

Erica-Irene A. Daes

INDIGENOUS PEOPLES

KEEPERS OF OUR PAST - CUSTODIANS OF OUR FUTURE



ERICA-IRENE A. DAES

Erica-Irene A. Daes was born on the island of Crete. She studied law, economics and political sciences and received a Ph.D from the School of Law. She has also received two doctorates honoris causa from the universities of Saskatchewan-Canada and Tromsø-Norway. She is a visiting Professor at a number of universities.

Although very young during the Second World War, she contributed to the resistance movement against the Nazis in Crete and earned recognition as a “freedom fighter” from the Greek Ministry of Defence and the Middle East Allied Forces.

She was Greece’s representative to the Social Committee of the Council of Europe (1959-1962) and to the Third, Fourth and Fifth Committees of many sessions of the United Nations General Assembly. She was also Greece’s representative to ECOSOC and UNESCO and, in 1990, was elected member, then later Vice-chairperson and Chairperson, of the Joint Inspection Unit of the UN System. She was elected as an individual expert to the Sub-Commission on the Promotion and Protection of Human Rights and served as its Chairperson, Vice-Chairperson, member and Special Rapporteur for more than 25 years. She was the Chairperson Rapporteur of the United Nations Working Group on Indigenous Populations from 1984 to 2001 and the principal drafter of the United Nations Declaration on the Rights of Indigenous Peoples.

She is the author of many studies, articles and books related to international public law, including UN law, human rights, international humanitarian law, environmental law, minorities and, in particular, indigenous peoples. She has delivered lectures to many universities and institutes, including the UN University in Tokyo.

She has carried out numerous fact-finding missions on behalf of the UN, to remote communities and areas in Australia, New Zealand and Brazil, including Amazonia, Guatemala, Mexico, Japan, including Hokkaido, Samiland-Norway and Finland, Quebec- Canada, Arizona USA, etc.

In 2002, for her pioneering work and outstanding contribution to the promotion and protection of human rights, the Sub-Commission on the Promotion and Protection of Human Rights conferred on her the title of Honorary Life Member of the UN Working Group on Indigenous Populations. She is also an honorary member of the Thessaloniki Institute of International Public Law and International Relations. In 2008 she was honored by the Thessaloniki University of Macedonia International Student Model United Nations (Thess.ISMUN). In 1993 she was the recipient of the United Nations “Human Rights Award” for outstanding services in the field of human rights and, among others distinctions, she has been awarded the “Commander of the Order of the Phoenix” by the President of the Hellenic Republic.

THIS WORK IS DEDICATED TO THE WORLD'S INDIGENOUS PEOPLES



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Copenhagen 2008

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**INTERNATIONAL WORK GROUP
FOR INDIGENOUS AFFAIRS**

Classensgade 11 E, DK 2100 - Copenhagen, Denmark
Phone: (45) 35 27 05 00 - Fax: (45) 35 27 05 07
E-mail: iwgia@iwgia.org - Web: www.iwgia.org



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A FEW WORDS FROM IWGIA

Erica-Irene Daes may have entered the United Nations scene as an independent international lawyer but it was as a human rights expert that she did what no-one had ever done before. She was to become a firm defender of the rights of peoples—indigenous peoples—who were fighting to be recognised by states.

This book is a personal account of the fate of indigenous issues within the United Nations from 1984 to 2007. It is much more than that, however, because it is written by the one person who—above all other government experts—was responsible for indigenous peoples' rise from oblivion to recognition by the international community.

I clearly recall the time when, in the very early days of the Working Group on Indigenous Populations, Mme Daes, the name by which she is known to indigenous peoples, called a meeting of the Working Group to order because indigenous peoples had initiated a traditional ceremony before the opening of the meeting. Such a ceremony was at the time seen as contradictory to UN principles, which require that there be no reli-

gious manifestations during official UN meetings. Although Mme Daes had always been a firm supporter of the integrity of the United Nations and of the need to keep its rules of procedure, she listened to indigenous peoples' cries for the need to participate in UN meetings on their own terms and conditions. She also took to heart the enormous value of bringing indigenous peoples' cultural and spiritual expressions into the UN. Years later, it was therefore she herself who asked indigenous peoples to address the opening and closure of the meetings. From then on, indigenous opening ceremonies became an integral part of many of the UN meetings relating to indigenous peoples' issues.

To Mme Daes, indigenous peoples are the custodians of humankind's cultural heritage. Mme Daes is herself, however, the undoubted custodian of a process that has led to indigenous peoples' legitimate consideration within the United Nations system and has allowed indigenous peoples to be treated not as footnotes but as participants in this process. She has become the affectionate keeper of a treasure, and of a process, that will always be associated with her name.

Jens Dahl

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FOREWORD

Recognition of, and respect for, the basic rights and freedoms of indigenous peoples is an important subject that has received growing attention from the international community over the last 25 years, in particular since the creation of the United Nations Working Group on Indigenous Populations, the convening of the World Conference on Human Rights in Vienna in 1993 and the adoption the same year of the decision by the General Assembly to establish the post of the United Nations High Commissioner for Human Rights. Among the more significant developments have been the proclamation by the General Assembly of an International Year of the World's Indigenous People, an International Day of the World's Indigenous People (9 August), the first (1995-2004) and second (2005-2014) International Decades of the World's Indigenous People; the appointment by the Commission on Human Rights (now the Human Rights Council) of a Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples; the establishment of the Permanent Forum on Indigenous Issues as a high-level advisory body reporting to the Economic and Social Council and, after more than 23 years of intense negotiations, the adoption by the Human Rights Council and the

General Assembly of a United Nations *Declaration on the Rights of Indigenous Peoples* on the basis of a text submitted by the Sub-Commission on the Promotion and Protection of Human Rights.

Erica-Irene Daes, the author of this book and recipient of the United Nations Human Rights Prize in 1993, was at the heart of these developments. As Chairperson of the Working Group on Indigenous Populations from 1984 until her retirement as an active member of the Sub-Commission in 2001, she was the principal drafter and driving force behind the *Declaration on the Rights of Indigenous Peoples*, authoring numerous seminal UN studies, visiting many remote indigenous communities all over the world and encouraging them to participate actively in the United Nations. Indeed, the annual session of the Working Group, held every August in Geneva, became one of the largest human rights meetings on the UN calendar. In recognition of her contribution, the Sub-Commission adopted an unprecedented, unanimous decision-making Dr. Daes member of the Working Group for life.

As a representative of her country, Greece, at numerous important forums including the General Assembly, Dr. Daes was and continues to be a strong and persua-

sive advocate of indigenous rights and for the adoption of progressive policies by States in regard to their indigenous communities.

This book, representing a personal record of her experiences, her analysis of the issues and her account of how the United Nations came to be persuaded to adapt to the international movement of the world's indigenous peoples, reflects the suffering, needs and aspirations of indigenous peoples from around the globe. It is a work that will be read with particular interest by everyone in the human rights community. It is a book that will leave no one indifferent.

Louise Arbour
United Nations High Commissioner
for Human Rights
Geneva, January 2008



Louise Arbour

PREFACE



As I write these preliminary remarks, I am filled with a deep sense of humility and appreciation for the opportunities I have had, over more than a quarter of a century, to work alongside so many exceptional individuals at the United Nations—in particular the High Com-

missioner for Human Rights and staff of her Office, and indigenous peoples and representatives of governments and non-governmental organizations (NGOs)—to advance the cause of indigenous persons and nations in the United Nations system and in other international, regional and national forums.

Like the rest of us, indigenous peoples seek recognition and respect for their basic human rights and fundamental freedoms, as well as special needs arising from an ancient relationship with their ancestral lands that most of us in the modern world have lost. This book commemorates the suffering, oppression and discrimination experienced by indigenous peoples, and outlines their continuing struggle for freedom and for cultural, and even physical, survival.

This book is also about my discovery of indigenous knowledge, heritage and culture, through my relationships with the indigenous nations with which I have

had the honor to work most closely, including the Sami people of Europe; the Cree of Quebec (Eeyou Istchee); the Aboriginal peoples of Australia and the peoples of the Torres Strait Islands; the Maya of Mexico and Guatemala; and the Ainu peoples of Japan.

Through this account of my own experience, I hope to pay tribute to the campaign that indigenous nations have pursued, in particular over the last three decades, to assert their voices and rights from the national to regional levels and in the United Nations system. It is time to raise contemporary awareness of an appreciation for these peoples, who occupy a unique place in the ecology of our human family. Far more so than the rest of us, it seems to me, indigenous peoples prize and are determined to conserve, in spite of the homogenizing drive of modernity, powerful connections with specific lands and territories through the distinctive cultures that their ancestors constructed, as they adapted, creatively and sustainably, to the particularities of the lands where they lived.

The repertoire of human observations, interpretations and innovations that indigenous peoples have maintained for countless generations are not mere curiosities of antiquity but a vital reservoir of human adaptive options which none of us can afford to disregard, let alone allow to be extinguished. I firmly believe that the fate of indigenous peoples is inseparable from the fate of the planet. For this reason, I have devoted much of this book to the role of indigenous peoples in the international conservation movement, and in the debate on how to achieve sustainable development.

In the pages that follow, I will explore the definition of “indigenous peoples”; describe the resurgence of the world’s indigenous peoples in the international arena; and review the work accomplished by the United Nations system over the last three decades, including new instruments and machinery for the recognition and protection of indigenous rights.

It is impossible for a single book to give a comprehensive and detailed description of the histories, cultures and socio-economic situations of 5,000 ethnically distinct indigenous nations and 375 million or so indigenous people, whose ancestors managed to survive and thrive in even the harshest and most remote regions of the earth long before the Industrial Age. Nor was it my intention to compile an exhaustive legal treatise on the status of the rights of the world’s indigenous peoples—although I will refer to some of my professional papers and public statements concerning these matters. First and foremost, I want to share with you a little of what I have witnessed and experienced, and how it has affected my appreciation of humanity and of human rights and international humanitarian law.

I have had occasion elsewhere to express my views on legal, economic, social, cultural and political issues concerning the world’s indigenous peoples, as a United Nations independent expert, a special rapporteur, an international lawyer, a legal scholar and a human rights activist; in my statements before important forums of the United Nations system; in lectures at a number of

universities and institutes of international law and international relations in many parts of the world; and in books, reports and articles, some of which have been published as United Nations studies. This book, in contrast, is about the heart.

On my 25-year journey in pursuit of justice for indigenous peoples, I have been privileged to be a part of events that legal scholars and human rights activists now recognize as milestones in the evolution of the worldwide movement of indigenous peoples, and I have had the honor to meet many prominent indigenous Elders, Grand Chiefs and leaders, visit their communities and villages, and learn important and humbling lessons from their wisdom. I took most of the photographs in this book during my visits to remote areas and communities where indigenous peoples live.

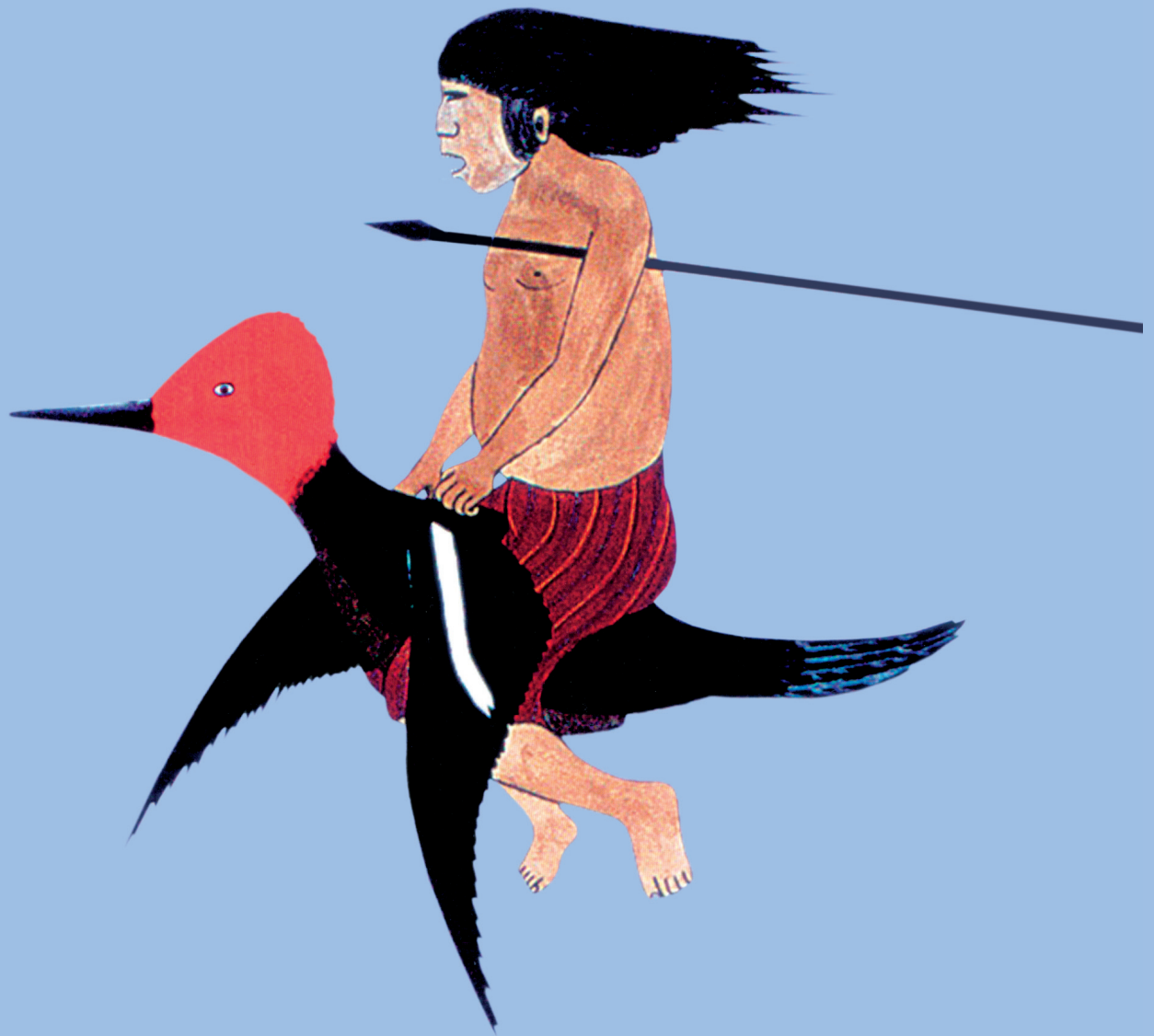
My experience of the diversity of indigenous cultures, and the enormous contribution made by the world’s indigenous peoples to our common civilization and our common future, convinces me that indigenous peoples are, and should be, regarded as the keepers and custodians *par excellence* of the vast cultural heritage of humankind.

This work is dedicated to them.

Erica-Irene A. Daes
Athens, 2008

ACKNOWLEDGEMENTS

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This book is the culmination of lessons learned from my many years' experience as Chairperson–Rapporteur of the United Nations Working Group on Indigenous Populations (UNWGIP). To all the indigenous elders, chiefs and representatives of indigenous peoples with whom I have had the honour and privilege to pursue the cause of indigenous rights, I express my heartfelt gratitude. This is, above all, their book.

My grateful thanks in particular to the United Nations High Commissioner for Human Rights, Ms Louise Arbour, for doing me the honour of finding time in her exhausting schedule to write the Foreword.

I would like also to express my gratitude to Ms Lola Garcia Alix and her colleagues at the International Work Group for Indigenous Affairs (IWGIA) for their constructive work and valuable contribution to the publication of this book.

To my dear friend, former Ambassador and Chairperson of the Sub-Commission for the Promotion and Protection of Human Rights (Sub-Commission) Mrs. Halima Warzazi, I would like to express my thanks and profound appreciation for my original appointment as Chairperson-Rapporteur of the UNWGIP in 1984.

I am very grateful to my distinguished and dear friends Mr. John Scott, Social Affairs Officer at the Secretariat of the Convention on Biological Diversity; Mrs. Dikka Storm, former Director of the Tromsø University Museum; and Professor of International Law Maivan Clech Lam, Associate Director of the Ralph Bunche Institute for International Studies, who provided me with invaluable information, data and inspiring advice, particularly in relation to the Aboriginal Peoples of Australia, Africa's Indigenous Peoples, Sami Peoples, Indigenous Knowledge etc.

Professor Gudmundur Alfredsson stands out for the indispensable assistance and counsel he provided during our official travels together to Australia, the Torres Strait Islands, New Zealand and Japan and for his valuable work as one of the early secretaries of the UNWGIP.

I would like to recognize Mr. Julian Burger of the Office of the High Commissioner for Human Rights (OHCHR), who provided high-level secretariat support to the UNWGIP for many years while I was its Chairperson-Rapporteur.

I have to express my many thanks to Mrs. Elsa Stamatopoulou, Director of the United Nations Permanent

Forum on Indigenous Issues (UNPFII) for the assistance given to me during our official and dangerous missions to remote areas of Brazil - in particular Amazonia - and Mexico. I should like also to warmly thank Mr. John Henriksen, former staff member of the OHCHR, for all his kindness and noteworthy help offered to me during the elaboration of a number of reports related to indigenous issues. I am further grateful to Professors Marie Battiste and Siegfried Wiessner, who assisted me materially in my work on indigenous heritage and contributed to the final drafting of the “Principles and Guidelines for the Protection of the Heritage of Indigenous People”.

To my friend and colleague Professor K. Koufa I owe a special debt of thanks for her intellectual support and stimulating cooperation while serving together in the Sub-Commission.

I will always hold a special place in my heart for Ambassador Dr. Ted Moses, former Grand Chief of the Crees of Quebec, and the late Bob Epstein, whose prudent advice and diplomatic *savoir-faire* were repeatedly called upon to advance our work in the UNWGIP and its parent bodies.

My grateful thanks to Mrs. Mary Robinson, former HCHR, for her strong support of my work in protecting the basic rights of the world’s indigenous peoples; to

Dr. William Jonas AM., former Aboriginal and Torres Strait Social Justice Commissioner, who gave me the opportunity to communicate directly with the aboriginal peoples in Australia and to be informed about their needs and aspirations; to Dr. Asbjørn Eide for his contribution in creating the foundations of the WGIP; to Professors Yozo Yokota and Julia Motoc for their constructive support to my work related to indigenous rights; to Ambassador and former colleague Fisseha Yimer for his friendship and valuable support to my work in the Sub-Commission; to Professor Douglas Sanders for all his valuable assistance in promoting the work of the WGIP and his contribution to reviews of a number of legal subjects concerning the rights of indigenous peoples specifically; and to Mr. Lee Swepston for his remarkable contribution to the development of indigenous rights, in particular to the elaboration and adoption of ILO Convention No. 169.

I remain grateful to Professor Russel Barsh for his valuable assistance over the years, in particular for reading and helping edit my manuscripts.

My thanks and appreciation to Mr. Christopher Cardozo, Fine Arts, for his great kindness in providing me with copies of the historical photographs (1868-1952) by Edward S. Curtis reflecting the history and life of the

North Americans Indians and giving his permission for them to be published in this book.

I also consider myself exceptionally fortunate to have enjoyed the friendship, cooperation and advice of such distinguished indigenous leaders as Ms Rigoberta Menchu Tum, Nobel Peace Prize Laureate 1992 and UN Goodwill Ambassador for the International Year of the World's Indigenous People; former Canadian Member of Parliament and first Rapporteur of the UNPFII, Wilton Littlechild; Grand Chief Oren Lyons, Onondaga Faithkeeper-Haudenosaunee; David Yanomami, Yanomami leader from the Amazon rainforest; Professor S. James Anaya; Robert Coulter, Esq., Executive Director of the Indian Law Resource Center; Ms Lowitja O'Donogue, CBE, AM, former Chairperson of the Aboriginal and Torres Strait Islanders Commission (ATSIC); Patrick Dodson, a wise elder and administrator of the Lands Council of Northern Territories; Mick Dodson, Rapporteur of the UNPFII; Matthew Coon Come, National Chief Assembly of First Nations; Nganeko Minhinnik, Chief of the Ngati Te Ata Maori tribe; Ole Henrik Magga, a Sami scholar and first Chairman of the UNPFII; Leif Dunfjeld, with whom I have visited the whole of Samiland; Lars Anders Baer, former President of the Sami Council; Pekka

Aikio, President of the Sami Parliament in Finland; Lars Emil Johansen, Premier, Greenland Home Rule; Henriette Rasmussen, former Minister of Culture of Greenland; Dalee Sambo Dorrough, Human Rights Specialist; Mililani B. Trask, Convener, Na Koa Ikaika O Ka Lahui Hawaii; Giichi Nomura, President of the Ainu Association of Hokkaido; Tokuhei Akibe, Assistant Executive Director of the Ainu Association of Hokkaido; Donald Rojas, President of the World Council of Indigenous Peoples; and Evdokia Gaer of the International League of Smaller Peoples and Ethnic Groups of the Russian Federation.

I should like to express my deep gratitude to the Sami Parliament of Norway and the Grand Council of the Crees, who are the sponsors of this book, and to acknowledge that its completion would have been impossible without their support.

Finally, many thanks to my family and, in particular, to George Panagiotidis, Chryssa Mylonaki and Asteris Papastamatakis for their practical assistance and, in particular, for computerizing and processing the text of this book. ○

INTRODUCTION

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WHO ARE INDIGENOUS PEOPLES?

There is no international consensus as to the definition of “indigenous peoples”; they cannot therefore be precisely identified, nor can any existing definition be globally applied. Self-identification is an important element in determining who is indigenous. Indeed, in many of their languages, they are simply “The People”. They are widely regarded as “First Nations” that have lived on their lands since time immemorial. They have survived in spite of the massacres, discrimination, oppression, disease, poverty and misery inflicted upon them by colonial powers such as Spain, Great Britain, France, the Netherlands and the United States.

The problems of indigenous peoples exist to varying degrees on all continents. Even in countries where the indigenous still constitute a majority, they remain powerless: largely unheard, misunderstood, or simply ignored by their governments. Their history is disdained, their way of life scorned, their subjugation denied and their social, economic and legal systems unvalued. Invaders and colonizers regarded indigenous peoples as primitive, even subhuman. Tragically, these views persist in many parts of the world.

International debate around the meaning of the term “indigenous” began in the late 19th century. The terms *indigenous* in English and *indígena* in Spanish come from the Latin *indigenae*, which Romans used to distinguish between persons who were born in a particular place and

immigrants (*advenae*). The French word *autochtone*, by comparison, comes from Greek and, like the German *Ursprung*, suggests that the group to which it refers was the first to occupy a particular place. The roots of all of these terms share one conceptual element: priority in time.

Nowadays, it is commonly agreed within the United Nations system that no single definition of indigenous peoples could do justice to the diversity of cultures and experiences of the ethnic groups that consider themselves indigenous and seek protection and support from the world organization. Insistence on any one technical definition at this time would almost certainly include or exclude too many of the vulnerable groups in need of international assistance.

Are indigenous peoples “peoples”?

At the first meeting of the United Nations Working Group on Indigenous Populations in 1982, the representative of the Miqmaq Nation of Atlantic Canada condemned the view that the concepts of “colonization” and “peoples” were only applied to overseas exploits. Indigenous peoples lose none of their inherent rights or identity as “peoples”, he argued, unless they have “freely and unambiguously chosen to incorporate themselves with other States or peoples by democratic

means". Moreover, "States should bear the burden of proving consent, either at the time of foreign settlement or under some contemporary agreement."

Where clarification or guidance is nevertheless needed on the difficult question of what makes a group indigenous as opposed to (for example) an ethnic minority, United Nations practice typically applies the following working definition, contained in the landmark *Study of the Problem of Discrimination against Indigenous Populations* by José R. Martínez Cobo, Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, in 1987:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

This working definition combines the element of *distinctiveness*, which characterizes both indigenous and tribal peoples, with the element of *colonialism*. In addition, it contains the following five essential elements: a) the persistence of some form of discrimination or marginalization; b) a special relationship with "ancestral

territories"; (c) geographic concentration in those territories; d) specific cultural manifestations such as religion or living under a tribal system of social organization; and e) a shared language or mother tongue that is the habitual or preferred means of communication within the home, family, or community.

The International Labor Organization's *Indigenous and Tribal Peoples' Convention, 1989* (No. 169), which is a revision of a 1957 ILO Convention (No. 107), also defines indigenous peoples in terms of their distinctiveness, as well as their descent from the inhabitants of a territory "at the time of conquest or colonization or the establishment of present state boundaries". The only difference is the addition of the "principle of self-identification". Article 1 of the Convention states that self-identification "shall be a fundamental criterion for determining the groups to which the Convention shall apply". Thus a group may be classified as indigenous only if it so chooses by perpetuating its own distinctive institutions and identity. Article 1 also contains a disclaimer that "the use of the term 'peoples' in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law". This satisfied states that were fearful of challenges to their sovereignty and territorial integrity.

Also in 1989, the General Assembly of the Organization of American States (OAS) authorized the drafting of an Inter-American instrument on the rights of indigenous peoples. This decision was widely understood to be a response to the adoption of ILO Convention No. 169. An official draft OAS declaration was made public in September 1995. After regional consultations in Canada, Guatemala and Ecuador, a revised draft was re-



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leased in February 1997. That revised draft used the term “peoples” with the same *caveat* that it would have no implications regarding the exercise of any other rights under international law. Nevertheless, the OAS Judicial Committee recommended that the term “peoples” be replaced with the term “populations”.

The OAS established a working group in November 1999 to continue negotiations on the text of the declaration, with the participation of indigenous representatives. At its second meeting in April 2001, the working group agreed to use the term “peoples”. The OAS declaration was to have been completed and adopted by 2002. At the time of writing, however, no consensus on a final version had been achieved.

The World Bank’s Operational Manual uses the terms “indigenous peoples”, “indigenous ethnic minorities”, “tribal groups” and “scheduled tribes” to describe groups that are socially and culturally distinct from the dominant sectors of society in ways that marginalize them in the development process. The Bank recognizes that different countries may refer to such peoples by different terms, so its policy does not provide a single universal definition for “indigenous peoples”. Instead, it identifies indigenous peoples in particular geographic areas by the presence, to varying degrees, of some or all of the following characteristics: a) a close attachment to ancestral territories and the natural resources therein; b) the presence of customary social and political institutions; c) local economic systems oriented primarily towards subsistence production; d) an indigenous language that is different from the predomi-

nant language; and e) self-identification and identification by others as members of a distinct cultural group.

Indigenous peoples throughout the world have criticized the fact that they are still denied their rights as “peoples”: in particular, their right to self-determination. A very public confrontation took place at the World Conference on Human Rights held in Vienna in 1993. Indigenous leaders refer to it as *the battle of the “s”*—that is, between “peoples” and “people”. The first draft of the final act of the conference, which had been prepared by the Secretariat, contained a section on indigenous “people” that the Secretariat regarded as non-controversial. It called upon governments “to ensure the full participation of indigenous people in all aspects of society” on a “basis of equality”, and urged United Nations bodies to “respond positively to requests by States for assistance which would be of benefit to indigenous people”. As such, the text implied that indigenous peoples were not entitled to *collective* rights, but only to equality of treatment as individuals. Spokespersons for indigenous peoples emphasized the right of indigenous peoples to self-determination and accused states of twisting international law to deny them their status as “peoples”. Statements to this effect were made by Ted Moses, Grand Chief of the Crees of Quebec; Nobel Peace Prize laureate Rigoberta Menchú; and myself in my capacity as Chairperson of the UN Working Group on Indigenous Populations, among others. Despite the efforts made by indigenous delegations and some governments to strike a compromise, the “s” was omitted from the final act of the conference.

There is no generally accepted legal, sociological or political definition of a “people”. Customary international law does not yet provide any guidance regarding the term “indigenous peoples” or its relationship with the broader concept of “peoples”. Whether a group is a “people” for the purposes of self-determination depends, in practice, on the extent to which the members of the group share strong ethnic, linguistic, religious or cultural bonds (a subjective element), and the extent to which this distinctiveness is recognized by others.

In my opinion, indigenous peoples are “peoples” in every political, legal, social, cultural and ethnological sense of the term. They have their own culture, languages, laws, customs, values and traditions; their own

long histories as distinct societies and nations; and a unique religious and spiritual relationship with the land and territories in which they have lived.

Under the heading “Sustainable development: managing and protecting our common environment” in the historic Outcome Document of the 2005 World Summit (General Assembly resolution 60/1), UN Member States commit “to recognize that the sustainable development of indigenous *peoples* [emphasis added] and their communities is crucial in our fight against hunger and poverty”. Likewise in resolution 60/142, adopted by the General Assembly on 16 December 2005, the Programme of Action for the Second International Decade of the World’s Indigenous People refers to the unique contribution of indigenous “peoples” in several of its preambular



paragraphs—although the Decade retains the singular term “people” in its title. The question of the “s” was only finally resolved by the adoption of the UN *Declaration on the Rights of Indigenous Peoples* by General Assembly resolution 61/295 (2007).

Indigenous peoples and “minorities”

It is possible to simplify the argument over the definition of indigenous peoples by exploring the distinction between the rights of indigenous peoples and the rights of persons belonging to “minorities”. The factors that jurists have repeatedly asserted as characteristics of either indigenous peoples or minorities are:

- Numerical inferiority;
- Social isolation, exclusion, or persistent discrimination;
- Cultural, linguistic or religious distinctiveness;
- Geographical concentration (territoriality);
- Aboriginality—that is, being autochthonous.

The term “minority” has sometimes been applied to any group that constitutes less than 50 per cent of the population of a state. It has been assumed that numerical inferiority puts the group at risk, thus justifying special measures of protection. This may often be true, as in the example of African Americans in the United States. A numerically small group may also be the dominant elite, however, as was the case of Afrikaners during the *apartheid* regime in





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South Africa. The numerical superiority of indigenous peoples in countries such as Bolivia or Guatemala has likewise been no guarantee of their enjoyment of basic human rights.

For these reasons, most previous attempts to define “minorities” and “indigenous peoples” have emphasized their non-dominant status in national society, either as a sufficient criterion, or in conjunction with the criterion of numerical inferiority. But it is not always clear how “dominance” should be determined. A group may nominally control the state apparatus yet be subordinate to another group that controls, for example, the lands, finances or military institutions of the country. *De jure* dominance may be *de facto* subordination. More seriously, applying non-dominance as a key characteristic of indigenous peoples or minorities results in a paradox: should the group in question ever become dominant, would it then cease to be indigenous or a minority? No minority or indigenous nation would admit that their legal status fluctuates with changing social conditions.

Is this merely a problem of language? A group asserts its rights when it feels that its rights are being violated. The task for the international community is to ascertain what rights a particular group may legitimately assert, as a matter of law, so that we can then determine whether legitimately claimed rights are being violated as a matter of fact. Whether a group’s rights have been abused may be impossible to resolve until we agree on what kind of group it is. For example, if Afrikaaners argue that they are entitled to special rights to their lands and autonomy, we must first determine whether they have a legitimate claim to being “indigenous”. The fact that they lack any special rights to land cannot be a factor in deciding whether they are indigenous because that would make the exercise logically circular.

Cultural distinctiveness--linguistic, religious or ethnic--is widely assumed to be a characteristic of both minorities and indigenous peoples, and is generally asserted by both groups. The leaders of minorities and indigenous peoples frequently assert that the enjoyment of their distinc-

tive culture is the reason they are seeking collective legal recognition and self-determination. Indeed, indigenous peoples worldwide contend that they share a special kind of culture that distinguishes them from all other peoples and cultures.

It is very challenging to agree on the extent to which cultures differ. To a greater or lesser extent, all groups and cultures overlap and change over time, particularly in this age of global communications. Does a group gradually lose its rights as its culture changes? Or lose its rights when it exceeds a certain threshold of cultural similarity to other groups?

National minorities and “racial” groups pose additional problems with respect to claims of distinctiveness. They may be distinguishable from other segments of the national society only with respect to their historical origins, names or physical appearance. These distinguishing features may expose them to discrimination, but a group’s visibility may not be associated with the existence of a distinctive group culture. Skin colour prejudice may have little to do with the existence of cultural differences, for example, although it often results in significant economic and political subordination. A group may struggle against skin colour prejudice without aspiring to the perpetuation of a distinctive culture, but simply to escape discrimination. It is probably safest to conclude that while cultural distinctiveness may often be the objective of groups that assert rights as minorities or indigenous peoples, it should not be a necessary criterion for the legitimacy of group claims.

In this regard, it should be appreciated that a “minority” can be created by the actions of the state, by its citizens, or by the group itself. Some groups choose to perpetuate a distinct collective identity, while others, satisfied to assimilate into national life, are prevented from doing so by institutional discrimination or public prejudice. Either situation may result in abuses of human rights, serious violence and, in extreme circumstances, threats to international peace and security.



Aboriginality—the characteristic of being autochthonous, or the original human inhabitants of a territory—appears to be an obvious distinguishing characteristic of indigenous peoples. However, it fails to clarify many situations, especially in Asia and Africa, where dominant as well as non-dominant groups within the state can all claim aboriginality. Some legal scholars have proposed the use of subordination and cultural distinctiveness as supplemental criteria in such situations; this approach requires us, however, to agree that the distinction between indigenous peoples and minorities in Africa and Asia is merely one of degree of aboriginality or cultural distinctiveness. Problems may arise from applying different criteria to different regions of the world: a qualitative standard in the Americas (aboriginality) and a quantitative standard in Africa and Asia (degree of aboriginality or distinctiveness).

The test of aboriginality also fails to clarify the status of groups that were forcibly dislodged from their ancestral territories and then compelled either to disperse or to emigrate. Are emigrant or diaspora groups “indigenous” to their place of origin, and “minorities” everywhere else? Every human lineage can trace its roots to a territory somewhere in the world, but this does not entitle every group to assert rights as an indigenous people. On the other hand, it would seem unjust for a group to lose its claim to being indigenous at the moment it is forced to abandon its ancestral lands. How long does indigenous status survive a forced removal, and justify a claim to the right to return? Minorities and indigenous peoples share very similar experiences of oppression and displacement, but using the factor of aboriginality accords greater rights

to groups that have succeeded in remaining physically present within their original territories.

Indigenous peoples contend that they not only continue to occupy parts of their original territories but also that they have a special relationship with their lands. This is obviously a claim of cultural distinctiveness, but it may be seen as a refinement of the concept of aboriginality as well. It is a way of saying that living together in a particular place is the core aspiration of the group, a *sine qua non* for the enjoyment of their human rights. While sharing a homeland may not be the contemporary reality of the group, as a result of intervention by state authorities and settlers, it is nonetheless definitive of the group’s identity and integrity. This may suggest a very narrow but precise definition of “indigenous”, sufficient to be applied to any situation where the problem is one of distinguishing an indigenous people from the larger class of minorities. The distinction may nevertheless still be merely one of degree and not of quality. Many groups that are identified or self-identify as “minorities” regard themselves as connected to a homeland within the state where they live, or another state.

Although aboriginality is perhaps the key factor from the perspective of indigenous peoples, it must be borne in mind that many indigenous peoples in the industrialized countries have changed their human-ecological relationships profoundly, and that a majority of them no longer live within their ancestral territories. Ancestral lands have retained considerable symbolic meaning and political significance for indigenous peoples everywhere, however, even in countries such as the United States where indigenous peoples have become

increasingly urbanized and integrated into national economic life.

No definition can eliminate overlaps between the concepts of minority and indigenous peoples. Cases will continue to arise that defy any attempt at a simple, clear-cut approach to classification. But the fact remains that indigenous peoples and minorities organize themselves separately and tend to pursue different goals, even in those countries where they appear to differ very little with respect to “objective” characteristics such as cultural distinctiveness.

In such cases, a purposive approach would seem appropriate. What are the legal consequences for a group of being assigned to one or the other category? Which category is most consistent with the goals and aspirations of the group? Which category is consistent with what can realistically be achieved by the group?

Classification as an “indigenous people” or “minority” has very different implications in international law. Both kinds of groups possess the right to perpetuate their distinctive cultural characteristics and to be free from adverse discrimination on the basis of those cultural characteristics. Both have the right to participate meaningfully in the social, economic and political life of the state as a whole—as groups if they choose, and in any case without adverse discrimination. In my opinion, the principal legal distinction between the rights of indigenous peoples and those of minorities in contemporary international law concerns internal self-determination: the right of a group to govern itself within a recognized geographical area without state interference, albeit in some cooperative relationship





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with state authorities, as in any federal system of national government.

Some minorities today enjoy limited self-government, either *de facto* or pursuant to national legislation. But only indigenous peoples are currently recognized as possessing the *right* to a political identity and self-government as a matter of international law.

The exercise of internal self-determination is impractical where the group concerned is widely dispersed and lacks a principal centre of population and activity. The territorial element is central to the claims of indigenous peoples, and it should be given particular weight precisely because it is so closely related to the capability of groups to exercise the rights they claim. On the other hand, minorities may increasingly make claims to autonomy based on the existence of discrete concentrations of their populations in particular regions of states.

Categorization of a situation as an “indigenous” problem or a “minority” problem will serve, at best, as a starting point for the international community to recognize the basic legitimacy of a group’s desire for political recognition by a state,



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and to promote a process of political engagement between the group and the state concerned.

Bearing these conceptual problems in mind, I should like to suggest that the ideal type of “indigenous people” is a group that is aboriginal (that is, autochthonous) to the territory where it resides today, and chooses to perpetuate a distinct cultural identity and a distinct collective social and political organization within that territory. The ideal type of “minority” is a group that has experienced exclusion or discrimination by the state or its citizens because of its ethnic, national, racial, religious or linguistic characteristics or ancestry, irrespective of aboriginality or territoriality.

From a purposive perspective, then, the ideal type of “minority” focuses on the group’s experience of discrimination, directing us to international standards aimed at combating discrimination and facilitating national socio-economic integration, such as the 1992 UN *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*. The ideal



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type of “indigenous people” focuses our attention on aboriginality, territoriality and the desire to remain collectively distinct, which are tied logically to the exercise of the right to internal self-determination, self-government or autonomy.

