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ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

Report on the United Nations Seminar on the effects of racism and
racial discrimination on the social and economic relations between
indigenous peoples and States

Geneva, Switzerland

16-20 January 1989

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I. INTRODUCTION

A. Organization of the Seminar

1. Upon recommendations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on Human Rights, the Economic and Social Council requested the Secretary-General by its resolution 1988/35 of 27 May 1988, entitled "Study of the problem of discrimination against indigenous populations", to organize in 1988, as part of the programme of advisory services on human rights, a seminar on the effects of racism and racial discrimination on the social and economic relations between indigenous peoples and States.

2. Pursuant to the above-mentioned resolution, the Seminar was held at the Palais des Nations, Geneva, Switzerland, from 16 to 20 January 1989. The Seminar held nine meetings.

B. Participants

3. Invitations to nominate expert participants were extended to 15 Governments and 10 indigenous organizations, on the basis of geographical distribution, past participation in the United Nations human rights meetings, interest in the subject and relevant experience to offer to the deliberations. Participants from the following countries and non-governmental organizations attended the Seminar in their personal capacity: Australia, Brazil, the German Democratic Republic, Ghana, India, Norway, the Philippines, Senegal, Tunisia, Yugoslavia, the Four Directions Council, the Grand Council of the Crees (of Quebec), the Indian Council of South America, the Indian Law Resource Centre, the Indigenous World Association, the Inuit Circumpolar Conference, the National Aboriginal and Islander Legal Services Secretariat, the National Indian Youth Council and the World Council of Indigenous Peoples. (The list of participants appears in Annex I.)

4. The following resource persons who were invited to prepare background papers also attended the Seminar:

Professor Vitit Muntarbhorn, Faculty of Law, Chulalongkorn University, Bangkok, Thailand;

Professor Douglas Sanders, Faculty of Law, University of British Columbia, Vancouver, Canada;

Professor Rodolfo Stavenhagen, Research Professor, El Colegio de México.

5. Mrs. Erica-Irene A. Daes, Chairperson of the Working Group on Indigenous Populations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities was invited by the Centre for Human Rights to participate in the Seminar (the text of her introductory statement appears in Annex IV).

6. Observers for the following States were also present: Australia, China, and the Union of Soviet Socialist Republics.

7. In addition, the following United Nations bodies and specialized agencies were represented as observers: United Nations High Commissioner for Refugees; Department for Special Political Questions; Regional Co-operation, Decolonization and Trusteeship; Department of Technical Co-operation for Development and International Labour Organisation.

8. Observers of the following non-governmental organizations in consultative status with the Economic and Social Council took part in the Seminar: (Category II): The Bahá'i International Community, the Four Directions Council, the Indigenous World Association, the International Organization for the Elimination of All Forms of Racial Discrimination, the Inuit Circumpolar Conference, the National Aboriginal and Islander Legal Services Secretariat, the Women's International League for Peace and Freedom, the World Council of Indigenous Peoples; (Roster): The Grand Council of the Crees (of Quebec), the Indian Council of South America, the International League for the Rights and Liberation of Peoples. In addition, the Aboriginal Women's Organization, the "Movimiento Indio Tupak Katari-MITKA-l-MIL-Wiphala" and the Haudenosaunee also participated.

C. Agenda

9. The Seminar adopted the following agenda:

1. Election of the chairperson and rapporteur
2. Adoption of agenda
3. Organization of work
4. Presentation by experts and observers:

(a) The realization of indigenous social rights:

Presentation of background paper by
Professor Vinit Muntarbhorn

(b) Indigenous participation in national economic life and the role of traditional indigenous economies:

Presentation of background paper by
Professor Douglas Sanders

(c) Effective protection and comprehensive development of the social and economic sectors in indigenous communities through international standard-setting activities:

Presentation of background paper by
Professor Rodolfo Stavenhagen

5. Discussion by participants

- (a) Racism and racial discrimination and its effect in impeding the application of international standards and standard-setting activities to indigenous peoples' economic and social developments
- (b) International standards and standard-setting activities having relevance to the economic and social rights of indigenous peoples

6. Conclusions/recommendations.

D. Documentation

10. The following background papers were prepared for the Seminar at the request of the Centre for Human Rights (texts of background papers appear in Annex III):

HR/GENEVA/1989/SEM.1/BP.1 - "Indigenous participation in national economic life and the role of traditional indigenous economies", prepared by Professor Douglas Sanders (Item 4 (b) of the Agenda);

HR/GENEVA/1989/SEM.1/BP.2 - "The realization of indigenous social rights", prepared by Professor Vitit Mantarbhorn (Item 4 (a) of the Agenda); and

HR/GENEVA/1989/SEM.1/BP.3 - "Effective protection and comprehensive development of the social and economic sectors in indigenous communities through international standard-setting activities", presented by Professor Rodolfo Stavenhagen (Item 4 (c) of the Agenda).

11. The following working papers were submitted during the session:

HR/GENEVA/1989/SEM.1/WP.1 - by Mr. Russel L. Barsh, Four Directions Council;

HR/GENEVA/1989/SEM.1/WP.2 - by Mr. Russel L. Barsh; and

HR/GENEVA/1989/SEM.1/WP.3 - by Mr. Ted Moses.

E. Officers of the Seminar and the secretariat

12. At its 1st meeting, 16 January 1989, the following officers of the Seminar were elected, by acclamation:

Chairperson: Mr. Ndary Toure (Senegal); and

Rapporteur: Mr. Ted Moses (Grand Council of the Crees (of Quebec)).

13. The Secretary-General of the United Nations was represented by Mr. Jan Martenson, Under-Secretary-General for Human Rights and Director-General of the United Nations Office at Geneva, Mr. M. Vezel, Chief of the Advisory Services Section, Mr. Tom McCarthy, Chief of the Research, Studies and Prevention of Discrimination Section and Mr. Horst Keilau, Chief of the Prevention of Discrimination Unit. Mr. Yo Kubota was Secretary of the Seminar. The Secretariat was also serviced by Mr. Gudmundur Alfredsson, Human Rights Officer, and Ms. Giuseppina d'Agostino-Chabbey, Ms. Sandra Belcourt and Ms. Aline Massard, staff members of the Centre for Human Rights.

II. PROGRAMME OF THE SEMINAR

A. Opening and closing meetings

14. The Seminar was opened by Mr. Jan Martenson, who made an introductory statement (a copy of the statement is attached as Annex II).

15. At its 8th and 9th meetings, on 20 January 1989, the Seminar considered conclusions and recommendations for adoption.

B. General discussion

16. In reaching conclusions, the Seminar took into consideration a discussion of the following major issues.

17. First, there was a question of terminology. In particular the terms "indigenous", "indigenous populations", "indigenous peoples" and "social rights". There is still no consensus internationally on what constitutes the best definition of these terms. However, there is now greater tendency to favour the term "indigenous peoples" over the term "indigenous populations", especially as it reinforces the right to self-determination.

18. Further the discussion concerned the categorization of indigenous groups. The categories are not exhaustive, and may include, for example, those living in the hinterland, in enclaves, in peasant communities, in urban areas, in non-self-governing territories, in trusteeship territories or ex-trusteeship territories.

19. The temporal factor is a key to understanding the dilemma of indigenous rights. It was noted that indigenous rights arise in relation to their particular territories and are not in conflict with the rights of other peoples or populations to other parts of State territories. In relation to paradoxes involving certain traditional practices, it was noted that modern international human rights standards apply to States and to indigenous peoples.

20. The conflict between the "collective" approach to indigenous rights and the "individualistic" approach was mentioned by many participants. This should not obscure the premise that the collective nature of indigenous rights is complementary to the recognition of individual rights in international standard-setting: collective rights exist in addition to individual rights, and the one reinforces the other.

21. The notion of indigenous rights is enhanced by the call for State obligations and duties towards indigenous peoples. This implies accountability, compensation for past violations of rights, prevention of future violations, and appropriate means of redress. It is also predicated as a counterbalance against the argument of national security, which is invoked too frequently in many societies.

22. The rise of "peoples" as international legal persons was also voiced extensively. Rights and duties are inherent in "peoples" regardless of whether they have achieved statehood or not. These rights are advocated at the international level and they enhance the notion that "peoples" should be regarded as having sovereignty, even though they are not States.

23. Although law is an essential component of the realization of indigenous rights, State policy is closely related with the welfare and development of indigenous peoples. All too often, States are unwilling to adopt a pluralistic policy which would enable indigenous peoples to preserve their identity. Integration or assimilation underlying such policy may lead to ethnocide. Hence, the need for recognition of diversity between the different groups; autonomy to protect the existence of each group, and full and informed consent of each group, if State policies are not to impinge on their livelihood.

24. Racial discrimination against indigenous peoples is the outcome of a long historical process of conquest, penetration and marginalization, accompanied by attitudes of superiority and by a projection of the indigenous as "primitive" and "inferior". The discrimination is of a dual nature: on the one hand, a gradual destruction of the material and spiritual conditions for the maintenance of their modus vivendi, and on the other hand, attitudes and behaviour of exclusion or negative distinction when indigenous peoples seek to participate in the dominant society.

25. Manifestations of racism are less based on traditional notions of superiority of "race" in a biological sense than on notions of predominance of the "superior" culture over the "primitive" culture.

26. The disintegration of the social, economic and cultural pattern of indigenous peoples is often caused by State policies which are detrimental to indigenous rights. This is aggravated by development policies which are top-down in approach, and which neglect the real concerns of indigenous peoples. Without full participation of the latter in planning, implementation, benefit-sharing, and evaluation of development policies and projects, on the basis of the consent of indigenous peoples concerned there can be no genuine development of indigenous rights.

27. The substance of social rights which need to be fostered should incorporate such concerns as social development, social welfare services, social security, adequate standard of living and protection of traditional means of subsistence. These rights must include employment, education, basic needs (such as housing, food and medical care), access to legal resources, religion, language, information, land and other resources. Taken together all of this implies the implementation of the right to self-determination which is crucial to the continued existence of indigenous peoples.

28. These elements call for greater political willingness on the part of States, as well as intergovernmental political and financial institutions, which impact the livelihood of indigenous peoples, to promote the realization of indigenous rights and development. They underpin the need to identify and eradicate racism and discrimination, both de jure and de facto.

29. The realization of these rights is often hampered by certain precepts which perpetuate colonialism. These precepts include, for example, arguments for acquisition of territory based upon discovery, conquest, terra nullius and trusteeship, compounded by the role of religious missions. They need to be impugned and appropriate redress should be provided.

30. There is also the danger of exploitation against indigenous peoples which emanates from the current economic system of certain States. This jeopardizes the traditional economies existing before the advent of more recent forms of economic development. The conflict between indigenous interests and private developers, on the one hand, and between indigenous livelihood and public policy or projects, on the other hand, should not be underestimated.

31. Although the realization of indigenous rights does not imply that indigenous peoples should not adapt to more modern conditions, safeguards are still lacking to protect the lifestyle of indigenous peoples, which result in their marginalization in many regions. This indicates that the element of choice and participation on the part of indigenous peoples, is a pre-condition to the adaptation process. This is interlinked with their ability and the right to choose appropriate technology to ensure their development.

32. The land question is at the heart of indigenous rights. It has a spiritual and social dimension which goes far beyond the material notion of land as a resource for productivity. The problem of ignoring the need for the full and informed consent of the indigenous peoples concerned concerning use of land, persists in many societies; it calls for greater protection of indigenous participation and respect for indigenous peoples' decisions in regard to land and other related resources.

33. The danger of States using certain State services and policies to destroy indigenous cultures should not be underestimated. This includes, for example, restrictive population policies, as well as the use of an official or "national" language as a colonizing force over indigenous cultures. The call for multilingualism is an important component in protecting indigenous cultures.

34. National measures requiring instant attention include an appraisal of treaty arrangements between indigenous peoples and the State. Where such treaties exist, they should be scrutinized to assess their effectiveness, and their promotion of equitable relations between the different peoples. Where they do not yet exist, they should be tendered on as means of ensuring protection of indigenous rights.

35. In relation to existing legislation concerning indigenous rights at the domestic level, evaluation should be undertaken to appraise its effect on indigenous peoples, in terms of fairness and full-participation in choosing one's path in development, including population policies.

36. Constitutional principles, judicial and other traditional mechanisms should be explored to enhance protection of indigenous rights. National ombudsmen and traditional or indigenous peace-keeping institutions may contribute to this process.

37. At the international level, standard-setting, as exemplified by the current Draft Universal Declaration on Indigenous Rights, is of fundamental importance, and should be accelerated. It should be enhanced by more effective monitoring mechanisms - such as by means of an International Ombudsman and/or special rapporteur; and/or by more extensive use of existing mechanisms (such as the Commission on Human Rights), and national ombudsmen and peace-keeping institutions.

38. Reform is also required of those instruments which exist at the international level which reflect earlier notions of uniformity and assimilation. In this context the work of the International Labour Organisation to revise Convention No. 107 was noted.

39. In the development context, better co-ordination is required between various agencies - not necessarily those which identify themselves as human rights oriented - to foster the rights of indigenous peoples. Development strategies at all levels should thus incorporate indigenous rights as a means, and an end.

III. CONCLUSIONS

40. The Seminar concludes that:

(a) Indigenous peoples have been and still are the victims of racism and racial discrimination, and of the imposition of arbitrary and imposed administrations and régimes which inevitably deny their human rights and fundamental freedoms;

(b) The concepts of "terra nullius", "conquest" and "discovery" as modes of territorial acquisition are repugnant, have no legal standing, and are entirely without merit or justification to substantiate any claim to jurisdiction or ownership of indigenous lands and ancestral domains, and the legacies of these concepts should be eradicated from modern legal systems;

(c) Colonial laws and colonial concepts are used to justify the imposition of "trusteeship", and other demeaning, prejudicial and racially founded systems which prevent indigenous peoples from exercising their human rights and fundamental freedoms, and result in their impoverishment, disenfranchisement, debasement, demoralization and disintegration;

(d) The effective protection of the individual human rights and fundamental freedoms of indigenous peoples cannot be realized without the recognition of their collective rights;

(e) The principle of self-determination as set forth in the Charter of the United Nations and in article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights is essential to the enjoyment of all human rights by indigenous peoples. Self-determination includes, inter alia, the right and power of indigenous peoples to negotiate with States on an equal basis the standards and mechanisms that will govern relationships between them;

(f) Racial prejudice, injustice, and economic, social and political deprivation, have destroyed and marginalized indigenous peoples and their economies;

(g) Treaties and agreements between indigenous peoples and States, and treaties between States that affect indigenous peoples, should be subject to international supervision to secure their enforcement;

(h) Racism and racial discrimination against indigenous peoples are practised through the rejection of indigenous economic, cultural, and social values, and the utilization of so called "modern" economic and social justifications for development, land expropriation, labour exploitation, and other practices which destroy indigenous economies and societies;

(i) Indigenous rights issues are not generally well known or understood because the public lacks the necessary information on these rights. This shortcoming may itself lead to racism and racial discrimination;

(j) Indigenous identity and cultural survival has been threatened through the deprecation and suppression of indigenous languages, spiritual and religious practices;

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

(l) In certain States the indigenous peoples constitute the majority of the population; and in certain States indigenous peoples constitute the majority in their own territories;

(m) Indigenous control over their own affairs and destiny is essential for the elimination of the effects of racism and racial discrimination on economic and social relations between States and indigenous peoples;

(n) States' respect for implementation of the collective rights of indigenous peoples would make a significant contribution to avoiding conflict, alleviating the adverse social and economic conditions in which indigenous peoples live and achieving indigenous peoples' self-sufficiency.

IV. RECOMMENDATIONS

41. The Seminar:

(a) Recommends that States implement the principle that their relations with indigenous peoples will be based upon free and informed consent, and co-operation, rather than merely consultation and participation and that this be respected as a right;

(b) Recommends that indigenous peoples be recognized as proper subjects of international law;

(c) Confirms the need to recognize the collective rights of indigenous peoples;

(d) Calls upon the international community, particularly States, to explicitly recognize indigenous rights, and apply comprehensively existing international human rights instruments for the promotion and protection of the rights of indigenous peoples; and recommends that appropriate and practical mechanisms for assuring compliance should be established; calls upon those States which have not yet acceded to the relevant international human rights instruments, including the two International Covenants and the Optional Protocol to the International Covenant on Civil and Political Rights, to do so and to implement them accordingly;

(e) Supports the decision by the Working Group on Indigenous Populations that the drafting of a Universal Declaration on Indigenous Rights should be completed, with full indigenous participation, at the earliest possible time and should be the first step in standard-setting in the field of indigenous rights; the adoption and proclamation by the General Assembly of the Declaration should be followed by the elaboration and adoption of an International Convention on the Rights of Indigenous Peoples; the Draft Universal Declaration is strongly supported in principle as a most positive contribution;

(f) Recognizes that a limited monitoring capacity has been established at the international level, but calls for more efficient and comprehensive means of monitoring, for example, through the appointment of a United Nations Commissioner for Indigenous Peoples to prevent violations of indigenous rights;

(g) Recommends that a commissioner should be appointed by the Secretary-General and be attached to the United Nations Centre for Human Rights, in order to study the treatment, problems and developments concerning the recognition, protection, realization and restoration of indigenous rights; and to prepare, when necessary, reports with comments, observations and suggestions to the Commission on Human Rights and to the Governments concerned.

