HOW INDIGENOUS PEOPLES’ RIGHTS REACHED THE UN

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Introduction

Friends and colleagues, both indigenous and non-indigenous, have often insisted that I should write down for posterity how I came to offer my professional services to the UN and my personal experiences of initiating the work that I tried to achieve within the UN with regard to indigenous rights: the goals, aspirations and ways and means of channelling the UN’s efforts in relation to indigenous peoples. I will here try to satisfy their curiosity. I have to confess that it has been strange and rather difficult to express these things in the first person singular but these are “personal experiences” which, necessarily, the person talking or writing has to express in this way.

Drawing the UN’s attention to indigenous peoples

I was a post-graduate student at the Latin American Law Institute at New York University in the 1950s when a notice appeared on the news board stating that the UN was seeking lawyers with mother-tongue Spanish, and interested parties were invited to attend an interview on the days indicated. I duly attended the UN offices where, after three days of interviews, I was offered a contract in what was then the Human Rights Division, an area that had always attracted me. I was employed to work in the General Secretariat as a Human Rights Officer, basically conducting research and writing documents. I was assigned to the section working with the Sub-Commission for Prevention of Discrimination and Protection of Minorities (the Sub-Commission). At that time, the Sub-Commission had decided to prepare studies into discrimination in relation to specific rights, under the responsibility of different members of the Sub-Commission as Special Rapporteurs.

Relevant international legal precedents for indigenous peoples’ rights

Some of the international instruments that would become important to the indigenous rights movement included articles 1(3), 13 (1, b), 55 and 56, among others, of the UN Charter of 1945 as they recognised the principle of equality of rights and self-determination of peoples. Then, on 10 December 1948, by means of Resolution 217 A (III), the UN General Assembly (UNGA) adopted the Universal Declaration of Human Rights. It had also, the day before, on 9 December of that year, adopted the Convention on the Prevention and Punishment of the Crime of Genocide, via UNGA Resolution 260 (III). Among the relevant human rights instruments adopted in the 1960s were the International Convention on the Elimination of All Forms of Racial Discrimination (1965) and, of greater importance, the two international human rights covenants (1966). The latter have their identical Article 1 enshrining the right of all peoples to self-determination as a fundamental human right, thus reaffirming earlier UNGA resolutions from 1950 and 1952 in this regard.
Outside of the UN itself, but also positive, were the instruments and work of specialist bodies such as the International Labour Organisation (ILO). This included the ILO’s work on indigenous workers, first in a colonial context and later also in independent countries. The UN Educational, Scientific and Cultural Organisation’s Convention against Discrimination in Education was also important, adopted by the General Conference on 14 December 1960, and in force since 22 May 1962.

In this respect, it should be noted, as background, that in 1948 the Bolivian delegation presented a proposal to create a sub-commission responsible for the social problems of indigenous peoples on the American continent. This initiative was reviewed, amended and reviewed again and then turned into a proposal to conduct a study into the issue, to be undertaken with the advice, cooperation and assistance of the UN specialist bodies. This study never got off the ground. It did, however, illustrate that there was some interest in the issue at that time on the part of some countries.

The need for specific indigenous peoples’ rights

Indigenous peoples have inhabited my country, Guatemala, since time immemorial and these peoples were determined to maintain and protect their different identity, their own culture, customs, traditions and institutions, as well as their lands and territories, which had been the object of attempted usurpation and dispossession. They were, furthermore, calling for respect. As I was working in the area of human rights, it occurred to me that perhaps what was needed was work on recognition and respect for indigenous rights from an angle that was closer to their desires and aspirations. I felt it was particularly important that indigenous peoples’ specific collective way of viewing the cosmos and themselves, their different world view, should be respected, in particular in relation to respect for Mother Earth and nature, which is of vital importance to them. I therefore devoted myself to this issue, in the confidence that success was possible, while fulfilling my obligations as a civil servant within the UN General Secretariat.

From 1977 onwards, in pursuit of an ideal that I considered to be a realistic one, we were able to rely increasingly on the enthusiastic, devoted, brilliant and effective struggle of indigenous peoples and their members, as well as on the international indigenous movement that was forming and growing around this task. The aim was clear: to achieve, insofar as possible, daily progress towards obtaining recognition of indigenous peoples as historic and living peoples, along with their human rights and fundamental freedoms, with particular emphasis on their collective, historic and specific characteristic rights which have, throughout history, always contributed to the well-being and integral development of humanity as a whole, in an atmosphere of understanding and solidarity between all, with respect for differences.

The need for specific indigenous peoples’ rights became particularly apparent to me when I learnt that ILO two texts, one a convention and the other a recommendation on indigenous peoples and others, referred to indigenous peoples as “populations”. The terms and content of these instruments were not favourable to indigenous peoples as they referred to “integration” and “protection”, evolving different and, in practice, contradictory ideas to those being advocated to indigenous peoples, at least those in my country and others that I knew of. I knew that in daily life (at least where I came from), integration was more akin to ideas and practices of assimilation and disappearance. I thought that protection would, in all probability, imply a continuation of the colonialisatio and neo-colonialist tutelage of the nation states in which these peoples lived, as they remained settled on their ancestral territories, now within the jurisdiction of those independent states. These ideas were contradictory to what we knew full well indigenous peoples were fundamentally seeking.

I thought that it might be possible to act from within the UN, with other like-minded people, to change these directions and guide them instead towards concepts of equal rights and self-determination of peoples on the basis of respect for differences (instead of “integration”) and strict compliance with human rights legislation in their regard. I hoped to provide indigenous peoples’ land ownership and possession with security and stability and to offer support to indigenous peoples’ own authorities and regulations, as well as to the age-old forms of organisation and integrated development models they had so successfully applied (instead of “protection”).

I decided that it was first necessary to bring the issue of indigenous rights to the attention of the UN’s human rights bodies and organs with the aim of giving direction to the instruments that might be adopted and to the actions that could be taken on the issue within the UN itself, offering goals that were more congruent with the aspirations and hopes of the indigenous peoples. To bring these efforts to fruition, I saw the need to work in areas where action was possible and that more clarity and precision would be achieved.

Indigenous peoples’ participation in international processes

Indigenous representation was lacking both in the UN’s conference rooms and its studies, and indigenous friends and acquaintances that I discussed the issue with at the time showed no interest in the work of the UN’s human rights bodies and organs, nor in the studies being prepared. They saw this as a complicated matter and felt they had enough problems on their hands with the actions being taken by their governments domestically. My indigenous colleagues were not eager t
endure the lack of recognition and denial of their rights and freedoms that would certainly be dealt them by governments acting together at the international level. In support of their position, they insisted that the UN was an intergovernmental organisation whose member states were failing to recognise the fundamental rights of indigenous peoples, and who were committing different abuses against them. I argued that there were certainly at least a few UN member states that might be interested in helping to address violations of indigenous peoples' human rights and fundamental freedoms, and of their rights as historic peoples, and to assist in aspects of their work in foreign domination on their own ancestral territories. I told my indigenous friends that, in my opinion, the only way of knowing how member states would react to their presentation of information to the UN was by participating in the sessions of the UN bodies and organs and outlining some of their main problems.

My indigenous friends stated that they had no way of participating in UN sessions as they were not accredited, and were being ejected if they turned up. I suggested that this problem could initially be overcome by participating as nongovernmental organisations (NGOs), for which they could seek official UN consultative status. Of course I knew full well that indigenous peoples were not NGOs per se but I suggested that it was perhaps a way of making their voice and information, their points of view, complaints and suggestions heard within UN organisations, and that such a form of consultation would allow them to participate in another form of their true nature as indigenous peoples. I added that while indigenous organisations were obtaining this consultative status as NGOs, they could perhaps convince some friendly NGOs to give them a few minutes of their time in oral interventions and a few paragraphs in the written documents they were presenting, enriching their presentations by adding information on indigenous peoples. Some time later, when my indigenous colleagues had agreed to look into this option, I spoke with representatives of various NGOs. The Anti-slavery Society and the International Commission of Jurists quickly stated their willingness. However, some national indigenous peoples' organisations soon acquired consultative status from the NGO Committee in New York.

Equally, at the same time, the lack of UN commitment to indigenous issues was apparent within the Secretariat. When I requested authorisation to travel to Georgetown, Guyana, in response to an invitation to a meeting being organised by the National Indian Brotherhood of Canada, to initiate the process of their conversion into the World Council of Indigenous Peoples, the Division refused to allow me to attend. They stated that the process was by no means a clear one, and that it was not known what results would be obtained nor whether there would be complaints against UN member states, in what terms, and that it was not appropriate for members of the General Secretariat to participate in this kind of meeting, even as observers (the capacity in which I had been invited).

Indirect ways of speeding up the process to secure indigenous peoples' access to the UN did, however, begin to be considered. It was concluded that one way of clearly guaranteeing an indigenous presence in the UN's conference rooms and documentation was to ensure their representatives' involvement in meetings at which their participation was explicitly anticipated and to which they could present their views in person. This was stated in sessions that they considered important. In these sessions, I stated my firm belief that they would be directly listened to as they would be using their own voices to express what was in their hearts and minds, without the distortion of any intermediary.

In 1974, with the UN Human Rights Division having moved from New York to Geneva, in Switzerland, I was in contact with the Special Committee for nongovernmental organisations on human rights and its Subcommittee on Decolonisation and against Racism, Racial Discrimination and Apartheid, and also with NGOs operating in Geneva, in the Palace of Nations and who were organising conferences on issues within their remit. I spoke to people regarding the possibility of organising a conference of NGOs on indigenous peoples' rights, and violations of them, in particular discrimination against them. The Subcommittee was enthusiastic about the idea, which they considered to be in line with the Subcommittee's aims and intentions. Among others, representatives of the World Council of Churches, and of the International Indian Treaty Council, in Geneva at that time, were involved in these talks.

It was decided to organise a conference along the lines of the ones already being held to address the issue of discrimination of indigenous peoples in the Western hemisphere, and NGOs with affiliate indigenous organisations were invited to attend, along with any that were in solidarity with indigenous peoples and who could send authentic indigenous representatives to the conference. It was agreed that these NGOs would be asked to send indigenous representatives with the hope of bringing together around 50 or 60 such participants. This conference, the International Conference of NGOs on Discrimination against the Indigenous Populations in the Americas, was held in the Palace of Nations, headquarters of the offices of the UN in Geneva, Switzerland, from 20 to 23 September 1977, with the participation of indigenous representatives (numbering more than doubled those invited). Reports were adopted from the different working groups established and from the conference itself, outlining the suggestions and proposals of the participants. Another meeting of the same kind followed later, the Conference of NGOs on Indigenous Peoples and Land, which was held from 14 to 17 September 1981, also at the Palace of Nations. A number of seminars on issues important to indigenous people also took place.

In 1981, a Meeting of Experts on Ethnocide and Ethno-development in Latin America was held from 6 to 13 December in La Catalina, Santa Bárbara de Her-
Preparation of a specific study on indigenous peoples

The Sub-Commission considered the study on racial discrimination at its 23rd session (1970). During the discussion, various members of the Sub-Commission supported the recommendation that the UN should conduct additional studies into the issue of the treatment of indigenous populations. Mr. Santa Cruz presented a draft resolution in which one of the four proposals called on the Commission to recommend that the Economic and Social Council (ECOSOC) authorize a study on minorities, including the issue of discrimination against 'indigenous populations'. As substantive officer assigned to the service of the Sub-Commission for the session and in my position as responsible for this within the General Secretariat, I was invited by Mr. Santa Cruz to be involved. I stated that I was happy that the idea of conducting a study on the rights of indigenous peoples, their enforcement problems and all the measures necessary for their consolidation and for overcoming the obstacles to their effectiveness had been accepted and supported. I disagreed, however, with the idea of linking it, as was suggested in the discussions, to another study dealing with minorities. I stated that although there were similarities between indigenous peoples and minorities, there were also significant differences. Among the arguments that I then put forward, and given that a purely numerical notion of "minority" prevailed in the UN environment, I cited the cases of Bolivia and Guatemala, indicating that the indigenous peoples of both countries formed a clear majority, representing more than 50% of the population, according to official data.

The draft resolution having been sent from the Sub-Commission to the Commission on Human Rights, it was considered at the Commission's 27th session in Geneva in 1971. It noted opposing points of view, as some were in favour of a separate study into discrimination of indigenous populations while others insisted that just one study should be undertaken, to include both the protection of minorities and the elimination of discrimination against indigenous populations together.

One person who had been a member of the Commission in the 1940s when it was drafting the Universal Declaration of Human Rights was present at this period of Commission on Human Rights sessions and - in part for this very reason - enjoyed a reverential respect from other Commission members. I managed to get him to agree to make a short declaration referring to the fact that, according to official statistics, in Bolivia and Guatemala, the country from which I came and which I represented in the Commission, indigenous peoples were in a vast majority of around 70% of the population and that this fact was reflected in the UN Population Yearbook, of which he left a copy with the Commission so that they could see that not all indigenous populations (peoples) were "minority groups" as some in the Commission had been stating. This had a great effect on the Commission members, in particular those inclined to conduct only one study, including experts on minorities.

On 21 May 1971, ECOSOC unanimously approved Resolution 589 authorizing the Sub-Commission to conduct a general and complete study into the problem of discrimination against indigenous populations and to suggest the necessary national and international measures by which to eliminate this. In its Resolution 8 (XXIV) of 18 August 1971, the Sub-Commission decided that the study would be placed under the responsibility of one of its members, appointing José Ricardo Martínez Cobo as Special Rapporteur, and requested a preliminary report on the matter to be presented to its 1972 session. The study was entitled "study of the problem of discrimination against indigenous populations." (the Cobo Indigenous Peoples Report). The preliminary report was presented as anticipated and the Sub-Commission approved it without amendment.

José Ricardo Martínez Cobo decided to leave the job of preparing the Cobo Indigenous Peoples Report to me. The final Cobo Indigenous Peoples Report was presented to the Sub-Commission at different sessions, the various chapters having been put together in three documents that were considered at its sessions in 1982, 1983 and 1984. The Sub-Commission approved Resolution 1984/35 of 30 August 1984 by which it described the study as a "highly valuable contribution to the clarification of basic legal, social and cultural problems relating to indigenous populations". On the recommendation of the Sub-Commission and the Commission on Human Rights, in its Decision 1985/137 of 30 May 1985, the ECOSOC called on the Secretary-General to publish the complete report in consolidated form and to disseminate it widely, and decided to print the report's conclusions, proposals and recommendations.

When determining the sources of information to be used for the Cobo Indigenous Peoples Report, it was suggested that wider information coming from scientific and academic bodies should be drawn on. From initial investigations into these and other sources, it was established that there were around 40 countries in which what we would regard as indigenous peoples were living and it was decided that, if possible, the study should include information on each and every one of them. In the end, only 37 countries were included. In addition, however, and this was an innovation in this kind of thematic study, it was proposed that, provided the Sub-Commission approved it and the respective governments agreed to receive them, visits would be made to some of the countries covered by the study. Visits were conducted to 11 countries.
It was also decided, with the approval of the Sub-Commission, to adopt the same practice as used in the above-mentioned earlier studies into discrimination conducted by the Sub-Commission, namely that of preparing summaries of the information available for each country, in the study. The process of meeting, selecting, classifying and ordering the materials and drafting these summaries, scrupulously following existing standards in this regard and covering each and every one of the issues included in the outline plan, was extremely laborious and complex given the difficult - and sometimes virtually impossible - access to existing data.

A particular issue that arose during the preparation of the Cobo Indigenous Populations Report was that of the classification of indigenous as peoples or populations. They had to be called populations instead of the more appropriate term peoples, which I had been using as a definite preference. The use of the word populations was required by the UN for a number of years, although I was always ready and waiting for the time when the more appropriate term peoples could be used, through a decision to change from within the UN.

The term “populations” had been previously used in publications and meetings of the International Labour Organisation and in the different conventions and recommendations adopted by that body (“poblaciones” in Spanish). The Study on Racial Discrimination, which was prepared under the responsibility of Hernán Santa Cruz, from Chile, contained a Chapter IX dealing with “Measures adopted in relation to the protection of Indigenous Peoples”. In drafting this Chapter IX, I had deliberately used the word “peoples” (“pueblos”). However, Chapter XIII of the Study on Racial Discrimination – “Conclusions and proposals” – included a Section B “Problems of the Autochthonous Populations”, to link it to Chapter IX, paragraph 1994 referred to “aboriginal populations” and the words “indigenous populations” were utilised throughout Section B, including three times in Paragraph 1102, which set out the proposal for the specific study on discrimination against “indigenous populations”. Populations was confirmed by the Special Rapporteur Santa Cruz – thus worded by him – for its inclusion in the final report on the Study on Racial Discrimination. With this, the term indigenous populations became part of the UN terminology, contrary to my endeavours to use the term indigenous peoples in Chapter IX of the Study. From then on, many UN member states with indigenous peoples living on territory under their jurisdiction only accepted the term indigenous populations, which had to be used in the Cobo Indigenous Populations Study, being the term authorised by the ECOSOC.

A great deal more could be said with regard to the content of the Cobo Indigenous Populations Study but this is neither the time nor the place. I must say that, in general, I was free to determine the content and order of the information obtained. The only exception was relating to indigenous peoples’ own legal systems and the exercise of jurisdictional powers by their communities and community authorities, which I was asked not to include in the chapter on justice administration, or rather only in minimal terms, as this had to be limited to state actions in this regard, in particular that of the judicial authorities. A good number of the issues included in the study are still topical and have lost no relevance in terms of their approach, treatment or written development, even though 30 to 40 years have now passed (1971 to 2009).

The Working Group on Indigenous Populations

The human rights bodies of the UN were paying little attention to establishing a mechanism to focus on indigenous peoples’ issues, even over the period when the Cobo Indigenous Populations Report’s different chapters were being presented each year to the Sub-Commission. Indigenous issues only received about 20 to 40 minutes of attention a year, when the Sub-Commission received the different reports we prepared. In essence, the information consisted of different substantive chapters of the Report and the visits made by the Special Rapporteur and to the 11 countries to meet with indigenous peoples and obtain direct, first-hand information for the study.

When the Working Group on Slavery was created in 1974 I realised that the basic mechanism that I was seeking to create could be a working group on indigenous peoples. Towards the end of 1974, a Symposium on the Future of Traditional Societies was held at Cambridge University, United Kingdom, to which I was invited by the organisers, the Anti-Slavery Society. It was held from 16 to 20 December and I attended with the aim of gathering information for the Cobo Indigenous Populations Report given that, for all intents and purposes, they could be described as traditional societies. I explained that it would be useful for the UN to create a working group, under the Sub-Commission and made up of five members of that body, one from each of the established UN geo-political groups, selected by their corresponding geo-political group and appointed by the Chair of that body, to deal exclusively with issues affecting indigenous peoples. Information and proposals would be presented to this working group by indigenous peoples’ genuine representatives, sent for this purpose by the indigenous communities and organisations. To enable this, the idea was to create a collatoral voluntary contributions fund that would help defray the costs and expense of travelling to Geneva and spending at least a week participating in the Working Group’s session. Given the high travel expenses for such participation, such costs could not be covered by indigenous communities anywhere in the world. I repeated that these were personal ideas that had thus far not been formally proposed at the UN, although I intended to do so shortly. Having returned to my work in Geneva following the symposium, I presented two texts: 1. my report on my involvement in the meeting; and 2. as separate text, a file note on the ideas for
a working group and fund to facilitate indigenous peoples' participation. Initiatives subsequently arose in this regard on repeated occasions and in different fora.

The time finally came when the ECOSOC, in its Resolution 1982/34 of 7 May 1982, authorised the Sub-Commission to establish an annual Working Group on Indigenous Populations (WGIP) to meet for a maximum of five working days prior to the Sub-Commission's sessions with the aim of:

a) ... examining events relating to the promotion and protection of the human rights and fundamental freedoms of indigenous populations,
b) ... [paying] special attention to changes in standards relating to indigenous rights.6

In the interests of a broader participation in the new and recently created mechanism, during the initial sessions of the WGIP in 1982 and 1983 I sought ways of opening it up to the involvement of indigenous peoples' nations, peoples, communities - and also to organisations that were obviously indigenous. I was concerned about the restrictive effect of the simplistic, across-the-board application of the requirement for consultative status with the ECOSOC, which had been strictly demanded for participation in the sessions of UN organs and bodies for more or less 30 years. Non-ECOSOC accredited indigenous peoples' representatives found it impossible to participate alongside other representatives in a WGIP that had been created explicitly and specifically to listen to them and their communities, to gather their contributions and take them into due consideration when conducting its important work, something completely new in the UN with regard to indigenous peoples. Their information, along with the information provided by representatives of the nations, peoples and indigenous communities, would be of great importance in terms of enabling the WGIP to fulfill its tasks appropriately. I felt it absurd, and contradictory in the extreme, to create a working group to listen to indigenous organisations' representatives and then to demand that they have consultative status before they could participate in its sessions, which was the same as destroying with one hand what you had just finished building with the other.

Of course, it was important to make sure that those who attended the WGIP were actually the real and legitimate representatives of those peoples and communities and that they were attending to provide information on their problems and contribute to ways of resolving them, either solutions that they felt possible or advisable or those arising from the discussions in the WGIP. I stated that I was sure that they would come in good faith and share as the solemn emissaries of their peoples without resorting to the deviances, excesses or abuses that some sectors feared could happen, given that this would be an historic opportunity to tell the world what was happening to them. Ways of ensuring that the WGIP's sessions were conducted in line with UN standards would be sought and most certainly found, without any kind of hitches, the WGIP always having the right to bring the behaviour of participants and the practices emerging in the sessions in line with the relevant regulations. These ideas were shared with different participants in the conference room where the WGIP's meetings were being held. A number of indigenous representatives in this situation decided to ask to speak at the sessions to see how the WGIP members would react and, if necessary, insist on their right to speak there. Meanwhile, at the same time, the same had been proposed individually to the WGIP members.

In their response to these conversations, three of the WGIP's members stated that they had no problem in allowing the representatives of indigenous organisations to talk at and participate in the WGIP sessions even if they did not hold consultative status, as they would provide important information to the WGIP, provided the other members of the WGIP also felt the same way, and they hoped that they would. When the WGIP members all came together to consider and decide on this issue of the participation of representatives from organisations without consultative status, they all repeated their respective positions. It was generally indicated that if they were allowed to participate, this would mean that the WGIP trusted those representatives to act in accordance with the UN's rules of procedure.

The then Chair of the WGIP, Asbjørn Eide (from Norway) in 1982 and 1983, proposed that they be allowed to speak with a proviso that the WGIP could take this permission away from them if they departed from the applicable procedures in the WGIP's sessions and that, if necessary, this would be done without hesitation. The other members of the WGIP agreed to this and supported the proposal without amendment. Having unanimously agreed to proceed in this way, at the next session of the WGIP the Chairperson announced this procedure, which was well received by the participants.

This broad openness on the part of the WGIP, which never had to be restricted, soon became a special - and perhaps its most important - feature, enabling the number of participants involved in the WGIP to become ever greater until it had reached, a decade later, around a thousand participants per session. This is highly unusual and extraordinary for a body at the level of a WGIP. It even leads 125 to confirm the relevance of it having been considered and named the point of entry for indigenous peoples to the UN and to a new kind of high-level dialogue between these peoples and the governments and international community and to the establishment of new methods of international cooperation. The WGIP performed these roles ideally due to appropriate goals, a clear and firm direction and the intervention of genuine indigenous representatives.

A number of governments also sent senior civil servants from their country's public administration, even from state ministries, to participate in the WGIP's sessions and they made formal statements on issues within their competence.
This marks an important stage in the struggle for respect, reaffirmation and promotion of the fundamental rights of millions of people, a struggle that began around 50 years ago, and in which the international indigenous movement - active in this process since the mid 1970s - has since 1978 been increasingly active and important through its effectiveness and efficiency, having taken on the predominant role it deserves in this.

As someone involved in this process, I found myself before a half closed door, one that did not wish to exclude anyone but which, however, prevented passage. I gave it a gentle nudge, and with some difficulty opened it a little. I will forever be thankful for that nudge because it opened up the possibility of thousands of people crossing that threshold, people representing the more than 300 million human beings whose rights were being violated and who needed to act to overcome this situation.

Once through the door, however, in the process of affirming their presence there, incorrect and manipulated terminology was initially used - such as indigenous populations - although the relevant terminological direction was never lost and, in the end, the use of the appropriate terms was recovered, preserved in hope yet always ready to reappear. The right to self-definition was claimed, combining subjective elements of self-identification and its complement, community acceptance. Insofar as was possible for a staff member of the General Secretariat within the procedures of a UN political body, I objected to discrediting indigenous peoples as historic peoples, which is what considering them as simple minorities would have meant. Lastly, the other door - ajar already and no more - was opened, enabling access to participation in the new specific mechanism, the establishment of which was achieved through repeated insistence on many occasions, over many years.

The international indigenous movement - now consolidated, albeit with some superficial cracks that it will be able to mend - will continue working, in all efficiency and suitability, in the UN and in the other existing fora, in order to guarantee future generations of indigenous peoples a dignified and significant future in which they will continue to contribute their bright lights and constructive directions to those generations and to humankind as a whole, for the good of all... onwards and upwards.

Notes

1 This text is an abbreviated version of a longer study on this issue to be published by the International Work Group of Indigenous Affairs.
2 The other 6 studies related, respectively, to discrimination in: political rights; freedom of religion and religious practice; the right of all people to leave any country, including their own and to return to their country; people born outside of wedlock; equality in justice administration; and the discussed racial discrimination.
THE CONTRIBUTION OF THE WORKING-GROUP ON INDIGENOUS POPULATIONS TO THE GENESIS AND EVOLUTION OF THE UN DECLARATION ON THE RIGHTS OF INDIGENOUSPEOPLE

Erica-Irene A Daes

Introduction

In May 1982, the Economic and Social Council (ECOSOC) authorized the former Sub-Commission on Prevention of Discrimination and Protection of Minorities (Sub-Commission) to establish the Working Group on Indigenous Populations (WGIP). It was composed of five independent experts, members of the Sub-Commission, coming from the five UN regions (Africa, Asia, Eastern Europe, Latin America and Western Europe and Others Group (WEOG)). According to its mandate, the WGIP would review current developments affecting the rights of indigenous populations and draft standards related to the recognition, promotion and protection of the rights and freedoms of the world’s indigenous peoples. For the first time, indigenous peoples had access to their own UN forum, which became a world forum for indigenous peoples’ movements. It was the place where everyone met and coordinated their world-wide efforts: the five members of the WGIP, representatives of the world’s indigenous peoples, government observers, members of non-governmental organizations (NGOs), academics and representatives of the Office of the High Commissioner for Human Rights (OHCHR) and its Secretariat. A free, liberal, democratic and constructive dialogue between all concerned took place, related in particular to issues outlined in its mandate, at every one of its meetings. Subsequently, the WGIP became the most open body in the UN system and a significant international forum. However, the WGIP did not have adjudicatory powers and was at the lowest level of the UN system. Its recommendations had to be submitted to the Sub-Commission, the former Commission on Human Rights and ECOSOC. However, the WGIP, as has been repeatedly stated, became a “community for action”.

Genesis of the declaration of the rights of indigenous peoples

In September 1984, I was invited, in my capacity as the Chairperson-Rapporteur (Chairperson) of the WGIP, to represent the WGIP at the General Assembly of the World Council of Indigenous Peoples in Panama. I met with hundreds of indigenous peoples from different places around the globe, who demanded that the UN should formally recognize and protect their basic rights and fundamental freedoms. In particular, the Sami people, under the very able leadership of the late Sara from Kautokeino, insisted that a declaration, or even a convention, should be proposed for adoption by the UN. After long and painful consultations in which I actively participated, the following seventeen principles were adopted to constitute, among others, the basis of a declaration:


Principle 1: All indigenous peoples have the right to self-determination. By virtue of this right they may freely determine their political status and freely pursue their economic, social, religious and cultural development.

Principle 2: All States within which an indigenous people lives shall recognize the population, territory and institutions of the indigenous people.

Principle 3: The cultures of the indigenous peoples are part of the cultural heritage of mankind.

Principle 4: The traditions and customs of indigenous people must be respected by the States, and recognized as a fundamental source of law.

Principle 5: All indigenous peoples have the right to determine the person or group of persons who are included within the population.

Principle 6: Each indigenous people has the right to determine the form, structure and authority of its institutions.

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Principle 7: The institutions of indigenous peoples and their decisions, like those of States, must be in conformity with internationally accepted human rights, both collective and individual.

Principle 8: Indigenous peoples and their members are entitled to participate in the political life of the State.

Principle 9: Indigenous people shall have exclusive rights to their traditional lands and its resources; where the lands and resources of the indigenous peoples have been taken away without their free and informed consent such lands and resources should be returned.

Principle 10: The land rights of an indigenous people include surface and subsurface rights, full rights to interior and coastal waters and rights to adequate and exclusive coastal economic zones within the limits of international law.

Principle 11: All indigenous peoples may, for their own needs, freely use their natural wealth and resources in accordance with Principles 9 and 10.

Principle 12: No action or course of conduct may be undertaken which, directly or indirectly, may result in the destruction of land, air, water, sea ice, wildlife, habitat or natural resources without the free and informed consent of the indigenous peoples affected.

Principle 13: The original rights to their material culture, including archaeological sites, artefacts, designs, technology and works of art, lie with the indigenous people.

Principle 14: The indigenous peoples have the right to receive education in their own language or to establish their own educational institutions.

Principle 15: The languages of the indigenous peoples are to be respected by the States in all dealings between the indigenous people and the State on the basis of equality and non-discrimination.

Principle 16: Indigenous peoples have the right, in accordance with their traditions, to move and conduct traditional activities and maintain friendship relations across international boundaries.

Principle 17: The indigenous peoples and their authorities have the right to be previously consulted and to authorize the realization of all technological and scientific investigations to be conducted within their territories and to have full access to the results of the investigations.

Principle 18: Treaties between indigenous nations or peoples and representatives of States freely entered into shall be given full effect under national and international law.

These principles constitute the minimum standards which States shall respect and implement.
No State shall deny an indigenous nation, community, or people residing within its borders the right to participate in the life of the State in whatever manner and to whatever degree they may choose. This includes the right to participate in other forms of collective action and expression.

Indigenous nations and peoples continue to own and control their material culture, including archaeological, historical and sacred sites, artefacts, designs, knowledge, and works of art. They have the right to regain items of major cultural significance and, in all cases, to the return of the human remains of their ancestors for burial in accordance with their traditions.

Indigenous nations and peoples have the right to be educated and conduct business with States in their own languages, and to establish their own educational institutions.

No technical, scientific or social investigations, including archeological excavations, shall take place in relation to indigenous nations or peoples, or their lands, without their prior authorization, and their continuing ownership and control.

The religious practices of indigenous nations and peoples shall be fully respected and protected by laws of States and by international law. Indigenous nations and peoples shall always enjoy unrestricted access to, and enjoyment of, sacred sites in accordance with their own laws and customs, including the right of privacy.

Indigenous nations and peoples are subjects of international law.

Treaties and other agreements freely made with indigenous nations or peoples shall be recognized and applied in the same manner and according to the same international laws and principles of treaties and agreements entered into with other States.

Disputes regarding the jurisdiction, territories and institutions of an indigenous nation or people are a proper concern of international law, and must be resolved by mutual agreement or valid treaty.

Indigenous nations and peoples, may engage in self-defense against State actions in conflict with their right to self-determination.

Indigenous nations and peoples have the right freely to travel, and to maintain economic, social, cultural and religious relations with each other across State borders.

In addition to these rights, indigenous nations and peoples are entitled to the enjoyment of all the human rights and fundamental freedoms enumerated in the International Bill of Human Rights and other UN instruments. In no circumstances shall they be subjected to adverse discrimination.

General remarks concerning the elaboration of a draft declaration

In my opening statement to the fourth session (1985) of the WGIP, and in my capacity as its Chairperson, I drew attention to the part of the mandate of the WGIP relating to standard-setting activities in accordance with Resolutions 1982/34 of the ECOSOC, 1984/35 B of the Sub-Commission and 1985/21 of the Commission, which emphasized this part of its mandate. I stressed, inter alia, that a starting point for meeting some of the serious problems facing the indigenous peoples in the international and national context was the setting of appropriate standards directed at their needs and rights, and I underlined that this was not an easy task. It would be an enormous and complex one. Despite the difficulty and the complexity of the task, I was confident that international standards could be drafted.

Further, I recalled that no groups of people in contemporary society have been subjected to greater neglect and discrimination than indigenous people. Too often the indigenous peoples have been the first victims of gross and systematic violations of their human rights. It was on these kinds of challenges that the WGIP should also focus.

Finally, I pointed out that the two above mentioned sets of important drafts of principles for a declaration on indigenous rights should constitute the basis for drafting the new instrument because they succinctly reflected the needs, rights and aspirations of the world's indigenous peoples.

The other members of the WGIP expressed support for the emphasis I placed on the standard-setting activities of the WGIP and stated that the time had come to begin the elaboration of a draft instrument. Similarly, the statements made by some of the government observers, by representatives of the indigenous peoples and their organizations, and of other NGOs, indicated general agreement with the drafting mandate and the need for, and expectation of, the preparation of new standards and norms on indigenous rights.

According to one member of the WGIP, while many international instruments were obviously related to the human rights of indigenous peoples, their special needs required new standards so as to provide fresh impetus and new emphasis in addressing and remedying the underlying problems facing indigenous peoples, including the frequent alienation between the indigenous populations and nations on one hand and the states on the other. The view that existing instruments did not adequately respond to the needs of indigenous peoples was endorsed by most speakers, including some government observers. The opinion was also expressed that the relevant provisions of the existing human rights instruments should be implemented for the protection of the rights of indigenous peoples.

