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Mme Chairman,

Over the past few days I was listening very carefully to the speakers who were analysing different developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations. This debate is of particular importance also for the standard-setting part of our terms of reference since it indicated the main problem areas to be covered by international standards evolving in this field.

Standard setting, particularly in an area as complex as ours, is not merely a technical legal exercise. It requires also a great deal of conceptual clarification and "confidence-building" necessary for the adoption, by the political bodies of the UN, of standards relating to this important area of human rights.

For these reasons I would like to take this opportunity to express some of my basic thoughts regarding those key concepts which seem to me as requiring both conceptual clarification and a wide recognition in the UN. The questions I wish to address are the following:

1. What has been the fate of group-rights in the context of the UN human rights activities so far? This question seems to be particularly important as we have to recognize that the group rights will inevitably have to be among the main questions in our present and future work. We have to proceed from the assumption that rights of individuals belonging to indigenous populations have already been recognized, that they have already been elaborated in a number of existing instruments, and that there are implementation mechanisms which could clearly be invoked in cases of violations of particular rights of individuals belonging to indigenous populations. In addition to the reaffirmatinn of the crucial individual rights our focus should be placed on the collective dimension of the human rights protection.

2. The second question which I would like to address relates to issues of autonomy which were mentioned very often in the deliberations of this working group.

3. The third question will be relating to the possible relevance of new concepts, such as the right to development, to indigenous populations. I was actively involved in the UN debates on the right to development and in the preparation of the declaration on this subject which was adopted on 4 December last year (res. GA 41/128).

Coming now to the first question - i.e. the question of the position of human groups in the realm of protection of human rights, I first have to make a slight historic digression regarding the fate of minorities, which were historically the first type of human groups entitled to human rights' protection. Yet in the history of the UN their treatment so far has not been entirely satisfactory.

The traditional doctrine of the international human rights law has been that the protection of the individual's human rights inevitably leads to an appropriate protection of groups - such as minorities. Therefore the Universal Declaration of Human Rights contains no provisions relating to rights of minorities. This was a considerable departure from the pre World War II situation characterized by a complex mechanism of minority rights protection. Yet the arguments of conceptual clarity of the post World War II system provide only a partial explanation for the temporary disappearance of minority rights. The other part of the explanation probably lies in the realm of politics: minorities could create problems and should therefore not be given much voice internationally.[x] In any case, instead of a minority rights provision in the Universal Declaration of Human Rights, the General Assembly adopted - on 10 December 1948 -a resolution entitled "Fate of Minorities" (res. 217(III)C) which essentially removed the issues of minorities from the normative area to the analytical field, and left it there for the next thirty years. Article 27 of the International Covenant on Civil and Political Rights (adopted in 1966) did not change the picture very much. It stipulates the rights of persons belonging to minorities rather than the rights of minorities as groups and recognizes that the content of these rights is only

[x] See: Inis Claude, National Minorities - an International problem, Harvard 1955, pp. 124 - 143

- that they will not be denied to enjoy their culture, to practise their religion or to use their language. Regional conventions on human rights adopted in the frameworks of the Council of Europe and the Organization of American States essentially followed the same approach. Bilateral treaties contain more specific provisions in favour of minorities but they are few in number and sometimes characterized by defficient application. The "individualistic approach" characterizes also the present discussions in the Commission on Human Rights on a draft declaration on the rights of persons belonging to minorities. The articles provisionally accepted so far show that there is a strong tendency to reduce the minority rights to the protection of the individual members of minorities. At present - as in the past - the arguments of conceptual clarity of the theory of individual rights have become convenient to those who fear that group rights might increase internal political instability and cause international tension. Hence the objections to references of minority rights as group rights.

The fate of the rights of peoples hardly shows a better picture than that of the rights of minorities. This hypothesis may look surprising in view of the overwhelming UN literature (studies, resolutions etc) on the subject. Yet it should be kept in mind that so far the debate (and action on) self-determination largely concentrated on the issues of decolonization and other political issues (notably those relating to foreign occupation). The fate of the territory was often more important than the fate of the peoples. The issues of self-determination have usually been raised in connexion with territorial changes and practically never in connexion with internal peaceful change. The provisions in the international legal instruments on the continuous and development-oriented nature of self-determination of peoples remain rather scarce. The practice of the Human Rights Committee shows that this UN body is, in fact, unable to comprehensively deal with the issue of self-determination either while considering the reports by states or within the procedures regarding individual complaints.

Among the rules relating to self-determination, the one which proved to have the most general recognition and practical confirmation is, that self-determination cannot be construed as authorizing or encouraging any action which would dismember or impair the territorial integrity and political unity of sovereign and independent states. The necessity to stress the importance of internal self-determination of peoples (without any attempt at impairing the territorial integrity or political independence of sovereign states) today seems to be greater than ever.

In short, the group aspect of the human rights of individuals and peoples calls for further debate and elaboration. Our working group can play an important role in this process.

What could be the elements of the future human rights protection of human groups, such as indigenous peoples? Permit me, Mme Chairman, to offer - by way of hypothesis rather than as a formal proposal - some ideas of my own. I shall proceed from the assumption that the rights of individuals - members of the group are fully recognized and that certain aspects of group rights such as the right to physical existence and prohibition of genocide represent a peremptory norm of general international law.