Obviously, there will be cases that fit both ideal types and merit the protection afforded to both: not only some degree of self-determination, but also the right to integrate freely into national society for some purposes. A group that has been characterized as a “minority” may nevertheless possess a limited degree of aboriginality and territoriality, and justly demand some form of autonomy as a reasonable means of protecting itself from discrimination. The inevitability of overlap does not invalidate the approach that I am proposing, or render it impracticable. On the contrary, being practical and realistic requires an approach that is purposive, and links the characteristics of groups to their aspirations and to the rights they are entitled to and can realistically exercise. ○

CHAPTER 1



INDIGENOUS PEOPLES AND THE UNITED NATIONS

In 1923 Deskaheh, leader of the Iroquois Confederacy, travelled to Geneva to inform the League of Nations of the tragic situation of indigenous peoples in Canada and to request the League's intervention in their long-standing conflict with the Canadian Government. In spite of Deskaheh's efforts, the League decided not to hear the case, asserting that the issue was an internal Canadian matter.

The United Nations system first addressed itself formally to indigenous issues in 1949, when the General Assembly, by its resolution 275 (111) of 11 May 1949, invited the Sub-Commission on Prevention of Discrimination and Protection of Minorities (the Sub-Commission) to study the situation of indigenous Americans, in the hope that the material and cultural development of these peoples would result in a more profitable utilization of the resources of America to the advantage of the world.

The United States objected, which not only led to the termination of this particular study but also to the temporary suspension of the entire Sub-Commission! In any event, it is fair to suppose that the real initiative for this study was related more to the Cold War, and to the interests of the exploitation of the South American interior, than by any genuine concern for the welfare of indigenous communities.

More than 20 years elapsed before the UN Economic and Social Council (ECOSOC), by its resolution 1589 of

21 May 1971, authorized the Sub-Commission to undertake a study into the "Problem of Discrimination against Indigenous Populations". The Sub-Commission entrusted this vast task to José R. Martínez Cobo, who took 15 years to complete and publish his encyclopaedic five-volume report, which the Sub-Commission welcomed as "a reference work of definitive usefulness". It was indeed a forceful and eloquent appeal to the international community to respond decisively to the exclusion and discrimination experienced by indigenous peoples throughout the world.

The UN Working Group

Representatives of indigenous peoples themselves began to visit the UN Office at Geneva frequently in the 1970s to complain about the inhuman conditions in which they were living. As a member of the Sub-Commission, I spoke with many of them about their lives and struggles, and I was struck by the deep pain and bitterness with which they spoke, in particular the Aboriginal peoples of Australia.

The Sub-Commission continued to receive and discuss progress reports from Ambassador Martínez Cobo, and to hear from a growing number of newly-formed international non-governmental organizations of indigenous peoples such as the International Indian Treaty

Council, the World Council of Indigenous Peoples, the Grand Council of the Crees (of Quebec), the Sami Council and the Indian Law Resource Center. We began developing concrete proposals for UN initiatives that we sincerely hoped would change the attitudes of governments, and build a momentum for change in legislation and policies.

At its 34th session in 1981, the Sub-Commission proposed the establishment of a standing United Nations Working Group on Indigenous Populations, to be composed of five members of the Sub-Commission. We recommended that the Working Group have a mandate “to review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations”, while also giving “special attention to the evolution of standards concerning the rights of indigenous populations”. In other words, we hoped that the Working Group would continue to study the situations and aspirations of indigenous peoples around the world and, in addition, begin to clarify the rights of indigenous peoples under international law.

The Commission on Human Rights and ECOSOC approved our proposal (ECOSOC resolution 1982/34) and the Sub-Commission chose a distinguished Norwegian legal scholar, Asbjørn Eide, to be the Working Group’s first Chairman-Rapporteur. The Working Group met for the first time in August 1982 with barely 25 representatives of indigenous peoples and governments, but considerable controversy. Some governments were particularly displeased with the Working Group’s decision to let all of the indigenous participants speak freely, regardless of whether or not they were

sponsored by international non-governmental organizations accredited to the UN by ECOSOC. Eide courageously and successfully defended this important procedural decision. Indeed, it was frequently challenged even after I succeeded him as Chairperson-Rapporteur in 1984, by which time the number of indigenous people participating in the annual sessions of the Working Group had grown to more than 800.

During my 18 years as Chairperson-Rapporteur of the Working Group, I did my utmost to build an open, liberal and democratic forum in which indigenous peoples and governments could meet as equals and express their views freely. I repeatedly urged indigenous peoples to avoid abusive language, despite their justifiable anger and bitterness, and make constructive proposals for national and international action. I likewise urged governments to listen carefully and respectfully to indigenous people, avoid defensiveness and denials, and try to respond positively. I believed from the start that a peaceful exchange of views would change ideas, build collegial relationships, and result in meaningful commitments to work together. If I have achieved this to any degree it has been through the goodwill of hundreds of indigenous representatives as well as the various observer governments.

The Working Group did not limit itself to building relationships, however. My four colleagues and I also prepared special studies and reports that we hoped would help promote awareness and recognition of the rights of indigenous peoples. One of the first studies proposed by the Working Group was devoted to the history and legal status of “treaties, agreements and other constructive arrangements” made between states





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and indigenous peoples. It was entrusted to Professor Miguel Alfonso Martinez of Cuba, the Latin American member of the Working Group, who presented his final report in 1999 after many years of diligent research.

I was also entrusted with several important studies in addition to my tasks as Chairperson-Rapporteur. The most important, perhaps, were the working papers I prepared on the definition of “indigenous peoples”, and on the application of the principle of self-determination to indigenous peoples. I also take pride in first addressing the problem of the protection of the intellectual and cultural property rights of indigenous peoples in the early 1990s as the author of a Sub-Commission study on “the heritage of indigenous peoples”. Many other United Nations bodies and specialized agencies have now taken up this issue. Special working groups on the traditional knowledge of indigenous peoples have been established by the World Intellectual Property Organization (WIPO) and by the States Parties to the UN *Convention on Biological Diversity*. I also prepared reports for the Sub-Commission on the relationship between indigenous peoples and their lands, and on indigenous peoples’ permanent sovereignty over their natural resources.

Of course, none of these efforts would have been successful without the growing participation of indigenous peoples themselves in the annual sessions and activities of the Working Group. A preoccupation of mine as Chairperson-Rapporteur was finding ways to ensure that indigenous peoples from every region of the world, especially from the poorest countries, could afford to attend our meetings. Discussions with governments and

indigenous leaders led to the establishment of a UN Voluntary Fund for Indigenous Populations by the General Assembly in 1985. The Working Group subsequently became the most democratic and open body of the UN system, a meeting place of the world's indigenous peoples.

The Voluntary Fund is administered by a Board of Trustees composed of five persons with relevant experience of indigenous issues, appointed by the Secretary-General in consultation with the Chairman of the Sub-Commission for three-year renewable terms, and serving in their personal capacity. At least one of the members of the Board must be a representative of a widely recognized organization of indigenous peoples. Four of the five members of the Board are currently indigenous people. In 2007, the Voluntary Fund recommended financial support for 67 indigenous representatives to attend UN meetings.

As part of the *Programme of Activities for the International Decade of the World's Indigenous People*, moreover, a special fellowship programme was established within the Office of the High Commissioner for Human Rights "to assist indigenous people wishing to gain experience in the different branches of the Centre and in other parts of the UN system". More than a hundred indigenous persons have already served as UN Fellows. Five fellowships will be awarded for 2007 and these include return airfare from their country of residence to Geneva; modest accommodation and health insurance in Geneva for the duration of their fellowship; and a monthly grant to cover other living expenses in Geneva.



The Declaration on Indigenous Rights

In 1984, I participated in the Fourth World Conference of the World's Indigenous Peoples in Panama, in my capacity as Chairperson-Rapporteur of the Working Group. A very important result of this global gathering was the participants' adoption of a proposal for a United Nations Declaration of the Rights of Indigenous Peoples, which was tabled at the next annual session of the Working Group. The Sub-Commission and Commission on Human Rights endorsed the idea of a special UN instrument clarifying the legal status and rights of indigenous peoples, and entrusted me with the task of preparing a draft. I drew extensively on the texts prepared by indigenous peoples themselves in Panama and elaborated three subsequent revisions of the draft Declaration over the next nine years.

Above all, my colleagues and I on the Working Group were concerned that the draft should reflect the real aspirations of indigenous peoples themselves, and to the greatest extent possible be prepared with their full participation. I considered the comments and proposals made by hundreds of indigenous leaders and organizations, and made every effort to revise and amend the draft until there was wide agreement among the indigenous participants. This process was certainly time-consuming, but it was indispensable lest indigenous peoples feel, once again, that others were making decisions for them.

At the same time, my colleagues and I were very conscious of the need to involve governments in the drafting process. We knew that the declaration would have little impact if it lacked support among a large number of concerned governments. Our task was there-

fore very delicate: to involve government observers in a learning process, and to persuade indigenous leaders to dispel governments' fears of secessionist movements and violence. That we succeeded at all in bringing governments to a common viewpoint with indigenous peoples is clearly a tribute to the moderation and pragmatism of indigenous leaders throughout the many long years of deliberations!

I think it is fair to say that no other United Nations instrument has ever been elaborated with so much direct participation of its intended beneficiaries. My final draft was agreed by the Working Group in 1993 with few amendments and forwarded to the Sub-Commission, where it was approved. In its resolution 1994/45, the Sub-Commission decided to ask the Commission on Human Rights to consider the draft Declaration as expeditiously as possible; to request the Secretary-General to circulate the draft Declaration to indigenous peoples worldwide; and to recommend that the Commission on Human Rights ensure that representatives of indigenous peoples were able to participate in the further consideration of the draft Declaration by the UN system, regardless of their consultative status with ECOSOC. This last recommendation was a significant step: for the first time in the fifty-year history of the United Nations, individuals were allowed to participate actively and directly in the elaboration of a draft UN instrument, without requiring them to be official representatives of Member States or UN-accredited organizations.

By its resolution 1995/32, the Commission on Human Rights decided to establish an open-ended inter-sessional working group with the sole purpose of further elaborating the draft Declaration adopted by the Sub-



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Commission, chaired by a distinguished Peruvian diplomat, Luis Enrique Chávez Basagoitia. A special procedure was adopted to facilitate the participation of indigenous peoples at this inter-governmental level, and the first session of the new working group took place in Geneva from 20 November to 1 December 1995. Indigenous leaders called for the adoption of the existing draft without changes, but governments insisted on reviewing and revising the draft section by section. The social and cultural provisions of the draft were broadly acceptable to governments; however, the provisions on self-determination, land and natural resources continued to be very controversial. The draft Declaration languished almost 12 years in the new Commission-level working group.

Finally, due to the tireless efforts of the President of the 61st session of the General Assembly, H.E. Sheikha Haya

Al Khalifa, and to the goodwill of many indigenous representatives and governments (including Greece, Guatemala, Mexico, Peru and other “friends of the Declaration”), the *Declaration on the Rights of Indigenous Peoples* was approved by the General Assembly (A.res./61/295/13 September 2007), by a vote of 143 in favour and 4 against with 11 abstentions. It was truly an historic event.

The *Declaration* has a certain logical order that reflects its overall philosophy and approach. The preamble contains a number of important general principles. It follows by a statement of the fundamental principles of equality and non-discrimination with regard to indigenous peoples collectively as “peoples”, and individually as persons. Specific reference is made to self-determination, not because it is a right of being indigenous, but because it is a right of all “peoples” from



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which indigenous peoples cannot be excluded. It provides also that indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Also, the *Declaration* recognizes the rights of indigenous peoples to their physical existence and cultural identity. Further, a number of important articles focus on issues of special concern to indigenous peoples in the exercise of their rights to equality, self-determination and collective identity. Some articles deal with land, natural resources, cultural and intellectual property and other economic rights, as well as the right to protection of the environment and ecological security. Furthermore, the Declaration provides expressly that the rights recognized herein constitute the minimum

standards for the survival, dignity and well being of the world's indigenous peoples.

Seminars and workshops

While work on a draft Declaration on the rights of indigenous peoples continued, the High Commissioner for Human Rights organized a number of important international and regional technical seminars to promote a greater understanding of the rights and needs of indigenous peoples.

The *Seminar on the effects of racism and racial discrimination on the social and economic relations between indigenous peoples and States*, was held in Geneva in 1989, and was chaired by a Senegalese government expert, Ndary Touzé. Ted Moses, Grand Chief of the Grand



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Council of the Crees of Quebec, an indigenous leader with considerable policy experience as well as a deep knowledge of existing international law and procedures, was chosen to be rapporteur of the seminar, and this was a significant development in the recognition of indigenous peoples as international actors. Participants concluded that indigenous peoples have been, and still are, the victims of racism and racial discrimination; that relations between states and indigenous peoples should be based upon free and informed consent and co-operation, not merely consultation; and that indigenous peoples should be recognized as subjects of international law with their own collective rights as “peoples”.

More recent international technical meetings have included the *Workshop on indigenous peoples, private sector natural resource, energy and mining companies and*



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human rights, convened in Geneva in 2001 and chaired by another prominent indigenous leader from Canada, Wilton Littlechild, a former Member of Canada’s Parliament as well as the first Rapporteur of the Permanent Forum on Indigenous Issues; a *Seminar on treaties, agreements and other constructive arrangements between states and indigenous peoples*, organized in Geneva in 2003, also chaired by Mr. Littlechild; an *Expert seminar on indigenous peoples and the administration of justice*, in Madrid in 2003, chaired by Tomás Alarcón; a *Seminar on draft principles and guidelines for the protection of the heritage of indigenous people*, which I chaired in Geneva in 2000 with the assistance of Professors Marie Battiste and Siegfried Wiessner; and the *Expert seminar on indigenous peoples, permanent sovereignty over natural resources and their relationship to land*, held in Geneva in 2006 with two eminent indig-

enous persons, Tom Calma in the chair and Andrea Carmen as rapporteur.

Special Rapporteur for indigenous rights

In 2001, Mexican scholar Rodolfo Stavenhagen was appointed by the ECOSOC as Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. He has a mandate to gather information from all relevant sources, including governments and indigenous people themselves, and to prepare comprehensive annual reports. In his 2005 report, for example, he focused on hindrances and inequalities that indigenous peoples face in relation to education, and concluded that longstanding national assimilation policies, and teachers' lack of understanding of indigenous languages and cultures, continue to limit indigenous peoples' educational opportunities. Another important part of the special rapporteur's mandate is visiting the countries where indigenous peoples live to promote a dialogue between indigenous peoples and governments.

Special technical studies

In Volume V of his report, Martinez Cobo stressed the importance to indigenous peoples in some countries of the treaties they had made with nation-states, including many former colonial powers. He concluded that a thorough and careful study should be undertaken of the provisions of these treaties; their legal force at present, the observance or lack of observance of these

treaties by states; and the consequences of treaty violations for the indigenous peoples concerned. The Working Group on Indigenous Populations adopted this recommendation at its fifth session, and in its resolution 1989/774, the ECOSOC approved the appointment of Professor Miguel Alfonso Martinez to undertake a *"Study of treaties, agreements and other constructive arrangements between States and indigenous populations"*. Professor Alfonso Martinez submitted progress reports in 1992 and 1995, which were publicly debated with indigenous peoples' representatives, and a final report in 1999. Several provisions of the draft Declaration were influenced by this study.

Meanwhile, based on a working paper I prepared on the ownership and control of the cultural property of indigenous peoples, and a concise note by the Secretary-General on the extent to which indigenous peoples can utilize existing international standards and mechanisms for the protection of their intellectual property, the Sub-Commission expressed its conviction, in its resolution 1992/35, that "there is a relationship, in the laws or philosophies of indigenous peoples, between cultural property and intellectual property, and that the protection of both is essential to the indigenous peoples' cultural and economic survival and development". This led to my appointment, by ECOSOC decision 1992/256, as Special Rapporteur to undertake a study on "the protection of the heritage of indigenous peoples". I submitted my report the following year. The Sub-Commission endorsed my conclusions and recommendations, and in its resolution 1993/44 asked me to expand my study by elaborating draft principles and guidelines

for the protection of the heritage of indigenous peoples. My expanded report was widely circulated, and the World Intellectual Property Organization (WIPO) and Conference of the Parties (COP) to the UN Convention on Biological Diversity have taken up my suggestions for new legal standards.

Special UN Missions

As Chairperson-Rapporteur of the Working Group, I have been asked repeatedly to conduct special missions to examine the situation of indigenous communities first-hand, to intercede with governments, and to make reports to senior UN officials. Some of my missions were highly publicized while others were strictly confidential. Gudmundur Alfredsson, then a young lawyer on the staff of the UN Centre for Human Rights and now a professor at the University of Lund, Sweden, accompanied me on these important and sometimes dangerous journeys. I remember with gratitude his resourcefulness and deep knowledge of indigenous issues, which sustained us through many difficulties.

I will never forget my first visit to Quebec City in 1985. The University of Laval invited me to make a presentation on the rights of indigenous peoples at an international conference on minorities. The chairman of my session at the conference was Ted Moses, Grand Chief of the Grand Council of Crees (Eeyou Itchee) of Quebec, a great human being who was already an important national figure in Canada, and on his way to becoming a leading force on the international arena. He invited me to visit the Cree community of Eastmain in

northern Quebec with him, so that I could see for myself the conditions under which his people were obliged to live. I accepted, with gratitude.

Eastmain is more than 800 kilometers north of Quebec City near Hudson Bay. It was snowing there when we arrived, and this had developed into a severe snowstorm by the time we left. Despite my anxiety over the threatening weather, I was overwhelmed by the hospitality and kindness of Cree people. The faces of the elders, young people and children are forever impressed on my memory. I listened to Cree elders (including the distinguished and esteemed parents of Grand Chief Moses) speak about their hopes for a better future for their grandchildren, and visited the community school, where children were being taught by a grandmother in their own Cree language.

We visited Aboriginal communities in most of the federal states of Australia in 1987 and 1988, and listened first-hand to their experiences of discrimination in every aspect of their daily lives, from health care and education to employment and the administration of justice. We had opportunities to visit very remote places where rock paintings record the Dreaming, and learn how the ancestors of Aboriginal people taught them how to live in harmony with nature and treat each other with propriety and respect, setting the pattern of Aboriginal culture that has persisted for 40,000 years. We also saw these ideals reflected in the works of present-day Aboriginal artists, whose paintings express Aboriginals' historical suffering as well as great hopes for their future. At every turn we also saw evidence of cruel treatment, misery and despair. At the time of our visit, a major topic of public debate in Australia was a Royal Com-

mission into Aboriginal Deaths in Custody, investigating the disproportionate number of Aboriginal people who had died after being arrested.

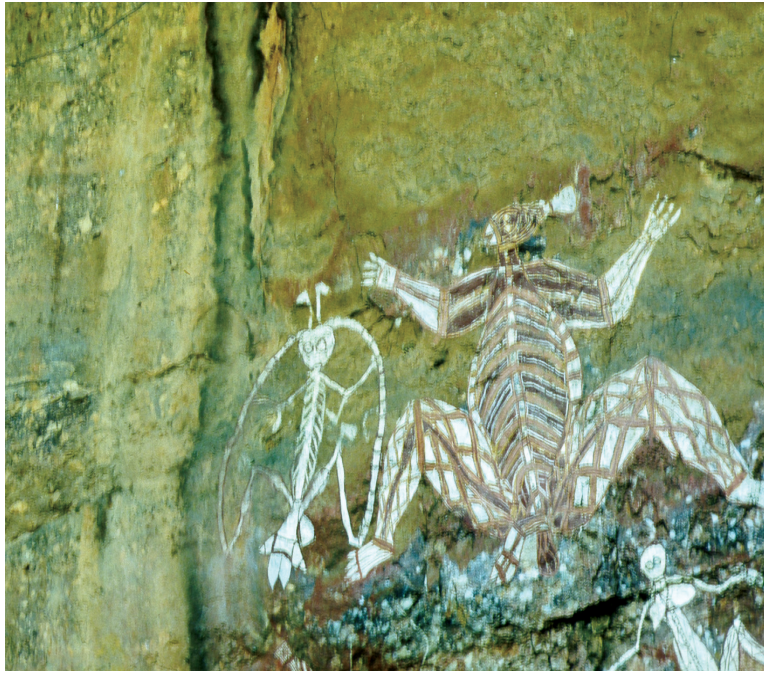
In the Torres Strait Islands, people proudly explained their unique historical, cultural and political position in contemporary Australia. George Mye, a distinguished member of the Aboriginal and Torres Strait Islander Commission (ATSIC), told us: "We seek to exercise our inherent right as indigenous peoples to self-determination within the Australian nation." He felt that ATSIC had been "an instrument of empowerment" by giving elected representatives of indigenous communities direct control over nationally financed social, educational and health programs. Indeed, it appeared to me that under the able leadership of Lowitjia (Lois) O'Donoghue, ATSIC had contributed significantly to improving the human rights and conditions of indigenous Australians. I must add that her influence extended beyond Australia: she was often a participant and influential speaker at annual sessions of the Working Group.

In addition to hearing from a broad cross-section of Aboriginal people, I met with national leaders including (then) Foreign Minister Gareth Evans, through whom I urged the government of Australia to take prompt action to improve Aboriginal and Torres Strait peoples' social and economic conditions. I also had the honor of meeting many Australian judges, who displayed a keen sense of fairness and professional responsibility. The Australian press covered my trip with objectivity and great interest, contributing significantly to public awareness and therefore to one of the major objectives of my mission. On a subsequent visit to Australia, I learned that many of

my recommendations for improving the social and economic situation of Aboriginal people had been adopted in Canberra.

The Australian government subsequently told the Working Group: "We recognize that the principle of self-determination offers a key to greater recognition of the identity, dignity and status of indigenous peoples". Australia thereby became the first government to accept the application of this important principle to the status of indigenous peoples, and Australian diplomats made considerable efforts in the early 1990s to build consensus on this point. Unfortunately, many of these gains have been lost as a result of subsequent changes in that country's leadership.

Another important mission brought me to New Zealand at the official invitation of the government, and as a guest of the Associate Minister of Foreign Affairs, Fran Wilde. I had opportunities to discuss a wide range of issues with Maori people, from land rights and fisheries to cultural matters. I visited the territory of the Ngati Te Ata *iwi* (tribe) and was deeply impressed by their traditional values and by their devotion to the beautiful country that Maori call Aotearoa. A meeting with the Queen of the Maori was especially memorable. Nganeko Minhinnick, a chief of the Ngati Te Ata tribe, was kneeling crying for her land, which she said had been expropriated illegally for mining. Maori explained that this land is a cemetery where many of their ancestors had been buried, and therefore a sacred place. I was very moved, and stated "the cemeteries, where ancestors are buried should be respected as sacred places by everyone and in particular by governmental authorities".



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Maori leaders complained to me about many violations of the Treaty of Waitangi, which established conditions for the British settlement of Aotearoa in 1840. Although the New Zealand government established a special legal body, the Waitangi Tribunal, to settle past grievances and clarify the obligations arising from the treaty, there is a very large backlog of unresolved claims. When the government of New Zealand issued an apology to the Ngati Tahu *iwi* in 1996 for treaty violations, for example, the Maori said: "Five generations of Ngati Tahu men and women have grown old in the shadow of our tall trees". In gratitude for my visit, Maori have given me the name *Arohani*, which means, "love".

One of my most interesting trips was to Samiland, which consists of the northern parts of Norway, Sweden and Finland, as well as a small part of the north part of the Russian Federation. I had to admire the successful efforts of the Sami people to provide bilingual schools for their children, and their establishment of Sami parliaments that have achieved legal recognition in three of the four countries in which they live. The Sami people enjoy a higher standard of living than other indigenous peoples around the world, and they have a very strong sense of commitment to assisting indigenous peoples elsewhere, especially in Latin America.

My journeys also took me to Japan, at the invitation of the Ainu people of the beautiful northern island of Hokkaido. The government of Japan denied the cultural identity and distinctiveness of the Ainu until the 1990s, and it still maintains that the Ainu are a minority rather than an indigenous people. Nonetheless, the

Ainu have carefully guarded their culture for centuries. Professor Alfredsson and I had an opportunity to visit Ainu primary schools and museums, and to attend special theatrical performances that demonstrated the continued vitality of Ainu traditions. In Tokyo, members of all the national political parties received me very graciously, and I was delighted that they subsequently made a substantial contribution to the Voluntary Fund from their own pockets. At Tokyo University, I spoke about human rights and the status of the world's indigenous peoples to a very large, highly animated audience of faculty staff, students and Ainu people.

One of my most important and difficult field missions was in Guatemala, accompanied by a colleague from the Sub-Commission, Awn Al-Khasawneh, who is now a distinguished member of the International Court of Justice. Our mandate was to observe the first democratic elections in that country in nearly half a century, and Guatemala was still very much in the throes of civil war. Guerrillas were still operating in the mountains, and there continued to be kidnappings and disappearances of human rights activists and Maya community leaders. We met with indigenous people throughout the country, urging them to participate in the election and elect a truly democratic president. We discussed the administration of the upcoming elections, freedom to vote and how to protect the ballots. The election was a success, and the new democratically elected president, Vinicio Cerezo Arevalo, launched an energetic program of reform that set the stage for peace talks.

The international community was meanwhile shocked to learn about the invasion of north-western

Amazonia by *garimpeiros* (individual gold-seekers) and their massacres of remote communities of indigenous Yanomami people. The UN Secretary-General, Javier Perez de Cuellar, expressed his personal concern about the situation to the Brazilian authorities. In 1991, the government of Brazil invited me to travel to Amazonia and examine the situation first-hand. I was accompanied by Elsa Stamatopoulou, formerly Deputy Director of the Office of the High Commissioner for Human Rights in New York; she is now in charge of the secretariat of the Permanent Forum on Indigenous Issues.

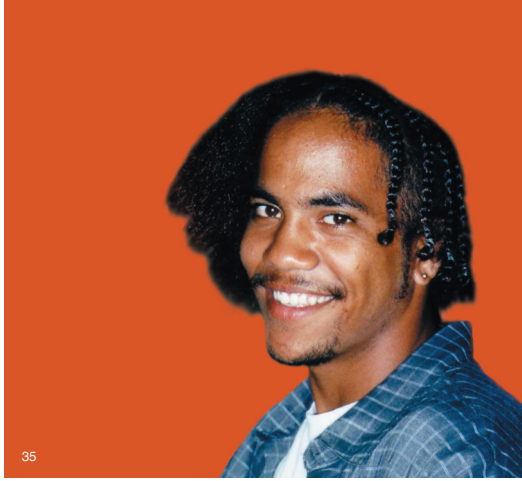
The Brazilian government efficiently organized our itinerary and supplied us with an aircraft to reach remote parts of the Amazonian rainforest. What I could see from the window of the low flying airplane was beautiful. Enormous trees, brightly coloured birds and rivers made up the world the Yanomami sought to protect and enjoy in their own way. Unfortunately, *garimpeiros* had already killed thousands of indigenous people, not only by direct physical violence but also by introducing new contagious diseases and by using mercury as part of their gold-mining technique. Mercury was washing into the rivers and poisoning indigenous communities farther downstream. The situation of the Yanomami people is discussed in more detail in chapter VI.

The situation of indigenous peoples in southern Mexico has also attracted global attention since the violent confrontations that took place in Chiapas in 1994. In the winter of 2000, the *Instituto Nacional Indigenista* (INI) invited me to visit southern Mexico and review the situation there. I was again fortunate to be accompanied by Elsa Stamatopoulou. We not only vis-

ited Chiapas but also the neighbouring federal states of Nayarit, Oaxaca, Campeche, Yucatan and Guerrero, traveling to remote villages in the mountainous countryside to hear directly from indigenous people about their needs and aspirations. We also discussed the very serious problems facing Mexico's indigenous peoples with the former Foreign Minister, Rosario Green, a very eminent diplomat, as well as the Attorney General and other federal officials, the Governors of many of the federal states, national indigenous organizations, human rights activists, non-governmental organizations and academics. My report to the Sub-Commission explained:

Today, Mexico faces a complex reality, not least due to the challenges of globalization. A beautiful and very important country of some 100 million people, Mexico has an indigenous population estimated at 10% with some 59 languages spoken. Massive migration and internal displacement of the indigenous population to the urban centers has created new challenges for the migrants and the displaced for society as a whole and for the Government who bears major responsibility in finding solutions. The culturally rich and mostly resilient but economically marginalized and poor indigenous population that was for hundreds of years considerably out of sight for the more developed parts of the country is now inhabiting urban centers. This creates intense contacts, contrasts and shocks between Mexicans living in different developmental and cultural dimensions. The events in Chiapas in 1994 and the fact that indigenous communities enhanced their level of organizations and their demands for meaningful participation in decisions affecting them have ap-





parently triggered a number of efforts by the Government to promote progress in the area of economic, social and cultural rights. At the same time, it is clear that indigenous areas are increasingly militarized, resulting in tension, clashes and grave human rights violations. The militarization of indigenous areas provokes outbreaks of violence, an atmosphere of fear, constitutes breaches of the right to live, and physical and mental integrity, etc. Impunity is still a major problem, exacerbating the frustration and suspicion of indigenous communities towards the state, especially in the area of the administration of justice.

I urged the Mexican government and the Zapatista National Liberation Army (EZLN) to resume their dialogue on the implementation of the San Andrés Accords as soon as possible. In my opinion, the broad democratic principles embodied in the accords addressed the needs and aspirations of indigenous peoples and, indeed, all Mexicans.

The Navajo-Hopi dispute

Although I had undertaken many important and often dangerous missions, perhaps the most difficult and sensitive one involved a situation in the United States. The Navajo-Hopi land dispute was significant because it demonstrated that even the well-intentioned efforts of democratic countries to do justice for indigenous peoples often encounter serious difficulties and create new kinds of injustices. In addition, this dispute involved allegations of human rights abuses by the institutions of indigenous peoples themselves.

The Hopi people have lived on the Colorado Plateau as farmers for thousands of years. Between 500 and 1000 years ago the Navajo (Dine) people settled in the area. As hunters, and later as herders of sheep and goats, they had a very different way of life.

Hopi lands were recognized and protected by Mexico before they became part of the United States in 1848. At first, the United States respected Hopi lands, but fought a war against the Navajo, eventually agreeing by treaty in 1868 to set aside enough land for the Navajo to survive. A great deal of land surrounding Hopi villages was subsequently set aside for the Navajo, or for the “joint use” of both indigenous nations. Neither indigenous nation was happy with this arrangement.

In the 1960s, coal was discovered in the “joint use area” (JUA), and in 1974 the Navajo and Hopi persuaded Congress to enact a law dividing the JUA between them. A special commission was established to fix the new boundary line and arrange for the relocation of Navajo and Hopi families to their respective sides of the boundary. The relocation was supposed to be completed by 1986, but large numbers of Navajo refused to move. Navajo leaders sought a new agreement with Hopi leaders, but the Hopi refused to agree to any changes. Navajo in the contested area had an important ally: traditional Hopi elders who felt that dividing the land between the two related peoples was unjust.

After Congress declined to reconsider its 1974 law, Hopi elders sought help from the Working Group on Indigenous Populations and the Sub-Commission. In its decision 1987/110, the Sub-Commission took the extraordinary step of delegating me, and my Ameri-

can colleague on the Sub-Commission at that time, Judge John Carey, to visit Washington, D.C. and the disputed area as observers. I was able to travel to a number of Navajo and Hopi villages, including Hotevilla and Teesto in June 1989, and to exchange views with members of Congress and the leaders of both indigenous nations. I was hopeful that the presence of the UN, and an open dialogue between the indigenous leaders and national leaders, would result in a just and balanced solution.

Representatives of the Navajo nation declared: "We are opposed to relocation itself, we continue to oppose forced relocation. Relocation has no place in the traditional Navajo world. We are opposed to relocation because it doesn't work. It doesn't work because it precipitates divorce, child and spouse abuse, alcoholism, drug abuse, family breakup, loss of home, indigence, welfare dependence and even sometimes suicide among those who relocate. Relocation doesn't work because it continues the disruption of Navajo lives in a region that has already been devastated by almost thirty years of restrictions on development, livestock reduction, and denial of economic opportunity. ... Relocation doesn't work because it provides exile when [we] should be providing opportunity."

My report to the Sub-Commission recommended the provision of UN advisory services to the parties, and suggested a United Nations study of the problem of involuntary resettlement generally around the world. Forced relocation has been widespread as a result of border changes and armed conflicts, as well as the taking of land for public purposes such as roads and hydro-electric dams. The Navajo-Hopi situation made me

aware of how serious the long-term consequences of such actions can be for poverty, health and the enjoyment of human rights. A study of forced relocation was subsequently undertaken at the request of the Sub-Commission by my distinguished friend, Judge Awn Al-Khasawneh, which drew upon a working paper prepared by the Nigerian member of the Working Group on Indigenous Populations, Christie Mbonu.

The International Year

The decision of the United Nations to proclaim 1993 the International Year of the World's Indigenous Peoples had a significant impact on world public opinion. In particular, I was delighted that the Secretary-General at that time, Boutros Boutros Ghali, and the UN Department of Public Information arranged for a well-publicized event in the chambers of the General Assembly itself to launch the International Year. The leaders of many indigenous nations spoke from the podium to the assembled governments; among them was Davi Yanomami, whom I had visited in his traditional territory in the jungle of Amazonia. Indigenous leaders were profoundly moved by the ceremony, feeling that the international community had finally recognized the importance of the world's 375 million indigenous people, and was offering them a distinct role in world affairs. Symbolically, they were equal to other nations—if only for one day.

In his introduction to *Seeds of a new Partnership-Indigenous Peoples and the United Nations*, a collection of statements made by indigenous leaders in connection with the launch of the International Year, Secretary-General

Boutros Ghali wrote: “The voices in this book tell us of peoples whose way of life is under threat. They tell of peoples who have lived through centuries of racism, domination and human rights violations, whose values and cultures have been under attack. But the voices in this book also tell hope. They tell of a will to live and of the desire to find a new basis for relating to the world. These are indeed seeds of a new partnership. In these seeds, we shall find the power of growth.”

Rigoberta Menchú Tum, winner of the Nobel Peace Prize in 1992, was appointed United Nations Goodwill Ambassador for the International Year. She stressed the importance of respecting traditions, as well as her hope for a just relationship between indigenous peoples and nation-states: “We believe in the wisdom of our elders and sages, from whom we have inherited strength and learned the art of speech. This has enabled us to reaffirm the validity of our thousand-year history and the justice of our struggles. ... The result will be the honourable and peaceful renewal of contact between our cultures and the societies in which we live.”

My own modest contribution to the opening ceremonies for the international Year was also an expression of hope based upon justice:

“I believe that indigenous peoples have reached a critical turning point, and that their long-neglected rights will soon emerge from the shadow of history into the light of contemporary recognition and implementation. I look forward to the day when indigenous peoples everywhere will be heard in the councils of the world, speaking in all their languages the feelings so eloquently expressed by an American Indian poet Scott Momaday:

*You see, I am alive, I am alive
I stand in good relation to the earth
I stand in good relation to the Gods
I stand in good relation to all that is beautiful”.*

I was profoundly honoured to receive the United Nations Human Rights Award that day from the Secretary-General, in recognition of my efforts on behalf of the indigenous peoples of the world. Nothing could have made me happier, or more firmly committed to continuing my work, than accepting this UN award in the presence of so many distinguished Heads of Governments and indigenous leaders with whom I had laboured since my election as the Chairperson-Rapporteur of the Working Group a decade earlier.

First International Decade

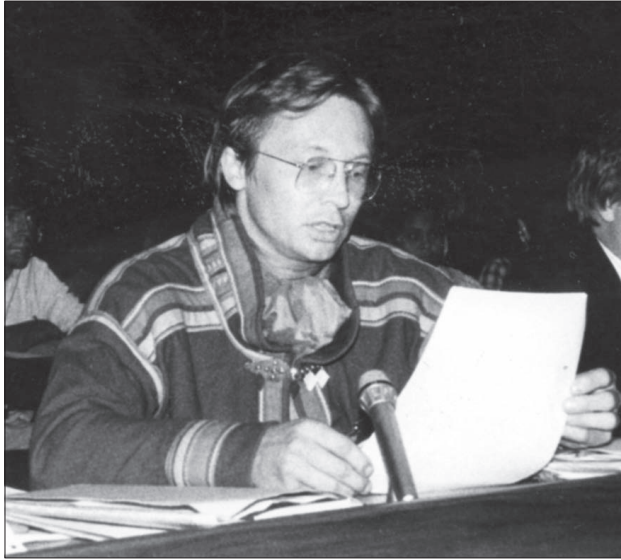
The most important result of the International Year was the proclamation of an International Decade of the World’s Indigenous People (1995-2004). The main goals of the International Decade were operational: to foster international cooperation to help solve the problems faced by indigenous peoples in areas such as human rights, culture, environment, development, education and health.

The programme of activities for the International Decade, adopted by General Assembly resolution 50/57 (1995), called upon the specialized agencies and other intergovernmental organizations and national governments to engage in activities that benefited indigenous

peoples directly, as well as activities for the promotion and protection of the rights of indigenous peoples through, for example, public education about the languages, cultures, rights and aspirations of indigenous peoples. The United Nations High Commissioner for Human Rights, Mary Robinson, former President of the Republic of Ireland and an outspoken defender of human rights, was entrusted with the coordination of the Decade.