Several representatives of the hundreds of indigenous peoples attending the WGIP, as observers, stressed the need for special indigenous standards. They pointed out, among other things, the inequalities and oppression suffered for centuries; ethnocidal practices, notwithstanding lofty statutes and policies; a lack of understanding and knowledge of indigenous peoples' cultures, reflected in speculations of backwardness and primitiveness; and forced assimilation and in-
integration by majority populations, as reasons underlining the need for new standards concerning indigenous rights and freedoms. The hope was expressed that precise new international standards would also bring into line national constitutional reforms, legislation and their prompt implementation. The more specific reason most often mentioned was deprival of their territorial base and land rights, including all the surface and sub-surface resources which come with the land and which form so essential a base of the indigenous peoples’ way of life.

One member of the WGIP, Mr. Ivan Tosoevski, expressed words of caution for the road to a comprehensive declaration. It was in the same context as pointed out by some government observers, that the standards had to be drafted in such a way that they would cover all indigenous groups, a task said to be particularly difficult because of the factual diversities and different political demands involved. One set of solutions would not serve the needs of all aboriginal groups, even within the same country. Overly ambitious targets could also jeopardize the depth and seriousness of the analysis needed for the content and implications of the various substantive rights.

Tosoevski also expressed the view that he had some hesitation in using the term “indigenous peoples”. He said that the term “peoples”, as used in the UN Charter, related to all peoples, and new criteria establishing two different kinds of peoples should preferably not be introduced into international law. The political and legal use of the concept of “indigenousness” would only cause confusion. With a unified approach to the term “people”, there was no need to specify special rights for indigenous peoples. Most indigenous peoples could be treated as minorities, and any attempted distinction between the two was nothing more than an artificial dilemma. He continued to state that the minority concept was a well-known quantitative concept in constitutional and international law. Taking into account the reality and historical political processes, it would be illusory to expect from the WGIP any recognition and definition in this regard. Likewise, according to the Tosoevski, the right to land was important for every human being and group, and emphasis on indigenous peoples’ land rights was a misunderstanding as there was no specific need for ownership of land by cultural or ethnic identities. It was more important to clarify the functions of land in different societies. He concluded by saying the WGIP needed more time for further clarification of concepts before it could begin a drafting process of standards in this field.

In this respect, another member of the WGIP pointed out that the UN had managed 40 years without a definition of the term “people” and that a definition of “indigenous peoples” was unnecessary, at least for the purposes of the present standard-setting activities, especially as there were ample international precedents of the usage of the latter term. The reality of the situation was also reflected by the presence in the conference room, in which the WGIP held its meetings, of a large number of persons who considered themselves to be indigenous and who attached basic values to this identification. He stressed that the task of the WGIP should not be further complicated by definition of the beneficiaries; rather, the difficulties associated with defining the term “minority” should serve as a warning signal to the WGIP. Similarly, with regard to the right of peoples to self-determination, this right should not automatically be associated with independence.

Further, another member of the WGIP stated that the WGIP should draw inspiration from the influence that the Declaration on the Granting of Independence to Colonial Countries and Peoples had had on the decolonization process. Thanks to this Declaration, millions of peoples all over the world now lived in freedom and independence. It was his belief that the recognition and restoration of basic rights to indigenous peoples would be hastened if an appropriate declaration could be drawn up by the WGIP with the co-operation of all the parties concerned, bearing in mind that any future set of principles could only be adopted with the support of governments.

Furthermore, Mrs. Gu Yijie, member of the WGIP, agreed that, historically speaking, the concept of indigenous populations was associated with colonialism and aggression by foreign nations and powers but she warned that there should be no confusion between indigenous populations, on the one hand, and ethnic minorities in certain countries and regions, on the other. Issues related to multinational states with populations of different origin should be dealt with in other fora. Also, she said, to assure success in the WGIP’s work, indigenous peoples should be on an equal footing with all nationalities and individuals of all nations, but with clear protection of special rights.

A great number of indigenous observers pointed out that the term “indigenous populations” in the title of the WGIP should be changed to “indigenous peoples”, which in their opinion accurately reflected the reality. They insisted that they represented peoples and nations and did not wish to be considered mere populations or minorities subject to outside definitions.

Some government observers pointed out that the standard had to be drafted in such a way that it would cover all indigenous groups, a task, as they said, that would be particularly difficult because of the factual diversities and different political demands involved.

Many speakers stated that the report prepared by the Special Rapporteur, Mr. Jesus Martínez Cobos, entitled “Study on the Problem of Discrimination against Indigenous Populations”, especially its chapter containing conclusions, recommendations and proposals, should be taken into account in the process of formulating new standards.

The observer for the International Labour Office (ILO), Mr. Lee Sweepston, after endorsing the efforts of the WGIP on the development standards, informed the WGIP that his organization was moving towards a revision of Convention No. 107 on Indigenous and Tribal Populations, 1989 (ILO Convention 107) and had initiated specific procedures and a timetable to this effect. In a written sub-
mission to the WGIP, the ILO provided additional information on its work in this regard. Several speakers during the WGIP session warmly welcomed the measures taken by the ILO.

In this regard, one government observer stated that the WGIP should take due account of the ongoing work in relation to the revision of ILO Convention 107 and that the ILO's work should closely follow developments in that of the WGIP.

One individual expert advised that the WGIP should examine existing or possible national constitutional provisions in connection with its drafting work. It should be kept in mind that international standards on indigenous rights, for example, concerning autonomy, special parliamentary representation and voting regimes, could be incorporated into constitutional laws, which would supplement the international standards.

**Substantive principles**

A member of the WGIP expressed the view that the drafting efforts had to be anchored in existing international instruments such as the Universal Declaration of Human Rights, the International Covenants on Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Indigenous populations and peoples had to be entitled to full enjoyment of these and other human rights. In addition, it had to be a cardinal principle of any standards that they provide for redress of disadvantage and abuse, suffered over the years, backed up by affirmative action at national level.

According to another member of the WGIP, the major principles to be covered, in addition to fundamental rights and civil rights laid down in other applicable instruments, included the right to life, physical freedom and security, the right to land and natural resources possessed by indigenous populations, the deprivation of which could in their case amount to deprivation of the right to life, and the right to appropriate political self-rule.

With some variations, several government observers stated that the rights to land, religion, education and culture and respect for other aspects of their own life and for their own economic and political situation should be properly reflected in the new standards.

In accordance with the Plan of Action of the WGIP for 1985, specific suggestions were made with regard to the cultural, linguistic, educational and religious rights of indigenous peoples. Indigenous representatives emphasized the urgency in maintaining and securing their cultural identity, heritage and traditions in the broadest sense, including their cultural and religious value systems. It was stressed that education should be provided by and for themselves, in their own language and with their own curriculum. Some of them mentioned in this regard the need for intercultural education and ensuring that the larger national societies also learn about indigenous cultures. Further, the fullest regard for indigenous religious beliefs and religious sites was required when drafting the relevant articles in the new standards.

With regard to the principles concerning the education and culture of indigenous populations, one government observer raised the following basic issues:

- How best to preserve and enhance indigenous cultures, languages, and religions within larger societies?
- What are appropriate methods for ensuring that indigenous populations have control and influence over their own cultural and educational activities?
- How can the values of indigenous populations be preserved within their own communities, and shared with the broader society?
- What measures are appropriate to overcome the cultural losses experienced by many indigenous populations through history?

The government observer who asked these important questions felt that a discussion of these issues might lead to significant progress towards a workable scheme for ensuring that the concerns at stake be respected.

A number of suggestions forwarded by the representatives of indigenous peoples related in particular to the inalienable right of self-determination and to the rights to land, territories and natural resources. They underlined the fact that ancestral land and the territorial base are essential to all other rights of indigenous peoples and their future generations, including the right to life. Collective rights and peaceful possession of the surface and sub-surface of these lands, they argued, should be covered by the new standards, especially those connected to the indigenous way of life and activities relating to renewable resources, such as fishing, whaling, hunting, harvesting, gathering and trapping. They also stressed that, without corresponding rights to adequate surface and ground waters, indigenous land rights would be rendered meaningless. They stressed further that the right to earth, land and natural resources was considered essential for indigenous peoples because of the many forms of dispossession they had suffered. The forms of loss become more extreme in modern times through transnational and technological advances, reflected, inter alia, in increased pollution, dam constructions, mining operations, military activities and other environmental contamination. It was stressed that indigenous peoples had not had problems with conservation of the environment or the extinction of species, so protection groups were quite misdirected in their criticism of indigenous practices.

The right to self-determination was the main subject of many statements by indigenous representatives. While some spoke in this context of autonomy or self-government as necessary for their control over the land, as well as their economic, social and cultural systems, others spoke of the right in a broader sense,
prohibiting discovery, conquest, the concept of terra nullius, and occupation as means of depriving them of sovereignty. They also emphasized the need to respect treaties freely concluded between indigenous peoples and states, in accordance with the principle of pacta sunt servanda, which should be reiterated in the new standards.

Further, it was suggested that other principles and rights be included in a future set of standards, as set out in the abovementioned two draft declarations of principles proposed by a number of non-governmental indigenous organizations. The rights, which were also suggested from the floor, included: the right to peace, human dignity and justice; the right to life, physical integrity and security; the right to determine their own membership or citizenship; political rights; family rights; the right to move across state boundaries for the conduct of traditional activities; the right to humanitarian treatment of indigenous refugees; the right not to be subjected to relocation; and the right to prior authorization by indigenous populations of technological, scientific or social investigations.19

Furthermore, indigenous representatives, in the context of existing and forthcoming international standards affecting indigenous peoples, emphasized the need to establish remedies. The responsibility of states to respect populations, in accordance with the UN Charter, and to protect peoples against private and public encroachment therefore had to be established. They also referred to the right of indigenous peoples, as a last resort, to defend themselves against violations of their rights.

Some indigenous representatives spoke of the need to send international observers to national constitutional and political negotiations taking place between indigenous populations and governments in various parts of the world. Two indigenous NGOs, in their comments on one aspect of the proposed draft declaration concerning the resolution of disputes between states and indigenous populations, recommended that the WGIP elaborate further on the duty of indigenous communities and member states to engage in good-faith dispute resolution with respect to their differences.20 Such disputes should be resolved by agreement between the parties. If good-faith negotiations failed, the two parties might wish to continue their negotiations with the assistance of a mediator, or the parties might wish to make efforts to establish a process for having the matters decided by an impartial third party. They also recommended that the international community be entitled to monitor the progress of dispute resolution and to encourage all parties to pursue such efforts in good faith. The WGIP, in fulfilling its mandate, should be able to hear information about the negotiations and monitor their progress.21

The observer for Canada expressed concern over proposals relating to the right of self-determination and the status of indigenous populations as subjects of international law, as spelled out in the draft declarations of principles submitted by a number of indigenous NGOs.22 He pointed out, among other things, that indigenous populations, as was the case in his own country, might well wish to organize their own life autonomously and to have their own institutions. The proposed text, however, went much further than this and included the right to determine their political status and citizenship. Indeed, reference to the right of self-determination would imply the right of secession, which governments would not be in a position to accept. He also questioned the assertion that indigenous peoples and nations were subjects of international law. International law was created by states, through agreements or practice, and there were no indications that states recognized indigenous peoples and nations as subjects of international law. In his view, therefore, it would be incorrect to include in the declaration something that was not, in fact, supported in international law. 23

Type of Instrument

There was more or less general agreement from all sides that the WGIP should in the first instance produce a declaration, to be eventually adopted by the UN General Assembly (UNGA). The possibility of a convention was also mentioned but there seemed to be general agreement, on this point, that this kind of instrument would emerge further down the road, possibly by drawing inspiration from the declaration.

After considering the abovementioned comments, information and data submitted mainly by governments and indigenous organizations and, in particular, the draft declarations of principles presented by a number of indigenous NGOs,24 I formally proposed to the WGIP that it should, within the framework of its standard-setting mandate produce, as a first formal step, a draft declaration on indigenous rights, which could be adopted by the UNGA. I further explained that the WGIP, in addition to the abovementioned draft declarations, should also take due account of the international instruments already existing within the UN system, particularly the UN Charter and the International Bill of Human Rights. The WGIP agreed with my proposal and authorized me to prepare, as a first step, a draft containing some relevant important principles.

The first draft principles:

In accordance with the decision of the WGIP, I elaborated and submitted to the WGIP the following Draft Principles:

1. The right to the full and effective enjoyment of the fundamental rights and freedoms universally recognized in existing international instruments,
particularly in the Charter of the UN and the International Bill of Human Rights.

2. The right to be free and equal to all other human beings in dignity and rights, and to be free from discrimination of any kind.

3. The collective right to exist and to be protected against genocide, as well as the individual right to life, physical integrity, liberty and security of person.

4. The right to manifest, teach, practice and observe their own religious traditions and ceremonies, and to maintain, protect and have access to sites for these purposes;

5. The right to all forms of education, including the right to have access to education in their own languages and to establish their own educational institutions;

6. The right to preserve their culture identity and traditions and to pursue their own cultural development;

7. The right to promote intercultural information and education, recognizing the dignity and diversity of their cultures.

These draft principles, with the relevant recommendations of the WGIP, were submitted to WGIP’s parent body, the Sub-Commission, to the former Commission on Human Rights and to the ECOSOC. Consequently, the systematic and substantive work of drafting standards, related to the recognition and protection of the rights and freedoms of the world’s indigenous peoples began in 1985. A

The drafting of standards

In 1987, the WGIP, in order to further facilitate the process of drafting standards, recommended that I should be entrusted with the preparation of a working paper containing a full set of preambular paragraphs and principles for insertion into the Declaration. This recommendation was submitted to the Sub-Commission which, bearing in mind that the Commission on Human Rights, in Resolution 1987/34 of 10 March 1987, had urged the WGIP to intensify its efforts to continue the elaboration of international standards in this field, expressed its appreciation to the WGIP and especially to its Chairman/Rapporteur Mrs. Eri-Irene Daes for the progress made at its fifth session in carrying out its mandate, particularly in its standard-setting activities. It endorsed the recommendation that the WGIP make every effort to complete a draft declaration on indigenous rights as soon as possible.

At the opening of the fifth session of the WGIP in 1987, I recalled that at its 1985 session the WGIP had adopted the preliminary version of seven draft principles and had decided, as a first step, to elaborate a draft declaration on indig-
tion, had so far been addressed at the UN through “the individualistic approach”, whereby the focus had been on the protection of individual members belonging to minorities rather than on the minorities as groups. The rights of peoples and the debates on self-determination had been largely concentrated on decolonization and other political issues, such as foreign occupation. In his view, the following group rights could be envisaged:

- the right to maintain and develop group characteristics and identity;
- the right to be protected against attempts to destroy the group identity, including propaganda directed against the group;
- the right to equality with other groups as regards respect for and development of their specific characteristics;
- the duty of the territorial state to grant the groups – within the resources available – the necessary assistance for maintenance of their identity and their development;
- the right to have their specific character reflected in the legal system and in the political institutions of their country, including cultural autonomy as well as administrative autonomy, wherever feasible; and
- along with these general and common rights each category of groups and each group would be entitled to more specific rights. For instance, the land rights of indigenous peoples constitute a specific category of rights necessary for the development of this category of groups.

He emphasized that none of the group rights could be construed in such a way as to justify any violation of the universally recognized human rights of individuals or to impair the territorial integrity of those sovereign states that were conducting themselves in compliance with the principles of international law concerning friendly relations and co-operation among states in accordance with the Charter of the UN.33

The indigenous preparatory meeting, held in Geneva from 27 to 31 July 1987, considered again the Declaration of Principles which had been prepared and submitted to the WGIP by a similar preparatory meeting held in 1985.34 In presenting the results of the 1987 Preparatory Meeting, a representative of the indigenous peoples pointed out that indigenous participants had that year added two new principles to the above-mentioned Declaration of Principles and made new minor amendments and corrections to the 1985 draft. The two new principles covered the right to be free from military conscription and rights relating to health, social services and housing. The aforesaid Declaration obtained consensus among the participants of the 1987 Preparatory Meeting, including indigenous leaders and representatives who had not been present at the 1985 session. The speaker further requested that the WGIP take into account and comment upon the 22 principles contained in the above-mentioned Declaration as amended.35

Looking to the future standard-setting activities of the WGIP, all participants agreed that efforts to this end should be enhanced. Upon the specific recommendation of several indigenous observers and one government representative, it was agreed by members of the WGIP that I should be entrusted with the preparation of a full draft text prior to the WGIP’s sixth session in 1988.

In accordance with this mandate, I elaborated the first draft declaration, entitled “Draft Universal Declaration on Indigenous Rights”. It was tabled in August 1988. It was composed of twelve preambular paragraphs and six main parts.

As I stated, the first important issue for Indigenous peoples is survival. Article 3 of the draft specifically dealt with this issue. It provided “the collective right to exist and to be protected against genocide, as well as the individual rights to life, physical integrity, liberty and security of person.”

A second issue is equality. Indigenous peoples have frequently been denied legal equality with other members of the state. Article 1 of the draft provides that “indigenous peoples are entitled to universally recognized rights and freedoms, implicitly asserting a right to equality.”

A third issue is cultural survival. It was considered that equality rights alone would not protect indigenous peoples against assimilationist state policies. Articles 4 and 11 dealt with cultural rights, including an affirmative obligation on the part of States under Article 7 to ensure that indigenous collectivities receive state support for the maintenance of their identity.

A fourth issue is economic rights. The most fundamental aspect of the economic issue is the right of ownership of traditional lands and natural resources, a matter of continuing dispute between States and indigenous peoples in many parts of the globe. In this respect, Article 12 provided for: “The right of ownership and possession of the lands which they have traditionally occupied. The lands may only be taken away from them with their free and informed consent as witnessed by a treaty or agreement.”

Issues about indigenous peoples’ rights in a sector of commercial fishing have been advanced in the United States, Canada and New Zealand. The Kılıç declaration of the Human Rights Committee recognized the legitimacy of the special rights of the Sami people to the reindeer-breeding industry in Sami land (northern Scandinavia).36 Article 18 recognized these rights to traditional economic activities and its 254 and 35 paragraphs expressly provided that “in no case may an indigenous people be deprived of its means of subsistence.” It also provided for the right to just and fair compensation, if they have been so deprived.

A fifth issue was political rights. This issue was debated and views were expressed by a great number of participants, in particular by representatives of the observer governments, concerning terminology. Among the questions raised were the following: are the indigenous groups “populations” or “peoples”? If they are “peoples”, do they have the right of self-determination in international law? In this respect, Canada and Sweden specifically made submissions to the
Human Rights Committee asserting, among other things, that Indian and Sami
collectivities were not "peoples" with a right of self-determination under Article
1 of the Covenant on Civil and Political Rights.39

There was a consensus among members of the WGIP that the term "peoples"
was the more appropriate term. Also, the other members of the WGIP supported
my opinion that indigenous peoples did not wish to have or to exercise a right of
secession. Self-determination for indigenous peoples is assumed, among other
meanings, to require a degree of autonomy involving cultural, economic and poli-
tical rights within the structures of recognized states.38 This draft declaration
dealt with two self-determination issues. It recognized a right of political par-
ticipation in the institutions of the state in Articles 21 and 22. Articles 23, 24, and 25
provided for indigenous autonomy within the state. Thus, Article 23 guaranteed
indigenous peoples: "the collective right to autonomy in matters relating to their
own internal affairs, including education, information, culture, religion, health
housing, social welfare, traditional and other economic activities, land and re-
sources administration and the environment, as well as internal taxation for fi-
nancing those autonomous functions".

This draft declaration also addressed the basic issues related to the recogni-
tion and protection of the rights and freedoms of the world's indigenous peoples.
For the first time in the UN's history, substantive discussion of these important
issues was launched in its fora, with hundreds of indigenous representatives rec-
ognized as active participants.

At the opening and closure of the meetings of the sixth session, I appealed to
all participants, in particular to representatives of the observer governments and
indigenous peoples, to submit comments and suggestions related in particular to
the text of the draft declaration, in writing. In response to these invitations, a
number of suggestions and constructive comments were received, made by gov-
ernments, indigenous nations and organizations, as well as by NGOs, academics
and other persons. I took these suggestions and comments into consideration
when elaborating a revised draft declaration, entitled "Draft Universal Declara-
tion on the Rights of Indigenous Peoples".39 I presented this new revised draft
declaration to the eleventh session of the WGIP.

At the first meeting of the eleventh session of the WGIP in 1993, I indicated
that standard-setting activities would be a major task of the session and invited
all the participants to work together closely and constructively with the main
objective of accelerating the drafting of the declaration. I also clarified that the
abovementioned revised draft declaration on the rights of indigenous peoples,
included, inter alia, the draft proposals from the three informal drafting groups
established during the eighth session of the WGIP, as well as suggestions made
by governments, indigenous organizations, other international organizations
and interested parties.

Prior to the discussion on the specific provisions of the aforesaid draft decla-
rations, a number of general statements were made on the draft declaration as a
whole. Thus, the observer from New Zealand stated that the WGIP was now in a
position to make substantial progress and emphasized a number of general points
regarding the draft declaration. In particular, he underscored the need for the
draft declaration to be sufficiently precise for it to be easily understood and ef-
effectively implemented.

The observer from the Government of Brazil pointed out that his government
approached the drafting of the declaration in a positive manner. He mentioned
Commission on Human Rights Resolution 1990/62, which stressed that interna-
tional standards must be developed on the basis of the diverse realities of indig-
enuous peoples in all parts of the world. He drew attention to the positive aspects
of the existing draft, including the protection of the cultural identity and eco-
omic structures of indigenous communities but cautioned against the adoption
of texts which were ambiguous or politically unacceptable to governments.

A representative of the Ainu people expressed her people's appreciation to
the international community for its attempts to abolish oppression of indigenous
peoples. The representative of the ILO reiterated the need for a new international
instrument in this field that would be compatible with those already in existence.
He, however, indicated that since the WGIP was drafting a declaration, it would
be in a position to produce a text that would not only take into account accepted
international standards but also reflect the aspirations of indigenous peoples.

Mr. Ted Moses, Chief of the Grand Council of the Crees of Quebec, also made
a general statement on standard-setting. He suggested, inter alia, that the present
drafting process should take into account the results of the above-mentioned im-
portant drafting groups set up at the eighth session of the WGIP in 1988, as well as
the results of the "Seminar on the Effects of Racism and Racial Discrimination
on the Social and Economic Relations between Indigenous Peoples and States".40
He also stated that the inalienable rights of indigenous peoples could not be ne-
egotiated or bargained away. He reminded the WGIP that the representative of the
ILO felt that a consideration of political rights was beyond its mandate and more
appropriate for consideration by ECOSOC. He therefore urged the WGIP to take
these rights into account in preparing the draft declaration.

The representative of the International Organization of Indigenous Resource
Development also expressed the desire for a declaration which would explicitly
recognize indigenous people as "peoples", providing practical remedies for on-
going problems without compromising existing rights.

The representative of the Indian Council of South America stated that the
draft declaration should be universal in its scope and that states participating in
the work of the WGIP should use their political skills to assist in finding univer-
sally accepted provisions.
Another suggestion was made by the representative of the Mohawk nation. He stressed that early treaties between indigenous peoples and Europeans were based on agreements among equals and that this notion should be incorporated in the draft declaration.

A number of observers of governments, indigenous peoples and others at the WGIP emphasized the need for the draft declaration to be both consistent with itself, especially regarding terminology and substance, and consistent with existing international human rights instruments.

Subsequently, I submitted the above mentioned draft declaration for its first reading and requested that the WGIP proceed by considering the paragraphs of the draft declaration one by one. This exercise was extremely difficult, taking into consideration the great number of participants, over seven hundred, and their different legal backgrounds and cultures.

During the discussion of certain provisions of the above mentioned revised draft declaration, some important issues were raised. Several indigenous representatives stressed that the draft declaration should reflect the unqualified right of indigenous peoples to self-determination. Some government observers, however, indicated that it might be necessary to qualify the application of this right in order to make the text acceptable to governments, who would have to implement it. Other government observers expressed strong opposition to the inclusion of a reference to self-determination.

It was also stated by certain indigenous representatives that indigenous peoples were entitled to recovery, restoration, restitution and/or adequate compensation of and for lands and resources that have been taken without their consent, and that this right should be adequately expressed in the draft declaration.

The question of control over the occupation and/or use of their lands and resources was highlighted as being of special concern to indigenous peoples. Indigenous peoples particularly sought to exercise control over the use of their lands and resources. In this connection, the traditional role of indigenous peoples as custodians of the environment was brought to the attention of the WGIP.

Amendments were also submitted by WGIP members Alfonso Martínez and the late Hatano.

I invited the WGIP to commence the second reading of the draft Declaration. On the basis of the discussion of the draft Declaration held during the previous meetings, I elaborated a new draft which I presented at the 5th meeting during its eleventh session on 21 July 1993. At this meeting it was agreed to use the word "articles" rather than "paragraphs" in future in the draft Declaration. The new revised draft, on which a further reading of the draft declaration was based, is contained in UN Document E/CN.4/Sub.2/AC.4/1993/CRP4.

The UN Goodwill Ambassador, Ms. Rigoberta Menchú Tum, addressed the meeting. She stated, *inter alia*, that the draft declaration would have to be an instrument which facilitated the struggle of all indigenous peoples. At that point, the drafting procedure had shown considerable progress but, before the declaration could be enshrined within the framework of international instruments, gaps needed to be filled. It would be paramount to reach consensus on the issue of self-determination. Furthermore, the right to ownership of land by indigenous peoples could not become a peripheral issue. Unfettered enjoyment of those rights went to the very essence of the cultures and societies of indigenous peoples and must be entrenched in the document. There were many promising developments. She underlined the fact that the discussions had displayed the perseverance and unity of indigenous peoples as well as the goodwill of a number of states. It was essential that the draft not be viewed as a threat to governments or a source of friction but as a mechanism that would eliminate conflict in the future.

During the prolonged and often contentious debate about specific provisions of the above-mentioned revised draft declaration, many important and complex issues relating to "collective rights" and, in particular, individual versus group rights in international human rights development were raised.

In this regard, the observer for the United States of America stated: "The draft Declaration is largely a list of collective rights to which indigenous peoples are entitled. She expressed concern about the fact that those references went far beyond the limited collective rights recognized in international law or the practice of the states. The draft Declaration did not define "indigenous peoples". Hence, there were no criteria for determining what groups of persons could assert the proposed new collective rights. She expressed concern that in some circumstances the articulation of group rights could lead to the submergence of the rights of individuals. Many other governmental observers stressed that the approach to the question of "collective rights" in the revised draft Declaration was fundamentally inconsistent with existing international human rights instruments. This interpretation was opposed by virtually all of the indigenous representatives, who supported an extension of the traditional Western understanding of human rights, i.e. rights of individuals to be free from oppression by the state, to a broader recognition of the rights of peoples to exist as collectives and to be secure in their collective integrity from intrusions by the state or other threatening forces.

The observer for the Government of Chile expressed the readiness of his government to participate in the elaboration of a consensus document.

Another issue which was frequently addressed by government observers was the need to make the draft declaration as flexible as possible. The observer for Japan pointed out that a flexible text was needed so as to take into account the different historical and social contexts in which indigenous peoples lived as well as the different administrative systems of the countries concerned. The observer of Norway stressed that such flexibility had to be followed by strong protection of the rights of indigenous peoples.
The observers for some other governments reiterated that the draft Declaration in its present form did not contain a definition of "indigenous peoples". In particular, the representative of Japan expressed the concern that this might give rise to subjective interpretations as to which groups were entitled to the rights contained in the Declaration. In this respect, I replied that for the purposes of the draft Declaration, the working definition of "indigenous peoples" contained in the study by Martínez Cobo should be applied. 4 Further, several representatives of indigenous peoples commented on the need to use the term "peoples" in the plural, both in the draft Declaration and in other documents, because the singular form was perceived by indigenous peoples as discriminatory, denying them rights available to other peoples.

Following a request for clarification of the terms "cultural genocide" and "ethnocide", I explained that cultural genocide referred to the destruction of the physical aspects of a culture, while "ethnocide" referred to the elimination of an entire "ethnos".

The majority of the government observers expressed reservations on the issue of self-determination. The observer of Canada emphasized again at this session that his country supported the principle that indigenous peoples qualified for the right of self-determination in international law on the same basis as non-indigenous peoples. In all other cases, self-determination of indigenous peoples had to be granted within the framework of existing nation states. The notion of self-determination as used in the draft declaration implied the right of indigenous peoples to unilaterally determine their political, economic and social status within the existing state, while it was not clear how the concepts of self-determination, self-government and autonomy, which were addressed in Articles 3 and 29 of the draft, interrelated and what the range of powers of indigenous governments would be and how they would relate to the jurisdiction of existing states. 46

The observer for Finland stated that his country was in favour of the use of the concept of self-determination in the draft declaration. The observer for Denmark also stated that the exercise of the right of self-determination was a precondition for any full realization of human rights for indigenous peoples. His country supported the formulation in the draft declaration that indigenous peoples had the right to autonomy and self-government in matters relating to their internal and local affairs. The enjoyment of the right to autonomy and self-government constituted the minimum standard for the survival and the well-being of the world's indigenous peoples.

The observer for the Russian Federation said that when discussing the issue of self-determination it had to be borne in mind that indigenous peoples live in very different regions of the world and that they might require totally different aspects of self-government. She felt that paragraph 29 did not cover all aspects that fell under the notion of self-determination and self-government and suggested that the Declaration should contain only the general principle.

Further, the observer of Brazil pointed out that some of the concepts proposed in the draft had difficulty in being accepted by many governments, in particular those relating to self-determination as defined by existing international law, the extent of the rights of property over indigenous lands, demilitarization of indigenous lands, and the impossibility of removal of indigenous populations from their lands.

Moreover, the observer for New Zealand stated that a distinction could be made between the right of self-determination as it currently existed in international law, a right which had developed essentially in the post-Second World War era and which carried with it a right of secession, and a proposed modern interpretation of self-determination within the bounds of a nation state, covering a wide range of situations but relating essentially to the right of a people to participate in the political, economic and cultural affairs of a state on terms which meet their aspirations and which enable them to take control of their own lives. He suggested seeking language on self-determination which committed governments to work with indigenous peoples in a process of empowerment within the state in which they lived.

The prevailing opinion of the indigenous peoples was expressed by Mr. Moana Jackson, who reported on the conclusions reached in the informal meeting held by the representatives of indigenous peoples. They were worried about attempts to limit the concept of self-determination to the conduct of internal affairs. He stated that the right to self-determination, contrary to what the observer for New Zealand had said, was not primarily a post-Second World War concept but had existed since time immemorial and was not dependent exclusively on international law for its understanding. Indigenous peoples claimed for themselves a right to a subjective definition of the right to self-determination.

In addition to the above-mentioned statement, a number of representatives of indigenous peoples expressed the view that the right to self-determination was the pillar on which all the other provisions of the draft declaration rested and the concept on which its integrity depended. It was argued that there seemed to be consensus that the right to self-determination should be considered as a rule of jus cogens implying that this right was of such a profound nature that no state could derogate from it. Many representatives of indigenous peoples also emphasized that the Declaration had to express the right of self-determination without any limitations or qualifications.

The observer for the Nordic Sami Council proposed that the issue of self-determination, in accordance with its importance, should be dealt with in the first operative paragraph or article and that the exact wording of Article 1 of the two International Covenants on Human Rights should be used. The observer of the Haudenosaunee Nation, delivering a joint statement on behalf of the Indigenous representatives of Australia, made similar proposals.
In this regard, Ms. Lowitja O’Donoghe, Chairperson of the Aboriginal and Torres Strait Islander Commission, recalled my visit to Australia and mentioned that at a meeting, I had suggested that a distinction be made between “external” self-determination, available to peoples who had liberated themselves from imposed alien rule, and “internal” self-determination, by which collective groups of indigenous peoples sought to preserve and develop their cultural and territorial identity within the political order of the state in which they live. Ms. O’Donoghe stressed the fact that “self-determination”, to Australia’s indigenous peoples, meant seeking increasing autonomy in terms of self-management and self-government but was not understood as a mandate for secession. A need to stress the territorial integrity of states in the draft Declaration could therefore not be perceived.48

The observer for the American Indian Movement of Colorado expressed the view that the right to self-determination could not be limited to those peoples who had already established their states. He emphasized that accepting a concept of self-determination which encompassed not merely self-government but the right to freely choose a political status would not automatically lead to the dismemberment of states. Conflict and disruption were not caused by demands for the right to self-determination, as some governments had suggested, but by the fact that peoples were forced to assimilate into states that did not respect their distinctive identities.

A number of scholars also expressed their views on the concept of self-determination. Professor Maivan Lam stated that indigenous peoples had the same right as all other peoples to self-determination but that many international jurists today held the view that the right of self-determination had achieved the status of jus cogens and was therefore not subject to changes by states. Moreover, she drew attention to the fact that the International Court of Justice had, in the Western Sahara case, expressed the view that the right to self-determination belonged to peoples, not to states.49

Professor Thornberry emphasized that the international law on self-determination was not static. Although a powerful case could be made that self-determination formed part of jus cogens, the precise form of self-determination was subject to historical change. He pointed out that the concept of self-determination as it was shaped by the WGPJ was itself part of the change.

Professor Jim Anaya argued that the right of self-determination was a long-standing idea. He referred to two aspects of self-determination: one constitutive, the other ongoing. The first was linked to the rights of peoples to determine their political status, the second concerned the rights of groups of individuals to make meaningful choices in matters of concern to them on an ongoing basis. He added that secession was not usually desirable and could in many cases prove to be detrimental to the interests of indigenous peoples.50

Another issue which was frequently addressed and reiterated during the debate was the use of the term “indigenous peoples”.

