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THE CONCEPT OF
INDIGENOUS PEOPLES
AND ITS APPLICATION
IN ASIA

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DISCUSSION PAPER 2014



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Front cover: 19th century murals in Wat Phumin, Nan, Thailand

All photos by the author



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TRIBES, STATES AND INDIGENOUS PEOPLES IN ASIA: THE EVOLUTION OF THE CONCEPT OF INDIGENOUS PEOPLES AND ITS APPLICATION IN ASIA

Christian Erni

On 13 September 2007, after 8 years of negotiations in the UN Working Group on Indigenous Populations (UNWGIP) and another 12 years in the open-ended Working Group on the Draft Declaration, the UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples (UNDRIP) with a vast majority of 144 votes.¹ That it sailed through the General Assembly so smoothly was only possible because of a few last-minute changes in the text – some minor, others decisive – and intensive lobbying and negotiation during the weeks before it was taken up in the General Assembly. In fact, at one point, it looked as if the Declaration would not make it to the General Assembly in time. After the draft text was adopted with an overwhelming majority in the Human Rights Council, the USA, Australia and New Zealand, which were at that time not members of the Human Rights Council, raised objections and successfully lobbied, above all, African countries to join in their opposition (Eide 2009: 39). They thus succeeded in mobilizing a majority in the Third Committee to reject the Declaration. As Eide (*ibid.*:40) points out, African delegates' sudden change cannot be explained only by the pressure and cajoling of the "CANZAUS countries" (Canada, New Zealand, Australia, USA; Merlan 2009: 317). As comparably young, independent nations one of their main concerns was that the Declaration might jeopardize their nation-building project (see also Barume 2009).

Asian governments and the debate on a definition

Asian countries remained silent in all this and, with the exception of Bangladesh and Bhutan, which abstained, all Asian countries voted in favour of the Declaration. This may have come as a surprise to some, for others it was rather predictable. At least for one Asian country, the Philippines, voting in support of the UNDRIP was consistent with its national policy: it has officially recognized indigenous peoples and has passed a comprehensive law for the protection of their rights.² For most other Asian governments, however, it seems that the UNDRIP was not a problem simply because they deny the existence of indigenous peoples in - and thus the applicability of the UNDRIP to - their countries.

In their comments immediately after the adoption of the Declaration, representatives of several Asian countries such as Bangladesh, India, Indonesia and Pakistan pointed at the lack of a definition as a major obstacle to the implementation of the Declaration. Indonesia's representative Muhammad Anshor, for example, said

"[] that several aspects of the Declaration remained unresolved, in particular what constituted indigenous peoples. The absence of that definition prevented a clear understanding of the peoples to

whom the Declaration applied. In that context, the Declaration used the definition contained in the International Labour Organization Convention, according to which indigenous people were distinct from tribal people. Given the fact that Indonesia's entire population at the time of colonization remained unchanged, the rights in the Declaration accorded exclusively to indigenous people and did not apply in the context of Indonesia. Indonesia would continue to promote the collective rights of indigenous peoples." (United Nations General Assembly 2007)³

It had already become obvious during the deliberations on the Draft Declaration by the UNWGIP that behind these governments' insistence on a definition stood their unwillingness to recognize indigenous peoples in their own countries. As Sami lawyer John Henriksen observed:

"The concept of 'indigenous peoples' was a significant hurdle for many governments to overcome in the early stages of the negotiations. African and Asian governments generally held the view that a definition of the term 'indigenous peoples' should be included in the text in order to identify the beneficiaries. It was clear that some of these states were more interested in obtaining a definition which would exclude indigenous peoples in their own countries from becoming beneficiaries of the Declaration." (2009: 79).

The issue of the definition was discussed during the second and third sessions of the Working Group on Indigenous Populations in 1983 and 1984, taking the work of Special Rapporteur José Martínez Cobo as a point of departure

(Daes 1996: para 21). Although Martínez Cobo included a definition in his final report of 1986, the "Study of the Problem of Discrimination against Indigenous Populations", no consensus was reached in the Working Group and it henceforth and in line with the indigenous participants' recommendations adopted "a flexible approach to determining eligibility to participate in its annual sessions, relying upon organizations of indigenous peoples themselves to draw attention to any improper assertions of the right to participate as 'indigenous' peoples" (Daes 1996: para 21).

According to Tauli-Corpuz (2008: 92), the main arguments put forward by indigenous representatives against the inclusion of a global definition are:

- "Having a global definition will risk exclusion of some indigenous peoples because it can never adequately capture the diversity of indigenous peoples;
- A definition will write in stone indigenous peoples' characteristics, thereby not taking into account that these are constantly evolving and developing; and
- The insistence on a definition itself is an act of discrimination. The terms "peoples" and "minorities" were not defined by the other instruments of the UN. Why is it that when it comes to "indigenous peoples" states insist that a definition be made?"

Indigenous representatives also emphasized that a definition of indigenous peoples was not necessary,⁴ and insisted on self-identification as part of their right to self-determination (*ibid.*). The members of the UNWGIP also concluded that it was neither realistic nor useful to try and adopt a definition and, according to Daes (1996: 4, para.

6), "the Working Group itself had been a success despite not having adopted any formal definition of 'indigenous peoples'".

Even though the position that a definition was not desirable eventually prevailed within the UN-WGIP, Asian governments continued to express their reservations with regard to the application of the concept of indigenous peoples to their countries. Speaking at the 53rd session of the United Nations Commission on Human Rights in 1997, the adviser of the Chinese delegation, Long Xuequn, for example, argued:

"The indigenous issues are a product of special historical circumstances. By and large, they are the result of the colonialist policy carried out in modern history by European countries in other regions of the world, especially on the continents of America and Oceania." "As in the case of other Asian countries, the Chinese people of all ethnic groups have lived on our own land for generations. We suffered from invasion and occupation of colonialists and foreign aggressors," said Long. "Fortunately, after arduous struggles of all ethnic groups, we drove away those colonialists and aggressors. In China, there are no indigenous people and therefore no indigenous issues." (Embassy of the People's Republic of China in Switzerland 1997)

At the 4th session in of the Working Group in 1985 the Chinese member for the WGIP, Mrs Gu Yijie, was already of the opinion that "historically speaking, the concept of indigenous populations was associated with colonialism and aggression by foreign nations and powers but she warned that there should be no confusion between indig-

enous populations, on the one hand, and ethnic minorities in certain countries and regions, on the other. Issues relating to multinational states with populations of different origin should be dealt with in other fora" (Daes 2009: 55).

Asian indigenous activists involved in the drafting of the UNDRIP made efforts to convince Asian governments to reconsider their position regarding the definition. Victoria Tauli-Corpuz, former chair of the UN Permanent Forum on Indigenous Issues and one of the leading Asian indigenous negotiators during the drafting of the UNDRIP recalls:

"We, the few Asian indigenous representatives present in the negotiations, held several meetings with member-states from Asia to explain why a global definition of indigenous peoples cannot be done. Our main point has been that it is more feasible to make such a definition at the national level, while having one at the global level will risk excluding other indigenous peoples, as one definition cannot capture the diversity of indigenous peoples. Obviously, this worked because we finally got most of them to vote for the adoption of the Declaration. However, some of them still insist that there are no indigenous peoples in their countries or that the whole population is indigenous." (2008: 78)

Relegating the issue of the definition to the national level,⁵ Tauli-Corpuz argues, has helped to convince Asian governments to give up insisting on a definition. This suggestion may, indeed, have been well-received by Asian governments since it can be seen as being in line with a general concern of many governments to make the Declaration a "domestic affair".⁶ Thailand's rep-

representative, Ms Punkrasing, expressed this very clearly in her comment immediately after the adoption of the UNDRIP:

“[] her delegation had voted in favour of the text and was in agreement with its intent, despite the fact that a number of paragraphs raised some concerns. [] Thailand understood that the articles on self-determination would be interpreted within the framework of the principle set out in the Vienna Declaration. Thailand also understood that the Declaration did not create any new rights and that any benefits that flowed from the Declaration would be based on the laws and Constitution of Thailand.” (United Nations General Assembly 2007)

Like their African counterparts, Asian governments seem to have been particularly appeased by what could be considered a “domestication” of the UNDRIP, achieved by means of an addition in the preambular paragraph, which refers to “the significance of national and regional particularities”, and, more important, an amendment to operational Article 46. It now states that 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”.

