



Centre de Documentation, de Recherche et d'Information des Peuples Autochtones  
Indigenous Peoples' Center for Documentation, Research and Information  
Centro de Documentación, Investigación e Información de los Pueblos Indígenas

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### **Table of Contents**

- [Editorial](#)
  - [\*\*1999 Working Group on Indigenous Peoples\*\*](#)
    - [Study on treaties \(Item 8\)](#)
  - [\*\*1999 Sub-Commission on the Promotion and Protection of Human Rights\*\*](#)
    - [Resolutions and decisions concerning indigenous peoples](#)
  - [\*\*Self-determination and the survival of indigenous peoples\*\*](#)
    - [1999 Midnight Sun Workshop, Inari, Finland](#)
  - [\*\*Upcoming events\*\*](#)
    - [Calendar of UN meetings](#)
    - [Preparatory meeting to the Working Group on the Draft Declaration](#)
    - [UNESCO workshop](#)
    - [WHO consultation](#)
    - [Tourism](#)
- 

**EDITORIAL**

The present UPDATE is mainly thought to be an instrument to prepare the next session of the Working Group on the Draft Declaration, which will start on October 17th at the UN Geneva Office. We publish *in extenso* the paper presented by Dr. Ted Moses at the Midnight Sun Workshop on Self-Determination and Indigenous Peoples, which was organized last June in Finland by the Saami Council and Parliament. This paper illustrates best the crucial importance of the recognition of the indigenous peoples' right of self-determination, which guarantees *inter alia* their right to freely dispose of their natural wealth and resources. What is at stake is the very survival of indigenous peoples, which can by no means be secured unless their right to use their own means of subsistence is restored. If this paper might be considered as biased as far as it puts the emphasis on one dimension of the right of self-determination among many others and is therefore coloured by a given concrete reality, it nevertheless appears to be relevant to understand the situation endured by indigenous peoples worldwide and represents therefore a major contribution to the ongoing negotiations on the Draft Declaration.

In this context, we would like to mention also the statement made by the expert, Dr. David Weissbrodt, at the 55th Session of the newly renamed "Sub-Commission on the Promotion and Protection of Human Rights". He focused on three points: (1) the meaning of the concept of "indigenous self-determination" as set forth in Article 3 of the Draft Declaration, mentioning that indigenous peoples were not primarily seeking to secede and that therefore, "indigenous self-determination... should not be seen as a threat to either national interests nor international standards."; (2) the potential conceptual conflict that may arise between the principles of self-determination and of non-discrimination; (3) the balance to be established between collective and individual rights, noting thereby that "the emphasis on collective rights does not privilege collective rights over those of the individual, but rather extends those rights to communities as a whole".<sup>(1)</sup> As far as the issue of self-determination is concerned, we would like to reiterate the suggestions made by indigenous representatives at previous sessions of the Working Group to take duly into consideration the Explanatory note concerning the Draft Declaration (E/CN.4/Sub.2/1993/Add. 1-3). It has been elaborated by Dr. Erica-Irene Daes and represents a sound basis for further negotiations.



Finally, the findings of the Treaty Study bring legal evidence to support the claim of indigenous peoples who had entered into a treaty-making process with the colonizer to be recognized in their status as "peoples", with no prejudice to the indigenous peoples which have no such legal arrangements. According to the conclusions of the Study of Dr. Alfonso Martinez, the treaties signed between sovereign indigenous nations and the colonial powers are still legally binding today and cannot be modified unilaterally or by exercising pressure. And beside all the legal arguments that can be advanced, one should keep in mind that land dispossession and marginalization suffered by indigenous peoples worldwide because of the unequal relationships between indigenous and non-indigenous societies gave rise to a historical debt which basically appeals to the ethical dimension of politics, on which rests the credibility of a system supposed to regulate a unified world.

(1) Given the limited place available, it was not possible to publish this statement at length; it can be obtained at doCip on request.

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# Working Group on Indigenous Peoples

17<sup>th</sup> session, 26 - 30 July 1999

## Study on treaties (Item 8)

Presenting his final report, Special Rapporteur (SR) **Miguel Alfonso Martínez** pointed out that two documents were missing for technical reasons and would be included as annexes: these are comments from African organizations issued at a meeting held in Arusha last February and critical comments from Asian organizations. Referring to the dispossession of IPs by colonial powers, especially in Africa, **El-Hadji Guissé** expressed concern about the fact that these documents, as annexes, would not be integrated into the study itself. Reacting against comments made about the lack of contributions by Africans, he called on experts to visit this continent. Studies should not focus only on the Western world but must be international. Victims should be visited. Treaties should be examined both in Africa and Asia by experts who visit those places. Conflicts should be analyzed in depth in order to take preventive steps. He was critical of the SR's treatment of the Asian and African IPs and rejects their being defined "minorities". He reminded that "treaty status" is not a criterion for defining IPs.

**Bangladesh** sees the treaty study as covering all geographical regions and attempting to describe the overall process of domestication of indigenous issues in its various manifestations. **Denmark** strongly believes in IPs' self-identification and therefore does not share the views expressed in para. 83, 90 and 91 on an alleged exclusiveness of the term "indigenous". Reminded the SR of their not-reflected submission regarding the Home Rule Government of Greenland.

The positions expressed by 22 indigenous organizations on the Treaty Study can be divided into three broad regional categories: (1) North American and Pacific IPs, who fully endorse it (ATG, IOIRD, SLFN, PNN, TSNTC, HD, KLH), and Central and South American IPs, who endorse the conclusions and recommendations (DM, CTT); (2) European IPs, who qualified their position (SC, MTCP); and (3) Asian and African, IPs who disagree with the conclusions of the study (AIPP, TF, SGC, CC, CORE, ICITP, JOHAR, AITPN; RCN).