Government observers expressed their concern that the use of the term “peoples” would have implications for international law because of its link with the right of self-determination. The observer for Canada proposed that the draft Declaration should contain a provision specifying that the term “peoples” had no consequences for the right of self-determination under international law. If such a clarification were not made, it would mean that there was a right to secede; even if secession were not chosen, it would still imply the right of indigenous peoples to enact laws concerning their political, economic, social and cultural status without regard to, or application of, the laws of the surrounding state.

Further, the observer for Brazil noted that the use of the term “peoples” instead of “people” was not consistent with that of other UN documents, including Chapter 26 of Agenda 21.51

Many representatives of indigenous peoples stressed that the term “people” had primarily historical implications for them. Mr. Ted Moses, the Chief of the Grand Council of the Crees, for example, pointed out that they had defined themselves as peoples since time immemorial. Others emphasized that only the use of the term “peoples” would reflect the notion of collectivity on which indigenous life was based. The term “indigenous people” or “populations” signified only a group of individuals and therefore denied them their collective identity.52

On the question of land rights, the observer for Canada stated that the draft declaration drew no distinction between “lands” and “territories”, nor was it clear whether they were intended to mean only those lands and territories where indigenous people had or could establish legal titles to all lands and territories which they claimed. The provision in Article 24 of the draft declaration,53 that indigenous people “have the right to own, control and use their lands and territories”, in combination with the statement in Article 23 that lands and territories are those that have been traditionally owned or otherwise occupied or used, gave those articles a far-reaching effect. Article 25, establishing a principle of restitution of land, was also problematic for Canada, which has devised a system of negotiated settlements (comprehensive land claims agreements) with indigenous people. He reiterated the Canadian recommendation that a “reasonable limits” clause should be introduced in the Declaration in order to enable more governments to support it.

The observer for Sweden pointed out that, while the land rights of indigenous populations were generally discussed in terms of ownership and possession, he felt that the importance of “usufruct” should be stressed as an alternative concept because it is a strongly-protected legal right to use land. The Swedish Supreme Court had recognized the right of “usufruct” as a customary right of the Sami population in one large land area.
The observer for the Dene Nation also emphasized that the declaration had to include a clear right of indigenous peoples to own their lands and resources. Similarly, the observer for the Nordic Sami Council stressed that the draft declaration should clearly guarantee the ownership of traditional lands by indigenous peoples and recognize their hunting and fishing rights and that other concepts such as mere "usufruct", as suggested by the above mentioned Swedish delegate, were not able to meet the concerns of all indigenous peoples.

Mr. Moana Jackson, who reported on the conclusions reached at the informal meeting held by indigenous representatives, proposed inter alia, that Articles 3 and 29 of the draft declaration should be amended. He further argued that the issue of self-determination should be dealt with in a new Article 1 and be worded along the lines of the two International Covenants on Human Rights.

Finally, my colleagues, the other four members of the WGIP, and I acceded to the requests of the representatives of indigenous peoples and adopted unanimously as Article 3 of the draft Declaration the following text, which incorporates common Article 1 of the two International Covenants on Human Rights, without any change or qualification: "Indigenous peoples have the right of self-determination. By virtue of that right they freely pursue their economic, social and cultural development". This decision of the WGIP was greeted with a standing ovation from indigenous participants and a conciliatory response from many of the governments.

It should be mentioned that my colleagues, members of the WGIP, and I made every effort and completed the elaboration of the draft Declaration on the rights of indigenous peoples at our eleventh session in 1993. After careful consideration of the last comments and amendments, the draft Declaration was given a second reading and all delegations participated actively in the discussions.

Subsequently, the WGIP agreed on a final text entitled "Draft Declaration as Agreed upon by the Members of the Working Group at its Eleventh Session" and decided to submit it to the Sub-Commission at its forty-fifth session. In that respect, the WGIP recommended to the Sub-Commission:

To consider the draft declaration as contained in the annex of the present report of its eleventh session Doc. E/CN.4/Sub.2/1993/29, at its forty-sixth session in 1994, in order to ensure that the members of the Sub-Commission have sufficient time to study the text;
To request the Secretary-General to send the draft declaration to the editorial and translation services of the UN as soon as possible;
To request the Secretary General to circulate the text to indigenous peoples, governments and intergovernmental organizations, making special reference to the fact that no further discussion of the text would take place in the Working Group;
To recommend that the Commission on Human Rights and the Economic and Social Council take special measures so that indigenous peoples be enabled to participate fully and effectively, without regard to their consultative status, in the consideration of the draft declaration by the Sub-Commission and other higher UN bodies, as they have thus far contributed to the work of the Working Group; and
To submit the draft declaration to the Commission on Human Rights for consideration at its fifty-first session in 1995.

At the level of the Sub-Commission, and before the closing of the relevant debate on the draft declaration, I submitted the following relevant amendments to the Sub-Commission's Resolution:

Insert the following text as a new subparagraph(a):
The draft declaration shall be entitled "UN Declaration on the Rights of Indigenous Peoples;"
Renumber the subparagraphs.
Replace existing subparagraph (d) by the following:
To adopt the draft UN Declaration after due consideration, at its forty-sixth session in 1994, and to submit it to the Commission on Human Rights with the recommendation that the Commission consider and adopt it at its fifty-first session, in 1995;
Add the following new paragraph, as operative paragraph 4:
To recommend to the Commission on Human Rights and to the Economic and Social Council to take special measures to enable indigenous peoples to participate fully and effectively, without regard to consultative status, in the consideration of the draft UN Declaration, as they have contributed to the work of the Working Group.

The Sub-Commission adopted unanimously the above-mentioned amendments and in particular the new title of the draft declaration, as I proposed it, which was "UN Declaration on the Rights of Indigenous Peoples".

Finally, the Sub-Commission, after an attentive consideration of the above-mentioned revised draft Declaration, decided unanimously to submit it to the Commission on Human Rights, for consideration and adoption by the UNGA within the International Decade of the World's Indigenous People.

Conclusions

The UN Declaration on the Rights of Indigenous Peoples (the Declaration) constitutes the most important development concerning the recognition and protec-
cion of the basic rights and fundamental freedoms of the world's indigenous peoples. It is the product of many years of work by many people including, in particular, many hundreds of indigenous people from all parts of the world. Its text reflects an extraordinary liberal, transparent and democratic procedure before the WGIP that encouraged broad and unified indigenous input. The members of the WGIP and I made every effort to incorporate indigenous peoples' primary aspirations in the final text. It should be noted that no other UN human rights instrument has ever been elaborated with so much direct involvement and active participation on the part of its intended beneficiaries. The text as it was drafted by myself and approved by the WGIP also focused on issues of special concern to indigenous peoples in the exercise of their rights to equality, self-determination, lands and natural resources and collective identity. In broad terms, it deals with aspects of strengthening the distinctiveness of indigenous societies within the institutional frameworks of existing states. The preparatory work and the debates on the draft declaration have contributed highly to the perseverance and the unity of indigenous peoples. Also, the preparatory work as it is presented in the preceding paragraphs constitutes a useful tool for analysis and interpretation of many provisions of the final text of the Declaration adopted by the UNGA. Further, it will be used effectively for peaceful negotiations and reconciliation between states and indigenous peoples. The WGIP has greatly contributed, with its systematic, responsible and important work, to establishing the foundations on which the final text of the proclaimed Declaration is built.  

Notes

3 Ibid, 14.
4 Ibid, para 58.
5 Ibid, para 61.
6 Ibid, para 61.
7 Ibid, para 63.
8 Ibid, para 63.
10 Above n 2, para 66.
12 Ibid.
15 Above n 2, para 72.
16 Ibid, para 74.
17 Ibid, para 76.
18 Ibid, para 76.
19 Ibid, para 80.
21 Above n 2, para 82.
22 Ibid.
23 Ibid, para 83.
24 Ibid.
26 Ibid, Annex II.
30 UNCA “Resolution 41/120: Setting International Standard In the Field of Human Rights” UN Doc A/RES/41/120 (4 December 1986).
31 Ibid.
34 Above n 2, Annex IV.
43 Report by Rigoberta Menchu Tum in ibid, 15.
44 Ibid, para 68.
46 Above n 11.
47 Above n 45.
48 Ibid., para 9.
50 A Summary of the interventions made by these 3 scholars is contained in above n 45, 19.
51 Editor's Note: Agenda 21 is a comprehensive plan of action for the UN, states and groups to take to protect the environment. It was agreed at the 1992 UN Conference on Environment and Development in Rio de Janeiro, Brazil: Rio Declaration on Environment and Development (1992) 33 ILM 874.
52 Above n 45, 20.
55 Above n 45, 60-60, Ms. Atiah stressed the need for the draft declaration to be adopted by the SubCommission in 1993, because that was the wish of the indigenous peoples.
56 These recommendations represent a compromise achieved after long consultations between the members of the WIP. The individual opinions and the amendments to the report of three of its members (Mr. Alfonso Martinez, Mr. Boutkevitch and Mr. Hatano) are contained in above n 45, Annex II.
58 Above n 45.
THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: SOME KEY ISSUES AND EVENTS IN THE PROCESS

John B Henriksen

The UN High Commissioner for Human Rights, Louise Arbour, hailed the General Assembly's adoption of the Declaration on the Rights of Indigenous Peoples (the Declaration) as "a triumph for justice and human dignity." It is indeed not difficult to concur with the views of the High Commissioner when looking back at the extremely difficult process by which the Declaration was developed.

This article provides a brief personal retrospective glimpse at the long process leading to the adoption of the Declaration, focusing on what happened at the level of the UN Commission on Human Rights. The author of this article was involved in the negotiation process for almost two decades in various capacities as an indigenous representative; a governmental representative; and as a staff member of the Office of the UN High Commissioner for Human Rights.

In 1993, the Working Group on Indigenous Populations (the WGIP) agreed on a draft declaration on the rights of indigenous peoples, which it had been working on since 1985. In 1994, the parent body of the WGIP, the Sub-Commission on Prevention of Discrimination and Protection of Minorities (the Sub-Commission), endorsed the proposed text and submitted it to the Commission on Human Rights (the Sub-Commission Text). In 1995, the Commission on Human Rights followed up by establishing a working group (WGDD) to consider the Sub-Commission Text, and recommend how the General Assembly (UNGA) should deal with this matter.

The Commission on Human Rights established special procedures for participation in the WGDD on the part of indigenous peoples' organizations to ensure that those that did not have consultative status with the Economic and Social Council could participate in the process. These special accreditation procedures ensured broad indigenous peoples' participation. However, indigenous organiz-

ations from certain countries were still prevented from participating as the special indigenous participant status could not be granted if the government concerned had any objections with regard to granting such status to an applicant from the relevant country.

The nature of the negotiation process differed remarkably from other comparative human rights standard-setting processes. The participation and influence of the beneficiaries of the instrument was significant and unprecedented. During the first session of the WGDD (1996), the issue of indigenous peoples' status in the negotiations was a major issue. Despite strong objections from certain states, an informal understanding was reached stipulating that changes in the Sub-Commission text required broad acceptance from indigenous peoples' representatives. This unprecedented informal procedural agreement between indigenous peoples and member states established the foundations for the negotiation process. It ensured greater transparency in the negotiations and encouraged governments to discuss and explain proposed changes in the plenary of the WGDD.

Indigenous peoples were also successful in gaining significant substantive influence in the negotiations as a result of a combination of factors, such as having a strong case to advocate, a relatively high degree of unity within the indigenous caucus, many visionary indigenous leaders, international human rights law expertise, and a gradual development of experience in multilateral diplomacy. Consequently, indigenous peoples were able to match the substantive expertise and negotiation skills of governmental delegations and, in many instances, the indigenous delegates also surpassed governmental delegations in this regard.

At the opening of the first session of the WGDD, a joint indigenous caucus statement called for the immediate adoption of the declaration as submitted by the Sub-Commission, without change, amendment or deletion, as a statement of minimum standards for the rights of indigenous peoples. This later became known as the "no-change position". However, only three governments indicated a willingness to accept the text from the Sub-Commission without changes. It soon became evident that there was no majority in the WGDD in favor of adopting the text as proposed by the Sub-Commission. It was, however, agreed that the Sub-Commission text should serve as a basis for future negotiations.

The concept of "indigenous peoples" was a significant hurdle for many governments to overcome in the early stages of the negotiations. African and Asian governments generally held the view that a definition of the term "indigenous peoples" should be included in the text in order to identify the beneficiaries. It was clear that some of these states were more interested in obtaining a definition which would exclude indigenous peoples in their own countries from becoming beneficiaries of the Declaration. It was frequently stated by African and Asian states that they did not have any indigenous peoples in their countries and that everyone there was indigenous. The debate surrounding the concept of "Indige-
ous peoples" was re-energized by the conclusions of the Sub-Commission's Special Rapporteur on treaties, agreements and other constructive arrangements between States and Indigenous populations. Professor Miguel Alfonso Martínez, in his final treaty-study report stated that the situation of groups in African and Asian States claiming to be indigenous should be analyzed in UN forums other than those concerned with the problems of indigenous peoples. The conclusions of the Special Rapporteur encouraged African and Asian governments to continue to raise the issue of definition. It also created a very tense situation between African and Asian members of the indigenous caucus and caucus members from the American continent, as the latter group had strongly supported the final report of the Special Rapporteur. Eventually, African and Asian governments dropped their insistence on a definition, and no such definition was included in the Declaration as adopted by the UNGA.

In addition to this specific problem related to Africa and Asia, the concept of "indigenous peoples" was also problematic for many governments due to the fact that international law acknowledges that "all peoples" have the right to self-determination. In an attempt to avoid identifying indigenous peoples as "peoples", various other terms were introduced to describe the beneficiaries, including "indigenous populations", "indigenous people", "persons belonging to indigenous populations". In other words, some states wanted to either replace the term "peoples" or to explicitly clarify that the use of the term "peoples" in the text should not be construed as having any applications as regards the collective rights which may be attached to the term under international law. Indigenous peoples strongly opposed all such attempts. The text, as adopted by the UNGA, uses the term "indigenous peoples" without defining the concept, nor does it contain any reservations as far the legal implications of the term are concerned.

It is beyond any doubt that the concept of collective rights, in particular the right to self-determination and collective land and natural resource rights, represented the greatest challenges to the process. Some states, including France, Sweden and the UK, were strongly against recognizing collective human rights. Indigenous peoples argued in favor of acknowledging collective rights as indispensable to their continued existence as distinct peoples. The principal concern which certain states had with regard to collective rights was eventually solved through a specific paragraph in the preamble to the Declaration, which recognizes and reaffirms that indigenous individuals are entitled to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples.

Many governments viewed collective indigenous rights, in particular the right to self-determination, as challenging existing national political and legal structures. Hence, they advocated status quo solutions. Some governments also frequently argued that acknowledgement of an indigenous peoples' right to self-determination would constitute a serious threat to the stability and sovereignty of states. This was also the position expressed by the representative of Sweden in a closed informal meeting of Western governments. It was said that the government concerned could not accept the draft provision on the right to self-determination because it could lead to claims for independence from the Sami people. However, fourteen years later, the Swedish government acknowledged that indigenous peoples have the right to self-determination, including under common Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the Covenant on Economic, Social and Cultural Rights (ICESCR). In its periodic report (2006) to the UN Committee on Economic, Social and Cultural Rights, the Government of Sweden stated that indigenous peoples have the right to self-determination insofar as they constitute peoples within the meaning of common Article 1 of the ICCPR and the ICESCR. This demonstrates the extent of change and of influence that took place in the position of some governments during the 20-year negotiation process.

The Declaration identifies indigenous peoples as self-determining peoples without any qualifications, and reaffirms that indigenous peoples are entitled to the general right to self-determination. This is significant because, initially, a number of governments, in particular the United States of America, fiercely attempted to formulate a restrictive sui generis right to self-determination for indigenous peoples.

Another major problem in the negotiations were the constant attempts from many states to domesticate indigenous peoples' rights by seeking to make them strictly subject to national legislation. Indigenous peoples expressed strong opposition against all such attempts; it was argued that this would undermine the entire purpose of the Declaration, as well as the international human rights system. Eventually, only one reference to domestic legislation was made in the operative part of the Declaration: Article 46 states that the exercise of the rights set forth in the Declaration shall be subject only to such limitations as are determined by law, and in accordance with international human rights obligations.

The negotiations were heavily influenced by a mutual mistrust between governments and indigenous peoples. Some governments expressed concerns about possible hidden agendas in informal settings. At the same time, many indigenous representatives expressed similar mistrust towards governments, and were wary of indigenous organizations that engaged in bilateral dialogue with governments.

In one instance, in 1998, during the fourth session of the WGDD, a representative of a European government, regarded as being very progressive in the field of human rights, informally expressed great frustration because the governmental delegations of Denmark and Norway had indigenous individuals in their delegations. In his view, an indigenous presence in closed governmental meetings made it impossible to have open discussions between governments.
The previously mentioned "no-change" position of the indigenous caucus helped to cement the Sub-Commission Text as the basis for negotiations. However, towards the end of the 1990s, some indigenous organizations started to question the sustainability of this position. It was obvious that the Sub-Commission Text could be improved, strengthened and clarified. Moreover, there were clear signs that a continuation of this position could jeopardize the entire process, as certain governments had started to question the usefulness of extending the mandate of the WGDD due to the stalemate, in particular caused by Australia and the USA.

In 2000, the Inuit Circumpolar Conference and the Saami Council delivered a joint statement in the WGDD, indicating a willingness to consider changes in the Sub-Commission Text, if such amendments strengthened or clarified the text and were in conformity with international legal standards. This created severe problems within the indigenous caucus, and the two organizations were branded as deserers by many other indigenous organizations. However, other indigenous organizations gradually joined this position when they too, realized that to hold on to the strict no-change position was infeasible. The "no-change" group in the caucus began to lose ground. In the meantime, the governments of Guatemala and Mexico adopted a no-change position of their own. This effectively blocked any progress in the negotiations because there were now "no-change" groups in both camps.

Consequently, at the turn of the century, after four years of negotiations, only two of 45 draft articles had been adopted by the WGDD: one on the right to nationality for indigenous individuals (Article 6); and the other on gender equality (Article 44). Both provisions simply reaffirmed existing individual human rights.

In 2004, the Nordic governments, together with New Zealand and Switzerland, submitted a comprehensive package of proposed changes to the Sub-Commission text (CRP1). This proposal was based on the Sub-Commission Text, and aimed at identifying possible consensus. It attempted to keep intact as much as possible of the Sub-Commission Text. The vast majority of the proposed changes were included in the text adopted by the UNGA in September 2007. However, provisions concerning indigenous peoples' rights to lands, territories and nature resources are significantly stronger in the final text than in the CRP1.

This joint proposal created a certain momentum in the process, as it was welcomed by most states and a number of indigenous representatives as a constructive attempt to overcome existing differences. Many indigenous organizations strongly opposed the proposed changes, and continued to advocate the adoption of the Sub-Commission Text. Some of these indigenous representatives informally expressed the view that they would prefer not to have a declaration at all rather than having a text which differed from the Sub-Commission Text. At the following session, the Tébeteéba Foundation, the Saami Council and the Sami Parliametary Council submitted their own comprehensive proposal aimed at further narrowing the gaps. Substantive progress was blocked, however, by indigenous and governmental delegations holding to their no-change positions. The Peruvian chairman of the WGDD was effectively sidelined as consensus facilitator due to the fact that two influential states from his region were sticking to their no-change positions.

The stalemate resulted in a division of the global indigenous caucus into seven regional caucuses. This allowed indigenous organizations that had abandoned their previous no-change position to engage in constructive discussions about proposed amendments.

On the governmental side, a similar watershed event took place. At the 10th session of the WGDD (2004), the delegation of Norway, in response to continued opposition from the delegations of Guatemala and Mexico to adopt articles with minor amendments, proposed through the Chairman of the WGDD that Guatemala and Mexico take over Norway's responsibilities to facilitate consensus on these provisions. Guatemala and Mexico both accepted this responsibility, albeit somewhat reluctantly. This changed the overall dynamic of the process as, in their new role as facilitators of consensus, the two delegations were no longer in a position to maintain their no-change position. As a consequence, the Chair of the WGDD also became proactive in seeking consensus. Guatemala and Mexico continued their successful facilitation throughout the process, and played a crucial role in the final negotiations at the UNGA, in particular in securing African support for the text.

This process is probably the most difficult and complex human rights standard-setting activity the UN has ever embarked on, and it will most likely remain so for a very long time. The Declaration, although far from being perfect, represents the world community's commitment towards redressing the historic injustices faced by indigenous peoples. The next battle for the world's indigenous peoples will be to secure full and effective implementation of these universal minimum standards for indigenous peoples' rights.

Notes

2. The author participated in the negotiation process in various capacities: (1) from 1991-1995, as an indigenous representative in the UN Working Group on Indigenous Populations, representing the Saami Council and the Sami Parliament respectively; (2) from 1996-1999, as staff member of the Office of the UN High Commissioner for Human Rights assigned to serve the UN Commission on Human Rights' Working Group on the Draft UN Declaration on the Rights of Indigenous Peoples (3) from 1999-2001, as an indigenous representative, representing the Saami Council; (4) from 2003-2004, as an adviser to the Royal Ministry of Foreign Affairs of Norway; and (5) in 2007, as an adviser to the Saami Council during the final negotiations on the Declaration in the UN General Assembly.

4 The working group was officially named “the working group established in accordance with Commission on Human Rights resolution 1995/32” because the UN Commission on Human Rights could not reach an agreement on how the beneficiaries of the instrument should be identified, as “indigenous peoples” or “indigenous people”. Hence, the title of the new working group did not make any reference to the beneficiaries of the draft declaration. This matter was closely related to the question of whether indigenous peoples were entitled to the right to self-determination.

5 At the time, less than 20 indigenous organizations were in consultative status with ECOSOC and the majority of these organizations were from the Western hemisphere. Without the special accreditation procedure, indigenous peoples from other parts of the world would have been prevented from participating in the process.


7 Bolivia, Fiji and Denmark.

8 Special Rapporteur Miguel Alfonso Martínez “Studies on treaties, agreements and other constructive arrangements between States and indigenous populations” UN Doc E/CN.4/Sub.2/1999/20 (22 June 1999), para 90.


11 Above n 9.


13 New Zealand later resumed close cooperation with its long-time partners in this process, Australia, Canada and USA. Those four were the only states that voted against the adoption of the Declaration in the UN General Assembly on 13 September 2007.
INTERNATIONAL INDIAN TREATY COUNCIL REPORT FROM THE BATTLE FIELD - THE STRUGGLE FOR THE DECLARATION

Andrea Carmen

Juan Leon Alvarado, a long-time Mayan Quiche activist, former International Indian Treaty Council (IITC) staff member and now Guatemalan Ambassador to Norway, Jean Luc Von Arx, a good friend from Geneva and I were climbing the mountainsides of France on a weekend during negotiations on the then draft declaration on the rights of indigenous peoples in September 2004. It was a beautiful day with a warm sun, a cool breeze and a brilliant blue sky. Lake Geneva appeared tiny; a long thin mirror of the sky many miles away and far below. Although we could see the buildings of the surrounding city, they were too small and far away to make them out clearly. Our physical and spiritual distance from the UN’s Palais des Nations was immense, and very welcome at that moment.

During the previous week in Geneva, those of us still fighting for adoption of the text approved by the Working Group of Indigenous Populations and the Sub-Commission for the Prevention of Discrimination and Protection of Minorities (the Sub-Commission Text) in 1994 had been having a tough time. Many states were attempting to weaken the rights in the Sub-Commission Text and create a second-class set of rights for indigenous peoples. Some states had made it clear that a text that included the term “indigenous peoples”, which was in most of the articles, would not be adopted intact. We were told that the most essential provisions, including self-determination and rights to traditionally-owned and used lands and resources, would not be accepted by most states, and that we were living in a dream world.

Our dedication to defending the Sub-Commission Text went beyond our support for its contents as the “minimum standard” we could not and would not go below. In our view, maintaining a unified “no changes” position was also the best strategy for blocking unacceptable changes, and had been the key to our success in doing so over the years. In addition, for many of us, the Sub-Commission Text represented the words, spirit, thoughts and instructions of many of the elders and traditional leaders who had begun the work on the declaration back in the early 1970s but who were no longer with us in this world.

IITC’s position was complicated, or simple, whichever way you want to see it, because our many affiliates from the Americas and the Pacific continuously mandated us to defend the Sub-Commission Text against changes. It was not until the final year of negotiations that we were authorised to accept changes, and then only where they would strengthen or clarify the Text or refine wording that could gain state support without undermining rights. However, in September 2004, we were not there yet.

On that Sunday in September 2004, Juan Leon, Jean Luc and I were grappling with the realisation that the indigenous caucus, the group of indigenous peoples from around the world involved in the declaration negotiations process, was no longer united around the “no changes” position. Some delegations felt we should consider some of the state proposals and enter into active negotiations to develop new wording. A few had actually joined states in making proposals for changes on the floor. Still, at that point, most indigenous delegations and even a few states, such as Guatemala, continued to defend the Sub-Commission Text in most if not all provisions, and no indigenous delegation said they were prepared to compromise on the most essential provisions such as self-determination. However, in our view, it was a risky strategy to accept changes: where it would lead was anyone’s guess. We at IITC felt that we were fighting for our survival, and we knew that our grandchildren would have to live with whatever was in the final version once it was adopted as the international standard recognizing our rights.

The most extreme proposed amendments from states included doing away with terms like “peoples” and “self determination” thereby creating new and limiting terms such as “internal self-determination” or “self-empowerment” just for indigenous peoples! Many other state proposals at first sight appeared innocuous, just a word or two here and there, but they would still have the effect of watering down or weakening vital rights. These included proposals to substitute “obtain” with “seek” regarding free, prior and informed consent and “shall” with “should” regarding state obligations to uphold the rights in the Declaration. None of the changes proposed by states at that point did anything to strengthen the original wording. In our view, and often appeared to be part of a deliberate strategy to break the indigenous caucus’ no-changes position.

Some very hard questions were facing all the indigenous delegations involved in this process, including IITC: if the Sub-Commission Text had been accepted as...
the "minimum standard", how could we consider any text that was even more of a minimum? How much change were we willing to accept collectively as a caucus or as delegations to achieve the requisite state support for eventual adoption by the Human Rights Council and the General Assembly (UNGA)? At what point in the process would we decide that no Declaration was preferable to a weakened one, and could the indigenous caucus agree on when that would be? If the Sub-Commission Text began to change with the agreement of indigenous peoples, was it possible to propose even stronger wording in some provisions? If so, how would we be able to defend it against unacceptable changes to the core provisions, such as land rights and self-determination, which were the focus of state opposition? Was it possible to negotiate text without negotiating rights, which are inalienable and therefore non-negotiable? At what point in Geneva or New York would indigenous peoples, as non-state participants, be excluded from decision-making on the final text? Could we maintain a collective position in the caucus to defend core rights and could we even agree on what those were? As one indigenous delegate had said that week, all the strategies before us entailed tremendous risks. The stakes for our peoples now and in the future were so high, and we had dedicated so many years of our lives to this process. I could hear my grandchildren's voices in my heart, once they were able to read some mythical finished product of the Declaration many years in the future, saying "Grandma, I can't believe that you agreed to THIS!!! The tension within the indigenous caucus, and in the UN negotiations, was hard to take at times.

With the benefit of hindsight it has become clear that the long-held indigenous caucus no-change position was essential to the final outcome of the Declaration, even if it also appeared that little progress was made in declaration negotiations between 1995 and 2004.

Yet that sunny Sunday in September 2004, we could not have predicted how the Declaration would turn out. We were struggling to remain optimistic, positive, determined, to keep our spirits up, enjoy the day and clear our minds for what was to come in the next week and after. We were catching our breath for the next phases of the negotiations, which would start up again in just a few hours back in the belly of the UN far below.

The walk started out easily enough, across green sloping meadows and under lush green trees. It soon became more steep and rugged and we had to edge along or, in my case, crawl along on my hands and knees, on narrow rocky paths along the sides of cliffs with steep drops of hundreds of feet just to our right. Finally after several hours we reached what Jean Luc had announced was our intended destination: a large cave opening in the cliff side called "the hole" in French. With smooth rock tables and huge boulders inside, it seemed that it had been used by the ancient peoples of that land for ceremonies and gatherings. We could see the late afternoon sun and blue sky far above through what had once been a "blow hole" where the waves of an ocean, long since retreated, used to crash in through the cave opening and then shoot up through the hole in the roof of the cave a hundred feet or more above where we now stood. A small painted wooden sign mounted on the cave wall told us that, 140 million years before, this cave had been at sea level. We noticed small fossil sea creatures embedded in the rock of the wall. 140 million years! I felt very new, tiny and small, pressed up against the reality of that huge expanse of time.

Juan Leon and I both stood very still, and pressed our faces against the cool, smooth cave wall. I said, "Juan, you know that in 140 million years, it won't matter what this Article or that one says in the Declaration. All that will matter is that we fought for our peoples." Juan said to me, "Si, es cierto" (yes that's true). We looked at each other in silence, cheeks held against the rock, feeling our valiant ancestors who had fought the battles they had to fight irrespective of whether they were certain they would win, lose or survive to fight another day, and had kept their hearts strong no matter what the odds. We smiled at each other and really meant it, took a few slow deep breaths in and out, knowing then what was true, what passed away and what lasted for ever and was never lost. We were ready, really ready then, for the steep climb up and out of that amazing hole. We were ready to go back into the UN the next day and do what we had to do, the best we could. We knew that somehow it would be OK in the end.

It is not that we had not been encouraged by significant victories up until then, which had helped us immeasurably to hold on to the Sub-Commission Text or, at least, the essential rights it affirmed. We had, against all odds and through unyielding and vocal determination, held the Chair of the Working Group on the Declaration (the WGDD) negotiations since 1997, Luis Enrique Chávez of Peru, in keeping the Sub-Commission Text as the "basis of discussion". This prevented certain states, and groups of states, from promoting their new and often seriously flawed drafts on an equal footing with the Sub-Commission Text. This also ensured that the Sub-Commission Text remained the official Text that was presented, referenced, quoted, used and applied in many situations and contexts, including in UN bodies and expert seminars over the years of the negotiations. This position was maintained through to the very last WGDD session in Geneva and meant that changes were minimized. For example, the wording of all changes were compared to the Text and intent of the Sub-Commission Text. The indigenous participants, as well as the Chair, maintained the position that proposed word changes had to remain as close as possible to the Sub-Commission Text, and any potential changes had to be presented and justified in terms of how they improved or clarified the original. Many proposed changes, when assessed in this light, did not stand up to scrutiny and were abandoned and the original language, or very close to it, was what was finally used.

In 1996, most of the indigenous delegates "walked out" of the negotiations in protest at being relegated to the position of "observers" in the debate over our own survival, rights and dignity. As a result of the walk-out, for which we re-
ceived considerable international and UN attention, we achieved a ground-breaking and confidence-building victory, ensuring that indigenous peoples would be equal participants in reaching consensus on the Text. It also made it clear that the negotiation process would not garner any legitimacy without the participation of indigenous peoples. We made history in UN standard-setting for the first time the so-called “beneficiaries” of rights were playing an active and equal role in their development.

Together, indigenous peoples’ active participation and the use of the Sub-Commission Text as the basis for negotiations ensured that the rights in the declaration as finally adopted by the Human Rights Council still constituted an acceptable minimum standard, from the point of view of most indigenous peoples. Indeed, some articles were actually strengthened in the final stages of the debates. Examples include new language on border rights in what became Article 36 (very important to my own Yakqui Nation and others divided between international borders of states like the US and Mexico), repatriation of cultural items including human remains, and the vital provisions for the recognition of treaty rights.

A surprising ally for us in this process (sorry, Luis, but it was a surprise, albeit a very welcome one) was the Chairman of the WGDD. Of course, we had moments of frustration over the years with various aspects of his approach, especially when we saw he would not press states to accept the Text of Sub-Commission articles when only one or two object (what does consensus mean in a UN process? A constant subject of debate). However, Luis Chávez reports to the Commission on Human Rights consistently compared proposed changes to the Sub-Commission Text. He was always willing to engage with indigenous participants at any point in the process and to allow for their significant input. Most importantly, the final “compromise Chairman’s text” presented for a vote of the Human Rights Council in June 2006 (when it became clear that consensus was not possible on certain core provisions such as land rights), retained an allegiance, not totally but in large part, to the spirit and letter of the Sub-Commission Text as well as to the indigenous peoples’ proposals.

Moreover, despite some tense and fragmented moments in the indigenous caucus, it held together with an overall process, internal protocol and sense of principle, despite differences in objectives, approaches and strategies. Most of us continued to participate, listen to one another and find consensus wherever we could. And, it is not that we did not have times of fun together. We went dancing, ate together (remember the long meals and meetings at the old Manoa restaurant?), told stories, prayed together, took weekend trips to see the Matterhorn, stayed up all night drafting joint statements, laughed and joked to get us through the stressful moments. One year we organized a betting pool, collecting 2 Swiss Francs per bet from caucus members, to guess Chair Luis Chávez’ real age (the late great Bob Epstein won the 244 franc “pot” but I won’t divulge how we were able to get the correct answer from the Chairman himself, which was 40 in August” at the time). Through this very tough, unique and historic experience, over the years, we developed deep bonds of friendship, solidarity and mutual respect that have continued to grow, like warrior soldiers fighting side-by-side in the trenches of a war.

During those two weeks in September 2004, some of us agreed that we were missing a broader awareness and activism about the declaration among the indigenous peoples of the world, especially at the “grass roots” level. Many community members never made it to Geneva but were vitally affected nonetheless. We took the view that the active engagement of indigenous peoples on the “home front” could help break down the resistance of states, if only we could find a way to involve them in what was going on. So a four-day hunger strike and spiritual fast was organized by six indigenous representatives, with wide support from indigenous organizations around the world, when the declaration negotiations resumed for a third week in November/December 2004. The resulting publicity helped to mobilize the attention of the world community and, in particular, indigenous peoples around the world, and to build support for defending our rights despite the concerned attempts by some states to undermine them.