For many of those active in indigenous rights advocacy work within the UN it may sound rather sobering, but we can with fair certainty conclude that African and – though maybe less obviously so – Asian governments present in the UN General Assembly voted in favour of the UNDRIP only because they felt that amendments to the text and the lack of a definition of indigenous peoples allowed them to a) deny the existence of indigenous peoples in their own countries and

thus the applicability of the UNDRIP; and/or b) to consider the UNDRIP as subject to national law.

Unexpected support for Asian and African governments’ denial of the applicability of the concept to their countries came from within the very institution that contributed so much to the popularization of the concept and, with it, the growth of a global indigenous rights movement. During the 16th session of the UNWGIP in July 1998, Working Group member and Special Rapporteur Miguel Alfonso Martínez submitted his “Study on treaties, agreements and other constructive arrangements between States and indigenous populations”. In paragraph 88 of his report, he states that

“[] in post-colonial Africa and Asia autochthonous groups/minorities/ethnic groups/peoples who seek to exercise rights presumed to be or actually infringed by the existing autochthonous authorities in the States in which they live cannot, in the view of the Special Rapporteur, claim for themselves, unilaterally and exclusively, the ‘indigenous’ status in the United Nations context.”

And in paragraph 89 he continues:

“These States – whose existence as such is, in the majority of cases, very recent – have not only the right but also the duty to preserve their fragile territorial integrity. The risk to such States of breaking up (or ‘balkanization’) which such unilateral claims to ‘indigeneness’ imply naturally cannot be taken lightly.”⁷

Martínez’ position came as a shock for indigenous representatives from Asia and Africa because they had assumed that the issue of the

definition had been extensively discussed and considered it settled once and for all. They insisted on the universality of the concept (see e.g. Tauli-Corpuz op.cit. or Asia Indigenous and Tribal Peoples Network 1999), and the debate in fact died down quickly after the closing of the 16th session of the UN Working Group.

The UNDRIP thus remains without any definition – and with a dilemma: refraining from agreeing on a general definition or insisting on self-identification alone may provide governments with a reason to refuse the recognition of indigenous peoples living within its country. Agreeing on a definition, on the other hand, brings with it the danger that certain groups, who may identify themselves as indigenous but to whom some of the respective definitional criteria do not apply, are excluded.

While there seems to be a general consensus within the relevant bodies of the United Nations and the international indigenous peoples' movement – supported by some scholars – that a definition of indigenous peoples is neither desirable nor necessary, the problem remains that the subjects to whom international or national legal instruments are supposed to apply need to be identified.

Indigenous peoples: the legacy of a colonial term

The empirical validity and usefulness of the concept of "indigenous peoples" as an analytical category has also been questioned by academics. Some of its critics particularly point at what they perceive to be an exclusionary and potentially chauvinistic undercurrent (see e.g. Bétéille 1998, 2006; Rodrigues and Game 1998, van Schendel 2011 for the Indian context; Bowen 2000 and Ku-

per 2003 generally). Partly in response to these authors, a prolific discourse has ensued among social scientists over the past decade (Rosengren 2002; Kenrick and Lewis 2004; Barnard 2004, Dove 2006 at a global level; Xaxa 1999, Karlsson 2003, Baviskar 2006 on India, Li 2000 on Indonesia) that left the academic controversy largely unresolved but the concept nevertheless firmly entrenched in both popular and scholarly use.

The term "indigenous" emerged as a legal concept within the framework of European colonialism in the 19th century. It has its roots in the Latin *indigena* – for a person who was born in a particular place.⁸ The original meaning of the term thus implies what is still today most commonly associated with the concept: priority in time.

Daes (ibid.) traced the origin of the term as an international legal concept back to the Berlin Africa Conference of 1884-1885, in which European states⁹ regulated the colonization of Africa (basically dividing up Africa among, and regulating trade between, them). At this conference, the European colonial powers "made a commitment to the 'protection of indigenous populations' of Africa. In this legal context, the term 'indigenous' was meant to distinguish between citizens or nationals of the Great Powers and those persons in Africa who were under the colonial domination of the Great Powers" (ibid.). The term "indigenous" continued to be used to distinguish the colonized populations from the colonizers in general, such as by the League of Nations, the predecessor to the United Nations Organization (ibid. para 12). After World War II, however, its application became increasingly confined to the "aboriginal populations" of the Americas, following the practice of the Pan-American Union (ibid. para 15 to 20).

It is interesting to note that there was an unsuccessful attempt by the government of Belgium to

reinterpret Article 73 of the UN charter regarding non-self-governing territories, which would have implied a broadening of the application of the concept of "indigenous": "According to the delegation of Belgium, the reporting obligations of Article 73 applied not only to overseas colonies, but to 'backward indigenous peoples' living within the borders of independent States in all regions of the world." (ibid. para 20).

The realization that there was a similarity between the people recognized as "indigenous" in countries that have experienced settler colonialism and are now dominated by the descendants of the colonizers, and certain marginalized – or, as they are often called, "underdeveloped" or "less advanced" – groups in other parts of the world was, however, clearly reflected in the first international legal instrument devised for the protection of such people by the United Nations System: the International Labour Organization's Convention Number 107 of 1957. Its full name is the "Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries". It has to be emphasized that the Convention refers to "indigenous *and other* tribal and semi-tribal populations", which implies that "indigenous populations" are considered "tribal populations". Thus, according to Convention 107, "all 'indigenous' peoples are 'tribal', but not all 'tribal' peoples are 'indigenous'." (Daes 1996: para 22)

In 1989, ILO Convention 107 was replaced by Convention 169, in response to increasing criticism of its assimilationist thrust. ILO Convention 169 is officially entitled the "Convention concerning Indigenous and Tribal Peoples in Independent Countries", which obviously implies that a distinction is being made between indigenous peoples and tribal peoples. A comparison of the

first article in the two conventions makes the semantic shift clearer.

In ILO Convention 107 Article 1 states:

"1. This Convention applies to:

- a) members of tribal or semi-tribal populations in independent countries whose social and economic conditions are at a less advanced stage than the stage reached by the other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
- b) members of tribal or semi-tribal populations in independent countries which are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation and which, irrespective of their legal status, live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong."

Here, a distinction is drawn between "tribal or semi-tribal populations [] whose social and economic conditions are at a less advanced stage" and "tribal or semi-tribal populations [] which are regarded as indigenous".

Article 1 of Convention 169 is somewhat more elaborate:

"1. This Convention applies to:

- a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
- b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

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

3. 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.”