### Treaty study

#### Conclusions:

- Land rights are a central element of indigenous issues as land dispossession is a source of major conflicts;
- the reasoning on indigenous issues cannot be exclusively juridical. The ethical element must be taken into account: historical debt of land dispossession and marginalization due to unequal relationships between IPs and non-IPs;
- IPs are deprived of their right to self-determination which is supposedly opposed to

the territorial integrity of States, although it does not imply independence or secession. IPs should be able to attain a free expression of this right. Mechanisms should be found to solve conflicts peacefully;

- open conflicts or conflictive relationships are due to the fact that issues have been simmering without appropriate solution for a long period, sometimes even centuries;
- all the human rights recognized in international instruments are applicable to indigenous peoples and individuals. The focus on land ownership should go beyond the commercial aspect;
- agreements, treaties and conventions, and the process of negotiation inherent in treaty-making, are seen as a positive element to establish a new relationship. The process of negotiation is the most appropriate way to approach conflict resolution;
- existing State mechanisms, either administrative or judicial, are unable to satisfy IPs' aspirations and hopes for redress;
- there is a widespread desire on the indigenous side to establish a new relationship;
- treaties are still legally valid today. Those who assert that they are not should bear the burden of proof;
- the UN has a role to play in these issues.

### **Recommendations:**

- Establishment of a new, special jurisdiction within States with IPs to deal exclusively with indigenous issues, with four distinct specialized branches: (1) an advisory conflict-resolution body (advisory function); (2) a body to draft new bilateral, consensual, legal instruments, and new legislation and other proposals (legislative function); (3) a judicial collegiate body empowered to adjudicate cases that have not been resolved through the recommendations of the advisory body and capable of making its final decisions enforceable (jurisdictional function); (4) an administrative branch (administrative function);
- a strong political determination and the effective participation of IPs on an equal footing are essential;
- an international adjudication mechanism (for example, the proposed permanent forum for IPs) to handle claims or complaints from IPs when the domestic jurisdiction is exhausted, empowered to take charge of final decision;
- the more effective and developed the national mechanisms for conflict resolution on indigenous issues are, the less need there will be for establishing an international body;
- the convening of three workshops: on the establishment of an international conflict-resolution mechanism on indigenous issues; modalities for redressing the effects of land dispossession suffered by IPs; and the implementation/observance of indigenous treaty rights.

**ATG** support the **SR**'s conclusion that their treaties, which were signed as independent nations, are valid international legal norms, unlike the doctrine of discovery, conquest and settlement (also **IOIRD**, **SLFN**, **PNN**, **TSNTC**, **HD**). Also support the recommendation that the UN convene a special seminar to discuss the conclusions and recommendations contained in the treaty study (also **CTT**). In a joint statement, **IOIRD** read a resolution issued at a meeting held in Vancouver by the Assembly of First Nations and the National Congress of American Indians: to approve the UN treaty study; to call for a UN World Conference on

Treaties or a UN Committee of Expert Meeting, or in the alternative, to ask Canada to host one of the recommended workshops by the SR in Treaty Six Territory, to review the SR's final report and coordinate follow-up action arising from the review. Stated that treaties confirm their right to self-determination.

**PNN** questioned the SR's recommendation that treaty issues should be addressed within a domestic realm and are interested in the concept of an international conflict-resolution body (also **AN**). Informed that they are currently discussing Treaty Six and Canada's treaty obligations with the Federal Government of Canada and that they will not consider taking any disputes to any domestic court. **HD** find the SR's observations on how States dismantle and "domesticate" treaties important. Stated that the SR clearly established the need to deal with ethnocentrism, eurocentrism, Christian doctrine and academic theories that prevail in the Western hemisphere. Recommended that these issues be taken before the International Court of Justice. **SLFN** said that Canada has inherited the legal obligation to implement Treaty Nine and has no authority to change it without their consent. Canada is currently negotiating agreements to diminish and eventually extinguish their Treaty without proper consultation and informed consent of their IPs. This Treaty is sacred and cannot be broken.

**KLH** fully support the reference to the Apology Bill enacted by the U.S. Congress stating that "the case of Hawaii could be re-entered on the list of non-self governing territories of the United Nations". **NKIKLH** asked for the inclusion of General Assembly Resolution 1469 in the treaty study.

**TTEC** referred to the 1867 Treaty of Cession to which IPs were only a third party, thus legally not bound by it. Russia had no right to "sell" Alaska for the absolute title was recognized to be in the dominion of the IPs of Alaska, who were recognized as "independent tribes inhabiting an independent territory".

**SUFNP** discussed the development of the Draft Declaration as an international treaty. Said they could not support a Declaration which has no impact in law without first having their sovereignty recognized and respected. Stated that the Draft is vague, ambiguous, contradictory and inconsistent with a number of human rights instruments. **TSNTC** urged for the Draft Declaration to be passed.

**DM** highlighted the positive negotiations in Guatemala concerning the agreement on the identity and rights of IPs as part of the Peace Accords, which are considered "State agreements and commitments". Support the SR's assertion that agreements do not need to have legal status to be fully implemented and that political will is necessary. **CTT** pointed out that other treaties signed by the Mapuche could have been included in the report. The report should also have mentioned two institutional figures of the Mapuche: the Lonkos (political leaders) and the Toki (war leaders).

According to **SC**, the study is not universal as some regions, such as Africa and Asia, have not been given the attention they deserve (also **Asian IPs**, and **MTCP**, who mentioned Eastern Europe/former Soviet Union). Does not share the view that IPs from Africa and Asia should address other UN forums, such as the WG on Minorities (also **CC**, **JOHAR**, **RCN**). Support their right to self-identification, a criterion mentioned by Martínez Cobo in his accepted definition of IPs, ILO Convention 169 and the World Bank Operational Directive 4.20 (also **AITPN**). Do not see any difference between external and internal colonization (also **AITPN**). Support the approach of a definition within a national context and historical

framework, as an international definition would exclude some IPs. This position is supported by **TF**. Agree with the SR that the Saami Parliaments of Sweden and Norway have a role to play in the interpretation of the 1751 Lapp Codicil.