A statement declaring the hunger strike and spiritual fast on 29 November 2004 was presented at the WGDD by Saul Vicente Vasquez (Zapotec from Oaxaca, Mexico) on behalf of the hunger strikers, after a traditional drum and prayer song had been offered by a Lakota elder:

“We will not allow our rights to be negotiated, compromised or diminished in this UN process, which was initiated more than 20 years ago by Indigenous Peoples. The United Nations itself says that human rights are inherent and inalienable, and must be applied to all Peoples without discrimination.”

Chairman Chávez allowed us to remain sitting on our white blanket in the back of the room despite requests from both the US and the Russian Federation to have us physically removed as “protesters”. The Russian Federation also objected to the Lakota prayer song!

Over 700 emails and faxes came in from around the world that week declaring their support for the hunger strike, the declaration, and the rights and principles it upholds. These messages were passed on to the states to demonstrate that the work on the declaration was part of a growing international movement and a shared commitment that reached far beyond the few dozen indigenous delegates who persisted in finding their way back to Geneva year after year. Later, the Chair and several states told me and others that this was a turning point for them and that it had helped open their eyes as well, as it underscored our level of commitment to our rights and the vital importance of the declaration to indig-
enous peoples around the world. The responses of the "grass roots" peoples invigorated us as well.

Maybe this did help to turn the tide. There were certainly many other factors involved as well. For whatever reason, by 2005, things had begun to move in a better way, and a growing number of states seemed ready to accept that any changes would have to be small and could not undermine the rights already contained in the Sub-Commission Text or international law. The caucus agreed that while changes to the Sub-Commission Text seemed to many to be inevitable at that point, we would stand together and hold the line for key provisions including free, prior and informed consent, traditional land and resource rights, self-determination and the unqualified use of the term "peoples".

New and unexpected relationships of political solidarity and personal friendship emerged, not just among indigenous peoples but also with some of the state representatives who seemed newly prepared to fight for us and defend the rights in the declaration, if need be in direct opposition to some of the other states. Although many of the old familiar battle lines remained to the bitter end, new alliances were forged and have lasted to this day, in some cases realigning the "state vs. indigenous" paradigm that had characterized the struggle for the Declaration for so many years.

The indigenous caucus remained strong and, in the main, unified even after the declaration was adopted by the Human Rights Council and moved to the UNCA in New York. Our cohesiveness could have been seriously undermined by a changed political scenario and a greatly diminished voice in the process during these final set of negotiations among the states, which precipitated the vote in the UNCA. We were consulted about a final set of nine changes that had been negotiated among a group of states, with the concession that, if these could be incorporated, then further amendments would not be considered. We all consulted quickly with our regional lists; we were presented with the proposed changes one week to the day before the scheduled vote was to take place in New York. The vast majority of indigenous peoples from around the world who responded expressed that although they did not like two of the nine proposed amendments in particular (some others were fairly neutral and two appeared to actually strengthen the Text), they were not "deal breakers" and the rights we needed to have affirmed and recognized were still intact. Those who had objections would thus not call for opposition to its adoption. It would go ahead as scheduled.

On 13 September 2007, I was able, as the North American regional co-coordinator, together with Grand Chief Edward John from Canada, on the Global Steering Committee for the Indigenous Caucus, to join the indigenous representatives invited to sit on the floor of the UN UNGA to watch the UNGA's huge electronic voting screen as the 143 green "yes" votes (one more "yes" vote was added later making a total of 144), the 4 red "no" votes (everyone knows who they were by now) and only 11 abstentions (I was one of many who expected a few more of those) came up. What a moment! We were finally, in the eyes of the UN, full members of the human family with the legal rights essential for our survival, dignity and well-being fully recognized (if not yet fully upheld!)

But what was it that we had finally gained after all those years of struggle and negotiations over the wording? In the end we were able to join forces with many states and indigenous peoples around the world to maintain the key provisions we had started out to defend 30 years before, to make a real difference to indigenous peoples trying to uphold their rights in their own communities. It is not surprising that many of these most vital provisions were also the most hard fought and, in some cases, among those where consensus was ultimately not possible. They include:

- **Peoples with an "s" throughout the document**, which ensures that the rights recognized under international standards and laws for all peoples are also recognized and applied without qualification or exception to indigenous peoples, such as self-determination, development and means of subsistence.

- **Equal rights and non-discrimination**, which can be used to challenge all forms of cultural, environmental, social, judicial, education and legal forms of discrimination.

- **The Declaration is the first international standard focusing primarily on the recognition of collective rights rather than individual human rights**, responding to our ongoing insistence over many years that as indigenous peoples our rights and identity, which are based on our relationships to our lands, cultural and ceremonial practices, ways of life, subsistence economies, languages and political systems, are exercised and carried out collectively, as peoples.

- **Self-determination**, which is an essential and non-negotiable provision that functions as the basis of all the other rights in the Declaration.

- **Rights to the lands, territories and natural resources "which they have traditionally owned, occupied or otherwise used or acquired"**. Recognition of this vital right in these words provides a tool for the struggles of countless indigenous peoples around the world whose traditional lands and resources are not legally recognized by the states in which they live, or for whom these rights are being denied.

- **Free, prior and informed consent** expressed as both a right of indigenous peoples and an obligation of states in many of the Declaration's provisions, including, notably, in regard to the adoption by states of legislative or administrative measures, and as a prerequisite for the development, use or exploitation of indigenous peoples' lands and natural resources.
**Right to subsistence and development**, which includes the protection of indigenous peoples’ traditional institutions, economic activities and subsistence ways of life.

**The international standing of treaties** entered into by indigenous peoples and states and the full recognition of treaty rights as having an international character, interest and responsibility for the first time.

**The Declaration** provides a framework for establishing just and equitable processes for redress, restitution and conflict resolution, with the full participation of the indigenous peoples concerned, including the minimum criteria for negotiations and settlement processes involving indigenous peoples’ lands, territories and resources, including those which were traditionally owned or otherwise occupied or used and which were confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

**The Declaration** also recognises rights required for the practice of traditional cultures and ways of life, protection of sacred sites, control of educational systems, preservation of indigenous languages, defense of the environment and productive capacity of our lands, prevention of forced relocation, and many other rights essential for our survival, as well as a number of specific obligations by states to ensure and facilitate the exercise and implementation of these rights.

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**Implementing the Declaration: pesticides use in Yaqui communities in Sonora, Mexico**

Indigenous peoples have been able to use the Declaration to good effect since its adoption. For example, Yaqui indigenous peoples in Mexico have utilized the Declaration in their fight against the use of pesticides, which have had a devastating effect on their communities. Based on Article 29 of the Declaration, which affirms that: “[I]t is the responsibility of the State to take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent”, the Yaqui authorities passed a Declaration requiring states to respect their right to free, prior and informed consent before using pesticides and chemicals on their lands.

In Rio Yaqui, Sonora, Mexico, Yaqui indigenous communities had experienced over 50 years of the so-called “green revolution” which sought to boost agricultural production in “developing countries” through the use of modern agricultural methods such as the heavy use of toxic pesticides and chemical fertilizers, as well as the introduction of new, hybrid seeds. The right to free, prior and informed consent on the part of the affected communities was not considered as a factor, nor is it understood or practised in the implementation of this program to this day.

Seeing the Declaration used in this way makes the many years of struggle and time away from home and families well worth it. I think we can be satisfied, hold up our heads and look into the eyes of our community members, our leaders and elders, our children and grandchildren, knowing we did the best we could for them. We were part of creating something they can use.

Maybe in the far distant future, the spiritual echoes of this historic struggle, and the many personal stories of love and sacrifice that went along with it, will still be felt and told in some place or another. There is no doubt that our ancestors stood with us and gave us strength throughout the process, especially when the negotiations were difficult. We learned that, in a cave on a mountainside far above Geneva, in the halls of the UN, and in a traditional guardia (meeting place) in Vizcaino Sonora, Mexico, we saw our leaders take a stand using the words we fought for. What we all helped to create in the Declaration is much more than words on paper, however dry or beautiful they may be. We helped to create a tool that can be used now by our peoples in their struggles, to safeguard the health of their children, protect the waters and lands that feed their families, uphold their treaty rights, and safeguard the sacred places where prayers are offered to the Creator for the coming generations.

The Declaration will live up to its full potential only when it is combined with the resistance and commitment of indigenous communities who decide to assert it. The text may not be all we wanted it to be, but it is far, far stronger than it seemed it would be at some of the darker moments we lived through, working for its adoption. It is a new floor but it is not the ceiling. The work will continue as new generations come into the international arena and see new possibilities there to defend and assert our inherent rights as indigenous peoples.

Meanwhile, in the here and now, the Declaration is alive with the hope that it can be used to ensure that our rights to live in our ways, with health, dignity, peace and justice, will be respected at long last. This will happen if our peoples and nations know it, take it to heart, stand behind it, assert it and use it. This is the responsibility of us all. For all our relations.

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**Notes**

2. Saul Vieira Vasquez “Statement to the UN Working Group established in accordance with Commission on Human rights resolution 1995/32” (29 November 2004).
4. Ibid, Articles 27, 28 and 40.
RESPONDING TO THE CONCERNS OF THE AFRICAN STATES

Albert K Barume

Introduction

Shortly after the United Nations (UN) Declaration on the Rights of Indigenous Peoples (the Declaration) reached the UN General Assembly (UNGA), from the Human Rights Council in Geneva, African states raised serious concerns regarding several provisions and managed to defer its adoption. From such an openly hostile position, which dashed almost any hopes for adoption of the Declaration, in less than a year and a half the majority of African states had changed their opinion to vote in favour of the Declaration. How did this happen? Who sided and what kind of persuasive argument led to such an about turn? These are the key questions of this paper, which is based on the author’s first-hand experience as an integral player in many of the initiatives highlighted here.

Background

The Declaration was adopted by the Human Rights Council on 29 June 2006 with 30 votes in favor, 2 against and 12 abstentions. Of the twelve African members of the Council, only three voted in favour of the Declaration (Cameroon, South Africa and Zambia), six abstained (Algeria, Ghana, Morocco, Nigeria, Senegal and Tunisia) and three were absent (Djibouti, Gabon and Mali). In accordance with UN procedures, once in New York, on 28 November 2006, the Declaration went through the Third Committee of the UNGA, which focuses on social, humanitarian and cultural issues. At this meeting, Namibia presented an amending resolution which called for the vote on the Declaration to be deferred in order to allow more consideration of African concerns. Many African states expressed support for this Namibian proposed resolution. For instance, the Botswana Government argued: that the Declaration failed to define indigenous peoples; that all Africans are indigenous; that the right to self-determination would cause insurrection and division in Africa; and, finally, that the right to vote, prior and informed consent would become a veto mechanism against governmental projects. The Namibia-suggested deferment resolution was upheld by the Third Committee with 82 votes in favor, 67 votes against and 25 abstentions. All African states with missions in New York and present at this session voted in favor of the Namibian amendment, with the exception of the Democratic Republic of the Congo, Equatorial Guinea, Sao Tome and Principe, Seychelles and Somalia, which surprisingly were absent from the voting room on that day. Like many others, a former Chairperson of the African Commission's Working Group on Indigenous Populations/Communities officially expressed his concern to the Namibian government in the following words:

We would like to express our deep concern about this situation, as we firmly believe that the UN Declaration, as adopted by the Human Rights Council in June 2006, represents a new path for the protection of the human rights of indigenous peoples and reflects not only an emerging international consensus on the rights of indigenous peoples but also the great progress made on this issue at the African Commission on Human and Peoples' Rights.

The African Group's formal concerns

African states' concerns with the Declaration were not expressed until the text reached the UNGA in September 2006. By then, the text had spent more than twenty years being debated in Geneva by the UN Working Group on Indigenous Populations, State representatives and Indigenous Communities. Throughout all these years, most African states did not take meaningful part in the debates, for several and diverse reasons. Some African countries explain this with reference to a lack of human resources, whereas others simply argue that Indigenous peoples' issues were not, then, at the top of their diplomatic agendas. As a group, African States and Governments (the African Group) made public their seven major concerns in a five-page document entitled "Draft Aide Memoire" dated 9 November 2006. First, the African Group underlined the need for a formal definition of the term "indigenous", which, it argued, would make it easier to identify the holders of the rights enshrined in the Declaration. Reference was also made to inter-ethnic tensions that could be exacerbated by recogising special rights to sections of African populations. Secondly, the African Group objected to an Indigenous peoples' right of self-determination under article 3 and 4 of the Declaration, fearing political instability, secessions and threats to the territorial integrity of African states. Third, Article 5 of the Declaration on the...
right of indigenous peoples to political social and cultural institutions, created fears among African states, which considered such a right to be in contradiction with several constitutions that promote unified states. Fourth, the right to belong to an indigenous community or nation in accordance with the traditions and customs of the nation or community was seen by the African Group as a green light for indigenous communities to change their nationalities freely, thus leading to political instability. Fifth, the African Group feared that the right of indigenous peoples to free, prior and informed consent would emerge as a veto mechanism to national legislation. Sixth, the African Group viewed indigenous peoples' rights to lands, territories and resources which they have traditionally owned, occupied, used or acquired as illegally unworkable and in breach of states' rights over land and natural resources. Seventh, the African Group objected to the provisions of the Declaration on the right of indigenous peoples to recognition, observance and enforcement of agreements, treaties and other constructive arrangements historically concluded with states. Treaties, the African Group objected, were exclusively a State responsibility.

Between April and May 2007, the African Group came up with more than 35 amendments to the Human Rights Council adopted Declaration, with more than eight in the preamble alone. These suggested changes, most of them strongly worded, were circulated among African diplomats only but later served as a basis for discussions with the states in favour of the Declaration as adopted in Geneva (the Co-Sponsors Group). For example, in Article 3, the words "right to self-determination" were replaced with "right to participate in the political affairs of the State." Furthermore, the following new paragraph was inserted in the preamble:

Recognizing that the situation of indigenous peoples varies from region to region, country to country, and from community to community, every country or region shall have the prerogative to define who constitutes indigenous people in their respective countries or regions taking into account its national or regional peculiarities.

The African Group’s proposed amendments contained the words “national law” twelve times, revealing that the Group was concerned to keep indigenous peoples’ rights within domestic standards. One might, indeed, think that African states wanted their own UN Declaration. As a matter of fact, the large number and nature of the suggested amendments by the African Group left many skeptical about any chance of ever reaching a consensus between states and indigenous peoples.

The high level of African political influence

From June to December 2006, debates on the Declaration went on among African diplomatic missions in New York. It appeared, right from the start, that not all African states took the same position. Some African missions’ representatives in New York had no precise objection of their own to the Declaration, as adopted by the Human Rights Council. Countries such as the Republic of Congo, the Central African Republic and South Africa, which had taken bold steps back home to recognize indigenous peoples’ rights, did not see any major domestic legal implications of the Declaration. In other words, as the debate proceeded among the Africans on the Declaration, diverse individual positions on the part of African states emerged.

To address the division between African states, Botswana and other states seeking to amend the Declaration pushed for a high-level political dialogue on a common position. This explains why the Republic of Botswana proposed the item “Exchange of views on Draft United Nations Declaration on the Rights of Indigenous Peoples” to the agenda of the Executive Council of the African Union’s (AU) 10th session held in Addis Ababa on 25-26 January 2007, which produced a four-page concept note that summarized the African Group’s concerns as presented in the “Draft Aide Memoire.” The AU’s Executive Council of Foreign Ministers is in charge of, among other matters, preparing the agenda of the AU UNGA. So, as expected, the African Heads of States and Governments, during their 8th Ordinary Session (AU General Assembly) held in Addis Ababa on 29-30 January 2007, endorsed the Executive Council’s proposal and made a decision with four important points that were to impact on the whole negotiation process relating to the Declaration. This decision brought down the concerns of the African Group to five, notably omitting the one on treaties. It reaffirmed that “the vast majority of the peoples of Africa are indigenous to the African Continent” and endorsed a common African position, instructing the African diplomats in New York,

to maintain a united position in the negotiations on amending the Declaration and constructively work alongside other Member States of the United Nations in finding solutions to the concerns of African States […] to continue to ensure that Africa’s interests in this matter are safeguarded. *

This intervention of African Heads of States and Governments not only brought a strong political influence into the negotiation process but it also tied up, or reduced, the maneuvering space for African diplomats at the UN in New York. In private, several diplomatic missions expressed support for the Declaration but, at the same time, and in public, they could not afford to be seen to break the African Group’s common position.

Addressing the African Group’s concerns

It appeared to many that, if the Declaration was to have a chance of adoption, it would be necessary to create an environment in which African states could take...
individual positions on the Declaration, as a vote by the UN General Assembly was increasingly seen as the possible endgame. Adopting this strategy, in March 2007, a group of sixteen researchers, indigenous leaders and scholars from ten African countries, all active and interested in the work on indigenous issues being undertaken by the African Commission on Human and Peoples’ Rights (ACHPR), prepared a twenty-page technical response (Response Note) to the African Group’s Draft Aide Memoire. Point by point, and following the same structure, the Response Note addressed the concerns of the African Group, illustrating that the African regional human rights mechanism had been working on the issue of indigenous peoples’ human rights for more than five years. Notably, many African diplomats in New York and Geneva were unaware of the landmark ACHPR human rights and conceptual report on indigenous peoples, which brings to shore Africa-grown understandings of indigenous peoples’ rights (to self-determination, to lands and culture) that fit well with states’ territorial integrity. The Response Note also tapped into African jurisprudence and states’ practice to reveal that numerous African states had adopted the concept of indigenous and taken bold steps, including restitution of lands to indigenous peoples within protected and mineral-rich areas. On the definition issue, the Response Note cited examples of several African countries, including South Africa, to demonstrate that “consistent practice reveals that African states do not use a formal definition of their indigenous communities or peoples in order to correct the historical injustices affecting them.” It further quoted the ACHPR’s report, which indicates that:

> in Africa, the term ‘indigenous peoples or communities’ is not aimed at protecting the rights of the first inhabitants that were invaded by foreigners’. Nor does the concept aim to create hierarchy among national communities or set aside special rights for certain people. On the contrary, within the African context the term ‘indigenous peoples’ aims to guarantee equal enjoyment of rights and freedoms to some communities that have been left behind. This particular feature of the African continent explains why the term ‘indigenous peoples’ cannot be at the root of ethnic conflicts or of any breakdown of the Nation State.

More importantly, the Response Note informed many African diplomatic missions in New York of recent developments in understandings of the right to self-determination on the continent, as developed by the ACHPR:

> The right to self-determination as entrenched within the provisions of the OAU Charter as well as the African Charter, cannot be understood to sanction secessionist sentiments. Self-determination of peoples must therefore be exercised within the inalienable national boundaries of the State with due regard for the sovereignty of the nation-state.

As shown below, countries such as Namibia welcomed and agreed with this argument, which seemed to ease some of their concerns. Once finalized, the Response Note was sent to each and every African Permanent Mission in New York and even non-African representatives.

In addition to producing the Response Note, six members of the group of African experts went to New York, where they held individual meetings, as well as group discussions, with almost thirty African diplomatic missions. With the help of the International Work Group for Indigenous Affairs (IWGIA) and the United Nations Permanent Forum on Indigenous Issues (UNPFII), a roundtable was also organized, bringing together African and non-African diplomats with various opinions on the Declaration.

Most African missions welcomed and appreciated the Response Note, which they said contained useful information and updates. The issues regarding the definition of indigenous peoples, the right to self-determination and access to land with resources appeared to be the main concerns. The Namibian embassy was the only African mission in New York that not only met the experts group but also presented its core argument, in a letter, which agreed with a number of points notably the one on self-determination:

> I am encouraged by the fact that the Response Note to the Draft Aide Memoire of the African Group on the Declaration on the rights of indigenous peoples serves to buttress the position of the African Group rather than negating it. In the Response Note the experts among others indicate that the right to self-determination as entrenched within the provisions of the OAU Charter as well as the African Charter, cannot be understood to sanction secessionist sentiments.

A number of other African delegations in New York referred to domestic situations as reasons for not supporting the Declaration. A Nigerian representative mentioned, for instance, the Timor conflict to justify why his government objected to several provisions of the Declaration. But most simply expressed lack of scope for manoeuvring given that the matter had gone to the Heads of States and Governments, some of whom seemed to be monitoring the process closely. Whether or not this was a coincidence, it so happened that Botswana’s Attorney-General was also on an official mission in New York during this period. Several other African representatives did not understand why countries such as Botswana, Namibia, Kenya and Nigeria were insisting on having the declaration profoundly amended. Many were indeed sceptical about a whole-scale reopening of the text and concluding negotiations before the end of the 61st session of the UN General Assembly in September 2007. It also came out that most members of the African Group were not prepared to bear a historical world responsibility for the Declaration’s failure. Combined, all these factors and opinions provided a fertile ground for permission.
There were several other initiatives to try and persuade the African Group to support the Declaration, such as a press release by the Indigenous Peoples of Africa Coordinating Committee (IPACC), a public statement by Amnesty International, a statement by IWGIA to the ACHPR, and numerous statements by participants to the 6th session of the UNPFII. One could also mention an initiative carried out in June 2007 by two indigenous leaders from Central Africa, who visited the Republic of Congo, Cameroon, Central African Republic and Burundi, to convince the officials to support the Declaration. These indigenous leaders met with high-ranking officials from presidencies, prime ministers' offices and foreign affairs ministries. It was noticeable from these meetings that discussions on the Declaration among ambassadors in New York were not being closely followed in some capitals. In Cameroon, Central African Republic and the Republic of Congo, officials pledged support for the Declaration. This was particularly mentioned by the Prime Minister of Central African Republic, who underlined the domestic efforts by his government to improve the human rights situation of the country's indigenous peoples. It was thought that Central African countries could play a leading role in rallying support for the Declaration once some of them, namely Burundi and Cameroon, expressly mention indigenous communities in their Constitutions.

Numerous options were explored among the diplomats in New York. For instance, it was suggested that the concerns of the African Group could be addressed within the text of the resolution introducing the Declaration for adoption, which could specify or clarify the meaning of a number of articles of the Declaration with regard to issues such as the right to self-determination and respect for territorial integrity. However, most African states did not appear ready to settle for anything less than amendments to the core text of the Declaration.

**Contribution of the African Commission on Human and Peoples’ Rights**

As the Declaration was a human rights text, it would have been appropriate for AU bodies and member states (African diplomats in New York, the AU’s Executive Council and Heads of States and Governments) to seek a legal advisory opinion from the ACHPR, which is mandated to advise all AU’s bodies on issues relating to human rights. The need for the ACHPR’s legal advice to the AU on the Declaration was expressed by the community of African human rights NGOs in Accra, Ghana, in May 2007, at what is known as the NGOs Forum, held before every session of the ACHPR. In Accra, the ACHPR adopted a resolution highlighting its work on indigenous issues, notably the 2003 Report of the African Commission’s Working Group of Experts on Indigenous Populations / Communities, subsequently noted and authorized for publication by the 4th Ordinary Session of the Assembly of Heads of States and Governments of the AU, held in January 2007 in Addis Ababa, Ethiopia. On May 2007, the ACHPR Resolution mandated the Working Group on Indigenous Populations/Communities to draft a legal opinion to shed some light on matters similar to the concerns voiced by the African Heads of States and Governments on the Declaration. On the meaning of the term “indigenous”, the Advisory Opinion referred to the report of the ACHPR on indigenous peoples to underscore that “in Africa, the term indigenous populations does not mean ‘first inhabitants’ in reference to originality as opposed to non-African communities or those having come from elsewhere.”

On the issue of lands, the Advisory Opinion clarified that the Declaration's land rights provisions were similar to those found in instruments adopted by the AU such as the:

**African Convention on the Conservation of Nature and Natural Resources**, whose major objective is: “to harness the natural and human resources of our continent for the total advancement of our peoples in spheres of human endeavour” (preamble) and which is intended “to preserve the traditional rights and property of local communities and request the prior consent of the communities concerned in respect of... their... traditional knowledge.”

With regards to the right of self-determination, the Advisory Opinion states that:

**Article 46 of the Declaration [...] is in conformity with the African Commission’s jurisprudence on the promotion and protection of the rights of indigenous populations based on respect of sovereignty, the inalienability of the borders acquired at independence of the member states and respect for their territorial integrity... the notion of self-determination has evolved with the development of the international recognition of the claims made by indigenous populations whose right to self-determination is exercised within the standards and according to the modalities which are compatible with the territorial integrity of the Nation States to which they belong.”

The ACHPR Advisory Opinion was distributed widely and sent to each and every African permanent mission in New York. Later on, the former Chairperson of the ACHPR, H.E. Salamatu Sawadogo, attended the 9th Ordinary Session of the Assembly of the African Union (Head of States) held in Accra, Ghana in July 2007. She is reported to have provided legal clarification to the Heads of States on the Declaration, as described in the and other members of the AU’s bodies on the Declaration, as described in the and other members of the AU’s bodies on the Declaration, as described in the...
York had to be cleared back home, as the Heads of States had decided "to remain seized of the matter". Furthermore, given that most of their concerns were legal in substance, African states could not ignore the ACHPR's Legal Opinion that demonstrated there were legal safeguards against any negative impact of the Declaration on the continent.

**Final negotiations under UN supervision**

As time went on and lobbying efforts multiplied, there were strong indications that African states might agree on a proposal for a reduced number of amendments to the text of the Declaration, around twenty-five. This window of opportunity may have influenced, on 6 June 2007, the appointment by the President of the UN UNGA of Ambassador Hilario G. Davide, from the Philippines, as "facilitator" mandated to bring the Co-sponsors' Group, led by Mexico, and the African Group closer. Writing to all permanent missions in New York, the President said:

> I am pleased to inform you of my decision to appoint His Excellency Hilario G. Davide, Jr., the Permanent Representative of the Philippines to the United Nations, to undertake, on my behalf, further consultations on the Declaration on the Rights of Indigenous Peoples. Ambassador Davide, Jr. will conduct open and inclusive consultations, in formats that he deems appropriate, with a view to reflecting the views of all concerned parties in this process. I expect him to report back to me on the outcome of his consultations as soon as possible, but not later than mid-July 2007.

By early August 2007, it emerged that Ambassador Davide's work was starting to bear fruit. From an initial 35-plus proposed amendments, brought down to 25 in April 2007, it was reported that the African Group would accept a specific reference to respect for territorial integrity and, in exchange, all key provisions including those on land and resource rights, self-determination, free, prior and informed consent and treaties would remain intact. Both sides had something important to lose if a solution was not found. The Co-Sponsors' Group feared that a vote by the UNGA, without some sort of consensus with the African Group, could lead to more damaging amendments on the floor. As for the African Group, it appeared that a growing number of its members were becoming increasingly uncomfortable with the strong stand led by a minority of African states, regardless of all the clarifications provided by, among others, the ACHPR. In private, several African states' representatives expressed that they felt they were being dragged into positions that were unjustified or irrelevant back home. Numerous other African countries expressed a reluctance to be responsible for the failure of a text that had taken such a long time, more than 20 years, to negotiate.

It also believed that the ACHPR Advisory Opinion, the work of the Chairperson of the African Commission at the Assembly of the AU or Heads of States summit in Accra in July 2007, the Revised Note by African experts and all the materials provided by various groups to diplomats in New York played a positive role in the softening of the African Group's position. Thus, on 30 August 2007, the African Group and the Co-Sponsors' Group announced an agreement consisting of nine amendments to the original text adopted by the Human Rights Council. They also agreed to vote against any amendments on the floor of the UNGA by other opposing states.

The first amendment was inserted into the first sentence of the preamble of the Declaration. It made reference to the Charter of the United Nations, responding thus to the African Group's concerns over the right to self-determination, on which it argued should be understood within the context of the Declaration on friendly relations between states, which refers to states' territorial integrity. The second amendment was a deletion of the whole fifteenth paragraph of the preamble, which had stated "[r]ecognizing that indigenous peoples have the right freely to determine their relationships with States in a spirit of coexistence, mutual benefit and full respect". It is believed this deletion was an immediate consequence of the deal on territorial integrity, since it would have been contradictory, on the one hand, to keep such a paragraph and, on the other, to safeguard states' territorial integrity. The third amendment added the Vienna Declaration and Programme of Action to the International Instruments mentioned in paragraph 18 of the preamble, because the Vienna Declaration refers to states' territorial integrity. A whole new paragraph on national and regional particularities was inserted in the preamble as the fourth amendment: "[r]ecognizing also that the situation of indigenous peoples varies from region to region and from country to country, and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration". This paragraph resembles a former one contained in the initial amendments proposed by the African Group, but without the phrase: "every country or region shall have the African Group, but without the phrase: "every country or region shall have the prerogative to define who constitutes indigenous people in their respective countries or regions", which, in the finish, was accepted as incompatible with the principle of self-identification. A fifth amendment to Article 8(2)(G), which rephrases states to provide effective mechanisms for the prevention of, and redress for, forced assimilation, was shortened following a deletion of the words “by force, forced assimilation, was shortened following a deletion of the words “by force, forced assimilation, was shortened following a deletion of the words “by force, without any reference to other cultures or ways of life imposed on them by legislative, administrative or other measures”. The sixth amendment consisted of a watering down of Article 30(1) by deleting the requirement that military activities only take place on indigenous peoples' lands and territories when justified by a "significant threat to" the public interest. The seventh amendment was the deletion of the proviso "they could then hold and exercise rights given to them under international humanitarian law.”
before the words mineral, water or other resources in Article 36(2) on lands, territories and natural resources. The eighth amendment is seen as the paramount safeguard for states' territorial integrity, which ended up being the African Group's main demand. Reference to territorial integrity is also the most important issue on which much energy and time were spent. Its final formulation was the subject of several days' consultation with several groups, including indigenous communities. Reference to territorial integrity was indeed the main bargaining chip that those in support of the Declaration were to offer and, in exchange, the African Group agreed to drop most of its suggested amendments on other issues, including to the provisions on lands, territories and resources. The initial Article 46(1) text stated:

Nothing in this Declaration may be interpreted as implying for any State, people or group or person any right to engage in any activity or perform any act contrary to the Charter of the United Nations.

It was amended with the following additional phrase:

or construed as authorizing or encouraging any action which would dismember or impair totally or in part, the territorial integrity or political unity of sovereign and independent states.

The eighth amendment added the proposition "and" between the words "by law" and "in accordance" in Article 46(2) thus requiring that any limitation of the Declaration's right to freedom be both determined by law and in accordance with international human rights obligations. So, from an initial proposal for more than 35 proposed amendments, the African Group settled for virtually one major amendment, that on territorial integrity, with eight further more minor ones, as if saying "do whatever you want except tamper with our political power". On 13 September 2007, 143 states thus voted in favour of the Declaration as opposed to only 4 negative votes from Canada, Australia, New Zealand and the United States. No African country voted against the Declaration, although three (Burundi, Kenya and Nigeria) were present in the voting room and abstained. However, it is intriguing that on the day of vote a staggering 15 African countries were absent from the room, most of whom had been present and voted in favor of the Namibian-led referendum Resolution almost a year earlier. So why were they suddenly uninterested in the Declaration issue at its crucial moment? Was it because they did not want to appear either to be in support of or against the Declaration? Or were the big guns that voted against the Declaration putting pressure on these states? It is difficult to tell but it is believed that several African states preferred to be seen as being as neutral as possible. Thus more than 30 African states voted in favor of the Declaration, including countries such as Botswana that had been openly opposed to it at the beginning. And this is how the Declaration became one of the most widely supported human rights instruments on the African continent, where it will likely have a positive impact on similar pre-existing efforts by the African Commission and the AU.

Notes

2 The General Assembly decided "to defer consideration and action on the United Nations Declaration on the Rights of Indigenous Peoples to allow time for further consultations thereon". Further, the Assembly would also decide "to conclude consideration of the Declaration before the end of its sixty-first session" see UNGA Third Committee "Resolution on the draft Declaration on the Rights of Indigenous Peoples": UN Doc A/C.3/61/L.18/Rev2 (28 November 2006)
3 Ibid.
6 The Co-Sponsor Group was led by Mexico and included more than 60 other UN member states.
10 South Africa, Rwanda, Cameroon, DR Congo, Kenya, Mali, Burundi, Morocco, Tanzania and Niger.
13 Above n 11, 3.
14 Ibid, 6.
15 Ibid, 6.
16 The Group was led by Dr. Albert Banare and included Dr. Noemi Kipnari, Adela Wiidchut, Joseph Olo Simel, Hassan Ind Balakame and Hon. Liberace Nyagato. This group was then joined by Andrew Chiveriwa and Professor Shabudh Gato.
20 EN/GB86/025/2006/AppendixB-393

21 Mr Kabilin Zephyrin (an Indigenous leader from Rwanda) and Hon. Liberat Nkayiza (Indigenous woman Member of Parliament in Burundi).


25 Ibid, para 38.
26 Ibid, para 38.
27 Haya Rabah Al Khalifa, President of the UN General Assembly, Letter to Permanent Missions to the United Nations (6 June 2007).


30 Above n. 1.

31 Chad, Côte d’Ivoire, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Guinea-Bissau, Madagascar, Mozambique, Namibia, Rwanda, Sao Tome and Principe, Seychelles, Somalia, Togo and Uganda.
THE RIGHT OF INDIGENOUS PEOPLES TO
SELF-DETERMINATION IN THE POST-DECLARATION ERA

S James Anaya

Introduction

A centerpiece of the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) is its Article 3, which affirms that, "Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Recognition as "peoples" with rights of "self-determination" has been central to the chorus of indigenous peoples' demands within the international arena. As representatives of indigenous peoples from around the world advocated for the Declaration through the UN system for over two decades, it became increasingly understood that self-determination is a foundational principle that anchors the constellation of indigenous peoples' rights.