(h) Confirms the need to devise new communications procedures, to facilitate and maximize the access of indigenous peoples to these procedures, at the United Nations, its affiliated agencies, and other organs; with a view to providing redress for grievances;

(i) Requests that the United Nations undertake, in consultation with indigenous non-governmental organizations, a public information programme on the rights of indigenous peoples, and assure the dissemination of information on indigenous rights as widely as possible;

(j) Requests that United Nations seminars and training courses in the field of human rights should be held within indigenous communities;

(k) Calls for the establishment of programmes of affirmative action on the part of international, regional and national organizations and Governments, for the practical realization of indigenous rights;

(l) Cites the utility of co-ordinated action in the field of indigenous rights by international, regional, and intergovernmental organizations;

(m) Demands full recognition of and respect for the right to human dignity of all indigenous peoples and particularly the individual and collective right of indigenous peoples to life;

(n) Urgently calls upon the international community to take immediate measures to assure that the basic rights of indigenous peoples to food, shelter, health care and other basic needs are realized and treated with the highest priority, and that adequate resources are allocated with the full consent of indigenous peoples;

(o) Recommends that indigenous peoples should be entitled to long-term sustainable incomes by their communities without external interference;

(p) Demands that all States and relevant entities recognize and respect indigenous rights to lands and resources, and provide for just restitution and compensation for past infringements of such rights;

(q) Recognizes the fundamental relationship between respect for indigenous rights, and protection of the world's environment and recommends that this relationship be recognized explicitly in the work of the United Nations Environment Programme, in co-operation with indigenous peoples' organizations;

(r) Condemns the imposition of non-indigenous social, cultural and economic judgements and values upon indigenous peoples, and calls for the prohibition of assistance and support by United Nations agencies and other international, regional and national organizations for projects and development that threaten the human rights and fundamental freedoms of indigenous peoples, or adversely affect indigenous social, cultural, and economic rights;

(s) Urges full recognition of the indigenous right to development, and the requirement for the full participation and consent of indigenous peoples in the selection, planning, implementation, and evaluation of development projects, consistent with the indigenous right to benefit from and control their own lands and resources;

(t) Requests that every possible effort be taken by States, national, regional and international organizations, to prevent foreign or alien adoption of indigenous children, which is prohibited as a genocidal practice;

(u) Recommends the incorporation of indigenous rights in the work of all States and international organizations involved with the development process, with the direct participation of indigenous peoples, and calls for closer co-operation among States and international organizations to utilize their resources more effectively to promote indigenous peoples' rights;

(v) Requests the Secretary-General to organize an international conference with the participation of competent United Nations organs and bodies of the United Nations system, Governments and indigenous peoples in order to develop concrete measures for the implementation of recommendation (u);

(w) Recommends that the advisory services programme of the United Nations in the field of human rights, and other international technical assistance programmes, should be made available to indigenous peoples to promote and protect human rights;

(x) Calls upon States and all international agencies to include indigenous rights and indigenous participation as a key component of development planning, in particular, in national development plans and regional and global development strategies; and to emphasize their interrelationship with human resource development;

(y) Requests that Governments recognize that the realization of indigenous rights in the economic, social, and cultural field will result in breaking the cycle of poverty and misery;

(z) Requests the Secretary-General to give the widest possible distribution to the report of this Seminar, including the distribution of the report to the General Assembly at its forty-fourth session, the Commission on Human Rights at its forty-fifth session, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities at its forty-first session, and the Working Group on Indigenous Populations, Governments and competent international and regional organizations; and that the present report be issued as a United Nations publication.

V. ADOPTION OF THE REPORT

42. At its 9th meeting, on 20 January 1989, the Seminar adopted the report, as amended, without a vote.

Annex I

LIST OF PARTICIPANTS AND OBSERVERS

A. Participants

Mr. James Anaya, Associate Professor, University of Iowa College of Law. Teaching and scholarship in constitutional law, Indigenous peoples' rights, civil rights and international human rights, (National Indian Youth Council)

Mr. Russel L. Barsh, Chief Administrative Officer of FDC, General Agent and Legal Counsel for the Miknaq Grand Council (Four Directions Council)

Ms. Lidiya Basta, Senior Research Fellow, Institute of Comparative Law, Belgrade (Yugoslavia)

Mr. Hayden F. Burgess, WCIP Vice-President, Attorney-at-Law, Interim Director at Pacific and Asia Council of Indigenous Peoples (PACIP), Hawaii (World Council of Indigenous Peoples)

Mr. Paul Coe, Chairman (National Aboriginal and Islander Legal Services Secretariat)

Robert T. Coulter, Executive Director of ILRC, Member of the Bar of the State of New York and the District of Columbia (Indian Law Resource Centre)

Mr. Roberto de Mello Ramos, Executive Secretary to the Council for the Defense of the Rights of the Human Person (CDDPH), Ministry of Justice (Brazil)

Ms. Roxanne Dunbar Ortiz, Director of IWA, Professor, Department of Ethnic Studies, California State University, Hayward Campus (Indigenous World Association)

Mr. Asbjørn Eide, Director, Institute for Human Rights, Oslo (Norway)

Mr. Laafif Garbouj, Counsellor, Ministry of Foreign Affairs, Tunis (Tunisia)

Mr. Joachim Heintze, Professor, Institute for International Studies of the Karl-Marx University, Leipzig (German Democratic Republic)

Mr. Yaw Konadu-Yiadom, Assistant Director, International Organizations and Conferences Bureau, Ministry of Foreign Affairs, Accra (Ghana)

Mr. Ted Moses, Grand Chief (Grand Council of the Crees (of Quebec))

Mr. Asuncion Ontiveros Yulquilla, General Co-ordinator (Indian Council of South America)

Ms. Purificacion V. Quisumbing, Assistant Secretary for Human Rights and Humanitarian Affairs, Department of Foreign Affairs, Manila (Philippines)

Mr. S. Rama Rao, Legal Officer, Legal and Treaties Division, Ministry of External Affairs, New Delhi (India)

Ms. Mary Simon, President of ICC, serves on the Board of Directors of the Canadian Institute for International Peace and Security (Inuit Circumpolar Conference)

Mr. Ndary Toure, Judge of the Supreme Court, Dakar (Senegal)

Ms. Pat Turner, First Assistant Secretary Program Policy Division, Department of Aboriginal Affairs (Australia)

B. Member States represented by observers

Australia

Mr. Rob Winroe, Deputy Secretary, Department of Aboriginal Affairs

Mr. William Barker, Counsellor, Permanent Mission, Geneva

China

Mr. Shanxiu Wu, Second Secretary, Permanent Mission, Geneva

Union of Soviet Socialist Republics

Mr. Vladimir Boulychev, Diplomat, Permanent Mission, Geneva

C. Representatives of United Nations organs

United Nations High Commissioner for Refugees

Mr. Salvatore Lombardo, Associate Legal Officer, Division of Refugee Law and Doctrine

Special Political Questions, Regional Co-operation,
Decolonization and Trusteeship

Ms. Patricia Kabbah, Special Assistant to the Under-Secretary-General, New York

Department of Technical Co-operation for Development

Mr. Mourad Cherait, Chief, Technical Assistance Recruitment and Fellowships Office, Geneva

D. Representatives of specialized agencies

International Labour Organisation

Mr. Lee Swebston, International Labour Standards Department, International Labour Office, Geneva

E. Resource Persons

Mr. Vitit Mintarbhorn, Associate Professor, Faculty of Law, Chulalongkorn University, Bangkok, Thailand

Mr. Douglas Sanders, Professor, Faculty of Law, University of British Columbia, Vancouver, Canada

Mr. Rodolfo Stavenhagen, Research Professor, El Colegio de México

F. Representative of the United Nations Working Group on Indigenous Populations

Ms. Erica-Irene A. Daes, Chairman/Rapporteur

G. Observers for non-governmental organizations in consultative status with the Economic and Social Council

Baha'i International Community

Ms. Machid Patio
Ms. Diane Alai

Four Directions Council

Ms. Emily Mimde
Ms. Theresa Bull

Grand Council of the Crees (of Quebec)

Mr. Bill Namagoose, Executive Director
Mr. Robert Epstein

Indian Council of South America

Ms. Beatriz Ahiaba, Permanent Representative, Geneva
Mr. Tomás Condori, Representative

Indigenous World Association

Ms. Allene Cottier, Co-Director

International League for the Rights and Liberation of Peoples

Ms. Verena Graf
Ms. Odette Billard

International Organization for the Elimination of All Forms of Racial Discrimination (IAFOR)

Mr. Hussein Raiani

Inuit Circumpolar Conference

Ms. Dalee Sambo, Special Assistant Director, Alaska Office

National Aboriginal and Islander Legal Services Secretariat

Mr. Terry O'Shane, Secretariat

World Council of Indigenous Peoples

Ms. Puanani Burgess

Women's International League for Peace and Freedom

Ms. Edith Ballantyne, Secretary-General

Ms. Els Vÿftigschild, Intern

H. Other Indigenous Organizations

Aboriginal Women's Organization

Ms. Kate George

Movimiento Indio Tupak Katari-MITKA-l=MIL-Wiphala

Mr. Constantino Lima Chávez

Haudenosaunee

Mr. Kenneth Atsenhaienton Deer

Mr. Joaquisho Oren R. Lyons

Mr. Katase, Markus McComber

Mr. Gano Ge Da We, Bernie Parker

Mr. Kahnasaraken Loran Thompson

Annex IIOPENING STATEMENT BY MR. JAN MARTENSON
INDIGENOUS RIGHTS SEMINAR16 January 1989

Ladies and Gentlemen,

I should like to welcome you to this meeting, which, once again, bears one of those long United Nations titles: the Seminar on the Effects of Racism and Racial Discrimination on the Social and Economic Relations between Indigenous Peoples and States. The seminar was authorized by the Economic and Social Council on the recommendation of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Allow me to make some general comments and then share with you some ideas on the important questions which are to be discussed here.

Ladies and Gentlemen,

The fortieth anniversary of the adoption of the Universal Declaration of Human Rights was celebrated just a month ago. Today, we can rightly say that one of the most striking areas of progress by the United Nations and the entire international community has been in the field of human rights. At present, most of the noble ideas set forth in the Charter of the United Nations and the Universal Declaration of Human Rights, which some considered utopian and unrealistic at the time, are now recognized as a common ideal for all nations and all peoples to achieve. The Universal Declaration is nothing less than a Magna Carta of human rights and fundamental freedoms.

In fact, we can say that none of the rights proclaimed in the Declaration have been omitted from our current conception of the essential elements of human dignity. The Declaration contained the seeds of the two International Covenants on Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and some 50 other conventions and declarations dealing with almost all aspects of the rights of the human person, from the rights of women and children to the prevention of torture.

The United Nations has also developed various kinds of machinery for protecting human rights throughout the world. Although too many violations still occur, there is an effective international system in operation which, increasingly, enables us to get these rights proclaimed and accepted by States and more and more widely applied. This system consists, in particular, of the following:

1. The quasi-judicial functions of the Human Rights Committee;
2. Special procedures (entailing field missions) decided upon by the Commission on Human Rights;
3. Reports from States;
4. Individual recourse procedures;
5. The good offices of the Secretary-General.

The improvement and extension of the existing machinery and the development of efforts to make respect for human rights into a truly universal reality are now at the forefront of the objectives of United Nations action in this field.

The free enjoyment of all the rights of the individual and all fundamental freedoms is the ultimate aim of the Organization's human rights programme. The international community has committed itself to achieving that aim by ratifying the Charter of the United Nations. More specifically, the Universal Declaration remains, even today, the beacon which lights our way forward. Our aim is to help forge a universal culture of human rights. One encouraging fact in this context was the decision by the United Nations General Assembly to launch a world-wide information campaign on human rights on 10 December 1988, the fortieth anniversary of the Universal Declaration.

It is certainly essential that individuals should be fully aware of their rights, if we are to be able to achieve real progress towards universal respect for fundamental freedoms and rights. Information and education, therefore, have an essential role to play, and the United Nations has decided to give priority to extending and developing its range of activities, addressing itself to a wider human rights community, consisting of Governments, non-governmental organizations, universities and research establishments, the media and the people concerned.

To this end, the Organization has embarked upon a much wider programme of publication and other activities in the information and education fields, both to celebrate the anniversary of the Universal Declaration and for the subsequent period. The recent establishment of an external relations section in the Centre for Human Rights should allow these new tasks to be carried out efficiently.

The second major area of United Nations work in the field of human rights is the provision of advisory services and technical assistance. Governments which wish to respond to the people's aspirations in this field must be able to rely upon the international support which the Organization is in a position to provide. After all, a soundly based national system can prove to be the best guarantee against human rights violations.

The establishment and strengthening of the national infrastructure required for the protection and promotion of human rights is thus an essential task. The establishment of a voluntary fund has been of crucial importance in this respect, since in the past too many requests for assistance could not be met owing to the lack of resources. These two aspects of the human rights programme - wider implementation at the international level and the provision of advisory services - are an integral part of the global system in this field.

The activities of the United Nations thus form a triangle whose three corners are legislative action, implementation and information/education. The legislative process has achieved remarkable results since the adoption of the Universal Declaration of Human Rights, and it is still by no means at an end. However, more and more emphasis needs to be placed on implementation, both at the international level - by means of supervision and control machinery - and at a national level. Ultimately, it is quite possible that information and education activities will determine the success or otherwise of the international human rights programme.

The international society which we hope to build, based on equity, security, justice and economic and social progress, must be firmly based on the conditions laid down in the Universal Declaration. In order to bring this great task to a successful conclusion, all members of the extended human rights community mentioned above need to participate in it and to collaborate more and more closely. The campaign for human rights and fundamental freedoms is a challenge which everyone must face.

Ladies and Gentlemen,

The subject matter of this seminar is a very topical one and it comes at a time when very significant and far-reaching decisions are being made by both the United Nations and the International Labour Organisation with regard to standard-setting in the field of indigenous rights.

I am certain that you are thoroughly familiar with the focal point of current United Nations activities in this field, namely the ongoing work of the Working Group on Indigenous Populations. With its mandate to review national developments and draft new international standards, the Group has succeeded in drawing both substantive and substantial attention to the plight and many problems facing indigenous peoples. The Working Group has also taken the crucial first step, under the very able guidance of the Chairman/Rapporteur of the Group, Professor Erica-Irene Daes, in the preparation of a new human rights instrument with the tabling for comments of the full text of a draft declaration on indigenous rights.

One measure of this success has been the rapid increase in attendance at the sessions of the Working Group of both governmental and indigenous representatives. Last summer there were 380 registered participants, making the Group one of the largest human rights fora within the Organization and quite a unique one at that, because of the concentration of people directly affected by the issue under discussion. Indigenous peoples and their organizations, 10 of which have now acquired consultative status with the Economic and Social Council, have made a very significant and lasting impact on the United Nations. I am very glad to see them represented here because one example of this development is the participation in this seminar of indigenous experts, nominated by their own organizations. It is indeed the first time that non-governmental organizations have nominated experts on an equal footing with Governments to take part in a United Nations seminar.

I am also very happy to see in our midst three experts who have played a key role in the unfolding and development of this success story. Mr. Asbjorn Eide was the first Chairman/Rapporteur of the Working Group during its two initial sessions, followed by Mrs. Erica-Irene A. Daes who has now chaired the Group for four sessions. Mr. Miguel Alfonso Martínez, who is a member of the Working Group, was recently appointed Special Rapporteur of the Sub-Commission to examine the significance of treaties, agreements and other constructive arrangements between States and indigenous populations.

In addition to the activities of the Working Group, indigenous rights were the subject of a report by another Special Rapporteur of the Sub-Commission, Mr. José Martínez Cobo, who completed in 1984 the Study of the Problem of Discrimination against Indigenous Populations and, with his conclusions and recommendations, laid the foundation for much of our subsequent work. There has also been established a United Nations Voluntary

Fund for Indigenous Populations in order to facilitate world-wide indigenous representation at sessions of the Working Group. The Fund has already proven its great usefulness, and we very much hope that it will be able to expand its activities in the future. Indigenous issues have been addressed in the context of the First and Second Decade for Action against Racism and Racial Discrimination, of which I am the co-ordinator, and most recently, last October, in the Global Consultations on this topic. In this context, I should like to draw your attention, inter alia, to recommendation No. 15, which reads as follows:

"Governments should create favourable conditions and promote legal measures in order to further and protect the human rights of persons belonging to national, religious, linguistic and ethnic minorities, of indigenous peoples, of migrant workers and refugees."

Furthermore, indigenous concerns and communications have been debated in a wide range of other settings and under a variety of agenda items, from the Commission on Human Rights and the Sub-Commission to the treaty bodies, such as the Human Rights Committee.

Finally, we should keep in mind that the International Labour Organisation is currently engaged in a partial revision of its Indigenous and Tribal Populations Convention (No. 107). This work, scheduled for completion in the summer, has a direct bearing on our undertakings, including the topics at this Seminar. I am pleased to see here representatives of the International Labour Office and also Professor Rodolfo Stavenhagen who, in 1986, was the Chairman of the ILO Expert Meeting on the revision of the said Convention.

Ladies and Gentlemen, the evidence accumulated through these international activities makes it abundantly clear that the problem of discrimination against indigenous peoples not only has existed but continues to exist. In their deliberations, the Special Rapporteur and the Working Group of the Sub-Commission have repeatedly drawn attention to the fact that indigenous peoples, from being the original inhabitants of their lands and firmly in control of their destiny, have been reduced to fringe elements of many societies. These problems extend equally clearly from the political sector to the economic and social relations with States, which are the subject-matter of this Seminar. You will find much of the evidence spelled out in documents before you, in the background papers, in the report of the Working Group, and in the study by the Special Rapporteur, Mr. Martínez Cobó, in particular in his conclusions where he systematically covers such areas as social institutions, employment, coercive labour systems, land, housing and health.

In light of these observations, one can only acknowledge the daunting task awaiting you at this Seminar and encourage you to tackle the many questions in a determined and resolute manner. One task is to further identify and analyse the problems as well as the causes underlying them, another is to examine and evaluate possible ways and means of overcoming any and all discriminatory practices. You are all experts in this very field and it is with high expectations that we, in the secretariat, await the outcome of your deliberations. I am equally certain that the Working Group and its parent bodies stand to benefit from any conclusions, however tentative, that you may reach.

As I mentioned earlier, I am devoting additional human and financial resources to the information and advisory services functions in the Centre for Human Rights. I am happy to report that one of our upcoming publications, currently under preparation, will be a factsheet on indigenous peoples and their international rights.

We also welcome resolution 1988/21 of the Sub-Commission which, if approved by the Commission, will further facilitate the inclusion in the programme of advisory services of courses and seminars intended for the benefit of indigenous peoples and communities and other particularly vulnerable groups. We hope that these services, together with our increased efforts at disseminating the relevant information, will be, as I said, one more element in combating existing discriminatory practices.

Having made these remarks relating to the substantive side of your Seminar, please allow me to make a few comments on the technical side.

The agenda of the Seminar, based on the authorizing resolutions, was spelled out in the letters of invitation. It reads as follows:

- I. The realization of indigenous social rights;
- II. Indigenous participation in national economic life and the role of traditional indigenous economies; and
- III. Effective protection and comprehensive development of the social and economic sectors in indigenous communities through international standard-setting activities."

For each of these three items, we have invited eminent professors to write background papers, and I warmly welcome them here today and thank them for their very valuable contributions. These experts, who are here as resource persons, are Mr. Muntarbhorn of Thailand, Mr. Stavenhagen of Mexico and Mr. Sanders of Canada. They will not only introduce their papers to you but also lead the relevant parts of the discussions.

The object of this Seminar is to permit a substantive, profound and constructive review - at the expert level - of the current situation, extensive exchange of views, and assessment of future action. Our aim is not to spend our time discussing lengthy communiqués or final documents. The Chief of the Section of Research, Studies and Prevention of Discrimination, Mr. McCarthy, will act as representative of the Secretary-General during the Seminar, aided by his able staff, notably by Mr. Keilau and Mr. Alfredsson. Mr. Yo Kubota will act as Secretary of the meeting. Together they will prepare a report which will incorporate the points, suggestions and recommendations made in the course of the week. In this fashion, all the various views will be reflected and the participants should have at their disposal, at the end of the meeting, a useful action-oriented document which will be forwarded to the competent bodies of the United Nations.

Having said this, ladies and gentlemen, I believe we can now begin with the general debate foreseen in the programme.

Annex III

BACKGROUND PAPERS

A. REALIZATION OF INDIGENOUS SOCIAL RIGHTS */

Background Paper prepared by Professor Vitit Muntarbhorn

Looking through the literature on indigenous rights, one is continually faced with political issues that seem to overshadow the realization of these rights. 1/ The sensitive nature of the subject, coupled with undertones of guilt based on past colonialism or neo-colonialism, tends to obscure the underlying social issues which have a broader dimension.