**CC** pointed out the contradictions contained in the report suggesting that the SR studied the Asian and African situation in a superficial way. Believe that the SR has not been in a position to examine "an extensive array of cases" in relation to the five "juridical situations" identified in para. 34. Urged that contributions be made to be incorporated into the report before it becomes an official UN document (also **CORE**). According to **AIPP**, the SR's erroneous conclusions weaken the study and go against the advancement of the universal rights of IPs. Referring to his second progress report (para. 100-105), they rejected the assumptions regarding the nature of indigenes which is linked to colonization (also **AITPN**). By implying that colonization only occurred where white people came 'across the water', the SR marginalizes the struggles of IPs in Africa, Asia and other areas (also **JOHAR**). Believe that the SR has gone beyond the scope of his mandate (also **TF**).

**TF** believe that the task of defining IPs in Asia, Africa and the Pacific should be a continuing and evolving process involving the IPs, the broader society, States and the international community to be discussed at the WGIP and future Permanent Forum. The fact that the term "indigenous" is deemed inappropriate in the Afro-Asian context (para. 91) is of great concern to them, as it implies the exclusion of many IPs (also **SGC**, **CC**, **ICITP**). Further stated that minority rights are individual rights and that minorities are not accorded the right to self-determination. Concluded that the Afro-Asian context should be further analyzed (also **CORE**, **ICITP**).

**CORE** consider that the re-opening of the issue of the definition limits the mandate of the study. The study does not clearly identify the process of re-colonization of IPs and nations by successors of European colonial governments in Asia and Africa, thus preventing the re-recognition of indigenous sovereign nations. Appropriate international conflict-resolution mechanisms must be established. Asked the SR to include the case-study on Manipur as a representative case from Asia and to omit the extensive discussion of the indigenous-minority dichotomy, as the situations in Asia and Africa have not been thoroughly examined.

**JOHAR** recalled that colonization in Asia dates back to 4000 to 5000 years, which accounts for the lack of treaty relationships and, like **AITPN**, stated that IPs cannot be assimilated to religious or linguistic minorities. See defining IPs based on European colonialism belying the history of previous occupation. Acknowledged that the situations in Asia and Africa are complex but not confusing.

**ICITP** referred to the indigenous identity of the Adivasis, citing the land criterion, a treaty under British rule and ILO Convention 107 (ratified by India), and archaeological sites as evidence of the existence of IPs in India. **SGC** referred to "friendship treaties" concluded between Okinawa, as an independent nation, and Western powers, such as the U.S, France and Holland. These treaties were ignored and confiscated by Japan in the process of colonization.

**AITPN** recalled that they submitted a report on the universality of IPs to the SR last year, which contains legal evidence about the IPs in the following Asian countries: Philippines, Malaysia, Japan, Nepal, India, and Bangladesh. Asked the SR to include their statement as an annex to the final report.



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## List of abbreviations

AIPP:	Asia Indigenous Peoples Pact
AITPN:	Asian Indigenous and Tribal Peoples Network
ATG:	Akaiitcho Territory Government (Canada)
CC:	Chakma Circle (Bangladesh)
CORE:	Centre for Organisation, Research and Education (India)
CTT:	Consejo de Todas las Tierras (Chile)
DM:	Defensoría Maya (Guatemala)
HD:	Haudenosaunee Delegation (Canada)
ICITP:	Indian Confederation of Indigenous and Tribal Peoples. Joint statement with Society for Threatened Peoples and Adivasi Co-ordination Germany.
IOIRD:	International Organization of Indigenous Resource Development. Joint statement with Four Cree Nations of Hobbema, PNN, Confederacy of Treaty Six Chiefs, Grand Council of the Crees, Treaty Four Secretariat (Canada); International Indian Treaty Council, Indigenous World Association; Movimiento de la Juventud Kuna (Panama).
JOHAR:	Jharkhandis Organisation for Human Rights (India)
KLH:	Ka Lahui Hawai'i
NKIKLH:	Na Koa Ikaika O Ka Lahui Hawai'i
PNN:	Paul Nakoda Nation (Canada)
RCN:	Rehoboth Community of Namibia
SC:	Saami Council (Nordic countries)
SGC:	Shimin Gaikou Centre (Japan)
SLFN:	Sachigo Lake First Nations (Canada)
SUFNP:	Sovereign Union of First Nations People (Australia)
TF:	Tebtebba Foundation (Philippines)
TSNTC:	Teton Sioux Nation Treaty Council (Canada)
TTEC:	Tunnak Traditional Elders Council (United States)

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## Sub-Commission on the Promotion and Protection of Human Rights

51<sup>st</sup> session, 2 - 27 August 1999

### Resolutions concerning indigenous peoples

**International Decade of the World's Indigenous People (Resolution 1999/19)**

The Sub-Commission: 1) Recommends that the celebration of the International Day be held on the fourth day of the 18<sup>th</sup> session of the WGIP; 2) Strongly recommends that the draft UN declaration on the rights of IPs be adopted as early as possible, and not later than the end of International Decade in 2004; 3) Welcomes CHR resolution 1999/52 in which the Commission decided to re-establish an open-ended inter-sessional ad hoc working group on the permanent forum (PF) for IPs; 4) Recommends that the PF be established as soon as possible in the course of the Decade with functions that do not duplicate those already conferred on the WGIP, financed through the regular budget of the UN and securing full participation of all interested IPs; 5) Endorses the view expressed by many IPs during the 17<sup>th</sup> session of the WGIP that the establishment of the PF should not be understood as a justification for the abolition of the WG, which should continue to carry out its ample and flexible mandate; 6) Thanks the government of Costa Rica for hosting the UN Workshop on Research and Higher Education institutions and IPs in June 1999, and encourages the HCHR to consider organizing a follow-up workshop to put into practice the recommendations arising from the Workshop; 7) Expresses its appreciation to the Saami Parliament and Council, the Abo Akademi-Institute for HR, and to the government of Finland for the excellent organization of the workshop on IPs and the right to self-determination held in Finland in June 1999; 8) Invites the HCHR to consider ways and means by which she might support the World Indigenous (WIN) Games; 9) Recommends that the HCHR organize meetings and other activities in Africa and Asia in order, i.a to raise public awareness about indigenous issues in those regions; 10) Also recommends that the HCHR organize a workshop on IPs, private sector natural resource, energy and mining companies and human rights in order to contribute to the ongoing work of the WG on the working methods and activities of transnational corporations; 11) Invites the CHR to consider organizing a world conference on indigenous issues in 2004 with a view to evaluating the Decade and considering future international policies and programmes to contribute to the reconciliation of governments and IPs.