The International Decade stimulated a number of UN bodies and specialized agencies to intensify their work with indigenous peoples, most notably the International Labour Organization (ILO), the World Health Organization (WHO), and the United Nations Educational, Scientific and Cultural Organization (UNESCO). Indigenous issues were addressed by a growing number of technical meetings and workshops throughout the UN system, building commitment and consensus on concrete measures to support indigenous communities on the ground. For example, UNESCO organized a workshop on the “Cultural Challenges of the Decade of the World’s Indigenous Peoples,” which was ably chaired by Katerina Steunou. I was delighted to be able to participate in this important event, and to speak of the need for every one of us to appreciate and respect the integrity of indigenous peoples’ cultures and heritage. It is my hope that a day will soon come when our indigenous and non-indigenous intellectual traditions meet on equal terms—and together help build a new and better world.





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Second International Decade

General Assembly resolution 59/174 (2004) welcomed the achievements of the First Decade, in particular the establishment of the Permanent Forum on Indigenous Issues, and proclaimed the Second International Decade of the World's Indigenous People (2005-2014). The main goals of the Second Decade are the further strengthening of international cooperation for the solution of problems still faced by indigenous peoples in the fields of culture, education, health, human rights, the environment, and social and economic development, through action-oriented programmes, specific projects, increased technical assistance and standard-setting activities. UN organs, programmes and specialized agencies were directed to examine how existing programmes and resources might be utilized to benefit indigenous peoples more effectively, including by means of better incorporating indigenous perspectives and activities. The UN Under-Secretary-General for Economic and Social Affairs was appointed Coordinator of the Second Decade.

UN Specialized Agencies

UNESCO clearly has a very important role to play in the protection of the cultures and heritage of indigenous peoples, in particular the protection of sacred sites and cultural landscapes, and the recovery of moveable cultural property such as sa-

cred objects. Many indigenous peoples have found a sympathetic and supportive audience at UNESCO.

I should also like to mention the growing contribution of the World Intellectual Property Organization (WIPO) to the evolution of international standards in this field. In 1998, I participated in an important WIPO roundtable on the intellectual property of indigenous peoples, which led to the establishment of a WIPO inter-governmental working group on the protection of traditional knowledge and folklore.

The work of the World Health Organization (WHO) in the field of indigenous peoples will unquestionably grow in importance. I had the honour of chairing an “International Consultation on the Health of Indigenous Peoples” at WHO, where I called for the launch of a global campaign for indigenous communities’ physical security and health. I argued that persistent oppression is a cause of disease and, in turn, poverty and oppression are aggravated by chronic ill-health:

Indigenous peoples in most countries lack the legal standing or power to defend their rights or protect their health. They are marginalized politically because of their poverty, their relatively small number, and the discrimination they routinely face. They are also marginalized because of the severe adverse health consequences of their loss of land and [traditional] food systems. A community in which half or more of the adults suffer from preventable, chronic and disabling health conditions cannot resist interference or assert itself effectively. I would argue, then, that governments’ development policies have imposed such severe poor health on in-

igenous societies, *that the resulting malnutrition itself has become a form of oppression.*

WHO is also committed to the protection of traditional knowledge in the field of medicine, and to the integration of traditional methods of healing into national primary healthcare programs.

Permanent Forum on Indigenous Issues

The World Conference on Human Rights, in its *Vienna Declaration and Programme of Action*, recommended that the General Assembly establish a “permanent forum” for indigenous peoples within the United Nations system. In its resolution 48/163 of 21 December 1993, the General Assembly requested the Commission on Human Rights to give “priority consideration” to this issue; and the Commission, by its resolution 1994/28 of 4 March 1994, turned to the Working Group on Indigenous Populations for “suggestions for alternatives”.

On the basis of the discussions that took place during the twelfth session of the Working Group, including a paper submitted by the Government of Denmark and a comprehensive note that I prepared in my capacity as Chairperson-Rapporteur of the Working Group, we proposed guidelines for the membership and functions of a permanent UN forum for indigenous peoples. We also recommended that the Centre for Human Rights organize a workshop on the establishment of a permanent forum for indigenous peoples with the participation of governments, indigenous organizations and in-



dependent experts. The Commission on Human Rights endorsed this recommendation in its resolution 49/214, and the workshop was held in Copenhagen in July 1995 with two independent experts (Rodolfo Stavenhagen and myself), 21 Member States and 21 indigenous organizations. In its resolution 50/157 of 21 December 1995, the General Assembly recommended convening a second workshop on the possible establishment of a permanent forum for indigenous peoples. The second workshop took place in Santiago de Chile in 1997.

Following these preparatory deliberations ECOSOC, by its resolution 2000/22 of 28 July 2000, decided to establish - as a subsidiary organ of the Council - a Permanent Forum on Indigenous Issues consisting of sixteen members, eight to be nominated by governments and elected by ECOSOC, and eight to be appointed by the President of ECOSOC. The appointed members are all indigenous persons, identified through formal consultations with governments taking account of the broad distribution of the indigenous peoples of the world, as well as the principles of transparency, representation and equal opportunity for all indigenous peoples. All members serve in their personal capacity as independent experts for a period of three years, with the possibility of re-election or reappointment for one further term.

ECOSOC also decided that states, United Nations bodies, inter-governmental organizations and non-governmental organizations in consultative status with ECOSOC may participate in meetings of the Permanent Forum as observers, while organizations of indigenous peoples may participate as observers in accordance with the more liberal procedures that had previ-

ously been applied to meetings of the Working Group on Indigenous Populations.

The Permanent Forum now serves as an advisory body to ECOSOC with respect to the economic and social development, culture, environment, education, health and human rights of indigenous peoples. This mandate includes providing expert advice and recommendations on indigenous issues to all programmes, funds and agencies of the United Nations system through ECOSOC; raising awareness of indigenous issues and promoting the integration and coordination of activities relating to indigenous peoples throughout the United Nations system; preparing and disseminating information on indigenous issues.

The Permanent Forum on Indigenous Issues first met at the United Nations Headquarters in New York City from 13 to 24 May 2002, and has met annually since then. The first Chairperson of the Permanent Forum was Ole Henrik Maga, a Sami leader and scholar; and the first Rapporteur was Wilton Littlechild, a Cree lawyer and parliamentarian from Alberta, Canada. I commented on this historic occasion that: "Today, indigenous peoples finally sit as members of an official United Nations body entrusted with the promotion and protection of their rights, interests and welfare. And this new UN body met in New York, at a place Native Americans called 'turtle bay' on Turtle Island, in the House of Mica foreseen by the well-known Hopi prophecy."

As I observed at that time, a great circle of historic events had been completed and a new and more powerful circle of events was about to begin. The Permanent Forum is an official voice of indigenous peoples in the international community, with a different mandate to the Work-

ing Group on Indigenous Populations. I believe that the Permanent Forum should channel international financial and political support to those states that are already taking steps to recognize indigenous peoples' rights, and serve as a watchdog over UN programmes and services. It is fitting that since 2005, the Chairperson of the Permanent Forum has been Victoria Tauli-Corpuz, a highly respected indigenous leader in the Philippines who worked for many years to engage the UN more directly in the grassroots struggles of indigenous peoples in developing countries.

While the Working Group lacks any authority over the "operational" side of the UN system—that is, over the important role of the United Nations as a conduit of international financial and technical assistance for development, peace and security—the Permanent Forum has an explicit mandate to ensure that the operational side of the UN makes an effective and successful contribution to the aspirations of indigenous peoples.

In my opinion, the Permanent Forum should focus its efforts where the most positive change is possible. Unlike the Working Group, the Permanent Forum is not an organ of the Human Rights Council, and does not have a mandate to criticize states for violations of human rights. That is the job of other international bodies, including the UN Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the International Labour Organization. The Permanent Forum has been charged with helping manage the financial and technical assistance that states receive from the UN system and, in this role, the Permanent Forum should help bring Indigenous peoples into a real part-

nership for development with other sectors of national society. Indigenous peoples must no longer be victims of development but important contributors to development with their own special talents, deep knowledge and unique expertise. Indigenous peoples are a good example of groups that have historically been disregarded or underserved; they still receive less state assistance and less access to public services than other social groups in most of the countries in which they live.

As a link between the human rights side of the UN and its operational side, the Permanent Forum will be in a position to help UN agencies share information and design more collaborative multi-agency projects for indigenous peoples. I would like to suggest that facilitating inter-agency cooperation is only the beginning of the story, however. The Permanent Forum should also serve as a watchdog over UN agencies' impacts on indigenous communities, and as an entrepreneur to help UN agencies find additional resources for projects benefiting indigenous peoples. Indigenous peoples should truly benefit from existing UN aid programs, and not be injured or prejudiced in any way by activities of the UN itself. It seems so obvious, yet for decades there was no systematic or transparent evaluation of the UN activities affecting indigenous peoples. The Permanent Forum is breaking new ground. For the first time in our era, indigenous leaders are participating in a high-level forum within the UN system. Indigenous peoples have achieved representation in the international arena at last, some 75 years after they first approached the League of Nations for recognition as the world's first nations. ○



CHAPTER 2

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EQUALITY, INDIGENOUS IDENTITY AND HERITAGE

In one important respect, indigenous peoples and minorities assert similar, seemingly contradictory claims. Both groups seek equality with other citizens of the state, while at the same time they demand respect and support from the state for the development of their own cultural, religious and linguistic identities.

The meaning of “equality”

The liberal theory of the nation-state is based upon the equality of citizens with respect to individual rights as well as individual responsibilities. Individual and group differences have traditionally been regarded as a strictly private affair. In principle, everyone remains free to pursue his or her individual desires and collective activities, as long as he or she faithfully performs his or her duties as a citizen and asks no more from the state than other citizens.

Few if any modern states have actually attained this philosophical ideal. Sometimes, this has been a result of intolerance directed against particular groups, depriving them of the same rights and freedoms as other constituent groups of national society. Often the problem has been the cost of accommodating the aspirations of particular groups, or very small groups, within otherwise tolerant and pluralistic states. How many different

languages can realistically be granted official status, so that they can be used freely in education, politics and legal proceedings? What number of citizens must speak a language before it must be given equal status with other national languages? This problem is a function of diversity. In New Zealand, there is one indigenous language—Maori—and it has achieved official status. In Canada, by comparison, there are at least ten widely used indigenous languages, as well as two dominant European languages. Only one indigenous language (Inuktitut) yet has official status in Canada, and only in Canada’s northern territories.

There is another reason why liberal theories of equality are difficult to realize in modern states. Different groups may have fundamentally different ideas about the nature of society, the economy, and the state itself. They may find it impossible to agree on any formula for the rights and duties of national citizenship. There are three possible results in such a case. A national formula for citizenship may be imposed on smaller, more culturally distinct groups on the grounds that limitations on this group’s cultural freedom are justified by the demands of public order. Exceptions to equality may be agreed by the parties, resulting in a federation of ethnically and legally distinct societies within one state. Alternatively, the existing state may dissolve, as we have seen with such tragic results in the former Yugoslavia.

Legal scholars trained in the Western liberal tradition find it very difficult to imagine a nation-state based upon what the great philosopher Aristotle described as “geometric equality”. The Western model of the state demands that each citizen be, for the purposes of the law, exactly the same. “Geometric equality” describes a state composed of two or more groups of citizens who differ in mutually agreed ways. The pieces differ in shape, but all fit together according to a shared vision of the picture as a whole: a mosaic.

In geometric equality, individual freedom is assured by providing for rights of membership and mobility. No-one may be forced to belong to, or remain a member of, any particular group. It is important to stress this point about geometric equality and the structure of states because indigenous peoples tend to be more different from their neighbours than minorities. States cannot satisfy the aspirations of indigenous peoples using the same approaches that may have satisfied national or ethnic minorities. At the same time, indigenous peoples themselves are more likely to seek accommodation than demand independence.

Religious freedom provides a compelling example of this dynamic. Religious minorities require freedom to erect and maintain their own places of worship, and freedom to teach and conduct their own religious rites within those places. They may choose to maintain distinct forms of dress, or establish separate schools for their children. None of these choices requires costly accommodation by the state or other citizens. Indeed, other citizens may scarcely be aware of the existence or beliefs of most religious minorities. However, the religious beliefs of indigenous peoples cannot be confined

to a church or school building. Indigenous peoples believe that they have personal connections with, and individual responsibility for, all living things and landscapes in their traditional territories. Lakes, caves, mountains and other natural features scattered throughout their ancestral lands are all seen to have a spiritual as well as an ecological and economic importance.

Nearly every ecological change therefore has some religious and cultural significance for indigenous peoples. Respect for their religions and cultures requires major changes in national laws governing the use of land and natural resources, as well as accepting that a large part of the national territory may remain “under-developed” for the foreseeable future. This does not mean that indigenous peoples are all unalterably opposed to sustainable development, industrialization or the commercial use of natural resources. If given the choice, however, they are likely to be very cautious about ecological changes, and to give ecological and cultural continuity very heavy weight in any calculation of the potential net benefits of a proposed development project.

The fundamental principles of identity, equality and non-discrimination are most clearly and completely set out in the United Nations *Declaration on the Rights of Indigenous Peoples*. It reaffirms the right of indigenous peoples, individually and collectively, to enjoy full equality before the law while recognizing their complementary right to exercise whatever level of autonomy or self-determination they choose. Indigenous peoples have already won limited international recognition of their right to enjoy complete equality as citizens as well as continuing legal distinctiveness, including rights that go beyond what other citizens may legitimately claim.

This apparent paradox of “equal but different” extends beyond the religious, linguistic, social and cultural fields (where minorities also enjoy special legal protection) to territorial and administrative matters.

While few governments are prepared to concede the right of international or “external” self-determination to indigenous peoples, most have accepted the lesser, included right of autonomy or internal self-government. There is an assumption, perhaps, that indigenous peoples are concentrated in small areas, so that their control over their internal affairs therefore need not be a major inconvenience to the country as a whole. There is also a growing awareness that indigenous peoples can potentially solve their own social, economic, health, environmental and development problems for themselves, as long as they are provided with adequate resources and the freedom to develop their own approaches. This is consistent, after all, with the wider reorientation of thinking with regard to development strategy in the United Nations system since the 1970s. A number of countries, including Denmark (Greenland), the United States, Canada, Nicaragua and Panama have experimented with autonomy for indigenous peoples, and the results have almost uniformly been viewed as positive.

The idea of indigenous peoples exercising autonomy within their own small territories seems less threatening than sharing responsibility for governing the entire country. Where there has been a long history of racism, intolerance or marginalization of indigenous peoples, there can be strong opposition to giving indigenous peoples a voice in decisions affecting their non-indigenous neighbours. There are two main practical reasons for taking this additional step, however. One reason is

to ensure respect for the local autonomy of indigenous peoples. The enforcement of national laws and policies will inevitably continue to be a source of potential conflict between national-level officials and indigenous peoples’ own local authorities. Friction can be minimized if indigenous peoples participate at both levels of law-making. Furthermore, a partnership on national issues can highlight the shared concerns and aspirations of indigenous and non-indigenous people in the country. It will help build mutual understanding and, in the long term, a more stable, cooperative working relationship between national leaders and indigenous leaders.

In the United States, for example, where indigenous peoples have enjoyed some degree of local autonomy since the 1930s, the growth of national environmental regulations in the 1970s threatened to create new conflicts with indigenous communities over the use of water, wildlife and minerals. Indigenous communities devised their own conservation programmes, but were frustrated by uncooperative national government agencies and by the risk of being overruled when they disagreed with national policies or plans. The solution was to revise major United States environmental laws. National agencies must now consult indigenous authorities before adopting new policies or plans and, in some cases, they defer to indigenous peoples’ own local plans.

In my opinion, this is what partnership means in the context of the political declarations made at the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro in 1992, and at the official ceremonies for the International Year and International Decades of the World’s Indigenous People. Our goal should neither be the complete independence of

indigenous peoples nor the kind of local autonomy that would lead to their social or political isolation and continuing vulnerability. Most indigenous peoples seek, and the United Nations has thus far encouraged, a hybrid of autonomy and political integration.

In my view, indigenous peoples must be able to participate effectively at all levels in the decisions affecting their destiny, enjoying a large measure of control over their internal affairs, and an equitable sharing of power in national politics.

Indigenous peoples' heritage

In introducing the concept of indigenous heritage, it is useful to recall a poem that was written by the Nahuatl (Aztec) historian Tezozomoc more than four hundred years ago, and later translated into Spanish by the great 20th century Mexican scholar Miguel León-Portilla. Writing just after the Spanish invasion, Tezozomoc recalled an earlier age when the Aztecs were still a young nation. Pursuing a powerful vision revealed in a dream, Aztec elders and teachers traveled together eastward towards the sun. Devastated, the people left behind sang:

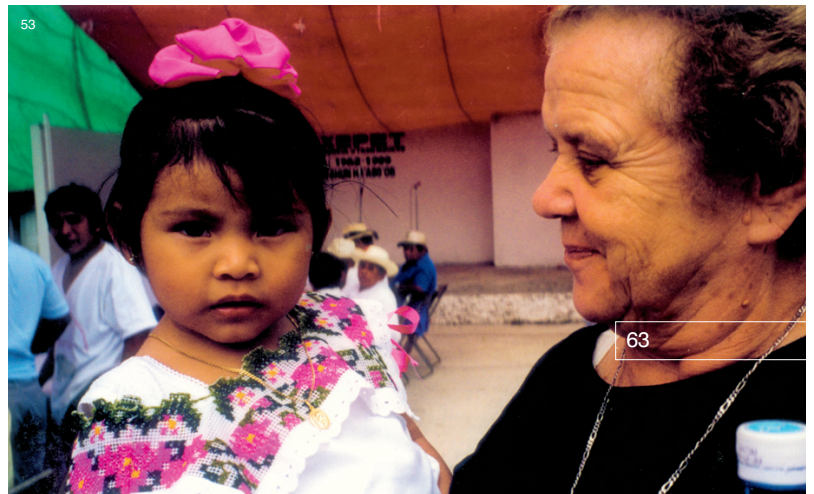
*Will the sun shine, will it dawn?
How will the people move, how will they stand?
How will the earth continue?
Who will govern us?
Who will guide us?
Who will show us the way?
What will be our standard?
What will be our measure?*

*What will be our Pattern?
From where should we begin?
What will be our torch, our light?*

In the midst of their confusion and despair, the Aztec people discovered that four old men had remained behind. With the memories of just these four elders, the Aztecs slowly reconstructed their history, their laws, their calendar and their sciences. And, as they relearned their history, they became a powerful nation.

Tezozomoc told a hopeful story of rediscovery and renewal to his people, who had so recently been crushed and enslaved by Spain. As long as a few fragments of their heritage and history survived in the memories and hearts of their elders, there was hope of recovering what seemed to be lost. Indeed, he tells us, the generation that rediscovers its lost history and spirituality will be even more powerful than its ancestors.

I have learned that a people's heritage lives or dies in their hearts. Centuries of foreign occupation and oppression cannot destroy a people's heritage if they continue to cherish and believe in it. My own country, Greece, survived nearly four hundreds years of foreign rule by the Ottoman Empire, yet it survived and flourished. But a people can lose its heritage in a single generation. People who neither respect nor value their own heritage can lose it—or sell it off—in no time at all. It is futile to hoard heritage in museums and books if children are ashamed of their parents and their grandparents, and only value what they see on television. Strong, healthy and loving families are indispensable to the survival of indigenous cultures.



Among the lessons I have learned are these: power can never completely crush a people that cherishes its heritage; nor can power ever completely liberate a people that have abandoned it.

In a collection of essays on the rise and fall of Eastern European communism, the Czech writer Ivan Klima distinguishes between two kinds of 20th century national liberation struggles: *power versus power*, and *culture versus power*. He argues that power can only exist by creating fear and resentment; power has no soul. Therefore, a liberation struggle based on power will change nothing at all. The integrity of a people's identity and culture, however, can neutralize power by making it look ridiculous. It is quite apparent in my own part of the world, the Balkans, that culture can be absolutely indestructible. Unfortunately, recent events there have also made it readily apparent that powerful governments can use the protection of culture as a pretext for new forms of oppression and colonialism.

Indigenous peoples have been particularly vulnerable to the loss of their heritage as distinct peoples. Often viewed as "backward", they have continually been targets of aggressive policies of cultural assimilation by the state, religious institutions and society. Their arts and knowledge systems have not been valued and much was simply destroyed. Even in countries with legislation to protect historically and culturally important places, the sacred sites of indigenous peoples are often excluded.

Indigenous peoples regard all products of the human mind and heart as interrelated and flowing from the same source: the relationships between the people and their land; their kinship with the other living creatures that share the land; and the invisible spiritual world. "Heritage" is any-

thing that belongs to the distinct identity of a people and is theirs to share, if they wish, with other peoples. It includes all of the things that contemporary international law regards as the creative products of human thought, skill and craftsmanship such as songs, music, dances, literature, artworks, scientific research and knowledge. It also includes legacies from the past and from nature, such as human remains, the natural features of the landscape, and naturally occurring species of plants and animals with which people have long been connected. Indigenous peoples' heritage is ordinarily a collective right associated with particular families, clans, tribes or other kinship groups.

European exploration and colonization led to the rapid appropriation of indigenous peoples' lands by European empires, as well as indigenous peoples' arts and knowledge. European acquisition of indigenous food plants such as maize and potatoes made it possible to feed the growing urban concentrations of labourers needed for Europe's industrialization.

The "Green Revolution" in biotechnology and the demand for new ways to combat illnesses such as cancer and AIDS have led to a renewed and intensified interest in the medical, botanical and ecological knowledge of indigenous peoples. The fact that many indigenous peoples are threatened with extinction has been used as a justification for acquiring their knowledge even more rapidly.

Appropriation of indigenous peoples' heritage continues today in all parts of the world as non-European states expand their economies into regions previously considered remote, inaccessible or worthless: deserts, the Arctic tundra, mountain peaks and rainforests. Ironically, publicity around the victimization of indigenous peoples in these areas has also renewed outside interest

in indigenous arts. Tourism in indigenous areas is growing, along with the commercialization of indigenous art and despoiling of archaeological sites and shrines. There is an urgent need, then, for action that will allow indigenous peoples to regain control over their remaining cultural and intellectual, as well as natural, wealth.

In writing these lines, I was compelled to the conclusion that the distinction between cultural and intellectual property is, from indigenous peoples' viewpoint, an artificial one and not very useful. A song, for example, is not a "commodity", a "good" or a form of "property" but one of the manifestations of an ancient and continuing relationship between the people and their territory. Because it is an expression of a continuing relationship between the particular people and their territory, moreover, it is inconceivable that a song, or any other element of the people's collective identity, could be alienated permanently or completely. For this reason, it is both simpler and more appropriate to refer to the collective "heritage" of each indigenous people rather than make distinctions between "cultural property" and "intellectual property". For example, the *Cultural Heritage Act No. 3501 (1979)* of Ecuador is applicable to everything that indigenous peoples themselves regard as "recurrent and valid means of expression and identification of their culture".

It is not only the ability to possess a distinct heritage, but to share it freely with others that endows each indigenous people with its own dignity and value. The indigenous peoples of the Pacific Northwest of North America are harvesters of the sea. Each clan or community has been associated for centuries with the particular populations (or "runs") of salmon, which return annually to its territory and are viewed as kinfolk. The



dignity and honour of each community depends on its ability to hold feasts and share salmon with others. The ability to share depends on wise management of the ecosystem. So not only are the consumption and trading of salmon a major part of these peoples' heritage; so, too, is the sharing, which would come to an end if their particular runs of salmon disappeared. The songs, stories, designs, arts and ecological wisdom connected with the salmon are all interrelated elements of Pacific Northwest peoples' heritage.

Indeed, indigenous peoples do not view their heritage in terms of "property"—things used for the acquisition of more things—but in terms of community and individual responsibilities. Possession of a song, a story, or medicinal knowledge carries certain responsibilities to show respect to, and maintain a reciprocal relationship with all the human beings, animals, plants and places with which the song, story or medicine is connected. For indigenous peoples, heritage is a bundle of relationships, rather than a bundle of economic rights. The "object" has no meaning outside of the relationship, whether it is a physical object such as a sacred site or ceremonial tool, or something intangible such as a song or story. To sell it is necessarily to bring the relationship to an end.

Indigenous peoples have always had their own laws and dispute resolution procedures for protecting their heritage and determining when and with whom their heritage can be shared. The rules can be complex, and they vary greatly among different indigenous peoples. To catalog all of these rules in detail would be almost impossible; in any case, I believe that each indigenous people must remain free to interpret its own system of laws, as they understand them.

Indigenous scholars nevertheless agree that all indigenous legal systems share some common elements. As I noted earlier, heritage is ordinarily associated with a family, clan, tribe or other kinship group. Only the group as a whole can authorize any sharing of its collective heritage, and consent must be given through specific decision-making procedures that differ depending on the kind of heritage involved (songs, stories, arts, medicine, ecological or other knowledge). In any case, consent is always temporary and revocable: heritage can never be alienated, surrendered or sold, except for conditional use. Sharing therefore creates a perpetual relationship between the givers and the receivers. The givers retain the authority to ensure that knowledge is used properly, and the receivers continue to recognize and repay the gift.

Although heritage is collective, there is usually an individual who can best be described as the custodian or caretaker of each song, story, name, medicine or sacred place. Their responsibilities should not be equated with ownership or "property". Traditional custodians serve as trustees for the interests of the community as a whole and they enjoy their privileges and status in this respect only for so long as they continue to act in the best interests of the community.

Contemporary disputes over indigenous peoples' heritage continue to be varied and numerous. They include the protection and use of sacred sites; recovery of sacred and ceremonial objects; recovery and reburial of human remains collected by archaeologists and museums; ensuring the authenticity of indigenous artworks; recognizing communities' interests in their traditional designs and performing arts; breaches of confidentiality by an-

thropologists and other researchers; issues of privacy surrounding new forms of cultural and ecological tourism; medical research on indigenous peoples and “bio-prospecting” in indigenous peoples’ territories; and, above all, strengthening community control of future research.

Governments, scientists and other scholars, museums and private art collectors, the tourism industry, non-indigenous artists and performers must examine their own role in the appropriation of indigenous heritage. Legislation and court decisions in countries such as the United States and Australia have recognized indigenous peoples’ collective ownership of at least some aspects of their heritage, but much more remains to be done.

Indigenous knowledge and our future

Culture is an endlessly changing mosaic in time and space. Cultural diversity is as necessary for human innovation and creativity as biodiversity is necessary for adaptation and survival in nature. In this sense, cultural diversity forms a part of the common heritage of humanity, and should be recognized and promoted for the benefit of present and future generations (see Article 1 of the UNESCO *Universal Declaration on Cultural Diversity*).

We are beginning to understand that the spectacular diversity in the natural and cultural world and exuberance of life on this planet are rare, if not unique in the universe, the result of a miraculously complex symbiotic evolution of species, behavior and ideas. To an extent that is exceptional for any single species, humans have continued to recreate diversity. With the waning of modern industrial society—which promoted mass production

of standardized people for the purpose of mass production of standardized goods—we see a global resurgence of enthusiasm for human individuality. Diversity is becoming a principle of humanism for the new era.

In words and deeds, the United Nations recognizes that indigenous peoples retain a deep material and spiritual attachment to their lands and cultures while continuing to be tragically vulnerable to destruction. States have not only marginalized indigenous peoples but also accused them of being opposed to “progress”. Predictably, this attitude has led states to commit, or permit repeated onslaughts against, indigenous communities. It is this record of abuse, ethnocide and genocide that some states, NGOs, the United Nations and indigenous peoples themselves are now actively seeking to arrest and redress.

My focus in this book is not how development can help indigenous peoples but rather how profoundly indigenous peoples have enriched the world—and can continue to do so. It is in the self-interest of all of us to support measures that protect and sustain indigenous peoples. Indigenous peoples command an extensive body of knowledge, values, practices and aesthetic expressions that, while comprising their own cultural patrimony, also contribute to the common heritage of humankind, and may reveal a blueprint for our sustainable future. Koichi Matsuura, Director-General of UNESCO, put it very well when he introduced the UNESCO *Universal Declaration on Cultural Diversity* in 2001: “The Declaration aims both to preserve cultural diversity as a living, and thus renewable treasure that must not be perceived as being unchanging heritage but as a process guaranteeing the survival of humanity; and to prevent segregation and fundamentalism.”



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Today's conservatively estimated 375 million indigenous people are spread across all of the earth's eco-regions, from the frigid Arctic Circle to the teeming Amazonian forests. Indigenous cultures encode a staggering diversity of human strategies for physical survival and spiritual fulfillment. The material bases of indigenous peoples also represent an extraordinary longevity, inasmuch as many of them have persisted for millennia. Indeed, the anthropologist Marshall Sahlins famously called indigenous hunting and gathering peoples the "original affluent society", in which consumption is modest, means sufficient and leisure abundant.

The material and social lives of human beings, anthropologists tell us, are mediated by culture. And culture, they explain, is the summation of people's adaptations to particular social and natural contexts that invariably change, exerting pressures on communities to adapt further. It follows that an essential element of human culture is flexibility, which permits humans to adapt at a faster

pace than an exclusively genetic process of adaptation and evolution. Like overly specialized animal or plant species, inflexible or non-adaptive cultures are no longer with us. The human cultures that still remain comprise a precious library that we may consult as we attempt to chart a sustainable tomorrow for all of humankind. Indigenous peoples are the custodians of a very large part of that cultural encyclopedia for the simple reason that other peoples, whether through choice or compulsion, have largely surrendered their patrimony to a homogenizing modernity that threatens to be unsustainable. Indigenous peoples continue to privilege tradition and collectivity over modernity and alienated individualism.

A number of influential anthropologists have helpfully contrasted the distinctive features of what, at the risk of oversimplification, may be called traditional and modern societies.

Claude Lévi-Strauss contrasted the *mythical perspective* of the indigenous peoples he studied in Brazil with the



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scientific worldview of European society. Amazonian peoples seamlessly merged science with myth, rather than compartmentalizing knowledge, feelings and experience as modernity encourages us to do in the name of efficiency. The conceptual models that Amazonian peoples constructed to explain their origins, their differences and how they should behave was consequently holistic but also highly localized, replete with tensions and even contradictions, like life itself. The culture of modern technology and industry, by comparison, promotes a narrowly rationalist and individualist ideology that oversimplifies life and privileges humans over the environment.

The economic anthropologist Karl Polanyi contrasted the ways in which pre- and post-market societies organize the exchange of goods and services. Polanyi classified exchange systems as reciprocal, redistributive and market. "Reciprocal" exchange involves persons of equivalent social standing who maintain ongoing social relationships with each other; over time, their exchange of goods and

services approximates equal value. For example, Kanaka Maoli (indigenous Hawaiian) fisher folk offered a portion of their catch to upland kin or friends who, sooner or later, reciprocated with part of their taro harvest.

"Redistributive" systems of exchange appear in societies that have an institutionalized social hierarchy. Persons of higher standing such as chiefs, kings and presidents have the power to claim a privileged share of labour and products. In turn, they are expected to redistribute some of their wealth in a way that reduces material inequality in society while strengthening their own prestige and power.

"Market" forms of exchange are distinguished by the fact that they neither require nor create enduring social relationships. At least in principle, everyone pays the same price for the same product—usually to a stranger such as a cashier, a vending machine, or even an Internet site. The producer and consumer never meet.

Although all three forms of exchange can be found in most societies today, reciprocal exchange remains the norm in indigenous societies while the market mode is dominant everywhere else. Redistributive exchange increasingly takes the form of taxation by the state. While citizenship can be described as a social relationship, it is impersonal and largely devoid of feelings of intimacy with rulers or bureaucrats. Indigenous societies alone maintain a mode of exchange that continually impresses upon participants the fact that their needs are indissolubly tied to those of others.

The mythological lens and reciprocity of indigenous peoples did not prevent them from developing exhaustive bodies of empirical knowledge that the anthropologist Harold C. Conklin dubbed “ethnoscience”. Conklin found that the indigenous Hanunóo people of the Philippines had at their command a sophisticated taxonomy of more than 2,000 plants and often engaged in impassioned debates regarding the properties of different plant species. At the age of seven, a Hanunóo child could already identify 51 of 75 plants that Conklin showed her, with only two mistakes! Anthropologists have long observed that, while the ethnoscience of subsistence societies undoubtedly serves practical ends, it also generates play and polemics, like knowledge everywhere.

Participants in subsistence economies do not merely hunt and gather the natural diversity of flora and fauna; they actively observe, maintain and even augment the diversity of living resources on which they depend. Their knowledge of species may extend over a vast territory that they explore as seafarers or pastoralists. Their close understanding of their environments may be described as *intimate*, rather than mere local knowledge, and also

reverent by virtue of its incorporation into a mythical vision of the universe that recognizes genealogical relationships between earth, water, plants, animals, humans and spirits. Within that vision, survival depends on keen empiricism as well as a solicitous and emotional kinship with the rest of the universe –a perspective that is shared by many contemporary environmentalists.

It is heartening to me that the academic community has increasingly acknowledged the underlying empirical validity of indigenous knowledge, and encouraged modern science to engage with it. The International Council for Science (ICSU) based in Paris has distinguished between what it terms science, pseudo-science and traditional knowledge. In brief, ICSU characterizes the modern scientific enterprise as segregative (reductionist), rationalist and promoting scrutiny and growth. By contrast, ICSU defines pseudo-science as claims to knowledge based on static dogma, such as “creationist” accounts of the origin of the earth being advanced by some Christian denominations in the United States. Traditional knowledge, on the other hand, is typically a dynamic process, like science, but more holistic and normative, interweaving empirical, spiritual, social and ethical elements when constructing its explanatory narrative.

If modern scientists acknowledge the empirical wealth of traditional knowledge, it is no doubt because they recognize that their own methods of knowledge acquisition overlap with those employed by indigenous peoples: observation, prediction and experimentation. At the same time, the ICSU observes that both science and traditional knowledge are deeply influenced by their cultural milieux, which can pose conceptual possibilities as well as conceptual limitations. Science has



borrowed substantially from indigenous knowledge. Linnaeus is said to have constructed his binomial system of classification of species on the model of taxonomies developed by the indigenous Sami people in his native Sweden. Conversely, there is no reason to suppose that indigenous knowledge cannot (or does not) absorb elements of modern science.

The obstacle to a mutually enhancing exchange between scientific and indigenous knowledge lies less in their incompatible epistemologies than in the unequal power held by the holders of these knowledge systems. Unequal power, to state the obvious, poses real dangers for indigenous peoples. Science that serves the profit motive has already facilitated the appropriation of indigenous knowledge, for example by patenting chemical compounds extracted from the traditional pharmacopoeias of indigenous peoples without their free, prior and informed consent or equitable profit-sharing arrangements. Given that the industrialized world will probably continue to enjoy greater political power than indigenous knowledge holders, inter-governmental and non-governmental organizations have begun to develop rules for the equitable participation of indigenous peoples in research that include full disclosure, free and informed consent, confidentiality (privacy) and genuine benefit-sharing. The exchange of knowledge must be fair and mutually enriching, not one-sidedly exploitative or destructive.

For several decades, indigenous peoples have been actively seeking a partnership with states and the United Nations. A partnership between scientists and indigenous knowledge holders should also be possible. In 2002, UNESCO launched an initiative “Local and Indigenous Knowledge Systems” (LINKS) to encourage such a part-

nership. LINKS sponsors collaborative efforts to explain, record and preserve cultural and linguistic diversity, traditional or indigenous systems of resource use and land tenure, and local taxonomies of the natural world.

A partnership between scientists and indigenous peoples will be of enormous benefit to humanity. It has been said that three-quarters of 120 chemical compounds in widespread medicinal use today had already been used by indigenous peoples for similar purposes. Scientists have thus far isolated bioactive compounds from barely 1 percent of the plant species on earth, which may number as many as 750,000. The current commercial value of the medicinal plants already identified on the basis of traditional knowledge is estimated at US\$43 billion.

Traditional knowledge holders dispense primary health care to an impressive 80 percent of the world’s population. Small-scale traditional or indigenous farmers make up 70-80 percent of the food producers in Sub-Saharan Africa, and artisanal fisherfolk account for 90 percent of the global fisheries workforce. The Director of LINKS has noted that pastoral and peasant communities using traditional modes of production have become the major custodians of the world’s crop and domestic animal diversity.

UNESCO experts have urged that local knowledge be heeded in development projects. Projects designed from outside—unfortunately still the norm—typically fail, at least in part from ignorance, if not also disdain of local knowledge. New approaches, such as Participatory Rural Appraisal (PRA), are part of a growing shift in rural development strategies from technology transfer towards energizing existing local expertise.



The 1992 *Convention on Biological Diversity* helped open the way for these changes. The Convention requires signatories to “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional life-styles relevant for the conservation and sustainable use of biological diversity”. The link between cultural and biological diversity is key to understanding why indigenous peoples can make a substantial contribution to humanity in the field of development. For millennia, indigenous peoples devised successful strategies for their survival, reproduction and well-being under a wide variety of conditions—whereas our “modern” global economy, based on unlimited consumption, is causing the earth and its atmosphere to disintegrate before our eyes, with dire consequences for human livelihoods and our collective survival. We have no choice but to

retreat from this economically driven self-destruction. To reorient the global consumerist economy, we must turn to those who still know and live the alternatives.

We must act quickly. The knowledge of indigenous peoples could become wholly fragmented, even lost, if the world continues to tolerate its plunder. At present, the international legal system does little to protect the creativity embodied in the collective cultural heritage of indigenous peoples. Instead, it encourages the marketing of ideas and innovations by conferring exclusive commercial rights on the producers of new products. In a global industrial economy, this regime increasingly favours not so much individual creativity as production capacity, which has increasingly come to reside in corporations that purchase (or discover) “raw” creativity and transform it into commodities for sale on the world market. ○

CHAPTER 3



INDIGENOUS CULTURES AND GLOBALIZATION

Indigenous peoples today stand at the crossroads of globalization. In many ways, indigenous peoples challenge the fundamental assumptions of globalization. They do not accept the assumption that humanity will benefit from the construction of a world culture of consumerism.

