has pointed out that "customary international law would be applicable to any indigenous state and possibly to indigenous or other autonomous communities within states."<sup>52</sup> In any

---

46. *Id.* at art. 7.

47. *Id.* at art. 15.

48. *Id.* at art. 16.

49. *Id.* at art. 17.

50. *Id.* at art. 29.

51. The first draft of the study was presented in 1991 to the Sub-Commission on Prevention of Discrimination and Protection of Minorities (U.N. Doc. E/CN.4/Sub.2/1991/34).

52. See Hannum, *supra* note 7, at 673-74.

case, he continues, this issue creates no greater problems than those encountered in many other states or cultures.

The text of the draft Declaration has been drafted with the very active participation of indigenous representatives and has clearly opted for the supremacy of the universal human rights norms. Article 33 directly refers to this issue. It provides that "[i]ndigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive juridical customs, traditions, procedures and practices, in accordance with internationally recognized human rights standards."<sup>53</sup> This acceptance of international human rights norms by indigenous peoples should in fact come as no surprise since the parallel historic example of new states in the 1950s and 1960s confirmed the same trend. Namely, the new states created in the post-war decolonization era saw their ideals reflected in the Universal Declaration of Human Rights and were in fact instrumental in the adoption in 1966 of the two International Covenants, the one on Economic, Social and Cultural Rights and the other on Civil and Political Rights.

#### **D. Treaties Between States and Indigenous Peoples**

The non-respect of treaties concluded by the colonial powers and indigenous peoples has been consistently denounced by the latter. The very existence of these treaties proves to the indigenous peoples that states viewed them in the past as nations vested with sovereignty and with the competence to conclude international agreements. Besides, indigenous representatives and others repeat that the concept of "terra nullius"<sup>54</sup> has long been rejected and that indigenous nations should be respected as sovereign. A UN study is now underway by Miguel Alfonso Martinez, the Cuban human rights expert of the Sub-Commission and member of the Working Group, devoted to Treaties, Agreements, and other Constructive Arrangements between States and Indigenous Peoples.<sup>55</sup> The draft Declaration states that:

Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, according to their original spirit and intent, and to have States honour and respect such treaties, agreements and other constructive

---

53. Working Group, *supra* note 31, at art. 33.

54. According to the theory of "terra nullius," territories first "discovered" by a European state could become colonies of such state even if native people lived in those territories. An historic decision repudiating the "terra nullius" doctrine was made by the Supreme Court of Australia in 1992. 1992, 175 Commonwealth Law Records 1, Mabo No. 2.

55. The most recent draft of the study is in U.N. Doc. E/CN.4/Sub.2/1992/33.

arrangements. Conflicts and disputes which cannot otherwise be settled should be submitted to competent international bodies agreed to by all parties concerned.<sup>56</sup>

### E. Self-determination and Autonomy

While the United Nations has recognized the right of peoples to self-determination, it has not defined the term "peoples." Some states are reluctant to accept the term "peoples" when referring to indigenous nations because of the implicit threat of demands for self-determination, perceived by some as possible secession. Due to the diversity of their circumstances, indigenous peoples' own desires vary significantly as to the degree of autonomy or self-determination that they pursue: from administrative or local autonomy over matters such as education, health, public services, to the full-fledged right to determine their own mode of development and their relation to the state.

The current draft Declaration on the Rights of Indigenous Peoples in article 3 states that "[i]ndigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and institutions and freely pursue their economic, social and cultural development."<sup>57</sup> Moreover, article 31 provides that:

Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their international and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.<sup>58</sup>

In a 220-page submission to the Commission on Human Rights in February 1992, the Grand Council of the Crees of Quebec, who found themselves in the middle of the recent Canadian constitutional crisis, made an interesting analysis of their right to self-determination. Among its conclusions, the report states that:

8. A state may include more than one "people," each of which is entitled to the exercise of the right to self-determination. The right to self-determination of each people must be recognized and respected in accordance with international law, without discrimination.

---

56. Working Group, *supra* note 31, at 52.

57. *Id.* at art. 3.

58. *Id.* at art. 31.

9. In the context of Quebec, the Quebec people and indigenous peoples constitute "peoples" under international law. The reality is that there are potentially conflicting claims to self-determination and territory that must be impartially and equitably addressed.

10. The right to self-determination is not absolute. It does not automatically include the right to secede from the Canadian federation. In each specific case, there may be various other international principles that must be taken into account. Although the world situation is changing, most jurists or publicists do not currently recognize an unlimited right to secede under international law in all cases.