### **Working Group on Indigenous Populations (Resolution 1999/20)**

The Sub-Commission: 1) Recommends that the WG at its 18<sup>th</sup> session adopt as the principal theme "**Indigenous children and youth**" and that the Office of the HCHR invite the UNICEF and the Committee on the Rights of the Child to provide relevant information and participate in the WG, and that the WG continue to address, on a yearly basis, the issue of IPs' right to their lands and their resources; 2) Requests the HCHR to organize meetings on indigenous issues in particular in Africa, Asia and Latin America, to provide a greater opportunity for participation of peoples from these regions and to raise public awareness about IPs; 3) Requests the HCHR to encourage studies with respect to the rights to food and adequate nutrition of IPs and IPs and poverty, stressing the linkage between their present general situation and their land rights, and to develop further cooperation with the FAO and the World Food Programme on indigenous issues; 4) Recommends that a working paper be prepared by the Chairperson-Rapporteur on IPs and racism and racial discrimination for consideration at the preparatory meeting for the World Conference against Racism; 5) Requests Mr Alfonso Martinez to submit to the WG at its 18<sup>th</sup> session the working paper on possible principles and guidelines for private sector energy and mining concerns that may affect indigenous lands (cf. Res. 1998/23); 6) Recommends the appointment by the CHR of a Special Rapporteur on indigenous issues to request and receive information relating to the recognition, promotion and protection of the human rights of IPs; 7) Requests the CHR to request the ECOSOC to authorize the WG to meet for **eight working days** prior to the 52<sup>nd</sup> session of the Sub-Commission.





### **Working paper on indigenous peoples and their relationship to land (Resolution 1999/21)**

The Sub-Commission: 1) Requests the Special Rapporteur to submit her final working paper on the basis of the comments and information received, and to submit it to the WGIP at its 18<sup>th</sup> session and to the Sub-Commission at its 52<sup>nd</sup> session.

### **Final report of the study on treaties, agreements and other constructive arrangements between States and indigenous populations (Resolution 1999/22)**

The Sub-Commission: 1) Takes note of the critical remarks and observations advanced by a number of participants in those debates on the Special Rapporteur's considerations, contained in paragraphs 67 to 92 of his final report, on the relevance of the concept of "indigenusness" in the particular context of present-day African, Asian and Pacific states; 2) Requests the Special Rapporteur to submit to the secretariat, not later than 15 November 1999, the correction and additions he may consider it necessary to make to his final report, including the addenda referred to in para. 130 of the report of the WGIP on its 17<sup>th</sup> session; 3) Also requests the Special Rapporteur to present formally to the CHR at its 56<sup>th</sup> session the revised version of his final report; 4) Requests the HCHR to organize, not later than June 2000, a **seminar on treaties, agreements and other legal instruments** between IPs and states to discuss possible follow-up to the study and explore ways and means to implement the recommendations included in his final report; 5) Requests the WGIP to remain seized of the important issue of indigenous treaties and agreements and the rights deriving therefrom during its annual sessions during the rest of the International Decade.

### **World Conference against Racism (Resolution 1999/6)**

The Sub-Commission suggests that the World Conference focus, *inter alia*, on means to be applied to protect the rights of indigenous peoples.

The Sub-Commission made a statement concerning the situation of human rights in Mexico, noting "persistent allegations of torture, extra-judicial executions and disappearances, as well as violations perpetrated against indigenous communities [...] Also notes the concluding observations of the Human Rights Committee of 27 July 1999 in which the Committee expressed concern at the increase in actions by the armed forces within society, particularly in the states of Chiapas, Guerrero and Oaxaca."

The draft resolution on the situation of human rights in Indonesia was withdrawn.

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## **Self-determination and the Survival of Indigenous Peoples: the Crucial Significance of this International Human Right**

*This paper was presented by Dr. Ted Moses, Ambassador of the Grand Council of the Crees (Eeyou Istchee), at the Midnight Sun Workshop on "The Right of Indigenous Peoples to Self-Determination", 17-20 June 1999, Inari Finland*

After frequently reading and hearing very well known words, we sometimes begin to lose sight of their meaning and significance. They become empty of content while remaining full of importance and renown. This, I think, has started to happen to the word "self-determination".

This evening I want to put the content back into the concept of self-determination. I want to explain that the very survival of the indigenous peoples depends directly on respect for the rights contained in that concept of self-determination.

The most familiar reference to the international right of self-determination is that found in the international Bill of Rights in common Article 1 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

It is there that the content of the right of self-determination is set out in its essentials; and for this reason I want to begin by reading common Article 1 of the International Covenants in its entirety:

#### **Article 1**

1. 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.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based on the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The State Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

The fact that Article 1 is reproduced in each of the two Covenants gives us a particular insight into the right of self-determination. Self-determination is a right, pertains not only to political status, but equally to economic, social and cultural development. As such, self-determination is a concept of sweeping scope that encompasses all aspects of human development and interaction, cultural, social, political and economic.

It is not simply a political right as it is most often characterized. And it is not exclusively an economic right. It is a complex of closely woven and inextricably related rights which are interdependent, where no one aspect is paramount over any other.

Article 1 does not establish or create the right of self-determination. It confirms that this right exists and that it is a right possessed by "peoples" or a "people".