From their own tragic experience over the past 500 years, indigenous peoples are acutely aware that consumer societies grow and prosper at the expense of other peoples and the environment. Many of the indigenous people I have met are opposed to the notion of “sustainable development”, which they regard as code for the illusory goal of continuous growth in human consumption. We must not forget that the United Nations Conference on Environment and Development (the 1992 “Earth Summit”) was unable to agree on any significant transfer of wealth from the North to the South because such a transfer would require higher prices and a reduction in levels of consumption among the rich countries. Instead, the Earth Summit promised to boost growth and consumption in the South without curtailing consumption patterns in the North.

Indigenous peoples simply do not accept the assumption that a consumerist global economy is good for humanity. Assessing the economy from the perspective of those who have suffered its severest exactions

and dislocations, they have begun to act at the national and international levels to challenge accepted notions. However, while a growing number of people sympathize with the critical viewpoint of indigenous activists, many others enthusiastically embrace the globalization of laissez-faire capitalism—or are simply no longer able to imagine other alternatives. A small segment of humanity derives considerable wealth from the present system, and so advocates for its unmitigated propagation throughout the world, portraying the current consumerist extravaganza as the embodiment of inevitability and progress, and depicting subsistence traditions of frugality as residual expressions of nostalgia and backwardness. In reality, of course, the issues at stake are far more complicated than can be summed up in the words “progress” and “backwardness”.

While the importance of cultural and biological diversity for our species has been recognized in principle by the international community, most of us are already participants in the homogenizing global economy that urges us to pursue the same commodities, as much and as often as possible, at the expense of the environment. As resources such as water, fuel and food grow scarcer for much of the world’s population, can we bring ourselves to conserve? Indigenous cultures are more “economical” than today’s global consumerist culture, typically maintaining restraining mechanisms, such as ta-

boos and totemic relationships, which regulate access to resources that might otherwise be depleted.

The global economy evades the feedback mechanisms generally at work in indigenous communities. When a modern production plant poisons a river, for example, the global consumers of its products are generally unaware of the problem. Consequently, they neither confront the producer nor do they restrain their consumption of the products. Of this artificial separation of actions and their consequences, Canadian environmentalist David Suzuki says we are living in a “shattered world”. In stark contrast, indigenous societies are densely interconnected worlds. Actions generate immediate and intimate social consequences that compel people to take restorative action. The inevitability of consequences is both a physical fact and a moral certainty.

Culture and sustainability

Every indigenous people treasures its own territory as unique. It is the only one they have; the only one redolent of their history; the only one that they can pass on to their children, grandchildren and future generations. This conviction compels them to the conclusion that they must care for their territories so that their territories can continue to care for them. We might call this an ethic of reciprocal sustainability. The Haudenosaunee of North America urge one another always to consider the consequences of their actions for their descendants unto the seventh generation!

Because of their attention to scarcity, to territory and to sustainability, indigenous cultures do not tolerate the

exaggerated individual materialism that characterizes the global marketplace. While indigenous cultures value individuality and personal freedom, they generally subordinate acquisitive and competitive individualism to the survival and harmony of the collective, which includes past and future generations, and the entire world of beings that is encompassed in their myths.

The values that tend to characterize indigenous cultures—diversity, territoriality, sustainability and collectivity—are also found in the emerging concept of *human security* that has begun to be seen within United Nations. Respect for cultural differences, valuing local knowledge, awareness that development must be sustainable and recognition that security (including food security) is illusory when it is not collective: on the global plane, these are nascent norms of the 21st century conceived, one hopes, in time to curtail the destructiveness that was so mindlessly unleashed in preceding centuries. An appreciation of biophysical limits, and a spirit of caretaking, will perhaps now displace the prior vision of a boundless world of riches awaiting unrestrained appropriation. With luck, we shall understand that all humanity is indigenous to the earth, and learn to preserve the planet in the same way that indigenous peoples struggle to preserve their parts of this universal home.

Protection is not antithetical to development, provided that the goal of development is understood not as spiraling consumption or the domination of nature but as greater human security from want and fear. The forebears of today’s indigenous peoples were not wealthy in things but they were secure in their livelihoods and shared cultures. Plunder and displacement have made

their descendants so poor that many can no longer provide for themselves.

There are two lessons for development agencies here. Their work may need to focus more on preventing harmful change and encouraging only change that appreciates and respects the logic of indigenous peoples' own adaptive strategies to their varied environments. Moreover, indigenous peoples themselves are the real experts on what is sustainable in their environments—not outside specialists. Of course, outside specialists may add value to a development project that an indigenous community desires and controls, but experts who fail to heed the depth and complexity of indigenous knowledge do more harm than good.

World trade and local knowledge

In the wake of the Earth Summit, the political collapse of the Soviet Union and the creation of the World Trade Organization, there has been an enormous increase in the level of private foreign investment in developing countries (at least, outside of Africa). In the Andes of South America and in Southeast Asia, where thousands of the world's indigenous peoples live, private foreign investment has increased by as much as 10,000 percent according to statistics published by the World Bank and the International Monetary Fund. Certainly, this new money is making some people in the North—and in the South—very wealthy. But this growth has been achieved at the expense of many important and highly diverse ecosystems, and of the indigenous peoples who live within them. Even national parks, biosphere reserves

and the lands set aside for indigenous peoples have been opened to mining and logging—and not only in Latin America and Asia.

We seem to have learned nothing from the human and ecological tragedies caused by the misguided development policies of the 1960s and 1970s. Large-scale development projects such as hydroelectric dams, transmigration programmes and the so-called "Green Revolution" have not just displaced millions of people, leveled rainforests, emptied rivers and exterminated much of the world's biological diversity; these projects have also set ethnic and social conflicts into motion that may haunt us for generations. The spiral of violence in Indonesia and East Timor, for example, was directly attributable to international development policies that placed growth, trade and consumerism ahead of justice.

While indigenous peoples have continued to be victims of globalization, the very existence of the world indigenous movement is a product of globalization, especially in the field of information technology. Air travel, telephone, facsimile and now the Internet have helped link indigenous peoples worldwide, increase their visibility and amplify their collective voices. In Canada there is an Aboriginal Peoples' Television Network; in Guyana, indigenous peoples have mapped their ancestral territories and asserted land claims using the Global Positioning System and remote-sensing satellite technology. Indigenous peoples worldwide are using the globalization of the communication of ideas to combat the globalization of reckless consumption.

Of course, globalization is not a new phenomenon. It began more than 500 years ago, when Western Europeans began to extend their military power and systems



of trade to other continents. It is as old as the law of nations, which emerged as a framework for managing the globalizing of power and trade—in particular, for managing the conflicts that frequently erupted between competing states. As an international lawyer, I share with my colleagues a heavy historical responsibility for managing the next stage of globalization better than the previous ones. In particular, I believe that we must continue to insist that the rules of the international marketplace be not only procedurally neutral but also substantively fair. If it is true that the world is rapidly becoming a global village, then we have more reason and responsibility than ever to treat others with respect and reciprocal regard.

The globalization of trade and communications presents opportunities as well as challenges for indigenous peoples, as indeed it does for all of us. Globalization is creating two potentially opposing forces: the global marketing of goods, and the global marketing of ideas. Indigenous peoples have already fully appreciated the possibility of using global ideas to combat global consumerism. Indigenous peoples are rich in ideas and stories; it has always been their principal form of capital. As long as the cost of access to global communication channels such as the Internet continues to fall, the influence of creative individuals and creative societies may grow. The main beneficiaries of globalization will not necessarily be those people and cultures with the greatest stocks of physical wealth, but those with the most compelling stories.

It should be underlined that this optimistic forecast depends entirely on growing public access to communications technologies that are equitable and affordable to

all. Communication media must be supported and protected as global public utilities, or else the balance of global power will shift back to the countries, companies and individuals with the most money and ammunition.

Hence the “digital divide” debate within the international community. Developing countries, as well as impoverished regions and minorities within industrialized countries, have argued that the Internet has become a basic necessity that should be accessible and affordable to all. They reason that access to the Internet can boost the educational and skills levels of their populations, and that lack of Internet access is a competitive disadvantage for countries that already suffer severe poverty and indebtedness. I would like to suggest that, for indigenous peoples, the major problem of the future is not gaining access to the Internet but keeping their most private and sacred knowledge *off* the Internet!

Globalization presents us with a profound contradiction, however. It is creating a global market for the dissemination of fresh ideas and new voices, while making it easier for one voice to drown out all the others. It is providing each of us with fingertip access to the whole range of human cultural diversity while at the same time dissolving all cultures into a single supermarket with standard brands. It is making it possible for even the smallest society to earn a livelihood by selling its ideas rather than selling its lands or forests. But it is also threatening the confidentiality of indigenous peoples’ most private and sacred knowledge.

Anyone who has been following the legal battle over free distribution of recorded music over the Internet is aware that the globalization of communication has made it easier than ever for indigenous peoples’ sacred



and special knowledge to be appropriated illicitly. At the touch of a button, volumes of confidential material can be placed irreversibly in the free global public domain—the global commons—from where it can be downloaded, transformed and commercially exploited by others.

Some international legal scholars have suggested that UN agencies should construct a global database of indigenous peoples' knowledge to pre-empt adverse patent or copyright claims. Others contend that indigenous peoples have legal standing to bring "prior art" challenges against patents whether or not they previously disclosed the contents of their knowledge. In any case, a global knowledge database would not overcome the most important obstacle that indigenous peoples currently face when they discover an infringement of their traditional knowledge: they cannot secure or afford adequate legal representation in the courts, particularly if the dispute is transnational. If the World Bank, the European Patent Office and the World Intellectual Property Organization (WIPO) are serious about supporting the legal and substantive interests of indigenous peoples, I think they should help pay for legal services rather than build databases.

There is another kind of initiative gaining support in the international community that I believe should be studied further: the attempt to create, through diplomatic negotiations, a new category of intellectual property for indigenous knowledge. Work on this approach is proceeding under the auspices of the Parties to the *Convention on Biological Diversity* and, separately under the auspices of the United Nations Food and Agriculture Organization (FAO), in connection with revising the *International Undertaking on Plant and Genetic Resources*.

This approach was attempted once before, nearly 35 years ago. I refer to the 1971 amendment to the *Convention for the Protection of Literary and Artistic Works* (the Berne Convention), which authorized states to adopt *sui generis* measures for the protection of national "folklore", and to the Model Law on folklore subsequently prepared by WIPO and UNESCO. Many scholars have already criticized specific elements of the model law, such as its definition of "folklore", as well as its treatment of folklore as property of the state, rather than of peoples or communities. In any event, it has become, *de facto*, a strictly regional (African) instrument. As the distinguished professor Paul Kuruk of Ghana wrote in *The American University Law Review* in 1998, laws for the protection of national folklore are almost exclusively found in Africa, and African states are frustrated because it is nearly impossible for them to enforce such laws in the industrialized countries where most of the commercial producers and consumers of folklore actually live and work.

Parties to both the *Convention on Biodiversity* and the *International Undertaking* would do well to reflect carefully on the fate of the model folklore provisions. Let us assume, for the sake of argument, that WIPO, the FAO, and other United Nations agencies eventually succeed in adopting a universal definition of indigenous knowledge; they agree that states should adopt national laws for the protection of indigenous knowledge and confirm that national laws for the *sui generis* protection of indigenous knowledge are compatible with the Trade-Related Aspects of Intellectual Property (TRIPs) Agreement. What would be the consequences for indigenous peoples? First of all, indigenous peoples would need to convince national governments to adopt appropriate

national legislation. That will certainly take many years; at present, such laws exist (to the best of my knowledge) only in Costa Rica, Peru, and the Philippines, although it is gratifying to note that the Andean Pact countries as a group are also committed to the adoption of similar legislation.

Moreover, 95 percent of the world's indigenous peoples live in the developing countries, and legislation enacted by these countries will be insufficient, by itself, to prevent the piracy of indigenous knowledge by researchers and corporations located in industrialized countries.

Defining indigenous peoples' cultural and intellectual property is not the real issue; nor is any lack of agreement that indigenous peoples' heritage should be protected by law like other property. The real issue is enforcement, since disputes routinely cross international frontiers, and generally involve parties with vastly disproportionate levels of power, information and financial resources. Suppose, for example, that a German university professor obtains information about a medicinal plant from an indigenous healer in Brazil, and subsequently obtains a patent or copyright in Germany. How will indigenous people in Brazil learn about this infringement? Can they afford to take the necessary legal action in Germany? Or rely on the Brazilian government to represent their interests? And assuming that there is any relevant Brazilian legislation, will German courts enforce it? From a practical viewpoint, these are very serious problems that the international community has thus far failed to address.

As I indicated earlier, the Model Law regards folklore as state property, not as indigenous peoples' prop-

erty. Not only does this mean that indigenous peoples must rely on state officials to prevent infringements and to give them their fair share of any royalties or compensation,; it also means that the state determines, through legislation, the standards and procedures under which indigenous peoples may use, learn, and teach their own intellectual heritage. The same state-centered philosophy characterizes the *Convention on Biological Diversity* as well as the proposed revisions to the *International Undertaking*. In fact, many states parties to the *Convention on Biological Diversity* have adopted access- and benefit-sharing laws that are very similar to the model folklore provisions, insofar as the state retains the authority to grant licenses for research, access, and use affecting indigenous peoples in their ancestral territories.

I find this approach troublesome. In my view, efforts by states and intergovernmental bodies to define indigenous peoples' rights and responsibilities regarding their own heritage are contrary to the principle of indigenous self-determination.

In my UN study on "the protection of the heritage of indigenous peoples", I proposed draft *Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples* that emphasize the authority of indigenous peoples themselves to license or veto research, and affirm that customary law is the ultimate determinant of rights and responsibilities in relation to indigenous cultural and intellectual heritage. My *Principles and Guidelines* were revised and supplemented by a UN seminar organized in Geneva, under my chairmanship, in 2000. The report of the seminar was submitted to the UN Commission on Human Rights for adoption; unfortunately, at the time of its replacement by the Human



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Rights Council, the Commission had not taken any action on this important instrument.

Meanwhile, WIPO has undertaken a study of customary intellectual property laws that, I believe, reflects a more promising direction for future international action than attempts to negotiate special substantive standards applicable to all indigenous peoples.

Public and private actors

In connection with the issue of enforcement, which I believe merits the particular attention of international lawyers who anticipate representing the interests of indigenous communities, I would like to make the following comments. Thus far, our collective efforts to advance the rights and interests of indigenous peoples have focused on standard setting in the field of public



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international law. We have appealed to the community of states to respect and protect the indigenous nations and peoples that live within their borders. In the fields of cultural protection and biopiracy, however, the key actors are not states, but private entities such as universities, museums, and business corporations that are generally headquartered in countries other than the ones where their activities adversely impact on indigenous peoples.

Meanwhile, the underlying consensus-based and state-centred legal paradigm of the UN system is gradually yielding to a new paradigm, represented in different ways by the World Trade Organization (WTO) and the International Criminal Court (ICC). Like its predecessor, the League of Nations, the United Nations evolved from particular historical conditions: the disintegration of empires and the growth of a much larger, more diverse system of states. Respect for the sovereign

equality and independence of states was axiomatic in both the Covenant of the League and the Charter of the United Nations.

We now live in a more complex political reality: a layer cake of states, regional and international inter-governmental organizations and –increasingly– federal divisions of power within states. We also live in a world in which private entities such as global corporations, private foundations and even NGOs are larger than many states, and enjoy increasingly freer mobility. The old principles of sovereign equality and independence are no longer consistent with the world as it is. And the gap between theory and reality will continue to grow wider.

This is particularly evident in the growth since 1945 of international compulsory jurisdiction. Although the UN Charter obliges Member States to obey international law, including relevant judgements of the International Court of Justice, it took more than 30 years to vindicate the authority of UN bodies to make statements concerning abuses of human rights and other matters, which that states insisted were strictly matters of internal sovereignty. The UN system proper still lacks any meaningful enforcement machinery short of military intervention, which is plainly a response of last resort in the most extreme cases. With the establishment of the WTO dispute settlement mechanism in 1994, however, we have something a little more like an international court that can grant effective remedies to states and industries. Of course, the competence of the WTO system is limited to trade, and standing to bring an action is limited to states. The Appellate Body of the WTO has nevertheless authorized consideration of “third-party

submissions” by NGOs. And the proposed Multilateral Agreement on Investment is still under diplomatic consideration; it would give investors standing to bring trade actions against states. The North American Free Trade Agreement (NAFTA) already contains such a provision. In principle we should welcome this trend and insist that standing be available to a broad range of interested non-state parties, including indigenous peoples.

While the WTO dispute-resolution mechanism is opening the door to NGO participation, the International Criminal Court is exploring the individual responsibility and liability of non-state actors, at least within the broad and still poorly defined field of “crimes against humanity”. It is a matter of some disappointment to me that the persistent crimes of some states and corporations against indigenous peoples, such as the physical destruction of the ecosystems upon which they depend for their livelihoods, or forced assimilation, were not defined as “crimes against humanity” by the Rome Statute of the ICC.

Of course, we must not place our confidence uncritically in every new international tribunal. The strongest new legal system to emerge is unquestionably that of the WTO, but it is clear that rich countries are generally the plaintiffs, and also have the economic power to pay fines and avoid complying with the spirit of WTO panel recommendations. Similarly, the ICC and earlier country-specific war crimes tribunals have no effective jurisdiction over large states with strong armies; they must be content for now with punishing relatively weak states that have lost wars. The message to abusers of human rights is not that they will pay for their crimes,

but that they must struggle for more power with greater ruthlessness to escape the Court's jurisdiction.

With freedom comes responsibility; and with the greater freedom of action of private entities such as corporations and NGOs must come greater direct legal responsibility for their actions. The ICC has taken a preliminary symbolic step in this direction, but it has been justly accused of selectivity and a tendency to focus on low-level agents acting for politicians, generals and business leaders who profit the most from repression and civil strife. These facts undermine the credibility of the new generation of international adjudicative bodies. They must think more strategically, for in the long term, and demonstrate their universality, independence, and fairness like any of the emerging national judicial systems in transitional states. A new, more robust international legal system must be for everyone, and not just for rich states and their industries.

The rule of law is conducive to justice, legal philosophers believe, because it is *consistent* and does not discriminate between persons.

But facially neutral rules of law can still be unjust and exploitative—even viciously repressive of particular groups in society. We must not fool ourselves into thinking that a political majority is incapable of using the rule of law to its own selfish advantage, both at the national level and at the international level. Without explicit protection for vulnerable groups such as indigenous peoples, and, even more crucially, guarantees of genuine access to the judicial and political process for them, new national and international legal regimes will simply reinforce existing inequalities and injustices.



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New international tribunals cannot hope to secure credibility unless the same principles of individual responsibility and accountability apply to rich countries, powerful business corporations and—I wish to stress this point—to inter-governmental organizations themselves. As the UN undertakes a growing number of peace-building missions, it must assume more direct liability for its own actions. There is a strange philosophy of impunity evolving around UN missions that recalls the arrogance of the former European empires, an arrogance based upon claiming an absolute mandate to transform the subject society, without any accountability for the results.

My experiences in the United Nations system, over more than 35 years, have made me hopeful, but very skeptical. I am hopeful that we are moving closer to “hard” international law, by which I mean law that is truly enforceable. I remain unconvinced, however, that we are moving towards an international legal regime that is truly equitable and truly just. States—and here I mean the wealthiest and most powerful states—remain in control of the machinery for the time being. Corporations may be gaining in that regard as well. Poor states, communities, and individuals largely remain outside the gates.

The alternative to struggling to open the gates of public international legal processes to wider participation is, I suggest, to strengthening private international law.

During the 45 years of the Cold War, international lawyers seeking social justice assumed that most states had ineffective or corrupt judicial systems. Private in-

ternational law operated effectively only within a small sub-set of UN Member States. Human rights and environmental activists compensated for this by struggling to establish effective international adjudicative machinery. I would like to suggest that the conditions under which social activists have planned their work since 1945 are changing, and that it is time to shift our energy and attention towards using the international jurisdiction of national courts. The globalization of the rule of law depends, first and foremost, on the quality of national legal systems and cooperative relationships between the judicial systems of neighboring states. Only by this means will we break down the boundaries that have existed between public and private international law, and develop a world legal regime in which international standards are truly enforceable.

In the United States, there have been a number of interesting cases since the 1970s involving transboundary tort liability. Recent decisions not only deal with classic human rights issues such as torture and forced labour but also the destructive mining of indigenous peoples’ territories. The defendants are individuals and corporations: precisely the kinds of non-state actors that the International Criminal Court should prosecute, but, realistically, cannot.

The fate of the *Convention for the Suppression and Punishment of the Crime of Genocide* serves as a sobering example. It has failed, on the whole, because most national courts did not apply it. The same could be said of nearly every international convention in the fields of human

rights and humanitarian law. The standards exist, states have ratified them, but national courts are unwilling or unable to enforce them in private legal actions.

In the final analysis, then, the fate of international law will depend on the growth of competent, consistent, and effective national court systems – a culture of international judicial courage and neutrality, in an international political environment of clear respect for the law.

If we are to secure universal respect for the principle that indigenous peoples are the owners of their own knowledge and cultural heritage, we need more than a strong international consensus; indeed, continued efforts to define and codify the nature of indigenous peoples' intellectual property rights would be counterproductive, and incompatible with these peoples' right to self-determination. The crucial missing elements –the challenges to which I believe we should direct our creative energy as lawyers in our countries– are 1) strengthening the transboundary jurisdiction of national courts to enforce private international law; and 2) securing international respect for the customary intellectual property laws of indigenous peoples, as a matter of choice-of-laws. This will achieve not only protection for indigenous peoples, but also for the whole international community. ○



CHAPTER 4

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THE UNITED NATIONS AND THE ENVIRONMENT

The lives of indigenous peoples are intimately connected with their environment. They continue to assert their rights to protect, as well as use, their territories in the face of large-scale development projects such as mining, logging, and energy production. National development activities have often caused extensive and irreversible environmental damage, and it this has been borne mainly by indigenous peoples.

Indigenous peoples have accordingly played a central role in the international environmental movement, sometimes in cooperation with environmentalists but often in conflict with them.

The UN on “the environment”

The watershed year for the United Nations was 1972, when the United Nations Conference on the Human Environment was convened in Stockholm. The *Stockholm Declaration* adopted by the 1972 Conference, states, as its Principle 1, that humanity “has the fundamental right ... to adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being”. The same year, the UN established the United Nations Environment Programme (UNEP).

Fifteen years later, the World Commission on Environment and Development published its report, *Our*

Common Future, also known as the Brundtland Report. Although best known for introducing the concept of “sustainable development”, *Our Common Future* also highlighted the concerns of indigenous peoples. After debating the Brundtland Report in 1989, the UN General Assembly decided to convene the United Nations Conference on Environment and Development, which completed its work at in Rio de Janeiro, Brazil, in June 1992: the “Earth Summit”.

Three important instruments were adopted at the Earth Summit: the *Rio Declaration on Environment and Development*; *Agenda 21*, an international programme of action for sustainable development; and a statement of principles for the sustainable development of forests. Two provisions of the *Rio Declaration* have are of particular relevance for indigenous peoples. Principle 10 recognizes the general link between human rights and environmental protection, albeit in procedural terms:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making

processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Hence *broad public participation* in decision-making is one of the fundamental conditions for achieving sustainable development. It includes everyone's right to participate in environmental impact assessments and other decisions that potentially affect their communities. It also includes access to information held by national authorities, such as information on products and activities that may have an adverse significant adverse impact on the environment, and information on environmental protection measures.

Of equally great significance is Principle 22 of the *Rio Declaration*, which states applies Principle 10 explicitly to indigenous peoples:

Indigenous peoples and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

The requirement of grassroots participation—and the participation of indigenous peoples in particular—is reiterated throughout the pages of *Agenda 21*. Chapter 23 of *Agenda 21* identifies “major groups” in society whose

full participation is essential for sustainable development: women, youth, indigenous and local populations, NGOs, local authorities, workers, business and industry, scientists, and farmers. Section 3 of chapter 23 requires that policies and rules for participation in the work of the United Nations must apply equally to all major groups. Section 8(B) calls upon governments to establish judicial and administrative procedures to protect the environment, and make them accessible to all individuals, groups and organizations with recognized legal interests in the environment, including indigenous peoples.

Chapter 26 of *Agenda 21*, “Recognizing and strengthening the role of indigenous people and their communities”, lists a number of objectives for governments and intergovernmental organizations, to be addressed in “full partnership with indigenous peoples”, including:

- Adoption or strengthening of appropriate policies and/or legal instruments at the national level;
- Recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate;
- Recognition of their values, traditional knowledge and resource management practices with a view to promoting environmentally sound and sustainable development;
- Recognition that traditional and direct dependence on renewable resources and ecosystems, including sustainable harvesting, continues to be essential to the cultural, economic and physical

well-being of indigenous people and their communities;

- Development and strengthening of national dispute-resolution arrangements in relation to settlement of land and resource-management concerns;
- Support for alternative environmentally sound means of production to ensure a range of choices of how to improve their quality of life so that they can effectively participate in sustainable development;
- Enhancement of capacity-building for indigenous communities, based on the adaptation and exchange of traditional experience, knowledge and resource-management practices, to ensure their sustainable development;

Chapter 26 also underscores the importance of “active participation of indigenous people and their communities in the national formulation of policies, laws and programmes relating to resource management and other development processes that may affect them, and their initiation of proposals for such policies and programmes”, as well as the “involvement of indigenous people and their communities at the national and local levels in resource management and conservation strategies”—Including *Agenda 21* itself.

Furthermore, “Some indigenous people and their communities may require, in accordance with national legislation, greater control over their lands, self-management of their resources, participation in development decisions affecting them, including, where appropriate, participation in the establishment or management of protected areas.”





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The United Nations Development Programme (UNDP), as the UN's largest aid donor and a managing partner in the new Global Environment Facility (GEF), responded to *Agenda 21* by funding regional meetings of indigenous peoples and international agencies to explore development needs. UNDP also planned to open a special "window" to fund projects on traditional ecological and medicinal knowledge.

Similarly, the UN Economic and Social Council (ECOSOC) directed all UN agencies to ensure that technical assistance financed or provided by them is compatible with international instruments and standards applicable to indigenous peoples, and, for this purpose, the ECOSOC decided to encourage greater efforts to coordinate the work of different parts of the UN system as well as greater participation of indigenous peoples in the planning and implementation of UN projects affecting them. This reinforced the trend towards recognizing a special procedural status for indigenous peoples within the UN system.



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The Sub-Commission entrusted one of its members, Fatma Zora Ksentini of Algeria, with a study on human rights and the environment. Her final report proposed a comprehensive set of "Principles on Human Rights and the Environment". Principle 14 refers specifically to indigenous peoples' right to control their lands, territories and natural resources, and to maintain their traditional way of life. It reaffirms that indigenous peoples have the right to protection against from any action or course of conduct that may result in the destruction or degradation of their territories, including land, air, water, sea-ice, wildlife and other resources. Ksentini's principles were transmitted to the Commission on Human Rights in 1994, but the Commission, at the time of its dissolution, had taken no action on them.

Pursuant to Commission decision 2001/111, however, the United Nations High Commissioner for Human Rights and the Executive Director of UNEP jointly organized an *Expert Seminar on Human Rights and the Environment* in January 2002 to review progress since



the Earth Summit. The seminar unanimously reaffirmed the close connection between the protection of human rights and environmental protection, in the context of sustainable development. Its conclusions reflected a growing conceptual convergence between what were previously regarded as distinct fields of international concern and responsibility.

At its second session, held in May 2003 session, the Permanent Forum on Indigenous Issues focused its attention on the environment with special presentations by UNEP and by the Secretariat of the *Convention on Biological Diversity*. Reference was made to the relevant provisions of the Convention on Biological Diversity, and to the need to conduct assessments of the likely cultural, environmental and social impacts of proposed development activities on the sacred sites, waters and lands traditionally occupied by indigenous peoples. Other issues raised were the problems caused by desertification and deforestation; the commercial exploitation of indigenous medicinal plants; the need for enhanced protection of traditional knowledge systems; and the war crimes provision of the Rome Statute of the International Criminal Court, which includes military actions resulting in “widespread, long-term, and severe damage to the natural environment, which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated”.

The rights to life and health

The right to life, broadly writ, and the right to health constitute the *ratio legis* of international human rights

law. All persons and all groups of people, in particular vulnerable groups such as indigenous peoples and minorities, have an inherent right to life. Under international human rights instruments, the assertion of the inherent right to life of every person is accompanied by an assertion of the legal protection of that basic human right and of the negative obligation on states to refrain from arbitrarily depriving anyone of his or her life. This is counterbalanced by a positive obligation to take all appropriate measures to protect and preserve human life. In this respect, some members of the UN Human Rights Committee have expressed the view that Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR) requires governments to take positive measures to ensure the right to life: that is, the provision of resources such as food, land, health care, and environmental integrity.

The right to a healthy environment is a necessary corollary to the right to life. Therefore, in my view, the obligations of the state include not only taking effective legislative and administrative measures to protect the life and survival of all persons and groups of persons; but also avoiding serious environmental hazards or risks to life; and establishing monitoring and early warning systems to detect serious hazards or risks, and urgent action to deal with those threats.

The right to life is the link between the fields of international human rights law and environmental law. The *Universal Declaration of Human Rights* and, as we have seen, the *Stockholm Declaration* and the *Rio Declaration* stressed the relationship between human rights, the environment, and sustainable development. Indeed, a number of principles enshrined in the UN’s 1948 *Uni-*

versal Declaration of Human Rights have significant environmental dimensions: not only the right to life, but also the right to health, to safe and healthy working conditions, to adequate housing, and to food.

The environmental dimension of human rights includes not only the rights to life, health, livelihoods and culture, but also encompasses the right to have access to information about the environment; the right to express opinions about the environment; the right to environmental education; the right to associate peacefully with others for the purpose of protecting the environment; the right to participate in effectively in decisions affecting the environment; and the right to administrative or judicial redress for violations of protected rights.

At the same time, it should be obvious that no human rights can be realized in a degraded or polluted environment. Many UN -system human rights treaties include environmental rights, such as the *Convention on the Rights of the Child*; the *International Covenant on Economic, Social and Cultural Rights*; and, with particular reference to indigenous peoples, *ILO Convention No. 169*.

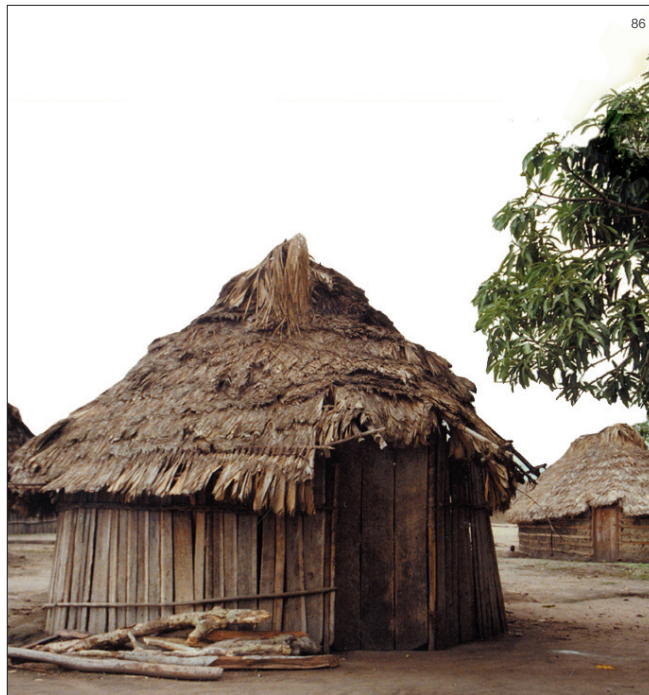
The Yanomami case

The international environmental movement has focused much of its attention on fragile ecosystems such as deserts, the Arctic tundra, and tropical rainforests. These ecosystems are home to many of the world's remaining indigenous peoples, and their protection is necessary for the physical and cultural survival of their indigenous inhabitants. It is almost impossible to separate conservation of these important habitats from the

human rights and sustainable development of indigenous peoples. As affirmed by the Earth Summit, indigenous peoples possess profound and irreplaceable knowledge of the ecosystems in which they live, based on countless years of direct observations. Indigenous peoples' knowledge is especially valuable in regions that have already been disturbed by settlers or industry, where only the original inhabitants can remember the earlier character of the land and wildlife. Indigenous peoples can, and must, play a role "on the ground" in all efforts to understand, protect and sustainably utilize their fragile homelands.

The well-publicized case of the Yanomami in Brazil, to which I referred in Chapter 1, illustrates the convergence of the human rights of indigenous peoples and the protection of environmental interests.

The Yanomami were one of the most numerous, and best-known forest-dwelling peoples in South America. Their home is among the hills, along the border between Brazil and Venezuela. Yanomami local groups generally consist of a single cone-shaped multi-family house (eastern and western Yanomami) or a village composed of rectangular houses (north and north-eastern Yanomami). Each collective house or village considers itself an autonomous economic and political entity (*kami theri yamaki*, "we co-residents") and its members prefer to marry inside this community of kin with a cross-cousin—that is, the son or daughter of a maternal uncle or paternal aunt. This type of marriage, repeated between the families in a local group from generation to generation, makes the Yanomami house or village a dense mesh of kinship bonds. Local groups also maintain a network of relations of matrimonial, ceremonial and



economic exchange with other nearby groups, considered allies in opposition to other multi-community groupings of the same nature. These groupings partially overlap to form a complex socio-political nexus, which links the totality of the Yanomami collective houses and villages from one end of the indigenous territory to the other.

The space of the forest used by each Yanomami house or village can be described as a series of concentric circles. The first circle, with a radius of about five kilometers, is the area of small-scale gathering by women, individual fishing, or, in the summer, collective fishing with timber poison; occasional brief hunting trips at dawn or



dusk; and agricultural activities. The second circle, with a five to ten kilometer radius, is the area of individual hunting (rama huu) and day-to-day family food gathering. The third circle, with a ten to twenty kilometer radius, is the area used for the large collective hunting expeditions (henimou) lasting one or two weeks that precede funerals; other long multi-family hunting and gathering expeditions of three to six weeks during the period when new swiddens are ripening (waima huu); and old swiddens: where people make occasional encampments to hunt and harvest the remaining crops.

During the 1970s and 1980s, the Yanomami suffered hugely from Brazilian gold-miners (garimpeiros) in-



vading their land. The miners shot hundreds of people, destroyed their villages, poisoned their rivers with mercury (used in the mining process), and exposed them to diseases to which they had no immunity. Twenty percent of the Yanomami died in just seven years.

The Yanomami filed a complaint with the Inter-American Commission on Human Rights, demanding the legal demarcation of the Yanomami territory and the expulsion of the miners. The tragic situation of the Yanomami people was also presented to the United Nations Commission on Human Rights, to the Sub-Commission, and to the Working Group on Indigenous Populations.

In my capacity as Chairperson-Rapporteur of the Working Group, I received an official invitation from the Government of Brazil to visit remote areas of the country, including the Yanomami territory, in 1990. I advised the Secretary-General:

The fate of the Yanomami people, an ancient and distinct indigenous people is a challenge to the conscience of humanity and the human rights principles enshrined in the UN Charter, the International Bill of Human Rights and other international and regional human rights and humanitarian law instruments. It would be a stigma upon the United Nations if the Yanomami were left helpless to perish. The Brazilian Government should be offered the coordinated emergency humanitarian assistance of the United Nations system to the direct benefit of the Yanomami people. Assistance should be in the areas of health and food by WHO, UNICEF and FAO and also in the area of human rights awareness building and

education by the Centre for Human Rights through its Advisory and Technical Assistance in the Field of Human Rights. In this programme of assistance and resource mobilization by the United Nations system, it is important to underline the need for the Yanomami to become self-sufficient again, especially in terms of obtaining their own food. Further the gold-miners should be removed from the Yanomami territory by the Brazilian authorities, as soon as possible, and new invasions should be strictly prevented. The reduction of the gold-miners from some 45,000 to about 4,000 in 1990 is proof that this can be done. The demarcation of the Yanomami land should be completed as soon as possible. This land should be contiguous territory and comprise an area large enough to sustain the Yanomami in their traditional way of life.

On the basis of my report, UN Secretary-General Javier Pérez de Cuellar personally intervened on humanitarian grounds, urging the removal of the miners to protect the Yanomami people. Environmentalists and national and international NGOs joined the Yanomami in their appeal to demarcate their territory. In 1991, Brazilian President Fernando Collor de Mello undertook a serious military effort to expel the miners, and, in 1992, he signed a decree to demarcate 22.5 million acres of the Yanomami territory as the "Yanomami Park".

The miners began to return in 1993 under the administration of President Fernando Henrique Cardoso, who rolled back the demarcation decree and issued Decree No. 1775, which gives private commercial interests



the right to contest the boundaries of indigenous territories that had not yet been fully demarcated by the state. Nothing has happened to reverse these backward steps, although international efforts to protect the lives and land of the remaining Yanomami people continue.

The right to development

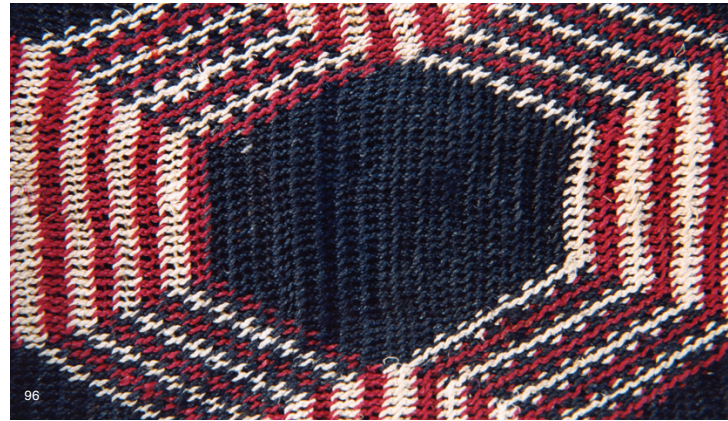
Human dignity was traditionally the core concern of human rights law. "Human development" has meanwhile come to be accepted as an expression of the enhancement of human capabilities, the widening of choices, and an expansion of freedoms. It is important to appreciate that development, to be equitable, can brook no discrimination in the sharing of its benefits between different people, irrespective of gender, religion or geographical disparities. Poverty is the greatest violator of human rights, and its eradication is vital for development and the survival of hundreds of millions of people around the world.