One is struck by the lack of clarity concerning the key components of indigenous rights, compounded by semantic difficulties which often turn into political polemics. What is meant by "indigenous"? Do we talk of indigenous "peoples" or "populations"? What does the term "social" entail and what are the constituent rights? These preliminary questions are rendered more elusive by the nature of the nation State itself. How accountable is that entity for former ills which may have affected the livelihood, if not the existence, of indigenous groups? Who was here first, anyway? If we were here first, how to prove that you are accountable for past practices, if at all? Causation inevitably becomes enmeshed with accountability, and the willingness to accept the past and atone for it. Even if we could prove that "this actually happened", political dictates or expediency may militate against full-fledged exposure. Turning a blind eye to history may thus become the rule rather than the exception. Unless, of course, pressure may be brought to bear on the nation State by the international community itself, so as to pre-empt the prediction of "après moi, le déluge".

These comments may sound ominous. Yet, one is confronted with the irrefutable fact that many States have been built on the destruction of indigenous groups. An additional difficulty is whether one believes in the State system as it is now. This is interlinked with the dilemma concerning self-determination as a right of indigenous groups and whether this implies the break-up of existing States. If not that extremity, then what forms of participation and autonomy or decentralization to ensure that indigenous groups have a genuine "say" in shaping their own destiny? One should thus not underestimate the struggle for power and the competition for resources, natural and human, material and non-material.

Intrinsically, one has the impression that indigenous groups are in the position of underdogs who need to be helped. In many cases, this is true. Their plight sometimes overlaps with that of other groups, in particular minorities; in many countries, indigenous groups are also minorities in relation to the majority population. However, our vision should be more

*/ Special thanks to Dr. M. Anabtawi and Prof. J. Crawford for providing some of the documents used in this study. The views expressed are the author's own.

Note: The opinions expressed in this paper are those of the author.

comprehensive. On scrutiny, there are certain situations where indigenous groups are in the position of Government, even though numerically they are in the minority. 2/ They may then become, perhaps, the abuser rather than the abused.

How to regulate the conduct against indigenous groups, on the one hand, and conduct of indigenous groups, on the other hand? One's natural reaction is to look to legal precepts at the national and international levels to remedy the situation: the Law as a panacea. In reality, one may note that the Law is only one of the many elements at stake; one should not expect too much from it, particularly in the social field. The perspective of social rights calls for a much broader understanding of the ambience shaping the realization of these rights. Political discretion, national development planning, social policy, resource allocation and distribution of money and power are all part of the social web in which indigenous rights are entangled. If one needs to look to the Law as part of the quest for social rights, one should also cast a glance beyond it.

On another front, it is of interest to observe that the empirical basis for advocacy of indigenous rights is often faced with a fundamental flaw. Much of the work undertaken on these rights was, until recently, written by non-indigenous researchers. 3/ The findings and proposals may, therefore, be lopsided, if not incomplete. Genuine realization of indigenous social rights correlates with the necessity of having more indigenous groups voicing their claims and providing the evidence (as analysed) themselves. The loopholes that await include the following:

Definition

The first key problem facing indigenous social rights is that of definition.

What is meant by "indigenous"? As one commentator has noted:

"The term 'indigenous' has emerged in practice over the years and (like the term 'peoples') has no accepted definition. Its existence, in fact, is an accident of history." 4/

Attempts to define it include the following proposition: it refers to a group of people who fulfil these criteria:

"they are descendants of a people which lived in the region prior to the arrival of settlers coming in from the outside, settlers who have since become the dominant population;

"they have maintained a culture which is different in significant respects from that of the dominant population;

"they are, as a group, in an inferior position in the country concerned, in political and economic aspects." 5/

While this definition holds true to some extent, it fails to pay attention to those systems where the indigenous group is tantamount to the dominant population when it is ensconced as the Government, and is in the superior position vis-à-vis the rest of the population.

There are other dangers in defining "indigenous". In one country, one is not considered to be indigenous if one is an "integrated Indian", thereby forfeiting those rights ordinarily accruing to indigenous Indians. 6/ Demarcating by means of definition may, therefore, lead to the anomalous situation whereby a group or person who was originally indigenous loses certain rights originally attached to such status.

The debate becomes more heated with the term "indigenous populations" and "indigenous peoples". Both terms appear frequently, although there may be different connotations. The former is prominently displayed in the name of the United Nations "Working Group on Indigenous Populations". 7/ The latter is linked with the appearance of the word "peoples" in various international instruments, such as the International Bill of Human Rights, 8/ the African Charter on Human and People's Rights, 9/ and the non-governmental Algiers Declaration of the Rights of Peoples. 10/ The difference between the two terms seems to be the issue of self-determination: while the term "peoples" is clearly linked with the right of self-determination, the term "populations" is more detached from it. 11/ The former is illustrated by two similar articles in the 1966 International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights which state that:

"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." 12/

Currently, there is a shift to favour use of the term "peoples" even in the United Nations Working Group on Indigenous Populations. 13/

The difficulty is further complicated by the rationale for these rights. Are they rights emanating from individual members of the group (qua individuals) or from the totality of the group (qua group)? 14/ The former is more attuned to the traditional eurocentric notion of human rights as accruing to individuals. The latter has been espoused more recently by third world nations in the search for their own expression of human rights. The fear, on the part of some, is that the group rights may jeopardize individual rights in that they may be interpreted to override these individual rights.

There is also at times confusion between indigenous rights and minority rights, as seen in this comment:

"A first category consists of various indigenous groups which the European colonizers of the seventeenth and eighteenth centuries pushed back into the inhospitable regions of the American continent, Siberia and Australasia. Here one immediately comes up against a complication, that these indigenous populations dispute their inclusion in the minority concept." 15/

While there may be an overlap between indigenous rights and minority rights, the two should be contra-distinguished. 16/ Some issues particularly affecting indigenous groups, e.g. land claims and citizenship, do not relate so directly to minorities. The evolution of law on these matters differs from one category to another, although complementarity is important.

Time

Another factor conditioning indigenous social rights is the temporal dimension. 17/ The problem is acute in the colonial context whereby the original indigenous group is displaced by new settlers, the latter then becoming the dominant group. This may be accentuated by the arrival of new immigrant groups as migrant labourers who may stay temporarily or permanently. Do the various phases of history give rise to different forms of accountability based upon indigenous rights? At what point in time are these rights to be assessed, especially in relation to violations? The repercussions are enormous, especially if they are posited retroactively.

The debate may be fuelled by the question: who was here first? In some countries, the answer is well known, e.g. the fact that the aborigines existed thousands of years in Australia before the advent of settlers from Europe. 18/ In other countries, however, the answer may be uncertain. The question is not likely to be taken up too publicly by the Government if there are problems concerning ethnic conflicts and claims. 19/

There may also be incompatibility between modern perceptions of human rights and traditional, indigenous practices. While sati (bride-burning), stone-throwing of adulterous couples, and limitations on women's rights may be acceptable as part of indigenous practices, they are unacceptable at the international level, especially if viewed from the norms evolved in recent years in forums such as the United Nations. Who should then decide what is acceptable and what is unacceptable? The modernist would opt more readily for international mechanisms, while the traditionalist would be protective of indigenous modes. Needless to say, the twain should meet, and compromises may be fostered in settings such as the Working Group on Indigenous Populations through constructive dialogue.

Interrelationship

The plight of indigenous groups is intertwined with a host of factors which condition social relations. The most poignant is the interrelationship between indigenous rights and State policy. How pluralistic is the State policy de jure and de facto? 20/ In many societies, indigenous groups have been relegated to the "brink of survival" 21/ because they are regarded as peripheral to the concerns of the State. Integration or assimilation of indigenous groups under the State apparatus and policy becomes the stricture, thereby endangering both the physical and spiritual autonomy of indigenous groups. Ethnocide is only a few steps away.

In the face of such paternalism, the tentacles of the State contribute to the disintegration of indigenous groups. The decline of social relations among indigenous members of the group, whether at the individual, family or community level, manifests itself in higher proportions of family break-ups, alcoholism, crimes, and juvenile delinquency when compared to non-indigenous groups who are embodied in the State. 22/

The sense of disintegration is compounded by destruction of the ecology and habitat upon which indigenous groups depend for their physical and cultural survival. Deforestation, particularly of rain forests, and pollution

introduced by outsiders jeopardize the modus vivendi of indigenous groups. 23/ The social nexus binding the members of the group to the environment surrounding them is thus annihilated.

Paradoxically, the capacity of indigenous groups to be self-reliant is destroyed, thereby rendering them more reliant upon the State. Intentionally or unintentionally, the cycle of assimilation is completed, and the leeway for action by indigenous groups is subsumed under State benevolence.

Social rights

It is in the above setting that indigenous social rights find themselves in modern-day society. While in the past, indigenous groups may have felt no urgent need to advocate social rights - precisely because their basic social needs were satisfied in the spirit of self-reliance, at present the call for social rights is of immediate concern - precisely because their social set-up has been destroyed and their capacity to be self-reliant has diminished drastically.

A caveat should be lodged at this juncture. Should we talk of rights or duties? If we are to talk of rights, what are those "social" rights? Interestingly, the first question is being raised increasingly at the international level in the sense that it may be more effective to talk in terms of State duties towards indigenous groups, including the latter's social welfare and development, than to talk in terms of mere social rights on the part of indigenous groups. The term "duty" implies more responsibility and accountability. According to the views expressed recently by a member of the Working Group on Indigenous Populations, 24/ such duties have three dimensions:

The duty of States to respect the characteristics, traditions and languages of indigenous peoples;

The duty of States to protect or to guarantee, for instance, the life and physical existence of indigenous peoples as groups;

The duty of States to fulfil or provide, through appropriate legal frameworks of participation, social services, education and development of indigenous peoples.

In the current draft Universal Declaration on Indigenous Rights 25/ which will be discussed in greater detail later, the term "duty" appears several times, although the term "rights" appears more frequently. This suggests that both terms are complementary and may reinforce each other.

As for the term "social" rights, again there is a problem of definition. There is no clear delineation between social, economic and cultural rights, as is shown by the lack of such delineation in the International Covenant on Economic, Social and Cultural Rights. Likewise, in the Cobo report on "The Study of the Problem of Discrimination against Indigenous Populations", 26/ no definition is offered. To the layman, however, certain elements are closely linked with the term "social" and common sense dictates the following concerns: social development, social welfare services, social security, adequate standard of living, employment, education, housing/health/food, legal services, religion, language, information, land, and participation. The list is not exhaustive.

Social development

Perhaps the first right to be advocated in this field is that of social development, in view of the past distorted process of development which tended to emphasize growth at the national level - exemplified by the Gross Domestic Product - rather than development of individuals and groups at the microscopic level. 27/

The call for the right to development has been heralded by the 1986 United Nations Declaration on the Right to Development 28/ which defines it as a right pertaining to individuals and groups as follows:

"An inalienable human right by virtue of which every human person and all peoples are entitled to participate in ... and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized." 29/

Concretely this right entails more realistic and responsive development planning and action at both the national and international levels, and is interlinked with basic human needs as well as popular participation. It is epitomized by the following stipulation:

"States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income..."

"States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights." 30/

This right should not be advocated in a vacuum; it is conditioned by realistic national development policies and plans, and implementation thereof. It should be noted that many developing countries have five-year national development plans which provide for the path to development. 31/ Generally, they do not make express provisions for indigenous rights, partly through neglect and partly through fear of according too high priority to indigenous rights. There is thus more room to incorporate indigenous interests into these plans, allocate appropriate budgets, and ensure implementation and evaluation in co-operation with the indigenous groups.

Social welfare services

The right to social welfare services is especially important in view of the disintegration of indigenous life-styles as already noted. Family welfare, childcare, medical facilities and other needs should be satisfied by effective State allocation of resources without paternalistic superimposition. This is mirrored by one of the provisions in the current draft Universal Declaration on Indigenous Rights, i.e.

"19. The right to special State measures for the immediate, effective and continuing improvement of their social and economic conditions, with their consent, that reflect their own priorities."

Autonomy is also emphasized by another article in the draft Declaration, i.e.

"23. The collective right to autonomy in matters relating to their own internal and local affairs, including ... social welfare ..."

Social security

Interlinked with the right to social welfare services is the right to social security. Particularly pertinent to this is the work of the International Labour Organisation and its numerous conventions. For example, the right to social security is mentioned in the now much criticized Convention No. 107 on Indigenous and Tribal Populations. 32/ It is also implied by draft articles 19 and 23 above, even though it is not singled out as a specific right.

Adequate standard of living/Traditional means of subsistence

The right to an adequate standard of living is stated explicitly in the International Bill of Human Rights. 33/ It is again implied by draft articles 19 and 23 just mentioned, even though the words "adequate standard of living" are not used.

Complementary to this, there is the issue of traditional means of subsistence which is pertinent to the modus vivendi of indigenous groups. In this respect, the draft Declaration provides the following elaboration:

"18. The right to maintain within their areas of settlement their traditional economic structures and ways of life, to be secure in the enjoyment of their own traditional means of subsistence, and to engage freely in their traditional and other economic activities, including hunting, fresh- and salt-water fishing, herding, gathering, lumbering and cultivation, without adverse discrimination. In no case may an indigenous people be deprived of its means of subsistence. The right to just and fair compensation if they have been so deprived."

Employment

The right to employment is stipulated in the International Bill of Human Rights and various instruments of the International Labour Organisation. 34/ Although it does not expressly appear in the draft Declaration, it is implied by its articles, including draft article 18 above. A key issue is retention of traditional occupations which are seen by some as primitive but which indigenous groups hold dear.

Stipulation of this right alone will not have much impact on the current state of unemployment affecting many indigenous groups. There is thus a need for an effective employment policy on the part of the State with more vocational training and job-creation schemes, again avoiding a paternalistic attitude and enabling indigenous groups to have free choice in these matters.

Education

The right to education is stated in the International Bill of Human Rights and many other instruments. It is explicitly stated and expanded in the draft Declaration in the following articles:

"10. The right to all forms of education, including in particular the right of children to have access to education in their own languages, and to establish, structure, conduct and control their own educational systems and institutions."

"23. The collective right to autonomy in matters relating to their own internal and local affairs, including education ..."

Many of the weaknesses concerning this right were reported in the Cobo study. ^{35/} Problems include the fact that it is not enforced or observed in relation to indigenous groups. There are not enough schools or teachers in indigenous communities. There is a high rate of illiteracy, in addition to lack of educational facilities and materials in indigenous languages. The oral traditions of indigenous groups are often neglected in the formal educational system which veers towards written forms of education. The number of those who are out of school is also worrying and this suggests that the formal system of education is insufficient. Hence the need to expand non-formal education to respond to the needs of indigenous groups.

Housing/Health/Food

The right to these basic needs is stated in the International Bill of Human Rights and has been expanded by more recent initiatives on the part of the third world. The right to shelter as a human right has been enhanced by the Global Strategy to the Year 2000 in relation to shelter, while the right to food has been elaborated by recent developments to overcome famine and malnutrition with the help of the Food and Agriculture Organization. "Health for All and All for Health" with its target of the Year 2000 is currently the catch-phrase for the realization of the right to health as espoused by the World Health Organization.

The draft Declaration accords high priority to these needs, but eschews paternalism on the part of the State by specifying the following indigenous rights:

"20. The right to determine, plan and implement all health, housing and other social and economic programmes affecting them, as far as possible through their own institutions."

"23. The collective right to autonomy in matters relating to their own internal and local affairs, including ... health, housing ..."

In reality, however, the right to these needs is faced with a host of obstacles. In many societies where the indigenous communities do not enjoy a dominant position, they are confronted with critical problems concerning housing, health and food, especially as they tend to live in rural areas where access to services providing for these needs is poor.

Legal services

The right to legal services is implied in the International Bill of Human Rights, particularly in the provisions touching upon equality before the law and remedies before competent tribunals. However, the traditional view of legal services depending upon the formal system of courts and lawyers may be said to be incomplete, especially as the majority of the world's population, including indigenous groups, do not have genuine access to the formal system: they are too distant physically and mentally from such system. One has thus to bear in mind traditional systems of dispute resolution which do not necessarily have to bank upon the presence of qualified judges and lawyers, e.g. village chiefs and monks who may act as mediators at the local level. 36/

The draft Declaration is aware of this parallel system and provides for a broad range of mechanisms as follows:

"28. The individual and collective right to access to and prompt decision by mutually acceptable and fair procedures for resolving conflicts or disputes between States and indigenous peoples, groups or individuals. These procedures should include, as appropriate, negotiations, mediation, national courts and international human rights review and complaints mechanisms."

Religion

Religion as a social right is inevitably intertwined with religion as a cultural right. It is a right frequently expressed in many international instruments, notably the International Bill of Human Rights. In the context of indigenous practices and beliefs, however, the meaning of religion may have to be broader than that based upon the world's great religions. As the Cobo study has noted, traditional religions tend to be more spatial in approach (rather than temporal or historical). 37/ They are closely allied to the physical presence of the land and environmental surroundings.

For this reason, the draft Declaration elaborates upon the right to practise one's religion in a broad manner as follows:

"8. The right to manifest, teach, practise and observe their own religious traditions and ceremonies, and to maintain, protect and have access to sacred sites and burial grounds for these purposes."

Autonomy is voiced again by this article:

"23. The collective right to autonomy in matters relating to their own internal and local affairs, including ... religion ..."

Language

The right to use one's language is connected with a sense of self-identity on the part of indigenous groups. The threat from national educational systems in many societies is that they opt for one national language rather than multilingualism, including teaching of indigenous languages. The language issue is thus instrumental in fostering State policies of assimilation on the one hand, and in destroying ethnic cultures on the other hand.

Multilingualism is a key to facilitating preservation of indigenous cultures and their social cohesion. Priority is accorded to this dimension in the draft Declaration in its recognition of this right:

"9. The right to maintain and use their own languages, including for administrative, judicial and other relevant purposes."

The predicament is whether the nation State will permit it.

Information

The right to information was not explicitly specified in the International Bill of Human Rights, but it has gained momentum in recent years. With regard to indigenous interests, it is particularly important in the sense of channelling information to and from indigenous groups. The main obstacle in this area is State control over the mass media itself and its unwillingness to cater for indigenous groups, such as by allowing indigenous television programmes.

The right to information appears in the draft Declaration in the following manner:

"11. The right to promote intercultural information and education, recognizing the dignity and diversity of their cultures, and the duty of States to take necessary measures, among other sections of the national community, with the object of eliminating prejudices and of fostering understanding and good relations."

Autonomy on the part of indigenous groups is also claimed:

"23. The collective right to autonomy in matters relating to their own internal and local affairs, including ... information ..."