31. The ongoing colonized treatment of indigenous peoples by Canada and Quebec serves to significantly strengthen the chain of indigenous peoples to external self-determination under international law. Colonialism in all of its manifestations has been unanimously condemned by the United Nations and all its Member States. The internationally recognized remedy to achieve decolonization is self-determination.<sup>59</sup>

The Home Rule Government of Greenland has provided a model of full autonomy short of independence. In September 1991 a UN Human Rights Seminar was held in Nuuk, Greenland, on the Experience of Countries in the Operation of Schemes of Internal Self-government for Indigenous Peoples. Among the other conclusions, the Meeting of Experts shared the view "that indigenous peoples constitute distinct peoples and societies, with the right to self-determination, including the rights of autonomy, self-government, and self-identification."<sup>60</sup>

Whatever the arguments of states will be in the continuing process of drafting of the "Universal Declaration on the Rights of Indigenous Peoples," it will be very difficult for them to contend that indigenous peoples are not peoples and as a result they would not be entitled to self-determination. The criticism of arbitrariness and double standards would definitely undermine any such argument. It is true that ILO Convention 169 has already followed this undefendable route and in its first article states that "the use of the term 'peoples' in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international [law]." It must be remembered, however, that the United Nations, not an ILO forum, is the appropriate forum for debating and solving the fundamental question of self-determination. In that sense, the ILO Convention cannot be considered as prejudging the final result in the UN Declaration on the Rights of Indigenous People. It seems in any case that the debate over self-determination can

---

59. "Status and Rights of the James Bay Crees in the context of Quebec's Secession from Canada," *supra* note 38, at 181, 186.

60. U.N. Doc. E/CN.4/1992/42, at 11.

hardly be based on whether indigenous peoples are peoples, because they clearly fulfil the generally accepted preconditions of peoples. The debate over self-determination should rather focus on its contemporary content. In that context, the opponents of collective rights must review their positions. At a time when ethnic conflicts threaten to dismember countries, the recognition of collective rights within the *state*, including the right to self-determination, may be the only way to maintain the integrity of the state. If a people cannot express its self-determination within a state by deciding on its mode of development, fully participating in the political, economic, and other institutions or exercising the right to autonomy in internal and local affairs, then logically the only other way of exercising self-determination would be outside the state. The point here is hardly to defend the sanctity of the state, nor for that matter to suggest that the creation of numerous mini-states, one for each people, is the solution to the problems of humanity. The aim is to stress that, in this world of rapid transformation, states and peoples alike must rethink the meaning of the right to self-determination and its link to democracy and all human rights and fundamental freedoms.

The debate about self-determination of indigenous peoples has one major advantage over the debate of minorities. Minority issues have often involved conflicts between neighboring states, have been exploited in the form of hostile propaganda by one state against another, and have threatened international peace. The result has been the over-politicization and rigidity of positions. Indigenous peoples' issues, on the other hand, have rather been of an internal nature to states, and have not involved bilateral or multilateral relations. While this might have contributed to the relatively low political profile of their problems by comparison to those of minorities, this is conducive to a more equitable consideration of legal issues regarding indigenous peoples, such as self-determination. In any case, it is clear that in the future indigenous representatives at the United Nations will strongly press for the final recognition of the right to self-determination. Whatever the interpretation of that right, its recognition will enhance indigenous peoples' position and negotiating power in the states in which they live.

## V. CONCLUSION

The Working Group on Indigenous Populations completed the draft Declaration on the Rights of Indigenous Peoples in 1993. A working group is expected to be established at the level of the Commission on Human Rights, composed of state representatives as opposed to the individual human rights experts of the Sub-Commission, to further elaborate the draft Declaration. The key question is not so much the extent to which states will try to weaken the present draft, but how indigenous representatives will be able to participate



fully, just as they have in the Working Group of the Sub-Commission. The political climate in 1993 augured well for their participation. The fight at the future working group of the Commission on Human Rights will clearly be more difficult since states are expected to fully express their positions then and try to control the process. The direct voice and massive participation of indigenous representatives combined with the right tactics should prevent a major weakening of the text.

With the rise of the indigenous movement internationally, political expediency has pushed states into the gradual acceptance of indigenous peoples rights at United Nations fora. As has been the case with minorities,<sup>61</sup> many states have generally preferred the recognition of rights and a democratic dialogue to the outburst of violence and its impact on the country as a whole. Of course, from the declaration of principles to their implementation, there is certainly a long and difficult road. Yet the formal international recognition of global human rights vis-a-vis indigenous peoples strengthens their struggle and the hand of those who try to help them, including the United Nations. The era of universally accepted human rights will perhaps give birth to a world where the inevitable rise and fall of empires, superpowers, or other states will not necessarily mean the disappearance of human civilizations.

---

61. After decades of inaction and the stagnation of a draft, "Declaration on the Rights of Persons belonging to National, Ethnic, Religious or Linguistic Minorities" for more than ten years at the United Nations Commission on Human Rights, quick progress has been obvious after the end of the Cold War and the resurgence of nationalism. At the end of 1992, the General Assembly adopted the Declaration (G.A. Res. 47/135, U.N. GAOR, 47th Sess., U.N. Doc. A/RES/47/135 (1993)).