In the new Convention the previously used, rather foggy term “semi-tribal” was completely dropped and “populations” replaced by “peoples”, following the demand of the indigenous representatives participating in the UN Working Group on Indigenous Populations, which at that time was already working on the draft of the UNDRIP. Important to note here is that in para-

graph 1.(b), which refers to indigenous peoples, the adjective “tribal” used in Convention 107 has been abandoned. Thus, while under Convention 107 the distinction was drawn between “indigenous” tribal populations and “non-indigenous” tribal populations, in Convention 169 it is drawn between indigenous peoples and tribal peoples. As shown earlier, it is this distinction that was highlighted by the Indonesian government representative in his comment and used to support his argument that the Declaration did not apply to his country (United Nations General Assembly *op.cit.*).

The term “tribal” does not appear anywhere in the UNDRIP. The abandonment of this term in the UNDRIP is the result of its rejection by indigenous representatives who were active in the UNWGIP and related international processes. In the report of the International NGO Conference on Indigenous Peoples and Land in 1981, the term “tribe” was still used (World Federation of Democratic Youth 1981: 28). In the early years of the UNWGIP, a number of terms were used and proposed to be used interchangeably: “aborigines”, “native”, “nations” or “nationalities”. They were all dropped when the agreement was reached to use only one instead of, as was suggested, several terms in the document (Jannie Lasimbang, personal communication).¹⁰ Some considered the term “tribal” to be colonial and racist; others found it inappropriate since it evoked the image of a static society while, it was pointed out, today many of the descendants of so-called tribal peoples do not lead a “traditional” lifestyle considered typical of “tribal” people. The consensus reached was to use the term “indigenous peoples” only (*ibid*). Consequently, in all the international declarations and other documents of various UN bodies issued since the 1990s,¹¹ only the term indigenous (indigenous people,

populations, communities but increasingly also indigenous peoples) is used.¹²

Thus, “indigenous” has evolved from a term applied in the late 19th and early 20th century to all colonized people to one used more narrowly for the native peoples of the Americas (and other countries that experienced settler colonialism) between the 1930s and the 1980s, i.e. between the declaration of the Pan-American Union (see Daes op.cit. para 15) and the establishment of the UNWGIP, and which was further broadened to include groups from all over the world during the deliberations of the UNWGIP. This broadening of the geographical scope of the concept is also reflected in José Martínez Cobo’s influential study,¹³ which covered 37 countries, 10 of them from Asia, although none from Africa (Cobo 1981 para 7).

The broadening of the concept of “indigenous peoples” within the UN implied the abandonment of the term “tribal” and, with it, the subsuming of groups of people hitherto referred to as “tribal peoples” within the term “indigenous peoples”. To paraphrase Daes (1996: para 22), while according to ILO Convention 107 “all ‘indigenous’ peoples are ‘tribal’, but not all ‘tribal’ peoples are ‘indigenous’”, we can say that according to ILO Convention 169 “indigenous peoples are not tribal peoples and tribal peoples are not indigenous peoples” – but both equally enjoy the rights provided for by the Convention. And the implicit understanding of the concept of “indigenous peoples” as it evolved since the UNWGIP is that “all those so far called tribal peoples are now called indigenous peoples” – and thus fall under the ambit of the Declaration.

As a result of the transformation and popularization of the term “indigenous peoples” through the work of the UNWGIP and related initiatives within

the UN system over the past two decades, “indigenous peoples” is now commonly used as a synonym for “tribal peoples”. For Benjamin (2002: 14), “[t]he term ‘indigenous’ is the most usual epithet for the kinds of lifeway here called ‘tribal’.” And he points out that its “usage was further reinforced by the United Nations International Year of Indigenous Peoples (1993), which (despite its name) clearly referred to the world’s disadvantaged *tribal* populations, and not to the many other populations in the world who can equally claim to be indigenous” (ibid., original emphasis). And, after all, the definition of “indigenous communities, nations and peoples” in José Martínez Cobo’s study (1986 paras 379-380), which was used by the Working Group as a working definition for its deliberations on the Draft Declaration (Daes 2009: 68) and which is still the most cited definition, includes “living under a tribal system” as one of its definitional criteria.¹⁴

So, while we can safely conclude that, in the present practice within the UN, the peoples previously referred to as “tribal peoples” or “tribals” are now subsumed within the term “indigenous peoples” we are confronted with another, equally tricky question: who are “tribal peoples”?

Tribes: Yet another colonial legacy

Colonial governments have recognized the presence of what they perceive as “uncivilized”, “primitive” or “backward” people living in mountainous, forested or otherwise remote and inaccessible areas throughout the world and have given them a range of names. In their colonies in Indochina, the French initially adopted the terms commonly used within lowland societies (*Moi* by the Vietnamese, *Kha* by the Lao and *Phnong* by the Khmer), all bearing the connotation of be-

ing “savage”, or they would just use the French equivalent “sauvages” (Salemink 2003: 28). After some failed attempts to introduce political or scientific labels (*ibid.*), they stuck to *Montagnards* (mountain dwellers), an expression still often used for the aboriginal inhabitants of the Central Highlands of Vietnam.

The Spanish colonizers in the Philippines named those who were brought under their control, Christianized and thus considered “civilized” *indios*, and those who managed to remain outside Spanish rule *infieles* (“heathens”) or, if they were Muslim, *moros*. The US-American colonial administration, which succeeded the Spanish at the end of the 19th century, called the upland people who remained uncolonized “non-Christian tribes”, sometimes “wild peoples”, as opposed to the “civilized peoples” of the lowlands and coastal areas.

The British used the term “tribals” for the people living in the hills and forests of their colonies in Asia (in what is now Pakistan, India and Burma) or “natives” (as in today’s Sarawak and Sabah of Malaysia).

These colonial designations are still widely used – along with the prevalent exonyms in local languages or newly-introduced official terms such as “ethnic minorities” – and in some cases even remain legal concepts, such as “native” in Sarawak and Sabah of Malaysia, or “tribal” in India and Pakistan. As Van Schendel (2011:24) argues, in South Asia the colonial term “tribal” has been turned into a post-colonial identity marker; it has been accepted by political activists and many have now come to think of themselves as “tribals”. The terms “tribe” or “tribal” are also quite commonly used in the public media and by activists and academics in countries outside the former British colonies, as in the Philippines¹⁵ and Thailand.¹⁶

In academic circles, the concept of “tribe” had already been heavily criticized in the 1960s and 1970s (Fried 1966, 1975; Helm 1968; Southall 1970; Godelier 1977), and most contemporary anthropologists do not consider it an analytically useful or politically correct concept. Benjamin (2002: 12) aptly captures the prevailing understanding: “It is now recognized that ‘tribes’, in the sense of discrete, total social units, do not exist outside of the popular, administrative or sociological imaginings”. Some scholars, such as Southall (1996: 1334), argue that the concept has been imposed on colonized peoples by imperialist nations, that it is the result of a relationship marked by oppression and a sense of supremacy on the part of the colonizers, and that it is in fact the “product of prejudice and exploitation” (*ibid.*). As mentioned earlier, indigenous peoples’ representatives in the UN Working Group on Indigenous Populations opposed the use of the term tribe precisely because of the various negative connotations it carries.