A revolution in strategic thinking took place between the United Nations Declaration on International Economic Cooperation (1990) and the World Summit on Social Development (1995). In the wake of decades of capital-intensive international development projects, with their legacy of environmental destruction, crushing external debt and "donor aid fatigue", economists concluded that development must begin with healthy, literate, skilled people who have both the freedom and the means to participate actively in decision-making at all levels. It is now generally agreed that "human development", including the realization of human rights, is

not merely one of the aims of development, but the means of development. The United Nations Development Program (UNDP) re-defined development in 1991 as a process of "increasing people's choices"; and it recommended strengthening growth and employment "through investing in people".

The relationship between human rights, freedoms and development has been part of international human rights discussions for more than 50 years, beginning with Article 55 of the UN Charter. Adopted three years after the Charter, Article 28 of the Universal Declaration of Human Rights refers to everyone's right to a social and international order capable of fulfilling their civil and political as well as economic and social rights. The adoption of the UN Declaration on the Right to Development in 1986 led to a more focused international debate on the links between development and human rights. The right to development was further considered at the World Conference on Human Rights in 1993, and, in its decision 1998/269, the Economic and Social Council authorized the establishment of an open-ended working group with a mandate to review progress made in the implementation of the Declaration on the Right to Development at the national and international levels, and to analyze obstacles to its full enjoyment, based on information submitted by states, UN agencies, other international organizations and non-governmental organizations. The Working Group on the Right to Development presented its seventh annual report to the Human Rights Council at its first session (Geneva 19-30 June 2006).

The right to development is a fundamental human right, and as such it is inalienable and indivisible. It is a bridge between civil and political rights on one hand,





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and economic, social and cultural rights on the other. The right to development is not just about mainstreaming human rights into development, but also injecting development into human rights discourse at all relevant levels. All parties should aim to fully realize this right in order to enhance multilateral development cooperation and contribute to sustained economic growth.

Developing countries have the primary responsibility for their own development, but the international community has a responsibility to create an international political, financial and trade environment that is conducive for development.

Most of the countries in which indigenous peoples live today are relatively poor and underdeveloped. They have generally been accustomed to regarding indigenous peoples as an obstacle to their national development, and not as an economic asset. By pursuing this philosophy, they will neglect the potential creativity and energy of a large portion of their national popula-

tion and condemn them to becoming centers of poverty, despair and conflicts that future generations will have to bear and try to repair. Ignoring the human potential of indigenous communities is a waste of resources in the short term and a source of high social and financial costs in the long term. In brief, it is very poor development policy, especially in view of the growing recognition of the commercial value of indigenous peoples' traditional knowledge of medicine and ecology.

Accordingly, one more reason why member states of the United Nations system should support indigenous peoples in their pursuit of development in conjunction with self-determination is the contribution that indigenous peoples can make, as free and equal partners, to national and regional development.

When we are referring to the right to development, we should also address the issue of "dispossession". Billions of dollars of resources have been extracted from indigenous peoples' territories. Consistent with indige-



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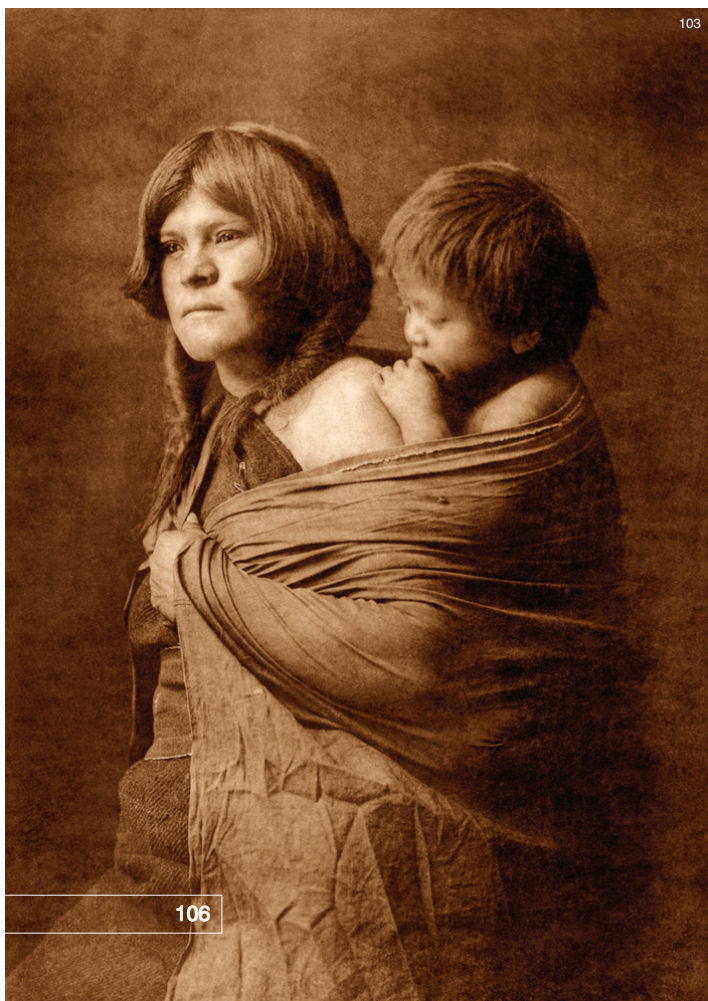
nous peoples' core values of generosity and sharing, I believe that states should ensure that indigenous peoples enjoy a fair share of all national resources, proportional to their populations, and in no case less than 5 percent of national resources; and the same share of representation on all relevant decision-making bodies as "equity partners" in the national economy.

Real resource sharing, based on principles of equity and mutual consent, might begin to rectify past injustices and dispossession of indigenous peoples' land and resources in a way that promotes cooperation and development—as opposed to a one-time pay-out of compensation.

The 25th annual meeting of the International Association for Impact Assessment in 2005 featured a special full-day event on Indigenous Peoples and Impact Assessment. Ted Moses, Grand Chief of the Crees of Quebec, argued for the meaningful involvement of indigenous communities throughout the assessment process.

Too often, he explained, they are relegated to the role of mere recipients of the assessment report, without an opportunity to influence its contents. He also complained that developers try to use the impact assessment process as an opportunity to "sell" their projects to indigenous communities. Rather, it should be seen as an opportunity to establish trust, and that requires open, honest and ongoing exchange, rather than merely convincing indigenous people to allow the project to proceed without opposition, litigation, or violence.

The historic World Millennium Summit held in New York City in September 2005 presented an opportunity to review progress made since the *United Nations Millennium Declaration*, adopted unanimously by Member States in 2000. The *Millennium Declaration* explicitly places both human rights commitments and development goals at the center of the international agenda for the 21st century. World leaders focused on the realization of the Millennium Development Goals, which are





quantifiable targets for addressing extreme poverty in its many dimensions (income poverty, hunger, disease, lack of adequate shelter, and exclusion) while promoting gender equality, education and environmental sustainability. Basic human rights are also included as goals: the rights of every person in the world to health, education, shelter, and security. Of particular relevance to this book, the *Millennium Declaration* and Millennium Summit reaffirmed the principles and programme of action of the Earth Summit, which includes specific rights and roles for indigenous peoples.

Between 1990 and 2002, according to competent UN sources, average incomes increased worldwide by approximately 21 percent. The number of people living in extreme poverty declined, by an estimated 130 million. Child mortality rates fell from 103 deaths per 1,000 live births to 88. Life expectancy rose from 63 years to nearly 65 years. An additional 8 percent of the developing world's people gained access to safe drinking water. And an additional 15 percent acquired access to improved sanitation services.

There are huge disparities between and within countries. However, poverty remains greatest for in rural areas, although urban poverty is also extensive, growing, and underreported by traditional indicators.

In his 2005 report, *Towards Development, Security and Human Rights for All in Larger Freedom*, the UN Secretary-General reminds us:

[I]t is in our power to pass on to our children a brighter inheritance than that bequeathed to any

previous generation. We can halve global poverty and halt the spread of major known diseases in the next 10 years. We can reduce the prevalence of violent conflict and terrorism. We can increase respect for human dignity in every land. And we can forge a set of updated international institutions to help humanity achieve these noble goals. If we act boldly –and if we act together –we can make people everywhere more secure, more prosperous and better able to enjoy their fundamental human rights.

Land rights and land claims

At the end of the day, international undertakings to protect the environment and promote the culturally appropriate development of indigenous peoples will come to naught unless indigenous peoples succeed in remaining on their lands. Progress on this practical level has been slow and patchy, I am sad to say.

British Columbia, Canada, has become an important test case for the resolution of indigenous peoples' land claims. The extent to which indigenous peoples there achieve a just and lasting settlement, and the manner in which they use their recovered territories and traditional resource rights, will be studied carefully by indigenous peoples and international legal experts everywhere. It will be very interesting to see whether the struggle of the indigenous peoples of British Columbia to recover their traditional resource rights also results in







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a renewal of their culture, and reorientation of the management of their magnificent forests and oceans.

The historical and cultural documentation prepared by Gitksan and Wet'suet'en hereditary chiefs for the *Delgamuukw* case in the Canadian courts is particularly interesting. What impresses me is the way in which the entire system of chiefly titles, names, symbols and ceremonies has always been interconnected with the stewardship of land and resources. Each house, each clan, and each nation, had specific roles to play. While present-day Western ways of thinking separate the arts, religion, political organization, kinship, nature and science, indigenous societies integrate all aspects of human experience and human responsibility, with a clear grasp of the totality of the social and ecological implications of their actions. Based upon what I have read and heard, they were careful to weigh all the possible consequences before they made any changes. Nothing was done without consulting the other members of the



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group, as well as the animals, the plants, and the ancestors. This approach was successful for countless generations.

The First Nations of British Columbia stand out because they have taken guidance from their hereditary chiefs and elders, and have kept them at the centre of their struggle. I suggest that three basic principles should be considered as a framework for ensuring that indigenous peoples strengthen their heritage in their efforts to regain their lands and resources.

The first principle is what may be called the *principle of integrity*. By this I mean the integrity of the whole set of relationships between indigenous nations and indigenous territories: names and chiefly titles, knowledge systems and arts, symbols and ceremonies—that is to say, all of the human dimensions of living together on the land, as well as all of the ecological relationships between humans, animals, fish and plants. A lawyer might refer to this concept as *non-severability*, which

simply means that interrelated things should not be separated.

The principle of integrity also implies a continuing responsibility for the health of the land, by maintaining and using the knowledge and the practices that belong to the land. In my travels among North American First Nations, I have been struck by the extent to which administration of land use: access, environmental protection, human health, research and education, and cultural activities have evolved into separate institutional domains that are, separate bureaucratic departments whose goals and objectives are often inconsistent or even contradictory. If First Nations' self-government results in reproducing the same kinds of governments as the nation-states, I fear that we will see the same kinds of results, including the packaging and sale of the land, and of everything sacred and precious that is connected with the land.

The old ceremonies, songs and names kept people tied to the land, and continually reminded people of their responsibilities. Strip away the ceremonies, symbols and knowledge from the land or sell them off, and people will no longer feel responsible for the land. Heritage is not merely a reflection and celebration of people's historical territory; it is an entire *management system* for the territory. Separating indigenous peoples' heritage from the land may therefore have serious adverse ecological and social consequences. Indigenous people's ceremonies, symbols, names, and songs contain their laws: the fundamental rules governing who may use the land, who may hunt the animals and fish, who may harvest medicinal plants, and the proper way to do all of these things.

The second principle is *locality*. Every people's territory is unique and has its own laws. The laws of the Tsimshian of Alaska and the Nu-chah-nulth of Pacific Canada are related at some level, but they are not identical because they live in different territories, with different ecological relationships. Tsimshian laws govern the relationships between human beings and the land in one particular place, and I do not believe that the Tsimshian would ever think of forcing their laws on any other peoples. Indigenous peoples think of their laws as inherently arising from their lands and territories—indeed, as inseparable from their territories—while it has become commonplace for Europeans to think that laws can be carried around and applied indiscriminately anywhere and to anyone.

In my view, there is a very simple way of settling the legal issues surrounding indigenous peoples' territories as well as their cultural and intellectual property rights. The solution is to resolve any disputes over the acquisition and use of indigenous peoples' heritage according to the customary laws of the indigenous peoples concerned. If someone claims to have properly acquired the right to use and sell a Tsimshian song, or story, or house panel, or medicine, let that person show that he faithfully complied with the requirements of Tsimshian law. In international law, this is referred to as the principle of *lex loci*—"the law of the place"—a very ancient legal principle among nations. It was recognized by the Roman Empire, and it still applies to disputes over contracts, the ownership of private property and family relationships when the parties live in different countries.

The principle of locality means that, for example, British Columbia, Canada, and the United Nations should recognize, respect, and enforce Tsimshian law in Tsimshian territory. This principle can be found in the ILO's *Indigenous and Tribal Peoples Convention, 1989* (No. 169), and is strongly implied in the UN Convention on Biological Diversity.

My third principle may best be described as *effectiveness*. The legal weapons available to indigenous peoples to defend their traditional resource rights and heritage must be capable of achieving results.

Nearly all of the laws aimed at protecting indigenous peoples are addressed to the nation-state. They are designed to influence the actions and decisions of government officials. In the past, indigenous peoples were usually the victims of state action such as military intervention, forced relocation and forced assimilation. Laws have gradually developed to restrict these kinds of abuses of state power, and to compel states to compensate, assist, and protect the indigenous peoples they had previously had oppressed.

As we begin the 21st century, however, we are entering a new world of international economic cooperation, trade liberalization, and privatization. Nation-states are yielding more power to international trade and financial institutions such as the World Trade Organization, and these institutions are working hard to make the world a safer place for private enterprise and investment.

The net effect of the restructuring of international relations is obvious. Corporations and their shareholders will gain greater global freedom and power. As they do so, corporations will assume more and more

of the functions of the nation-state. This can clearly be seen in North America. Governments are privatizing everything from post offices and hospitals to prisons and national parks. Corporations have begun to overshadow governments in many ways, and play a growing role in our daily lives. Many people around the world see this as an extremely dangerous trend, because they believe that corporations are selfish and undemocratic. States are bound, at least in principle, to uphold their national constitutions and respect the principles of human rights and fundamental freedoms. Corporations are obligated to make profits for their shareholders.

The profit motive can be used to influence the decision-making of corporations for the better. It is increasingly clear that corporations are sensitive to carefully focused consumer boycotts. It is also clear that some of the investors in multinational corporations appreciate the fact that, in the long term, their investments have greater value when they respect the rights of their workers and consumers, as well as the people who live close to their activities.

It is my firm belief that defending the world's indigenous peoples in today's international environment requires the use of tools that reach directly into the private and non-governmental sectors. Whatever legal, political or economic weapons the indigenous peoples choose to defend their heritage should be fully consistent with the three basic principles described above: *integrity, locality, and effectiveness*. ○

CHAPTER 5



FIVE CONTEMPORARY CASE STUDIES

The Aboriginals of Australia and Torres Strait peoples

In “deep listening”, the Aboriginals have heard, for the last 50,000 years, the intermingled voices of the earth and the ancestors. Song-lines, like trade routes, extend across the continent from all directions, mapping the sacred journeys of the ancestors and the creation beings that moved across the landscape in the Dreaming.

The Dreaming is before time began, and it represents the totality of the Aboriginal philosophy and its expression in myth, song, poetry, rock art, body painting, legend and dance; the oneness of time, the universe, and all that existed and continues to exist. Without a written language, the transmitters of wisdom were the elements of the landscape itself. To describe the landscape merely in terms of “sacred sites” fails to convey the depth of meaning in Aboriginal culture of the landscape, every part of which was a permanent reminder of eons of perception and interpretation.

The landscape is therefore critical to maintaining the Aboriginals’ physical, mental and spiritual life; in fact, these are inseparable from one another. Over the generations, the traditions of the people developed a complexity that was woven tightly into the fabric of society: the relationships between people, between people and their

habitat, and between eras of experience. The role of individuals, through their personal, family and clan Dreamings, was to learn their place in the whole; to strive to maintain the equilibrium of the universe; to respect the sacred trust; and to transmit the knowledge to future generations in the same way he or she had learned it.

Throughout the centuries, the environment became intimately bound up with every aspect of human life and culture. Aboriginals understood that their ancestors had created the landscape and the life within it, including themselves, each part playing a role in the maintenance of the whole world. The most important task for individual humans was that of custodians of the common environment.

Ab origine is Latin for “from the beginning”, and, from about 1873, this word was generally applied to the peoples who lived in Australia before the arrival of the English. How ironic it is that the recently repudiated doctrine of *terra nullius* asserts that Australia was legally “vacant” before the onset of English colonization in 1788. There were already more than seven hundred Aboriginal Australian tribal groups, each with its own distinct territories! Some believe that Aboriginals have been in Australia for as long as 50,000 years, making them one of the world’s oldest living cultures.

Owing to the immense history of Aboriginal cultures and the vast distances of Australia, Aboriginals differ

greatly in language, religion, social organization, art, economy and technology. There appear to have been at least 250 different Aboriginal languages, each of them with many dialects. Aboriginal housing, hunting techniques and weaponry varied richly, as did their songs, stories, dances, ceremonies, Dreamings and paintings.

Unlike other indigenous peoples, however, Aboriginals lacked centralized tribal organizations or chiefs. While large groupings might come together for important ceremonies, to trade, or for warfare with other groups, they were composed of many small kinship-based communities, led by people with comparable status. Authority was a function of age and accumulated knowledge, and was linked to particular lands, or sites, or to the control of particular ceremonies. Senior men and women were leaders within their own gender groups. There was also recognition of excellence in hunting, artifact production, singing, painting, medicine and storytelling, imparting authority to lead in certain situations.

Anyone receiving a gift of food would return the favour at another time. Equality of access to resources based on need and relationships, and rotating leadership depending upon circumstances, was overlaid by a broad structure of authority in which the senior men from each sub-group, reaching consensus, would make broad decisions for the group as whole: where to camp, when to move, how to organize a hunt, when to set off on a trading expedition.

And yet diverse, Aboriginal cultures shared many key features across the continent. The absence of invasions before 1788 and the importance Aboriginals attached to extended kinship contributed to this unity, as did the large

ceremonial meetings (*corroborees*) that took place in all parts of Australia. Hundreds of people traveled great distances to trade, arrange marriages and participate in these cultural events, made possible because most Aboriginals were multilingual. Corroborees continue today and involve music, dancing and storytelling.

There is abundant archaeological evidence of Aboriginal antiquity. Stone tools have survived from the earliest periods, and simple stone tools such as choppers and scrapers show little change over thousands of years. Wooden tools rarely survive, but one unique archaeological find proved that the barbed spear and the boomerang, used chiefly as weapons or for sport, were invented more than 10,000 years ago. The diversity of boomerang designs demonstrates that Aboriginal people had an intricate knowledge of aerodynamics.

Many different regional styles of rock art appeared over time, ranging from stylized, symbolic ancient engravings to the colourful “X-ray” figures of the north and vivid naturalistic hunting scenes of the east and west. Painting techniques included spraying paint from the mouth, usually to create a stencil outline of a hand or weapon; brushing using the chewed end of a twig or a finger; or splashing with bundles of grass. The scenes depicted usually involved the hunting of kangaroos, wallabies or emus with spears, boomerangs or axes. Groups of hunters were shown driving animals into nets or stalking them from hides.

Painting was a religious act, and could be accompanied by singing. It was a social exercise often performed by groups of people rather than individuals. Painting also played a role in land ownership and the recording of stories. The right to paint particular motifs, and, in



particular, to paint at certain sites, was, and continues to be restricted to the owners of specific stories and requires seniority within a clan. There were gender restrictions on who was permitted to see certain paintings. Painting at some sites was restricted to women.

This world came to an end, as the Aboriginal novelist Mudrooroo put it, with the arrival of the Europeans. A Dutch ship landed on Australian shores in 1623 and, while attempting to kidnap Aboriginal women, it was driven off by 200 Wik warriors. This story became part of the Dreaming of the Wik Aboriginal Nations of Cape York Peninsula, where it continues to be told 400 years later, taking more than three days to perform. The names of the women are still confidential so as not to “shame” their descendants.

As European contacts and settlement increased, Aboriginal numbers declined, and their ways of life in



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many areas were destroyed or changed forever. Smallpox, venereal disease, measles and influenza devastated Aboriginal people, who lacked immunity and were often malnourished and deprived of their traditional medicines as the result of forced relocation. European animals such as rabbits, foxes, cats and dogs, sheep and cattle fouled waterholes and altered ecosystems. The activities of gold miners, seal hunters and pearl divers, who kidnapped Aboriginal men, women and children for slave labour, were equally devastating.

Despite subsequent assertions by the victors, no part of Australia was conquered easily. There were some large-scale battles, when men with spears attempted to defend their territories against invaders with guns, but most of the resistance took the form of guerrilla raids on isolated huts and settlements. Between 1788 and the 1930s, it has been estimated that at least 20,000 Aborigi-

nal people were killed in direct conflict. But the results were a foregone conclusion. Some Aboriginal people managed to stay on their traditional lands by working for rations on cattle or sheep stations, while others were forced into government reserves or Church missions. Some Church missions allowed Aboriginal people to continue to use their own languages and to pursue their traditional livelihoods, but most were de-termined to destroy Aboriginal culture. Aboriginal languages and ceremonies were suppressed, freedom of travel was restricted, and violators were subjected to corporal punishment. Aboriginals could not work, marry or have a bank account without the permission of the local "Aboriginal protector", who was often the local policeman.

Children were separated from their parents, often as early as the age of five. At first they were kept in dormitories on the mission or reserve. By the end of the 19th century, however, children were placed in orphanages, in Church institutions or with white families who used them for slave labour. These children have come to be referred to as the "Stolen Generation". The policy of forced assimilation continued to the 1970s.

It is difficult for us today to understand the abhorrent ideology behind such a policy. Its goal was the physical extinction of the black population by breaking all ties between children and their families, and encouraging the "merging" or "absorption" of people of mixed race. As lighter skins were more desirable, the theory went, "pure-blood" Aboriginals would die out in a few generations. All this was, or

course, "for their own good", given the misery in which Aboriginals lived!

In 1937, the first Commonwealth-State Native Welfare Conference was held—the first time that Aboriginal affairs had been discussed at the national level. While reaffirming the "absorption" model, the Conference resolved that mixed- blood Aboriginal children should be educated to white standards, with a view to their taking their place in the white community on an equal footing.

After 1940, the removal of Aboriginal children was governed by the country's general child welfare

laws, pursuant to which children had to be found "neglected" or "destitute" before

they could be removed. Needless to say,

white Australian judges applied European standards of childrearing,

and regarded poverty as synon-

ymous with neglect. As a re-

sult, Australian courts re-

moved vastly greater num-

bers of indigenous children

than non-indigenous chil-

dren from their families. The state institutions

and Church missions where Aboriginal children were

placed received financial aid from the government

that was not available to impoverished Aboriginal

families. During the 1950s and 1960s, even greater

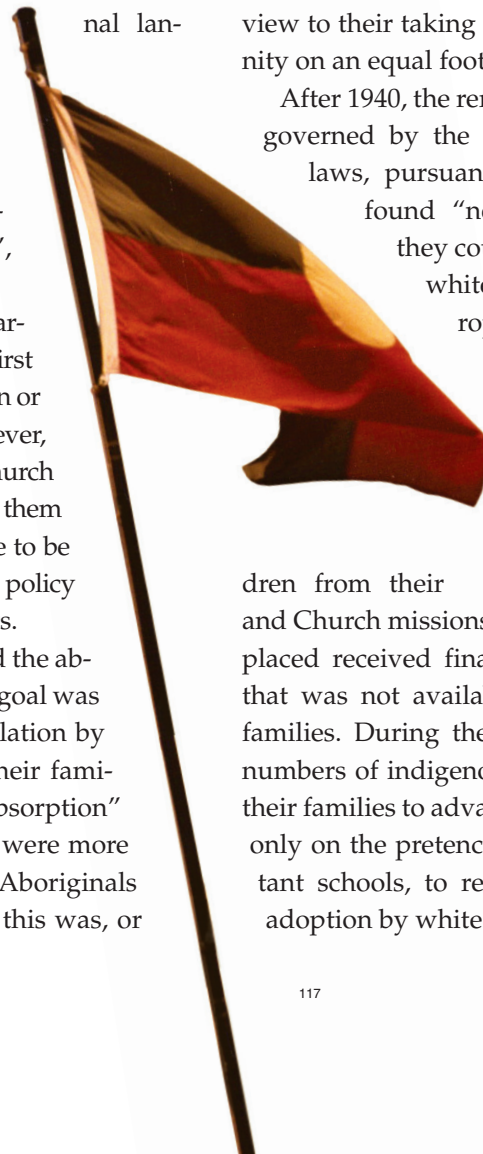
numbers of indigenous children were removed from

their families to advance the cause of assimilation, not

only on the pretence of "neglect", but to attend dis-

tant schools, to receive medical treatment, or for

adoption by white families.





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**HM PRISON
ALICE SPRINGS**
VISITING ARRANGEMENTS TO PRISONERS
VISITS UP TO ONE HOUR DURATION
ONCE PER WEEK UP TO FOUR
IMMEDIATE RELATIVES OF A PRISONER
CAN VISIT AT ANY ONE TIME ONLY
ONE FRIEND A VISITOR MAY BE REQUIRED
TO BE SEARCHED AND ALSO TO GIVE NAME
AND ADDRESS

VISITING TIMES 9:00-4:00pm
1:30-3:30pm
SATURDAY SUNDAY PUBLIC HOLIDAYS
NO VISITS CHRISTMAS DAY OR GOOD FRIDAY.
SPECIAL VISITS MAY TAKE PLACE
WITH PRIOR APPROVAL. ALL INQUIRIES
THROUGH THE SUPERINTENDENT

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A federal Office of Aboriginal Affairs was finally established in 1967, and the goal of assimilation was replaced by the equally nebulous goal of “integration”. The new Labour government, elected on a policy platform of Aboriginal self-determination, nonetheless provided Aboriginal groups with funding to challenge the removal of children from their homes. The number of indigenous children removed immediately declined.

There are varying estimates of how many Aboriginal children were removed from their homes from the end of the 19th century to 1970. Reliable sources put the figure at between one in three and one in ten indigenous children. No survey can capture the experiences of the children who grew to adulthood without their parents in a foreign and hostile environment.

The Convention on the Suppression and Punishment of the Crime of Genocide, adopted in 1948, was ratified by Australia in 1949. It defines genocide in Article II as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, such as: a) Killing members of the group; b) Causing serious bodily or mental harm to members of the group; c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d) Imposing measures intended to prevent births within the group; e) Forcibly transferring children of the group to another group.” It is my view that Australia’s removal policy was a gross violation of the rights of the Aboriginal people, and comprised genocide.

The Aboriginal nations of Australia are the traditional owners of the world’s sixth largest country, and it is rarely considered that the modern Australian nation,

one of the wealthiest on earth, is built on Aboriginal land and resources. In addition, Australia’s climate and dramatic scenery have made tourism a major industry, and Aboriginal cultures are increasingly of interest to both domestic and international tourists.

Until recently, Australian historiography did not acknowledge the fact that the continent was already fully settled when Captain Cook “discovered” it. Aboriginal assistance to the early settlers was also overlooked. The Australian climate is harsh and unforgiving, and it is difficult to imagine that Europeans could have explored and mapped the continent without native assistance.

In connection with the aboriginal contribution to the modern Australian population, it could be interesting to consider that, in the first 80 years of English occupation of the continent, 160,500 convicts were sent to this continent, and of which only 24,700 were women. Although it was never formally acknowledged, some Australians today may be of Aboriginal descent as a result of the co-habitation of white men with Aboriginal women and the policies used to extinguish colour and Aboriginality. There has also been little thought given to the thousands of Aboriginal women who worked as domestics and raised the children of white families while their own were institutionalised.

It is useful to mention the incalculable contribution of the cheap labour of the Aboriginals of the Stolen Generation that was so vital to the establishment and success of the pastoral industry.

As I discussed in an earlier chapter, indigenous peoples have a view of the environment that embraces the interrelationship between people, landforms, waterways, and the elements that pass over the landscape

(dust, wind, fire, water) as well as fauna and flora. Aboriginal peoples were instrumental in maintaining the biodiversity of the Australian landscape, and their forced removal from their territories has had, and will continue to have long-term effects. Australia persists to lose unique native flora and fauna at an alarming rate while introduced non-native species thrive.

Aboriginal people today take enormous pride in their achievements in sports. In the 19th century, Aboriginals participated with notable success in cricket, boxing and football. Evonne Goolagong Cawley, an Aboriginal woman from the Riverina District, became one of Australia's best female tennis stars. Aboriginal people such as Cathy Freeman, Patrick Johnson, Kyle Vander-Kuyp and Nova Peris-Keebone have represented their country in the Olympics. Many other well-known Aboriginal athletes have excelled in hockey, rugby, softball, basketball, swimming and soccer.

From the 1970s, Australia has also experienced an Aboriginal artistic renaissance, and artistic traditions dating back thousands of years are being revitalized. Traditionally, of course, artistic expression for Aboriginal Australians was not merely for aesthetics but for spiritual expression. In contemporary Australia, Aboriginal art has become highly visible, and its authenticity an important aspect of its creation and value. In the forecourt of Parliament House in Canberra stands a giant granite mosaic designed by Aboriginal artist Michael Jakamara Nelson symbolizing a place of meeting.

It is now widely recognized that Aboriginal Australians suffered prejudice, discrimination and mistreatment by white society. Statistics on housing, health, wages, employment, education and imprisonment re-

flect this legacy. A 1967 referendum gave the Australian national government authority to legislate for Aboriginal people for the first time, and signaled the beginning of organized Aboriginal activism at the national level. Groups advancing Aboriginal rights have included the Aboriginal and Torres Strait Islander Commission (ATSIC), the Council for Aboriginal Reconciliation, the Aboriginal and Torres Strait Islander Social Justice Commission, regional Land Councils, health, education and legal organizations, the Aboriginal provisional government, and several Aboriginal and Torres Strait Islander political parties and politicians. The Royal Commission on Black Deaths in Custody, formed in 1987 to investigate the reasons behind the significant number of deaths of Aboriginal people in the prison system, also played an important role.

The crux of Aboriginal rights over the last 25 years has been Native Title—land rights—which came to a climax in 1992 with the case of Eddie Mabo. Eddie Mabo was a member of the Meriam people, the traditional owners of Mer (Murray Island) and surrounding islands and reefs in the Torres Strait. In 1982, Mabo and four other Islanders commenced a legal action seeking a declaration of their traditional land rights. The High Court of Australia upheld the claim, thereby allowing Aboriginal and Torres Strait Islander peoples to assert title to lands to which they could show a “close and continuing relationship” and where the Crown had not yet extinguished their title explicitly. *Mabo* helped persuade the general public that Aboriginal people's demands were legitimate. The 1993 *Native Title Act* subsequently required the payment of compensation to Aboriginal groups whose land title had been extinguished

by the Crown. Disputes continue where Aboriginal people and farmers have competing historical claims to the same lands.

In 2002, the Western Australian (state) government returned 136,000 km² of land to the Martu people. The Australian federal government had recognized the Martu as the land's owners, and allowed them to hunt, fish and use the area's living resources, but denied their rights to petroleum and other minerals, and to an area designated as a national park. Many other Aboriginal land claims have not been as successful, however.

Torres Strait Islanders comprise a distinct indigenous people within contemporary Australia. The Torres Strait was discovered for Europeans as early as 1606, but European contacts were brief and infrequent until the foundation of the Australian colony in 1788, when Torres Strait became an important seaway. For decades, passing European vessels had little effect on the islanders' established way of life, although they caused violence on more than one occasion. In the 1860s, however, great numbers of small vessels owned by Europeans (but manned by South Sea Islanders and Asians) came to the Torres Strait Islands to exploit pearl shell and *trepang* (sea cucumbers). Torres Strait Islanders' first substantial relationship with Europeans began in 1871, when the London Missionary Society arrived on Darnley Island.

The Torres Strait group consists of 70 islands between mainland Australia and Papua New Guinea. Seventeen of the islands, scattered over an area of 48,000 km², are inhabited. There are 20 communities in the islands, each with its own local council. The location of the Islands midway between Melanesia and Australia

has been of great interest to ethnologists. The language spoken in the western islands includes Melanesian elements, for example, but its structure is Aboriginal. This may indicate a merging of Papuan and Aboriginal peoples at some time in the past.

The religion of the islanders focused on cultural heroes, ceremonies, and traditional objects such as turtle shell masks. Under pressure from the missionaries, these traditional ways of life began to give way to practices that were more acceptable to Europeans. The London Missionary Society stayed in the islands until 1915, when it was replaced by the Church of England and restrictions on traditional culture were relaxed somewhat. In 1936, following a general strike, Torres Strait Islanders were allowed to elect their own island councils; but it was not until 1992 that they were given ownership of their own lands by a court ruling.

The Torres Strait Islanders' experience of colonialism and their reaction to their position in Australian society provide a striking counterpoint to the experience of Aboriginals. The pearling industry long exploited their labour, but left them in occupation of their islands, and the Queensland (state) government has allowed them a degree of autonomy in local affairs. The islanders have thus had the space in which to develop a rich and vital way of life that they still call "island custom". For instance, tombstones are unveiled publicly at the end of the mourning period and this is followed by traditional dancing and feasting on giant turtle meat and root vegetables such as yam and sweet potatoes. Like the *costumbre* of Meso-American Indians and much of the *kastom* of the Pacific Islands, "island custom" is a patchwork of native and introduced elements. Yet it is

traditional in the sense of being distinctive to a long established, closely-knit and self-conscious society.

An eminent representative of the Torres Strait Islander Commission, George Mye, MBE, took the floor at the 10th session of the UN Working Group and declared in a firm voice, "*Terra nullius* in Australia is dead... The fire that burns in our people is still alight and our struggle, Madam Chairperson, will now be continued from a new and brighter political horizon."

Aboriginals and Torres Strait Islanders are not merely victims, but survivors who still have much to contribute to Australian society and to the great issues facing humanity as a whole. They have much to share that is utilitarian as well as spiritual. Let us hope that they continue to thrive, and to make progress in regaining their dignity, their traditional lands and their human rights.

The Ainu of Japan

The Ainu are indigenous to the beautiful island of Hokkaido, Japan's northern frontier, and to northern Honshu. The Ainu also have historical claims to the Kuril Islands and Sakhalin Island, and there are reports that some Ainu may still be living on Sakhalin. Many places on Hokkaido bear Ainu names, including the capital city of Sapporo. Ainu have a distinct ethnic identity with their own language, beautiful music and unique culture. Museums in Koyano, Kushiro City and Sapporo tell the history of the Ainu people and more importantly, the living aspects of their culture, including arts, handicrafts, and religion.



There are currently around 25,000 self-identified Ainu, but this figure could grow considerably if the Ainu suffered less stigmatization and social pressure to assimilate. Many Ainu still choose to register as ethnic Japanese to avoid discrimination.

Ainu no longer suffer the level of poverty, misery or despair that is found among indigenous peoples elsewhere in the world. Nevertheless, I have seen statistics indicating that Ainu continue to suffer discrimination in the field of education. Ainu have lower school enrolment, income and employment than other Japanese citizens, notwithstanding social welfare programs aimed at improving their condition.

Before their forcible integration into Japan, the Ainu lived in an enchanted world filled with gods and spirits. Animals, trees and water dominated Ainu lives, filled their dreams and inspired their behavior.

Ainu elders told stories teaching children how they must act to keep the world abundant and generous. They would often say *Ainu neon an Ainu ene po ne na*, which means “Be a human-like human, a person-like person”. The word “Ainu” was very powerful, and it was only applied to well-respected people.

The Ainu speak to the gods in a very simple manner because they believe the gods are on equal terms with them, and in exchange for taking good care of the gods, they expect the gods to do the same for the Ainu. They believe the gods live within, and protect every Ainu home.

Today, Ainu join the many millions of people living in large cities, disconnected from the natural world. However, we have much to learn from Ainu stories of a simpler way of life when everything was treated as in-

terconnected—a world in which human beings were deeply embedded and inextricably interlinked with the past, present and future; with the fish, trees, birds and mammals.

Ainu Mosir, the Ainu name for Hokkaido, means a peaceful place where the Ainu dwell. Before the Japanese colonized *Ainu Mosir*, the Ainu lived in harmony with the land. The men hunted bears in the mountains and seals in the sea, and they caught salmon in the rivers. The women gathered edible wild plants and mushrooms in the mountains; wove clothes on looms; and prepared the meals. Men, women and children all joined together to perform Ainu rituals such as *Iomante*, the bear festival. The Ainu especially revere Hokkaido brown bears, which still roam the island’s wilderness areas. Ainu also perform ceremonies to thank the salmon for feeding them. Other wildlife of significance to the Ainu include red foxes, Ezo deer, and red-crested cranes.

Salmon have always been very important for the Ainu—so much so that the Ainu word for salmon, *sipe*, also means “a staple food”. For centuries the Ainu harvested salmon freely from September to November when the salmon migrated upstream to spawn. They were always careful not to take more salmon than they needed. One way that they avoided over-harvesting salmon was by delaying most of their fishing until the end of the spawning season, in November. In this way, fishing did not affect the next generation of salmon. After they finished spawning, moreover, the salmon had very little fat. This made them dry better for storage over winter. The Ainu were careful to use salmon wisely and sustainably.