Land

One of the greatest problems concerning indigenous rights is that of land, both in relation to what indigenous groups have lost and wish to claim back (or compensation) and in relation to what they retain and wish to preserve from exploitation by others. It is all the more complicated because indigenous groups are frequently spiritually attached to the land; their *raison d'être* is the land itself. As the Cobo study has observed:

"For such peoples, the land is not merely a possession and a means of production. The entire relationship between the spiritual life of indigenous peoples and Mother Earth, and their land has many deep-seated implications. Their land is not a commodity which can be acquired, but a material element to be enjoyed freely." 38/

To some extent, the right to land on the part of indigenous groups was recognized some time ago by Convention No. 107 of the International Labour Organisation (*supra*), but that Convention has been criticized as being paternalistic and assimilative in approach. The current draft Declaration has more detailed provisions acknowledging the close social relationship between

indigenous rights and the land. The right of indigenous groups in this respect is complemented by a corresponding duty on the part of States as follows:

"12. The right of ownership and possession of the lands which they have traditionally occupied. The lands may only be taken away from them with their free and informed consent as witnessed by a treaty or agreement."

"17. The duty of States to seek and obtain their consent, through appropriate mechanisms, before undertaking or permitting any programmes for the exploration or exploitation of mineral and other subsoil resources pertaining to their traditional territories."

The struggle over land rights should not be underestimated. It calls into play age-old notions concerning acquisition of territory, e.g. the terra nullius concept, 39/ which although accepted in the past, is now increasingly impugned by indigenous groups.

Participation

Earlier on, the right to participate in the development process was referred to under the rubric of the right to development. The current draft Declaration reinforces this right in relation to indigenous concerns, particularly in these provisions:

"21. The right to participate fully in the political, economic and social life of their State and to have their specific character duly reflected in the legal system and political institutions, including proper regard to and recognition of indigenous laws and customs."

"22. The right to participate fully at the State level, through representatives chosen by themselves, in decision-making about and implementation of all national and international matters which may affect their life and destiny."

Although few States would deny the right to participate accorded to indigenous groups, its implementation is shaped by a tug-of-war in regard to power-sharing and resource distribution. Many Governments enjoy a system of centralization and they do not wish to relinquish it to indigenous or other groups which are under their administration. They also fear (or seem to fear) the process of self-determination leading to secession.

The tone of the current draft Declaration which favours indigenous rights to participation based upon "autonomy" rejects the past tendency to be assimilative and paternalistic. But it will not be easy to convince those States where the power and resources are monopolized, particularly in authoritarian or totalitarian systems, to yield a little more.

Realization

The rights pin-pointed above exemplify some of the social rights now espoused directly or indirectly in relation to indigenous groups. In a sense it may be said that they are optimistic in approach - genuine realization of these rights is far more difficult and may be a cause for pessimism. The concerns relate to both the national and international levels.

National

At the national level, genuine implementation of these rights depends, first and foremost, on political will. Such will is more often than not intractable. Nevertheless, international pressure may cause it to bend a little more.

In terms of law, it is interesting to note that many legal systems do not provide expressly for indigenous rights. National Constitutions are accustomed to providing for "everyone" or "every citizen" on an individual basis rather than for groups, including indigenous groups, on a collective basis. 40/ In order to reinforce indigenous rights qua groups, it may be necessary to propel more law reform to recognize these rights either in the Constitution itself or via other laws.

Mere stipulation in law is insufficient. Social rights depend to a large extent on an active role adopted by the State, at least in channelling the financial resources to the beneficiaries. This is intertwined with national development plans and correlative budgetary allocation to help indigenous groups. Conversely, it entails statal policy in allowing the indigenous groups to preserve and retain what they have in terms of resources and power. By not meddling, the State contributes to preserving whatever "self-reliance" is left to the indigenous groups, and as a corollary, the social web based upon it.

On another front, there is the question of redress where social rights are broken. In some cases, there may be resort to courts, but as already noted, access to the formal system of administration of justice is poor, particularly in developing countries. Alternative mechanisms may thus have to be explored and promoted, bearing in mind the fact that it is often executive discretion and practices which impinge upon indigenous rights. This calls into play the existence of national and local mechanisms to provide redress beyond the courts system itself. Administrative tribunals are part and parcel of these mechanisms, aiming at quick and cost-effective resolution of disputes between the executive and the populace. Ombudsmen or special committees accountable to Parliament may also be means of redress for indigenous groups seeking to question executive actions. At the local level, the role of village leaders and committees is also a key to disputes resolution which may be instrumental in checking alleged violations of indigenous rights.

A related legal issue is whether there should be a treaty between indigenous groups and the Government representing a broader category of people to guarantee indigenous rights. 41/ In some countries, such treaties exist, e.g. New Zealand, 42/ and organs exist to supervise adherence to the treaties. 43/ In other countries, no such treaties exist, e.g. Australia, 44/ or if they exist, their status and binding force are uncertain, e.g. United States. 45/ Alternatively, treaties may exist with some indigenous groups but not with other indigenous groups, e.g. Canada where although there are treaties with some groups, there is no treaty with the Cree. 46/ Although the legal impact of these treaties may differ depending upon whether one regards them as national pacts or international agreements, they may provide a greater sense of certainty for indigenous groups. Where they do not yet exist, the possibility of effecting such treaties should thus be canvassed, with appropriate supervisory mechanisms. If treaties are deemed undesirable

or impracticable for the present, the alternative may be to enact statutes guaranteeing indigenous rights unilaterally on the part of the dominant group. Needless to say, whichever form the documents take (as bilateral agreements or unilateral instruments), social rights should be expressly stipulated even more concretely than those already found in the existing documents, bearing in mind the list of rights enumerated above.

One should also not underestimate the contribution of non-governmental organizations in preventing as well as remedying violations of indigenous rights. Often governmental channels are insufficient or ineffective, and indigenous groups are left to depend upon non-governmental initiatives. The presence of many of these organizations at the Working Group on Indigenous Population's sessions in Geneva attests to the importance of these organizations. International exposure of their work and views helps to strengthen their role at the national level. 47/

Finally, thought may be given to the idea of a Committee on Indigenous Rights with representation from indigenous groups, governmental entities, representatives of the other sectors of the populace, and non-governmental organizations. This may prove to be a national forum where compromises may be worked out between the diversity of interests, governmental and non-governmental, indigenous and non-indigenous. This forum should aim at multi-culturalism and accommodation of interests where uniformity is not desired.

International

One of the basic issues underlying indigenous rights at the international level is whether to opt for binding instruments such as treaties (hard law) or other instruments which are non-binding or semi-binding such as declarations (soft law).

Binding instruments already exist appertaining to indigenous rights either directly or indirectly. Examples include the International Covenant on Economic, Social and Cultural Rights and Convention No. 107 of the International Labour Organisation. The weakness of these instruments is the paucity of accessions to them, particularly in relation to Asian countries, and insufficient enforcement where countries have acceded. Convention No. 107 is also criticized for being paternalistic and assimilative in approach, and there are current attempts to reform it so as to introduce a more accommodating approach and to replace the term "populations" with the term "peoples". 48/ There may also be an undercurrent of self-determination as an accepted indigenous right, 49/ although its parameters may be open to debate (i.e. whether it is extensive enough to mean secession).

Recent developments have pointed to the viability of a less binding instrument, i.e. the draft Universal Declaration of Indigenous Rights, cited above. 50/ If accepted by the United Nations, it will have persuasive force; its flexibility should induce States to vote for it, as the level of commitment is lower than that required by binding instruments. The range of social rights invoked by this draft Declaration directly or indirectly has already been discussed at length, and they include the right to social development, social welfare services, social security, adequate standard of living, employment, education, housing/health/food, legal services, religion,

language, information, land and participation. The list may be seen as tentative rather than exhaustive. These rights are reinforced by the umbrella of duties imposed upon the State, in particular the following:

"7. The duty of States to grant - within the resources available - the necessary assistance for the maintenance of their identity and their development."

"27. The duty of States to honour treaties and other agreements concluded with indigenous peoples."

One serious lacuna which protrudes is the question of monitoring and supervision in relation to the realization of indigenous social rights. Most of the international mechanisms that exist at the international level deal with civil and political rights rather than economic, social and cultural rights. For example, the Human Rights Committee attached to the International Covenant on Civil and Political Rights deals exclusively with civil and political rights, 51/ while the Commission on Human Rights' procedure 1503 for complaints against human rights violations has been used principally for civil and political cases. 52/ Other mechanisms dealing expressly with social issues, e.g. the recently established International Committee on Economic, Social and Cultural Rights, 53/ suffer from lack of binding force and are also subject to accession by States to the relevant treaties, such as the International Covenant on Economic, Social and Cultural Rights.

For this reason, there has been a recommendation to establish an International Ombudsman for Indigenous Rights to whom indigenous claims may be sent. 54/ Even if he has merely recommendatory powers, the international pressure that may ensue from his findings may act as a disincentive against State encroachments upon indigenous rights. The recommendation is worth advancing further.

Should this recommendation fail to attract support at the international level, one may capitalize upon existing international mechanisms so as to make them respond more concretely to indigenous rights. A key organ is the Commission on Human Rights itself. Arguably its procedure 1503 is broad enough to promote indigenous rights if one takes an evolutionary and purposive approach to human rights. Its omission to deal with social rights in the past should not hamper future attempts to utilize its mandate in this regard.

On another front, one should not forget the role of international and national non-governmental organizations in providing checks-and-balances against abuses of State power. Their access to mechanisms such as the procedure 1503 should be facilitated as a counterbalance against State discretion and as a means of redress, even in a diluted form.

The expense of social rights also calls for greater co-operation between the various agencies dealing with basic human needs, ranging from UNESCO to the World Health Organization, the Food and Agriculture Organization and the United Nations General Assembly itself. Entities which do not see themselves as initially involved in human rights - because they are service-oriented - may well be key catalysts in promoting social rights. Conversely, entities which see themselves as innately involved with human rights - because they are

advocacy-oriented - may prove to be ineffective in tackling social rights which need a broad range of services and experience (long-term in demand and approach), unless they are able to team up with those entities having the necessary know-how. Hence the call for more co-operation.

Parallel to the suggestion already made in relation to the national level, it may likewise be wise to establish a committee or association on indigenous rights enjoying both governmental and non-governmental participation.

Ultimately these initiatives may help to promote a genuine realization of indigenous rights, not so much as a matter of conflict but more as a matter of confluence. One's guarded optimism in this respect is shaped by the seminal realization that "diversity is not, in itself, contrary to unity, any more than uniformity itself necessarily produces the desired unity." 55/

Notes

1/ For a recent cross-cultural study, see 2 Law and Anthropology (Internationales Jahrbuch für Rechtanthropologie) (1987).

2/ Notably in Fiji.

3/ Op.cit., note 1; 1-2.

4/ R.L. Barsh, "Indigenous Peoples: An Emerging Object of International Law", 80 AJIL 369 (1986); 373.

5/ A. Eide, "Internal Conflicts under International Law", in K. Rupesinghe (ed.), Ethnic Conflict and Human Rights (United Nations University/Norwegian University Press, 1988) 25; 28.

6/ M. Carneiro da Cunha, "Aboriginal Rights in Brazil", op.cit., note 1, 55.

7/ See further D. Weissbrodt, "Report on the fifth session of the Working Group on Indigenous Populations", 12 HRJ 65 (Fall 1987).

8/ The International Bill of Human Rights comprises the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the International Covenant on Civil and Political Rights. For text, see Human Rights: A Compilation of International Instruments (New York, United Nations, 1983).

9/ 21 ILM 59 (1982).

10/ 13 ILM 50 (1974).

11/ R.L. Barsh, "Revision of ILO Convention No. 107", 81 AJIL 756 (1987); 760.

12/ Article 1 of both Covenants.

13/ Op.cit., note 7, 66.

14/ I. Brownlie, "The Rights of Peoples in Modern International Law", 9 Bulletin of the Australian Society of Legal Philosophy 104 (1985).

15/ Deschênes Report as cited by M. Davies, "International Developments of Indigenous Rights", op.cit., note 1, 29; 33.

16/ J. Crawford, "The Aborigine in Comparative Law", ibid., 5; 9.

17/ J. Crawford, ibid., 7.

18/ P. Hanks, "Aborigines and Government: The Developing Framework", in P. Hanks and B. Keon-Coen (eds.), Aborigines and the Law (Sydney, Allen & Unwin, 1984) 19; 19.

19/ V. Muntarbhorn, "The Aborigine in Thai Law", op.cit., note 1, 266; 266.

20/ See further A. Smith The Ethnic Revival (Cambridge, Cambridge University Press, 1981) and J. Rothschild, Ethnopolitics: A Conceptual Framework (New York, Columbia University Press, 1981).

21/ T. Van Boven as cited by M. Davies, op.cit., note 15, 29.

22/ For example, in Canada, J. Bayly, "Aboriginal Rights in Canada: The Northwest Territories", op.cit., note 1, 43; 50; in the United States, J.W. Zion, "Aboriginal Rights: The Western United States of America", ibid., 195; 205; in Australia, G. Nettheim, "Australian Aborigines and the Law", ibid., 371; 372; 384-91.

23/ For example, in Sri Lanka, P. Hyndman, "The Law and the Veddas of Sri Lanka: Vanishing Aborigines?", ibid., 215; 219; 221.

24/ E/CN.4/Sub.2/1988/24 (1988), para. 73.

25/ Ibid., Annex II.

26/ J.R.M. Cobo, Study of the Problem of Discrimination against Indigenous Peoples, E/CN.4/Sub.2/1986/7/Add.4 (1987).

27/ D. Bhattacharya, "Development: The State of the World at the Beginning of the Third Development Decade", XX The Developing Economics 21 (1982).

28/ Resolution 41/128 (1986) of the United Nations General Assembly.

29/ Article 1 (1).

30/ Article 8.

31/ For example, Thailand is now in the middle of her 6th National Economic and Social Development Plan (1987-1991).

32/ For text, see International Labour Conventions and Recommendations 1919-1981 (Geneva, International Labour Organisation, 1982).

33/ Particularly Article 25 of the Universal Declaration of Human Rights and Article 11 of the International Covenant on Economic, Social and Cultural Rights,

34/ For example, Article 23 of the Universal Declaration of Human Rights, Article 6 of the International Covenant on Economic, Social and Cultural Rights, and International Labour Organisation Conventions, such as Convention No. 122.

35/ Op.cit., note 26, paras. 89-119.

36/ For the Asia-Pacific region, see further Transcultural Mediation in the Asia-Pacific (Manila, Asia-Pacific Organization for Mediation, 1988).

37/ Op.cit., note 26, paras. 585-608.

38/ Ibid., para. 197.

39/ Orientation towards restricting use of this concept was seen in the Western Sahara case of the World Court: ICJ Reps. 12 (1975).

40/ For example, the Thai Constitution of 1978 uses the term "every person", and there is no reference to group rights.

41/ A special rapporteur was appointed in 1988 to study the treaties, agreements and other constructive arrangements between States and indigenous populations: E/CN.4/Sub.2/1988/24/Add.1 (1988).

42/ The Treaty of Waitangi 1840. See further D. Williams, "Aboriginal Rights in Aotearoa", op.cit., note 1, 423.

43/ In the case of New Zealand, the Waitangi Tribunal.

44/ Nettheim, op.cit., note 22.

45/ W. Cole Durham, "Indian Law in the Continental United States: An Overview", op.cit., note 1, 93; Zion, op.cit., note 22.

46/ This was the position apropos the Cree before 1975, but there is now legislation recognizing the rights of the Cree: the Cree Nascapi Act. See further "Cree Counsel the UN", 12 HRI 101 (Winter 1988).

47/ Op.cit., note 24, paras. 7-8.

48/ Op.cit., note 11.

49/ Op.cit., note 24, para. 80 and its link with Article 24 of the draft Declaration which states the following:

"The right to decide upon the structures of their autonomous institutions, to select the membership of such institutions, and to determine the membership of the indigenous people concerned for these purposes."

50/ Op.cit., note 25. The steps leading to the draft Declaration should be noted, in particular the fact that in 1987 a Declaration of Principles was adopted by the Indigenous Peoples Preparatory Meeting. Examples of the principles bearing upon social rights include the following:

"2. All indigenous nations and peoples have the right to self-determination, by virtue of which they have the right to whatever degree of autonomy or self-government they choose. This includes the right to freely determine their political status, freely pursue their own economic, social, religious and cultural development ...

"12. Indigenous nations and peoples have the right to education, and the control of education, and to conduct business with States in their own languages, and to establish their own educational institutions.

"13. No technical, scientific or social investigations, including archaeological excavations, shall take place in relation to indigenous nations or peoples, or their lands, without their prior authorization ...

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

"15. Indigenous nations and peoples are subjects of international law.

"21. ... All indigenous nations and peoples have the right to determine, plan, implement, and control the resources respecting health, housing, and other social services affecting them."

See further E/CN.4/Sub.2/1987/22 (1987).

51/ The literature on this is vast. For a simplified explanation, see Human Rights Machinery: Fact Sheet No. 1 (Geneva, United Nations, 1987).

52/ Ibid.

53/ Ibid. and P. Alston and B. Simma, "First Session of the United Nations Committee on Economic, Social and Cultural Rights, 81 AJIL 747 (1987).

54/ This is one of the recommendations of the report of the Independent Commission on International Humanitarian Issues, a part of which is reproduced in E/CN.4/Sub.2/1987/22 (1987), Annex IV.

55/ Op.cit., note 26, para. 402,

B. INDIGENOUS PARTICIPATION IN NATIONAL ECONOMIC LIFE

Background paper by Professor Douglas Sanders

Introduction

1. Indigenous people today survive as distinct populations in three different situations - as hinterland, enclave or peasant peoples.

The most culturally distinctive and most vulnerable are those living in hinterland areas - in the arctic and subarctic, in the desert, hills, mountains, forests and jungle. In this category are the isolated tribes of the Amazonian and forest heartland of South America.

A second group live as enclaves in areas where they form a distinct minority within a larger population. This is the pattern for many of the indigenous communities in North America, Australia and New Zealand.

A third group have become peasants or labourers within States, while remaining a distinct racial and, often, linguistic group. The best known examples are the Andean Indians of Ecuador, Peru and Bolivia.

The most isolated indigenous peoples have virtually no relations with the economy of the State within which they are located. In contrast, peoples in the third category are fully integrated into the State economy, albeit as a peasant or labouring proletariat. Contemporary discussion of indigenous issues tends to focus on the first two groups.

THE ISSUE OF THE RIGHTS OF INDIGENOUS PEOPLES
TO THEIR TRADITIONAL LANDS AND RESOURCES

2. Indigenous peoples became minorities or lost control over their traditional lands as a result of:

(a) Colonialism, with the creation of new national populations and new States (as in the Americas);

(b) The expansion of neighbouring States (as in northern Japan or northern Scandinavia), a process often not described as colonialism.

Both these processes gave rise to the question whether the rights of the indigenous people to their traditional lands and resources continue under the legal system of the new or expanded State. Since the creation or expansion of the State was an international process, the question also arises whether international law recognizes the continuation of the rights of the indigenous people. Legal justifications for colonialism or State expansion are described as part of domestic law or of international law or, sometimes, as both.