Underlying the colonial usage of “tribe” was a unilinear evolutionist thinking that ranks human societies according to their level of advancement from “primitive” to “civilized” societies. At the bottom stand the least advanced “tribal” societies, at the top Western “civilization”. As Van Schendel (*ibid.*:21) observes, for the British, “tribe” was above all an administrative category defining these “primitive” groups as “especially unfit to rule themselves and as natural wards of European colonial officers”, and, most important, “[t]hese ideas were not thrust upon an unwilling society. On the contrary, they meshed well with South Asian elites’ hierarchical attitudes towards people living in forests. The common term *‘jongoli’* (jungly) summed up this attitude. It means both ‘living in the jungle’ and ‘uncivilized, wild, uncouth’.” (*ibid.*)

ORDONNANCES DU GOUVERNEMENT FEDERAL

Ordonnance fédérale du 27 Mai 1946 portant création d'un Commissariat du Gouvernement Fédéral pour les Populations Montagnardes du Sud Indochinois.

LE HAUT COMMISSAIRE DE FRANCE POUR L'INDOCHINE

Chancelier de l'Ordre de la Libération,
Grand Officier de la Légion d'Honneur,

- Vu le décret du 17 Août 1945 portant création et fixant les attributions du Haut-Commissaire de France pour l'Indochine;
Vu le décret du 17 Août 1945 portant nomination du Haut-Commissaire de France pour l'Indochine;
Vu le décret du 20 Octobre 1911 portant fixation des pouvoirs du Gouverneur Général de l'Indochine;
Vu l'Ordonnance fédérale du 1er Novembre 1945 fixant les modalités provisoires d'exercice du pouvoir législatif et réglementaire dans la fédération Indochinoise;

Le Conseil du Gouvernement Fédéral entendu.

ORDONNE:

ARTICLE PREMIER - Les provinces du Darlac, du Haut-Donnai, du Langbian, de Pleiku et de Kontum, forment une circonscription administrative spéciale qui portera le titre de "Commissariat du Gouvernement fédéral pour les populations Montagnardes du Sud Indochinois" et cessent de relever du Commissariat de la république pour le Sud-Annam.

Ordinance of the French Government of May 27, 1946, creating a "Federal Government Commissariat for the Montagnard Populations of South Indochina"

The identification and listing of 'tribes' for administrative purposes was continued by post-colonial governments like India and Pakistan. Skaria (1997, cited in Van Schendel op.cit.) considers these lists "fundamentally arbitrary" and believes that "in almost all cases, the so-called tribes shared more cultural, social and economic practices with their caste neighbours in the region than with other 'tribes' all over India with whom British officials clubbed them". For Van Schendel (ibid.), "tribe became not so much a container of specific cultural traits – it was hard to imagine what Pashtuns might have in common with Nagas and Todas – but rather a term fixing a relationship of unequal power. To be tribal meant to be subordinated to a superior power with a civilising mission".

With this, Van Schendel introduces what is missing in Skaria's observation: the political dimension. "Tribe" as an analytical category had been abandoned in anthropology by the 1970s, except for in South Asia, where it is still an official administrative category (op.cit.: 23). Indeed, in Southeast Asia it has been found a useless analytical tool for the identification of particular social groups. The concrete forms of social organization, cultural traits, languages and subsistence patterns found among the people deemed "tribal" are too diverse, overlapping and fluid. According to Scott (2009: 243): "There is, clearly, no such thing as a 'tribe' in the strongest sense of the word – no objective genealogical, genetic, linguistic, or cultural formula that will unambiguously distinguish one "tribe" from another". However, as he elaborates further:

"There are, of course 'tribes' in the lived experience of hill peoples. Self-identified Karen, Kachin, Hmong and others have fought and died for identities that many believe have a deep and continuous history, a belief that would probably not stand up for critical scrutiny. Such powerful identities are, in this respect, no less fictitious and constructed than most national identities in the modern world." (ibid.)

And he concludes: "The only viable analytical alternative is to take such self-identifications as our point of departure. As was proposed nearly forty years ago, we must treat tribal divisions as 'essentially political in origin.' Ethnic identity on this reading is a political project." (ibid.)

He advances a "radical constructivist" perspective: "That ethnic identities in the hills are politically crafted and designed to position a group vis-à-vis others in competition for power and resources [...] The positioning in question is above all a positioning vis-à-vis the lowland state and other hill peoples". (ibid.: 244).

While the "tribal" populations in the hills and forests of South and Southeast Asia are ethnically extremely diverse and complex, with specific "tribal" identities often being rather vague, fluid and shifting, they have one feature in common which sets them apart from the rest of the population: they are non-state societies.

Colonization and the creation of post-colonial nation-states has often led to a consolidation, if not the emergence, of ethnic identities among tribal populations (see e.g. Karlsson 2000: 258f). With the introduction of the administrative category, this often went hand-in-hand with self-identification as "tribal". To see this, however, entirely as a result of imposition is, for some authors, an insult

to those concerned since this consigns them to a merely passive role (Winthrop 1991 and Sharp 1996, discussed in Kraus 2004 p. 42). The impact of colonization is not entirely dismissed by these authors but they point out that the original idea of "tribes" as clearly identifiable social units, which indeed may have been new in many places, was taken up and adapted to local realities and needs, thus shaping and changing local perceptions and forms of collective identities. Today, in countries such as India, Pakistan or the Philippines, many groups are self-consciously referring to themselves as tribes and do not seem to see it as connoting inferiority or primitivity.

Kraus (2004:42f) therefore believes that the term may still be useful as long as it is devoid of associations with archaism or primitivism, and historically contextualized. In this, the focus should be on the interaction between tribal groups and other forms of political organization, above all that of state societies, and its embeddedness in more encompassing cultural contexts, and with due attention to local representations of collective identity. Authors like Benjamin (2002) are doing precisely this.

Being tribal in Asia: Resistance by choice

Benjamin (2002) demonstrates that in the "Malay world", i.e. in the "various Malay kingdoms and their attendant hinterlands that have existed or still exist along the coasts of Borneo, the east coast of Sumatra, and on the Malay Peninsula" (p.7), state formation was a key factor in the emergence of a socio-political differentiation resulting in "three basic types of socio-cultural situations, where in pre-state times there had been just one" (ibid. p.8).

“Those who place themselves in command belong to what we can loosely call the ruler category, used here as a shorthand for priests, tax collectors, soldiers and so on, as well as kings. Those who allow their lives to be controlled by agencies of the state, which they provision in exchange for a little reflected glory but no counter-control, are peasants. But those who stand apart from the state and its rulers, holding themselves culturally aloof [...], are in the *tribal* category.”

Thus, as Benjamin (2002:9f) continues, “[] those who did *not* become Malay peasants had to set up their own cultural and social institutions [].

In so doing they generated three institutionalized societal patterns – the “Semang”, “Senoi”, and “Malayic” – as well as some less well-defined ones []. These three patterns have been aimed at retaining the people’s social and cultural autonomy in the face of the state, while allowing them nevertheless to sustain relations with each other and with the civilizational centres downstream.” The processes and resulting social and cultural patterns analysed by Benjamin for the “Malay world” are very similar to the ones found in the Philippines, the difference being that whereas in the Malay case these patterns emerged in pre-colonial times, in the Philippines they are a result of Spanish colonial rule.¹⁷

19th century murals in Wat Phumin, Nan, capital of presesent-day nan Province in Northern Thailand depicting the people of the muang (princely state/city state) and, outside the city wall, the people of the forest. See also murals reproduced on the front and back cover.