The Ainu ate many other species of fish as well. In April and May they caught *supun*, a large red-bellied dace, when they came upstream to spawn. In July and August they caught *sakipe*, a trout. For the Ainu, the rivers were storehouses filled with food.

The Ainu also hunted in the mountains, and collected edible wild vegetables, fruits, nuts, and mushrooms, and the fruits and nuts of trees could be harvested. Al-

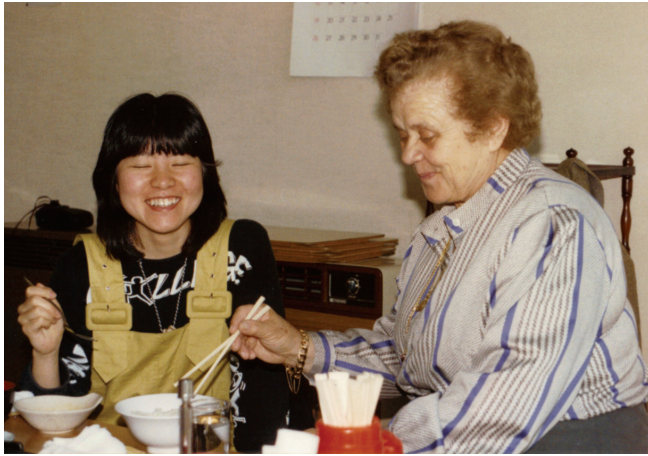


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though the Ainu grew their own crops of vegetables and grains, "mountain vegetables" were a very important source of food whenever garden vegetables were scarce. The mountains also provided the Ainu with natural fibers for making clothes and materials for building houses. Traditional Ainu *atrus* clothing was made from the bark of *atni* trees, which are a rare type of elm. It takes at least two months to weave enough fabric to



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make one kimono. All Ainu clothing made of *atrus* and other fibers is embroidered with Ainu designs. Traditionally, such designs were appliquéd and embroidered only on clothes that were destined for formal occasions, such as festivals and weddings, or during religious rituals.

In my capacity as Chairperson-Rapporteur of the Working Group on Indigenous Populations, I was invited to visit Hokkaido with Professors Ribot Hatano and Gudmundur Alfredsson in May 1991. I am grateful to the Ainu people for this kind invitation and their unforgettable hospitality. The leaders and staff members of the Ainu Association of Hokkaido were our hosts and were truly masters of organizational work. Over the last 20 years, the Ainu Association of Hokkaido has sent observers to meetings of the Working Group in Geneva, and made valuable contributions to its deliberations.

We visited several Ainu communities in Akan, Bira-tori, Koyano, Kushiro City, Obihiro and Sapporo, where

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we were received with a warmth and hospitality that I will never forget. The frequent showing of the flags of the United Nations, Greece and Iceland (home of Professor Alfredsson) added both an official and personal touch to the welcoming ceremonies.

The Japanese state arbitrarily imposed new laws on Ainu during the Meiji period (1868-1912), and practices that were at the very core of Ainu culture were punished. Restrictions were placed on fishing salmon, collecting firewood, felling trees, building traditional houses, and making dugout canoes. It became almost impossible to carry on the traditional Ainu way of life. *Ainu Mosir* was renamed Hokkaido. The Japanese also introduced forced labor. For over a century, the Japanese government pursued a policy of coercive supervision of Ainu communal property including land, buildings, and fisheries. The income from Ainu communal property was supposed to be used to help Ainu people, but instead the law was used



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to justify the expropriation of Ainu land and labour. Finally, the *Ainu Culture Promotion Act* (1997) directed that communal property must be returned to its Ainu owners. The Hokkaido government contends that the total present value of the communal property fund they created by coercively selling off Ainu land and houses is only US\$14,000, but it has not been able to provide detailed accounting. There is a 93-year-long gap in official records of the management of this money.

In 1999, a group of 24 Ainu people took this issue to the Sapporo district court. They argued that the involuntary management of communal property and inadequate restitution violated article 27 of the International Covenant on Civil and Political Rights. In addition, they argued that the restitution provided by the *Ainu Culture Promotion Act* violated Articles 13, 29 and 31 of the Japanese Constitution. Their complaint was dismissed in 2002 without a hearing, the court having decided that it

had “no merit.” The plaintiffs appealed to the Sapporo High Court, citing a 2003 report by the UN Special Rapporteur on indigenous rights, Rudolfo Stavenhagen. The Sapporo High Court referred to Professor Stavenhagen’s report when it announced that the case would be remanded to the district court for reconsideration: a small but important step forward.

This case provides a legal foundation for recognizing the collective rights of the Ainu. What the Ainu ask from the Japanese government, in addition to returning their communal property and healing past injustices, is the enactment of a law that recognizes the rights of Ainu as an indigenous people; and programs from the *United Nations International Decade of Education for Human Rights* that promote and protect the rights of Ainu as an indigenous people.

In order to clarify the nature of Ainu communal property and the collective rights of the Ainu people, it

will be useful to explore the background of the communal property case in more detail.

Under the 1899 *Hokkaido Former Aborigines Protection Act*, the Secretary of the Hokkaido regional government (following World War II, the Governor of Hokkaido) could designate specific lands, buildings, and other property as the communal property of each Ainu village. The money received from the sale or rent of communal property could then be used to assist Ainu people in financial difficulties, or to pay medical expenses for Ainu that became ill. This was supposed to “protect” Ainu people.

In Makubetsu (a part of the district of Tokatchi), the local Ainu and Japanese united to form a Fisherman’s Guild at the mouth of the Tokatchi River in 1875. Under the *Hokkaido Former Aborigines Protection Act*, the Secretary of the Hokkaido government placed the profits of the Guild and proceeds from the sale of fishing equipment into government-controlled bank accounts. The government not only took control of business income, but also storage facilities, for drying seaweed and the underlying fishing rights of the community to salmon and other fish. In Asahikawa, farmland was included in communal property. Even the money in the *All Hokkaido Former Aborigine Education Fund*, established by the Emperor and the Ministry of Education, was treated as communal property, as was the money that the Emperor personally contributed to the Ainu when he visited Hokkaido.

Ainu continue to demand evidence that this money was properly used. The Japanese government has given them the following reply: Ainu communal property

was managed by the Secretary (later the Governor) of Hokkaido. When there was an application from an Ainu for an outlay from the fund, it was referred to the head of the appropriate local administrative office. Records of receipts and payments only exist for the period 1935-1940. There are no records for the years before or after World War II—not even records specifying how much money was originally deposited in exchange for Ainu lands and other property that was sold or rented. Ainu persist in demanding accounting of their property, its cash value, and the interest earned since the 1890s.

They base their claim on the 1997 *Ainu Culture Promotion Law*, which not only repealed the *Hokkaido Former Aborigine Protection Act* but also expressly directed the Governor of Hokkaido to return communal property “to the joint owners”—that is, to the Ainu. The 1997 law does not specify the form that this restitution must take: whether property is to be returned to individuals or to groups. If the Ainu “have the right to receive restitution”, then it seems obvious to me that it should be up to the Ainu themselves to decide who may apply for restitution, and how. Japanese government officials have not even consulted with the Ainu regarding the restitution of communal property, however.

The Ainu argued in Sapporo courts that the government “fails to respect the Ainu as individuals”, which violates Article 13 of the Japanese Constitution; and that their “ownership rights have been ignored”, violating Article 29 of the Japanese Constitution. The Sapporo High Court agreed that there was merit to these arguments.

The High Court's decision came as a complete surprise to most Ainu people. Few Ainu were aware of the 1997 *Ainu Culture Promotion Law*, and even fewer had ever received benefits from the communal property system. Many Ainu did not know the locations of their ancestral villages. Although the government publicly announced that "anyone who can be thought of possessing rights" should apply for restitution, a great number of people simply did not know whether that applied to them, or felt that the money available, divided by the number of applicants, would barely cover the cost of postage required to file the application. (Government officials did not explain that *all* Ainu people had a claim to the *All Hokkaido Former Aborigine Education Fund*.) Others felt that the effort required to prepare the requisite documentation of their historical rights was too burdensome. There was also the fact that all applications had to be submitted within one year.

It has become clear that the Japanese government wants to limit restitution to the property that was officially designated by the Secretary (or Governor) of Hokkaido under the *Former Aborigines Protection Act*, excluding all other property that the Ainu held collectively before 1899 and then lost, like the Fisherman's Guild in the village of Makubetsu. Using the power of the Hokkaido government, local officials had already found ways to extort money from the Makubetsu fishery before the *Former Aborigines Protection Act*. The Hokkaido government admitted as much during the Imperial Diet's deliberations on the bill that eventually became the *Former Aborigines Protection Act*. The same Hokkaido authorities that had

been extorting money from the Fisherman's Guild before 1899 then connived to have the Guild designated as communal property under the new law. It is only natural to question the sincerity of the property "management" that was subsequently carried out by the Secretary of Hokkaido.

The Ainu feel that there is still something to be learnt from the tradition of communal ownership that once protected the Ainu within their *Kotan* (Ainu villages). Although they have received considerable support from Japanese scholars and lawyers, they feel that resolving the question of communal property depends on whether the Ainu can unite as one body and demand that the national and Hokkaido governments "stop lying about Ainu communal property".

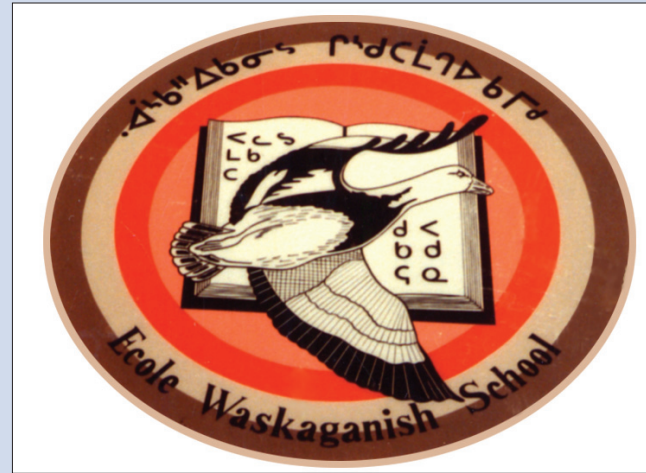
Meanwhile, Ainu people living in the village of Nibutani protested at the construction of a dam that they argued would destroy the environment and their traditional culture. They refused to sell their rice paddies to the government asking: "Who then will protect our land and culture?" The dam threatened two important spiritual landmarks where fox gods are believed to warn villagers of fire and flood, as well as a shoal where Ainu pray to the river god and hold celebrations for launching new wooden boats every August. The dam also threatened Ainu salmon fishing shoals. In 1999 the Sapporo district court agreed with the Ainu that the dam –by destroying key elements of Ainu culture– deprived them of human dignity in violation of the Japanese Constitution.



The Crees of Québec

The bush is vital to our spirit and power as the *Eeyouch*, and we must give credit to the Cree Trappers who continue to occupy every inch of Eeyou Istchee. The bush is a place to seek healing and it is the source of the food that we love to eat. The bush is also key to the future of our communities. It is a source of hydroelectricity, lumber, minerals, and a place for tourism development.

*Ambassador Ted Moses
Grand Council of the Crees of Québec*



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Like many other indigenous peoples, the Crees call themselves “the people” (*Eeyou*) and their land “the land of the people” (*Eeyou Istchee*). *Eeyou Istchee* extends over 344,854 km² of northwest and central Quebec, bordering Canada’s Hudson’s Bay.

There is archaeological evidence that these lands have been inhabited for at least 3,500 years. Some scholars suggest that the James Bay Crees were the first people to occupy the area after the last continental ice sheet retreated more than 8,000 years ago. The Crees traditionally made their livelihood chiefly by harvesting moose, caribou, geese and fish. Although the intense cold of their territory did not support agriculture, it produced furs of the very highest quality. This is what attracted early European traders and settlers to *Eeyou Istchee* and led to the establishment of the Hudson’s Bay Company in 1670, when King Charles II purported to



donate Cree lands to his cousin, Prince Rupert. The British Empire transferred Cree lands to Canada in 1868, and the Government of Canada transferred these lands to Quebec in 1898. Needless to say, the Crees, in total ignorance of these foreign legal transactions, largely continued to live as they always had, according to their own traditions.

In 1911 the National Transcontinental Railroad was built just to the south of the Cree lands. Unable to grow crops in the harsh northern climate, settlers who came with the railroad began to compete with the Crees for land and wildlife. Conflicts grew after World War I, when returning Canadian soldiers were hired and brought north as trappers. They used techniques such as poison bait that quickly exhausted the stock of fur-bearing animals and thereby deprived the Crees of their main source of sustenance. By the 1920s, there was famine. The Crees refer to this period as *kachistumakich*, the poor times.

Eventually, the Canadian authorities recognized the desperate situation of the Crees. The Hudson's Bay Company established a wildlife preserve in 1932 to help restore the beaver population, and the Government of Quebec restricted non-indigenous hunters and trappers. The Crees contributed by conducting annual surveys of beaver colonies. The wildlife preserve was an unqualified success, and was expanded to other parts of northern Canada.

Seasonal Cree settlements had been growing haphazardly around Hudson's Bay Company trading posts for generations. By the 1950s, they had become permanent towns. Elderly people visited the towns to obtain health care and other social services. Children

were required to attend school in towns. Gradually, more Crees became permanent townspeople instead of going back to the bush to hunt with their families. Although the Quebec government provided them with teachers and social workers, Cree towns lacked adequate infrastructure: no water, sanitary services or modern means of communication. In Eastmain, the name formerly given to the whole east coast of James Bay, there was only one radiophone connection to the outside world until the late 1960s. During this time the price of fur fell, due partly to changes in fashion and a distaste for wearing animal skins that developed among some consumers in Europe and North America. The poverty of the towns was dire.

Another catastrophe for Cree culture was the residential school system, begun in the 19th century and operated by Methodist and later Church of England missionaries. Residential schools that took students did not go beyond Grade 8, and for years that was the end of schooling for most Cree children. While they were at school, young Crees were separated from their families in the bush. Thus, in addition to suffering the programme of assimilation enforced by the schools, frequent physical abuse and neglect—many cases of which have now been documented—and losses of life from tuberculosis, a whole generation of children missed the training in traditional bush skills that constituted their Cree heritage.

Historically, there were probably never more than about 5,000 Crees. Today, approximately 12,000 Crees live in nine communities in Quebec, where they continue to speak their own language, part of the Algonquian linguistic group, the largest indigenous language family in Canada.

In 1971, the government of Quebec announced its intention to build three hydroelectric dams near James Bay. Crees were not consulted; most of them heard the news later over the radio. They asked the Quebec courts to halt the project, and won an injunction in November 1973. Unfortunately, a week later, the Quebec Court of Appeal set aside the injunction on the grounds that the project was in the national interest. In a split decision, the Supreme Court of Canada, decided against reviewing the Cree case.

At that time Cree society was still organized around family harvesting territories, each of them with a hunting leader. To meet the threat posed by the James Bay hydroelectric project, the Crees realized that they had to organize themselves differently. They established the Grand Council of the Crees, which was formed in 1974 to conduct negotiations with the outside world. This 20-member body, led by an elected Grand Chief, represents all the Crees of Quebec. The Cree Regional Authority is the administrative arm for environmental protection and providing services to the Cree communities. The Grand Council and the Authority are both not-for-profit corporations, and they report annually to the Crees at a single annual general assembly. They have identical memberships, boards of directors, and governing structures, and function *de facto* as a single organization.

The mission of the Grand Council is:

- a) To assist in solving the problems of the Cree people of Quebec;
- b) To assist the Cree people of Quebec by all means permitted by law to affirm, exercise, protect, en-

large and have recognized and accepted the rights, claims and interests of the Cree people of Quebec;

- c) To foster, promote, protect and assist in preserving the way of life, values and traditions of the Cree people of Quebec;
- d) To improve and assist in improving the conditions in Cree communities and lands and to foster and promote the development of the Cree communities, lands and people of Quebec;
- e) To provide regional services in regard to programmes, communications and activities which may affect or benefit the Cree people of Quebec.

The Crees signed the *James Bay and Northern Quebec Agreement* with the provincial and federal governments in 1975. The *Agreement* was the first of its kind ever signed in North America between Native and non-Native governments. In exchange for important concessions, the Crees received CDN \$125 million and gained partial control of local and regional government. The *Agreement* aimed at ensuring indigenous participation in development, and the Crees themselves overwhelmingly voted to ratify it.

When the *Agreement* was signed, most of the people living in Cree villages still hauled their water home in pails using a yoke; those with some money used 200-litre oil drums tied to a snowmobile. Sanitation facilities consisted of outhouses, often built on saturated clay with little absorption capacity. Half of the population



lived in wooden-sided tents or dilapidated, overcrowded houses when they were in town. Few had electricity. There were no proper roads, and each year the rainy season brought floods of sewage-soaked mud. Although the *Agreement* was meant to address these conditions, it was only the beginning of a 30-year struggle to have promises fulfilled, and to win recognition of the Crees as a distinct nation.

For years after the ratification of the *Agreement*, targets for adequate water supply, housing, sewage systems and health facilities were not met. The Grand Chief at the time, Billy Diamond, took the matter to the Standing Committee of Parliament on Aboriginal Affairs, and the Ministers of Health, Justice, and Indian Affairs and Northern Development. In 1981, a federal inquiry confirmed that the government had failed to deliver services to the people in the James Bay area. A modest action plan was put in place to resolve some of the immediate problems. Health clinics were renovated, the government acknowledged the need for better sewage and water systems, and discussions began on setting up local governments. The *Cree-Naskapi (of Quebec) Act* was adopted in 1984 to address these issues.

In 1995, the Crees and the Government of Canada signed the first agreement on financing the operations of Cree community governments; and the Grand Council of the Crees, meeting in Montreal, decided to hold a referendum on the threatened separation of Quebec from Canada. On 24 October 1995, Crees voted by a huge margin (4,666 to 183) to remain part of Can-

ada, with 77 percent of Cree voters participating. This landmark vote played an important part in national debates on the future of Quebec.

In 2002, the *Agreement concerning a New Relationship between the Government of Quebec and the Crees of Quebec* (the *New Agreement/Paix des Braves*) was signed following a referendum in which it was supported by 70 percent of Cree voters. The New Agreement establishes a Nation-to-Nation relationship between the Crees and the Quebec government based on mutual respect and cooperation. It also provides for a forestry regime managed by a Cree-Quebec Forestry Board on the basis of the traditional system of Cree Family Territories; an increased forestry allotment for the Crees; over \$850 million in construction contracts for Cree companies as well as training and employment programmes for Crees in construction, and power transmission lines to Cree communities; a Mining Exploration Board and a programme to facilitate the involvement of Crees in mining; funding over 48 years for economic development, environmental administration, trapping, outfitting and crafts associations; Cree local and regional policing and Cree game wardens; plus settlement of all outstanding Cree-Quebec court cases.

The *New Agreement* has had a significant impact on the Cree nation. The Crees now share the revenues from resource development within their territory. It is my deepest wish that the *New Agreement* will continue to confer benefits on the Crees of Quebec, and that the economic and social deterioration of the past will be fully overcome.



The *New Agreement* has placed broad new responsibilities on the Crees. Ask them if they are ready to take on the complex work of community and economic development for the next 50 years, and the Crees will reply that this is what they have always fought for.

In December 2001, in anticipation of the *New Agreement*, Grand Chief Billy Diamond organized a meeting of Cree companies to discuss how they might best work together to take advantage of the Agreement. In answer, the Eeyou Istchee Consortium was formed: a non-profit organization with a mandate to ensure fair and equitable distribution of jobs and contracts amongst Cree workers and Cree businesses. It encourages networking and mutual cooperation among Cree businesses and service organizations. Its board includes a representative from each of the nine communities.

The *New Agreement* created the Cree Development Corporation, which operates as an autonomous corporation and its board has a majority of Cree directors. It has a mandate to oversee and facilitate economic development in Eeyou Istchee. It addresses such important issues as job creation, the start-up of Cree businesses, and partnerships with non-Cree companies.

The Crees freely acknowledge that they need more people with financial and technical training; but their people have plenty of hands-on business experience and the will to effect change. Today more than 400 Crees each year are taking university and college courses. There are now Eeyou lawyers, accountants, geologists, pilots, economic development specialists, teachers, heavy equipment drivers, carpenters, secre-

taries, health workers, and more. The chance to participate more fully in their own community development is an incentive to young Crees, who can now look forward to viable employment opportunities in the territory and in their own communities. With the New Agreement, the Crees can re-occupy their traditional territory in new ways by participating in the development of their lands.

Confronted with this reality, the Crees have freely chosen to participate in developing their own future. For other indigenous peoples, there is no choice—their right to benefit from the resources of their land continues to be denied, in violation of their human rights. The land that has sustained them as nations for thousands of years now benefits others, while their own people are forced to leave or remain in poverty, dependent on government aid. They must fight for their rights, as the Crees continue to do in Eeyou Istchee.

It should be underlined that the *James Bay Northern Quebec Agreement* in 1975 marked the beginning of a new era for the James Bay Crees. By standing united as communities and as Cree citizens, they have remained committed to their own concept of nationhood. Their leaders have been strong and wise political actors who have worked tenaciously to protect Cree rights.

At an early stage of their struggle, the Crees decided to take their campaign to the international community. In 1979, the Crees obtained an audience with Pope John Paul II, who was to receive the Canadian Prime Minister shortly thereafter. In 1980, the Crees began their efforts to work with the United Nations, a collaboration that has been exceptionally fruitful

and has given me enormous personal satisfaction. Cree leaders attended the second historic meeting of international non-governmental organizations (NGOs) in Geneva to address the rights of indigenous peoples in 1981.

The Grand Council of the Crees acquired NGO consultative status with the Economic and Social Council in 1987. In that capacity the Grand Council participated in all of the meetings of the United Nations Working Group on Indigenous Populations; all meetings of the working group on the draft UN *Declaration on the Rights of Indigenous Peoples*; and all meetings on the drafting of ILO *Convention No. 169*. The Grand Council was able to establish contacts with governments around the world, and to network with other NGOs. This also helped them understand that they were not the only indigenous people non-governmental organization fighting for its rights, and to recognize that new international standards were needed.

In 1992, the Crees filed a brief with the Commission of Human Rights arguing that their removal from Canada without their consent by virtue of the threatened separation of Quebec from Canada would constitute a violation of their human rights. The Commission made no reply. In 1999, however, based on a submission by the Crees, the UN Human Rights Committee criticized Canada for violating the rights of indigenous peoples in violation of Article 1 of the *International Covenant on Civil and Political Rights*.

In 1993, under the excellent leadership of Grand Chief Ted Moses, the Crees attended the World Conference on Human Rights in Vienna, where they took

a leading role in support of indigenous peoples' status in international law as "peoples", a dispute that raged throughout the Conference and came to be called "the battle of the s". Cree representatives helped draft the section of the *Vienna Declaration and Programme of Action* relating to indigenous peoples. They later helped launch the Permanent Forum on Indigenous Issues.

The setbacks and achievements of the Crees illustrate very well the global struggle of all indigenous peoples: to be recognized as "peoples" (with an "s") who, under international law, have fundamental collective rights to self-determination; to continue to use their natural wealth and resources to maintain and develop their communities; and, most important of all, never to be deprived of their own means of subsistence. The Crees also fought for the recognition of all historical treaties between the Government of Canada and indigenous peoples as treaties under international law. They maintained that Canada and many other countries have applied different standards to the interpretation and implementation of their treaties with indigenous and non-indigenous peoples. The Crees accordingly continue to seek recourse to international courts to adjudicate treaty disputes and other conflicts with Canada.

I have included an important document in the appendices to this book: the Eeyou Istchee Declaration of Principles upon the first sitting of the Cree Legislature, in October 1995.



The Sami of Northern Europe

Máđii – the soft path that was once made became overgrown, but with enough traces remaining to be rediscovered.

Synnøve Perseb, Sami artist, 1990



The Sami are the indigenous people of Finland, Norway, Sweden, and northwestern Russia. The term *Sápmi* exists in every Sami dialect and has several meanings: the geographical region where the Sami people traditionally live; the Sami population; the Sami language; and a Sami person. A Sami policy adopted at the Nordic Sami Conference held in Romssa, Norway, in 1980 defines as a Sami “any person whose first language is Sa-

mi, or whose father, mother, or at least one grandparent uses Sami as his or her first language, or who considers himself or herself a Sami, lives entirely according to written and unwritten rules of Sami society and who is recognized by the Sami community as a Sami, or has a father or mother who satisfies these criteria”.

My account of the development of Sami cultural history focuses on the period from World War II to the present day. During this period the Sami participated in politics and the economic, social and cultural aspects of life in all four countries in which they live, while asserting themselves both as diverse communities and as a distinct indigenous nation. Most of my examples will come from Norway, but they may be taken as illustrative of the overall historical development shared by all Sami.

Like other indigenous peoples, the Sami have lived through repressive paternalistic administration, heavy taxation, an assimilationist school system contemptuous of their culture, and missionaries who sought to destroy their traditions. The Sami nevertheless survived and became a recognized force for the development of their economic, social and cultural rights and their rights to use their land and its resources.

Today the approximately 100,000 Sami have their own flag, celebrate their national day (Sami Peoples' Day), and sing the Sami National Anthem. The Nordic Sami Conference at Åre, Sweden, in 1986 adopted the Sami flag designed by the artist Astrid

Båhto from Ovgobahta, Skibotn, in Romssa, Norway. The circle on the flag represents a Drum, and at the same time is a reference to the poem *Beaivvi bártnit* (“The Sons of the Sun”) by the Sami poet Anders Fjellner (1795-1876). The red symbolizes the sun, and the blue the moon. The 1986 meeting at Åre also decided that the song *Sámi sog lávlla* (“Sami People’s Song”), written by Sami teacher and politician Isak Saba (1875-1921), would be the Sami anthem. Its text was first published in the Sami newspaper *Sa-gai Muitalægje* in 1906. Two melodies accompany the words:

a traditional *juoiggus*—a Sami traditional air—and music composed by Odd Sørli that was used at the Nordic Sami Conference in 1992. The Nordic Sami Conference at Helsinki, Finland, in 1992 decided that 6 February would be Sami Peoples' Day. Sami Peoples' Day was celebrated for the first time in 1993, at the same time as the International Year of the World's Indigenous Peoples was officially inaugurated in Kárášjohka, Norway.

The Sami Assembly in Norway is based in Kárášjohka and was inaugurated in 1989 by King Olaf the Fifth. The Sami Parliament in Finland is based in Anár, while the one in Sweden is in Giron. The representatives are elected by direct, secret ballot by and among the Sami people who are on the Sami electoral register. Those entitled to register are those who regard themselves as belonging to the Sami people and use the Sami language at home, or have a parent, grandparent



or great-grandparent whose home language was Sami. There are 13 Sami constituencies in Norway.

The Sami have traditionally lived throughout Finland, Norway, Sweden, and adjacent parts of Russia. The present-day borders between Denmark, Norway and Sweden were drawn in 1751; between Norway and Russia in 1826; and between Finland and Sweden in 1852. The establishment of these borders led to quarrels amongst nation-states over the traditional Sami way of life with its annual migrations.

The cornerstone of Sami traditional social organization was the *siida*, or village. Their way of life was largely based on hunting, fishing, and reindeer herding as well as gathering berries, hay, and peat. Hunting wild reindeer was important until relatively recently. No one knows for certain how long ago the Sami domesticated the reindeer, but reindeer continue to play an important role in the Sami culture and economy.

Along the coasts and in the south, farming also played an important role. Besides raising cows, sheep and horses, southern Sami grew rye and, in the 19th century, potatoes. Handicrafts using trees, roots, bone, horn, skin and sinew were produced for home use and trade. Boat building was an old Sami skill, and we know from archive material that the Vikings used boats built by their Sami neighbours.

The Sami language belongs to the Finno-Ugric branch of the Uralic language family. It is related to the Baltic-Finnish languages (Finnish, Estonian and Hungarian). It has ten dialects: South, Ume, Pite, Lule, North, Inari, Skolt, Kildin, Ter and Akkala. It is spoken in the northern parts of Norway, Sweden and Finland, and on the Kola Peninsula in Russia.

Norwegianization began with Christian missionary activity at the start of the 18th century and continued to be imposed through the school system, especially during the latter part of the 19th century. Numerous obstacles, including legal prohibitions, were put in the way of the use, enrichment and development of the Sami language. The Sami language is very rich in words pertaining to aspects of nature: animal life, the terrain, snow, activities connected to hunting and herding. But this vocabulary is threatened by changing lifestyles. *Sámi Giellalávdegoddi*, the Sami Language Committee, was established by the Nordic Sami Conference in 1971, and has developed a Sami language policy to conserve and develop the Sami language.

Duodji, or handicrafts, is a broad concept that encompasses everything from the idea to the finished product. The aesthetic, materials and technology reflect a way of life perfectly adapted to conditions in the different geographical areas of Sami settlement. The products were originally made for the producer's own use, to exchange and to trade, and were sometimes used to pay taxes. After 1945 handicrafts produced by women were recognized as an economic asset; this led to the sale of handicrafts being organized, seeking expert advice and teaching techniques in Sami schools.

Artists using other media are often inspired by the patterns and motifs of traditional handicrafts. Sami artists organized *Sámi Dáidda ehpíid Searvi*, the Sami Artists' Organization, in 1979, and introduced their concept of art, which became known as *Dáidda*. Today, Sami writers, musicians, and artists each have their own professional organizations. The Sami Artists' Organization is an independent branch of the respective national art-

ists' organization and a member of the International Association of Art. Sami artworks have been exhibited worldwide, giving Sami art national as well as international visibility. Arts and culture have played an important role in the process of putting the Sami people and culture on the political agenda of national governments.

In 1975 the Sami artist Hans Ragnar Mathisen published a map of the *Sabmi* depicting "Samiland" in "Finlandia" without borders and with Sami place-names. Mathisen used illustrations of places, cultural sites and symbols of material objects and from the old religion to tell the story of the Sami and how they used the land. This was followed by a number of maps of the Sami settlement areas, mainly in Norway; a Sami atlas of the world; and historical maps of Sami settlement in the north. Mathisen's work draws upon early Sami documentation of place-names. In the Sami language, place-names describe the place itself and what you see on the way. Long suppressed, Sami and Finnish place-names are now protected by law in Norway (*Law on Place-names*, 1990; revised in 1993).

Sami has traditionally been an oral culture, and parts of the oral literary tradition are still alive. Written Sami literature arose from the Christianization that began in the 18th century in Norway. There are school primers and other books, dictionaries and religious works written in Sami dating from this period. Sami literature written and read by Sami began to emerge at the beginning of the 20th century. The first book in Sami was *Muitalus samiid birra* ("Turi's Book of Lapland") published in 1911 by Johan Turi (1854-1936). This was followed by collections of Sami folklore and fairy tales assembled from scholarly studies and printed in Sami and Norwe-

gian. Sami literature has been flourishing since 1970, with Sami authors writing novels, plays, short stories and song lyrics.

Nils-Aslak Valkeapää (1943-2001) was a Sami from Finland. He started as a teacher, but developed his many talents and became a singer, musician, author, poet, and painter. In 1991 he received the Nordic Prize for Literature for his book *Beaivi áh ážan* ("The Sun My Father"), the first Sami to be so honored. He composed the music for the Oscar-nominated film *Ofelaš* ("The Pathfinder") and also played a role in the film. He was responsible for the Sami cultural presentation part of the opening ceremonies of the Winter Olympics at Lillehammer in 1994. He is buried in Gáivuotna in Romssa, Norway.

Theatre is a new medium in Sami culture, and in two decades has developed rapidly, mainly through the work of three groups: *Dálvadis* ("Winter Settlement Area") in Sweden; *Beaivváš* ("The Sun") in Norway; and *Rávgaš* ("Ruff") in Finland. Recently a new group has established itself in the South Sami area. Theatre groups give performances of plays of local playwrights, traditional works and international plays, both comedies and dramas. Film has also become a growing forum for presenting cultural and political messages. Owing to the success of "The Pathfinder," Sami filmmakers have shown their films at international festivals since 2001.

The publishing of newspapers to disseminate information to the Sami on matters of local, national and international interest began in the latter part of the 19th century. Some of these newspapers were in Sami, but they became increasingly difficult to finance and disappeared in the 1920s. The Swedish newspaper *Samefolkets*

Egen Tidning (“The Sami Peoples’ Journal”) began in 1919 and is still published monthly. Today there are two newspapers and a religious magazine published in the Sami language in Norway. Sami news has been broadcast on the radio in Norway since 1946. In the 1970s, a Sami radio station began broadcasting from Kárášjohka, and it now also broadcasts daily Sami news and entertainment programmes on television through a broadcast agreement between Finland, Norway and Sweden.

Juoiggus is a musical form that has a variety of expressions in Sami settlement areas. The melody of the *juoiggus* is called *luohhti*. Traditional forms of the *juoiggus* are known from the mid-17th century, and examples of *juoiggus* have been found in archives in Helsinki, Uppsala and Tromsø. Both traditional and new forms are flourishing today. In the 1950s Radio Sweden issued a collection of this material on records, now available on CD. The Sami publishers DAT and Idut have also recently issued a CD of traditional *juoiggus*.

Traditional music and modern music meet in Sami society. Holidays and festivals are always marked by musical presentations. In 1979 an annual Sami music festival, *Davvi Šuvva*, was organized in Garasavvon, Sweden. *Riccu-Riddu* (“Storm by the Coast”), a Sami youth music festival, has been held in Gaivuotna, Norway, for two decades. It has become an international venue for Sami culture and a meeting place for circumpolar indigenous peoples.

Mari Boine, an international Sami artist, singer, songwriter and composer was awarded the Nordic Council Music Prize in 2003. On that occasion, the Nordic Music Committee said: “Her work is characterized by its high artistic quality and she has put Sami music

on the national, Nordic and international music maps. She has managed to stick to the music’s roots but also to endow it with contemporary idiom that reaches out to an enormous public all over the world.”

Sami education is closely connected to the right to be educated in one’s mother tongue. The emerging Nordic nation-states and their churches initially viewed the Sami language as a tool for assimilation and Christianization, but from the latter part of the 19th century until the end of World War II the Sami language was prohibited in schools. Schools, particularly boarding schools, played a central role in assimilation, as has recently been acknowledged by the Norwegian government.

The use of Sami as the language of instruction in school has been one of the most important political issues for the Sami organizations since the 1950s. Use of the Sami language was experimentally permitted in schools in 1967, and the Sami language became an official subject of study in 1969. A Sami Educational Board was established in 1975. In order to implement the goals set by the Board it was necessary to increase the competence of teachers and the resources available for Sami children; translate instructional material; write new textbooks; and improve teacher training at universities.

Notwithstanding these recent developments, the Sami language today is under threat. In the southern Sami area few families use the Sami language at home, although Sami can be used in the boarding schools that many children attend. A language revitalization project in Divtasvuotna, in the Lule Sami area, has focused on use of the language throughout education, beginning in kindergarten. In other Sami areas, including Gaivuotna and Porsagu, Sami Language Centres have been established.

Compulsory schooling for nine years came into effect in Norway in 1990. This opened the way for a Sami Teacher Plan, which was adopted in the Storting (the Norwegian Parliament) in 1997. Ole Henrik Magga, an eminent Sami leader and first Chairperson of the UN Permanent Forum on Indigenous Issues, called the Plan “a milestone for the development of Sami culture and language as a natural part of the school system”. The pedagogical principles and guidelines for teacher training were developed on the basis of the Plan. Textbooks and means of instruction are closely connected to the language. Great efforts are being made across the national borders to develop common concepts within the same



language groups, with a view to strengthening the Sami identity of the pupils and their cultural affinities.

Scholarly studies of the Sami language were first carried out at the University of Oslo. One of the purposes was to instruct missionaries who were going to work in Sami areas. Today there are university courses in the Sami language, Sami culture and Sami literature at the University of Romssa, and at the *Sámia állaskuola*, a Sami university college established at Guovdageaidnu in 1989. The Sami language can now be studied as a mother tongue, rather than as a foreign language. Doctorates have been awarded to Sami students in the humanities, social and natural sciences, medicine, law, and fisheries. The development of Sami knowledge in archaeology, anthropology, history, language, biology, medicine, and law has led to a reconsideration of these fields from a Sami perspective. *Sami Instituhitta*, the Nordic Sami Institute, was established in 1973 in Guovdageaidnu. The scientific staff are recruited from among Sami researchers from Finland, Sweden and Norway. In the beginning the Institute's activities were funded mainly by the Nordic Council. Today, individual Nordic states also finance ongoing projects to strengthen and develop Sami language, culture and society. Principal fields of research include language, law and the social sciences. The training of primary and secondary school teachers is also a priority. The goal at the Nordic level is to develop tools, define research goals and develop possibilities for research to be carried out by Sami researchers.

The health of the Sami people has been a political issue since the 1950s, and has begun to be addressed in different ways. Healthcare is closely connected to the education and recruitment of doctors, nurses, health

visitors and other health professionals with knowledge of the Sami language. Disseminating information on health services was one of the main challenges. Sami health and social workers began to organize in the 1970s, and through their organizations they have highlighted the situation of their Sami patients and clients. Sami health and social issues were put on the national agenda in 1995 in an official Sami Health and Social Services Plan, which was the basis for the establishment of the Sami Health Research Centre in Kárášjohka in 1999. The Centre undertakes interdisciplinary research on subjects related to Sami health. It also publishes a journal in Sami and Norwegian.

Over the last thirty years many local, regional and national Sami cultural institutions have been established to carry out studies; collect oral and written traditions, customs, and artworks; and develop archives. They are careful to present Sami cultural heritage from the perspectives of different Sami groups.