"By virtue of that right", to use the words of the Covenants, certain freedoms flow. It is these freedoms which make up the content of the right of self-determination. We might think of

these freedoms as derivative rights which flow from the right of self-determination, and as such are part of the right of self-determination and may not be separated from it.

A caution is in order, however, because as indigenous peoples we are familiar with attempts to deny that certain rights belong to us, or pertain to us, and as such we must insist on the principle that all international human rights are indivisible and universal.

Discrimination based on race, colour, gender, belief systems, wealth, class, and so forth is a violation of international law. Nor may human rights be applied piecemeal, some rights or parts of rights to be respected, and others not. I will return to this point in a few moments, because this continues to be such a serious issue regarding the recognition of our rights within the United Nations itself.

The second paragraph of Article 1 has particular pertinence for indigenous peoples. It is an elaboration and explanation of the practical meaning of the freedoms arising out of the right of self-determination. It concerns the right to use and benefit from natural wealth and resources. And because this concept is so important and so elemental to the basic meaning of everything else contained in the Covenants, the principle is stated twice - once in the positive, and then again in the negative.

The principle is this: All peoples, as a result of their right of self-determination, have a right to benefit from their natural resources and the inherent wealth of their natural resources. In other words, all peoples have the right to use and enjoy the natural wealth of their lands and waters, and of their natural environment.

This is, as we know, the source of subsistence and life itself. But if any doubt remains as to the content of this right, it is put to rest by the final sentence in paragraph 2. "In no case may a people be deprived of its own means of subsistence."

For indigenous peoples, it is the essential content of self-determination: we may not be denied our *own* means of subsistence. The words "in no case.." imply that the prohibition is absolute. We may not be denied the wherewithal for life itself - food, shelter, clothing, land, water, and the freedom to pursue a way of life. There are no exceptions to this rule.

We have the right to benefit from the resources of the land as an expression of our right of self-determination. We may not be denied a means of subsistence, moreover, we may not be denied our *own* means of subsistence. We have the right to use our lands and waters to live by our own means as we always have, and by whatever means we may choose. Self-determination protects our right to subsist, and it protects as well our right to subsist in the way we as indigenous peoples see fit.

Those who know me, know that I have raised this issue over and over again, before the United Nations. For if we consider the history of the world's indigenous peoples during the last 500 years, if we consider the history of our people since our contact with Europeans, one terrible and tragic conclusion emerges as a central theme: the denial of our own means of subsistence by those who came to live in our land.

It is this violation of our right of self-determination that characterizes our recent history. Self-determination may make some people think of the right to vote, or the right to belong to political parties or even the right to independence. And those are all aspects of self-

determination. But when I think of self-determination, I think of hunting , fishing and trapping. I think of the land, of the water, the trees, and the animals. I think of the land we have lost. I think of all the land stolen from our people. I think of hunger and people destroying the land. I think of the dispossession of our peoples of their land.

Of course it is well understood these rights violations are now prohibited under international law. The third paragraph of Article 1 not only calls upon all States to respect the right of self-determination, but goes much further, and calls upon all States to "promote the realization of the right of self-determination".

Nevertheless, these rights abuses are not only historical, they continue. It is the function of international human rights law, however, to promote respect for human rights, and to prevent rights violations. Unfortunately, I would have to observe that with regard to the right of self-determination of indigenous peoples, there are many States that neither respect and certainly do not promote our right of self-determination.

In some parts of the world, in parts of Asia and Latin America, the dispossession of indigenous peoples is as rampant and brutal as it ever was. In other places, in Canada and United States of America for example, dispossession also continues, but disguised and hidden within the polite legal protocols of land claims policy, extinguishment or conversion of aboriginal title, and the happy rhetoric of "partnership", "self-government", and aboriginal peoples "gathering strength".

The end result is identical: we indigenous peoples are being denied our own means of subsistence. This is why we insist on the importance of the recognition and respect for our right of self-determination as peoples under international law.

The demand for the self-determination of indigenous peoples can not be abandoned or softened or modified, any more than we can afford to give up our right to our own means of subsistence or to the necessities of life itself. The right of self-determination contains the essentials for life - the resources of the earth and the freedoms to interact as societies and peoples.

It should be a simple matter given the language found in the international human rights instruments, to invoke principles of international law and to seek the assistance of the United Nations and other appropriate bodies to ensure that our right of self-determination is fully respected.

In this regard, as we all know, The United Nations Commission on Human Rights is currently considering the United Nations Declaration on the Rights of Indigenous Peoples that was drafted by the Working Group on Indigenous Populations under the Chairmanship of Professor Dr. Erica-Irene Daes, and approved by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. We are all, however, certainly aware that one of the main obstacles to the approval of the current draft is the objection by certain States to the language found in Article 3, which confirms that indigenous peoples have the right of self-determination.

The United Nations Declaration on the Rights of Indigenous Peoples does not create new rights for indigenous peoples, although some States that oppose the Declaration argue that it does. The Declaration is drafted to confront the issue of continued human rights abuses

against indigenous peoples, which was conclusively demonstrated through the research undertaken for the comprehensive Martinez-Cobo Report.

In response to the Martinez-Cobo Report, the Commission on Human Rights was asked to propose standards for the protection of the rights of indigenous peoples. Although existing human rights law certainly prohibits the abuses against indigenous peoples which have, and continue to take place, clearly, the existing instruments need to be bolstered and elaborated.

"All peoples have the right of self-determination". That clear statement should be sufficient. But certain States in their rapacity, their greed and hunger, their endless quest for further enrichment, and their continued belief in racial superiority, claim that the indigenous peoples are not "peoples" at all within the meaning of international law.

These States do not bring scientific or legal evidence to support this discriminatory denial of our status as peoples, knowing that there is no such evidence. Instead they claim that the recognition of the indigenous peoples' right of self-determination will lead to unilateral declarations of independence and violent action against the territorial integrity of existing States.