Individual agency and choice also stand at the core of Scott's lucid analysis (2009) of the socio-cultural dichotomy between hill and valley societies found throughout Southeast Asia. He argues that the presence of two fundamentally different forms of society in Southeast Asia – states in the valleys and along the coasts, non-state people (identified, as mentioned, in colonial "taxonomies" as "tribals") in the hills, forests, swamps and archipelagic labyrinths – have evolved not simply as a result of the geographical isolation of the latter – "civilization didn't reach them" – but as a result of choice: "At a time when the state seems pervasive and inescapable, it is easy to forget that for much of history, living within or outside the state – or in an intermediate zone – was a choice, one that might be revised as the circumstances warranted" (ibid: 7).

The essence of Scott's seminal study was captured in a lecture he had given before his book was published:

"Despite this constant exchange of populations across this permeable membrane, there is an extraordinarily stable, durable civilization discourse about hill and valley that treat each of these peoples as essentially different; one cultured, the other barbaric, one refined, the other primitive, one advanced and cosmopolitan and the other backward and parochial. These pairs, of course, are the pairs as valley elites see them. If we adopt the hill perspective we get different pairs; one is free and autonomous, the other is in bondage and subordinate; one is nominally an equal of others, the other is socially inferior; one is physically mobile, the other is hemmed in by officials and state institutions" (2008: 162).

These two separate spheres existed in spite of the constant flow of people between them throughout history. "Hill tribes" and "valley civilization", according to Scott, constitute a "lived essentialism" that "remains intact as a powerful organizer of peoples' lives and thoughts" (ibid.). He argues that: "A good deal of what we have come to consider 'hill' agriculture, 'hill' social structure, and 'hill' locations itself is [] largely defined by patterns of state evasion (and prevention)." (2009: 182)

As Scott demonstrates in detail, the pre-colonial state's main concern was to attract and often capture people and keep them in densely settled areas around the state centre, as wet-rice farmers for easy taxation and a source of corvée labour and for forced conscription. People kept or took to the hills in order to avoid taxation and slavery, and during times of increased pressure, when taxes were increased, harvests were bad or epidemics broke out, people left the plains in large numbers and took refuge in the hills.

Scott emphasizes that "[t]he hills, however, are not simply a space of political resistance but also a zone of cultural refusal" (ibid: 20). For him, living in the hills was both a political and cultural choice. The same conclusion is drawn by Li for the Indonesian context. She believes that "people who lived in the uplands did so not by default, bypassed by history, but for positive reasons of economy, security, and cultural style formed in dialogue with lowland agendas" (Li 1999, quoted in Scott 2008: 171).

There is ample evidence that "large numbers of 'defectors' from civilization" (Scott 2009: 173) have been absorbed by tribal peoples in the uplands of Southeast Asia. Scott even comes to conclude: "Thus the Great Wall(s) and the anti-Miao walls of Hunan were seen officially as a

barrier to barbarians, whereas, in fact, they were built just as surely to hold a taxpaying, sedentary, cultivating population within the ambit of state power" (ibid.).

The reverse, of course, was also common: the assimilation of tribal people into the valley state society. Resistance and flight were options not chosen by everybody; some would prefer to adapt and ultimately assimilate into the dominant society, such as, for example, many of the Hmong in Southwest China.

"On this account, the fugitive, stateless Hmong, marked indelibly by their flight and their refusal to 'enter the map,' are a remnant. Most of those who had historically been known as Hmong would have been absorbed as subjects of the Han state and hence disappeared as a distinguishable group. If we also allow for the fact that others who rebelled or fled along with them were absorbed into the ranks of the Hmong, then this remnant may have little in the way of genealogical, let alone genetic, continuity. The continuity – the meaning – of Hmongness may lie more powerfully in a shared history of rebellion and flight than in any presumed claim to ancestral blood ties." (Scott 2009: 175)

Not just for the Hmong but for most if not all tribal peoples in Southeast Asia and elsewhere, the core of their identity is the determination to retain their autonomy.

Colonization: Internal and external

It is largely through withdrawal into inaccessible areas, at times and in some cases in combination with active resistance, that tribal peoples in South and Southeast Asia have been able to retain their autonomy in the face of the overwhelmingly more powerful lowland or coastal states.

In the case of Tibet, this is somewhat reversed in the sense that the state had its centre of power not in the lowlands but in Lhasa on the Tibetan plateau. The pattern, however, remained largely the same, as Davide Torri observes:

"So, it may be true that peripheral and marginal settlements may have originated by the establishment of Kingdoms and States. In this sense, even traditional states can be assumed to be colonizing forces, pursuing their expansion and chasing people beyond the borders. Helambu [in north-central Nepal, C.E.], for example, is what in Tibetan tradition is called a *be-yul*...a hidden and secret valley, a refuge...a refuge from the political powers ruling from central Tibet."¹⁸

For Thapar and Siddiqi (2003: 41), at least part of the answer to the question of "how tribal identity [] survived" on the Chota Nagpur Plateau in Central India is "the availability of wasteland or forest with a relatively sparse population [that] provided the continuing possibility of new *khunt-kattis* (lineage-based corporate entities or communities; C.E.) at least prior to the seventeenth century." According to Nathan (2003: 120), "the movement towards settled, plough agriculture is here much more recent than it was in the plains. This movement is continuing even today", and in the uplands "a modified slash-and-burn agri-



《平苗图册·福康安与和琳攻克兰草坪滚牛坡图》

A scene of the Chinese Campaign against the Miao (Hunan) 1795. Collaboration of Chinese and European (Jesuit) painters. Engraved in Paris. Public domain file.

culture is carried on". In addition to the presence of forms of subsistence typical of state-evading peoples, the tribal peoples of Jharkhand possess, as Nathan (ibid.: 121) puts it, a "lack or weakness of endogenous state formation [which] meant that the state machinery has remained alien to Jharkhandi society".

Along with the waxing and waning of the power of lowland states in Asia came a rising and ebbing of pressure on and attempts to subjugate the tribal peoples at their peripheries. In the process, tribal peoples were displaced from the more favourable areas. The south and westward expansion of the Han Chinese, for example, pushed the tribal peoples into the climatically less hospitable areas of Southern China, on the one hand, and into the mountains on the other (Wiens 1954, cited in Scott 2009: 139). Over the past

five hundred years, the Miao¹⁹ have experienced nearly constant "campaigns for assimilation or 'suppression and extermination'" at the hands of the Han Chinese state of the Ming and Qing dynasties. (Scott 2009: 140) Insurrections were met with violent suppression campaigns, which led to the dispersal of the Miao throughout the uplands of Southeast Asia. Wiens compares these campaigns for expulsion and extermination with "the American treatment of the Indians" (op.cit., cited in Scott 2009: 140).

Ruthless treatment of tribal peoples reminiscent of Western colonial practices have also been reported elsewhere in the region, such as the Siamese Chakkri kings who enslaved and massacred large numbers of people as they extended their control over the hills in what is today the Lao-Thai border area (Scott 2009: 303).



Strategy of withdrawal and avoidance in the 21st century: The Taobuid of Mindoro island in the Philippines. Among the lowland peasants they are known as the 'mailap', the wild, shy, elusive ones.

Parallels with Western colonialism exist not only with respect to attitude and rationalization (the natives having been considered “primitive”, “barbarian” etc. and thus providing moral legitimacy for subjugating and enslaving them) or their methods (enslavement, forced displacement, raiding, massacring those who resisted) but also with respect to the responses of the native peoples to the expansion of the colonial state: a combination of resistance and withdrawal to remote, hilly, swampy or densely forested areas, like the Amazon basin, a process which in a few places is still ongoing. In the border areas of Brazil and Peru and a few other areas of the upper Amazon basin, small groups of indigenous peoples have taken their strategy of withdrawal to the extent of almost completely avoiding contact with the outside world (Huertas Castillo 2004). These groups are commonly referred to either by

rather descriptive names such as “uncontacted”, “isolated” or “self-isolated” peoples – or more value-laden one such as “naked ones”, “savages”, “nomads” or “free peoples”.