Sami museums in Norway are a part of the national museum network. There are some 15 Sami museums, libraries and cultural institutions in the Norwegian Sami territory, including two art museums. *Sami Museumsearvi*, the Sami Museum Association, is a non-governmental organization of Sami museums and museums in Norway with Sami collections. The Association facilitates cooperation among its members and is the focal point for other similar institutions in Norway and abroad. The *Kulturja Ealáhusossodat*, *Samediggi*—the Department of Environmental and Cultural Protection of the Sami Parliament—protects all Sami artifacts more than 100 years old pursuant to the *Cultural Heritage Acts* of 1978 and 1994

Sami Sierrabibliotehkka, the Sami Special Library, was established in 1983 at Kárášjohka, and since 1990 has had responsibility for collecting Sami literature. The National Library produced an electronic Sami bibliography in 1993. The Sami Archive was established at Guovdageaidnu in 1995 as the repository for material of historical importance, including the personal papers of notable Sami people.

Samis are well-known skiers, skaters and, recently, footballers. Sports have attracted many Sami people who would not normally take part in Sami cultural activities. A National Sami Football Club was established in 1985, and recruits players from Finland, Norway and Sweden. They have played against teams from Åland, the former East Germany (DDR), and Estland, and in 2001 they defeated the Greenland team. Efforts are being made to set up a national football team for Sami women. Sami sports organizations are financed by the three national Sami parliaments.

The Sami political system that has developed over the last thirty years is presented here mainly from the perspective of the Norwegian experience. As the system continues to develop, the strength of the Sami people will grow across borders.

Norway's recognition of the rights of the Sami as an ethnic and linguistic minority and as an indigenous people is grounded in the *Universal Declaration of Human Rights*; Article 27 of the *International Covenant on Civil and Political Rights*; *Agenda 21* adopted by the World Conference on Environment and Sustainable Development in 1992, and the UN *Declaration on Indigenous Peoples*. Norway has also ratified ILO *Convention No. 169*. Sami is an official language of Norway.

Individual Sami and Sami organizations began to bring Sami cultural and political issues into the public arena after World War II. The first Nordic Sami Conference was convened at Jokkmokk in 1953 by Sami organizations from Finland, Sweden and Norway. At that time the main issues were Sami rights to land, water, language, and culture. The land question coalesced around plans to build a hydroelectric dam on the Alta River. This conflict provoked a change in official government policies. A committee was established in 1980 to study the legal rights of the Sami. Its first report was submitted in 1984, and on the basis of its recommendations *Act No. 56* of 12 June 1987, was adopted; and a new Article 110A added to the Norwegian Constitution in 1988, which states: "It is the responsibility of the authorities of the State to create conditions enabling the Sami people to preserve and develop their language, culture and way of life." This obligation of the state implies a legal duty to support all the basic elements necessary for the Sami to live and develop, including legal protection for the material basis of Sami culture. The 1987 legislation contains administrative provisions to ensure the full implementation of Article 110A. The *Sámediggi* (Sami Assembly) was inaugurated in 1989, and in 1993 it assumed responsibility for the administration of all Norwegian state funding for Sami cultural activities.

The Sami are also recognized as an indigenous people in Finland, which recognized their legal rights to protect and develop their language and culture and to safeguard their cultural autonomy in their local communities in 1966. Sweden legislatively recognized the right of all ethnic, linguistic and religious minorities–





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including Sami– to protect and develop their own cultures and ways of life in 1976.

Efforts to secure Sami rights to land and water have continued since 1980. The preliminary work comprised a wide range of studies of customary laws, local regulations, and national and international law relating to the rights of indigenous peoples. The Norwegian Storting adopted an *Act on Land Use and Ownership in Finnmark County, Norway*, and the Sami Rights Committee submitted a report on land and natural resources in Finnmark to the Storting that is currently under review by representatives of the Sami, Finnmark County and the national government.

A new Sami Rights Committee was established in 2001 to study land and natural resource use by Sami outside Finnmark, and to report in 2005. And in 2004, a special district court was established within the Sami language administrative district to strengthen the Sami people's confidence in the legal system. The court is located in Deatnu, and accords equal status to both Sami and Norwegian languages.

The Sami Parliamentary Council was established in 2004 as a joint organization of the three national Sami parliaments. Sami from Russia have observer status. It deals with cross-border matters, fosters cooperation among Sami in the four countries, and acts as the collective voice of the Sami nation internationally, in particular within the United Nations system.

In 2002, an expert group was constituted to draw up a Nordic Sami Convention for Finland, Sweden and Norway. Matters to be addressed in the Convention will include the definition of "Sami"; self-determination; cooperation between the Sami parliaments and the states; language; the environment; the preservation of Sami cultural

heritage, health, education and research; and the protection of Sami livelihoods, culture, and children and youth.

There are many other important Sami organizations. One of the world's oldest indigenous organizations is *Norga Boazusapmelaccaid Riikasearvi*, the National Sami Reindeer Organization, established in 1948. In the 1970s, local Sami cultural groups (*Sami Searvi*) joined together as a national organization. The Saami Council, established at Kárášjohka in 1956, and located in Ohcejohka, Finland, is a collaboration of Finnish, Norwegian and Swedish Sami. Russian Sami became full members in 1992. The Saami Council has consultative status with the UN Economic and Social Council, and has initiated cooperation and projects with indigenous peoples around the world. The Saami Council and its eminent members played an important and constructive role in the deliberations of the Working Group on Indigenous Population and made also a valuable contribution to the elaboration and adoption of the UN declaration on the rights of indigenous peoples.

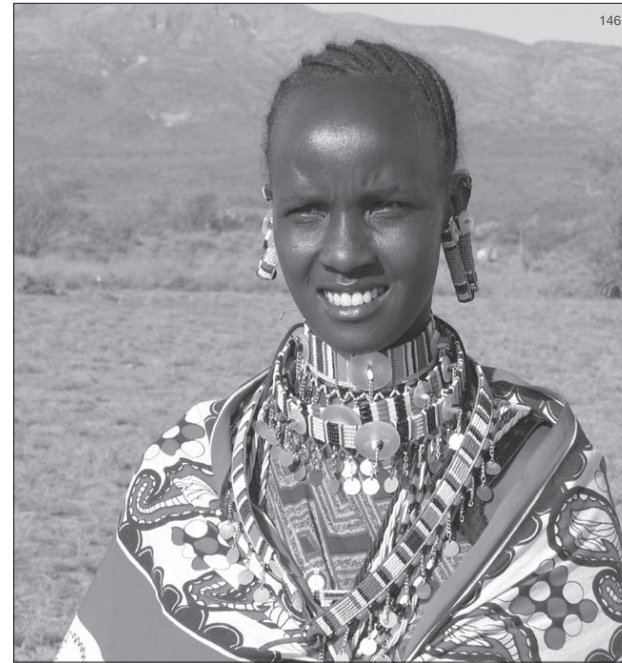
The Sami Church Council was established in Norway in 1992. It works to protect and promote Sami religious life within the Norwegian Protestant Church. Through the World Council of Churches, the Council cooperates with indigenous peoples around the world in work on indigenous peoples' rights. In addition, the Resource Centre of Indigenous Peoples' Rights was established at Guovageaidnu in 2002 to increase public knowledge of indigenous rights in Norway. The Centre aims to create a professional network dealing with indigenous issues among institutions in Norway and abroad.

The Sami women's organization *Sáráhkká* was created following a Nordic Council Women's Conference,

and played a central role in the founding of the World Council of Indigenous Women in 1989. These organizations stress that indigenous women have a different view of life to men, and that modernization often upsets the system of common law and traditions in ways that may not affect men. *Sámi Nisson Forum*, the Sami Women's Forum, has since 1996 been a network for initiating community projects for Sami women. It publishes a journal in Sami and Norwegian, *Gába*, offering a woman's perspective on issues facing Sami society. The National Sami Reindeer Organization is now working with the Norwegian Ministry of Agriculture to explore how the UN *Convention on the Elimination of All Forms of Discrimination against Women* can be incorporated into Norway's *Act on Reindeer Herding*.

The process of casting off the shadow of repression and creating a Sami nation has demanded creativity, knowledge and political skill. The fact that so much has already been accomplished is testimony to the strength of the solidarity demonstrated by Sami men and women—solidarity grounded firmly in Sami culture, traditions and customs, and in international human rights principles.

I should like also to mention briefly and to pay tribute to the memory of a very much respected Sami, the late Sara, from Kautokeino, who was a pioneer in promoting the human rights not only of the Sami peoples but of the world's indigenous peoples at the competent fora of the United Nations system.



Africa's Indigenous Peoples

As befits the ancient cradle of humanity, Africa is blessed with an extraordinary diversity of peoples and cultures: an estimated 2,000 distinct ethnic groups. Living biological resources continue to be the backbone of the African economy and the life-support system for most of Africa's people. Rural households depend on the continued use of their traditional knowledge of plants and animals for medicine, materials, and agriculture. Accordingly, among the main threats to Africa's biodiversity are the lack of recognition of indigenous knowledge and man-



agement practices, and disregard for indigenous property rights.

The Indigenous Peoples of Africa Coordinating Committee (IPACC) provides an interesting view on the issue of who is “indigenous” in Africa. During the formation of IPACC there was an important creative process in which different African groups claiming rights as “indigenous peoples” came together and explored what they had in common. Participants set aside international legal criteria and tried to make sense of the *de facto* mobilization of particular groups of African people from different political, economic and cultural backgrounds. IPACC maintains that the question of who is indigenous in Africa can be seen as a set of concentric circles with a core group who indisputably represent the “first peoples” of Africa: the peoples that suffer marginalization and discrimination for being “primitive” and are at the same time rich in knowledge and skills related to biological diversity. The other circles represent lesser degrees of stigmatization and marginalization, to which different policies may apply.

Hunting and gathering peoples form the core of the definition of indigenous peoples in Africa. Once all human societies lived by hunting and gathering, but few maintained this form of economy into the 21st century. Hunter-gatherers are the oldest continuous cultural collectivities on the African continent. Recent genetic research has confirmed that modern day peoples, including the various San, Hadzabe and Sandawe of southern Africa, have maintained their isolation from other peoples for up to 90,000 years. The fact that these three oldest genetic clusters on the African continent all share click languages suggests that language and perhaps

cultural practices, including hunting, have held these civilizations together since the dawn of humanity. The “pygmy” peoples of Central Africa have also remained largely isolated, genetically and culturally, for tens of thousands of years.

Genes are not a basis for allocating human rights, of course. But genetics provides evidence of the extraordinary antiquity of some African groups that suffer discrimination and abuse today. Past and ongoing processes of discrimination, colonialism and post-colonial nation-building, development and modernization have left some small African peoples marginalized in their own countries, and in need of special recognition and protection. Many of these groups have begun organizing themselves at the local and national levels, and are reaching out to similar groups around the world. Many of them are now taking part in the international movement for the rights of indigenous peoples.

The term “indigenous peoples” has negative connotations in Africa, however, as it was used in derogatory ways during the European colonial era and misused in chauvinistic ways by post-colonial African governments. Common misconceptions of the term “indigenous peoples” in Africa are: (1) to protect the rights of indigenous peoples would be to give special rights to some ethnic groups over and above the rights of all other groups within a state; (2) the term indigenous is not useful in Africa as all Africans are indigenous; and (3) talking about indigenous rights could lead to tribalism and ethnic conflict.

The important point that needs to be made regarding the use of the term “indigenous peoples” is that it is not an attempt to challenge the identity of other African

groups. Severely marginalized groups do not use the term “indigenous” to deny other Africans their legitimate claim to belong to Africa and to share in the resources of the continent. They use this term because it provides a basis on which Africa’s most disadvantaged groups can seek protection in international and regional human rights fora.

The African Commission on Human and Peoples’ Rights (ACHPR) describes “indigenous peoples” in the African context as groups whose cultures and ways of life differ considerably from the dominant society, and whose cultures are under imminent threat of extinction. The survival of their particular way of life depends upon access to their traditional lands and natural resources. They often live in geographically isolated regions, and are regarded as less developed and less advanced than more dominant sectors of society. They are subject to domination and exploitation within national political and economic structures, which reflect only the interests and activities of the national majority. Discrimination, domination and marginalization violate their human rights as peoples, threaten the continuation of their cultures, traditions and ways of life and prevent them from being able to genuinely participate in deciding on their own future and forms of development.

The African Commission adds that these groups could lead a good life, based on their own visions of a good life, and contribute considerably to the development of the states within which they live if they were given the same opportunities as other more dominant groups. In conclusion, treating certain African groups as “indigenous peoples” is not inherently problematic. The problem lies in political and structural factors: factors that must be looked at critically in order to allow

these marginalized groups to live someday in a dignified way and fully realize their potential to make positive contributions to the larger society.

The Batwa (“pygmy”) people live in the equatorial forests of Central Africa and the Great Lakes Region. They have different names that correspond to the specific regions of the forests in which they live. They speak different languages depending on the geographical location of their area. Just as the term “San” is a derogative Nama term for hunter-gatherers, Batwa is the Bantu plural for hunter-gatherers and not the word the people have for themselves.

In the Great Lakes, certain “pygmies” had special protection from the Tutsi kings and were valued as a powerful spiritual resource. In other cultures, such as the Xhosa culture in South Africa, the inter-marriage between San and Bantu people helped reinforce diviner traditions in the dominant culture, which absorbed the knowledge and ways of the older San peoples.

It was with the advent of colonialism that the hunter-gatherers and transhumant pastoralists of Africa first became marginalized; and in the course of the decolonization of Africa, they were excluded from state institution building. In some countries, the citizenship of hunter-gatherers remains in doubt to this day. In the western parts of Central Africa references are made to “*citoyens*” and “*Pygmées*” as distinct categories. Many if not all “pygmies” in Cameroon, Gabon, Congo Republic and the Democratic Republic of Congo are without the most basic forms of documentation necessary for citizenship, such as national identification documents and birth certificates.

Hunter-gatherers fit all of the possible international legal criteria for indigenous peoples. They are typically the

earliest surviving occupants of their present territories, and they are widely regarded by their neighbours as “autochthonous”. Their cultures and economic practices are intimately connected with the sustainable use of local natural resources. They are systematically marginalized by states, and often deprived of citizenship and education. Where the traditional economy has collapsed, usually due to environmental devastation, hunter-gatherers are relegated to the lower tiers of the cash economy, where they are extremely vulnerable to all forms of abuse, as well as the scourge of extreme poverty.

I should like briefly to refer also to the millions of transhumant pastoralists in Africa. In this regard it is useful to note that the Maasai and the Tuareg have been two of the leading cultural forces in the indigenous peoples’ movement in Africa. Many Africans recognize that the nomadic peoples must be considered as indigenous peoples.

Like hunter-gatherers, transhumant pastoralists were left out of the state formation process during colonialism and the postcolonial period. In Kenya, Tanzania and northern Uganda, for example, agricultural ethnic groups in the south held all the economic power at the time of independence. Groups such as the Maasai continually lost territory to neighbouring agricultural groups, which were backed by the state. In southern Africa, agro-pastoralist Bantu speaking peoples seized lands that were already occupied and used by groups of transhumant pastoralists (Khoekhoe) and hunter-gatherers (San). Despite interaction between these different groups in marriage, exchange of foods, customs and languages, conflicts persist to this day. ○



EPILOGUE

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THE PATH AHEAD

The adventure of indigenous peoples has just begun. From the shadow of extinction, indigenous peoples worldwide have asserted a shared identity and purpose, and combined forces to win international attention and growing support for their cause. In one generation, they have journeyed from obscurity to emerging as a new object of international law. Indeed, with the adoption in 2007 of the UN Declaration on the Rights of Indigenous Peoples, they have achieved recognition as a new *subject* of international law: that is, polities with distinct collective rights and standing to assert and defend their interests as direct participants in the work of the United Nations system and other international institutions.

We are all a part of this adventure. As the international movement of indigenous peoples gained momentum and global attention in the 1980s, it helped redefine the nature of nation-states and human rights generally. Indigenous peoples redefined and revitalized two far-reaching concepts that had fallen into disrepute during the Cold War—collective rights and individual responsibilities—and made them a part of public international law. Through the Working Group on Indigenous Populations, they helped lead the way for all grassroots organizations and NGOs in terms of democratizing international institutions. Together with women's organizations and other NGOs, indigenous peoples

moved the environment towards the top of the international political agenda, where it remains today.

Most significantly, perhaps, indigenous peoples played a prominent role in reconciling the pursuit of civil and political rights, with economic, social and cultural rights, in particular through their focus on land and the environment as the foundation for self-determination. As much or more than any other international movement in the last decade of the Cold War, indigenous peoples redefined human rights and development in terms of security, community, participation and cultural diversity.

We are witnesses to an evolving new world order that is not only marked by growing global trade and international financial institutions. Counterbalancing the growth of new forms of global power (and tragically, more global forms of violence) we can see the development of new forms of community, cultural autonomy, and communications that bring peoples closer together in spirit, without sacrificing their freedom. By standing together against nation-states and global economic interests, indigenous peoples—the world's most vulnerable peoples—established a precedent and example that I believe has helped change the world and define the 21st century.

The making and re-making of myth are universal means by which human societies understand and reproduce themselves, and represent themselves to others. As indigenous peoples struggled for centuries to

survive physically and culturally on the lands they cherished, they found new meanings in the multitude of stories inherited from their ancestors. As they became victims of international powers—colonialism, industry, the internationalization of trade and finance—their stories could no longer explain their world in terms of the shaping of a valley, mountain, forest or desert by the struggles of their ancestors to make peace with the animals and spirits that shared the use of their traditional territories. The stories of indigenous peoples reached out to address the global power struggles of which they had gradually and unwillingly become a part: struggles pitting centralized power and material growth against cultural diversity, freedom and ultimately, peace.

Indigenous peoples' creation stories reflect differences in the environments in which they live and give them a sense of belonging with their surroundings. Many stories describe the origin of specific landforms or features of the physical environment. The stories tell indigenous peoples that they have lived on their traditional lands since the beginning, when the Creator of all things assigned them their homes. Indigenous peoples everywhere felt a responsibility to take care of their homes, as part of a covenant with their Creator. Many continue to feel this connection and responsibility today.

Creation stories teach that humans must respect everything in their surroundings. It is here that their ancestors were taught how to hunt, fish or farm; which plants to use for food or medicine; and the importance of renewing balance and harmony with nature. Here the lessons were learned on how to live as a fully formed human person, and as a member of a family, a community, and a nation. The land is both birthplace and birthright.

As Tom Goldtooth, National Coordinator of the Indigenous Environmental Network in Canada, explains, "Indigenous peoples are the environment and the environment is indigenous peoples—we are one and the same with the air, water and the soil of our Mother Earth. We are connected to every living species and every living species is spiritually and culturally connected to us".

The circle of life is a view of existence in which all things end at the beginning in a never-ending renewal of existence. All parts of the circle are equal, and hold hands as equals. For indigenous peoples, the circle continues to be a universal symbol of connectedness, unity, mutual responsibility, harmony, wholeness, and eternity.

Among Cree-speaking indigenous peoples in North America, this perspective is captured in the word *miyowicihiwewin*, or "having good relations". Like many other indigenous peoples throughout the world, Crees dance in a circle, symbolizing good relations at all levels of life: the coming together of the nation, the reciprocity of human and their non-human neighbours, the collective responsibility of the nation's social, spiritual and political institutions, and their oneness with their Creator.

This philosophy is also represented in the pipe ceremony that is shared by many North American indigenous peoples. The parts of the pipe symbolize earth, plants, and spirit (the smoke). Pipe ceremonies follow the sun's path, in a circle.

Many indigenous cultures divide the circle into four directions, like a compass. The number four has symbolic significance that can be observed in the natural world. Each time the sun rises in the east to circle the sky, the day moves through four parts: morning, afternoon, evening and night. The days join together in four



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seasons of the year. Some indigenous peoples also conceive of four fundamental, sacred elements (earth, water, air, and fire) and four basic colours.

The other key concept of indigenous philosophy that merits wider recognition and respect is the power of women. Like Mother Earth, women have enjoyed high regard in indigenous societies, in particular elder women who were grandmothers, teachers, and to a significant degree, the conscience of the community and its leaders. They were seen as the protectors of the young, and the keepers of the history and culture of the people.

Certainly, not all indigenous cultures everywhere and at all times conceptualized “nature” in quite the same terms. In their common struggle against exploitation and extermination on the global stage, however, the notion of protecting Mother Earth has become a powerful unifying myth of indigenous peoples that strengthens and justifies their struggle. All of us, whether indigenous or non-indigenous, continue to create, enact, record and ponder our human stories. We might well also adopt Mother Earth as the mythos for the new century. For all of us, this is a responsibility, too—a challenge to be worthy of being Earth’s children.

As we begin down the path of the 21st century, let us not forget the archaeological evidence that “modern” humans (that is, our species *Homo sapiens*) have lived on this planet for more than 2,000 centuries. Although we have no written records of most of our history, there is little doubt that our common ancestors learned much from studying and shaping a human and natural world that was probably far more varied than the one we now inhabit. Their observations, interpretations and feelings about that world survive not in books, but in stories, traditions and practices the value of which we are only beginning to appreciate now that we are on the brink



of losing them and the languages in which they have been maintained. The choice is ours: to honour, preserve and embrace our total common legacy, or to lose it and with it, perhaps, our world and ourselves.

Professor Leroy Little Bear of the Kainai First Nation in the northern prairies of North America once wrote: "Creation is a continuity, and if creation is to continue, then it must be renewed. Renewal ceremonies, songs, and stories are the human's part in the maintenance of the renewal of creation. Hence the Sundance, the societal ceremonies and the unbundling of medical bundles at certain phases of the year are all interrelated aspects of happening that take place on and within Mother Earth."

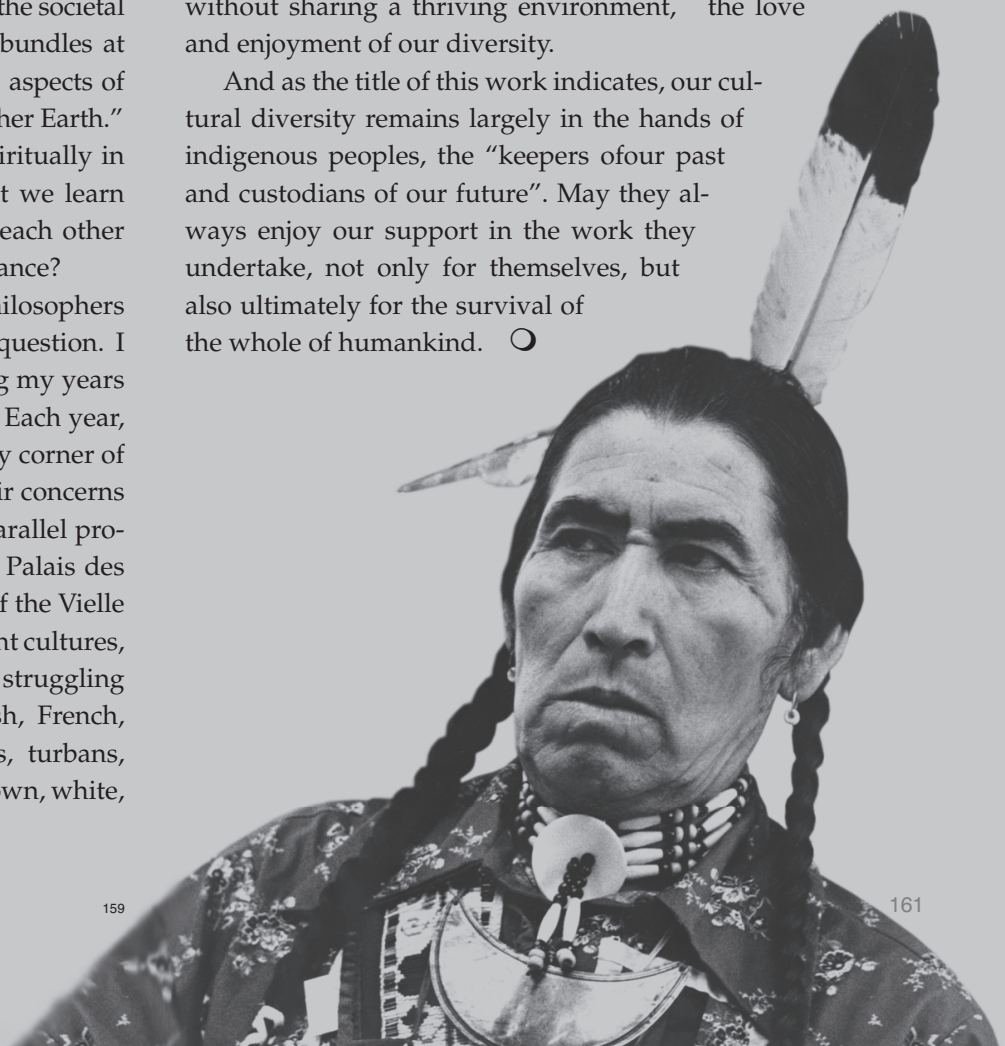
If humans are to survive and prosper spiritually in the 21st century, what kind of renewal must we learn and practice to restore good relations with each other and the earth? What will be our global Sundance?

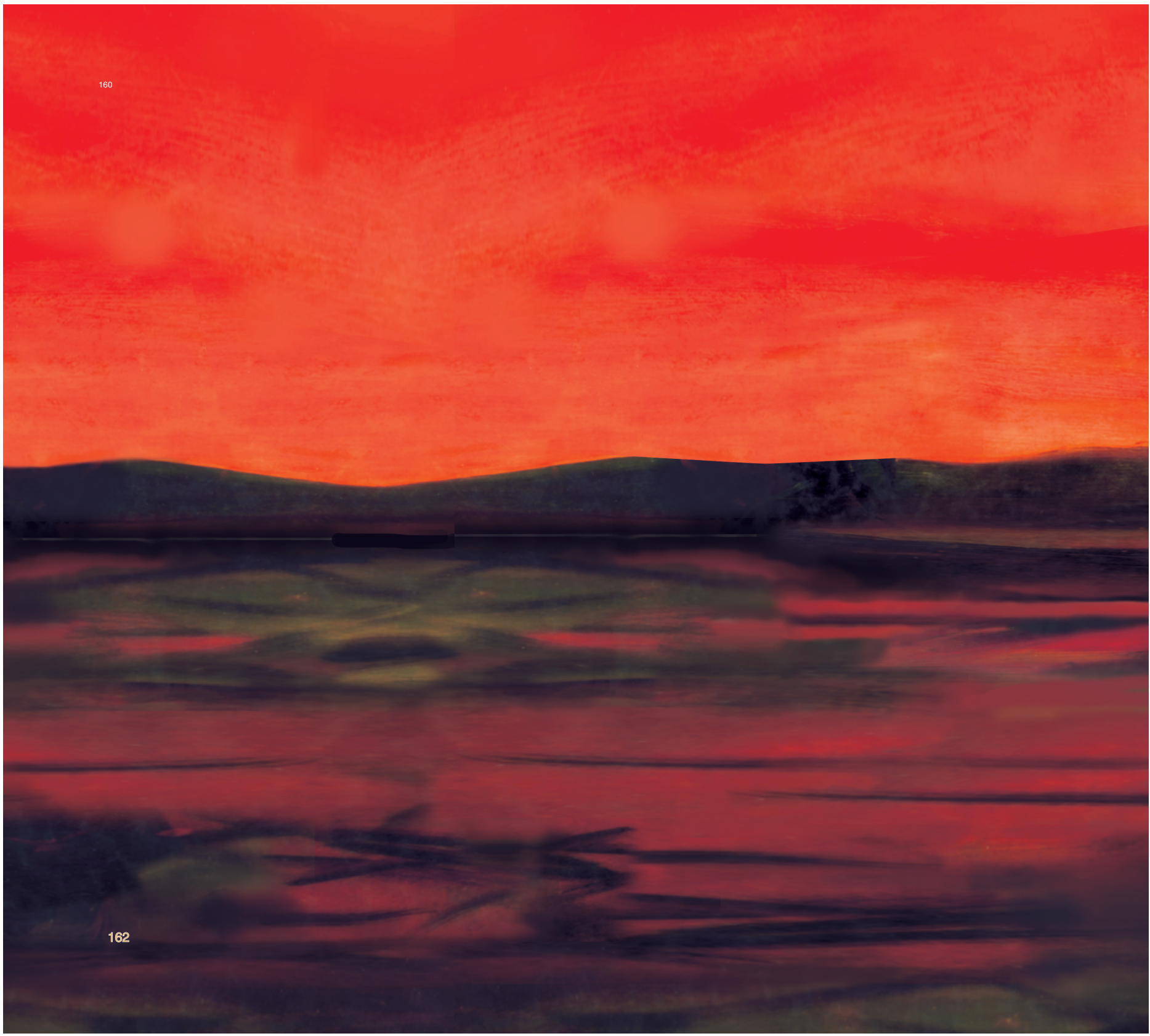
I no longer think that we must turn to philosophers and universities to answer this important question. I have seen the beginning of an answer during my years of work with indigenous peoples at the UN. Each year, as hundreds of indigenous people from every corner of the world converged on Geneva to press their concerns formally with the UN and governments a parallel process played itself out in the corridors of the Palais des Nations, in hotel lobbies, in the restaurants of the Vielle Ville: indigenous people of a hundred different cultures, speaking a hundred different languages (and struggling to communicate with each other in English, French, Portuguese or Spanish), clothed in shawls, turbans, feathers and embroidery; many shades of brown, white,

black—all of them, hugging, smiling, and sharing food and stories.

This is the renewal ceremony we need for the future. I have been very privileged to be part of it for the past quartercentury, and I regard it as the true spirit and meaning of the United Nations and of human rights. We may begin the 21st century with new international laws and institutions to safeguard human freedom and dignity, but we may not survive to the next century without sharing a thriving environment, the love and enjoyment of our diversity.

And as the title of this work indicates, our cultural diversity remains largely in the hands of indigenous peoples, the "keepers of our past and custodians of our future". May they always enjoy our support in the work they undertake, not only for themselves, but also ultimately for the survival of the whole of humankind. ○







UNITED NATIONS GENERAL ASSEMBLY

Sixty-first session - 7 september 2007

Agenda item 68

Report of the Human Rights Council

United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006, by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

Recalling its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

Adopts the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

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

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned 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,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

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,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights¹ and the International Covenant on Civil and Political Rights as well as the Vienna Declaration and Programme of Action,² affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples pos-

sess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing 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,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights³ and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

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

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

- a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
- d) Any form of forced assimilation or integration;
- e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and

future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.
3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

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.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of

subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

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.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall 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.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a significant threat to relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. 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.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

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.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations 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.
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law, and in accordance with international human rights obligations.
Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.
3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

JOHANNESBURG DECLARATION ON SUSTAINABLE DEVELOPMENT*

From our origins to the future

1. We, the representatives of the peoples of the world, assembled at the World Summit on Sustainable Development in Johannesburg, South Africa, from 2 to 4 September 2002, reaffirm our commitment to sustainable development.
2. We commit ourselves to building a humane, equitable and caring global society, cognizant of the need for human dignity for all.
3. At the beginning of this Summit, the children of the world spoke to us in a simple yet clear voice that the future belongs to them, and accordingly challenged all of us to ensure that through our actions they will inherit a world free of the indignity and indecency occasioned by poverty, environmental degradation and patterns of unsustainable development.
4. As part of our response to these children, who represent our collective future, all of us, coming from every corner of the world, informed by different life experiences, are united and moved by a deeply felt sense that we urgently need to create a new and brighter world of hope.
5. Accordingly, we assume a collective responsibility to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development – economic development, social development and environmental protection – at the local, national, regional and global levels.
6. From this continent, the cradle of humanity, we declare, through the Plan of Implementation of the World Summit on Sustainable Development and the present Declaration, our responsibility to one another, to the greater community of life and to our children.
7. Recognizing that humankind is at a crossroads, we have united in a common resolve to make a determined effort to respond positively to the need to produce a practical and visible plan to bring about poverty eradication and human development.

From Stockholm to Rio de Janeiro to Johannesburg

8. Thirty years ago, in Stockholm, we agreed on the urgent need to respond to the problem of environmental deterioration.¹ Ten years ago, at the United Nations Conference on Environment and Development, held in Rio de Janeiro,² we agreed that the protection of the environment and social and economic development are fundamental to sustainable development, based on the Rio Principles. To achieve such development, we adopted the global programme entitled Agenda 21³ and the Rio Declaration on Environment and Development,³ to which we reaffirm our commitment. The Rio Conference was a significant milestone that set a new agenda for sustainable development.
9. Between Rio and Johannesburg, the world's nations have met in several major conferences under the auspices of the United Nations, including the International Conference on Financing for Development,⁴ as well as the Doha Ministerial Conference.⁵ These conferences defined for the world a comprehensive vision for the future of humanity.
10. At the Johannesburg Summit, we have achieved much in bringing together a rich tapestry of peoples and views in a constructive search for a common path towards a world that respects and implements the vision of sustainable development. The Johannesburg Summit has also confirmed that significant progress has been made towards achieving a global consensus and partnership among all the people of our planet.

The challenges we face

11. We recognize that poverty eradication, changing consumption and production patterns and protecting and managing the natural resource base for economic and social development are overarching objectives of and essential requirements for sustainable development.

12. The deep fault line that divides human society between the rich and the poor and the ever-increasing gap between the developed and developing worlds pose a major threat to global prosperity, security and stability.
13. The global environment continues to suffer. Loss of biodiversity continues, fish stocks continue to be depleted, desertification claims more and more fertile land, the adverse effects of climate change are already evident, natural disasters are more frequent and more devastating, and developing countries more vulnerable, and air, water and marine pollution continue to rob millions of a decent life.
14. Globalization has added a new dimension to these challenges. The rapid integration of markets, mobility of capital and significant increases in investment flows around the world have opened new challenges and opportunities for the pursuit of sustainable development. But the benefits and costs of globalization are unevenly distributed, with developing countries facing special difficulties in meeting this challenge.
15. We risk the entrenchment of these global disparities and unless we act in a manner that fundamentally changes their lives the poor of the world may lose confidence in their representatives and the democratic systems to which we remain committed, seeing their representatives as nothing more than sounding brass or tinkling cymbals.

Our commitment to sustainable development

16. We are determined to ensure that our rich diversity, which is our collective strength, will be used for constructive partnership for change and for the achievement of the common goal of sustainable development.
17. Recognizing the importance of building human solidarity, we urge the promotion of dialogue and cooperation among the world's civilizations and peoples, irrespective of race, disabilities, religion, language, culture or tradition.
18. We welcome the focus of the Johannesburg Summit on the indivisibility of human dignity and are resolved, through decisions on targets, timetables and partnerships, to speedily increase access to such basic requirements as clean water, sanita-

tion, adequate shelter, energy, health care, food security and the protection of biodiversity. At the same time, we will work together to help one another gain access to financial resources, benefit from the opening of markets, ensure capacity-building, use modern technology to bring about development and make sure that there is technology transfer, human resource development, education and training to banish underdevelopment forever.

19. We reaffirm our pledge to place particular focus on, and give priority attention to, the fight against the worldwide conditions that pose severe threats to the sustainable development of our people, which include: chronic hunger; malnutrition; foreign occupation; armed conflict; illicit drug problems; organized crime; corruption; natural disasters; illicit arms trafficking; trafficking in persons; terrorism; intolerance and incitement to racial, ethnic, religious and other hatreds; xenophobia; and endemic, communicable and chronic diseases, in particular HIV/AIDS, malaria and tuberculosis.
20. We are committed to ensuring that women's empowerment, emancipation and gender equality are integrated in all the activities encompassed within Agenda 21, the Millennium development goals⁶ and the Plan of Implementation of the Summit.
21. We recognize the reality that global society has the means and is endowed with the resources to address the challenges of poverty eradication and sustainable development confronting all humanity. Together, we will take extra steps to ensure that these available resources are used to the benefit of humanity.
22. In this regard, to contribute to the achievement of our development goals and targets, we urge developed countries that have not done so to make concrete efforts reach the internationally agreed levels of official development assistance.
23. We welcome and support the emergence of stronger regional groupings and alliances, such as the New Partnership for Africa's Development, to promote regional cooperation, improved international cooperation and sustainable development.
24. We shall continue to pay special attention to the developmental needs of small island developing States and the least developed countries.
25. We reaffirm the vital role of the indigenous peoples in sustainable development.

26. We recognize that sustainable development requires a long-term perspective and broad-based participation in policy formulation, decision-making and implementation at all levels. As social partners, we will continue to work for stable partnerships with all major groups, respecting the independent, important roles of each of them.
27. We agree that in pursuit of its legitimate activities the private sector, including both large and small companies, has a duty to contribute to the evolution of equitable and sustainable communities and societies.
28. We also agree to provide assistance to increase income-generating employment opportunities, taking into account the Declaration on Fundamental Principles and Rights at Work of the International Labour Organization.⁷
29. We agree that there is a need for private sector corporations to enforce corporate accountability, which should take place within a transparent and stable regulatory environment.
30. We undertake to strengthen and improve governance at all levels for the effective implementation of Agenda 21, the Millennium development goals and the Plan of Implementation of the Summit.

Multilateralism is the future

31. To achieve our goals of sustainable development, we need more effective, democratic and accountable international and multilateral institutions.
32. We reaffirm our commitment to the principles and purposes of the Charter of the United Nations and international law, as well as to the strengthening of multilateralism. We support the leadership role of the United Nations as the most universal and representative organization in the world, which is best placed to promote sustainable development.
33. We further commit ourselves to monitor progress at regular intervals towards the achievement of our sustainable development goals and objectives.

Making it happen!

34. We are in agreement that this must be an inclusive process, involving all the major groups and Governments that participated in the historic Johannesburg Summit.
35. We commit ourselves to act together, united by a common determination to save our planet, promote human development and achieve universal prosperity and peace.
36. We commit ourselves to the Plan of Implementation of the World Summit on Sustainable Development and to expediting the achievement of the time-bound, socio-economic and environmental targets contained therein.
37. From the African continent, the cradle of humankind, we solemnly pledge to the peoples of the world and the generations that will surely inherit this Earth that we are determined to ensure that our collective hope for sustainable development is realized.