Yet Article 3 of the Declaration and its affirmation of indigenous self-determination proved to be one of the most contentious of the Declaration's provisions during the negotiations preceding its adoption. Independent of the subjective meaning attached to the right or principle of self-determination by indigenous peoples themselves, a frequent tendency has been to understand self-determination as wedded to attributes of statehood, with "full" self-determination deemed to be the attainment of independent statehood, or at least in the right to choose independent statehood. For obvious reasons, this tendency made explicit affirmation of indigenous self-determination the subject of lively debate.

Indigenous peoples have the same right of self-determination enjoyed by other peoples

First, the Declaration, by its own terms, recognizes that indigenous peoples have the same right of self-determination enjoyed by other peoples. This follows from the principle of equality that runs throughout the text of the Declaration and is made explicit in Article 2, by which both "indigenous peoples and individuals" are declared to be "equal to all other peoples and individuals". Additionally, the wording of Article 3 affirming the right of self-determination for indigenous peoples reflects that of other international texts which uphold the right for "[a]ll peoples," including the widely ratified International Human Rights Covenants (Covenant on Civil and Political Rights and Covenant on Economic, Social, and Cultural Rights) and General Assembly Resolution 1514, which is aimed at decolonization. The Declaration is thus premised on the conception of a universal right of self-determination and, on that premise, affirms the extension of that universal right to indigenous peoples.

As is well known, the application of the right of self-determination in the context of classical colonialism, such as that still existing in Africa in the mid-20th century, led to the formation of new independent states. If anything is clear, however, it is that, in the formation of new independent states, if anything is clear, however, it is that, independent statehood through the Declaration, endorsement of indigenous peoples' right of self-determination through the Declaration, states were not endorsing a right of indigenous peoples to form independent states. And indigenous peoples themselves have almost uniformly denied aspirations to independent statehood in demanding self-determination. Nor is it readily justifiable or practical to provide indigenous peoples, across the board, a unilateral choice of any status up to and including independent statehood. If there is a universal right of self-determination that extends to indigenous peoples, therefore, it cannot be the one that necessarily entails a right to independent statehood yet that right, if it is indeed the same one operative in the decolonization context, must be somehow linked to the independent state outcome in that context.
Self-determination as a human right

Identifying the content of a universal right of self-determination begins by seeing it as, in essence, a human right as opposed to a right of sovereigns or puppet states. For a period in history, international law was concerned only with the rights and duties of independent states, disregarding the face of humanity beyond the state. International law continues to be concerned primarily with states and their relations with one another but, under the modern rubric of human rights, it is increasingly also concerned with upholding rights that are deemed to inhere in human beings individually and collectively. Self-determination is properly understood to arise within the human rights frame of contemporary international law, rather than its traditional states' rights frame. As already noted, the right of self-determination is included in the widely ratified international human rights covenants, and it is also featured in the African Charter on Human and Peoples' Rights.7

The human rights covenants and other international instruments declare that “peoples” have the right of self-determination.8 This phraseology has led to endless debate about what constitutes a “people.” Among those engaging in such debate, the typical underlying assumption has been that only those entities within a limited class of human aggregations denominated “peoples” are, as such, holders of the right. For some, the entities qualifying as “peoples” are to be identified by reference to certain objective criteria linked with ethnicity and attributes of historical sovereignty. For others, a “people” is synonymous with the aggregate population of a state, or one that is entitled to become a state. In either case, the assumption is that a “people” is an entity that a priori has actual or putative attributes of sovereignty or statehood and that has a legal existence distinct from that of human beings who otherwise enjoy human rights.9

But if self-determination is a human right, its designation as a right of “peoples” must refer to something other than a right that belongs fundamentally to such corporate or associational entities that are each deemed to have a distinct legal existence as sovereigns or quasi-sovereigns. More in keeping with the human rights character of self-determination is the use of the term “peoples” as designating rights that human beings hold and exercise collectively in relation to the bonds of community or solidarity that typify human existence. Because human beings develop diverse and often overlapping identities and spheres of community—especially in today’s world of enhanced communications and interaction on a global scale—the term “peoples” should be understood in a flexible manner, as encompassing all relevant spheres of community and identity.

Thus, the Declaration now identifies indigenous peoples as self-determining “peoples” without qualification, within a framework that is one of human rights as opposed to states’ rights. As pertaining to “peoples”, the right of self-determina-
determination precepts are also readily discernible in the traditional political systems and philosophies of indigenous peoples. Accordingly, international human rights texts that affirm self-determination for "all peoples," and authoritative decisions that have been responsive to self-determination demands, point to core values of freedom and equality that are relevant to all segments of humanity in relation to the political, economic, and social configurations in which they live.

Under a human rights approach, attributes of statehood or sovereignty are, at most, instrumental to the realization of these values—they are not the essence of self-determination for peoples. As now made clear by the Declaration, "peoples" are transgenerational communities with significant attributes of political or cultural cohesion that they seek to maintain and develop. And for most peoples—especially in light of cross-cultural linkages and other patterns of interconnectedness that exist alongside diverse identities—full self-determination, in a real sense, does not justify—and may even be impeded by—a separate state. It is a rare case in the post-colonial world whereby self-determination, understood from a human rights perspective, will require secession or the dismemberment of states.

Generally speaking, the concept of self-determination of peoples is one that envisions an ideal path in the way individuals and groups form societies and their governing institutions. Political theory feeds understanding about that ideal. Evolving and disparate political theories have over time yielded diverse understandings of the self-determination. Lenin and Wilson, for example, both championed the self-determination of peoples in the early part of the 20th century but they had very different notions of what self-determination was to bring about. Today, various strains of political theory coalesce in certain common human rights postulates of freedom and equality and how they are to define the political order. Indigenous peoples have helped forge a political theory that sees freedom and equality not just in terms of individuals and states but also in terms of diverse cultural differences and co-existing political and social orders. Under this political theory, self-determination does not imply an independent state for every people, nor are peoples without states left with only the individual rights of the groups' members. Rather, peoples as such, including indigenous peoples with their own organic social and political fabrics, are to be full and equal participants at all levels in the construction and functioning of the governing institutions under which they live.

It is thus mistaken to see self-determination as meaning a right to secede or to form an independent state in its fullest sense, with indigenous peoples' right of self-determination being a different and inferior right. Such a notion, that full self-determination necessarily means a right to choose independent statehood, ultimately rests on a narrow state-centered vision of humanity and the world, that is, a vision of the world that considers the modern state—that institution of Western theoretical origin—as the most important and fundamental unit of human organization. This framework of thinking obscures the human rights character of self-determination, and it is blind to the contemporary realities of a world that is simultaneously moving toward greater interconnectedness and decentralization, a world in which the formal boundaries of statehood do not altogether determine the ordering of communities and authority.

**Substantive versus remedial self-determination**

Furthermore, the linkage between self-determination and independent statehood is based on a misunderstanding of the normative grounds for the process that led to the decolonization of African and other territories in the 20th century. Invoking the principle of self-determination, the international community developed particular prescriptions to do away with government structures of a classical colonial type, prescriptions that, for most colonial territories, meant procedures resulting in independent statehood. Decolonization procedures, however, did not themselves embody the substance of the right of self-determination; rather, they were measures to remedy self-determination violations of the right that existed in the prior condition of colonialism. The substantive idea of self-determination defines a standard in the governing institutional order for all of humanity based upon widely-shared values, a standard with which colonialism was at odds. Other forms of violation of self-determination may be identified, and the remedies forthcoming need not necessarily entail the emergence of new states. Substantively self-determination may be achieved from a range of possibilities of institutional reordering other than the creation of new states. What is important is that the remedy be appropriate to the particular circumstances and that it genuinely reflect the will of the people, or peoples, concerned.

Thus it is indeed possible to take seriously the proposition that self-determination applies to all segments of humanity, that is, all peoples. The substance of the right of self-determination, as opposed to remedies that may result from violations of the right, is the right of all peoples to control their own destinies under conditions of equality. This does not mean that every group that can be identified as a people has a free standing right to form its own state or to dictate any one particular form of political arrangement. Rather self-determination means that peoples are entitled to participate equally in the constitution and development of the governing institutional order under which they live and, further, to have that governing order be one in which they may live and develop freely on a continuous basis.

Logically, however, only those segments of humanity that have suffered a violation of self-determination are entitled to remedies for the violation. A violation of self-determination must thus be established in order for a group to have a legitimate claim to alter the status quo of political and social ordering. Additionally, not all peoples thus entitled to remedies are entitled to the same remedies but
rather to those remedies that are appropriate to the particular circumstances. This follows from close attention to the diverse contexts in which the right of self-determination has been widely admitted to apply—from decolonization, to the abolition of apartheid, to indigenous peoples.

The UN Declaration: a self-determination remedial regime

The Declaration and related developments are based effectively on the identification of a longstanding *sui generis* violation of self-determination, one that is in addition to the *sui generis* violation represented by 20th-century colonialism. Indigenous peoples of today typically share much the same history of colonialism as that suffered by those still living in this century under former colonial structures and targeted for decolonization procedures. But despite the contemporary absence of colonial structures in the classical form, Indigenous peoples have continued to suffer impediments or threats to their ability to live and develop freely as distinct groups in their original homelands. The historical violations of Indigenous peoples’ self-determination, together with contemporary inequities against Indigenous peoples, still cast a dark shadow over the legitimacy of state authority in many instances.

The very concept of Indigenous peoples is a concept which has been developed under international legal and political discourse is bound to a concern for this situation, which has global dimensions. The most commonly cited definition of Indigenous peoples, provided by UN Special Rapporteur José Martinez Cobo, emphasizes the characteristic of non-dominance as a result of historical colonization and its ongoing legacies:

> 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 where prevailing in those territories, or parts of them. They form at present non-dominant sectors of society. ...  

The voluminous Martínez Cobo Study on the Problem of Discrimination Against Indigenous Peoples, mandated in 1970 by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (later the Sub-Commission on the Promotion and Protection of Human Rights), laid much of the early groundwork for the Declaration. The study describes the conditions of disadvantage of Indigenous peoples worldwide, linking those conditions to histories of oppression and ongoing discrimination.

The Declaration does not itself define “Indigenous peoples” but it makes clear who they are by emphasizing the common pattern of human rights violations they have suffered. The second preambular paragraph of the Declaration affirms

> that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin, racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust ...

The implication is that a common characteristic of Indigenous peoples is having suffered such “doctrines, policies and practices”. And the fourth preambular paragraph specifically grounds the Declaration in a concern

> that Indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests ...

By alluding to this history at the outset, the Declaration reveals its character as essentially a reparations instrument. It is not privileging Indigenous peoples with a set of rights unique to them. Rather Indigenous peoples and individuals are entitled to the rights enjoyed by other peoples and individuals, although these rights are to be understood in the context of the particular characteristics that are common to groups within the Indigenous rubric. Thus, Article 3 claims for Indigenous peoples the same right of self-determination that is affirmed in other international instruments as a right of “all peoples”. The purpose of the Declaration is to remedy the historical denial of the right of self-determination and related human rights so that Indigenous peoples may overcome systemic disadvantage and achieve a position of equality vis-à-vis heretofore dominant sectors.

Projected back in time, the universal human right of self-determination can be seen as having been massively and systematically denied to groups within the Indigenous rubric. Indigenous peoples, essentially as a matter of definition, find themselves subject to political orders that are not of their making and to which they did not consent. They have been deprived of vast lands, livelihoods and access to life-sustaining resources, and have suffered historical forces that have actively suppressed their political and cultural institutions. As a result, Indigenous peoples have been crippled economically and socially, their cohesiveness as communities has been damaged or threatened, and the integrity of their cultures has been undermined. In both the industrial and less-developed countries in which Indigenous people live, the Indigenous sectors are almost invariably at the lowest rung of the socio-economic ladder, and they exist at the margins of power. Structural phenomena grounded in racially-discriminatory attitudes are not just blemishes of the past but rather translate into current inequities.
The Declaration's very existence and its explicit affirmation in Article 3 that indigenous peoples, in particular, have a right of self-determination represent recognition of the historical and ongoing denial of that right and the need to remedy that denial. The remaining articles of the Declaration elaborate upon the elements of self-determination for indigenous peoples in the light of their common characteristics and, in sui generic fashion, mark the parameters for measures to implement a future in which self-determination is secure for them.

With its remedial thrust, the Declaration contemplates changes that begin with state recognition of rights to indigenous group survival that are deemed "inherent", such recognition being characterized as a matter of "urgent need". Professor Eric-Ismael Dhes, the long-time chair of the UN Working Group on Indigenous Populations, has described this kind of change as entailing a form of "belated state-building" through negotiation or other appropriate peaceful procedures involving meaningful participation by indigenous groups. According to Professor Dhes, self-determination entails a process through which indigenous peoples are able to join with all the other peoples that make up the State on mutually-agreed upon and just terms, after many years of isolation and exclusion. This process does not require the assimilation of individuals, as citizens like all others, but the recognition and incorporation of distinct peoples in the fabric of the State, on agreed terms.

Accordingly, the Declaration generally mandates that "States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration," and it further includes particular requirements for special measures in connection with most of the rights affirmed. Such special measures are to be taken with the aim of building healthy relationships between indigenous peoples and the wider society, as represented by the states. In this regard, "treaties, agreements and constructive arrangements between States and indigenous peoples" are valued as useful tools, and the rights affirmed in such instruments are to be safeguarded.

Among the special measures required are those to secure "autonomy or self-government" for indigenous peoples over their "own internal and local affairs" in accordance with their own political institutions and cultural patterns. Also required are measures to ensure indigenous peoples "rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State" and to have a say in all decisions affecting them. The Declaration specifies that "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."
Rather, it recognizes for them rights that they should have enjoyed all along as part of the human family, contextualizes those rights in light of their particular characteristics and circumstances, and promotes measures to remedy the rights’ historical and systemic violation.

**State sovereignty: a counter norm**

As understood here, self-determination is a human rights norm that broadly benefits human beings in relation to the constitution and functioning of the government structures under which they live. It entitles peoples to remedial measures when the relevant governing institutional order fails in some respect to conform with self-determination values, and such remedial measures may bring about change, sometimes radical change, in the state-governing apparatus in relation to people or territory. The reach and application of the principle or right of self-determination, however, cannot be fully appreciated without attention to the doctrine of state sovereignty, which remains central to the international legal and political system. Whereas self-determination provides grounds to reform existing state practices or structures of government in appropriate circumstances, the sovereignty doctrine tends to keep self-determination issues from international scrutiny and to uphold the status quo of political ordering.

The doctrine of state sovereignty thus forms a backdrop and potentially limiting factor for the implementation of self-determination through the processes of international law and politics. The limitations of this state-centered doctrine are essentially twofold. First, the doctrine limits the capacity of the international system to regulate matters within the spheres of authority asserted by states and recognized by the international community. This limitation on international competency is reflected in the UN Charter’s admissibility against intervention “in matters essentially within the domestic jurisdiction of any state.” This aspect of sovereignty doctrine manifests itself in a rule of conditional abstention, which applies generally to constrain international involvement in matters of human rights. Typically, international procedures for the examination of human rights problems require showing that domestic remedies have been exhausted, or that state actors at the domestic level are incapable of or unwilling to address the problems. Hence, the International community can be expected to defer to domestic processes to allow them the opportunity to address violations of human rights, including the right to self-determination. Ordinarily, states should be expected to respond on their own, without international involvement, to self-determination claims by particular groups and should undergo necessary reforms on their own.

However, to the extent that domestic processes prove ineffective in addressing conditions that are contrary to self-determination, the matter becomes one of international concern—no longer “essentially within the domestic jurisdiction”—and state sovereignty may be made to yield to an appropriate level of international scrutiny. Such was the case with classical colonialism, a long-standing and widespread problem that required international involvement for concrete and systemic measures to be brought about by the condition of self-determination for the colonized peoples. Apartheid was a similarly intractable problem that justified intergovernmental intervention. The South African apartheid regime not only failed to take concrete steps to remedy the systemic deprivation of self-determination, it was brutal in its efforts to keep the status quo.

The problems commonly faced by indigenous peoples worldwide have also become matters of international concern, inasmuch as these problems of historical origin have persisted through the passage of time without adequate remedial measures being developed at the domestic level. The international community has developed a concern for indigenous peoples in general through a series of programs—including the UN Permanent Forum on Indigenous Issues, the newly-established Expert Mechanism on the Rights of Indigenous Peoples and the UN Special Rapporteur on the situation of fundamental freedoms and human rights of indigenous people—and by the articulation of relevant standards, as represented most prominently now by the Declaration. However, the level of international involvement in the problems of particular groups is highly variable; it depends on the pace of relevant reform measures at the domestic level, the gravity and persistence of particular problem situations, and the success with which such situations are brought to the attention of relevant international actors.

A second limitation emanating from state sovereignty doctrine is its substantive preference for existing configurations of state authority over people and territory. This corollary to state sovereignty finds expression in provisions of the UN Charter and other texts which protect the territorial integrity and political unity of states. It is notable that several states insisted on including in the Declaration language reiterating the principles of state territorial integrity and political unity. In a world that remains organized substantially by state jurisdictional boundaries, such international protection for the status quo of political and territorial ordering can be seen to advance, in some measure, widely shared values of stability and ordered liberty among peoples.

But under contemporary international law and prevailing policy, the status quo is weakened when it would serve as an accomplice to the subjugation of human rights, including the right of self-determination, just as it was weakened to the point of breaking when the status quo represented colonial rule or apartheid. Existing configurations of state authority have been found, in various ways, to suppress the cultural patterns of indigenous peoples—including those cultural patterns that extend into social, economic, and political spheres—and to perpetuate inequalities rooted in the very patterns of state-building that gave rise to the
status quo. As represented by the Declaration, the international system is developing to promote appropriate changes in the status quo of state political ordering in regard to indigenous peoples, in a manner that is calculated, not to dismantle states but rather to ultimately strengthen state territorial integrity and political unity.

While state sovereignty doctrine limits the application of the self-determination norm through the international system, the limitations are conditional and should not be considered incompatible with, or debilitating to, self-determination values. Ideally, sovereignty doctrine and human rights precepts, including those associated with self-determination, work in tandem to promote a stable and peaceful world. Where there is a trampling of self-determination, however, precautionary measures in favor of non-intervention, territorial integrity, or political unity of existing states may be offset to the extent required by an appropriate self-determination remedy.

Conclusion

Self-determination is an extraordinary regulatory vehicle in the contemporary international system, broadly establishing rights for the benefit of all peoples, including indigenous peoples. It enjoins the incidents and legacies of human encounter and interaction to conform with the essential idea that all are equally entitled to control their own destinies. Self-determination especially opposes, both prospectively and retroactively, patterns of empire and conquest. To the extent that distinct segments of humanity have been denied self-determination by virtue of historical and continuing wrongs, they are entitled to remedial measures in accordance with the relevant circumstances and preferences of the aggrieved groups.

The Declaration affirms that indigenous peoples in particular have the right of self-determination, recognizes that they have been denied enjoyment of the right, and marks the parameters for processes that will remedy that denial.

It is perhaps best to understand the Declaration and the right of self-determination it affirms as instruments of reconciliation. Properly understood, self-determination is an animating force for efforts toward reconciliation—or, perhaps more accurately, conciliation—with peoples that have suffered oppression at the hands of others. Self-determination requires confronting and reversing the legacies of empire, discrimination, and cultural suffocation. It does not do so to condone vengeance or spite for past evils, or to foster divisiveness but rather to build a social and political order based on relations of mutual understanding and respect. That is what the right of self-determination of indigenous peoples, and all other peoples, is about.

Notes

3 This chapter is based on a paper that was presented at the International Conference on Self-Determination: Scope and Implementation, held from 4–6 February 2002 in Oslo, Norway, and published as part of the proceedings of the conference. The theory of self-determination incorporated here has been exposed in the author’s prior works, written before adoption of the UN Declaration on the Rights of Indigenous Peoples, including 8 James Anaya, 2001, Indigenous Peoples in International Law (New York: Oxford Univ Press), 147–182; and S James Anaya, 1999, "A Contemporary Definition of the International Norm of Self-Determination," 11 Transnational Law and Legal Problems, 131.


5 Ibid, Article 2.

6 UN Declaration on the Rights of Indigenous Peoples (27 August 2007).


19 Above n 2, Article 28.
20 Ibid, Article 37.
21 Ibid, Article 3.
22 Ibid, Article 5; Ibid, Article 20.
23 Ibid, Article 5.
24 Ibid, Article 18.
26 Ibid, Article 26(1).
27 Ibid, Article 28(1).
29 Human Rights Committee "General Comment Adan by the Human Rights Committee under Article-69. Paragraph 6, of the International Covenant on Civil and Political Rights: General Comment No. 22(50) (art.6(7)) UN Doc CCPR/C/22/Add.5 (1994), para 7.
30 UN Charter, above n 7, art 2(7).
32 See UN Charter, above n 7, art. 2 (4) stating that "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state...."
33 See above n 1, Article 46(1)
THE PROVISIONS ON LANDS, TERRITORIES AND NATURAL RESOURCES IN THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: AN INTRODUCTION

Matias Ahén

Introduction

On 13 September 2007, after more than twenty years of intense negotiations, the United Nations General Assembly (the UNGA) adopted the UN Declaration on the Rights of Indigenous Peoples (the Declaration). The adoption of the Declaration by the UNGA brought to an end perhaps the longest and most complicated standard-setting activity the UN has ever embarked on. The Declaration process was difficult for procedural reasons, but in particular for the complex negotiations on material rights the Declaration enshrines. This article addresses one set of rights in the Declaration: indigenous peoples’ rights to lands, territories and resources (LTRs), which include waters and natural resources. They are probably the most complicated rights in the Declaration. To fully understand and adequately analyse the LTR provisions in the Declaration, it is necessary to touch upon why, historically, issues pertaining to indigenous peoples’ rights in general, and to LTRs in particular, have been so complex.

The article will initially provide a brief overview of the evolution of international law on indigenous peoples’ rights to LTRs since the establishment of the UN. Then I explain the implementation gap relating to these rights, which in turn sets the stage for the negotiations on the LTR provisions within the UN ad hoc Working Group on the Draft Declaration on the Rights of Indigenous Peoples.

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(indigenous peoples’ rights: challenge to International law

While, in the wake of World War II, the newly-established UN set out to craft a human rights system, for several decades it essentially ignored indigenous peoples’ societal structures. The foundation for the human rights system of today was elaborated without indigenous peoples in mind. The crafters of the modern human rights system perceived that the rights and interests of indigenous, and other collectives, could be adequately protected through a human rights system that focuses solely on the rights of the individual. Corresponding with conventional individual liberal theories, the belief was that there is no need to protect the group as such, as a distinct cultural and legal entity, if the rights of individuals are protected. This position essentially equates to a conservative understanding of the individual’s right to non-discrimination: i.e. a right for individuals to be treated equally but with no rights to have distinct cultural particularities taken into account. In other words, there is no right to be treated differently, even if you are distinctly different from the majority population. For example, all persons have the right to the language of the majority, while no one has any right to their mother tongue if it is different from that of the majority’s. Premised on such an understanding of the human rights system, it was appropriate to gradually integrate and assimilate International law into the non-indigenous dominant society.

With time, however, both conventional liberal individualism and the complete focus on the individual within human rights law became increasingly challenged. It was acknowledged that policies and rights that ignored the fact that individuals belong to groups could be detrimental to the group as such and, when a group disappears, to the individual members of the group. At the same time, indigenous peoples had, to a large extent, managed to maintain essential elements of their distinct societies and cultures, despite the inadequacies of International law to protect indigenous societies, and colonization, forced assimilation and other atrocities directed against them. These two factors combined resulted in a gradual yet rather fundamental shift in international law as it relates to indigenous peoples. In a few decades, international law has evolved to hold, beyond doubt, that indigenous peoples – as distinct collectives – have the right to maintain and develop their particular societies, side by side with the majority society. Indigenous peoples cannot be integrated into the engulfing society against their will. This is a defining characteristic of indigenous rights compared to the rights enjoyed by ethnic and other minorities. Put simply, minority rights focus on catering for respect for individuals belonging to minorities within the majority society. Indigenous rights, on the other hand, aim at providing an envi-
environment in which indigenous peoples, first and foremost, have the right to preserve their societies outside the dominant society.

While the UN has, by adopting the Declaration, accepted that the human rights system has evolved to encompass a right of indigenous peoples to exercise, maintain and develop their distinct cultural identities, as collectives, this recognition has been poorly transformed into practice. That is particularly true with regard to the three most important of indigenous peoples’ rights: indigenous peoples’ collective human rights in general; the right to self-determination; and LTRs.

First, the legal recognition of indigenous peoples’ rights to maintain their distinct societies and cultures as collectives has raised the question, who is the beneficiary of such rights? Is it the individual members of the indigenous people or the people as such? As mentioned above, the notion that indigenous peoples as collectives could enjoy human rights that inhere in individuals runs contrary to the conventional human rights system, which recognizes only individuals as beneficiaries of human rights. On the other hand, if, having accepted that indigenous peoples enjoy rights to their cultural identity, as well as to autonomy, it would seem incoherent if the beneficiary of the right should not be the people as such.

Second - and closely related to the issue of whether indigenous peoples enjoy collective human rights proper - is the question of how the right to self-determination applies to indigenous peoples. Where do indigenous nations - who are not states but not minorities either - fit in the international political and legal map? It is clear that when self-determination evolved into a right, it was originally perceived as applying only to people in meaning the sum of the inhabitants of a state or a territory. Such an understanding is in conformity with conventional international law’s inability to recognize legal subjects other than the state and the individual.

The two sets of rights touched upon above are beyond the scope of this article. The Declaration has settled the debate that international law recognizes collective human rights proper and has also affirmed that indigenous peoples are entitled to the right to self-determination. This article focuses on indigenous peoples’ rights to their LTRs.

Indigenous peoples’ rights to lands, territories and resources generally

Cultural rights

The indigenous rights discourse operates with a few working definitions of the term "indigenous peoples". For present purposes, it is sufficient to note that, regardless of the definition used, particular emphasis is always placed on the requirement that a group - in order to constitute an indigenous people - must have occupied and used a fairly definable territory before present day state borders in the area were drawn. Indigenous peoples’ cultures are further marked by an intrinsic spiritual connection to that very territory, and the natural resources situated in such...

As a result of the above-mentioned developments in international law, the UN recognized the logical connection between a right to a cultural identity and a right of indigenous peoples to their traditional territories. Thus, when international law started to address indigenous rights, it paid particular attention to indigenous peoples’ rights to LTRs. Today, international law recognizes that the intrinsic connection between indigenous peoples and their traditional territories results in their holding certain material rights to LTRs traditionally occupied and used. How far these rights stretch has been subject to intense debate. But some general conclusions can be drawn.

As a means to protect their cultural identity, it is clear that international law safeguards indigenous peoples in their traditional territories from competing activities that would prevent them from continuously exercising, or make it more difficult for them to continuously exercise, their traditional livelihoods and other culture-based activities. This right follows, for example, from Article 27 of the UN International Covenant on Civil and Political Rights as interpreted by the UN Human Rights Committee, and ILO Convention No. 169 on Indigenous and Tribal Peoples (ILO Convention 169) Articles 13-15, as interpreted by the ILO Secretariat. No balancing test is allowed. If the competing activity makes it significantly more difficult for the indigenous community to exercise its culture, it is irrelevant that the activity, if allowed, would generate billion-dollar profits or would otherwise be of great value to the society as a whole.

Property rights

More recently, legal scholars and international and domestic institutions have increasingly acknowledged that the right to culture is not necessarily the only basis on which indigenous peoples can claim rights to LTRs. Lately, the international legal discourse has recognized that indigenous peoples hold property rights to the territories they have traditionally occupied and used.

As explained above, a defining characteristic of indigenous peoples is that they have inhabited and used their traditional territories since before other populations started to move into these areas. With few exceptions, domestic jurisdictions today recognize initial occupation as a means through which property rights to land can be acquired. However, with few exceptions, such rights have traditionally only been recognized for the colonizing, non-indigenous, population. Indigenous peoples’ use of their traditional territories has not, in most in-
stances, been regarded as giving rise to property rights. Rather, the state has normally considered itself the owner of indigenous peoples’ traditional territories.

In recent years, however, both domestically and internationally, courts and other institutions have started to question what was previously taken for granted: that the state owns indigenous peoples’ traditional territories. Gradually, the world community has come to acknowledge that a domestic legal order whereby the law recognizes that use of land by the non-indigenous population gave rise to property rights, and indigenous land use did not, violates the fundamental right to non-discrimination. International law has developed such that if domestic law recognizes that occupation gives rise to property rights to land that law must apply equally to indigenous peoples. Moreover, under international law, it is discriminatory to design a domestic legal system in such a way that stationary land use common to the non-indigenous population results in rights to LTRs whereas more fluctuating use of land, common in many indigenous cultures, does not. In other words, it is not enough that the legal system is formally non-discriminatory. It must also guarantee equal treatment in substance.

The Implementation gap

It is uncontested that, under international law, indigenous peoples hold both cultural and property rights to LTRs they have traditionally occupied and used. In addition, most states acknowledge some responsibility for past injustices committed against these indigenous peoples and generally accept that these injustices are negatively impacting on indigenous peoples today. Further, most states recognize that they are obliged to rectify injustices of the past by recognizing rights that continue today. In addition, most states prevaricately nurture an aspiration to improve the situation of indigenous peoples. However, this has rarely been reflected in state legislation, policies or practices. What, then, is the reason for this implementation gap?

Of course, the major reason is, as usual, money. Respecting human rights is often associated with certain “burdens” for states. But, it is probably safe to conclude that this characteristic of indigenous peoples’ human rights is one of the most controversial. This is a result of indigenous peoples having been subject to structural discrimination for as long as the modern human rights system has existed, and beyond. Indigenous peoples have been denied rights recognised for other peoples, allowing the colonizing peoples to build their societal structures over and across indigenous societies. Further, non-indigenous laws have not necessarily been particularly appropriate for regulating indigenous societies. As a consequence, when, as described above, indigenous peoples call for respect for collective human rights proper, this challenges one of the most fundamental building blocks of international law. Further, respect for indigenous peoples’

right to self-determination demands a sincere editing of the political map of the world. Still, the application of cost-benefit analyses to the decision to respect human rights has particularly detrimental effects on the implementation of indigenous peoples’ rights to LTRs.

Most states simply hold that implementing indigenous peoples’ rights to their LTRs, to the extent the right to non-discrimination demands, would simply be too costly for them, in both political and financial terms. Indigenous peoples’ rights to LTRs – if fully implemented – would bring about fundamental structural and economic changes in most states in which indigenous peoples today find themselves residing. Not insignificant parts of the colonizing society’s social structures would have to be fully or partly removed from indigenous territories. In addition, natural resources - often generating core incomes for the state as a whole - would have to be returned to the indigenous peoples, or at least the incomes shared. Hence, given that the structural discrimination of indigenous peoples has gone on for such a long time, and on such a scale, it is no wonder that, for practical reasons, many states today find it very difficult to “turn back the clock” and acknowledge indigenous peoples’ rights to their LTRs, even if genuinely acknowledging responsibility for past injustices.

It was against this background that the negotiations on the LTR provisions in the Declaration commenced.

The setting for the negotiations on the LTR provisions in the declaration

In line with the above, states participating in the negotiations on the Declaration surely acknowledged that, even in the absence of a Declaration, indigenous peoples hold rights to the LTRs they have traditionally inhabited, occupied and used. And, obviously, it would not have been possible to adopt a Declaration on the rights of indigenous peoples without addressing these keystone rights. As further described above, most states surely generally accepted, or were at least aware, that indigenous peoples’ rights to LTRs under international law are fairly far-reaching. Indeed, many states were, or at least during the negotiations process gradually became, ready to agree to a Declaration confirming that indigenous peoples hold rights to LTRs that go beyond what had, by then, been implemented on a domestic level.

That said, most state representatives entered into the negotiations on the Declaration with a cautious attitude towards the LTR provisions. They were - particularly at the outset of the deliberations - not ready to allow the Declaration to enshrine all rights that indigenous peoples hold to their LTRs. In other words, most states were simply not prepared to pay the price - in financial and political terms - for a complete recognition of indigenous peoples’ rights to LTRs in the
Declaration. Instead, state representatives’ message to indigenous peoples at the outset of the negotiations was essentially, “We are ready to acknowledge your rights to LTRs to a greater extent than we do today. But let’s be realistic and find a compromise partly based on law but that also takes political realities into account.”

Indigenous peoples’ representatives, on the other hand, entered into the negotiations with a rather different approach. They were determined not to agree to any continued discrimination. Indigenous peoples set out to achieve a declaration that would fully confirm their rights to use and own all their traditional territories, both as a pre-requisite for exercising, maintaining and developing their respective cultures and as a result of a non-discriminatory application of the right to property. Indigenous peoples were firm that international law should be the only guiding light for the negotiations, and that political considerations should be kept out of the process. Indigenous representatives were, in short, not interested in the compromise the state representatives offered them.

The negotiations on the LTR provisions in the declaration

Naturally, these very different points of departure among state and indigenous representatives laid the groundwork for extremely complicated negotiations in the WGDD. It soon became evident that the LTR provisions would be most difficult on which to reach an agreement. And this was particularly problematic given that, for most of the WGDD process, it was impossible to make any tangible progress on any of the provisions in the declaration. At least other parts of the declaration offered greater promise for potential progress. Given this difficult negotiating environment, participants in the WGDD informally agreed that it made little sense to spend too much time on the fruitless task of finding common ground on the most complicated articles in the Declaration. As a result, for most of its final sessions, the WGDD focused on so-called easy articles or soft issues and, also, on collective rights and the right to self-determination - the WGDD set aside the LTR issue for the time being. On the few occasions when the WGDD did touch on the LTR provisions, it merely read through the LTR articles to conclude that participants’ positions on these provisions still differed considerably. The gap between states’ and indigenous peoples’ positions was wide.