In the Americas, flight has been a very common response of native peoples throughout colonial history to avoid massacres, raids and slavery (ibid.: 50f, on the Madre de Dios region in the Peruvian Amazon). And very much like what Scott describes for mountainous mainland Southeast Asia: resisting and evading the (colonial) state and its agents led to the adoption of particular patterns of social organization and livelihood that allowed for high mobility and dispersal.²⁰ The Mashco Piro of the Madre de Dios region, for example, “were forced to abandon farming in order to allow for a greater mobility that would

enable them to keep their distance from outsiders" (ibid.: 21).

The emergence of "regions of refuge" (Beltrán 1979) in the wake of state-avoidance by "tribal" peoples is a global phenomenon. These "regions of refuge" are, however, rapidly shrinking. The situation changed drastically with the creation of post-colonial nation-states and their clearly demarcated and fixed state boundaries. In South-east Asia, the people who see themselves as the heirs of pre-colonial civilizations – the Thai, Lao, Kinh, Khmer, Malays, Javanese – or, in the Philippines, the successors of the colonial elite, are controlling these newly-formed nation-states. In the early years after decolonization little had changed for the "hill peoples", who were to a large extent still able to maintain far-reaching autonomy and control over their lands and resources. The consolidation of state power and the rapid technological development of the past six decades, however, allowed the state to expand its control into ever more remote areas. In its wake came large-scale resource extraction, land conversion and settler colonization of these areas, resulting in the dispossession, displacement and marginalization of tribal peoples. Their situation changed fundamentally because one of the key conditions for maintaining autonomy was steadily eroding: the possibility of withdrawing. Today, the "basis for popular freedom" (Scott 2008: 169), i.e. the possibility of taking refuge in the "hills" is, in many cases, not an option any more.

While pre-colonial relationships between tribal and state societies can be described as ambivalent – characterized by antagonism but also mutual dependence in economic terms – the balance now shifted decidedly in favour of the latter. Increased technical, military and administrative power enabled states to extend control over the

formerly unattractive or inaccessible territories inhabited by tribal peoples, areas which are now increasingly recognized as repositories of key strategic resources.

Alongside this came state policies not just for administering but also for assimilating tribal peoples into national mainstream culture and society. Where deemed necessary, this was to be achieved through the forced relocation of whole communities to the plains and foothills, as in present-day Laos,²¹ or by moving large numbers of settlers from the country's core areas to the uplands and other peripheral or "frontier" areas (Geiger 2008). State-sponsored transmigration programs reached massive scales in countries like Indonesia, Vietnam or Bangladesh where hundreds of thousands of people were resettled to consolidate territorial control of the frontier by increasing "the number of 'reliable' citizens [] in spaces inhabited by 'unreliable' ethnic minorities (besides providing a safety valve for decongested rural areas)" (McElwee 2004 quoted in Geiger op.cit.: 15).

If we understand colonialism as "a practice of domination, which involves the subjugation of one people to another" (Stanford Encyclopedia of Philosophy) then there is no reason to treat the attempts of the pre-colonial Asian states – the Moghuls, Han, Burmans, Tai, Khmer, Kinh – to subjugate and enslave tribal peoples, and the present-day policies and practices of the heirs of these kingdoms in the nations they dominate as fundamentally different from British, Spanish, French or Portuguese expansion in their overseas colonies. The difference was largely in terms of distance and scale, not in its ends and means, nor in the underlying motivation and its legitimization with the "civilizing mission".

Hence, as Baird (2008: 205) concluded for the Brao in today's border area of Laos and Cambodia:

"Ethnic groups like the Brao, who do not dominate any particular nation-state, and have long been dominated by those from various ethnic or cultural groups in different periods over history, are people whose identities have been fundamentally shaped by various forms of colonialism. Each form of colonialism had different objectives and has involved varying strategies, each with their concomitant social and spatial repercussions. However, colonialism began long before the French arrived, even if the colonialisms of the past were quite different from the colonialism implemented by the French and other since then."

For India, Xaxa (2008: 233) speaks of a "twofold colonialism" during the British colonial era:

"The colonialism in the context of tribes was external (British) as well as internal (dominant Indian population). [] The dominant Indian population in collusion with the colonial state embarked on alienating tribal people from their control over land, forest and other resources. In the course of this process there was also settler colonisation of the region inhabited by the tribal people. [] Colonisation of tribal regions has gone unabated in post-independence India."

The term internal colonialism has been used to describe colonial practices occurring within the boundaries of post-colonial nation-states (see e.g. Roy 2003 for Jharkhand in India, Evans

1992 for the Central Highlands of Vietnam). As Xaxa (op.cit.) points out:

"The processes through which this happened may have not been as violent as the in the New World, for example, but has surely not been devoid of coercion, deceit, force and violence. Notwithstanding the difference, the end result has been spectacularly similar if not identical. The slow, gradual and refined process of marginalization and subjugation is often more dangerous since it escapes indignation and condemnation."

Tribal or indigenous: Changing names for persisting people

The experience of colonization is emphasized in Andrew Gray's (1995: 37) understanding of the concept of indigenous peoples. For him it

"[...] refers to the quality of a people relating their identity to a particular area and distinguishing them culturally from other, "alien" peoples who came to the territory subsequently. These indigenous peoples are "colonized" in the sense of being disadvantaged and discriminated against. Their right to self-determination is their way of overcoming these obstacles."

The right to self-determination is the core demand of the international indigenous peoples' movement, and has been most vehemently attacked by representatives of various governments engaged in the drafting process of the United Nations Declaration on the Rights of Indigenous Peoples. Since opting for withdrawal and the "tribal way of life" in the past was a way

to maintain autonomy or, as Scott put it, “popular freedom” (op.cit.), it should come as no surprise that indigenous activists from Asia identify so strongly with the international indigenous peoples’ rights movement. After all, self-determination was very much the main driver behind the choice of the “tribal way of life”, and seeing that the demand for the recognition of the right to self-determination stood at the centre of the agenda of the international indigenous peoples’ movement thus struck a sensitive chord. Entering the arena of international indigenous rights activism is the continuation of the self-assertion of an alternative, the “tribal” way of life under rapidly and radically changing circumstances. It can therefore be argued that the term “indigenous peoples”, as a term reflecting this change in contexts, conditions and strategies, has become a more appropriate designation.

Representatives of what were then still called tribal peoples from Asia were, from the beginning, actively involved in the process leading up to the establishment of the UNWGIP and the UNDRIP. They immediately identified with the aspirations and demands of indigenous rights activists from the Americas, Australia, New Zealand and Scandinavia, who in the early days led the indigenous rights advocacy work at the UN.²² Identification was easy since they found themselves in situations that were all too similar: they were confronted with state encroachment through transmigration programs, forced resettlements, large-scale infrastructure – mostly dam – projects, logging and plantation industries, the resulting state and corporate dispossession, the underlying non-recognition of cultural difference and basic individual and collective human rights and, ultimately, the loss of self-determination.