I referred a few moments ago to our insistence on the universality and indivisibility of human rights. And I return to that issue now. How is it possible for "all peoples" to have certain basic human rights and fundamental freedoms, but somehow for the indigenous peoples to be denied these rights? Canada has told the indigenous peoples that it would recognize the "internal" right of self-determination, but not the "external" right. Some States have argued for the recognition of the "cultural" rights of indigenous peoples, but not our "political" rights. Other States have argued that indigenous peoples might be permitted to control their own educational and health institutions, but not to control their own lands and resources.

The fact that this debate takes place within the United Nations itself, where the principles of universality and indivisibility of human rights law are thought to be a fundamental premise and grounding principle has drawn no reaction from the Secretary General or the High Commissioner for Human Rights. The idea that indigenous peoples' rights are somehow immune to those fundamental standards seems surprisingly acceptable to the official guardians of human rights, even in the United Nations.

So far, the specious debate about our rights, and the false and inflammatory claims put forward by States that oppose the recognition of our universal human rights has led to an impasse at the Commission on Human Rights, and little if any progress on the approval of the Declaration.

This impasse at the international level has its counterpart at the national level where we as indigenous peoples continue to be governed by laws and policies which fail to recognize our right of self-determination, and fail to incorporate existing international law protections into the municipal laws of the State.

Under this system, and as exemplified by Canada, it is the aboriginal peoples who must attempt to claim back from the State the lands we have lived on for thousands of years. And it is the State which determines the validity and extent of the claim and its final resolution. The baseline or starting point in this process is total dispossession. The onus is upon indigenous peoples to prove their indigenous ancestry, their original possession, and the

extent of the use of their lands and territories. It is the State that makes judgment, and it is the State that is the ultimate beneficiary.

Finally, in perhaps the most confounded and convoluted contradiction of all, the indigenous peoples must surrender to the State their aboriginal title in order to have title to their meager remainder confirmed through treaty by the State with some guarantee of "finality" and "certainty".

This is the process known as "surrender" and "extinguishment". It has been a mainstay of colonial relations with indigenous peoples in every country ever touched by Great Britain. It continues to be a fundamental and non-negotiable pre-condition for every land claims settlement with indigenous peoples in Canada. It is invoked exclusively against indigenous peoples, and has no other application in Canadian law.

Unfortunately, some indigenous peoples, confronted with development, encroachment on their territories, and exploitation of their resources, are forced to make settlements in order to save the little they have.

Just last week an elder, Lloyd Milton, a Gitenyow hereditary chief in northern British Columbia, told us:

"We have waited for over 25 years to reach a settlement with the governments of this territory where our people have lived for thousands of years. While Jesus Christ was walking in Jerusalem, we were fishing in the Nass River. But while we wait to have our rights recognized by the governments, they keep coming and taking our trees. Same with the fish; they keep taking them. Mining, same thing. They keep taking every thing with no benefit for us, no respect, no good faith."

Chief Milton has never been to the United Nations and has never heard of self-determination, but surely he was talking about the failure to respect his peoples' right of self-determination. He was telling us that Canada and British Columbia have failed to respect their right to their own means of subsistence.

It is with all this very much in mind that I participate in the sessions of the Commission on Human Rights open-ended working group on the Declaration on the Rights of Indigenous Peoples, and the Working Group on Indigenous Populations, and other United Nations meetings. It is with the hope and expectation that our rights as peoples will be fully recognized, that the international community will no longer continue to discriminate against the indigenous peoples in the application of what are purported to be universal standards.

In this regard there has been some very significant progress made in the last few months at the United Nations and I will conclude my remarks with these positive developments.

The Sub-Commission on Prevention of Discrimination and Protection of Minorities is as we all well know comprised of expert members. It was this Sub-Commission that approved the United Nations Declaration on the Rights of Indigenous Peoples. Although the members were subjected to considerable political pressure from Member States to do otherwise, they nevertheless approached the issue of human rights standards for indigenous peoples on the fundamental premise of the universality and indivisibility of human rights in general.

However, long before the Declaration was sent on to the Commission on Human Rights, I heard directly from the diplomatic representatives of certain States that the Declaration would not survive as it is now drafted once it reached the "political level" of the Commission.

That prediction or threat is now being proven true. While the expert members of the Sub-Commission reflected on the obligation to preserve in good faith the universal standards proclaimed in the Charter of the United Nations, the diplomats who receive instructions from their various governments simply act on those instructions. Since certain regimes consider it in their national interest to oppose the recognition of our rights at the United Nations, there is a considerable divergence of interests and responsibilities between the United Nations expert bodies and its political bodies.

One balance point, however, is to be found in the United Nations treaty oversight bodies such as the Committee on Economic, Social and Cultural Rights, and the Human Rights Committee. The members of these oversight bodies, although appointed by Member States, act in their juridical capacities, and focus on the issue of treaty compliance. Although it would be naive to believe that they do not come under political pressure, they have nevertheless achieved a considerable practical degree of autonomy within the United Nations system.

The signatory States of the human rights conventions are required to file periodic reports on the implementation of these conventions. These reports are reviewed by the oversight bodies which may pose questions to the signatory States. Eventually, these States have the opportunity to appear before the oversight bodies to respond to questions and to provide further explanation. The signatory States normally employ diplomats and experts to facilitate this dialogue on their implementation of the human rights conventions with their United Nations counterparts.

In recent years, a new ingredient has been added to this process with the opportunity for non-governmental organizations to informally submit comments on the reports filed by governments. As you might imagine, the government reports are very self-serving, to say the least; and in my experience, the governments have never vetted any of their reports which comment on the status of the rights of indigenous peoples with the indigenous peoples' organizations. One would suppose, to read the periodic reports of the Government of Canada to the two committees responsible for the implementation of the International Covenants, that the indigenous peoples in Canada are the happiest and luckiest peoples in the world!

The Grand Council of the Crees has attempted to introduce a measure of reality into this process of periodic review by preparing counter-reports to the government's reports, and by assembling well supported and easily verifiable evidence to support the information we bring to these United Nations committees.