As a consequence, the WGDD did not end up seriously addressing LTRs until the final week of the WGDD’s eleventh and final session. By that time, the Declaration process had gained tangible and considerable momentum. Agreements on self-determination and collective rights had been reached in principle. Importantly for indigenous peoples, but also for the negotiations on LTRs, the negotiations on self-determination and collective rights had, broadly speaking, ended in a way indigenous peoples thought they should. Indigenous representatives had managed to convince states that indigenous peoples should not have to compromise on such important rights. For instance, the Declaration’s Article 3 underscores the fact that indigenous peoples – like other peoples – enjoy the right to self-determination. Furthermore, agreement had been reached among states and indigenous representatives on most of the less contentious articles in the Declaration. By the end of 2005, all of a sudden, the only major outstanding issue was the LTR provisions.

Inspired by the progress made on the remainder of the declaration, most state and indigenous representatives were working closely together to achieve an agreement on the LTR provisions. Intense and constructive discussions on the LTR chapter ensued. These negotiations rapidly brought the participants’ positions closer to each other. Suddenly, the gap between indigenous and state positions was not so insurmountable. In the final stages of the negotiations, state delegations agreed that the declaration should acknowledge what already follows from international law, i.e., that indigenous peoples hold rights to LTRs as both cultural and property rights. States acknowledged that, in line with what has been outlined above, it is not meaningful to talk about indigenous peoples’ rights to LTRs if not recognizing that continued access to land is a pre-requisite for indigenous peoples to be able to exercise, preserve and develop their cultures. Furthermore, states admitted that a reasonable understanding of the fundamental right to non-discrimination demands that indigenous peoples’ land use gives rise to ownership rights thereto, to the same extent as for the rest of the population.

With this general recognition in mind, during the final week of the WGDD, both state and indigenous representatives crafted and tabled proposed language for the LTR provisions. Due to the urgency, they sometimes perhaps did so in a “too inspired” and disorganized fashion. It was at times not easy to keep track of who had tabled exactly what proposal and how it had been amended by whom. Nonetheless, some general agreements emerged. There was agreement that the Declaration should recognize the spiritual relationship that indigenous peoples enjoy with their lands as well as the importance of LTRs for their being able to exercise and develop their distinct cultures. Participants further agreed that the Declaration had to acknowledge indigenous peoples’ right to own their traditional lands in a manner that does not discriminate against nonindigenous peoples or indigenous peoples that otherwise utilize lands and waters in less stationary manners. But most of the debate was on the definition of the LTRs. Some states still insisted that the Declaration should refer to indigenous peoples’ LTRs as “their” lands, territories and resources. Such a vague reference to “their” could of course result in the Declaration being interpreted to apply only to LTRs to which indigenous peoples hold formal title, or to which the state otherwise officially acknowledges that the indigenous people has rights. Indigenous representatives categorically rejected all proposals suggesting such a limited scope of the LTR provisions, and gradually convinced state representatives to withdraw such language. Instead, it was agreed that the factor determining whether indigenous
peoples hold rights should not be recognition by the state but, instead, utilization, in practice, by indigenous peoples. In other words, it was agreed that the Declaration should recognize rights of indigenous peoples to “lands, territories and resources traditionally used”. Finally, there was no objection to the right to restitution in general.

Such was the general agreement reached at the end of the WGDD’s final session. It might appear that states made some major concessions in the final hour of the WGDD process and, measured against their starting positions for negotiations, they did. But one should recall that the only thing the state representatives did was to permit the Declaration to, in general terms, express what already followed from international law. But given how politicized the discussions on indigenous peoples’ rights to LTRs were, states should be commended for stretching out their hand to indigenous peoples, thereby saving the entire declaration process. Indigenous peoples, for their part, had to give up their aspirations that the Declaration should elaborate in greater detail on their rights to LTRs, for instance on sub-surface resources. In order to reach an agreement, however, they settled for a more general LTR segment but which is still specific enough on the most fundamental elements of their rights to LTRs.

While the WGDD finished with agreements in principle on some of the most important issues pertaining to indigenous peoples’ rights to LTRs, this did not change the fact that the WGDD ended without agreed language on exactly how these rights were to be expressed in the Declaration. This was of course not optimal but neither was it perceived to constitute a major concern. Even at the beginning of the final session of the WGDD, the Chairperson had indicated that he did not expect the WGDD to reach agreement on all outstanding issues. Rather, his aspiration was that the WGDD should reach agreements on most provisions and, on the few outstanding issues, the participants’ positions would be close enough to give him sufficient guidance on how to fill in the blanks in a Chair’s text. On that basis, he could then submit a Chair’s text through the UN Human Rights Council to the UNGA for adoption. As described above, the Chairperson’s plans and aspirations materialized. At the end of WGDD 11, the Chairperson announced that he would finalize the Declaration and pass it on to the UN system for adoption. Virtually all participants – state and indigenous delegations alike – agreed that the WGDD had come as far as it possibly could. The general sentiment that continued negotiations would not result in the WGDD making significant further progress. True, an additional WGDD session would likely have resulted in even broader, perhaps complete, agreement among indigenous peoples and most states. But it was equally evident that this would still not generate consensus. Australia, New Zealand and the United States had made it blatantly clear that they would not join agreement on any Declaration acceptable to indigenous peoples. Therefore, there was little value to be added by holding one more session. In addition, and more importantly, for reasons beyond the control of the WGDD, as well as the scope of this article, there were also considerable risks associated with continuing the WGDD process. On 22 March 2006, the Chairperson of the WGDD presented his Chair’s text. In line with the above, it contained few surprises, at least as far as the LTR provisions were concerned. The LTR articles essentially contained the elements coming out of the negotiations at the 11th session of the WGDD, even if the Chairperson had had to use a few words of his own to flesh out this agreement. Consequently, the states party to the informal agreement at the end of the WGDD accepted the LTR provisions in the Declaration, and voted in favour of the adoption of the Declaration at the UNGA.

The content of the LTR provisions in the declaration

Article 25 recognises that the intrinsic connection between indigenous peoples’ cultures and the LTRs they have traditionally used results in indigenous peoples holding rights to such LTRs. The provision confirms that indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their LTRs. Article 25 may not add much to the provisions that follow it in terms of concrete and implementable rights. The article almost has the character of a preamble paragraph. Nonetheless, the provision warrants its place in the Declaration, underscoring one of the important bases for indigenous peoples’ rights to LTRs and, as such, also offers guidance for the interpretation and implementation of the following provisions.

The most central LTR provisions are Articles 26 and 28. These provisions specify the rights indigenous peoples have to LTRs they have traditionally used and continuously occupy as well as to lands traditionally used but which have fallen out of indigenous peoples’ possession.

Article 26(1) proclaims that: “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.” The provision thus speaks generically about “rights”, without qualifying the nature of these rights. One must therefore assume that the provision pertains to LTRs both as cultural and property rights. With regard to cultural rights, this is made clear by reading Article 26(1) in conjunction with Article 25. Article 26(2) then moves on to affirm that indigenous peoples also hold rights to LTRs as property rights.

Article 26(2), in its most pertinent part, proclaims that: “Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of … traditional occupation or use…”. Clearly, the key word in this provision is “own”. To a large extent, an ownership right can be expected to consume rights to “use”, “develop” and “control”. Hence, pursuant to Article 26(2), indigenous peoples have the right to own the LTRs they have traditionally occupied and used, provided, however, that they continuously
"possess" these territories. The extent of indigenous peoples' ownership rights to land pursuant to Article 26(2) is consequently largely contingent upon how one understands the term "possess" in the provision.

There is no universally applicable definition of the concept "possess". The term can have various meanings in different jurisdictions. Black's Law Dictionary's broad definition of "possess" probably describes fairly accurately the general understanding of "possess" in most jurisdictions. According to Black's, "possess" is "to have in one's actual control; to have possession of". Further, "possess" is: [1] The fact of having or holding property in one's power, the exercise of dominion over property; and [2] the right under which one may exercise control over something to the exclusion of others. Some might argue that Black's definitions of "possess" and "possession" suggest that indigenous land utilization is not sufficiently exclusive and intense to qualify as possession. But that is not necessarily correct.

The chapters above outlined the recent evolution of international law on indigenous peoples' property rights to LTRs, describing the clear trend in international law to reject as discriminatory an interpretation of domestic law that recognizes that non-indigenous land use gives rise to property rights when indigenous peoples' land use does not. The term "possess" in the Declaration must be understood against this background. It would be a contradiction in terms to first, in principle, recognize indigenous peoples' ownership rights to land only to immediately thereafter render such rights contingent on a domestic, and discriminatory, understanding of the term "possess". That would be akin to rendering indigenous peoples' rights to LTRs subject to national legislation. The abovementioned developments in international law prohibit the use of a conventional and discriminatory understanding of the concept "possess" in the indigenous rights discourse at the international level.

Rather, the term has to be customized to an indigenous peoples' rights context. In other words, one cannot necessarily expect and demand the same level of intensity and exclusivity with regard to land utilization in indigenous cultures compared to non-indigenous cultures. An example is nomadic or semi-nomadic indigenous peoples: their particular way of life often results in their utilizing vast areas over time-cycles that stretch over a year, or even longer, where most land patches are used for a fairly limited period of time. Moreover, in present day society, most indigenous peoples — following colonization imposed on them — find themselves sharing all or substantial parts of their territories with the colonizing population. Under such circumstances, it is inevitable that in most instances indigenous land use is not completely exclusive, due to reasons beyond the indigenous people's control. The fact that the non-indigenous population today use the indigenous people's traditional territories for competing activities should not result in the indigenous people being deemed not to possess the area in question, particularly since the competing activity is often carried out without the consent of the indigenous people in question.

The conclusions above also follow from a careful text analysis of Article 26(2), which proclaims that the "possessor" referred to is precisely such one that follows from "traditional occupation or use", "Traditional use". In this context must be understood to include the ways in which respective indigenous peoples utilize their land, in accordance with their distinct cultural practices, regardless of whether the land use is not particularly intense compared to conventional non-indigenous land utilization. Such an interpretation is further in line with legal doctrine and jurisprudence. For instance, Kent McNeil, eminent Canadian professor, has underlined that "possessor", in the context of indigenous peoples, must be understood to mean "possessor in fact", in turn giving rise to a presumption that the indigenous people also has "possessor in law". And in the Delgamuukw Case, the court affirmed that physical occupation by an indigenous people was evidence of possession in law. This presumption must reasonably be particularly strong with regard to such parts of an indigenous people's traditional territory to which no other title exists. Lack of private ownership indicates that competing activities have been limited and that, consequently, the indigenous people in question has utilized the area with a large degree of exclusivity. The fact that the state might today regard itself as owner of the same land does not mean prevent the indigenous people from "possessing" the same.

Article 26(2) thus affirms that indigenous peoples hold ownership rights to LTRs they have traditionally, and continuously, used. But the Declaration goes further. Article 28(1) stipulates that "indigenous peoples have the right to ... restitution of, or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally occupied or used, and which have been ... taken without their free, prior and informed consent". Analyzing Article 28(1), one notes that, like Article 26, Article 28(1) recognizes indigenous peoples' rights to areas they have traditionally used or otherwise occupied. Again, the criterion is hence traditional use. The state need not have acknowledged the rights. And, as with Article 26, "traditional use" must be understood in the cultural context of the particular indigenous people.

Unlike Article 26, read in the context of Article 25, Article 28(1) does not specify whether the LTR rights constitute cultural or property rights. However, Article 28(1) must reasonably be interpreted to encompass both categories of rights. It would not make sense for Articles 26 and 28(1) to differ in scope. Rather, the presumption must be that the two provisions apply to the same set of rights. Both apply to LTRs that an indigenous people has traditionally used. The only difference is that Article 26 pertains to LTRs that the indigenous people continuously use. Article 28(1) then goes on to address LTRs the indigenous people has historically used but has subsequently been lost against its will. Article 28(1) proclaims that such LTRs shall be returned.
A brief comparison with the LTR provisions of ILO Convention 169

A comparison between the Declaration and the ILO Convention 169 illustrates that the Declaration simply codifies existing international law.16

Like the Declaration, ILO Convention 169 Article 13 affirms indigenous peoples’ special relationship with their traditional territories and underlines that respect for this relationship constitutes a prerequisite for the preservation and development of their distinct cultures. And, like Article 26(2) of the Declaration, ILO Convention 169 Article 14 proclaims that indigenous peoples hold property rights to LTRs they have traditionally and continuously occupied. Thus, the Declaration – when it comes to land areas that indigenous peoples still use – simply confirms existing international law. It may be that other LTR provisions in the Declaration stretch somewhat beyond the equivalent provisions of ILO Convention 169, especially in relation to LTRs that indigenous people do not continue to occupy.7 But that is unsurprising: The Declaration was adopted almost 20 years after ILO Convention 169 and the development within International law on indigenous peoples’ rights has been rapid in the last few decades.

The situation is somewhat different with regard to the right to restitution. As outlined above, Article 28 of the Declaration proclaims a right of restitution in relation to LTRs taken without an indigenous people’s consent. ILO Convention 169 does not include any corresponding provision. Still, the ILO Secretariat has, in its guide to ILO Convention 169, asserted that the LTR provisions in ILO Convention 169 should be understood to entail at least a limited right to restitution, provided that there is some connection to the present. Such a connection could be established, for instance, in cases of recent expulsion from the land areas in question. Still, the right to restitution that the ILO Secretariat reads into ILO Convention 169 is not the general right to restitution the Declaration proclaims. But, as will be elaborated on immediately below, this is not the same thing as saying that the Declaration’s Article 28 is a novelty in international law.

The legal status of the rights contained in the declaration

Following the adoption of the Declaration, some states have been quick to downplay its importance by pointing to the Declaration’s non-legally binding character. That, however, oversimplifies things. To determine the legal status of the rights enshrined in the Declaration, one must analyze every single provision of the Declaration against the background of existing and established international law. The conclusion of such an exercise would probably be that, to a significant extent, the Declaration clarifies and confirms rights that are already formally legally binding and applicable to indigenous peoples.7 As explained above, international law already recognised robust indigenous peoples’ rights to LTRs under the rubric of the right to culture and the right to non-discrimination.

Even the right to restitution in Article 28 is enshrined in various international legal sources, for instance in the African Charter on Human and Peoples’ Rights,20 and the International Covenant on Civil and Political Rights (CCPR), as interpreted by the UN Human Rights Committee in the context of indigenous peoples.21 But, perhaps most noteworthy, the UN Committee on the Elimination of Racial Discrimination (the CERD Committee) has elaborated upon indigenous peoples’ rights to LTRs as a part of the right to non-discrimination under the UN International Convention on the Elimination of All Forms of Racial Discrimination.22 In doing so, the CERD Committee has called on states “where [indigenous peoples] have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories”. Further, when restitution is not feasible, compensation should be awarded, if at all possible, in the form of lands and territories.23 Therefore, in this aspect, the Declaration is simply underlining existing international law.

Conclusion

In sum, this article has explained that the WCDP process did not end with agreed detailed language on the LTR provisions in the Declaration. However, even though no formal consensus was reached, the LTR provisions express a general understanding among both states and indigenous representatives within the WCDP on the appropriate content of LTR rights. This general agreement included, for example, that: i) indigenous peoples hold rights to those LTRs traditionally occupied and used, regardless of whether the state has formally recognized these rights in domestic legislation or otherwise; ii) the Declaration should affirm that indigenous peoples hold rights to LTRs both as cultural and property rights; and iii) the Declaration should recognize rights to LTRs that indigenous peoples traditionally occupied and used, but that have subsequently been lost against their will. Finally, the article has explained that there is a substantial implementation gap between indigenous peoples’ rights to LTRs under international law, on the one hand, and domestic legislation and policies, on the other. Hopefully, by voting for the Declaration, states have demonstrated a genuine will to bridge this implementation gap.

Notes

As explained above, it is essentially this characteristic that distinguishes indigenous peoples from minorities. In addition, indigenous peoples have normally preserved their own societal institutions to a higher degree than minorities.


6 See the rulings by e.g., the Inter-American Commission on Human Rights in Mayan Indigenous Communities of the Totonal District Totonal o Belice (Merida), I/A CHR, Report No. 49/98, Case 12-053 (12 October 2004) and Wil. Maris and Ferre Diaz o United States (Merida), I/A CHR, Report No. 79/02, Case 11-140 (27 December 2002), para 131 (2003), by the Inter-American Court of Human Rights in the Magahua (Siona) Jwaas Tinghi Community v Nacacag R (31 August 2003) Inter-Am. Court H R (Sec. Cj) No. 79 (also published in 2003) 19 Arizona J Int’l and Comp Law 365 and in Minahasa community v Sarawak, I/A CHR (Sec. Cj) No. 154 (2005), by the Belize Supreme Court in Claims No. 171 and 172 of 2007, Cal et al v the Attorney General of Belize & Anor (2007) Claim Nos. 171 and 172 of 2007, Cornett Cj (Belize Sup Cj) and by the High Court in Botswana, Mica, No. 52 of 2003, of 15 December 2006. Compare also the ruling by the Supreme Court of Norway in the so-called Starsberg Case (Bl 2001 2 129).

7 Respect for rights of other non-state forming peoples of course also raised similar challenges. But, as mentioned above, the debate on whether international law recognizes collective human rights proper as well as the right to self-determination against to non-state forming peoples has so far been held essentially in an indigenous peoples’ context.

8 The agreement did not include every participant at the WGDG. A few states were not ready to abandon their traditional position that the LTR provisions should be based on a political compromise, and not international law. These states — Australia, New Zealand and the United States — were hence not party to the negotiations and informal agreements described above. The reader will note that these are three of the four states that ended up voting against the adoption of the declaration in the UNGA, with Canada casting the additional negative vote.


10 Regarding these risks, see further Matthias Ahren, 2007, "The United Nations Declaration on the Rights of Indigenous Peoples: How was it Adopted and Why is it Significant?" (4) Cache Journal of Indigenous Peoples’ Rights 84.

11 See above n 9.

12 Again, the one exception was Canada.

13 As the reader knows, the Chair’s text was adopted by the FRC but would subsequently be slightly revised by the UNGA’s 3rd Committee. But these amendments did not affect the LTR provisions.


15 See Delgamuukw v British Columbia [1997] 3 S.C.R. 1 (Can.) at 101. Delgamuukw v British Columbia is a famous leading decision of the Supreme Court of Canada where the Court made its most definitive statement on the nature of Aboriginal title in Canada.

16 Above n 5.

17 Unlike the Declaration, ILO Convention 169 distinguishes between lands an indigenous people still use mainly for subsistence, and lands that the indigenous people today share with the colonizing population. Under ILO Convention 169, indigenous peoples hold ownership rights only to the
INDIGENOUS PEOPLES IN ASIA: RIGHTS AND DEVELOPMENT CHALLENGES

Chandra K Roy

Introduction

The adoption of the UN Declaration on the Rights of Indigenous Peoples (the Declaration) on 13 September 2007 by a majority of member states of the UN General Assembly serves as a reminder of the historic injustices suffered by indigenous peoples around the world. It heralds a new beginning—one that is premised on the recognition of the rights of indigenous peoples, and the need for a more equitable and just global society where respect and tolerance for differences is the norm, not the exception.

Asia has been described as a region of relatively new states populated by old peoples. This has deeper resonance when you consider that nearly two-thirds of the world's 300-370 million indigenous peoples live in Asia. Indigenous peoples are also the stewards of the world's rich bio-cultural diversity, with over 5,000 different groups speaking 4,000 different languages spread across more than 70 countries on six continents. Ironically, despite this rich cultural diversity, indigenous peoples are among the most vulnerable and impoverished groups, constituting approximately 5% of the total world population yet 15% of the world's poor. They face severe problems in access to health, education, and other basic services and often live in fragile eco-systems that are threatened by increasing commercialization and over-exploitation.

This is also the situation for indigenous peoples in Asia. Different terms are often used to identify them, including "indigenous peoples", "ethnic minorities", "tribes", "tribal groups", "indigenous communities", "hill tribes", "Adivasis", "Janajatis", Scheduled Tribes etc. Some of these terms are used in a derogatory manner, including describing indigenous peoples as "backward" and "primitive".

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The Declaration itself was adopted without defining indigenous peoples and Article 33 reiterates that it is the right of indigenous peoples to decide their own identities. UNDP follows this practice and uses the term "indigenous peoples" to be more responsive to demands from indigenous peoples themselves as this is their preferred term to describe themselves.

Increasingly, the term indigenous peoples is gaining popularity as the most appropriate generic term to describe indigenous groups, including among policy makers, academics, development workers and civil society. This shift in perception has come about as a result of the indigenous movement and growing solidarity and awareness among indigenous peoples themselves that this is how they wish to be identified, as it most fully captures the socio-economic, cultural and political dimensions of their history and existence.

Challenges remain in ensuring indigenous peoples around the world, and in Asia, are recognized and included as full partners in national development policies and outcomes with the right to define their own parameters and priorities for development, according to their needs and realities. Indigenous peoples are dynamic, thus responses and interventions must respond to the present situation, and not further entrench historic injustices and discrimination. As stated in the preamble to the Declaration:

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs

(Preamble, para 10)

UN Development Policy Framework

The Declaration was adopted after more than 20 years of intense—and often acrimonious—discussion involving a diverse range of players, from powerful governments to community-based organizations. It covers a range of critical issues, including the right to self-determination, land and resource rights, political participation, economic empowerment, and provides a framework to address these in a comprehensive manner. The leitmotif of the Declaration is a reiteration of the
recognition of the identity and rights of indigenous peoples. As clarified in Article 43, the Declaration establishes minimum standards for the survival, dignity and well-being of the indigenous peoples of the world. It is a reinforcement of rights already recognized in international law.

In 2001, building on its experience of working with indigenous peoples around the world, and realizing the need for specific guidelines to ensure it was addressing the development needs of the most vulnerable and marginalized, as required by its mandate, the UNDP adopted the Policy of Engagement with Indigenous Peoples. This Policy is the result of a series of consultations with representatives of indigenous peoples’ organizations worldwide, UN agencies, as well as UNDP staff, and benefits from evaluations and lessons learned from UNDP’s bilateral and multilateral activities. The aim of the Policy is to provide UNDP with a framework to guide its work in building sustainable partnerships with indigenous peoples. The policy is premised on findings that projects and programmes based on a development strategy formulated by indigenous peoples and responsive to their traditions, customs and values have a higher success rate. Following up on this, UNDP initiatives involving indigenous peoples have focused on building regional, national and local networks for exchange of experiences and information, awareness-raising and advocacy on critical issues affecting indigenous peoples, policy dialogue and support for innovative projects.

The Declaration provides UNDP with an additional pillar on which to base its support for indigenous peoples. As the UN’s lead agency for development, Article 23 of the Declaration is of special importance for UNDP:

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

As part of the UN system, with the distinction of having adopted a comprehensive policy on indigenous peoples, the UNDP is significantly influenced by Articles 41 and 42 of the Declaration:

Article 41:
The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42:
The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Thus the UN system, including its different bodies and agencies, is responsible for implementing the Declaration through financial and technical support, at all levels, including at the country level where the outcomes and realities are the most critical. The Declaration provides UNDP with an added impetus to continue its support and involvement with indigenous peoples. This is strengthened by guidelines adopted by the UN Development Group in February 2008 outlining modalities for inclusion of indigenous peoples into the work of the UN country teams. The purpose of the Guidelines is to assist the UN system to mainstream and integrate indigenous peoples’ issues in processes for operational activities and programmes at the country level:

- The aim is to ensure the programmatic interventions of United Nations Country Teams (UNCTs) recognize the specificity of indigenous peoples’ situations and cultures in implementing the rights-based approach to programming taking into consideration the special needs of indigenous women, children and youth. In particular, the proposals of indigenous communities to integrate their social, political, cultural and economic rights and their aspirations into future development strategies must be considered so that the challenges they are facing are fully addressed, respect for their rights and cultures is ensured, and their survival and well-being is protected. In this context, participation of indigenous peoples, including indigenous women, must be an over-arching principle. It is expected that UNCTs will rise to the challenge of integrating and being open and respectful to these world views and understandings of wellbeing, including the significance of the natural world and the need to be in harmony with it.

The Guidelines are an important advocacy tool for bringing indigenous peoples’ issues into the work of the UN system at the country level.

The Asian experience

The situation of indigenous peoples in Asia varies from country to country. Yet, whichever country they may live in, indigenous peoples are among the most marginalized and disadvantaged of any population group, with high incidences of poverty, malnutrition, illiteracy and Infant and maternal mortality, and low levels of education, employment and general well-being. Studies conducted by
the World Bank and Asian Development Bank confirm that indigenous areas often coincide with poverty maps. This is also the case in those countries that are described as “middle income countries” such as Malaysia, as well as developing countries, for example, Bangladesh, India and Indonesia.

In response to the specific situation of Indigenous peoples in Asia, UNDP initiated a new programme, the Regional Initiative on Indigenous Peoples’ Rights and Development (UNDP-RIIP), in September 2004. The Programme aims to provide a regional forum for dialogue and cooperation on indigenous peoples’ issues in Asia, and is a direct response to demands from Indigenous peoples for a UNDP programme that is specific to their needs and rights. UNDP-RIIP was designed in a participatory manner with the involvement of Indigenous peoples, including during the process of evaluation of previous projects, lessons learned, formulation and design.

Established at the regional level, the UNDP-RIIP provides an opportunity to raise issues that are sensitive at the country level, to draw out the best/good practices from country experiences for dissemination and replication, and help to identify emerging trends in the region. UNDP-RIIP also has the comparative advantage of being in a position to facilitate and foster a neutral platform for governments and Indigenous peoples to directly discuss and agree frameworks and actions for cooperation. Since its establishment, UNDP-RIIP has gained distinction as a unique programme within the UN system, and the Programme of Action of the 2nd International Decade of the World’s Indigenous Peoples (2005-2014) has recommended its replication in other regions. The UNDP-RIIP is part of UNDP’s regional cooperation for Asia and the Pacific for 2008-2011 and seeks to address Indigenous issues at the regional level to ensure better integration in national development processes and outcomes.

A major factor in the success of the UNDP-RIIP has been the inclusion and involvement of Indigenous peoples in carrying out the Programme, on the steering committee, as thematic experts and in implementing activities, as has the participation of the governments in the countries concerned. The involvement and engagement of the relevant country offices in ensuring activities are conducted in an effective manner through national counterparts has also been critical. Another key element has been the institutional support of UNDP in engaging on Indigenous issues to address the pressing challenge of more inclusive and equitable globalization that allows vulnerable people to participate as full partners in the global economy. In this context, the achievement of the Millennium Development Goals and the Millennium Declaration has helped place a renewed focus on Indigenous peoples in the international development debate.

Using UNDP-RIIP as a case study, the following are some examples to illustrate the practical application of the Declaration in Asia.

Human rights and development

The justifications for human development and human rights are compatible and congruous yet they are sufficiently different in design and strategy to fruitfully supplement each other. The Universal Declaration of Human Rights recognizes human rights as the foundation of freedom, justice and peace. This is strengthened by the adoption in 1993 of the Vienna Declaration and Programme of Action stating that democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. The UN Programme for Reform, launched in 1997, calls on the UN system to mainstream human rights into its various activities and programmes. Based on this, and in an effort to streamline its activities and approaches, the UN adopted a common understanding of a Human Rights-based Approach to Development Cooperation (HRBA to Development), founded on the following core principles:

1. All programmes of development cooperation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.

2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.

3. Development cooperation contributes to the development of the capacities of “duty-bearers” to meet their obligations and of “rights-holders” to claim their rights.

A human rights-based approach is a conceptual framework for human development that is normatively based on international human rights standards and operationally directed at promoting and protecting human rights. It seeks to analyse inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress. It is both a policy and a programming tool based on the following key principles:

- Participation
- Accountability
- Non-discrimination and attention to vulnerable groups
- Empowerment and
- Linkage to Human Rights standards
In response to the development challenges facing indigenous peoples in Asia-Pacific, and the need to link human rights and development as this has significant consequences for indigenous peoples, UNDP-RIPPS has initiated a project on the Human Rights-Based Approach to Development (HRBA) and Indigenous Peoples. The aim is to build greater awareness of the principles of the HRBA and its value as an advocacy and implementation tool to strengthen indigenous peoples’ rights and development.

Training has been conducted in Asia – in Nepal and in the Philippines – so that indigenous representatives can gain a better perspective on rights and development. The Declaration provides the overarching framework for a more comprehensive and detailed understanding of the modalities, implications and impact of the application of the HRBA to Development from the indigenous peoples’ perspective. The aim is to enable indigenous peoples to actively promote their rights and advocate for culturally appropriate development that is in accordance with their needs and priorities. This will be expanded and developed further to ensure that the capacity of both indigenous peoples to demand their rights and governments to be able to respond to such demands is further strengthened. A toolkit for the training courses and other capacity development activities is part of this initiative.

A complementary activity has been that of assessing the impact of the development policies and programmes on indigenous peoples. Conceptualized during a planning workshop in October 2005, in close partnership with the Asian Development Bank (the ADB) and Indigenous peoples’ organizations, a series of analytical studies to identify the gaps and opportunities of the major financial institutions were completed in 2006: Engaging in Dialogue: The Human Rights Based Approach to Development and Indigenous Peoples. This was followed by a series of analytical studies on existing projects funded partly or fully by the ADB. The case studies, carried out in five countries, Bangladesh, India, Indonesia, Nepal and the Philippines, review the use and enforcement of the ADB’s safeguard policies, and establish recommendations for further action and follow-up. The studies informed an ADB safeguard review process, with consultations undertaken in November 2007, and are a part of UNDP-RIPPS’s ongoing cooperation with the ADB.

Inclusive governance

As mentioned above, in Asia, the recognition of indigenous peoples ranges from defining them as minorities and backward to the adoption of a specific law on indigenous peoples: The Philippines Indigenous Peoples’ Rights Act of 1997. As described by the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples;

Indigenous issues are increasingly the object of specific attention by several Asian States in key areas such as land rights, cultural protection, autonomy and self-government and development policies, thus signaling an important change of mentality regarding the recognition of cultural difference and its human rights implications. However, there is still an important implementation gap with regard to existing constitutional and legal provisions, and much remains to be done in order to mainstream indigenous rights in policies and the institutional machinery at the national level.¹⁵

Laws and policies recognizing indigenous governance systems are generally absent in Asia with some exceptions, for example, the Indigenous Peoples’ Rights Act as mentioned above, and Indonesian forestry laws. This has to be seen in relation to the implementation of obligations under international human rights instruments. For many indigenous peoples, there are few opportunities for genuine partnerships with states as, in many cases, states are not always accountable to them and/or indigenous peoples lack adequate political weight and representation to influence policy outcomes. Indigenous peoples’ participation in civil society is further overlooked because of their marginalization, their cultural and linguistic diversity and the reluctance of some states to acknowledge the ethnic diversity of their national population, or that indigenous groups exist within their borders and territories.¹⁶

UNDP’s efforts are aimed at bringing indigenous peoples into governance processes so that the voices of the marginalized can also be taken into account. This is consistent with the Declaration to facilitate participation of indigenous peoples in decision-making processes (Article 18), as well as consultation and free, prior and informed consent (Article 19). Indonesia provides a concrete example, where the UNDP carried out an analytical review of the laws and policies impacting on indigenous peoples to identify future law and policy options. This was done in close cooperation with the government ministries, the National Commission on Human Rights and Aliansi Masyarakat Adat Nusantara (AMAN), the Indigenous Peoples’ Alliance of the Archipelago, with UNDP support. This was the first time that these three institutions had worked together, and there are ongoing efforts to ensure greater linkages and cooperation in relation to law and policy development.

In Cambodia, the government has been engaged in a process of developing a framework for its work with highland peoples/indigenous peoples. UNDP helped provide the space and the opportunity for indigenous peoples to be involved in the policy formulation process to ensure that the policy, when adopted, was responsive to their needs and aspirations. This was done by disseminating the draft policy to indigenous peoples, facilitating interpretation into local languages and providing support for consultations and round tables with relevant ministries and indigenous peoples. The policy is currently under consideration,
and is in the final stages of adoption. This work was carried out in close cooperation with the International Labour Organisation and the Office of the UN High Commissioner for Human Rights and local organizations.

Law and policy remains an urgent issue and further work in this field will be undertaken in the region.

**Juridical pluralism**

The issue of access to justice and the interface between formal and customary law is critical to good governance and poverty reduction. This is also recognized in the UN Declaration when it calls for due recognition of indigenous peoples’ laws, traditions, customs and land tenure systems (Article 27), the right to promote, develop and maintain institutional structures and juridical systems or customs (Article 34) and the right to access justice and dispute resolution, giving due recognition to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights (Article 40).

Analytical case studies, providing data on juridical pluralism and the extent to which indigenous peoples’ laws, traditions and customs are taken into account in national laws and judicial processes, provide an example of the application of the Declaration rights in development. Legal analyses and assessments conducted in Bangladesh, Cambodia, India, the Philippines and Thailand formed part of a regional series entitled Inclusive Governance for Disadvantaged Groups, including indigenous peoples. The analyses focused on identifying the gaps and challenges that exist in the region with reference to the recognition and inclusion of indigenous peoples’ customary law and practices within the rubric of access to justice. The reports were carried out by experts and practitioners with theoretical and practical experience on the issue, with a view to identifying solutions, ways forward and drawing out the regional dimensions of the issue. They were conducted in a participatory and empowering manner, highlighting the root causes of the legal marginalization of indigenous peoples, and involving discussions, interviews and consultations with indigenous communities in the selected countries. Land has emerged as the central issue. The studies emphasize the need for greater recognition of customary rights and juridical pluralism as an effective means of providing equitable and easy access to justice for marginalized groups, and provide important input and guidance to UNDP programming at the country and regional level.