3. Certain justifications or explanations for colonialism or State expansion are now rejected as racist, ethnocentric, factually inaccurate or contrary to the principles of national and international law. These unacceptable justifications can be quickly summarized:

(a) Religious mission: Frequently the Papal division of the world was cited in the process of Portuguese and Spanish colonialism, though such an argument was rejected by major Roman Catholic figures, notably Vittoria and de las Casas. The idea of a "civilizing mission" is a more modern version of the same approach, but no more acceptable in contemporary international law.

(b) Discovery: Modern scholars conclude that discovery, alone, was never a legal basis for the acquisition of territories. "Prior discovery" became an explanation after the fact, used to justify acquisitions which had already taken place. The famous judgements of Chief Justice Marshall of the United States Supreme Court in the early nineteenth century relied on a doctrine of "discovery", but held that discovery did not end Indian territorial or political rights. Australian Aborigines have twice staged reverse "discoveries", planting their flag on British soil.

(c) Conquest: Historians in Latin America speak of the "conquest" and perceive it as destructive of prior Indian rights. But the States in Scandinavia, North America and Australasia do not claim to have gained control over indigenous territories by "conquest", though they acknowledge that some warfare did occur. Conquest, to be valid in law, involves (i) a just war, (ii) no permanent acquisition of territory, and (iii) no ending of pre-existing rights by the conquest itself. The British Imperial Court, the Judicial Committee of the Privy Council, ruling about tribal rights in part of what is now Nigeria, stated: "A mere change of sovereignty is not to be presumed as meant to disturb rights of private owners ...": Amodu Tijani v. The Secretary, (1921) 2 A.C. 399 at 407.

(d) A denial of a pre-existing legal order: It was sometimes argued that the territories in question were legally uninhabited on the basis that the people were nomadic hunters, with no political or legal organization. This can be summarized as the "wandering savages" school, and has been a very common justification for acquisition of populated lands. The British legal formulation of acquisition by "occupation and settlement" assumed territories were "waste and uncultivated" and the lands were described as "terra nullius", that is, lands belonging to no one. This justification was upheld by the Supreme Court of the Northern Territory of Australia in Milirrpum v. Nabalco (1971) 17 P.L.R. 141, but is being contested in current litigation in that country. The doctrine of terra nullius is widely recognized as racist and its application to Australia is in conflict with the ruling of the International Court of Justice in the 1975 decision on the status of the Western Sahara.

4. The question of the survival of the pre-existing rights of indigenous peoples in the legal systems of States, far from being a long-settled issue, is the subject of current litigation in a number of States. Recent litigation includes: (a) The decision of the Swedish Supreme Court in the Skattefjaal (Taxed Mountain) case in 1981, (b) The decision of the Norwegian Supreme Court in the Alta Dam case in 1982, (c) The current litigation in Australia in Mabo v. Queensland on traditional rights to the Torres Strait Islands, (d) The current litigation in Canada in Hukw v. Attorney-General of British Columbia (and two companion cases), litigation by the Lubicon Cree Indians and litigation on aboriginal rights to fish (currently before the Supreme Court of Canada), (e) Current litigation in New Zealand involving Maori land and fisheries rights and (f) Attempts at litigation in the Malaysian State of Sarawak in 1987 to protect tribal rights to forest lands. Litigation, by and large, is a very limited option for indigenous peoples. Typically litigation

is not possible because indigenous people (i) lack adequate finances, (ii) have little familiarity with court procedures, (iii) do not have equal access to lawyers and the legal system and (iv) do not have access to reasonably impartial tribunals.

5. Confrontations between indigenous peoples and private developers or State development programmes have a long history, but have become increasingly common in the last decade. Some examples illustrate the problems:

(a) Logging activities have recently prompted resistance by tribal peoples in the provinces of British Columbia and Ontario in Canada and in the State of Sarawak in Malaysia.

Indians have physically resisted logging activities at various sites in British Columbia. They have blocked logging roads, and in one case embedded large nails in trees to damage power saws. A timber company applied for a court injunction to stop the protests. The British Columbia Court of Appeal in 1985 ordered a halt to logging at the particular site on the basis that Indian claims to ownership rights over the land had not been legally resolved. An Indian blockade of a logging road in the Canadian province of Ontario began in June 1988, and was still being maintained six months later. The Government and Indian representatives attempted to negotiate a settlement, but the matter was expected to go to court in December 1988.

Beginning in March 1987, Dayak tribal people in Sarawak established 12 road-blocks stopping logging operations. A Dayak delegation travelled to the Malaysian capital of Kuala Lumpur seeking protection for their forest lands. They brought a court action. They had applied to the Government for "communal forest reserves" to protect the lands, but those had not been granted. After seven months of protest, the road-blocks were ended, but only by the arrest of 42 individuals who were charged, among other things, with unlawful occupation of State lands. The arrests were part of the much larger series of arrests that occurred in October and November 1987, primarily in peninsular Malaysia.

(b) Hydroelectric projects have been built or proposed in a number of areas where indigenous peoples have lived and carried on traditional economies. This conflict has arisen, for example, in Bangladesh, Brazil, Canada, Guyana, India, Malaysia, Mexico, Norway, Philippines, Sweden and the United States.

The largest post-war demonstration in Norway occurred at the site of the Alta dam in 1981 during the sunless arctic winter. The dam was going to flood a significant area of reindeer pasture lands, affecting the traditional reindeer breeding economy of Sami people. Police were brought by luxury liner from southern Norway and hundreds of protesters were arrested. The question of Sami rights in the area was heard by the Norwegian Supreme Court. Against the expert evidence which had been received in the case, the court ruled that there would not be a significant impact on reindeer herding.

The Kaptai dam in Bangladesh, built in 1963, displaced 100,000 tribal people, leading to serious economic problems. As is frequently the case, there have been persistent complaints that resettlement programmes proved inadequate.

Tribal populations in the State of Madhya Pradesh in India have marched to protest the construction of the Narmada Valley project, which would displace 200,000 people in 500 villages. The World Bank, which is giving a loan of \$450 million for the Sardar Sarovar dam, has recommended that forest land be used for resettlement of these people, though that would violate the Forest Conservation Act. As is widely known, the World Bank has been criticized for its involvement with projects in tribal areas for a number of years and has formulated a policy specifically to deal with these issues.

A Kalapo Indian Chief from Brazil is currently attempting to raise international concern about a Brazilian plan for two large dams on the Xingu River in the Amazon River Basin. He states that the dam will flood 25 million hectares of forest and displace 500,000 people.

(c) Mining and oil and gas extraction have raised issues in various parts of the world. Mining activities have apparently interfered with plans to demarcate lands to protect the Yanomamo in Brazil. The Lubicon Cree in Canada say that oil and gas development in their homeland has destroyed their traditional hunting and trapping economy. A major Aboriginal issue in Australia has been uranium and other mining, particularly as it has affected traditional sacred sites. The image of the mining equipment moving into Nookembah was the most vivid image of this conflict in modern Australian history. It led to the first Aboriginal delegation to a United Nations body, in that case the Commission on Human Rights.

(d) State policies to move populations into indigenous or tribal areas, often called programmes of transmigration, have created major problems in Bangladesh and Indonesia.

The movement of Bangali settlers into the Chittagong Hill Tracts of Bangladesh led to a decade of insurgency and an estimated 45,000 refugees in India. In international forums Bangladesh denied that there were any problems, but in 1988 began negotiations with the tribal peoples on the serious issues involved.

6. International law discussions about the rights of indigenous or tribal peoples have focused on the basic issue of rights to traditional lands, resources and economies. This was the basic question addressed by the Spanish theologian Franciscus de Vittoria in his international law lectures in 1532: he concluded that the Indians had true dominion over their territories, by both public and private law. The basic theme of ownership of traditional lands has featured in the modern consideration of indigenous and tribal peoples. Article 11 of ILO Convention 107 on indigenous and tribal populations, reads:

"The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognized."

The study on the Problem of Discrimination Against Indigenous Populations by Special Rapporteur, Martínez Cobo, completed in 1983, devoted 66 paragraphs in Chapter XXII, Proposals and Recommendations, to the issues of land and resources. This was the most comprehensive and detailed part of the recommendations. We will quote four paragraphs:

*511. It must be recognized that indigenous peoples have a natural and inalienable right to retain the territories they possess, to call for the return of land of which they have been deprived and to be free to decide as to their use and development.

*512. Genuine guarantees should be provided and full effect given to the right of indigenous populations to the land which they and their ancestors have worked since time immemorial and to the resources which such land contains, as well as to traditional forms of land tenure and resource exploitation.

*513. Indigenous people have a natural and inalienable right to keep the territories they possess and to claim the lands which have been taken from them. In other words, they are entitled to the natural and cultural patrimony contained in the territory and to determine freely how to use it and benefit from it.

*514. Recognition must be given to the right of all indigenous nations or peoples, as a minimum, to the return and control of sufficient and suitable land to enable them to live an economically viable existence in accordance with their own customs and traditions, and to develop fully at their own pace ..."

The "Draft Universal Declaration on Indigenous Rights" prepared in 1988 by Madame Erica-Irene Daes at the request of the United Nations Working Group on Indigenous Populations, provides as article 12:

The right of ownership and possession of the lands which they have traditionally occupied. The lands may only be taken away from them with their free and informed consent as witnessed by a treaty or agreement.

Indigenous presentations to the United Nations Working Group place the right of ownership and control over their traditional lands and resources in the larger context of an indigenous right of self-determination, usually described in terms of autonomy within States.

There is a widespread consensus that rights to lands and resources are fundamental rights for indigenous peoples. The only other rights which would have equal or greater acceptance would be rights to physical and cultural survival.

7. Modern international law must be taken to recognize the right of ownership and control of lands and resources by indigenous peoples. It is on the basis of this recognition that a just economic relationship can be built between indigenous peoples and national economies. Because of the continuing conflicts over indigenous territorial rights, it is necessary to have international monitoring of disputes and an international ability to assist States and indigenous peoples in the resolution of conflicts.

THE ISSUE OF TRADITIONAL OR SPECIALIZED ECONOMIES

8. Traditional economies have routinely been undervalued by States. It has been estimated that the value of the wild meat harvested by the Dayak in the Malaysian State of Sarawak is \$US 210 million per year. Much of this benefit would be lost to the Dayak as a result of the logging of the tropical

forests. This loss is a hidden cost of forestry development, one that would be borne exclusively by the Dayak, and typically not acknowledged as a cost in the commercial logging operations. Former Canadian Judge Thomas Berger, both in the report of the Mackenzie Valley Pipeline Inquiry in Canada, in 1977, and in the report of the Alaska Native Review Commission in 1985, stressed the significance of the hunting and trapping economy to arctic and subarctic indigenous communities.

9. It is well-established in Western industrialized States that some rationalization needs to be brought to activities like agriculture and cattle production. These industries suffer from variations in weather conditions and fluctuations in market prices. Rationalization can involve production controls, marketing systems and price stabilization. Such systems have typically not been extended to traditional economies of indigenous peoples, even when, as with trapping, the product is marketed outside the region of production. There are two major exceptions. The reindeer breeding industry of the Sami in northern Scandinavia is organized by statute in Norway, Sweden and Finland. The hunting and trapping economy of the Cree Indians in the James Bay region of northern Quebec in Canada is organized under an income maintenance system established as part of the treaty which dealt with their territorial rights.

10. Hunting, fishing, trapping, herding and gathering rights are still important for indigenous peoples in many parts of the world. Even in industrialized North America, the largest body of court cases on the rights of indigenous peoples deals with these rights, and disputes continue to be litigated. Treaties and agreements typically feature provisions on these rights, including the agreements in principle on land claims signed in the Canadian northern territories in 1988. The International Whaling Commission has recognized special harvesting rights on the part of the Eskimos in Alaska. The Migratory Birds Convention signed early in this century by Canada, the United States and Mexico makes special (if limited) provisions about indigenous peoples. A codicil to the Treaty of Stromstad of 1751, which establishes the northern border between Norway and Sweden, provides for Sami reindeer breeders to freely cross the border.

These rights have great symbolic and cultural importance for indigenous peoples. In many areas they remain a part of day-to-day life and a crucial part of indigenous economies.

11. Certain of these special economic activities involve production for external sale. Notable examples are reindeer breeding, the trapping of fur-bearing animals, the harvesting of wild rice, commercial hunting and fishing and the production of art and handicrafts. In some situations, these activities are recognized as exclusive rights of indigenous peoples. Reindeer herding is a Sami monopoly in Sweden and Norway but not in Finland. Trapping rights are kept in Indian hands in parts of Canada. Wild rice harvesting is largely an Indian monopoly in both Canada and the United States. Some special promotion of indigenous handicrafts has occurred in various countries, in response to the sales of copies by non-indigenous producers.

12. Commercial fishing is a special case, and has been a major issue in the United States, Canada and New Zealand in the last two decades.

The north-west coast of North America, including parts of Washington State, the Canadian province of British Columbia and Alaska, is very rich in fish, particularly salmon, the traditional staple food of the Indian tribes in the region. The area contains the greatest surviving salmon rivers in the world. In the 1970s United States courts ruled that Indians in the coastal area of Washington State were entitled to up to 50 per cent of the commercial catch of fish, in fulfilment of promises in treaties signed in the nineteenth century. In 1986 the British Columbia Court of Appeal ruled that coastal Indian people had a legally enforceable aboriginal right to fish for their own needs, a right protected by the Canadian Constitution. The appeal from this decision was argued before the Supreme Court of Canada in November, 1988.

The Treaty of Waitangi of 1840 between Maori chiefs and the British confirmed and guaranteed to the Maori "the full, exclusive, and undisturbed possession of their ... Fisheries ...". But the Treaty was not respected as the legal basis for European rights in New Zealand, and Maori participation in the fisheries gradually diminished. When the New Zealand Government proposed establishing a system of "independent transferable quotas" (or ITQs) for fisheries, under which commercial fishing quotas would be treated as a form of private property, Maori took their objections to the courts. In September 1987, the New Zealand High Court ordered a halt to the granting of ITQs until the issues relating to Maori rights to the fishery were resolved. In response the Government proposed that the fishing quotas be leased, not sold. The quotas, themselves, would be held by a corporation, half owned by Maori and half by Government. Half of the revenues from the leases would go into Maori hands. In November 1987, a joint working group was established by an agreement between Maori representatives and the New Zealand Government to discuss the new government proposal and other possible resolutions of the fishing rights issues. In July 1988, the working group reported. It had not been able to reach agreement, with the result that two reports were made public, one by the Maori members and one by the Crown members. The Maori offered to make available to the Crown 50 per cent of the fisheries, while retaining ownership of the second 50 per cent. Fisheries would be jointly managed by Maori and the Government. In June 1988, the Waitangi Tribunal, an advisory body, released the 371 page Muriwhenua Fishing Report. It gave a detailed history of fishing rights in New Zealand, and a comparative examination of indigenous fishing issues in Canada and the United States. It concluded that there had been a breach of the Treaty and

... no adherence to the broad principle that two people (Maori and European) might exist together ...

13. There are a number of cases where special economic rights of indigenous peoples have been recognized, but not protected against competing use. Thus, Indian trapping rights are regularly lost to logging and other extractive industries. Sami have a monopoly on reindeer breeding in Sweden and Norway, but the lands necessary for reindeer breeding have not been protected or even confirmed as lands owned by the Sami herders. This has allowed competing uses to occur. Norwegian courts have ruled that compensation should be given to the Sami in such a situation, but not on the basis of a recognition of Sami ownership of the lands required for their herding activity.

14. These sectoral economic activities, specific to particular indigenous peoples, are issues supplementary to the broad principle suggested for the ownership of traditional lands in paragraph 7, above. There is an important

claim by indigenous peoples to a recognition of their role in these economic activities. The claim conceptually fits within the provisions in the International Human Rights Covenants recognizing the right of peoples to pursue their economic development and the right of peoples not to be deprived of their own means of subsistence.

ADAPTATION TO NEW ECONOMIES

15. Indigenous peoples are typically marginalized groups within national and regional economies, whether they fall within the hinterland, enclave or peasant categories.

Indigenous peoples in hinterland areas face problems related to the marginal character of hinterland areas in national, regional and international economies. They face the "boom and bust" cyclical patterns that are characteristic of hinterland economies, often resulting from high dependency upon particular commodity prices in international markets. The history of the Miskito Indian people on the Atlantic Coast of Nicaragua illustrates this pattern, with short-lived "boom" periods associated with timber extraction and the sale of turtles. Fur prices produced prosperous indigenous groups in the Canadian north, but prosperity ended with the collapse of international fur prices.

Indigenous enclave peoples face serious problems of unemployment or underemployment. Education and training will be below local norms. The history of State and private racial discrimination will have left a pattern of exclusion that proves difficult to overcome.

Indigenous peasant peoples suffer from being in the least protected sectors of national economies, frequently denied even a peasant land base by unequal patterns of land ownership.

Because the structural reasons for these economic problems are complex and historical, there is a popular tendency to "blame the victim" by seeing indigenous people as lazy or unadaptable.

16. The history of relations between particular indigenous peoples and new national populations and States shows clear indigenous interest in adaptation and development. Studies of the negotiation of Indian treaties in western Canada have revealed that the treaty provisions dealing with assistance for agriculture and cattle raising were included at the insistence of the Indian representatives. They had not formed part of government plans. Further studies have documented how the economic adjustment sought by Indians was frustrated by (a) the failure to fulfil the economic development promises, (b) the removal of some of the best agricultural land from the Indian reserves after they were established, and (c) a refusal to allow the capitalization of Indian agriculture (even by the use of Indian funds held by Government) at the point when non-Indian agriculture was becoming increasingly capital intensive. The refusal was to prevent Indian competition with non-Indian farmers. The failure of Indian agriculture to become established in the United States and Canada has masked the historical fact that Indians sought to make an adjustment to the new agricultural economy that was being created by colonial settlers.

17. The most obvious part of economic planning for indigenous enclave peoples in various countries has been the establishment of some system of reserved

lands. What is rarely appreciated is the fact that once that system was established, it was usually undercut by a reduction of the land base. Typically the most desirable agricultural land was removed from the reserves. In the United States the General Allotment Act of 1887 undercut Indian reservation land holding, laying the foundation for modern Indian poverty in that country. In the name of the individualization of Indian land holdings, the best agricultural lands were lost to non-Indians. In New Zealand the 1840 Treaty of Waitangi had confirmed traditional Maori land holding, but the Maori Land Court became a vehicle for denying tribal control over Maori lands and ensuring the transfer of land from Maori family groups to Europeans. In Japan the Government allowed non-Ainu leaseholds of Ainu reserved land, in violation of the legislation dealing with the lands. Then in the land reform after the Second World War, the Ainu were treated as absentee landlords and lost even reversionary rights in that land.