The nature of the concerns we have raised before the Committee on Economic, Social and Cultural Rights and the Human Rights Committee all relate in some way to the right of self-determination. We have pointed out that the indigenous peoples have been dispossessed of their lands and resources and are therefore marginalized in Canadian society and forced into extreme poverty with all the related effects of people who live under those conditions.

We pointed out that Canada has for the past several years ranked higher than any other State on the UNDP's Human Development Index, and that the International Covenant on

Economic, Social and Cultural Rights requires States to implement the Covenant "to the maximum of the available resources".

We provided evidence that the Government of Canada which has exclusive responsibility for aboriginal (viz. indigenous) peoples in Canada under the Constitution, has separate and lower standards for the provision of health care, education, housing, municipal infrastructure, policing, and other services for aboriginal peoples.

We tabled statistics on mortality, suicide, employment, education, housing, and health which demonstrate that the economic and social marginalization of the indigenous peoples in Canada is serious and deadly.

We explained that the extinguishment and conversion of indigenous rights is still official government policy although it has been repeatedly condemned by the government's own Royal Commission on Aboriginal Peoples.

We provided hard evidence to support every aspect of the conditions we described. But in the end our evidence before both of these committees was this: that our right of self-determination as indigenous peoples is being violated.

As you are well aware, the Human Rights Committee has been called upon under the Optional Protocol to the Covenant on Civil and Political Rights to make decisions regarding the rights of indigenous peoples under Article 1 of the Covenant and has consistently avoided doing so. In fact, in its General Comment 23 (Fiftieth session 1994) on Article 27, the Committee declared that "Self-determination is not a right cognizable under the Optional Protocol". In the same General Comment, however, it did recognize that under Article 27, the right "to enjoy a particular culture may consist in a way of life which is closely associated with territory and use of its resources. That may particularly be true of members of indigenous communities constituting a minority".

This Comment brought support to the efforts of the Saami Parliament to obtain jurisdiction over land use, and was seen as an interpretation of Article 27 that was intended to temporarily delay the need to confront the issue of rights under Article 1 with regards to indigenous peoples.

On the 7th of April 1999, just over two months ago, the Human Rights Committee meeting at the United Nations Headquarters in New York in its Sixty-fifth session tabled its Concluding Observations after consideration of the periodic report submitted by the government of Canada under Article 40 of the Covenant.

I am going to quote two paragraphs of Section C. Principal Areas of Concern and Recommendations in their entirety:

7. The Committee, while taking note of the concept of self-determination as applied by Canada to the aboriginal peoples, regrets that no explanation was given by the delegation concerning the elements that make up this concept, and urges the State party to report adequately on implementation of article 1 of the Covenant in its next periodic report.
8. The Committee notes that, as the State party acknowledged, the situation of the aboriginal peoples remains "the most pressing human rights issue facing Canadians".





In this connection, the Committee is particularly concerned that the State party has not yet implemented the recommendations of the Royal Commission on Aboriginal Peoples (RCAP). With reference to the conclusion by RCAP that without a greater share of land and resources, institutions of aboriginal self-government will fail, the Committee emphasizes that the right to self-determination requires, *inter alia*, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence (art. 1, par. 2). The Committee recommends that decisive and urgent action be taken towards the full implementation of the RCAP recommendations on land and resource allocation. The Committee also recommends that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with article 1 of the Covenant.

I want to commend the Committee on behalf of the Grand Council of the Crees for its integrity, good faith and courage. This is indeed a breakthrough for the rights of indigenous peoples.

I suggest that everyone here read these Concluding Observations found in document CCPR/C/79/Add. 105 of 7 April 1999, and the Concluding Observations of the Committee on Economic, Social and Cultural Rights found in the document E/C.12/1/Add. 3 of 4 December 1998.

All objections to the inclusion of Article 3 in the United Nations Declaration on the Rights of Indigenous Peoples are now moot.

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## Upcoming Events

### Calendar of UN human rights meetings in Geneva

18 - 20 October	Inter-sessional meeting of the Advisory Group of the Voluntary Fund for Indigenous Peoples
18 - 29 October	5th inter-sessional Working Group on the Draft Declaration on the Rights of Indigenous Peoples
14 - 23 February	2nd Working Group on a Permanent Forum for Indigenous Peoples
20 March - 28 April	56th Commission on Human Rights
10 - 12 April	13th Board of Trustees of the UN Voluntary Fund for Indigenous Populations
13 - 14 April	5th Advisory Group of the UN Voluntary Fund for the International Decade of the World's Indigenous People



1 - 5 May

1st Preparatory Committee for the World Conference on Racism

## **Committees in Geneva**

Human Rights Committee	18 Oct.-15 Nov. 1999 (67th session): Cameroon, China, Morocco, Norway 13 - 31 March 2000 (68th session, in New York) : Congo, Guyana, Mongolia, Peru, UK (dependent territories), Venezuela
Committee against Torture	8 - 19 November 1999 (23rd session) : Finland, Peru
Committee on Economic, Social and Cultural Rights	15 Nov. - 3 Dec. 1999 (21st session) : Argentina, Cameroon, Mexico 24 April - 12 May 2000 (22nd session) : Egypt, Georgia, Jordan
Committee on the Rights of the Child	10 - 28 January 2000 (23rd session) : Costa Rica, India, Sierra Leone, South Africa
Committee on the Elimination of Racial Discrimination	6 - 24 March 2000 (56th session) : List of countries not yet available

## **Other events**

18 - 20 October	Seminar and workshop on the cultural challenges of the International Decade of the World's Indigenous People UNESCO Headquarters, Paris
1 - 2 November	Roundtable on Intellectual Property and Traditional Knowledge World Intellectual Property Organization, Geneva
23 - 26 November	International Consultation on the Health of Indigenous Peoples World Health Organization, Geneva

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## **Indigenous Peoples preparatory meeting**

**Before the Working Group on the Draft Declaration on Indigenous Peoples Rights  
World Council of Churches, 150 Route de Ferney, Geneva**