**Indigenous women**

Indigenous women are often described as the custodians of tradition and culture. They bear the prime responsibility of ensuring the cultures and traditions of their peoples are passed on to future generations, and are the most noticeable expressions of their peoples’ distinct culture. Yet, as in any society, indigenous women too share the same burden of institutionalized gender bias as their non-indigenous sisters, yet they often have a heavier load. Indigenous women are the most vulnerable of indigenous peoples, and face double discrimination – on the basis of their gender and their ethnicity. In some parts of the world there is a triple burden to bear as indigenous women are also poor.

Indigenous women do not see themselves as victims. Faced with discrimination and prejudice, indigenous women have been forced to develop skills and strategies for survival – for themselves, their peoples and their cultures. They have learnt to survive oppression and marginalization, discrimination and violence, without losing the wisdom and patience to build on and to share these experiences. Yet often their contribution to the struggle of indigenous peoples is not recognized or acknowledged.

This is often from both outside and inside the community.

In cooperation with the Asia Indigenous Peoples Pact Foundation (AIPF) and local partners, UNDP-RIPF is conducting training for Indigenous Women on Decision Making (IWDM). The main emphasis of the IWDM training is to address the power dynamics that characterize the daily lives and relationships of indigenous women in their communities. Given the generally low status occupied by women in general and indigenous women in particular, training to enable indigenous women to be better informed of their rights strengthens their capacity to demand and enjoy those rights. This is also an excellent building block towards empowerment and capacity development.

The main activities under the IWDM initiative include the training of trainers, community-based training and the development of a manual which is shaped and adapted to the training. The training of trainers provided indigenous women with knowledge about national and international laws relevant to their lives and also served as a venue for participants to share experiences and concerns with each other. For example, participants expressed anxiety about the impact of development on indigenous women and also noted that building capacity and confidence hinges on access to information. Within this environment, women were able to effectively network with one another and build relationships to support each other in decision-making. The training courses have been held in Bangladesh, Malaysia, Nepal, India and Indonesia. The IWDM Project Completion Report notes that it is a rare experience for women to be given a space to gather and identify issues relevant to their own decision-making. Moreover, discussing resolution to such issues is much more important as it provides a space to facilitate actual decision-making. In general, providing such moments empowers women, as well as men, to
look deeper into the changing social and cultural relations as indigenous societies develop in the context of a broader sphere. This process allows co-accountability of both women and men in decision-making while considering transformation of structures within the dynamics of an advancing society.21

It is expected that the group of indigenous women who have been trained to carry out the training will be able to contribute to and support their work of their sisters in their communities and in other countries in the region. Building on the knowledge and experience gained, work in this area will continue with expansion to other critical areas such as violence and conflict prevention, identified by the participants as an area deserving greater focus and support. The IWDM initiative has been identified as a "best practice" by the UN Inter-Agency Task Force on Indigenous Women, and is included in a compilation launched during the sixth session of the UN Permanent Forum on 24 May 2007.

Land, resources and territories

Two centuries ago indigenous people lived in most of the earth's ecosystems. Today, they "have the legal right to use only around 6% of the planet's land and, in many cases, their rights are partial or qualified."22 Land and land rights are some of the most important issues for indigenous peoples. This is recognized in the Declaration, which includes references to lands, territories and resources in a number of articles, including Articles 25-30 and 32. Of these, Articles 25 and 26 are central, highlighting the spiritual relationship that indigenous peoples have with their lands, and reiterating their right to the lands, territories and resources they have traditionally owned, occupied or otherwise used or acquired. This includes the right to own, use, develop and control their traditional lands, territories and resources. The Declaration imposes an obligation on states to give legal recognition and protection to these rights, with due respect to the customs, traditions and land tenure systems of the peoples concerned (Article 26(2)).

For indigenous peoples, land is not only a means of production and survival but is central to how they define their identity. In many instances, indigenous peoples and their natural habitats are inextricably linked. For example, the Masai herding grounds in Kenya/Tanzania, the Inuit with their kayaks in Greenland, the Maya in the Andean mountain range, the Hmong in the multi-tiered rice terraces of the Cordillera (Philippines), the Sámi with their reindeer in the Arctic reaches of northern Norway (also Sweden, Finland and Russia) and Jumma farmers in the Jhum (swidden fields) of the Chittagong Hill Tracts, Bangladesh. Indigenous lands have long been threatened by colonialism, settlement, encroachment and exploitation, however, and land dispossession continues to this day.

For too long, indigenous peoples' lands have been taken away, their cultures denigrated or directly attacked, their languages and customs suppressed, their wisdom and traditional knowledge overlooked or exploited, and their sustainable ways of developing natural resources dismissed. Some have even faced the threat of extinction.23

Control, management and access to land and resources are critical concerns shared by indigenous peoples throughout Asia and around the world. Through local, regional and national consultations, UNDP-RPP and its partners are evaluating the relationship between government policies and indigenous peoples' practices on land, territories and resources. Consultations with indigenous peoples and with local and national governments reveal common themes or points of potential conflict and possible cooperation. These include the following:

- the importance of local governance systems in mitigating conflict;
- the presence and effectiveness of indigenous peoples' support structures for land and natural resources; and
- the need for coordination and cooperation on indigenous rights and resource management between different government agencies, and with indigenous peoples.

Needs assessments, conducted by UNDP-RPP from 2005-2006, document the fact that access to land and natural resources remains a primary concern amongst indigenous peoples. Analysis of current indigenous practices and government policies on land, natural resource management and biodiversity conservation identifies ways to mitigate conflict amongst the actors and stakeholders involved. Findings from Bangladesh, Cambodia, Malaysia and Thailand highlight the key areas requiring assistance in strategy formulation for future work in the region, with a regional synthesis report drawing out the main challenges and opportunities. Community consultations and focus-group discussions provided the practical dimensions of how indigenous peoples have continued to manage and adapt their natural resource strategies.

UNDP work in relation to indigenous peoples' land rights is part of the implementation strategy to follow up on Article 32 of the Declaration, which states that indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. UNDP analytical reports informed a regional dialogue on natural resource management held in November 2007 with participants from 13 countries in Asia, including: government representatives; indigenous leaders, elders and youth; researchers and community workers; and UNDP country offices. The objective was to share information on challenges and opportunities implicit in lands, natural resource management and cultural sustainability. The negative and positive in-
fluences on the lives and resources of indigenous peoples wrought through development, globalization and environmental degradation were assessed with a view to identifying good/best practices and deciding what could be done on a regional level to address these challenges in an indigenous-sensitive manner. The dialogue was held in Chiang Mai, Thailand, in close partnership with the Asia Indigenous Peoples’ Pact, the International Alliance for Indigenous and Tribal Peoples of the Tropical Forests, the Inter-Mountain Peoples’ Association for Education and Culture in Thailand and the International Work Group for Indigenous Affairs (IWGIA), with support from the Christensen Fund. It provided the space and opportunity to highlight policies and practices of indigenous sustainable development, and victories and challenges faced by indigenous community-led action in protecting and promoting their cultural diversity. Participants agreed and adopted a Regional Action Plan for further work in this area, and are currently engaged in networking and partnering on different initiatives.

Community dialogues on climate change

An interlinked multi-dimensional strategy on land and natural resources includes an ongoing series of community dialogues focusing on fragile eco-systems. Indigenous peoples are adept at adaptation, and in responding to new challenges while retaining their specific culture and identity. This is the key to their continuing existence. Indigenous peoples have much to share with the world at large on how they have managed to survive through the centuries, facing diverse threats to their natural habitats. Many of the indigenous areas are home to most of the world’s bio-diversity. This is recognized in Article 31 of the Declaration, which specifically mentions indigenous traditional knowledge systems and their knowledge of the properties of flora and fauna.

The contribution and success stories from the Asia region in adapting and enriching bio-cultural diversity effectively demonstrates the linkages between different peoples, places, cultures and ecology that share a common focus in surviving today’s world of increasing erosion. Increased efforts to link vertically with ongoing global and national sustainable development efforts, and horizontally between a broad array of stakeholders and partners, are essential. Neutral spaces for cross-sectoral dialogue are critical for achieving multi-stakeholder partnerships, of particular importance in ensuring that indigenous peoples have clear, leading voices in the path of their own development and the use and conservation of their lands and resources.

UNDP-RIPPE, with support from the Christensen Fund, is engaged in a process of bringing different stakeholders together, including government and indigenous peoples, to discuss collaborative strategies aimed at bringing about improved policies and practices of natural resource management and cultural preservation through the lens of bio-culturalism. The aim is to enable local stewards from areas with well-known biological and cultural diversity to exchange stories and ideas with policy makers and members of the local civil society organizations on how the challenges of climate change and unprecedented bio-cultural erosion are to be met. The selected areas are: Chittagong Hill Tracts, Bangladesh; Ifugao, the Philippines; North Lombok, Indonesia; Northeast India; and Sabah, Malaysia.

The community dialogues provide an opportunity for communities to discuss the ongoing phenomenon of climate change and how it is affecting them. Some illustrations:

- The community dialogue in Indonesia drew out the issue of unpredictable seasonal patterns that have caused serious damage to agriculture and livelihoods through severe flooding in the wet season and water shortages during the dry months. The extreme fluctuations in climate, most marked since 1999, have impacted negatively on human development, and contributed to higher levels of poverty amongst Indigenous communities.

- In the Chittagong Hill Tracts, the community dialogue focused on the traditional system of jhum cultivation, and how it is being affected, not only in terms of intensity and crop diversity but also in terms of fallow management. A majority of the indigenous peoples in the Chittagong Hill Tracts depend upon jhum for rice production and for meeting their subsistence needs. For them, jhum is more than a farming method, it is a source of knowledge and means to protect culture and identity. They have many practices, taboos, beliefs and folklores passed down from generation to generation through oral traditions. However, this knowledge is little inventoried and documented. By drawing on indigenous knowledge and technologies, they maintain biodiversity in the CHTR region. It is important that this continues and is supported.

- In Sabah, Malaysia the indigenous system of Tegal is used to conserve and manage fish resources. A prohibition or curse is used in an innovative manner to determine how and when the resources will be used by the community. This system has been so successful that the government is currently replicating it in other areas.

- Ifugao in the northern Philippines is home to the famous rice terraces that are on UNESCO’s World Heritage List. However, consistent deterioration also caused them to be listed on the World Heritage List in Danger in 2001. A major threat to the rice terraces is the invasion of giant worms. The community dialogues helped different indigenous communities share tech-
routines and strategies to combat these pests. The traditional methods, with innovations, used in some areas have been successful and these innovations are currently being shared with other areas.

The community dialogues are continuing, complemented by demonstration projects that are being implemented by indigenous peoples' organizations in Asia, linking land and resources with sustainable livelihoods that strengthen indigenous culture.

Conclusion

The Declaration provides us with a tremendous source of inspiration and of substance. It articulates indigenous peoples' aspirations in a comprehensive manner, and touches on the core elements of indigenous culture and identity. The adoption of the Declaration is a step towards the realization of a just and equitable world, one that is founded on principles of equality and justice. The importance of the Declaration was unambiguously articulated by UNDP Administrator Kemal Dervish, in his message to commemorate Indigenous Peoples' Day on 9 August 2008:

Last year the UN General Assembly adopted a historic Declaration on the Rights of Indigenous Peoples. UNDP is working with national governments, the UN System and all other development partners to make this Declaration a living reality. For instance, across Asia, UNDP is helping to bolster the capacity of government officials and representatives of indigenous peoples' organizations to integrate these rights into national policy.

UNDP will continue to support efforts to ensure that indigenous voices are heard loudly and clearly and that they contribute to local, national and global development processes. We can all benefit from their knowledge on a wide range of issues, from the promotion of human development to climate change and environmental sustainability.

Working together we move ahead in achieving sustainable human development for all.

Notes

CULTURAL RIGHTS IN GREENLAND

Henriette Rasmussen

Introduction

It was emotional to watch the film about the adoption of the Declaration on the Rights of Indigenous Peoples (the Declaration). It was indeed a breeze of history; illustrating how much we could achieve and how we could make the UN listen to our aspirations, our situation and convince them of what we want and need to say about our future. In Greenland, too, many people were happy to learn that the Declaration had been adopted by the UN in New York in this article, I describe examples of how the Declaration’s Articles 12 to 17, on culture and education, are practised by the Inuit in Greenland Home Rule.

Meeting other indigenous peoples was a highly inspiring experience for us Inuit in the 1970s. It happened at a time when we ourselves had just formed the Inuit Circumpolar Conference in June 1977 with the purpose of manifesting our common culture and furthering our rights.

The meeting with other Inuit from Canada and Alaska was highly inspiring. We were making history. We decided to meet, from then on, every four years in one of our four countries. The next meeting took place in Greenland in 1980, the next in Canada in 1983, the next again in Alaska but, thus far, we had only dreamed about one in Russia.

It was in one of these meetings that a young activist, later trained in law, Ms Dalee Sambo Dorrough, convinced us that something serious was going on in the UN, something that demanded our attention and active participation. She became one of the people instrumental in the adoption of the Declaration.

Much later, when I was working at the International Labour Organisation (the ILO) in Geneva from 1996 until 2000, we established many interesting relations with indigenous peoples from all over the world. The ILO attended and arranged meetings and discussions, travelling to their local communities, meeting with their local authorities and governments to inform them about their rights and learn about their situations. We acquired different materials from Central and South America, South East Asia and Africa. We published reports on the topic of cultural rights and indigenous education.

One report of particular note was that produced by Dr Nigel Crawford on the situation of the San people in Southern Africa (the Crawford Report). It examined economic development and cultural survival and offered important perspectives on cultural questions. The Report discussed the impact that economic demands and development have on culture and heritage and the importance of the distinction between arts and crafts. The San people had achieved some land rights but, like other indigenous peoples, they were poor and needed economic development. The research revealed that most of the local Nama (indigenous peoples inhabiting Northern Cape Province of South Africa) wanted to see economic development and cultural survival. However, some of the solutions to poverty that were being considered or implemented by indigenous peoples could, in fact, weaken indigenous cultures. While acknowledging this risk, it is necessary to recognize that all cultures are dynamic and that changes in culture can be a sign of vitality. Cultural survival should not mean stopping history, where cultural content is measured against an idealized lifestyle of a previous era.

The first part of Crawford’s Report discusses whether certain economic strategies marginalize or enhance cultural systems. The second part looks at the exploitation of culture and whether this enhances cultural traditions, so that they remain dynamic, or whether it reduces them to a commodity with little social meaning. I think this is an important discussion for indigenous peoples to have because, as guardians of our old cultures, we are the ones who need to be aware of these rights. In other words, once our rights as indigenous peoples have been recognised, we have a new responsibility not to exploit our cultures but to guard them and develop them in a culturally appropriate and acceptable manner.

The same is true of the use of arts and crafts for economic development. It is possible to argue that, where there is greater use of crafts for income generation, poverty alleviation will follow. It may, however, cause the creativity and authenticity of the work to decline. This over-exploitation of culture can lead to a decline in respect for, and the value of, traditional technology. This is evident with the low quality mass production of crafts dominated by cultural groups in various places; too much emphasis on mass production can take out the culture of the products and take away self-respect from the producers. As poverty alleviation is also a serious concern, the challenge will be to market authentic, culturally significant arts and crafts to an elite consumer group while choosing other projects for mass production.

I think these points, made in relation to Africa, will be valid for all indigenous peoples when the time comes for us to be able to practice and revitalise our cultural traditions and customs. We indigenous peoples are now responsible for
how we maintain, protect and develop the past, present and future manifestations
of our cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature. This needs our attention and reflection, along with good decision-making processes.

The cultural politics of collective rights

In a globalized world, even with the insecurity of climate change, I think it is crucial that we stick to our heritage when seeking answers to future challenges. The rich countries are threatened by their consumerism, and resources are limited. Indigenous peoples have lived marginalized in poverty, lacking commodities and social goods that the states in which they live would never deny themselves: education, economic development, freedom of religion, access to health and sufficient food. Indigenous peoples have, in many places, lost their lands and resources, or have been displaced to arid lands or reservations. And yet they have kept their dignity, their pride and their generosity. We have our own languages, histories, oral traditions, philosophies and literature. Now is the time to manifest these for the future. The world must learn from us; they may need our knowledge of sharing, respect for nature, and the care and security of the extended family and collective rights. It is now time for us to put our mark on the history of mankind.

Who are the Inuit? What is Greenland Home Rule and greater self-government?

The Inuit are 60,000 people living on the biggest island on the planet. Greenland, 2.1 million sq. km, situated in the Arctic, remote and isolated, expensive and fascinating, has been our homeland for more than 4,000 years. Historically and geographically, we belong to the North American culture of the Inuit. But we are also very influenced by more than 250 years of penetration, contact and colonization on the part of European countries.

Greenland left behind its "assimilationist" relationship with Denmark in 1979 when the Home Rule Government was introduced, with responsibility for politics and jurisdiction over many areas. Since then, we have had a parliament and a government of our own, with responsibility for all social, cultural, educational, economic, tax and fiscal policies. Only foreign policy, the currency, and the courts remain under Danish jurisdiction. The question of mineral resources (land rights) was resolved during this period by establishing a joint council consisting of members of the Greenlandic and Danish Parliaments. In 2008, a new step towards more self-government was negotiated and successfully put to referendum that November.

Indigenous Greenlanders have always formed the majority population in Greenland despite a long relationship with Europe and in particular with Denmark. It is the Greenlandic cultural heritage that has been a strong force, in my opinion, that always challenged Denmark. After introduction of the Home Rule, withdrawal from the EU in 1985, the final achievement is the self-government model introduced in 2009.

The political development of the 2008 self-government package began with the establishment of a special committee under the Parliament and Government of the Greenland Home Rule in 1999-2000. A small specialized workforce was established to provide support to the self-government initiative resulting in the publication of a report endorsed by the Greenlandic Home Rule Parliament, also for the establishment of joint self-government commission consisting of Greenlandic and Danish politicians in 2004.

These joint efforts by Denmark and Greenland resulted in the introduction of a new law, No. 473 of June 12, 2009 of the Danish Parliament, the Folketing. The Act on Greenland Self-Government. It recognizes the Greenlandic people's right to self-determination under international law, with the Greenlandic language as the official language of the country. It gives Greenland permission to assume tasks that remained under Danish responsibility, including to claim a declaration of independence when a majority of the population in Greenland so desires. Economically, it provides Greenland with an annual subsidy of 3.6 billion DKK (in 2009 price levels), until she can sustain herself from her own sources of income. The new Government, called Naalakkersuisut of Greenland, has expressed the desire to take the responsibility for Greenland's mineral resources and, also, jurisdiction over citizenship and employment of foreigners.

In domestic politics, I have had the privilege and honor of holding ministerial office twice; my last portfolio was as minister responsible for our cultural and educational policies. This article is mainly concerned with the experiences of the Kalaallit/Inuit in Greenland. How do we manifest, practice and develop our cultural heritage? I have included an overview of how we established and now run an acceptable, if not perfect, educational system. We run schools in our own language but have to struggle in other languages when the higher education system requires that subjects be taught in those languages.

The goal and substance of cultural policy is that the population should be aware of its own history, well-informed, living in the present with visions and hopes for the future. We develop our spiritual and mental values and attach great importance to strengthening ourselves spiritually as a nation on its way to greater self-government.

Many indigenous peoples live in extended families and this traditional network is very valuable. We must not lose it. The relationship between the genera-
tions and respect for our elders should be maintained since the older generation can pass on traditional values and norms to the younger generation.

Culture is the way we are together, and we all contribute actively in creating it. Culture is memory and the reminiscences of old and new traditions. Culture is also the memories that our forefathers have left behind the landscape and which we find in the museums and in our myths and legends. Culture is experiences, ideas, performances and belief. To cherish our culture is the duty of all society.

An important aspect of our culture, and one that gives perspective beyond the boundaries of our country, is the concept of sustainability. If our culture is based on sustainability, this will be a positive signal to the outside world. This new cultural policy must be expressed in terms of a spirit of sustainability and must seek support from the arts and sciences to attain a sustainable future for our society.

The recognition and preservation of indigenous peoples' cultures, traditional knowledge and spiritual wisdom contributes to the protection of the environment and the welfare of mankind. The culture of the hunter, with its rules for the utilization of nature and its resources, must be documented in literature. The culture of the hunter keeps alive good traditions, not least when there is a question over the just distribution of the natural resources.

Language

Kalaallisut belongs to the Eskimo group of languages and is spoken by approximately 44,000 individuals in Greenland. If we include Greenlanders living in Denmark then there are around 55,000 individuals speaking the Greenlandic Inuit language. The structure of this language group is very different from that of Indo-European languages, including the Nordic languages.

Qasasilliut, the Language Secretariat under Greenland Home Rule, was founded in 1998 out of a desire to optimize work within the field of language. The Language Secretariat works closely with Qasasilliut, the Language Advisory Committee, founded in 1982. The Language Secretariat's most essential assignments are to register and document the Greenlandic language.

In July 2000, the Greenland Home Rule Government set up a committee to evaluate the current status, distribution and development of the Greenlandic language. It was also asked to formulate a proposal for a clear and long-term language policy in Greenland. In November 2000, a mid-term report was published. The recommended initiatives requiring funding included vocabulary lists and dictionaries, databases and the collecting of words for linguistic surveys, linguistic guidance and information about Greenlandic. The initiatives not requiring funding included giving priority over a period of time to experimental work in the Greenlandic language. Our greatest cultural challenge today lies in a domestic future-oriented culture that is in competition with international culture. Priority is given to the culture of children and young people rather than to that of adults. The teaching of Greenlandic as a first language is being modernized and made more result-oriented so that its status amongst pupils is raised. Within the sphere of language technology, attempts have been made to write programs for transliteration between the old and the new orthographic systems. Spell checks, syntax checks and word divisions have been introduced.

Cultural institutions

The Greenland National Museum and Archives has a mandate to preserve and pass on Greenland's history and culture and to document Greenland's cultural development from the past to the present. The activity of the museum includes archaeological and ethnographic surveys, collecting contemporary data, research and communication. The Greenland National Museum and Archives carries out archaeological excavations throughout the whole of Greenland and is also the authority that gives permission for such excavations. Furthermore, the Greenland National Museum and Archives carries out reconnaissance in order to locate ancient monuments in situ. The Sermermiut area, in Disko Bay West Greenland, was declared a World Cultural Heritage area by UNESCO in 2004.

Literacy came to Greenland in the 19th century, thus making it possible to build a system of education based on Kalaallisut. Nonetheless, Danish remained the language of the administration and of most workplaces and, from the 1950s onwards, school education became more and more influenced by Danish norms and traditions. Danish was pushed forward as the language of instruction in primary school, the assumption being that educational achievements would be reached more quickly, especially during the development boom years of 1960-80. Kalaallisut was even seen by some as redundant.

The first newspaper in Greenlandic, Attagagilliat, was published in 1861. It still exists, but now as a weekly bilingua newspaper. Publishing different translations and articles written by Greenlanders, it soon became very popular throughout the country. In 1893, a translation of the Bible, as well as some Greenlandic teaching books, was published and, at the beginning of the 1950s, poetry and fiction books as well as new local newspapers followed suite. Greenlandic had become a literary language.

Greenland has a unique oral heritage in the form of myths, legends and drum songs. Fortunately, many of these rich cultural expressions were collected and written down in the 1850s, thanks to the efforts of the Danish Royal Inspector for Greenland, H.J. Rink. Rink encouraged hunters, catechists and trade posts to submit their stories. Many responded to his call and the material they sent him was
later compiled and published in Nuuk in four books, with old legends, between 1859 to 1863.

Dictionaries of the Greenlandic language have been published since the mid 19th century, and the latest dates from 2003.

In the early 20th century, the famous polar explorer Knud Rasmussen, whose mother tongue was Kalaallisut, collected stories and poetry that were later published in two books - Myths and Legends from Greenland (1925) and Songs of the Snow Hut (1930) - in Danish. From 1921 to 1924, Knud Rasmussen travelled on dog sledges from Greenland to Eastern Siberia, crossing Canada and Alaska. He had Greenlandic hunters with him, and their meetings with other Inuit in Canada, Alaska and Chukotka was later described in a book, this time in Greenlandic too. "Across Arctic America, Narrative of the 9th Thule Expedition", printed in New York in 1927. It was reprinted by the University of Alaska Press in 1999.

Developing education

Traditional and school education

School education was introduced with colonialism. Traditionally, education had taken place within the family. Mothers were probably the most important teacher of all, as she was the one bringing up the new generation within a sustainable hunting society. Fathers taught the boys hunting skills, how to make and use tools, how to build shelters, homes and skin boats like the kayak and the umiak. The women elders were the ones who taught the important preparation of many different kinds of skins for clothing, big tents, and selecting and sewing the skins for the boats. Grandmothers would teach their granddaughters about womanhood, menstruation, child rearing and so on. This is how it was in the past and in our parents' generation, but also during my own childhood in the 1950s in north-western Greenland.

One of the purposes of the Danish colonization was to Christianize the Inuit. First the Lutheran Protestant, and later the Moravian, missionaries were concerned that the population should be able to read the Bible and other religious works, so schools were established. The Danish missionaries and catechists, who as a rule lacked both training and language skills, usually did the teaching. To remedy the situation, a catechist's college - lærerhøjskole, i.e., the "big place for learning" - for Greenlanders was established in 1840.

Public schools were introduced in Greenland in 1905 and the Church and School Act became the framework by which the whole Greenlandic population, including the remote villages, was to be given a basic education. The curricula included religion, Greenlandic and mathematics, and trained catechists did the teaching. These catechists also had Church duties to perform.

In 1925, the Act on Administration introduced compulsory education for children aged 7 to 14 and taught the Danish language, culture and history. At the time, the young generation of educators and writers welcomed this development as an eye opener and way of accessing the outside world. This Act led to innovative trends in Greenlandic literature, interpreting Greenlandic with new literary tools such as the theatre and poetry, and this also stimulated curiosity in political trends outside of Greenland.

Until World War II, the income base for the majority of the population was still traditional hunting and fishing. For those few who wanted to continue their education for another two years, there were three "continuation schools" on the west coast of Greenland. After that, the only place for higher education in Greenland was the Teacher Training College. It was also possible to choose on-the-job training at the Royal Greenland Trade Company (Kongelige Grønlandske Handel). Finally, a few Greenlanders had the possibility of attending school in Denmark, provided they were given the permission to travel.

Appropriate teaching and learning

As stated in the Declaration, indigenous peoples have the right to establish and control their educational systems and provide education in their own language. This has improved during the Greenland Home Rule era. There has been a reaction against all the years of "Danification". Now, all efforts are concentrated on a "nation-building" process, to develop the country according to its own conditions and available resources. The "Greenlandisation" policy was aimed at making Greenland more Greenlandic and creating a sense of national Greenlandic identity.

The new school law of 1980 had as its key objective "to strengthen the position of the Greenlandic language" by making it the language of instruction, while Danish would be taught from Grade 4 as a first foreign language. The other important objective was to ensure that the content of the school subjects was more appropriately adapted to the needs of Greenlandic society. Once more, attainment of these objectives was dependent on the availability of Greenlandic teachers and teaching materials in Greenlandic; often these conditions could not be met, and Danish teachers would be in charge of teaching, at the expense of teaching in Greenlandic. Throughout the 1980s, efforts were made to increase the number of Greenlandic teachers by creating two more teacher training colleges and improving the training.

In 1997, the school administration was decentralized. While the responsibility for the overall legislative framework remains with the central authority, the Landsting (parliament) and Landstyre (government), the municipal councils now have the responsibility of defining the administrative and pedagogic goals for their
schools in accordance with the local situation. In order to support the local authorities with their pedagogical responsibilities, pedagogical/psychological resource centres were established in three different locations in western Greenland.

New initiatives

The latest significant changes to school legislation are as recent as 2002. They were introduced after thorough preparation, with both national and international participation, and a broad public debate on the future of the school system. Several conferences were held with the participation of schoolteachers from all levels, parents and local politicians. A special conference was organized for schoolchildren.

The objectives have been to build a flexible school system shaped on Greenlandic premises and needs, while at the same time making it possible for students to pursue a higher education outside of Greenland. The “Good School” is a ten-year school where the first nine years are compulsory. It has three levels: primary level from Grade 1 to 3 for the youngest children; a middle level from Grade 4 to 7; and a level for elder children (lower secondary) from Grade 8 to 10. Classes can be organized with pupils of the same age or not. The pupils are taught in subject-specific groups, as well as in cross-cutting subject groups, and the groups consist of pupils from one or several classes determined by the individual pupil’s needs and interests and in line with the agreed learning objectives. The languages of instruction are Greenlandic and Danish. English can also be used as an instruction language, as part of the pupils’ language learning. Teaching at all levels includes the following subjects:

- Languages: Greenlandic, Danish, English and a third foreign language;
- Culture and society: social science, religion and philosophy;
- Mathematics and nature, and in the highest grades, separate classes in physics/chemistry, biology and geography;
- Personal development: teaching in health, social and emotional issues, educational and professional information and other psychological and social topics.

Vocational training is very important for providing society with all kinds of necessary skills, and it has been in development since the first years of Home Rule. Today, Greenland has several vocational training schools as well as business and other specialist schools.

Higher education and research

The Home Rule Government has chosen to establish a number of research institutions in Greenland. To name just a few:

- The University of Greenland, Ilulissat, is an institution where research into Greenlandic language and literature and Arctic cultures and societies is conducted.
- The Greenland Institute on Natural Resources provides scientific data that can contribute to the sustainable development of Greenland’s natural resources and safeguard the environment and its biological diversity.
- The Greenland National Museum and Archives examines the country’s archaeological and cultural, as well as its recent, history.
- Statistics Greenland, which, as well as gathering statistical data, is handling the International Joint research project “The Survey of Living Conditions in the Arctic: Inuit, Sámi and the Indigenous Peoples of Chukotka (Russia)”.
- Inersaaktiv (the Centre for Pedagogical Development and In-service Teacher Training) also conducts research.
- In 2000, the Arctic Technology Centre was established in Sisimiut as a result of cooperation between the Technical University of Denmark and the Construction School.

Home Rule politicians argued that investing in the areas of education and research was necessary to understand and shape the society of tomorrow in line with its needs. Language, culture, history, pedagogy, administration, social conditions and media communication were all too important for a country’s development to be moved to another country.

Furthermore, there was a political demand to establish a coherent educational system. The idea was to create a wider learning and research environment and to use professional educators more efficiently. As in the international debate on education, there was a quest for more flexibility and mobility in the education system. This led to the creation of a new university and research centre in Nuuk, thereby establishing a learning and research environment to benefit the students and make it possible to use the teachers’ skills more efficiently.

Ilulissat opened at the end of 2007. It groups together all the current institutions of higher learning, including the University of Greenland and its four institutes, Statistics Greenland, the National Archives, the National Library, the School of Social Work, the School of Journalism, and the Language Secretariat. There will also be a new research center dealing with the social sciences and humanities in the Arctic that will be of use to the entire community of Arctic researchers. Fur-
thermore, new areas of research, including media and communication, social research, pedagogy and theory of education, will complement the existing research areas at the University. Ilisasarfik also includes student residences and lodgings for guest professors or researchers.

Ilisasarfik will, without doubt, give Greenlandic research new and exiting possibilities. Research will provide a basis for the decisions to be taken by the politicians and by people in the business and industrial sector, and thus be to the benefit of the wider society and contribute to the development of the goals formulated since Home Rule was introduced.

Art In Greenland

The tradition of the visual arts in Greenlandic history dates back to persons such as Aron, who lived in the mid-19th century, a hunter who, after getting tuberculosis, had to change his livelihood and started woodcuttings and water-colour paintings featuring daily life. Since then, a number of artists have made their mark, inspired by Greenlandic and Danish artists. Developments over the last few years clearly show that the younger generation of artists is aiming to make its mark in the international art arena. It is definitely a positive sign that today's artists are capable of creating works with universal appeal.

To obtain an income, both artists and designers are dependent on promoting their works and products. Unfortunately, the channels for this are not the most effective in Greenland today. There are, however, some groups of artists working and experimenting with various new forms of art, for example, traditional crafts, installation art, video art, performance art and concept art. In the world of design, the main focus is on clothing, in Greenland as well as abroad. Abroad, the main interest is in the use of seal skin and other ethnic materials. This is certainly an exciting development from which our society will benefit, now and in the future.

The School of Art in Nuuk contributes to stimulating an interest in art within our society. It is a stepping stone for other creative and artistic forms of education outside Greenland.

Vocal and instrumental music are of great importance to all ages. There is a rich musical tradition in Greenland. Traditional drums, drum songs and dances have been revitalized in modern times. Old and new recordings of these have been released. A characteristic of our music generally is that singing is mainly in Greenlandic. Our musical tradition therefore plays an important role in preserving Greenlandic as a living language.

Music on CDs as well as live music is of great importance to cultural life, both for entertainment and for dancing. Pop and rock music are the most widespread genres today and large numbers of CDs are released in relation to the size of our population, although the overall numbers sold have declined in recent years. There are two or three major record companies and several smaller ones.

There is a growing tendency to hold music festivals and there is no doubt that these festivals are of great importance to the musicians, as the number of music venues and arrangements held in Greenland is limited. There are municipal music schools and it is possible to study music at university level or at an academy of music.

The experimental theatre group "Silamuit" has played a predominant role in dramatic art in Greenland over the almost 20 years that the group has existed. Silamuit has been on tour in Greenland and abroad, and the group has been mentioned many times by politicians as being a fine ambassador for Greenland.

Several Greenlandic actors have also produced their own plays and performing shows over the last 8-10 years. It was in this way that the amateur theatre group, "Pakkiit", made its mark over a period of time. There is currently an educational stream in the Silamuit Theatre through which young and new actors can receive basic training. The Actors' Federation (KAISKA) takes care of actors' interests. Since its inception in 1960, the Federation has emphasized the interests of professional Greenlandic actors through its associated membership in the Danish Actors' Federation (DSF). KAESKA and Silamuit have been responsible for training Greenlandic actors.