18. In hinterland situations, frequently indigenous rights to land were left undefined and lands used by indigenous peoples not demarcated as reserves. This lack of precision in the legal system allowed competing rights to become established. The long delay in demarcating Guayami lands in western Panama allowed extensive non-Indian settlement in the lowland areas, reducing Guayami land use to the less productive hills. The lack of recognition of lands actually used by Indians for trapping purposes in hinterland areas in Canada allows those trapping rights to be ended in fact when logging or extractive industries are established in the region. In these situations, there is typically no recognition that Indian rights have been ended and that this loss is a cost of the new economic activity.

19. It is often thought that the exclusion of indigenous peoples from national economies was an inevitable result of cultural difference or of indigenous inability to change. This can be described as the "fatal impact" school, which has been extremely influential in popular thinking. In fact indigenous peoples attempted to adapt. Adaptation was blocked by a complex mix of positive and negative actions by States and non-indigenous populations. Little research has been done on the formal exclusion of indigenous peoples from economic sectors. In western Canada, Indians as individuals were legally barred from obtaining Government land grants and were barred from obtaining certain licences for commercial logging operations.

Racism and discrimination against indigenous peoples has been common. Racial stereotyping only began to be seriously challenged in the years after the Second World War.

20. It must be understood that the economic situation of indigenous peoples is not wholly negative. There is real success in certain sectoral areas, such as reindeer breeding and commercial fishing. Some Indian communities in British Columbia have high employment in the timber industry. The Cuna Comarca in Panama is a notable success, both politically and economically.

Some of the structural problems are starting to be overcome. The legal rules for economic development on reserved lands have been confusing and uncertain, even in the United States and Canada where reserve systems are the most highly developed. That confusion has inhibited economic development. But the legal framework has become more adequately defined, and Indian reserve land is being much more productively used.

The inferior educational systems typically provided to indigenous peoples are being replaced by systems more nearly approximating national standards. There are efforts to reduce the cultural bias in those educational systems and to allow indigenous control of local school systems. Education for indigenous people continues, however, to be below national standards in almost all States.

21. A number of States have economic development and training programmes to respond to the situation of enclave populations.

The national indigenous development funds in Australia and Canada are major current models for economic development programmes for indigenous populations. They make loans and grants to businesses that are controlled by indigenous people or will provide employment to indigenous people. The body in Canada is the Native Economic Development Programme and in Australia the Aboriginal Development Commission (now to be merged into a larger commission). Both are controlled by Government appointed boards, but are structured as semi-autonomous institutions. This reflects the view that regular government departments are not suitable vehicles for programmes of economic development.

The present pattern of semi-autonomous development funds, with their focus on loans and grants, has replaced the earlier pattern of "community development" projects, used in various countries in the 1960s. Those programmes rejected a focus on economic development in isolation from other social issues. They saw indigenous communities as needing social and political stimulation.

There is now a move away from reliance on "community development" or on the use of special indigenous development funds. Both approaches are criticized as externally controlled programmes and incompatible with indigenous autonomy.

CONCLUSIONS

22. Modern international law must be taken to recognize the right of ownership and control of lands and resources by indigenous peoples. This is a proper concern of international law, for the processes which have established indigenous peoples as vulnerable populations were international in character. A denial of indigenous rights to lands and resources can only be supported by invoking doctrines of racism or colonialism. Ideas of "discovery" and "terra nullius" cannot be considered legally valid.

23. It follows that there should be, at least, an international monitoring of the issues which arise concerning the rights of indigenous peoples to lands and resources. In time, such issues should be susceptible to international adjudication. In the meantime, the programme of the United Nations to provide advisory services to States in the area of human rights should be understood to include advisory services on issues of indigenous rights to lands and resources.

24. When an indigenous people has a traditional or specialized economy, it is proper that this economy receive State recognition and support, at least on the basis of equality with the support extended to other similar productive sectors of the national economy. Interference with the indigenous economies should be recognized as interference with property rights. As a result,

activities (such as logging or hydroelectric dam construction) which interfere with or limit indigenous economic activities should only proceed on a finding of significant national interest, and on the basis that the indigenous population will be provided with comparable resources to maintain their own economies. Because of the vulnerability of indigenous peoples their free and informed consent to such use of their lands should be required, as stated in the draft declaration on indigenous rights.

25. The sustaining of indigenous traditional or specialized economies is a vital part of a basic principle of allowing indigenous and non-indigenous people to coexist together within States.

26. It must be recognized that indigenous participation in national economies has been frustrated by a history of marginalization, racism and exclusion. The economic potential of the Indian reserve systems in North America was undercut by the loss of the best agricultural lands. Similar unreasonable limitations on indigenous resources occurred in other parts of the world. Indigenous peoples have not been shown to lack adaptability. Historically they have been kept out of national economies. This historical exclusion must be recognized and overcome.

27. Any programmes designed to aid the economic development of indigenous communities must harmonize with the right of those communities to a reasonable extent of political, social and economic autonomy. Previous patterns of community development programmes and special development funds were not harmonized with indigenous autonomy, a fact that may have contributed to their very limited success. It would be appropriate for the United Nations to sponsor a series of workshops, in different regions, exploring the interrelationship of the economic and political rights of indigenous communities.

C. EFFECTIVE PROTECTION AND COMPREHENSIVE DEVELOPMENT OF THE
SOCIAL AND ECONOMIC SECTORS IN INDIGENOUS COMMUNITIES
THROUGH INTERNATIONAL STANDARD-SETTING ACTIVITIES

Background Paper prepared by Professor Rodolfo Stavenhagen

Concern about the situation and protection of indigenous peoples is fairly recent in the United Nations system, though there are precedents. Certainly the United Nations, and earlier, the League of Nations, took notice of the "natives" in colonial territories. In 1953 the International Labour Organisation published its major study on Indigenous Peoples and in 1957 adopted Convention 107 on the Protection of Indigenous and Tribal Populations, currently undergoing revision. In 1970, the Sub-Commission on Prevention of Discrimination and Protection of Minorities appointed a special rapporteur to prepare a study on the discrimination against indigenous populations, and in 1981 the Working Group on Indigenous Populations was established, which is currently drafting a Universal Declaration of Indigenous Rights. At the regional level, the Inter-American Indian Institute has organized numerous international congresses since 1940, whose resolutions have provided standards for "indigenist" policies on the American continent.

In general, one might say that international standard-setting concerning indigenous peoples has been a slow and rather haphazard process in the international system. Still, it is a positive development that in recent years indigenous peoples have become the object of international standard-setting activities, thus reflecting the fact that the international community recognizes indigenous peoples as objects and possibly as subjects of international law and not only as an internal or domestic matter for States to deal with as they see fit. In terms of international human rights standards, it may also be argued that the increasing concern over the rights of indigenous peoples expresses the shift of emphasis from "universal individual rights" to "collective human rights", which is taking place also in other fields. While debate over these matters is by no means closed, the special features of indigenous rights present a challenge to the evolving structure of an International Bill of Rights.

A particular difficulty which must be dealt with in this process is the fact that international standards are being developed by States (or their representatives) for States, and that indigenous peoples have long complained that their principal problems are precisely those posed by their relations with States. Furthermore, until very recently indigenous peoples themselves were rarely consulted, let alone allowed to participate, in the collective efforts aimed at developing such standards.

Before standards can be set at all, however, the international community must be well-informed regarding the actual situation of indigenous peoples, their socio-economic conditions, the state of their human rights, their relations with States and with non-indigenous peoples, and the legal frameworks within which current governmental policies are being undertaken. More than a generation ago, the ILO study referred to above, provided such background information. More recently the monumental study on discrimination

Note: The opinions expressed in this paper are those of the author.

against indigenous peoples, prepared for the Sub-Commission, provides a solid, well-researched background for standard-setting activities. This has been complemented by numerous studies prepared by independent and non-governmental organizations as well as an almost infinite number of monographs and reports by academics and individual researchers.

In a statement to the Sub-Commission the Special Rapporteur observed that "the social conditions in which the majority of indigenous populations lived were favourable to the specific types of discrimination, oppression and exploitation in various fields described in the study. In many countries they were at the bottom of the socio-economic scale. They did not have the same opportunities for employment and the same access as other groups to public services and/or protection in the fields of health, living conditions, culture, religion and the administration of justice. They could not participate meaningfully in political life." 1/

More recently, a report prepared for the Independent Commission on International Humanitarian Issues, declares "The present situation of indigenous peoples is rooted in their colonial past. If they are largely landless, underprivileged and discriminated against, it is because of the relationship of conqueror and conquered which was established during the early years of colonial contact. A higher proportion of indigenous peoples in all countries today remain unemployed than in society as a whole... . Indigenous people also suffer comparatively poor health The perpetuation of the underprivileged position of most indigenous peoples has been ensured by the low priority accorded to their education by Governments The result is that almost everywhere the indigenous are the worst educated group in society." 2/

For decades, indigenous peoples have been powerless and helpless regarding their situation. To be sure, indigenous rebellions have occurred throughout history and all over the world; and of course indigenous peoples have been able to petition national Governments, and sporadically even international organizations. Usually, however, indigenous peoples have had to trust in paternalistic government action for redress of ancient torts or for projects conducive to development or improvement of their standards of living. Government responsibility for indigenous peoples has frequently taken the line of assimilation or incorporation. This ideology has found expression in international instruments. Thus, an Inter-American Indianist Congress met for the first time in 1940, and while it declared its respect for indigenous culture and personality, as well as complete equality before the law for all peoples, it also fostered the idea of national integration and indigenous assimilation to "national culture". The ILO's first efforts went along in the same direction. Its Convention 107 on Indigenous and Tribal Populations, adopted in 1957, was basically assimilationist and integrationist. Article 2 of the Convention stated unabashedly: "1. Governments shall have the primary responsibility for developing co-ordinated and systematic action for the protection of the populations concerned and their progressive integration into the life of their respective countries." As a result of increasing criticism of this Convention by indigenous organizations, the ILO initiated a process of revision, which entered its final stage at the Organization's General Conference in 1988. A new draft convention was discussed here, which is expected to be approved by the General Conference in 1989. The draft convention retains some of the suggestions made by the indigenous organizations, even though no overall consensus has been achieved by the

tripartite representatives to the ILO (Governments, workers, employers). Indigenous organizations have complained that they are not formally represented in the procedures, and only a smattering of them were invited as non-governmental organizations to present their points of view at the sessions of the General Conference. The new draft may include the concept "peoples" instead of "populations", as insisted upon by the indigenous organizations, though a number of official delegations still resist the use of this term. The ILO secretariat, however, seems to have adopted it. Article 2 of the new draft, as well as other articles of the Convention, are now much less "integrationist". While it states the responsibility of States, it also underlines the full participation of the peoples concerned in the development of co-ordinated and systematic action intended to guarantee the respect of the integrity of these peoples and their rights. 3/

Since 1982, the Working Group on Indigenous Populations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities has met annually. At its most recent meeting, in August 1988, the Working Group's public sessions were attended by approximately 380 participants from dozens of countries and numerous indigenous organizations. At this session, the Working Group advanced towards the drafting of a Declaration of Rights of Indigenous Peoples, which is expected to be adopted eventually by the General Assembly.

Even though this Declaration is still in draft form, and there is no guarantee that it will be adopted by the various United Nations bodies without modification, it is noteworthy that for the first time such a United Nations document reflects the proposals and suggestions provided by numerous indigenous organizations throughout five years of sessions of the Working Group. The Draft Universal Declaration on Indigenous Rights contains Part I devoted to general universal human rights; Part II, to collective cultural and ethnic rights, including protection against ethnocide; Part III, rights to land and resources; Part IV, economic and social rights, including the maintenance of traditional economic structures and ways of life; Part V, civil and political rights, including respect for indigenous laws and customs, participation in decision-making in all matters affecting their life and destiny, as well as the collective right to autonomy; and Part VI, regarding recommendations for fair procedures for resolving conflicts or disputes between States and indigenous peoples. 4/

If and when the new ILO Convention and the United Nations Declaration on Indigenous Rights are approved, a new international environment, however limited, will have been created for the rights of indigenous peoples which perhaps will help them improve their relative situation within their own countries. It remains to be seen however, to what extent such instruments will be ratified and implemented by the signatory States. To the extent that they are instruments drafted by Governments for Governments, in organizations which serve the interests of the member States, indigenous peoples remain understandably suspicious of them. Still, they do reflect up to a certain point, the claims which indigenous, aboriginal and tribal peoples have been pushing for decades and which represent the principal issues which so often are at the root of conflicts between States and indigenous peoples.

These issues may be summarized as follows:

1. Definition, membership and legal status. It may seem surprising that the question of definition of, and membership in, indigenous groups is an issue of some concern both to the indigenous themselves and to the States in whose territories they live. Yet the question arises, because the definition of indigenous peoples often is directly linked to the nature of the relationship between the group and the State, as well as with other groups. And the issue of membership is frequently linked to the enjoyment of certain rights and privileges, or conversely, to the imposition of disabilities and the limitation of political and civil rights. Therefore, in recent years, the question of definition and membership has become a claim put forward by the indigenous organizations, and is being dealt with by international organizations.

Thus, as early as 1953, the ILO reviewed the various definitions and criteria used by national Governments and social scientists, and concluded that there was no single, universally valid definition of indigenous peoples. It therefore proceeded to offer a provisional description as a "purely empirical guide to the identification of indigenous groups in independent countries", as follows: "indigenous persons are descendants of the aboriginal population living in a given country at the time of settlement or conquest (or of successive waves of conquest) by some of the ancestors of the non-indigenous groups in whose hands political and economic power at present lies. In general these descendants tend to live more in conformity with the social, economic and cultural institutions which existed before colonization or conquest ... than with the culture of the nation to which they belong ...". 5/ This description served as a basis for the definition which was later included in article 1 of ILO's Convention 107 which, as stated, is currently undergoing revision.

The United Nations "Study of the Discrimination against Indigenous Populations" also goes into an in-depth analysis of the various definitions used by Governments and others to define indigenous peoples and likewise recognizes that such definitions vary greatly. The Special Rapporteur concludes that "the question of a definition is one that must be left to the indigenous communities themselves". He proposes that "the right of indigenous peoples themselves to define what and who is indigenous must be recognized" and that "the correlative of this faculty is, obviously, the faculty of defining or determining what or who is not indigenous." Moreover, for the purposes of international action, the Special Rapporteur proposes the following definition:

"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 system." 6/

The reader will notice certain differences between the ILO and the United Nations definition, basically that the former refers to "persons" and the latter to "communities, peoples and nations", a distinction which reflects the changing concerns of the international community and the indigenous peoples themselves. They have in common, however, the idea that indigenous peoples are the descendants of the original inhabitants of a territory, that they were overwhelmed or subordinated to other peoples through invasion and/or conquest, that they occupy a non-dominant position in a society and that they are culturally distinct from the non-indigenous populations.

The World Council of Indigenous Peoples, a non-governmental organization, has insisted that the United Nations recognize the indigenous as separate nations within a political State and claims that the right to define who is and who is not an indigenous person should be left to the indigenous peoples themselves. It rejects artificial definitions such as those which appear in some national legislations and which impose on the indigenous definitions which the latter do not accept. 7/

The right of indigenous peoples to self-definition and self-identification, as well as to determine membership, has thus become a major issue in recent debates and in negotiations between the indigenous and the State, both at the national and international levels. The question has to do with the relative importance accorded to collective and individual human rights. When an indigenous or tribal people possesses a clearly identified territory and constitutes a recognizable administrative and/or social unit, then the question of definition and membership should not pose a particularly difficult problem, except if Governments refuse to recognize a group as such, which is often the case. A more complex situation arises in the case of indigenous peoples who emigrate from their original communities to become part of the modern, urban industrial and service economy.

2. Land, territory and resources. The land issue has long been a principal claim of indigenous peoples. Article 12 of the Draft Universal Declaration on Indigenous Rights proposes: "The right of ownership and possession of the lands which they have traditionally occupied", and article 13 stresses "the right to recognition of their own land-tenure systems for the protection and promotion of the use, enjoyment and occupancy of the land." 8/ The same right appears as Article 13 of the proposed revised version of ILO's Convention 107. 9/

Economic development and the integration of a world system of production and consumption have renewed pressures on the remaining lands of indigenous peoples in our time. "Since the Second World War - states the Independent Commission on International Humanitarian Issues - the number of incursions into indigenous peoples' lands has escalated worldwide. Once thought of as barren wastelands of little economic and political value, indigenous territories have now been identified as areas of vital national and even international importance With no untroubled or un coveted regions to retreat to, the native inhabitants have been forced to accept these invasions reluctantly, or else fight back." 10/

Little wonder that indigenous peoples everywhere have organized to resist such invasions of their lands and are struggling with Governments over control of land and forests and of subsoil resources, as well as in some cases inland and offshore water resources and icecaps. Logging and mining operations have

become sources of conflicts between States and indigenous peoples worldwide, and these include negotiations over the distribution of benefits and the limitation of damages. Governments, however, refuse to relinquish what they consider to be "national" assets, which are frequently described as such in laws and even constitutions. Indigenous organizations would like to have their right over subsoil resources recognized internationally, just as their right over land and surface resources. It is highly unlikely, however, that Governments will agree to this. The Draft Universal Declaration on Indigenous Rights rather timidly suggests "the duty of States to seek and obtain their (i.e. the indigenous peoples') consent, through appropriate mechanisms, before undertaking or permitting any programmes for the exploration or exploitation of mineral and other subsoil resources pertaining to their traditional territories. Just and fair compensation should be provided for any such activities undertaken." 11/ Article 14 of the proposed revision of ILO's Convention 197 (to be approved by ILO's General Conference in 1989) is drafted in almost identical language. 12/ In neither document are indigenous rights over subsoil resources actually recognized; Governments are simply advised to seek the consent of the interested peoples when mining activities on indigenous land is decided upon. Nothing is proposed should the indigenous peoples concerned withhold their consent, and experience shows that in the end Governments and multinational corporations do what they please.

3. Economic Development. Much damage has been done to indigenous peoples through economic development projects, particularly hydro-electric dams and other regional development schemes. The isolated, marginal areas often occupied by indigenous peoples constitute the last great and until recently unexploited reserves of natural resources. Neither State planners nor multinational corporations nor international development agencies have hesitated to implement strategies to "incorporate" these areas into the national and international economy. In the process, indigenous and tribal peoples have suffered genocide and ethnocide. Usually the grandiose development schemes such as multi-purpose dams that third world Governments are so fond of, are not designed to benefit the local population, but rather the urban and rural elites. Indeed, when local, frequently indigenous or tribal, populations exist, the idea is that they must be removed to make way for "progress".

The Independent Commission on International Humanitarian Issues concludes that "large dams are disastrous for indigenous peoples. They destroy their economies and habitats, disrupt their social systems, and submerge and otherwise desecrate sites of religious or cultural importance. Indigenous communities are dispersed, losing their original cohesion and unity; they are left impoverished, often landless and dispirited." 13/

Many of these development projects are designed and financed by the World Bank and other international development agencies. After having been accused repeatedly of neglecting environmental and human damage to tribal and indigenous peoples in the projects it supports, the World Bank finally decided on the adoption of guidelines for the protection of the environment and the local populations and declared it would withhold aid to Governments which did not respect them. 14/ Many observers consider, however, that the guidelines are not being implemented adequately, and lately World Bank officials have stated that protection of indigenous peoples or environments is not their priority concern. 15/

4. Language, education and culture. In many countries, in the absence of other valid criteria, the only test for the existence and quantification of indigenous peoples is their language. In fact, indigenous peoples the world over are recognized by the thousands of different languages they speak, most of them unwritten.