* Adopted at the 17th plenary meeting of the World Summit on Sustainable Development, on 4 September 2002; for the discussion, see chap. VIII of the Summit Report.

Notes

- 1 Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972 (United Nations publication, Sales No. E.73.II.A.14 and corrigendum), chap. I.
- 2 Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 (United Nations publication, Sales No. E.93.I.8 and corrigenda), vols. I-III.
- 3 Ibid., vol. I: Resolutions adopted by the Conference, resolution 1, annexes I and II.
- 4 Report of the International Conference on Financing for Development, Monterrey, Mexico, 18-22 March 2002 (United Nations publication, Sales No. E.02.II.A.7), chap. I, resolution 1, annex.
- 5 See A/C.2/56/7, annex.
- 6 See General Assembly resolution 55/2.
- 7 See ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up Adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998 (Geneva, International Labour Office, 1998).

UNIVERSAL DECLARATION ON CULTURAL DIVERSITY

Adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its thirty-first session on 2 November 2001

The General Conference,

Committed to the full implementation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other universally recognized legal instruments, such as the two International Covenants of 1966 relating respectively to civil and political rights and to economic, social and cultural rights,

Recalling that the Preamble to the Constitution of UNESCO affirms “that the wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfil in a spirit of mutual assistance and concern”,

Further recalling Article 1 of the Constitution, which assigns to UNESCO among other purposes that of recommending “such international agreements as may be necessary to promote the free flow of ideas by word and image”,

Referring to the provisions relating to cultural diversity and the exercise of cultural rights in the international instruments enacted by UNESCO,

Reaffirming that culture should be regarded as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs,

Noting that culture is at the heart of contemporary debates about identity, social cohesion, and the development of a knowledge-based economy,

Affirming that respect for the diversity of cultures, tolerance, dialogue and cooperation, in a climate of mutual trust and understanding are among the best guarantees of international peace and security,

Aspiring to greater solidarity on the basis of recognition of cultural diversity, of awareness of the unity of humankind, and of the development of intercultural exchanges,
Considering that the process of globalization, facilitated by the rapid development of new information and communication technologies, though representing a challenge for cultural diversity, creates the conditions for renewed dialogue among cultures and civilizations,

Aware of the specific mandate which has been entrusted to UNESCO, within the United Nations system, to ensure the preservation and promotion of the fruitful diversity of cultures,

Proclaims the following principles and adopts the present Declaration:

Identity, diversity and pluralism

Article 1

Cultural diversity: the common heritage of humanity

Culture takes diverse forms across time and space. This diversity is embodied in the uniqueness and plurality of the identities of the groups and societies making up human-

kind. As a source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature. In this sense, it is the common heritage of humanity and should be recognized and affirmed for the benefit of present and future generations.

Article 2 From cultural diversity to cultural pluralism

In our increasingly diverse societies, it is essential to ensure harmonious interaction among people and groups with plural, varied and dynamic cultural identities as well as their willingness to live together. Policies for the inclusion and participation of all citizens are guarantees of social cohesion, the vitality of civil society and peace. Thus defined, cultural pluralism gives policy expression to the reality of cultural diversity. Indissociable from a democratic framework, cultural pluralism is conducive to cultural exchange and to the flourishing of creative capacities that sustain public life.

Article 3 Cultural diversity as a factor in development

Cultural diversity widens the range of options open to everyone; it is one of the roots of development, understood not simply in terms of economic growth, but also as a means to achieve a more satisfactory intellectual, emotional, moral and spiritual existence.

Cultural diversity and human rights

Article 4 Human rights as guarantees of cultural diversity

The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights

of persons belonging to minorities and those of indigenous peoples. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.

Article 5 Cultural rights as an enabling environment for cultural diversity

Cultural rights are an integral part of human rights, which are universal, indivisible and interdependent. The flourishing of creative diversity requires the full implementation of cultural rights as defined in Article 27 of the Universal Declaration of Human Rights and in Articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights. All persons should therefore be able to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; all persons should be entitled to quality education and training that fully respect their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.

Article 6 Towards access for all to cultural diversity

While ensuring the free flow of ideas by word and image, care should be exercised so that all cultures can express themselves and make themselves known. Freedom of expression, media pluralism, multilingualism, equal access to art and to scientific and technological knowledge, including in digital form, and the possibility for all cultures to have access to the means of expression and dissemination are the guarantees of cultural diversity.

Cultural diversity and creativity

Article 7

Cultural heritage as the wellspring of creativity

Creation draws on the roots of cultural tradition, but flourishes in contact with other cultures. For this reason, heritage in all its forms must be preserved, enhanced and handed on to future generations as a record of human experience and aspirations, so as to foster creativity in all its diversity and to inspire genuine dialogue among cultures.

Article 8

Cultural goods and services: commodities of a unique kind

In the face of present-day economic and technological change, opening up vast prospects for creation and innovation, particular attention must be paid to the diversity of the supply of creative work, to due recognition of the rights of authors and artists and to the specificity of cultural goods and services which, as vectors of identity, values and meaning, must not be treated as mere commodities or consumer goods.

Article 9

Cultural policies as catalysts of creativity

While ensuring the free circulation of ideas and works, cultural policies must create conditions conducive to the production and dissemination of diversified cultural goods and services through cultural industries that have the means to assert themselves at the local and global level. It is for each State, with due regard to its international obligations, to define its cultural policy and to implement it through the means it considers fit, whether by operational support or appropriate regulations.

Cultural diversity and international solidarity

Article 10

Strengthening capacities for creation and dissemination worldwide

In the face of current imbalances in flows and exchanges of cultural goods and services at the global level, it is necessary to reinforce international cooperation and solidarity aimed at enabling all countries, especially developing countries and countries in transition, to establish cultural industries that are viable and competitive at national and international level.

Article 11

Building partnerships between the public sector, the private sector and civil society

Market forces alone cannot guarantee the preservation and promotion of cultural diversity, which is the key to sustainable human development. From this perspective, the pre-eminence of public policy, in partnership with the private sector and civil society, must be reaffirmed.

Article 12

The role of UNESCO

UNESCO, by virtue of its mandate and functions, has the responsibility to:

- a) Promote the incorporation of the principles set out in the present Declaration into the development strategies drawn up within the various intergovernmental bodies;
- b) Serve as a reference point and a forum where States, international governmental and nongovernmental organizations, civil society and the private sector may join together in elaborating concepts, objectives and policies in favor of cultural diversity;

- c) Pursue its activities in standard-setting, awareness-raising and capacity-building in the areas related to the present Declaration within its fields of competence;
 - d) Facilitate the implementation of the Action Plan, the main lines of which are appended to the present Declaration.
1. Among which, in particular, the Florence Agreement of 1950 and its Nairobi Protocol of 1976, the Universal Copyright Convention of 1952, the Declaration of Principles on International Cultural Co-operation of 1966, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), the Convention for the Protection of World Cultural and Natural Heritage of 1972, the UNESCO Declaration on Race and Racial Prejudice of 1978, the Recommendation concerning the Status of the Artist of 1980, and the Recommendation on Safeguarding Traditional and Popular Culture of 1989.
 2. This definition is in line with the conclusions of the World Conference on Cultural Policies (MONDIACULT, Mexico City, 1982), of the World Commission on Culture and Development (Our Creative Diversity , 1995), and of the Intergovernmental Conference on Cultural Policies for Development (Stockholm, 1998).

UN PRINCIPLES AND GUIDELINES FOR PROTECTION OF THE HERITAGE OF INDIGENOUS PEOPLES

Elaborated by the Special Rapporteur, Mrs. Erica-Irene Daes, in conformity with resolution 1993/44 and decision 1994/105 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights, Economic and Social Council, United Nations (E/CN.4/Sub.2/1995/26, GE. 95-12808 (E), 21 June 1995).

Principles

1. The effective protection of the heritage of the indigenous peoples of the world benefits all humanity. Cultural diversity is essential to the adaptability and creativity of the human species as a whole.
2. To be effective, the protection of indigenous peoples' heritage should be based broadly on the principle of self-determination, which includes the right and the duty of indigenous peoples to develop their own cultures and knowledge systems, and forms of social organization.
3. Indigenous peoples should be recognized as the primary guardians and interpreters of their cultures, arts and sciences, whether created in the past, or developed by them in the future.
4. International recognition and respect for indigenous peoples' own customs, rules and practices for the transmission of their heritage to future generations is essential to these peoples' enjoyment of human rights and human dignity.
5. Indigenous peoples' ownership and custody of their heritage must continue to be collective, permanent and inalienable, as prescribed by the customs, rules and practices of each people.

6. The discovery, use and teaching of indigenous peoples' knowledge, arts and cultures is inextricably connected with the traditional lands and territories of each people. Control over traditional territories and resources is essential to the continued transmission of indigenous peoples' heritage to future generations. and its full protection.
7. To protect their heritage, indigenous peoples must control their own means of cultural transmission and education. This includes their right to the continued use and, wherever necessary, the restoration of their own languages and orthographies.
8. To protect their heritage, indigenous peoples must also exercise control over all research conducted within their territories, or which uses their people as subjects of study.
9. The free and informed consent of the traditional owners should be an essential precondition of any agreements which may be made for the recording, study, use or display of indigenous peoples' heritage.
10. Any agreements which may be made for the recording, study, use or display of indigenous peoples' heritage must be revocable, and ensure that the peoples concerned continue to be the primary beneficiaries of commercial applicatio

Guidelines

Definitions

11. The heritage of indigenous peoples is comprised of all objects, sites and knowledge the nature or use of which has been transmitted from generation to generation, and

which is regarded as pertaining to a particular people or its territory. The heritage of an indigenous people also includes objects, knowledge and literary or artistic works which may be created in the future based upon its heritage.

12. The heritage of indigenous peoples includes all moveable cultural property as defined by the relevant conventions of UNESCO; all kinds of literary and artistic works such as music, dance, song, ceremonies, symbols and designs, narratives and poetry, all kinds of scientific, agricultural, technical and ecological knowledge, including cultigens, medicines and the rational use of flora and fauna; human remains; immovable cultural property such as sacred sites, sites of historical significance, and burials; and documentation of indigenous peoples' heritage on film, photographs, videotape, or audiotape.
13. Every element of an indigenous peoples' heritage has traditional owners, which may be the whole people, a particular family or clan, an association or society, or individuals who have been specially taught or initiated to be its custodians. The traditional owners of heritage must be determined in accordance with indigenous peoples' own customs, laws and practices.

Transmission of Heritage

14. Indigenous peoples' heritage should continue to be learned by the means customarily employed by its traditional owners for teaching, and each indigenous peoples' rules and practices for the transmission of heritage and sharing of its use should be incorporated in the national legal system.
15. In the event of a dispute over the custody or use of any element of an indigenous peoples' heritage, judicial and administrative bodies should be guided by the advice of indigenous elders who are recognized by the indigenous communities or peoples concerned as having specific knowledge of traditional laws.
16. Governments, international organizations and private institutions should support the development of educational, research, and training centres which are controlled by indigenous communities, and strengthen these communities' capacity to document, protect, teach, and apply all aspects of their heritage.

17. Governments, international organizations and private institutions should support the development of regional and global networks for the exchange of information and experience among indigenous peoples in the fields of science, culture, education and the arts, including support for systems of electronic information and mass communication.
18. Governments, with international cooperation, should provide the necessary financial resources and institutional support to ensure that every indigenous child has the opportunity to achieve full fluency and literacy in his/her own language, as well as an official language.

Recovery and Restitution of Heritage

19. Governments, with the assistance of competent international organizations, should assist indigenous peoples and communities in recovering control and possession of their moveable cultural property and other heritage.
20. In cooperation with indigenous peoples, UNESCO should establish a programme to mediate the recovery of moveable cultural property from across international borders, at the request of the traditional owners of the property concerned.
21. Human remains and associated funeral objects must be returned to their descendants and territories in a culturally appropriate manner, as determined by the indigenous peoples concerned. Documentation may be retained displayed or otherwise used only in such form and manner as may be agreed upon with the peoples concerned.
22. Moveable cultural property should be returned wherever possible to its traditional owners, particularly if shown to be of significant cultural, religious or historical value to them. Moveable cultural property should only be retained by universities, museums, private institutions or individuals in accordance with the terms of a recorded agreement with the traditional owners for the sharing of the custody and interpretation of the property.
23. Under no circumstances should objects or any other elements of an indigenous peoples' heritage be publicly displayed, except in a manner deemed appropriate by the peoples concerned.

24. In the case of objects or other elements of heritage which were removed or recorded in the past, the traditional owners of which can no longer be identified precisely, the traditional owners are presumed to be the entire people associated with the territory from which these objects were removed or recordings were made.

National Programmes and Legislation

25. National laws should guarantee that indigenous peoples can obtain prompt, effective and affordable judicial or administrative action in their own languages to prevent, punish and obtain full restitution and just compensation for the acquisition, documentation or use of their heritage without proper authorization of the traditional owners.
26. National laws should deny to any person or corporation the right to obtain patent, copyright or other legal protection for any element of indigenous peoples' heritage without adequate documentation of the free and informed consent of the traditional owners to an arrangement for the sharing of ownership, control, use and benefits.
27. National laws should ensure the labeling and correct attribution of indigenous peoples' artistic, literary and cultural works whenever they are offered for public display or sale. Attribution should be in the form of a trademark or an appellation of origin, authorized by the peoples or communities concerned.
28. National laws for the protection of indigenous peoples' heritage should be adopted following consultations with the peoples concerned, in particular the traditional owners and teachers of religious, sacred and spiritual knowledge, and, wherever possible, should have the informed consent of the peoples concerned.
29. National laws should ensure that the use of traditional languages in education, arts and the mass media is respected and, to the extent possible, promoted and strengthened.
30. Governments should provide indigenous communities with financial and institutional support for the control of local education, through community-managed programmes, and with use of traditional pedagogy and languages.
31. Governments should take immediate steps, in cooperation with the indigenous peoples concerned, to identify sacred and ceremonial sites, including burials, healing places, and traditional places of teaching, and to protect them from unauthorized entry or use.

Researchers and Scholarly Institutions

32. All researchers and scholarly institutions should take immediate steps to provide indigenous peoples and communities with comprehensive inventories of the cultural property, and documentation of indigenous peoples' heritage, which they may have in their custody.
33. Researchers and scholarly institutions should return all elements of indigenous peoples' heritage to the traditional owners upon demand, or obtain formal agreements with the traditional owners for the shared custody, use and interpretation of their heritage.
34. Researchers and scholarly institutions should decline any offers for the donation or sale of elements of indigenous peoples' heritage, without first contacting the peoples or communities directly concerned and ascertaining the wishes of the traditional owners.
35. Researchers and scholarly institutions must refrain from engaging in any study of previously undescribed species or cultivated varieties of plants, animals or microbes, or naturally occurring pharmaceuticals, without first obtaining satisfactory documentation that the specimens were acquired with the consent of the traditional owners.
36. Researchers must not publish information obtained from indigenous peoples or the results of research conducted on flora, fauna, microbes or materials discovered through the assistance of indigenous peoples, without identifying the traditional owners and obtaining their consent to publication.
37. Researchers should agree to an immediate moratorium on the Human Genome Diversity Project. Further research on the specific genotypes of indigenous peoples should be suspended unless and until broadly and publicly supported by indigenous peoples to the satisfaction of United Nations human rights bodies.
38. Researchers and scholarly institutions should make every possible effort to increase indigenous peoples' access to all forms of medical, scientific and technical education, and participation in all research activities which may affect them or be of benefit to them.
39. Professional associations of scientists, engineers and scholars, in collaboration with indigenous peoples, should sponsor seminars and disseminate publications to promote ethical conduct in conformity with these guidelines and discipline members who act in contravention.

Business and Industry

40. In dealings with indigenous peoples, business and industry should respect the same guidelines as researchers and scholarly institutions.
41. Business and industry should agree to an immediate moratorium on making contracts with indigenous peoples for the rights to discover, record and use previously undescribed species or cultivated varieties plants, animals or microbes, or naturally occurring pharmaceuticals. No further contracts should be negotiated until indigenous peoples and communities themselves are capable of supervising and collaborating in the research process.
42. Business and industry should refrain from offering incentives to any individuals to claim traditional rights of ownership or leadership within an indigenous community, in violation of their trust within the community and the laws of the indigenous peoples concerned.
43. Business and industry should refrain from employing scientists or scholars to acquire and record traditional knowledge or other heritage of indigenous peoples in violation of these guidelines.
44. Business and industry should contribute financially and otherwise to the development of educational and research institutions controlled by indigenous peoples and communities.
45. All forms of tourism based on indigenous peoples' heritage must be restricted to activities which have the approval of the peoples and communities concerned, and which are conducted under their supervision and control.

Artists, Writers and Performers

46. Artists, writers and performers should refrain from incorporating elements derived from indigenous heritage into their works without the informed consent of the traditional owners.
47. Artists, writers and performers should support the full artistic and cultural development of indigenous peoples, and encourage public support for the development and greater recognition of indigenous artists, writers and performers.

48. Artists, writers and performers should contribute, through their individual works and professional organizations, to the greater public understanding and respect for the indigenous heritage associated with the country in which they live.

Public Information and Education

49. The mass media in all countries should take effective measures to promote understanding of and respect for indigenous peoples' heritage, in particular through special broadcasts and public-service programmes prepared in collaboration with indigenous peoples.
50. Journalists should respect the privacy of indigenous peoples, in particular concerning traditional religious, cultural and ceremonial activities, and refrain from exploiting or sensationalizing indigenous peoples' heritage.
51. Journalists should actively assist indigenous peoples in exposing any activities, public or private, which destroy or degrade indigenous peoples' heritage.
52. Educators should ensure that school curricula and textbooks teach understanding and respect for indigenous peoples' heritage and history and recognize the contribution of indigenous peoples to creativity and cultural diversity.

International Organizations

53. The Secretary-General should ensure that the task of coordinating international cooperation in this field is entrusted to appropriate organs and specialized agencies of the United Nations, with adequate means of implementation.
54. In cooperation with indigenous peoples, the United Nations should bring these principles and guidelines to the attention of all Member States through, inter alia, international, regional and national seminars and publications, with a view to promoting the strengthening of national legislation and international conventions in this field.
55. The United Nations should publish a comprehensive annual report, based upon information from all available sources, including indigenous peoples themselves, on the

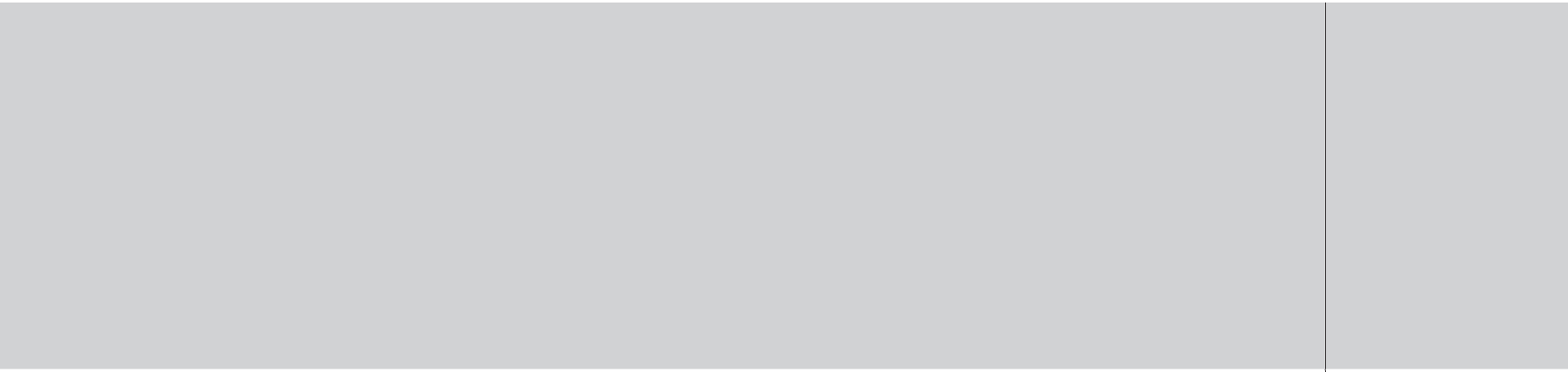
problems experienced and solutions adopted in the protection of indigenous peoples' heritage in all countries.

56. Indigenous peoples and their representative organizations should enjoy direct access to all intergovernmental negotiations in the field of intellectual property rights, to share their views on the measures needed to protect their heritage through international law.
57. In collaboration with indigenous peoples and Governments concerned, the United Nations should develop a confidential list of sacred and ceremonial sites that require special measures for their protection and conservation, and provide financial and technical assistance to indigenous peoples for these purposes.
58. In collaboration with indigenous peoples and Governments concerned, the United Nations should establish a trust fund with a mandate to act as a global agent for the recovery of compensation for the unconsented or inappropriate use of indigenous peoples' heritage, and to assist indigenous peoples in developing the institutional capacity to defend their own heritage.
59. United Nations operational agencies, as well as the international financial institutions and regional and bilateral development assistance programmes, should give priority to providing financial and technical support to indigenous communities for capacity-building and exchanges of experience focused on local control of research and education.
60. The United Nations should consider the possibility of drafting a convention to establish international jurisdiction for the recovery of indigenous peoples' heritage across national frontiers, before the end of the International Decade of the World's Indigenous People.

INDIGENOUS PEOPLES EARTH CHARTER
KARI-OCA CONFERENCE MAY 25-30, 1992

**Indigenous Peoples Earth Charter Kari-Oca
Conference May 25-30, 1992
Culture, Science and Intellectual Property**

84. We feel the Earth as if we are within our Mother. When the Earth is sick, and polluted, human health is impossible. To heal ourselves we must heal the planet, and to heal the planet, we must heal ourselves.
85. We must begin to heal from the grass roots level and work towards the international level.
86. The destruction of the culture has always been considered an internal, domestic problem within national states. The United Nations must set up a tribunal to review the cultural destruction of Indigenous Peoples.
87. We need to have foreign observers come into our Indigenous territories to oversee national state elections to prevent corruption.
88. The human remains and artifacts of Indigenous Peoples must be returned to their original peoples.
89. Our sacred and ceremonial sites should be protected and considered as the patrimony of Indigenous Peoples and humanity. The establishment of a set of legal and operational instruments at both national and international levels would guarantee this.

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90. The use of existing Indigenous languages is our right. These languages must be protected.
 91. States that have outlawed Indigenous languages and their alphabets should be censored by the United Nations.
 92. We must not allow tourism to diminish our culture. Tourists come into the communities and view the people as if Indigenous Peoples were part of a zoo. Indigenous Peoples have the right to allow or disallow tourism within their areas.
 93. Indigenous Peoples must have the necessary resources and control over their education systems.
 94. Elders must be recognized and respected as teachers of young people.
 95. Indigenous wisdom must be recognized and encouraged.
 96. The traditional knowledge of herbs and plants must be protected and passed on to future generations.

97. Traditions cannot be separated from land, territory or science.
98. Traditional knowledge has enabled Indigenous Peoples to survive.
99. The usurping of traditional medicines and knowledge from Indigenous Peoples should be considered a crime against peoples.
100. Material culture is being used by the non-Indigenous to gain access to our lands and resources, thus destroying our cultures.
101. Most of the media at this conference were only interested in the pictures which will be sold for profit. This is another case of exploitation of Indigenous Peoples. This does not advance the cause of Indigenous Peoples.
102. As creators and carriers of civilizations which have given and continue to share knowledge, experience and values with humanity, we require that our right to intellectual and cultural properties be guaranteed and that the mechanism for each implementation be in favour of our peoples, and studied in depth and implemented.
103. We should list the suspect museums and institutions that have misused our cultural and intellectual properties.
104. The protection, norms and mechanisms of artistic and artisan creation of our peoples must be established and implemented in order to avoid plunder, plagiarism, undue exposure and use.
105. When Indigenous Peoples leave their communities, they should make every effort to return to the community.
106. In many instances, our songs, dances and ceremonies have been viewed as the only aspects of our lives. In some instances we have been asked to change a ceremony or a song to suit the occasion. This is racism.

107. At local, national and international levels, governments must commit funds to new and existing resources to education and training for Indigenous Peoples, to achieve their sustainable development, to contribute and to participate in sustainable and equitable development at all level. Particular attention should be given to Indigenous women, children and youth.
108. All kinds of folkloric discrimination must be stopped and forbidden.
109. The United Nations should promote research into Indigenous knowledge and develop a network of Indigenous sciences.

THE KIMBERLEY DECLARATION

International Indigenous Peoples Summit on Sustainable Development Khoi-San Territory - Kimberley, South Africa, 20-23 August 2002

We, the Indigenous Peoples, walk to the future
in the footprints of our ancestors
(Kari-Oca Declaration, Brazil, 30 May 1992)

We the Indigenous Peoples of the World assembled here reaffirm the Kari-Oca Declaration and the Indigenous Peoples' Earth Charter. We again reaffirm our previous declarations on human and environmental sustainability? *

Since 1992, the discussions on sustainable development have been intensified however, the ecosystems of the earth continue to be degraded increasingly. We are in crisis. We are in an accelerating spiral of climate change that will not abide unsustainable greed.

Today we reaffirm our relationship to Mother Earth and our responsibility to coming generations to uphold peace, equity and justice. We continue to pursue the commitments made at Earth Summit as reflected in this political declaration and the accompanying plan of action.

The commitments which were made to Indigenous Peoples in Agenda 21, including our full and effective participation, have not been implemented due to the lack of political will.

As peoples, we reaffirm our rights to self-determination and to own, control and manage our ancestral lands and territories, waters and other resources. Our lands and territories are at the core of our existence - we are the land and the land is us; we have a distinct spiritual and material relationship with our lands and territories and they are inextricably linked to our survival and to the preservation and further development of our knowledge systems and cultures, conservation and sustainable use of biodiversity and ecosystem management.

We have the right to determine and establish priorities and strategies for our self-development and for the use of our lands, territories and other resources. We demand that free, prior and informed consent must be the principle of approving or rejecting any project or activity affecting our lands, territories and other resources.

We are the original peoples tied to the land by our umbilical cords and the dust of our ancestors. Our special places are sacred and demand the highest respect. Disturbing the remains of our families and elders is desecration of the greatest magnitude and constitutes a grave violation of our human rights. We call for the full and immediate repatriation of all Khoi-San human remains currently held in museums and other institutions throughout the world, as well as all the human remains of all other Indigenous Peoples. We maintain the rights to our sacred and ceremonial sites and ancestral remains including access to burial, archaeological and historic sites.

The national, regional and international acceptance and recognition of Indigenous Peoples is central to the achievement of human and environmental sustainability. Our traditional knowledge systems must be respected, promoted and protected; our collective intellectual property rights must be guaranteed and ensured. Our traditional knowledge is not in the public domain; it is collective, cultural and intellectual property protected under our customary law. Unauthorized use and misappropriation of traditional knowledge is theft.

Economic globalization constitutes one of the main obstacles for the recognition of the rights of Indigenous Peoples. Transnational corporations and industrialized countries impose their global agenda on the negotiations and agreements of the United Nations system, the World Bank, the International Monetary Fund, the World Trade Organization and other bodies which reduce the rights enshrined in national constitutions and in international conventions and agreements. Unsustainable extraction, harvesting, production and consumption patterns lead to climate change, widespread pollution and environmental destruction, evicting us from our lands and creating immense levels of poverty and disease.

We are deeply concerned that the activities of multinational mining corporations on Indigenous lands have led to the loss and desecration of our lands, as exemplified here on Khoi-San territory. These activities have caused immense health problems, interfered with access to, and occupation of our sacred sites, destroyed and depleted Mother Earth, and undermined our cultures.

Indigenous Peoples, our lands and territories are not objects of tourism development. We have rights and responsibilities towards our lands and territories. We are responsible to defend our lands, territories and indigenous peoples against tourism exploitation by governments, development agencies, private enterprises, NGOs, and individuals.

Recognizing the vital role that pastoralism and hunting-gathering play in the livelihoods of many Indigenous Peoples, we urge governments to recognize, accept, support and invest in pastoralism and hunting-gathering as viable and sustainable economic systems.

We reaffirm the rights of our peoples, nations and communities, our women, men, elders and youth to physical, mental, social, and spiritual well-being.

We are determined to ensure the equal participation of all Indigenous Peoples throughout the world in all aspects of planning for a sustainable future with the inclusion of women, men, elders and youth. Equal access to resources is required to achieve this participation.

We urge the United Nations to promote respect for the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded between Indigenous Peoples and States, or their successors, according to their original spirit and intent, and to have States honor and respect such treaties, agreements and other constructive arrangements.

Language is the voice of our ancestors from the beginning of time. The preservation, securing and development of our languages is a matter of extreme urgency. Language is part of the soul of our nations, our being and the pathway to the future.

In case of the establishment of partnerships in order to achieve human and environmental sustainability, these partnerships must be established according to the following principles: our rights to the land and to self-determination; honesty, transparency and good faith; free, prior and informed consent; respect and recognition of our cultures, languages and spiritual beliefs.

We welcome the establishment of the United Nations Permanent Forum on Indigenous Issues and urge the UN to secure all the necessary political, institutional and financial support so that it can function effectively according to its mandate as contained in ECOSOC Resolution E/2000/22. We support the continuation of the United Nations Working Group on Indigenous Populations based on the importance of its mandate to set international standards on the rights of Indigenous Peoples.

We call for a World Conference on Indigenous Peoples and Sustainable Development as a culmination of the United Nations International Decade for the World's Indigenous Peoples (1995-2004) and as a concrete follow-up to the World Summit on Sustainable Development.

We continue to meet in the spirit of unity inspired by the Khoi-San people and their hospitality. We reaffirm our mutual solidarity as Indigenous Peoples of the world in our struggle for social and environmental justice.

* Including the Draft Declaration on the Rights of Indigenous Peoples; the Charter of the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests; the Mataatua Declaration; the Santa Cruz Declaration on Intellectual Property; the Leticia Declaration of Indigenous Peoples and Other Forest Dependent Peoples on the Sustainable Use and Management of All Types of Forests; the Charter of Indigenous Peoples of the Arctic and the Far East Siberia; the Bali Indigenous Peoples Political Declaration; and, the Declaration of the Indigenous Peoples of Eastern Africa in the Regional WSSD Preparatory Meeting.

GRAND COUNCIL OF THE CREES

Eeyou Estchee Declaration of Principles

Since 1991 the Eeyou of Eeyou Estchee have been working towards establishment of a Cree Legislature. The first, special sitting of this Legislature was held October 17-19, 1995, and approved the following Eeyou Istchee Declaration of Principles:

We are Eeyou.

We are a sovereign Peoples.

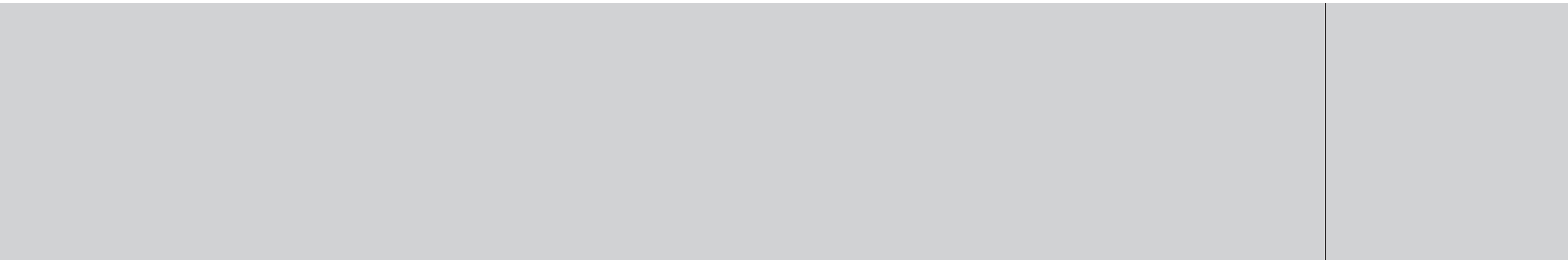
We are the original inhabitants of Eeyou Estchee and are one with Eeyou Estchee. Our power derives from the Creator, from the Eeyou and from the living spirit of the land and waters.

Eeyou Estchee comprises the ancestral and traditional lands which have sustained us and which we have occupied since time immemorial. It extends into other waters, territories and borders.

We are the caretakers of Eeyou Estchee which has been given to us by the Creator. We have the stewardship to protect and preserve the land for future generations.

We have the right to develop the resources on Eeyou Estchee in accordance with the Eeyou traditional principles of sustainable development. We have the right to harvest the wildlife resources of Eeyou Estchee in accordance with the Eeyou way of life.

All the resources, including the land, water, air, animals and Eeyou of Eeyou Estchee, must be protected from unilateral decisions by external forces.



We have the inherent right to self-determination and the right to govern ourselves. We have a distinct identity reflected in a distinct system of laws and government, philosophy, language, culture, heritage, values, customs, traditions, beliefs and territory.

Eeyou Estchee transcends the territorial boundaries of the Province of Quebec, extending into other borders.

We do not accept the status quo regarding our present relationships with Quebec and Canada. Cree consent is required and mandatory for any changes to our status as Eeyou or to the status of Eeyou Estchee.

As Peoples with a right to self-determination, we shall freely decide our political status and associations and freely pursue our future as a people.

We will assert and defend our inherent right of self-determination and the protection of Eeyou and Eeyou Estchee.

SOURCES

I. Treaties, Declarations and Documents

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- Convention on the Prevention and Punishment of the Crime of Genocide. Dec. 9, 1948;
- International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965;
- The International Bill of Human Rights : a) The Universal Declaration of Human Rights and b) The International Covenants on Human Rights, in A Compilation of International Instruments, volume I (First Part) Universal Instruments, UN Publication, Sales Nr. E.02XIV.4, ST/HR/1/Rev.6 (Vol.1, Part1);
- International Labour Organization (ILO), Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, Convention No, 1957/107;
- African Charter on Human and Peoples' Rights, June 27, 1981;
- Convention on Biological Diversity, June 5, 1992;
- International Labour Organization (ILO) Convention No. 1989/169 concerning Indigenous and Tribal Peoples in Independent Countries;
- Declaration on Granting Independence to Colonial Countries and Peoples, UN document A/RES/15/1514 of 14 December 1960;
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	134 Cree child, Kashechewan, Ontario, Canada - Photo: Josée Duranleau
	135 Cree woman, Kashechewan, Ontario, Canada - Photo: Josée Duranleau
138	136 Else Grete Broderstad, a distinguished Saami, head of administration of Tromsø University, welcoming Erica-Irene A. Daes, Dr. of Law honoris causa of Tromsø University, Tromsø Norway - Photo: Erica-Irene A. Daes' archive
139	137 Nordic Saami Flag, Sweden - Photo: Jørgen Brøchner Jørgensen
143	138 Saami woman in Geneva - Photo: IWGIA's archive
	139 Saami girl from Gáivuotna - Photo: Harry Johansen
	140 Saami representatives - Photo: IWGIA's archive
	141 Lars Anders Baer, a Saami leader from Sweden, who has contributed greatly to the recognition and protection of indigenous rights - Photo: Erica-Irene A. Daes' archive
146	142 A reindeer herder - Photo: Harry Johansen
147	143 East Saamis - Photo Harry Johansen
	144 Saami art - Photo: Erica-Irene A. Daes' archive
	145 Georg Panagiotides with two Sami leaders - Photo: Erica-Irene A. Daes' archive
149	146 Masaai woman, Kenya - Photo: Jenneke Arens
150	147 Twa women at Giheta Province, Burundi - Photo: Dorothy Jackson
153	148 Maasai people, Ngorongoro Conservation Area, Tanzania - Photo: Nina Johnsen
154	149 Bolivia - Photo: Alejandro Parellada
157	150 Erica-Irene A. Daes says goodbye to one of the Saami women - Photo: Beatrice Weyrich
	151 Grand Chief of the Grand Council of the Crees of Quebec, Ambassador Dr. Ted Moses with his adviser and devoted friend of the world's indigenous peoples, the late Economist Dr. Robert (Bob) Epstein - Photo: Erica-Irene A. Daes' archive
	152 A group of indigenous persons with Erica-Irene A. Daes - Photo: Erica-Irene A. Daes' archive
	153 Mattias Ahren, who is a Sami from Sweden, in the UN building in New York - Photo: Erica-Irene A. Daes' archive
158	154 Aymara people, Bolivia - Photo: Tony Suárez
160	155 Lola García-Alix and Erica-Irene A. Daes, UN Permanent Forum on Indigenous Issues, New York 2006 - Photo: Pablo Lasansky
	156 Ambassador Dr. Ted Moses, first indigenous person elected to UN official office. Ted Moses was elected as Rapporteur of the historic United Nations Seminar on "the effects of racism and racial discrimination on the social and economic relations between indigenous peoples and states", UN 1989.

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	<p>Next to him is Erica-Irene A. Daes, Chairperson of the Working Group on Indigenous Populations and the Secretary of the Seminar, the late Kubota, who lost his life serving the United Nations and observing the human rights and freedoms, in Africa in 1990 - Photo: Erica-Irene A. Daes' archive</p>
161	157 Mayan people welcome Erica-Irene A. Daes, Mexico - Photo: Erica-Irene A. Daes' archive
162-163	158 A Torres Strait Islanders delegation, discussing their problems with Erica-Irene A. Daes, on Thursday Island - Photo: Erica-Irene A. Daes' archive
	159 Indian chief in Geneva - Photo: Max Vaterlaus
	160 Painting by G. Mougios, from the collection of Zoe and Artemis Papastamatakis, 1959, "A Saami, enjoying the midnight sun in Sápmi" - Photo: Erica-Irene A. Daes' archive