Motion pictures are the medium of our time for information, documentation and fascination. Filmmaking is an activity that demands a great deal of equipment. The need for expensive and delicate equipment is demanding on organizations, the infrastructure and the economy. Film production is, above all, the product of co-operation, often across national boundaries. The world of film is the most commercial of the traditional arts. It is expensive to make films - it is an area that necessitates risk - but with a good product it is possible to achieve public attention and benefits, for example in the form of public relations advantages for a country and its culture. It can occasionally even lead to financial proft. The film "Pulau Wedding" made in 1934 by Knud Rasmussen, was the first film to be made only in Greenland. Our film industry has developed its own style in short films, documentaries and short features over the last 30 years, and especially 10 years. Against all odds, Inuit filmmakers are successful. Canadian, Alaskan and Greenlandic filmmakers have received significant awards at different international festivals.

Assissitut is an association of Greenlandic filmmakers with various qualifications, as well as people without formal education but with film experience. The association was established in 1999 in connection with the first Greenlandic film festival held in Kautoke, Greenland's Cultural Centre in Nuuk. This was done to strengthen communication between the active areas of the film industry and to promote Greenlandic films abroad.
The Greenland Home Rule Government can provide grants for film production. In 2003, a special film and theatre fund was established. It is not easy to build up a proper film environment in Greenland because professional training, operating partners, actors, equipment, funding and professional inspiration are all found mainly outside Greenland. People involved in Greenlandic film production have to spend longer or shorter periods of time outside Greenland. The people who seriously want to advance within the film world tend to settle abroad. A well-established film environment in Greenland is, however, an important condition for making Greenlandic film activities visible. This will inspire new talent in Greenland and also reduce the movement of already talented and qualified people out of the country, known as the brain drain.

Activities within the film industry create work, income and awareness and ensure that a large part of the funding is spent in Greenland. In addition, film production in Greenland will ensure the development of films with a special Greenlandic element. But there is an inter-connection of elements - there will be no film environment whilst there are no, or very few, people involved in the making of films. If Greenlandic film is to be developed, there is a need for financial backing, and there is not enough funding from the Greenland Home Rule Government to fully develop the film industry. A contemporary film called **Nuuk** is nonetheless currently being shot in the Nuuk area, with an entirely Greenlandic crew and actors.

**Literature**

There are still few authors writing in Greenlandic. The first novel was released in 1910. Literary productions include novels, plays and poetry inspired by the old culture and clashes with Western civilization. The national publishing house established in 1957 with the support of the Landraad has now been privatized and this has made it more difficult for writers to get published.

Public libraries are a feature in many towns and communities. The National Library in Nuuk and local libraries are important places for our literature and culture. The writers are remunerated an amount of money collected by the libraries from the loans of their books. There are also book clubs. However, in general, book reading is no longer as widespread as it used to be in previous times and it is now being challenged by the electronic media. Listening to book CDs, on the other hand, appears to be popular.

One thing characterizing the Kalaallisut is the pleasure they take in story telling and, even in Nuuk, people will swarm to the main library for story-telling evenings. They are good listeners and an unmistakable characteristic is their sense of humor and disposition to laughter.

**Language**

Language is of utmost importance to cultural identity. The Greenlandic language per se is not endangered today. However, there is a strong political wish to strengthen the language in administration as well as in education and, to a larger extent, as a culture bearer via literature.

There is often an outcry for more books for children and young people within certain genres. But it is not clear what will stimulate the production of more literature in Greenlandic. The Greenland Home Rule collaborates with the Greenland Writers' Union on improving the conditions for writers. The aim is to provide better conditions for stimulating the production of Greenlandic literature and it also provides funding for two Greenlandic language magazines on art and culture.

There is a Sports Council and sports organizations, and a large amount of voluntary work is being carried out locally to advance Greenlandic sporting endeavours. There is great interest on the part of the population; sports are well supported in Greenland - not least among the young - because they are good for a healthy lifestyle (weight, nutrition, non-smoking and so on), for the condition of children and young people in society, quality of life in old age, the disabled and women. Our youth compete in the Arctic Winter Games, the International Island Games and Pan-American competitions in football and European handball.

**Media**

Newspapers in Kalaallisut

Besides **Atuagagdlitt**, the first Greenlandic news periodical, another popular weekly newspaper in Greenlandic, **Sermitsiaq**, is also available online in a bilingual version, now also including English. Sermitsiaq is a very popular online paper in which there is a great deal of political debate. Besides these publications of national coverage, there are a number of smaller publications such as Kalaallit (The Greenlanders), published in Greenlandic only by the Greenlandic Writers' Association, and **Arranitt**, a bilingual magazine for women published by Sermitsiaq.

Radio and TV

In a region as vast as Greenland, with a widespread population living at great distances, radio has been significant as a source of news and enlightenment. But it has also been important for the development of a new form of journalism and a creative way of using the local language. Greenland's first broadcasting radio developed after World War II with the support of experienced Danish radio jour-
nalists and Radio Denmark, where young Greenlanders went for training as technicians and journalists. The cultural impact was enormous. News, reporting, debates, personal stories, radio theatre, European (mostly classical) music as well as North American modern music reached Greenlandic homes.

Today, the national Kalaallisut Nuunata Radioa (Radio of Kalaallisut Nunait) KNR is digitized. It also runs a public TV channel and a bilingual online news service. It is an independent institution with 100 employees and its own board of directors. TV and radio programs can be received throughout Greenland but some towns also have their own local radio and TV stations with local news, music and entertainment. They, too, get some financial support from the government and their productions are sometimes bought by KNR and used in national programming.

In 2005, 8,243 hours of radio and TV broadcasting included 60% art and culture, 33% news and current issues, and 7% children and youth programs, produced with their participation. KNR Radio broadcasts about 5,400 hours of material each year, comprising 2,500 hours in Greenlandic, 900 hours in Danish and 2,200 hours of music. KNR TV broadcasts about 300 hours of Greenlandic and around 2,000 hours of Danish programs per year. Television programs (and DVDs) are almost always in Danish or English and have a strong impact on Greenlandic culture.

Radio, in particular, has been perfect for the modern Greenlandic society, and it is still today the most influential media in the local language as it can be heard in all local communities. One of the obvious differences with other Inuit in North America is that when you visit Inuit homes in Alaska and Canada you'll find a TV set broadcasting all kinds of programmes in English while in Greenland it is much more often the radio that will be turned on, playing in Kalaallisut.

Electronic media

Most people have access to the Internet, and all the larger institutions, private as well as public, have their own Web sites. These are usually bilingual, although some of them try to have pages in English too. There are several chat sites in Kalaallisut specifically targeting young people. Lively interactive debates prevail in both Kalaallisut and Danish on the Web sites of Radio KNR and Sermaqta.

Future challenges

All indigenous peoples have their own history, culture and heritage. Ours, Inuit including Greenlanders, is very different from all the others. However, in modern times, we have managed to collaborate with indigenous peoples around the world. It has been greatly rewarding for our self-understanding and self-esteem. It is obvious that the situation of many indigenous peoples is very difficult. Self-government was endorsed in November 2008 with a 76% yes vote and it was inaugurated on Greenland's national day June 21, 2009. This will undoubtedly be a challenge for Greenland but Greenlanders seem to be very aware of this.

A door has now been opened by which to improve the situation, with the adoption of the Declaration. The states we live in have to take effective measures to combat prejudice and eliminate discrimination. They also have to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society. Now that the 60th anniversary of human rights has been celebrated globally, it is worth looking at the Declaration on the Rights of Indigenous Peoples. Based on collective rights, it has introduced a new and necessary step for humankind. The UN has agencies dealing with culture and education. UN Education, Science and Cultural Organisation and its declarations on cultural diversity and intangible cultural heritage and its different programs are other tools available to us. The challenge is now for us, and for the states in which we live, to create a better and a richer world to live in.

Notes

STATEMENT BY MR. KUUPIK KLEIST, PREMIER OF GREENLAND, 2ND SESSION OF THE EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES, GENEVA, 10-14 AUGUST, 2009

Geneva, 11 August, 2009

Madam Chairperson, Distinguished Members of the Expert Mechanism, Indigenous Experts and State Representatives, Ladies and Gentlemen.

It is a great honour for me to address this (the 2nd) Session of the Expert Mechanism on the Rights of Indigenous Peoples - yet another Important body to represent the interests of indigenous peoples at the international arena. Congratulations to all of you on your appointment as Experts to this Mechanism.

It is indeed a pleasure to register the huge development and rapid affirmation of indigenous rights throughout the UN system and, in particular, to experience an increasing number of indigenous experts in influential positions. The hard work and dedication finally seem to gradually bring about the results that we all have been striving for.

I have been looking forward to seeing you all again and found this an excellent opportunity to demonstrate our continued support.

Many of you will know that Greenland recently entered a new era after some years of internal deliberations followed by negotiations with Denmark. In a national referendum in Greenland on November 25, 2008, 75% of the Greenland people voted in favour of taking our self-government a step further. On June 2, 2009 in national parliamentary elections, the Greenland people voted to move forward with a new leadership, which I am proud to represent here.

All together we celebrated our new partnership with Denmark on our national day, June 21, 2009. A partnership which is shaped by our historic relationship and further developed upon principles laid out in the UN Declaration on the Rights of Indigenous Peoples.

Inspired and informed by internal needs and international processes, not least on indigenous rights, an all Greenland Commission on Self-Government in 2003 submitted a proposal for a renewed partnership with Denmark. On the basis of this work, the Premier of Greenland and the Danish Prime Minister on June 21, 2004 signed the terms of reference for a Joint Greenland-Danish Commission on Self-Government. I had the honour to be a member of the Greenland-Danish Commission, which concluded its work on April 17, 2008.

Further details on historical background, content and results of this process have already been reported to the 5th Session of the Permanent Forum in May of this year.

My main message today is the fact that this new development in Greenland and in the relationship between Denmark and Greenland should be seen as a de facto implementation of the Declaration and, in this regard, hopefully an inspiration to others.

At the national level or at the level of the realm, the Act on Greenland Self-Government indeed operationalizes the rights affirmed in the Declaration as called for by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Professor James Anaya, in his excellent report to the (9th session of the) Human Rights Council last year.

I have studied the report with great interest, and can very well subscribe to Professor Anaya's excellent overall analysis and conclusion, in particular, on the importance of pursuing peaceful engagements and partnerships.

The new relationship between Denmark and Greenland primarily entails a further devolution of powers to Greenland. It is based on a partnership, which now includes recognition of the Greenland people as a people under international law and thereby confirms our right to self-determination.

At the inauguration of Greenland Self-Government in Nuuk a few weeks ago, the Danish Prime Minister addressed this - to us - very important recognition in a most pragmatic and sober way stating that it would indeed be a natural thing for the government to inform the United Nations of Greenland's new status.

A status which, in addition to our recognition as a people under international law, also includes the recognition of Greenlandic as the official language and Greenland's ownership and control of all natural resources.

My own response to the overwhelmingly positive reaction from both Denmark and abroad, these past few weeks, is that - naturally - neither the transformation from Home Rule to Self-Government nor the full implementation of the Declaration will happen overnight. This is only the beginning and we are acutely
aware that our new status also brings with it huge obligations and challenges financially and politically - for Greenland. However, we are ready to take on greater responsibility, which always comes with rights.

"There are simply no free lunches", as they say. Rather, hard work lies ahead in order for us to fully exercise our additional powers and to ensure economic sustainability. First and foremost, we have to promote and ensure the education and training of our people.

I am therefore pleased that the right of indigenous peoples to education is an important theme at this session under the umbrella of implementation of the Declaration, even though education is also one of the mandated areas of the Permanent Forum and, indeed, falls under the broad mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.

The rights aspect is an important one. How do we ensure that our peoples are able to exercise their right to education?

In Greenland, we control our own educational system and have done so for some time. Our educational system is free and open to all. We have education and training in our own language. Yet we still struggle to increase the level of education at a sufficient pace to cover our need for educated people.

We have created several institutions of higher education to allow our students to study in Greenland instead of having to move abroad. We have made several educational reforms to adjust the educational system to our special needs and to ensure teaching in Greenlandic. However, we have also listened to our students wanting their education to be compatible with similar education in Denmark, the Nordic countries, and elsewhere to give them the necessary flexibility in their lives. My government shares the need for a global outlook.

We have a huge obligation to ensure that our children and youth are provided the necessary educational and occupational opportunities in a socially and culturally sensible and round environment which will allow them to prosper and take on responsibilities for the future of our country.

We will continue to invest heavily in education to maximize the benefit in terms of output. It is a challenge and a balancing act, in our educational system, to sustain our indigenous language and cultural heritage and at the same time ensure that our students obtain the professional skills and capacities of the world surrounding us. Our small number of people dispersed in a huge territory with a rather difficult infrastructure makes it extremely hard to reach out to everyone.

We know that we must succeed and we are very interested to learn from others in this area as to how we can best implement this right and ensure the best results for all parties.

Turning back to the implementation issue in the broader perspective, my old friend and colleague, Aqaluk Lynge, President of ICC-Greenland, has pointed to the fact that we need to start implementing the Declaration internally in Greenland. I agree with him on that point. The Declaration has been endorsed by both Government and Parliament of Greenland and it has raised expectations of citizens and interest groups. We need to take a closer look at our own compliance with this important (human) rights instrument. To guide and monitor our efficiency in this regard, our Parliament last year made an agreement in principle to establish a national centre for human rights in Greenland, a goal which I hope we will soon be able to fulfill.

When we take over jurisdiction from Denmark - such as over natural resources - we must carefully examine the potential impact on our local communities, hunters, fishermen and the environment. We do need to take advantage of opportunities for economic development, also based on non-renewable resources, to sustain ourselves in the future, but not at any cost.

Together with Denmark, Greenland took active part in the long and difficult negotiations leading to the adoption of the Declaration both to protect our own rights and in support of indigenous peoples around the world. Greenland also helped pave the way for the establishment of the Permanent Forum and this mechanism, which together with the important mandate of the Special Rapporteur form an impressive body of expertise and powers to contribute to the strengthening of the world order based on solidarity between all peoples.

It would appear that relationships and issues ripen with time and effort - and the more we share our experiences the further we are able to take the results.

We celebrate our new status and new partnership with Denmark with the clear understanding that the transformation was neither happening in isolation from our joint international struggle for the recognition of the rights of indigenous peoples. Nor will our experience automatically work with respect to solving problems elsewhere.

We do believe, however, that sharing positive examples and best practices is important. Together with the ongoing work of various UN forums and international and regional and local organisations, it contributes to the forging of new relationships between states and indigenous peoples. In the Arctic Council context, for example, we were able to use the positive momentum during a ministerial meeting in Nuuk, some years back, to achieve Permanent Participant status and seats at the table for our Arctic indigenous organizations.

In this regard, we applaud Denmark and like-minded countries for being at the forefront of the global community as promoters of the protection of human rights and indigenous peoples' right to political recognition.

I can also assure you of Greenland's continued commitment to supporting the constructive cooperation between various parties, be it in the UN or elsewhere. We pledge to work jointly with all parties towards the implementation of the Declaration on the Rights of Indigenous Peoples and the Programme of Action for the Second International Decade of the World's Indigenous People - with its highly relevant title - "Partnership for Action and Dignity".

Qujanaq - Thank you for your attention
CULTURAL SUPREMACY, DOMESTIC CONSTITUTIONS, AND THE DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

Bartolomé Clavero

Since the formation and independence of Latin American republics, the region has been partitioned between, on the one hand, a public law based on a single culture of European foundation and a pluralist society rooted in the presence of indigenous peoples, Afro-American communities, and other migrant groups both from Europe and later from Asia, which also brought with them their different cultures and customs. Legal multiculturalism is a de facto situation that has been in existence ever since, despite the continuing onslaught of States that deny it for the purposes of maintaining the primacy of a single culture. A simple proof of this can be seen in the fact that the Latin American constitutions - drafted by the heirs of Hispanic colonialism - have, since the earliest times when they were the languages of a relatively scarce minority, invariably been written in Spanish and Portuguese.

Throughout Latin America, constitutional law has been used as a tool to wipe out the existing or evolving pluralism of American societies with true determination, with the ultimate aim to annihilate indigenous peoples and their communities. The United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) is far more suited to the reality of social pluralism than with exclusive constitutional systems, for these systems continue to be identified with, and to defend, the culture of a sector of the population of European descent, which still claims the monopoly of human civilisation.

This does not necessarily imply that the Declaration will clash with established law in Latin America. The rights affirmed for indigenous peoples in the Declaration, under the umbrella of the general principle of self-determination, are not exactly compatible with the assumptions and provisions of Latin American constitutions. There is, however, absolutely no need for conflict: Latin American constitutional law is not the same as it was. Some parts have clearly remained constant including the design and establishment of the core constitu-

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Legal treatment of Indigenous peoples in Latin American constitutions

In general terms, Latin American republics were historically built on the basis of a monumental fiction, a fiction that legal jargon describes as "ius ris et de jure" with "erga omnes" effects. This legal reckoning admits no proof to the contrary, not even the most glaring evidence, and supersedes any claim, without exception. This fiction assumed that the European colonialists, primarily Spanish, had completely dominated the region and assimilated all those indigenous people that survived the Inquisition and occupation. During the first half of the 19th century, some Criollo (Amerindians of European origin) minorities established states over areas that they were not in control of, thus assuming the representation of many peoples and communities that they were not even aware of and with whom they could not even communicate. And, in their name, in the name of completely unknown people, they proclaimed rights of freedom, gaining independence and forming states.

These states were established over indigenous peoples and communities without their consent and without even considering that such consent was required. Given that well-traced colonial boundaries already existed, the new republics were established as if their borders were contiguous, taking upon themselves the power to incorporate wide and rich territories of peoples that were still independent. While living in areas of colonial influence, other indigenous peoples had managed to preserve a significant level of autonomy based on their distinct languages and cultures. The new republics simply denied them any claim to territory. The underlying assumption was that the political nation that was identified with state - a state based on European culture and language - would de-
stroy any indigenous law that might bear any political implication. Political control of the territory and economic control of the resources were at stake.

The constitutional treatment of indigenous peoples in the first Latin American republics varied highly. It is important to note this because the initial constitutional approaches to indigenous peoples reappeared at later stages, even in our times. Some States admitted the continued existence of indigenous communities, with their own customary law, and on their own right, albeit dependent on the act of recognition by an outside party – the State itself. Other States even signed transitory agreements or treaties with independent indigenous peoples as a strategy for establishing their power over indigenous territories, as if indigenous peoples’ jurisdiction over these territories was an anomaly that had to be rectified. There were constitutions that made reference to the States’ obligation to enforce their powers within their boundaries so that their assumed “civilising nature” would prevail over the alleged “savagery” of indigenous peoples. Colonisation policies were initiated, and the so-called “whitening” of indigenous territories began. There were many cases of bloody conquests based on presumptions of power contained in both the constitutions and the theory of the “civilising” nature of the State. The 19th century was the most genocidal for the region’s indigenous peoples, second only to the 16th century.

The “savagery” of indigenous people was another highly effective constitutional presumption. It was one of the kind that lawyers call “turis tantum”, in the sense that proof to the contrary can be admitted: the proof that indigenous peoples have stopped being indigenous by abandoning their language, by changing their clothes, by adopting other customs and, above all, by renouncing any pretension to community or peoplehood on their own. By abandoning one’s indigeneity, these peoples could gain access to state constitutional rights and freedoms. On the other hand, the fundamental freedoms and constitutional guarantees of those indigenous peoples who retained their language, culture, customs and community remained in a legal limbo, simply ignored by the constitutions. While racism was pervasive, the constitutional system was not necessarily racist in formal terms. Indigenous people were not completely excluded from the system, but rather their access to citizenship rights was made conditional. They were considered bereft of the requisite culture and so had to be “culturalised” to access constitutional rights. The cultural supremacy of those who believed that they were the bearers of the one and only “civilisation”, an island in the midst of an ocean of “savagery”, was at stake.

The Latin American constitutions were written on the basis of those supremacist assumptions. They affirmed a number of rights and guarantees, they organized government – congress, executive, justice and so on – as if Latin American societies were homogeneous wholes and as if the states exerted power over the whole territory within its theoretical borders. This was obviously a fiction, although it had some logic. From this early constitutional perspective, indigenous peoples and communities that retained their own laws and even controlled their territories and resources remained in a state of transition, in a precarious situation, waiting for the moment when states would take control of them and instruct them. The various models of constitutional treatment of indigenous peoples shared this common framework, one of cultural supremacy.

By way of example, reference could be made to one constitution regulating treaties between states and peoples: “For the same reason to provide the benefits of civilisation and religion we will be able to enter into treaties and negotiations with them (the savage Indians) over these objects (their territories), protecting their rights with all the humanity and philosophy that their current imbecility requires, and in consideration of the ill already caused them, without any blame on ourselves, by a conquering nation” (Constitution of Nueva Granada or Gran Colombia, 1811). In a more usual formulation: “It is for the Congress to take care of the civilisation of the territory’s Indians” (Chilean Constitution, 1822. Similarly: Peru -1823; Ecuador -1830; Argentina -1853; Paraguay -1870 and so on). The most expressive reference to indigenous peoples in early Latin American constitutional corpus is possibly that of Ecuador: “This Constituent Congress appoints the venerable parish priests as tutors and natural fathers to the Indians, energising their ministry of charity in favour of this innocent, abject and miserable class.”

Constitutional reforms regarding indigenous peoples

Throughout the 20th century, Latin American constitutionalism evolved in a direction that helped prepare the ground for the current status of the nation. The underlying aim of the treatment of indigenous peoples in the 19th century Latin American constitutions was the complete annihilation of these people as such, by promoting both the destruction of their cultures and the communities and the allotment of their communal territories into private plots for indigenous individuals or for invading settlers. The new century had barely arrived when the Mexican Revolution marked a turning point that inspired other states, particularly in the Andes.

The 1917 Constitution of the United States of Mexico recognised the legal status of “the joint owners, settlement dwellers, peoples, congregations, tribes and other population groups who de facto or de jure still hold the communal state” whilst also putting in place policies of land restitution and the granting of collective titles. This implied an acknowledgement of indigenous peoples’ communal way of life, which could also be extended to the recognition of customary law, juridical practices and other cultural mores.

One thing, however, did not change. The guarantees afforded by the Mexican Constitution did not derive from any express mention of indigenous peoples’
entitlements by themselves. The provision concerning the legal recognition of communities was included in the chapter on constitutional rights, but it was not framed in a rights-based language. Under the 1917 Constitution, neither the peoples nor the communities are original rights-holders: It is up to the Federation to grant rights. In fact, Mexico was to unilaterally weaken these recognition and guarantees in a 1992 constitutional amendment.

The same can be said of other cases of constitutional recognition of indigenous communities that have taken place throughout the 20th century. Indigenous peoples' rights were not often included in the sections on constitutional rights. Instead, they are mere additions included in other sections that did not alter the overall constitutional design. The constitutional recognition of customary law, community government and indigenous jurisdiction did not question the strongest, or in any way modify, the form in which States were constituted and the way in which the State's legislative, executive and judicial powers operated. There are constitutions that refer expressly to indigenous peoples' law and jurisdiction, and also to the use of their own language, but the general approach did not change. Cultural supremacy still rules quite openly. In the face of state constitutional powers, indigenous communities still found themselves in a situation of legal precariousness, social vulnerability and, save their own inveterate resistance, practically defencelessness.

A new turn was only heralded towards the close of the 20th Century, with a set of new constitutions or constitutional amendments that took place throughout the region around the 1980s and 1990s. New provisions related to indigenous peoples began to be included in constitutional rights chapters. More importantly, these provisions were crafted in a language of peoples' rights, somehow disassociating indigenous peoples from state recognition or from the exercise of state powers. These elements contributed to creating an atmosphere of greater constitutional respect towards indigenous communities and peoples. While recent approaches to the constitutional treatment of indigenous peoples have proved incapable of clearly overcoming the early 20th Century paradigm, they are however important because of the legal and political space they have provided to indigenous peoples in the defence of their rights. After the adoption of the Declaration, they also provide a framework for the domestic accommodation of the provisions contained therein.

Some Latin American constitutions now differentiate between human rights and constitutional rights, treating the former as international, and thus supranational and superior. Human rights now include indigenous rights, which have contributed to the development of international law itself. The Declaration affirms new rights that are of particular interest to indigenous peoples: a right to one's own culture, now expressed as both an individual and a collective right; a right of indigenous persons and communities to their own language or codes of communication; the right to their own uses of their territory and their own re-source management; a right to their own conflict resolution methods; and to their own way of life.

The right to one's own way of life, to one's culture, has been historically taken for granted by those belonging to the dominant culture, who never felt the need for a constitutional recognition for themselves. Now its is affirmed as a right belonging to everyone. It is the potential foundation for all indigenous rights, particularly the right to self-determination of indigenous individuals, communities, and peoples, with the capacity to push States to redefine the way in which they are constituted and exercise their powers.

Before the Declaration was adopted in 2007, one Latin American Constitution had already affirmed indigenous peoples' right to self-determination. This took place in Mexico via the 2001 constitutional amendment: "This Constitution recognises and guarantees the right of indigenous peoples and communities to self-determination...". This is a most significant step, particularly in the Mexican context. The recognition came from initial agreements reached between indigenous representatives and the Federal Government, although the Congress later claimed its legislative power to avoid respecting the agreements. By not rethinking the organisational structure of State powers yet the same time recognising indigenous peoples' right to self-determination, the Mexican constitutional reform was to no avail. The amendments introduced by Congress only aggravated the deadlock. The former UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, noted this clearly in the report he issued following his official visit to Mexico in 2003. The Constitution, he wrote, "has locked in the closet with padlocks" the indigenous right of self-determination.

The significance of the Declaration in Latin American constitutionalism

Despite all existing constitutional padlocks, the land in Latin America is fertile for the Declaration. The rights enshrined in the Declaration are based on, and elaborate upon, the recognition of indigenous peoples' self-determination in its political and economic, social and cultural dimensions. The force of the Declaration stems from its adoption by the UN General Assembly but also, and above all, from the real agreement that was reached within that international organisation between indigenous representatives and government delegations. The end result of this process is more, a lot more, than just another human rights declaration. For Latin America, it may represent the end of the internal colonialism that indigenous peoples have suffered as a result of the way in which independence was asserted and States were formed in that region.

This was immediately understood in Bolivia. In November 2007, only a couple of months after the adoption of the Declaration, the Bolivian Congress trans-
posed it fully into domestic law. It was not done as an act of lower rank than the Constitution, quite the opposite. A Constituent Assembly was at the same time completing a draft Constitution that was to break open doors, opening up spaces for the exercise of the right of self-determination of the peoples. One Latin American State now understands that it has to revise its entire organisational power structure in order to make effective the rights that a number of the region’s constitutions have been recognising and which have now culminated in their most consistent expression in the Declaration.

Needless to say, the weight of the past still counts on the present. Cultural supremacy is alive and kicking in large social sectors of the region and in the constitutions themselves. States - both in Latin America and elsewhere - are still loath to take indigenous peoples’ rights seriously, aware that, in practice, this requires not only a change in the political rules but also the economic ones. Nor are churches or transnational companies resigned to giving indigenous peoples a voice and a vote. International cooperation agencies and NGOs find it hard to respect indigenous self-determination. The past still weighs on the present; the difference is that the future now seems more promising.

Notes

WHEN INDIGENOUS PEOPLES WIN, THE WHOLE WORLD WINS
Address to the UN Human Rights Council on the 60th Anniversary of the Universal Declaration on Human Rights

Wilton Littlechild

Thank you Mr. President Uhomoibhi.

Respectful greetings from the Maskwacîs Cree Nation in the Treaty No. 6 Territory and the Assembly of First Nations in Canada to His Excellency Secretary General Ban Ki-moon,
Her Excellency High Commissioner Navanethem Pillay,
to all your Excellencies and distinguished ladies and gentlemen.

It is certainly a great honour to address this special session of the UN Human Rights Council to commemorate the 60th Anniversary of the Universal Declaration on Human Rights.

In the wisdom of a Cree Elder who said, "You must know where you came from yesterday; know where you are today; if you are to know where you are going tomorrow", we make this intervention:

Yesterday:

Sixty years ago the United Nations General Assembly adopted the world’s most important human rights document, an international law to recognize the inherent rights of all peoples. For the Cree Nation we say “Kikpaktíkínosowin”, “Oyo-tamukowin”, those we were blessed with by the Great Spirit. Our Creator, rights we were born with as members of the human family. An inherent right to self-
determination. An inherent right to govern ourselves, our territories and resources, according to our own laws and customs. Rights that were recognized for all peoples as the foundation of freedom, justice and peace in the world.

But in 1948 Indigenous Peoples were not included in the Universal Declaration. We were not considered to have equal rights as everyone else. Indeed we were not considered as human nor as peoples. Consequently, there were violations, at times gross violations of our human rights. Indigenous peoples simply did not benefit from the rights and freedoms set forth in the Universal Declaration.

Your Excellencies, in my community the leaders and Elders gathered in the mid-seventies, very concerned about this. “We have a Treaty No. 6 with Her Majesty the Queen of Great Britain and Ireland. It is not being respected according to the original spirit and intent”, they said, “as an international agreement, nor is it being honoured.” After much deliberation and spiritual ceremonies they decided to seek recognition and justice from the international community. We were here in 1977, when we could not gain access so we could inform the UN family of nations about our issues and concerns. The Maskwacîs Cree delegations have been coming here since then. Yes, we have called attention to ongoing Treaty and Treaty rights’ violations but we have always also recommended solutions for positive change, recognition and inclusion.

Today:

Our delegation wants to take this opportunity to acknowledge the tremendous advancements we have made together over the past three decades in efforts to better the quality of life for Indigenous Peoples worldwide.

The United Nations has, for example, taken many steps within its system through its various bodies to address indigenous issues. There have been several UN Expert Seminars and studies on a number of major areas: the nine-year study and Final Report by Professor Miguel Alfonso Martínez on Treaties, Agreements and other Constructive Arrangements; the Expert Seminar and Report on the Permanent Sovereignty of Indigenous Peoples over Natural Resources by Madame Erica Dae; and others on Self-Government, Education, Health, Lands and Culture, Free Prior Informed Consent, Private Industry, Justice, all contributed to a better understanding of indigenous world views.

If one was to highlight other major achievements they include: the establishment of the UN Working Group on Indigenous Peoples; the UN Permanent Forum on Indigenous Issues, and its thematic focus on Indigenous women and children; the Interagency Support Group established by all major UN agencies to contribute to the mandated areas; the proclamation of two International Decades and the establishment of the Special Rapporteur on human rights and fundamen-
tal freedoms of Indigenous Peoples; the ongoing work on indigenous children, climate change, intellectual property, traditional knowledge and more. The collective work of all these entities would not be possible without the individual contributions of experts and Special Rapporteurs, the coordination by the Indigenous Unit of the Office of the High Commissioner for Human Rights and the Secretariat of the UN Permanent Forum.

Today we see with the successive efforts of High Commissioners, Special Rapporteurs and support of preceding Secretary Generals of the UN, two pinpoints of success. First the pronouncement by former Secretary General Kofi Annan that Indigenous issues were now one of the top ten priorities for the UN and, secondly, his welcoming us into the UN family of nations.

Your Excellencies, this has been tremendous work to date. Many have died along this tough struggle together and, yes, we have a long way to go. As we look back, we see we have climbed many mountains together. One of the most satisfying was to see all these contributions leading to better understanding, better relations and respect that accumulated in a historic decision last year. With goodwill on all sides the foundation was set for the General Assembly to adopt the UN Declaration on the Rights of Indigenous Peoples and the Human Rights Council to establish an Expert Mechanism on the Rights of Indigenous Peoples.

Excellencies, one could argue that the UN has, with the important contribution of indigenous leaders and representatives, succeeded in ensuring that Indigenous Peoples are now part of humankind with equal rights and freedoms. The UN Declaration on the Rights of Indigenous Peoples clarifies how the Universal Declaration on Human Rights applies for our survival, dignity and wellbeing. As an Elder wanted me to tell you, "Now I am not an object, I am not a subject, I am a human being!"

Tomorrow:

Many challenges remain. Why is it that we as indigenous tribes, peoples and nations continue to lead in all the negative statistics? Why is it that there is still abject poverty among our families, especially our children? Why is it in our country the education of indigenous students is in a crisis? Why is it that we continue to be excluded from the economic mainstream, especially during this current global economic crisis? Why is it that our treaties continue to be violated? Why is it that four states continue to actively oppose the recognition of our rights, in particular the UN Declaration on the Rights of Indigenous Peoples as recently as two days ago on the eve of this important commemoration of the 60th anniversary? Why do they want to pick and choose which rights they want to uphold, contrary to the statement of the Secretary General today?

Your Excellencies, we know where we were, where we are today. For tomorrow, we must put all the good words of the past three decades and, if I may be so bold as to say, the last three hours, into more concrete action. We are a solution! What we need is implementation of the UN Declaration. On this important occasion let me thank the States that support us.

Through your Excellencies, I would not do justice to those I represent not to call on the others to:

Say Yes to a new framework for partnership
Say Yes to better relationships among our peoples and nations
Say Yes to honouring treaties and agreements with mutual respect for each other
Say Yes to our full inclusion and continued contribution to humankind

We respectfully urge you to call on the CANZUS states to now support the UN Declaration on the Rights of Indigenous Peoples and its full implementation as a solution that will give real meaning to this celebration. Finally, when Indigenous Peoples WIN, the whole world WINS.

Thank you.

Chief Wilton Littlechild, IPC
Samson Cree Nation
Ermineskin Cree Nation
Louise Bull Tribe
Montana Cree Nation
Regional AFN of Treaties 6, 7, 8 (Alberta)
Assembly of First Nations