Many indigenous rights advocates in Asia would probably agree with Benjamin (2002: 12), who,

with reference to the now widespread rejection of the term “tribe” concludes: “Unfortunately, political correctness, however justified it may be on occasion, constantly deprives us of words that we need. Social labels are not usually *inherently* offensive; normally, they simply *become* offensive when used by those who despise the people referred to” (original emphasis). Many would probably prefer that the term “tribal” had been retained in the Declaration on the Rights of Indigenous Peoples – just as in ILO Convention 169 – since the long, arduous and – in many countries – still fruitless debate on the applicability of the concept of “indigenous peoples” in the Asian context could have been avoided. And yet, seen in another light, the terminological shift can be welcomed not simply for being politically more correct but because it can be understood as reflecting fundamental changes in the overall situation of the people concerned.²³

At the local level, the option to self-identify as “indigenous” naturally resonated well with marginalized tribal peoples when recognition of indigenous status came along, with the possibility of tangible benefits in the form of the protection of land rights (see e.g. Baird 2010 for Cambodia). Discussions on identity and indigenous peoples’ rights, often initiated by NGOs implementing projects in rural areas, have also led to a “coming out” among discriminated groups, who have started abandoning their separate identities and assimilating into mainstream society (ibid.). The enthusiastic response of marginalized tribal peoples to the concept of indigeneity and the claim to rights it implies has not been well-received by governments. It represents a challenge to the state’s monopoly of power and territorial control – by demanding self-determination and collective land or territorial rights. It is therefore very likely that some Asian governments will continue to deny the applicability of the concept and



Secretary General and the 10 newly elected Executive Council members of the regional Asia Indigenous Peoples Pact (AIPP), 2012. They represent 47 member organisations from 14 countries in Asia.

therefore the presence of indigenous peoples in their countries. Indigenous rights' advocates, however, appear equally unimpressed for their part, and the term is increasingly used throughout Asia. Karlsson (2000: 139) found that, in India, this was happening "[n]ot because the term is embraced by naïve supporters of indigenous rights and cultural survival, nor because of hidden Western interests, but because it makes sense and is taken up by the indigenous people in India themselves."

Scott's seminal work, quoted so often throughout this text, is about "The art of not being governed" (2009), about people's struggles to remain un-governed or, rather, self-governed. For millennia, the tribal peoples of Asia have done this through a combination of resistance to and avoidance of the pre-colonial and colonial state. In the context of powerful modern nation-states, however, "the future of our freedom lies in the daunting task of taming Leviathan, not evading it" (ibid.: 324). The 20-year-long negotiation of the UNDRIP, the push for the creation of advisory and expert bodies on indigenous peoples in the UN system,

successful and less successful advocacy for the passing or amending of national legislation protecting indigenous or tribal peoples' rights, and the tremendous increase in court cases filed and fought throughout the world in defence of these rights signify precisely this shift. The stages, tools and strategies employed are vastly different, the purpose they serve however the same: to remain self-determined peoples.²⁴

What Scott (ibid.: 245) writes on Zomia may as well be extended to other parts of Asia, or the world beyond: "It is because they have fought and fled under so many names, in so many locations, and against so many states, traditional, colonial and modern, that their struggle lacked the single banner that would have easily identified it." (Scott: 245). Today, as their struggle is being protracted in new ways, and on many levels – local, national and international –, it looks like the concept of "indigenous peoples", with the meaning that evolved within the UN system over the past two decades, is providing this single banner.

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Notes

- 1 Eleven countries abstained and only four voted against: the United States, Canada, Australia and New Zealand. In the meantime, Australia officially declared that it recognizes and supports the UNDRIIP in April 2009, New Zealand endorsed it in April 2010, Canada in November and the US in December of the same year.
- 2 At present only three Asian countries officially recognize the existence of indigenous peoples within their boundaries: the Philippines, Taiwan and Japan. In Taiwan the term gained legal status through a constitutional amendment in 1994. Several laws pertaining to indigenous peoples were subsequently passed. In the Philippines, Republic Act 8371 of 1997 (Indigenous Peoples Rights Act) uses the term "indigenous peoples" interchangeably with "Indigenous Cultural Communities", a legacy of previous legislations. Japan's parliament voted in favour of the recognition of the Ainu as the country's indigenous people in 2008.
- 3 This statement reveals that, at that time, the Indonesian government's position did not differ from that of the Suharto regime which maintained that "Indonesia is a nation which has no indigenous people, or that all Indonesians are equally indigenous" (Li 2000a: 1). Since then, however, significant changes have taken place and the Indonesian government is now increasingly using the term 'masyarakat adat', which was coined by indigenous rights activists in Indonesia as the equivalent of 'indigenous peoples'.
- 4 In this connection it is frequently pointed out that the United Nations has so far also managed to do its work without a definition of the – undisputedly key – concept of "people" (see e.g. Daes 2009: 54).
- 5 According to Tauli-Corpuz (2008: 94), "the general agreement among indigenous peoples is that definition and identification will be done at the national level and in some cases, the regional or sub-regional level because there are indigenous peoples who were artificially divided and separated by the formation of nation-states and the establishment of national boundaries."
- 6 Indigenous peoples' representatives' understanding is that while the issue of definition and identification of indigenous peoples has to be resolved "within national states" this should be done "in cooperation with indigenous peoples" (Montes and Cisneros 2009: 154)
- 7 Indeed, concern for national unity has been one of the main arguments put forward by governments in opposition to the application of the concept of indigenous peoples in their countries and is one of the seven points in the "Draft Aide Memoire" drawn up by the group of African states after the resolution of the Third Committee to defer the voting on the Declaration "to allow more considerations to African concerns" (Barume 2009: 170).
- 8 Daes (1996: para 10) refers to *indigenae* as the root of the term, as opposed to *advenae* for 'a person who arrived from elsewhere'. I am grateful to Davide Torri for making me aware that this is not entirely correct since *indigenae* is the singular genitive and dative or the plural nominative of *indigena*, thus meaning 'of an indigenous/to an indigenous' and '(more than one) indigenous person'.
- 9 The states attending were: Austria–Hungary, Belgium, Denmark, France, the United Kingdom, Italy, the Netherlands, Portugal, Russia, Spain, Sweden–Norway. The USA were invited but did not attend. [http://en.wikipedia.org/wiki/Berlin_Conference_\(1884\)](http://en.wikipedia.org/wiki/Berlin_Conference_(1884))
- 10 Jannie Lasimbang has actively participated in the UNW-GIP for many years. She is currently a member of the UN Expert Mechanism on the Rights of Indigenous Peoples, has until recently been a member of the national Human Rights Commission of Malaysia and was Secretary General of the Asia Indigenous Peoples Pact (AIPP).
- 11 Such as the Rio Declaration on Environment and Development of 1992, the Cairo Program of Action of the International Conference on Population and Development of 1994, the Beijing Declaration of the Fourth Conference on Women and the Copenhagen Declaration on Social Development of 1995, the Millennium Development Goal review summit resolutions of 2005 and 2010. The increasing recognition of indigenous peoples within the UN system is reflected in the fact that several UN agencies have drawn up specific policies to guide their work on and with indigenous peoples (e.g. UNDP's policy of 2001, the UN Development Group's guidelines of 2009; IFAD's policy of 2009).
- 12 Occasionally, the term "tribal" does, however, still linger on in UN publications. The News and Media Division of the United Nations Department of Public Information, in an article on the 5th session of the Permanent Forum on Indigenous Issues posted on 22 May 2006, for example, writes: "Representatives of indigenous and *tribal* communities today urged the United Nations panel charged with drawing attention to their plight to press Member States to rapidly adopt a long-negotiated draft declaration on the rights of indigenous peoples, as the surest way to promote the human rights of 370 million people worldwide and to protect the fragile traditional lands and resources on which they depended for survival. (emphasis added)" <http://www.un.org/News/Press/docs/2006/hr4894.doc.htm>

- 13 The report was commissioned in 1972 and completed in 1986. It consists of 37 country studies and an addendum with conclusions and recommendations. The conclusions and recommendations of the study, in Addendum 4, are also available as a United Nations sales publication (U.N. Sales No. E.86.XIV.3). While commissioned to Special Rapporteur José Martínez Cobo, the study was in fact done by Augusto Willemsen Díaz, who was at that time employed as Human Rights Officer in the General Secretariat of what was then the Human Rights Division. He was assigned to do research for the section working with the Sub-Commission for Prevention of Discrimination and Protection of Minorities.
- 14 The full definition is as follows:

"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.