A language is basically a means of communication, but it is much more than that. Languages are an integral part of cultures; through its language, a given group expresses its own culture, its own societal identity; languages are related to thought processes and to the way the members of a certain linguistic group perceive nature, the universe and society. Languages express cultural patterns and social relations and in turn help shape these patterns and relations.

Moreover, languages are the vehicles for literary and poetic expression, they are the instruments whereby oral history, myths and beliefs are shared by a community and transmitted from generation to generation. Just as an Indian without land is a dead Indian, as the World Council of Indigenous Peoples states, so also an ethnic community without a language is a dying community. This was well understood by the romantic nationalists of the nineteenth and twentieth centuries who strove for a revival of "national" languages as part of the politics of nationalism in many parts of the world. 16/

On the other hand, language has always been an instrument of conquest and empire. Nebrija, a Castillian grammarian and adviser to Queen Isabel the Catholic in the fifteenth century, published his Spanish grammar the same year Columbus reached America, and advised his Queen to use the language as an instrument for the good government of the empire. Both the Spanish Crown and the Church took the advice to heart, for Spanish did become one of the universal languages of the modern world. So did English, of course, for the British Empire knew well the power of the word as an instrument of world power.

In the process of colonization, the languages of the colonized peoples - especially if unwritten - were usually downgraded to mere "dialects", a term which connotes something less than a full-fledged, structured language and therefore casts doubt on the status of the culture which uses it. Thus indigenous and tribal peoples are still considered at the present time by a non-informed public opinion to speak only dialects and not languages, a position frequently shared by government bureaucrats. This is of course linguistic nonsense, but it carries a political intention. As some anonymous wit has expressed: a language is a dialect with an army. Or to put it another way: a dominant group is able to impose its language on subordinate groups. Linguistic dominance is more often than not an expression of political and economic domination. 17/ To be sure, there are exceptions: In Africa, Asia and the Caribbean there are a number of linguae francae, vehicular languages used for trade and commerce which do not necessarily denote political domination.

In the predominant statist view of national unity, assimilation and development, the languages of indigenous and tribal peoples, particularly when only spoken by small minorities, have usually been destined to disappear. Government policies have generally been designed to help this process along. In most countries, indigenous languages are not given legal recognition, are not used in official administrative and judicial dealings, are not taught in

schools, and the people who do use them are discriminated against and treated by the non-indigenous as outsiders, foreigners, barbarians, primitives and so on. Very often, the men of the tribe or indigenous community, who move around in the outside world for economic reasons, learn the official or national language of a country and become bilingual. Women tend to be more monolingual, which increases their isolation and the discrimination which they suffer. Small children, before school age, speak the maternal language, but often as soon as they reach school they are not allowed to speak their own language in class. Observers have noticed that this creates serious psychological and learning problems among school-age children of many indigenous and tribal peoples. Or else, because of language and other forms of discrimination to which they are exposed, families avoid sending their children to official or missionary schools at all.

The Special Rapporteur, who bases his assessment on replies sent by many Governments to his questionnaire, informs us that: "The policies followed in a great many States were based on the assumption that indigenous populations, cultures and languages would disappear naturally or by absorption into other segments of the population and the national culture. 18/ But, he continues, in the typical low-key languages of United Nations documents: "It is believed today that these policies, which in some cases have prevailed for centuries, do not seem to have been well-grounded, to judge by their effects". And further: "Public schooling oriented towards doing away with indigenous characteristics and the policies of marginalization, relegation and elimination of indigenous languages followed by most States, many of which inherited them from the colonial period, have been questioned and utterly rejected". 19/

As a result of policies of persecution and general attitudes of discrimination against them, many indigenous and tribal peoples have internalized the negative attitudes of the dominant society against their languages and cultures. Particularly when they leave their communities, they tend to deny their identity and feel ashamed of being "aboriginal" or "native" or "Indian" or "primitive". Hiding an identity is not always possible, given that in many countries ethnic and cultural differences are accompanied by biological distinctions and cultural discrimination is often indistinguishable from racial discrimination. This has been particularly the case in European settler societies where the biological differences between the upper classes and the indigenous populations are particularly visible; it is less so in societies which have undergone a process of racial intermarriage and mixing, such as many Asian and Latin American countries.

In recent years, indigenous and tribal peoples have begun to resist the "natural" or forced disappearance of their languages and cultures, and slowly a growing awareness has arisen among social scientists, humanists, educators and even politicians, that the maintenance of indigenous languages within the concept of cultural pluralism is not necessarily undesirable for a given country. The Special Rapporteur states: "The vigorous presence of indigenous peoples and languages in many parts of the world is an established fact. Defence by these groups of their languages is determined and tenacious There is increasing acceptance of the need to recognize, once and for all, the plurilingual and pluricultural nature of the countries where indigenous populations live and to adopt unequivocally policies which permit and promote the conservation, development and dissemination of the specific ethnic nature of those populations and its transmission to future generations." 20/

The Draft Universal Declaration on Indigenous Rights prepared by the Working Group now establishes:

"9. The right to maintain and use their own languages, including for administrative, judicial and other relevant purposes.

10. The right to all forms of education, including in particular the right of children to have access to education in their own languages, and to establish, structure, conduct and control their own educational systems and institutions." 21/

One of the questions being debated currently among specialists is whether language rights should be considered human rights. Article 27 of the International Covenant on Civil and Political Rights establishes that persons belonging to ethnic, religious or linguistic minorities shall not be denied the right to use their own language. But aside from the fact that this Article is a very weak statement of cultural rights as applying to ethnic minorities, 22/ in fact the organizations of indigenous peoples around the world refuse to be categorized among "ethnic minorities" in general, which is one of the reasons why a specific declaration of indigenous rights is being prepared in the specialized United Nations bodies.

Language rights certainly seem to be a major issue among indigenous organizations at the present time. At the regional level, the periodic inter-American "indigenist" congresses, a meeting of Governments belonging to the Organization of American States, has reaffirmed for several years the linguistic rights of the indigenous populations of the American continent. UNESCO has also affirmed the importance of the use of vernacular languages as an integral part of the cultural policies of States, and particularly as regards education for minority groups. A number of countries have recently changed their traditional postures of discrimination against, and neglect of, indigenous and tribal minority languages, and have designed policies to protect and promote these languages.

The survival of indigenous and tribal languages is of course closely related to the educational and cultural policies of Governments. Article 27 of the International Covenant on Civil and Political Rights establishes the right of ethnic minorities to enjoy their own culture. Article 13 of the International Covenant on Economic, Social and Cultural Rights directs that "education shall be directed to the full development of the human personality and the sense of its dignity", and the States parties to the UNESCO Convention Against Discrimination in Education agree not to allow restrictions or preference in education based solely on the ground that pupils belong to a particular group. The domestic application of these universal standards is another matter. The Special Rapporteur writes that the right of indigenous populations to education has not been duly guaranteed and is not really observed, and that States frequently do not recognize traditional indigenous education based on autochthonous educational processes and often deliberately aim at doing away with it and replacing it by formal, alien and alienating educational processes. 23/

As a result, in numerous countries indigenous organizations and sometimes sympathetic Governments are experimenting with new linguistic and educational policies which take indigenous claims into account. A basic premise of these new schools is teaching the vernacular language, the mother tongue. In order

to achieve this, many unwritten indigenous languages have had to be turned into written tongues; alphabets have had to be prepared; educational materials in the vernacular tongues must be provided; teachers - often from the indigenous communities themselves - must be trained. This is a lengthy and complicated process, and amongst educators and governmental officials debates continue as to the relative merits of one or another kind of educational system. In countries where there exist myriad small indigenous linguistic groups, Governments argue that such educational innovations are costly and basically inefficient, and furthermore, they consider that fragmenting the educational system along linguistic lines is a threat to national unity. In these countries, if there exists a majority national language, government policy tends to favour the teaching of the national or official language. In other countries, where the indigenous communities are numerous, particularly if they have a certain amount of political clout, the education in indigenous languages tends to become accepted.

In fact, in most countries where indigenous language schooling is taking root, bilingual education tends to be norm. The indigenous language is taught together with the official or national language. Just what the pedagogical mix between the various languages is, depends on local conditions. Some authors consider the formal schooling in an indigenous language as merely a step towards the appropriation of the official or national language. Others consider it as an end in itself, which is what the indigenous peoples themselves claim. In most countries the teaching of indigenous languages is carried out only at the lower levels of elementary schooling and is not taken any further. In others it covers elementary and secondary levels, and higher technical schools also.

A more complicated educational problem is making bilingual schooling truly bi-cultural or inter-cultural. Just as school children in the urban industrial environment formally learn about their own "national" culture, so also children in indigenous schools must learn about their own cultures, aside from what they learn about the "total society". This poses a formidable task for educational planners, regarding curriculum development, preparation of textbooks, reading and audio-visual materials and so forth. Indigenous peoples have been claiming the right to establish and control their own educational institutions, which means exercising control over their own curriculum and educational contents. In some countries this is being achieved, and interesting educational experiments are taking place in many areas. In other countries, particularly in the poorer third world, this must be the Government's responsibility, and Governments, as has been pointed out above, are not always eager to undertake such innovations, particularly because they have been identified for so long with the assimilationist approaches.

Even if indigenous education is achieved in the terms set out above, another problem remains, that of indigenous cultures as a whole, as living totalities. Cultures are complex patterns of social relationships, material objects and spiritual values which give meaning and identity to community life and which are a resource for solving the problems of everyday life. Indigenous and tribal cultures have been particularly vulnerable to attack by the dominant society and Governments. Too many States ever since colonial times have adopted the stance that indigenous cultures must disappear and its members become acculturated into the dominant, so-called national culture. Discrimination and persecution of indigenous cultures span a wide variety of aspects, including:

Religion (prohibition to practise indigenous religion, forced conversion, taking of children from families and putting them into missionary schools);

The prohibition or discouragement of the use of traditional dress or names;

The violation of sacred and burial sites (indigenous peoples claim that numerous objects and artifacts in museums and private collections around the world have been vandalized, pillaged and stolen from sites and monuments which still have cultural and symbolic meaning for contemporary peoples. Litigation undertaken occasionally on behalf of the indigenous has sometimes led to the satisfaction of indigenous claims. Sacred sites are constantly being destroyed by land developers, government projects, military activity, grave-diggers or treasure hunters);

The exploitation of the artistic expressions of indigenous peoples (handicrafts, dances, ceremonies, music, etc.) for tourism, with complete disregard for authenticity and preservation, thus contributing to what many observers have termed the prostitution and degeneration of indigenous and tribal cultures. 24/

The Draft Universal Declaration on Indigenous Rights includes an article on "The right to manifest, teach, practise and observe their own religious traditions and ceremonies, and to maintain, protect and have access to sacred sites and burial grounds for these purposes," 25/ but it does not, at least in its present form, establish the duty of States and other actors to guarantee this right and to protect such sites for the indigenous.

Cultural policies designed to protect and strengthen today's indigenous cultures are being developed slowly by some States and international bodies. A beginning in this direction is the recognition that States in which indigenous and tribal peoples live are multi-ethnic and multi-cultural societies, a concept which many States still do not wish to admit. The Special Rapporteur says, in this respect:

"In multi-ethnic societies, action must always be based on criteria which, at least in principle, assert the equality of the cultural rights of the various ethnic groups. The State has the obvious obligation to formulate and implement a cultural policy which will, among other things, create the necessary conditions for the co-existence and harmonious development of the various ethnic groups living in its territory, either under pluralist provisions which guarantee that one group will not interfere with another, or under other programmes which guarantee equal and genuine opportunities for all." 26/

Thus the question arises whether there exists a human right to cultural identity. It seems that the international community is moving in this direction, though the concept itself is open to discussion. 27/ Certainly the indigenous peoples demand that such a right be recognized internationally and domestically.

In this respect, two basic issues arise which have not yet been solved. The first relates to the process of cultural change, adaptation and reinterpretation. Indigenous and tribal cultures are not static, and no protective cultural policy should be designed to keep them, as it were, as

living museums, an accusation which is often levelled at those who demand protection for indigenous cultures. The solution to this issue is that indigenous and tribal peoples simply be allowed to manage their own cultural affairs and develop their own cultural potential, with the support of, but not the interference by, the State. Why the support of the State? Because if left entirely on their own, these cultures would indeed tend to disappear as a result of ethnocidal processes which take place in society with or without State intervention. And to the extent that States usually take responsibility for the protection and/or development of "national" culture, indigenous cultures should likewise benefit from this protection on an equal, non-discriminatory basis.

The other basic issue regarding a possible human right to cultural identity is that certain traditions and customs in indigenous cultures are considered by outside (mainly Western) observers to be in violation of universal individual human rights (for example, the ritual sexual mutilation of children and adolescents, the formal and social inferiority of women). Which holds priority: the collective right to cultural identity or the universal individual human right to liberty and equality? The question has not yet been answered satisfactorily.

5. Indigenous law and social organizations. A principal factor which has enabled indigenous and tribal peoples to survive in the face of the persistent assaults against them by the dominant society, is their internal coherence, their social organization, as well as the maintenance of their own traditions, laws and customs, including local political authority. The distinct personality of indigenous peoples is not only a question of language or other cultural expressions, but the result of the permanent social reproduction of the group through the functioning of its own social, political and frequently religious institutions. Of course, there are exceptions, and in general terms indigenous and tribal peoples who lose their social institutions will also, in the long run tend to lose their ethnic identity. There may also be cases in which despite internal divisions and strife, or the breakdown of traditional institutions, a given group is able to conserve its identity. Generally, however, the preservation over time of ethnic and cultural identity is closely linked to the functioning of local social and political institutions.

Many Governments consider that the existence of such institutions distinct from the constitutional or legal mechanisms developed by the State, constitute a form of separatism, threat to national unity. Most national legal systems do not recognize indigenous law and political institutions. On the contrary, they may argue that if equality before the law, as established in all international human rights instruments, is to be a reality, then no particular ethnic group should have a right to its own legal and political institutions. Many observers, however, have pointed out that equality before the law is a pious fiction when indigenous and tribal peoples are concerned, and that one of the best instruments that these people have to defend their human rights is precisely the validity of their own institutions. The Rapporteur considers on this point: "Where traditional law continues to be observed by indigeneous populations, the question of legal systems arises. While some countries do not recognize the validity of indigenous laws and customs, in the face of the undeniable fact that such legal norms continue to exist, other countries have recognized their existence for some purposes. 28/

Indigenous peoples have demanded that their own customary legal and political institutions be recognized by the State. The Draft Universal Declaration of Indigenous Rights is clear on this point:

"21. The right to participate fully in the political, economic and social life of their State and to have their specific character duly reflected in the legal system and in political institutions, including proper regard to and recognition of indigenous laws and customs."

The non-recognition of customary indigenous law by established national legal systems may lead to serious violations of individual human rights. This has been documented, for example, in various Latin American countries. 29/ The Inter-American Indianist Congress held in 1985 recommended, among other issues, that the customary laws of the Indian peoples be recognized by the States. 30/

6. Self-government, autonomy and self-determination. The question of legal systems and customary law is directly related to tribal and community government, and to the political status of the indigenous peoples within the contemporary so-called nation-State. From time immemorial, indigenous and tribal peoples have been jealous of their sovereignty and independence. Most of them were incorporated against their will, through military and political pressure, into administrative systems not of their own choosing. They were reduced to "minority" status, whose lives and fortunes were determined and controlled by special ministries or departments, or by religious institutions. They lacked political rights and were excluded from political participation and representation. Many of them never knew what States they actually "belonged" to, till recent times. In some countries, during the European colonial expansion, treaties were signed between sovereign indigenous nations and the colonial power or the independent national successor Governments. Frequently, however, these treaties were violated and/or abrogated unilaterally by the State, with no regard to indigenous sovereignty and rights.

Aboriginal peoples in countries where treaties had been made in colonial and independent times have long claimed that because of such treaties they must be recognized as sovereign nations. The Governments involved have denied this claim, but have nevertheless attempted to provide satisfactory solutions to the indigenous demands. The International Indian Treaty Council, a non-government organization, has lobbied the United Nations for redress for several years. At its session in 1988, the Economic and Social Council, on the recommendation of the Commission on Human Rights, appointed a Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, with the mandate to prepare an outline on the possible purposes, scope and sources of a study on the potential utility of treaties, agreements and other constructive arrangements between indigenous populations and Governments for the purpose of ensuring the promotion and protection of the human rights and fundamental freedoms of indigenous populations. 31/

While de facto tribal and indigenous community governments exist in many countries, the formal and legal recognition of such institutions by Governments has been achieved only partially and unevenly. Some Governments recognize indigenous law and institutions when these do not conflict with

national laws, or else only when members of the indigenous or tribal community are involved. As soon as relations between indigenous and non-indigenous peoples occur, then the national law tends to predominate.

Indigenous organizations the world over are claiming the right to self-government and autonomy. Some countries have granted this. Self-determination has recently become a major political claim of indigenous peoples, especially in international bodies. They base their demands on the human right of self-determination of peoples as spelled out in article 1 of the two International Covenants. 32/ They claim that being the original "First Nations" of the territories which they inhabit, and having been submitted generally against their choosing to the suzerainty of other States and Governments, usually in the form of invasion, conquest and colonialism, they have the right to self-determination just as so many other peoples who have shaken off colonialism. Moreover, they demand the right to be considered "peoples", and not mere "populations" as has been the custom in international organizations. Likewise, they reject being considered as "ethnic minorities" and thus refuse to be dealt with according to article 27 of the ICCPR. These demands have been taken up by the specialized bodies of the United Nations which are currently dealing with the rights of indigenous peoples. Thus, both the new draft ILO Convention No. 107 and the Draft Universal Declaration on Indigenous Rights use the term peoples instead of populations.

7. Conclusions. The subordination of indigenous peoples to the nation State, their discrimination and marginalization, has historically, in most cases, been the result of colonization and colonialism. Within the framework of political independent countries, the situation of indigenous and tribal peoples may be described in terms of internal colonialism. The processes whereby indigenous and tribal peoples have been subjugated by today's dominant societies has occasionally been accompanied by genocide, not only in the nineteenth century during the heyday of colonial expansion, but also in some parts of the world during the present century and in contemporary times. Denunciations about the genocide of ethnic minorities in general and of indigenous and tribal peoples in particular have been brought to the attention of the international community regularly, but the latter has usually been unable or unwilling to do much about it. This has been one of the major failures of the United Nations system in recent years, despite the existence of the Convention on the Prevention and Punishment of the Crime of Genocide.