**Saturday and Sunday 16-17 October 1999, from 10.00 a.m. to 17.30 p.m.**

## **Draft Agenda**

Opening Thanksgiving

Consideration of the Agenda

Selection of Chairpersons

1. Strategies to deal with the working Group on the on the Draft Declaration

A. Presentation by Julian Burger, Secretary of the Working Group

B. Introduction of the new Chairman of the working Group (tentative)

C. ....

2. Other Business

A. Working Group on the Permanent Forum, February 2000

B. ....

C. ....



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## **Seminar and Workshop on Cultural Challenges of the World Decade for Indigenous Peoples**

**18-20 October 1999 at UNESCO Headquarters, Paris**

### **Provisional Agenda**

- 1. Presentation of the activities of UNESCO with regard to indigenous peoples**  
(working document 1)

Recommendations of recent international conferences (Stockholm on Cultural Policies, Paris on Higher Education, Hamburg on Adult Education, and Budapest on Science) and the intersection with the Plan of Action for the World Decade.

- 2. Cultural citizenship and indigenous populations**

In depth analysis of the indigenous vision regarding the following points:

- o Education and language
- o Cultural rights
- o The protection of the indigenous heritage and cultural creativity
- o The interaction of cultures through the media
- o Science, environment and indigenous knowledge
- o The role of the new information technologies

(discussion in small groups by theme or geographical region)

- 3. Observations and propositions**

- o How to improve the participation of indigenous peoples and how to take into consideration their needs and priorities with regard to UNESCO



- The insertion of UNESCO's activities with regard to indigenous peoples in the context of the UN system
- Proposals for future action

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## **International consultation on the health of indigenous peoples**

The World Health Organization (WHO) is currently strengthening its work in the area of indigenous peoples' health. As part of its activities in this regard, the Organization is convening an International Consultation on the Health of Indigenous Peoples which will be held in Geneva from **23-26 November 1999**.

The Consultation is being organized by the Department of Health in Sustainable Development (HSD), which has overall responsibility for this area of work within WHO. It will bring together representatives of UN agencies, responsible officers in WHO Regional Offices, intergovernmental agencies, Member States and representatives of the indigenous peoples organizations all over the world.

The aim of the International Consultation is to provide direction for the development of a plan of action for WHO to contribute towards addressing the health needs of indigenous peoples, during the International Decade of the World's Indigenous Peoples and beyond.

The objectives of the Consultation are:

- To provide input into the development of WHO policies and strategies that will facilitate the improvement of the health of indigenous peoples.
- To identify mechanisms to ensure the meaningful participation of indigenous peoples in the work of WHO at the international and country level.
- To identify ways in which WHO might work more effectively with other interested partners (international agencies, development institutions, the private sector, NGOs etc) to progress the health of indigenous peoples.
- To formulate recommendations to Member States to improve the health of indigenous peoples.

The Committee on Indigenous Health (COIH) of the caucus Working Group on Indigenous Peoples is the major partner of the International Consultation and will ensure that an indigenous peoples perspective informs the consultation process. This Consultation is limited to a group of experts.



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## **Tourism and the Convention on Biodiversity: A Call for Dialogue and Common Lobbying**

Following the successful workshop on tourism held during the Working Group on Indigenous Peoples (WGIP) 1998 organised by doCip, the Working Group on Tourism and Development (AKTE) and the Burma Peace Foundation together with the Working Group of Indigenous Minorities in Southern Africa (WIMSA), the Cordillera Peoples Alliance (CPA) and the Kuna in Panama, a short progress report and new information on ongoing activities in tourism were presented at the WGIP 1999. In their materials, AKTE and its German network partners point out that tourism will be one of the topics on the agenda of the forthcoming Conference of the Parties on the Convention of Biological Diversity (CBD) to be held in Nairobi in May 2000. The Convention on Biodiversity mainly relates to areas which are inhabited by indigenous peoples and which are more and more invaded by tourists. Therefore it is indigenous peoples and communities who are principally concerned, and must be the first to be consulted regarding the establishment of guidelines on tourism and the sustainable use of natural resources within the framework of the Convention on Biodiversity.

The ad-hoc Working Group on Tourism of the German Forum on Environment and Development provides valuable background information on these procedures and is encouraging indigenous peoples to get actively involved in preparing these guidelines on tourism in their respective regions. Moreover, the Working Group on Tourism of the Forum on Environment and Development has offered to facilitate networking so that the positions of indigenous peoples may be included in the process of elaborating guidelines on tourism for the Convention on Biodiversity. Since the German government has taken a leading role in establishing guidelines on tourism within the framework of the Convention on Biodiversity, the German NGOs involved in the Forum on Environment and Development consider it their principal task to align their lobbying with positions developed in cooperation with the most concerned indigenous peoples. They are therefore calling for a dialogue and active coordination of positions on tourism within the Convention on Biodiversity.

*For further information and work on CBD please contact:*

Ad-hoc Working Group "Tourism" of the German NGO Forum Environment and Development

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### **Errata**

- UPDATE 29 (May/June 1999) was a double issue: please read UPDATE 29/30.
- We apologize for omitting to mention the names of the following contributors to

UPDATE 29/30 (p.19): Gonzalo Oviedo from WWF-International and Wend Wendland from the World Intellectual Property Organization.

- Report by Ms Daes on IPs and their relationship to land (p.9): please read E/CN.4/Sub.2/1999/18.
- Clarification : UPDATE 28 (p.15): The organizations listed under "Central and South American IPs" did not speak on behalf of the "Coordination of IPs of Central and South America". They presented a joint statement signed by the following organizations: Saqb'ichil-Copmagua, Defensoría Maya, Consejo Tukum-Umam de Guatemala, ANIPA-México, CIDOB, FICI-Ecuador, Asociación Napguana, COICA, Taller de Historia Oral Andina.

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## Acknowledgments

### Contributors to this issue

Sophie Grobet, Marianne Wilhelm.

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