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

 - a) Occupation of ancestral lands, or at least part of them;
 - b) Common ancestry with the original occupants of these lands;
 - c) Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership on an indigenous community, dress, means of livelihood, life-style, etc.);
 - d) Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual or normal language;
 - e) Residence in certain parts of the country, or in certain regions of the world;
 - f) Other relevant factors."
- 15 This applies to both the Spanish term *tribo* and its English equivalent "tribe". For example, an informal network of indigenous activists and supporters calls its yahoo-group on the internet *inisyatRibo*, described as a "support initiative for rights to ancestral domain of indigenous peoples in the Philippines" (<http://groups.yahoo.com/group/inisyatRibo/>), and the media still frequently write or speak of "tribes", "tribal people" or "tribesmen" (see e.g. Inquirer of June 22, 2006 "Tribesmen as 'human carabaos'"). While the Catholic Church's Episcopal Commission on Tribal Filipinos (ECTF) changed its name to Episcopal Commission on Indigenous Peoples (ECIP) in January 1995, the Church's local (Diocese level) programs are still called "Tribal Filipino Apostolate", its bi-monthly publication has retained the title of "Tribal Forum" and its country-wide annual event "Tribal Filipino Sunday". Furthermore, local indigenous peoples' organizations often use "tribal" in their name, e.g. Narikdukan Manobo-Talaandig Tribal Association; Southern Bukidnon Tribal Council, Siocon Federation of Subanon Tribal Councils, the Federation of Matigsalog-Manobo Tribal Councils, or the two national-level organizations reportedly working closely with the government: the Tribal Councils of the Philippines (ATCP) and Tribal Communities Association of the Philippines (TRICAP) (www.iwgia.org/sw16786.asp).
- 16 This, of course, mainly applies to publications in English. There is often no equivalent term in the local language even though the various terms used are often translated as "tribal". In Thailand, for example, a number of designations have been coined over the years, such as *chao khao* (mountain/hill people), *chao thai phoo khao* (mountain/hill Thai), or *chon phao* (tribal people), all of which are commonly translated into English as "hill tribes".
- 17 The exception is the Moro area in the Sulu archipelago and western Mindanao, where a socio-cultural dichotomy had already emerged in pre-Spanish times. It is very likely that, if the Spanish had arrived a century or two later, the socio-politically already fairly complex societies of the coastal trading chiefdoms would, hand-in-hand with the spread of Islam, have been either brought under the rule of the expanding Muslim Sultanates of the South or consolidated into more powerful and centralized polities such as the trading states in the Indonesian archipelago. And, along with this would probably have come a socio-political and cultural differentiation similar to the one documented in pre-colonial Malaysia and Indonesia.
- 18 Personal e-mail communication of November 29, 2010.
- 19 While Miao is widely used in China, the designation Hmong is more commonly applied outside China (i.e. in Vietnam, Laos and Thailand and for the migrant communities overseas). These latter groups are sometimes considered a sub-group of the Miao. However, non-Chinese Hmong argue that Hmong should also be used for the people called Miao who live in China because the latter is a derogatory term. In present-day China, such negative connotations are apparently not prevalent and the two terms are increasingly used interchangeably now, at least for the Chinese groups.
- 20 Epidemic diseases introduced by the agents of the colonial states, to which the native populations had not yet developed resistance, had an added, profound impact on the indigenous populations. Depopulation was thus

the combined result of active withdrawal and high mortality due to diseases and violence.

- 21 See e.g. anonymous 2007, Baird and Shoemaker 2007, High 2008. Forced resettlement of indigenous communities in Laos began shortly after the socialist Pathet Lao gained power in 1975, mainly in response to armed resistance activities. At the beginning of the 1990s, the Lao government planned to relocate 180,000 households (approx. 1.5 million people), of which 60% were to be resettled by the year 2000 (anonymous 2007: 25). This has not been fully implemented yet but the process is still ongoing. Resettlement is not an official policy in itself but part of the national development strategy. (ibid.).
- 22 In 1974, the then Sub-Committee on Racism, Racial Discrimination, Apartheid, and Decolonization of ECOSOC's Special Committee on Human Rights sponsored the first international meeting addressing indigenous peoples' rights: the International NGO Conference on Discrimination against Indigenous Populations in the Americas. While this conference focused entirely on indigenous peoples from the America, the subsequent International NGO Conference on Indigenous Peoples and Land in 1981, again organized by the Sub-committee, was attended mainly by indigenous representatives from the Americas, some from Scandinavia, Australia and New Zealand, but also one from the Philippines (Dahl 2009: 62), and the conference report contains several references to the Philippines (World Federation of Democratic Youth 1981: 27, 28) and one to Namibia and South Africa (ibid.: 27).
- 23 In Africa, the concept of indigenous peoples has been equally contested but there has been considerable progress toward a region-wide acceptance as a result of the decade-long endeavors of the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights (ACHPR). For example, Chapter 4 of a report adopted by the ACHPR in 2005 discusses: "Possible Criteria for Identifying Indigenous Peoples" in Africa (African Commission on Human and Peoples' Rights 2007: 86ff).
- 24 The recognition of the right to self-determination in the Declaration was the most contentious issue – unacceptable to governments, indispensable for indigenous peoples. It could only be retained because of a disclaimer protecting the territorial unity of the state.

While the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the UN General Assembly in 2007 by a vast majority of votes, many Asian governments refuse to accept its applicability to their countries. Due to the lack of a definition of 'indigenous peoples' and an interpretation of the concept as applying only to the context of Western settler colonialism the concept remains contested in most Asian countries. At the same time, the concept and the set of internationally recognized rights attached to it resonate well with large numbers of marginalized groups who hitherto have been known under labels like 'natives', 'tribal peoples' or 'ethnic minorities', and who are now increasingly identifying themselves as 'indigenous peoples'.

Taking the controversy over its definition as point of departure, this article traces the evolution of the concept of indigenous peoples in the UN system, shows that at a time was and in many cases can still be considered coterminous with 'tribal peoples', that the experience of colonization indeed is core to what constitutes indigeneity, but that in Asia colonialism is not just confined to the Western colonial era, but that it predates it and, above all, that it is continuing in the form of internal colonialism to this day. It concludes by arguing that while resistance to and withdrawal from the state have been strategies chosen by tribal peoples to retain autonomy for centuries, this has become increasingly difficult today and that identifying as indigenous peoples and invoking international human rights instruments such as the UNDRIP are part of the new strategy of these peoples to preserve their identity and self-determination.



INTERNATIONAL
WORK GROUP FOR
INDIGENOUS AFFAIRS