More commonly, indigenous and tribal peoples have been the victims of cultural genocide or ethnocide. "Ethnocide entails two principal aspects; one is economic and the other is cultural. Economic ethnocide is imbedded in the theory and practice of development. It means that all pre-modern forms of economic organization must necessarily disappear to make way for either private or multinational capitalism or State-planned socialism or mixes thereof. Cultural ethnocide (perhaps a tautology) means that all sub-national ethnic units must disappear to make way for the overarching nation State, the behemoth of our times. Development and nation-building have become the major economic and political ideologies of the last quarter century or more. Both of them, as traditionally expounded by statesmen and academics alike, have been ethnocidal in that they imply the destruction and/or disappearance of non-integrated, separate ethnic units. This is frequently carried out in the name of national unity and integration, progress and of course development." 33/

Governments have carried out different kinds of policies at various times vis-à-vis the indigenous and tribal peoples within their territories. Aside from extermination and genocide, which fortunately constitute exceptions at the present time, policies of segregation, assimilation, forced integration and amalgamation have been carried out more or less successfully. Such policies have provoked the increasing resistance of indigenous organizations in recent years, and some States have experimented with new kinds of policies, including pluralism, self-reliance, self-management, autonomy, local and regional self-government and ethnodevelopment. 34/ Ethnodevelopment, a recent concept, like the concept of self-reliant development which was put forward in the 1970s, "means finding in the group's own culture the resources and creative force necessary to confront the challenges of the modern, changing world. It does not mean autarchy or self-imposed isolation, and much less retreat into a museum of "tradition" ... (it) does not mean political secession or separatism from an existing State ... (it) does not mean breaking-up existing nations and subverting the process of nation-buildings (a major task of our time, particularly in the third world), but rather redefining the nature of nation-building and enriching the complex, multi-cultural fabric of many modern States, by recognizing the legitimate aspirations of the culturally distinct ethnies which make up the national whole. 35/

In 1977, the first international conference of non-governmental organizations on Indigenous Peoples of the Americas was held under United Nations auspices in Geneva. This was followed by another NGO Conference on Indigenous Peoples and the Land, in 1981. Since then, an increasing number of indigenous and tribal organizations have attended the sessions of the United Nations Working Group on Indigenous Populations and have submitted statements and documents which have been publicly discussed and many of which are being taken into account in the United Nations Draft Universal Declaration on Indigenous Rights. The first NGO Conference of 1977 produced a Declaration of Principles for the Defence of the Indigenous Nations and Peoples of the Western Hemisphere, which states, inter alia, that indigenous people shall be accorded recognition as nations, and proper subjects of international law, provided the people concerned desire to be recognized as a nation and meet the fundamental requirements of nationhood. 36/ Other declarations of indigenous rights have been proposed by other conferences and other non-governmental organizations. A general tendency to be observed is the claim of the right of self-determination of indigenous peoples. This claim will surely remain a key issue in the national and international debates on indigenous rights in the coming years.

The individual human rights spelled out in the Universal Declaration of Human Rights are considered to be "standards of achievement" and are now, 40 years after their proclamation, generally accepted as international customary law. Evidently, indigenous peoples are carriers of these rights. Likewise, they enjoy the human rights set forth in the two International Covenants. There is a growing consensus, however, that these international human rights instruments are not enough to guarantee the survival and protection of indigenous peoples around the world, particularly in the face of accelerated economic, social and cultural changes. Thus, the need for the definition of collective economic, social and cultural human rights is now recognized. Such collective rights are no substitute for the enjoyment of individual rights and do not supersede them. Nor do they necessarily stand in contradiction to individual rights. Rather, collective rights (such as the

right of peoples to self-determination) must be seen as a necessary condition for the full enjoyment of individual rights, and conversely, the rights of collectivities may be deemed human rights only when they in turn enhance the enjoyment of individual human rights, not when they crush them.

The progress of international standard-setting activities towards the comprehensive identification and definition of indigenous rights must be considered within this context. A Universal Declaration of Indigenous Rights will have moral and political force even if it is not yet a formal international legal instrument. It will, hopefully, become part of international customary law. Once adopted, States with indigenous populations will find it difficult to ignore it, and for the indigenous peoples themselves it may become an instrument for the defence and protection of their rights, just as the Universal Declaration of Human Rights has become a banner in the struggle for human rights everywhere.

A further step will be the drafting and adoption of a Covenant or Convention of Indigenous Rights which will, indeed, have the force of international law. The ILO Convention 107 is such an instrument, and the new revised Convention, when adopted and ratified, will be binding upon member States. The problem with covenants and conventions, from the perspective of indigenous peoples, is that they are treaties between States and that the indigenous peoples themselves are not legally a party to them. Their scope is therefore limited, but their strength will lie in the way in which they establish guidelines and structures on government policies regarding indigenous peoples, and enable the latter to use such instruments in negotiating with Governments the domestic arrangements which govern relations between indigenous peoples and States. Whatever their limitations, however, such treaties will provide a framework wherein indigenous peoples become subjects of international law.

Some international covenants establish special procedures for complaints, litigation and redress. Thus the ILO established a Special Committee as a forum for the presentation of complaints under Convention 107. The Optional Protocol of the International Covenant on Civil and Political Rights provides for the Human Rights Committee to which individuals may have access under certain conditions. The development of international standards concerning indigenous rights must include flexible and efficient procedures whereby indigenous peoples (as individuals as well as collectivities) may seek redress when their rights are being violated.

Regional instruments are also being developed. The Inter-American system established the Inter-American Court of Human Rights to which individual complaints can be referred by the Inter-American Commission of Human Rights. Indigenous peoples and their advocates have at times presented complaints to the Inter-American Commission. However, the Inter-American system has not yet developed a comprehensive set of standards for indigenous human rights. This subject is currently being considered by the Organization of American States as it studies the possibility of widening the scope of the American Convention of Human Rights (known as Pact of San José) to include economic, social and cultural rights. The ninth Inter-American Indianist Congress held in 1985 adopted a resolution calling upon the OAS to develop regional legal standards pertaining to indigenous rights.

Indigenous peoples are frequently involved in extensive labour migrations across international boundaries and they have also in recent years become refugees and victims of armed conflicts. A future United Nations convention on migrant workers - which is currently being discussed - could take into account the special needs and conditions of indigenous workers. Likewise, international treaties on refugees could be updated to include the particular problems of indigenous refugees.

Indigenous peoples the world over have been the historical victims of racism and racial discrimination. But whereas these concepts originally refer to unequal treatment based on the supposed biological characteristics of the populations involved, now a days it is common to find discrimination on the basis of ethnic and cultural factors. Cultural and ethnic racism are imbedded in the historical and structural relationships between indigenous peoples and States. International standard-setting activities are an essential feature of the struggle of indigenous peoples for the effective protection of their human rights within the structural changes which must necessarily occur if indigenous rights are to be meaningful.

Notes

1/ José R. Martínez Cobo, Study of the Problem of Discrimination against Indigenous Populations. (Volume V: Conclusions, Proposals and Recommendations). New York, United Nations, 1987, pp.1-2.

2/ Independent Commission on International Humanitarian Issues, Indigenous Peoples, a Global Quest for Justice. London, Zed Books, 1987, pp. 16,17, 18.

3/ International Labour Conference, 76th Session, 1989. Partial Revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107). Report IV (1), Geneva, International Labour Office, 1988.

4/ United Nations document E/CN.4/Sub.2/1988/25.

5/ International Labour Office, Indigenous Peoples. Geneva, 1963. p.23.

6/ José R. Martínez Cobo, op. cit., pp.28-29.

7/ Ana Margolis First, La problemática indígena en el mundo contemporáneo, unpublished report presented to the United Nations University, 1985.

8/ United Nations document E/CN.4/Sub.2/1988/25.

9/ International Labour Conference, 76th. Session, 1989. Partial Revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), Report IV (1), Geneva, International Labour Office, 1988.

10/ Independent Commission on International Humanitarian Issues, op. cit., p.23.

11/ United Nations document E/Cn.4/Sub.2/1988/25.

12/ International Labour Conference, 76th. Session, 1989, op. cit.

13/ International Commission on International Humanitarian Issues, op. cit., p.58.

14/ World Bank, Tribal Peoples and Economic Development. Washington, World Bank, 1982.

15/ David Treece, Bound in Misery and Iron. The Impact of the Grande Caraiás Programme on the Indians of Brazil. Survival International, 1988, p.30, considers that the World Bank's expression of concern over tribal areas, are "mere rhetoric, a cynical exercise in public relations intended as a cloak for the Bank's real policy ..."

16/ Cf. Anthony D. Smith, The Ethnic Revival in the Modern World, Cambridge, Cambridge University Press, 1981.

17/ See, for example Louis-Jean Calvet, La guerre des langues et les politiques linguistiques, Paris, Payot, 1987; and José M. Tortosa, Política lingüística y lenguas minoritarias. Madrid, Editorial Tecnos, 1982.

18/ José R. Martínez Cobo, op. cit., para. 121.

19/ Ibid., paras. 122-123.

20/ Ibid., paras. 122-123.

21/ United Nations document E/CN.4/Sub.2/1988/25.

22/ Cf. Rodolfo Stavenhagen, "Human rights and peoples' rights - the Question of Minorities", in Is Universality in Jeopardy? New York, United Nations, 1987 (Sales No. GV.E.86.0.3)

23/ José R. Martínez Cobo, op. cit., paras. 89, 90.

24/ See, for example, Cultural Survival Quarterly, Vol. 6, No. 3, Summer 1982.

25/ Op. cit., Article 8.

26/ José R. Martínez Cobo, op. cit., para. 134.

27/ Cf. the papers presented at an international meeting organized by the Dutch UNESCO Commission on "Human Rights - Cultural Rights" in June 1988.

28/ José R. Martínez Cobo, op. cit., para. 155.

29/ Cf. Rodolfo Stavenhagen, Derecho indígena y derechos humanos en América Latina. Mexico, El Colegio de México and Instituto Interamericano de Derechos Humanos, 1988.

30/ Resolution No. 20, reproduced in Ibid., p.113.

31/ United Nations document E/CN.4/Sub.2/1988/24/Add.1.

32/ Article 1 of the International Covenant on Economic, Social and Cultural Rights and of the International Covenant on Civil and Political Rights are identical: "All 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."

33/ Rodolfo Stavenhagen, "Ethnocide or Ethnodevelopment: The New Challenge", in Development. Journal of the Society for International Development. 1987:1, p.74.

34/ Cf. José R. Martínez Cobo, op. cit., para. 40.

35/ Rodolfo Stavenhagen, "Ethnocide or Ethnodevelopment: The New Challenge", loc. cit., p.78.

36/ Quoted in extenso in Roxanne Dunbar Ortiz, Indians of the Americas, Human Rights and Self-Determination. London, Zed Books, 1984.

Annex IV

STATEMENT

by Mrs. Erica-Irene A. Daes

Mr. Chairman,

At the outset, I would like to congratulate you on your election as Chairman of this Seminar. Your dedication to human rights, your experience as a distinguished magistrate constitute guarantees for the success of this Seminar. I would like also to congratulate the Rapporteur, the Chief of the Creees, Mr. T. Moses. His deep knowledge of the problems facing the indigenous peoples around the world, his objectivity and well-known integrity, constitute guarantees for the preparation of an important and comprehensive report, which will reflect an analysis of all the views expressed, proposals made, final conclusions and substantive recommendations.

Mr. Chairman,

May I now thank, most sincerely, the distinguished Under-Secretary-General, Mr. J. Martenson for his invitation to me to take part in this Seminar on: "The effects of Racism and Racial Discrimination on the Social and Economic Relations between Indigenous Peoples and States". Mr. Martenson had also referred to the constructive work of the Working Group on Indigenous Populations. I am grateful to him for these comments and for his support to the Working Group. The work of the Working Group is a collective work produced by all members of the Working Group, with the assistance of the Secretariat, based on the substantive contributions made by Indigenous Peoples and Governments.

I would like further to thank Mrs. Simon and Mrs. Dunbar-Ortiz for their kind words addressed to me.

Mr. Chairman,

May I congratulate the eminent authors of the three thought-provoking and very helpful background papers, Professors Muntarbhorn, Sanders and Stavenhagen, and to thank them for their excellent presentations. In studying the background papers I am impressed by the wealth of expertise and legal knowledge which has been gathered here at this Seminar to consider the above-mentioned complex subject, and I am sure that our deliberations will prove most fruitful.

I hope to have an opportunity to express some views and to make some favourable comments on each of one of the aforesaid comprehensive background papers.

Mr. Chairman,

Those of us who take part in this Seminar hope that it will constitute a turning point in the contemporary history of the Indigenous Peoples. Obviously, the ultimate value of this Seminar and its place in history will largely depend on the quality of the dialogue which will be undertaken and the weight of its conclusions and recommendations. Indeed, this Seminar, the

broad scope and the importance of which no one is entitled to question, will throw some light on the social and economic relations between Indigenous Peoples and States.

The adoption of specific conclusions and substantive recommendations will be of great assistance not only to the Indigenous Peoples and to the Governments concerned in preparing their new social and economic policies, but also to me in elaborating further and revising the principles contained in my Working Paper on the Draft Universal Declaration on Indigenous Rights.

It is, therefore, my sincere hope that the report which will emanate from this Seminar will indispensably include, besides the presentation and analysis of the main points and issues of the debates, conclusions and substantive recommendations, related in particular to the eradication of existing racism and racial discrimination against Indigenous Peoples and to the ways and means of realizing indigenous rights.

The theme of the Seminar is related, as I mentioned already, to one of the most complex and perennial subjects, "The effects of racism and racial discrimination on the social and economic relations between Indigenous Peoples and States". These effects are painful, innumerable, but not incurable in our time if there is political will.

I do not consider the present forum the most suitable to present a full picture of the discrimination and oppression suffered by the Indigenous Peoples. Nevertheless, I would like to underline that there are still many cases of massive discrimination against Indigenous Peoples.

Thus, we find de jure or de facto racial discrimination against Indigenous Peoples in almost every one of the social institutions of many countries in which Indigenous Peoples live.

Indigenous Peoples throughout the world face continued loss of their cultural identity, their land, and natural resources, as well as destruction of the environment, if the trends of today continue.

The information and data, which have been submitted orally and in writing to the Working Group, present an irrefutable pattern of the oppression and discrimination practised against millions of Indigenous Peoples.

The Indigenous Peoples were gathered together, with no regard to tribal boundaries, or traditional homelands. Now, in most of the countries in which they live, they are deprived of their culture, their cultural identity, their human rights and above all their freedom. Being Indigenous Peoples, because of racism and racial discrimination, unable to maintain their links with the land, and to fulfil their spiritual and ritual obligations to it, they become demoralized, detribalized and degraded.

Therefore, it is imperative now, at this time, that the Governments concerned should take every legislative, administrative and economic measure and every other affirmative action, based always on consultations with the Indigenous Peoples themselves, to eradicate any kind of racism and racial discrimination, in particular from the domain of education, culture, health, housing, legal status, employment and economic status in general.

The policies of unilateral assimilation or forced integration aimed at the total destruction of their culture. The culture and spiritual life of the Indigenous Peoples are bound with them; it is a part of their very being. If these are destroyed, so are they.

The strong paternalistic control, almost total economic dependence, social disintegration, through the gathering of groups arbitrarily into settlements, appalling health and housing conditions and the failure of the education system and employment policies have greatly contributed to the demoralization of Indigenous Peoples in many countries.

In connection with the concept of "culture" it should be noted that this concept should be widely interpreted to include religion and the social and economic structure. Culture is an expression of humanity. It is not a mere pleasure that is taken in being someone different. In this respect, I would like to be permitted to recall some words from a report submitted by Kevin Gilbert to the Department of Aboriginal Affairs, back in 1977. He wrote, *inter alia*: I quote "It is not so much my black Aboriginality that you deny me as my right to human growth and human potential. While you deny me this, you can build me all the houses and all the mansions in the world but my spirit will not inhabit any of them" End of quote. This is the thinking of thousands of Indigenous Peoples around the world, who struggle to save their cultural identity, while they are not opposing multiculturalism in the polygeneric nations or States in which they live. The principle of multiculturalism prevents discrimination in culture and opposes unilateral assimilation.

With regard to the concept of education, it should be noted that it is concerned with the process of learning. The teaching function is a society's intellectual lifeline. Schools remain the major device for constructing a long-term future of every nation. These are the reasons for which the Indigenous Peoples are demanding the creation of schools both at primary and secondary levels, schools in which their own language, their history, traditions, etc. will be taught to their children.

The survival of Indigenous Peoples will depend upon a fundamental change in government policies and practices.

Mr. Chairman,

The challenge to both Indigenous Peoples and Governments is to resolve conflicts in a peaceful manner and to find just solutions. Governments can greatly help to raise public awareness of Indigenous People's perspectives and situations; they can enhance the legal, political and social position of the Indigenous Peoples; they can invest in programmes of social and economic action to benefit Indigenous Peoples as well as curb private interests which seek to exploit indigenous labour, their land, national resources and their environment.

Indigenous Peoples should, at least, have a right to the human dignity of the recognition of the ancient sovereignty of their ancestors.

States should consider recognizing the right of the Indigenous Peoples to internal self-determination or the right to autonomy in matters relating to

their own internal and local affairs, including, as I already mentioned, education, information, culture, religion, economic activities, lands, natural resources administration, etc.

Mr. Chairman,

This Seminar should achieve a productive dialogue and promote co-operation; it should avoid a confrontation.

Mr. Chairman,

At the international level, I should like to underline the importance of a sincere and constructive co-operation between the United Nations, specialized agencies, in particular, ILO, UNESCO, Governments and Indigenous Peoples, in promoting indigenous rights and adopting relevant international standards.

The important role of the non-governmental organizations in the field of information, promotion of indigenous rights and protection of indigenous human rights should be underlined and should be redoubled.

Mr. Chairman,

As it was mentioned already, the standard-setting activities of the Working Group related to indigenous rights and the Sub-Commission are of the highest priority. As far as the Draft Universal Declaration on Indigenous Rights is concerned, I take this opportunity to reiterate that I will not spare labour or time in order to elaborate further the relevant principles of the Draft Declaration on the basis of the replies and the comments, which will be submitted by Governments, specialized agencies and the Indigenous Peoples.

I was satisfied to learn that one other wish, which I expressed during the Global Consultation concerning a United Nations special publication on Indigenous Peoples, will soon become a reality. We owe thanks to Mr. Martenson for his personal concern and his decision that this publication should be issued as soon as possible.

Mr. Chairman,

In my recent study, on the "Status of the Individual and Contemporary International Law", submitted to the Sub-Commission during its last session, I included an important substantive recommendation concerning the preparation of a study concerning the status of the Indigenous People in International Law. I hope the parent bodies of the Sub-Commission approve this recommendation, because this study will really contribute to the recognition of Indigenous Peoples as subjects of contemporary International Law.

Mr. Chairman,

These are some general remarks, including my ideas as to what the report of this Seminar should contain.

I do not like to take more of the valuable time of the participants of the Seminar. All the participants, and in particular the Indigenous Peoples, can speak freely for themselves.

Thank you