The group rights could be the following:

1. The right to maintain and develop group characteristics and identity;
2. The right to be protected against attempts to destroy the group identity - by different means, including propaganda directed against the group;
3. The right to equality with other groups as regards the respect for and development of their specific characteristics;
4. The duty of the territorial state to grant the groups - within the resources available - the necessary assistance for the maintenance of their identity and their development;
5. The right to have their specific character reflected in the legal system and in the political institutions of their country. This right should include cultural autonomy as well as administrative autonomy, wherever feasible.
6. Along with these general and common rights each category of groups and each group is entitled to more specific rights. Thus, for instance, the land rights of indigenous peoples constitute a specific category of rights necessary for the development of this category of groups.

It goes without saying that none of group rights could be construed in any way so as to justify any violation of any of the generally recognized rights of individuals. Any member of the group should be free to leave the group. No specific custom or other rule applicable within the group should impair the universally recognized human rights of individuals - members or non-members of the group.

Furthermore, none of the developments within the group and among the groups should be exercised in a way so as to impair the territorial integrity of those sovereign states which are conducting themselves in compliance with the principles of international law concerning friendly relations and cooperation among states in accordance with the Charter of the UN(as defined in the UN GA res. 2625(XXV).

It is in the nature of the groups :
that their aspirations tend to some kind of autonomy and

often to (territory-based) administrative autonomy of the region where the group lives. The issue of their autonomy is often raised in situations characterized by political conflicts. More often than not such claims are rejected on grounds that they represent secessionist tendencies in disguise. Yet such rejections are not always convincing and it is doubtful whether, in fact, they contribute either to the strengthening of the integrity of a given state or to the full realization of human rights of its citizens.

In general it might be assumed that cultural or administrative autonomy could be seen as a basic tool for the development of these groups, for the harmonization of intergroup relationships and thus as a beneficial means for the realization of the human rights of individuals which constitute these groups and for the stability of the state concerned. The experience of multi ethnic states with a federal structure seems to confirm this assumption. There are obviously problems in these states as well, but probably such problems are less fatal than they would be if such states did not have a federal structure. Moreover, it seems that the solution to such problems in federal states lies in further development of their respective federal structures rather than in their replacement by a unitary structure.

The question which has to be raised now is whether the concept of autonomy of groups including indigenous peoples, is compatible with the existing norms of international law and whether it should be encouraged de lege ferenda.

In this connexion I would like to make again a slight historic digression. Many jurists, particularly the strict positivists, would probably say that autonomy has nothing to do with human rights and that it is up to States and their discretion to organize their domestic legal order in the way they deem appropriate. Yet it should be recalled that the issue of autonomy of local communities has a very long tradition - in European legal histoty at least - and that it has always been closely related to the human groups (i.e. communities) entitled to autonomous status.

in times of French revolution

Thus, for instance, the French National Assembly adopted on 14 December 1789 a law providing for the municipal autonomy which recognized two types of functions of municipalities: "des unes propres au pouvoir municipal, les autres propres à l'administration générale de l'Etat et déléguéespar elle aux municipalités".

Thus, in times of the adoption of the historically important human rights documents (Déclaration des droits de l'homme et du citoyen was adopted on 26 August of the same year 1789), the issue of local autonomy enjoyed a significant degree of general recognition. Since then it has been an important aspect of constitutions of many European states. Notwithstanding the positivistic interpretations that such constitutional provisions express only the will of states, it should be remembered that these provisions owe their existence to the fact that groups of human beings often require a certain status to carry out their basic rights.

Let us now look at the same problem from a modern perspective - i.e. from the perspective of the International Convention on Elimination of All Forms of Racial Discrimination which has been ratified by some 130 states and the content of which represents an important part of contemporary human rights law.

Articles 1(para. 4) and 2(para. 2) of the International Convention on the Elimination of All Forms of Racial Discrimination provide an appropriate framework for the concept od autonomy outlined earlier.

The mentioned provisions envisage a possibility that a state takes special measures in the social, economic, cultural and other fields to ensure adequate development and protection of certain racial groups or individuals belonging to them. These provisions impose no duty upon states - they rather provide for

the possibility of a special regime for the groups concerned. Such special regime could also be of relatively long duration - until its objectives (i.e. full and equal enjoyment of human rights) are achieved. This would mean that arrangements for the autonomy for groups
are - as a minimum - consistent with the requirements of the Convention on Prevention of All Forms of Racial Discrimination - and thus with the international law in general.

The interpretation of the mentioned provisions of the Convention on Elimination of All Forms of Racial Discrimination should evolve so as to encourage states to take measures necessary for the establishment of a special regime (including autonomy) as a matter of duty rather than as a matter of mere convenience. In this context the idea and the Declaration on the Right to Development could be useful. According to the Declaration (Art. 1, para. 1) the right to development is an inalienable human right by virtue of which every human person and all peoples

are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized. According to Article 3(para 1) of the Declaration, states have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development. In other words, states should adopt special measures in favour of groups in order to create conditions favourable for their development. If a group claims that the realization of its right to development requires a certain type of autonomy, suchaclaim should be considered legitimate. It is clear, however, that the realization of the right to development requires full respect for the principles of international law concerning friendly relations and cooperation among states in accordance with the Charter of the UN (Art. 3, para. 2 of the Declaration on the Right to Development).

The usefulness of the idea of the right to development in the context of the rights of such groups as minorities and peoples is in that it places the accent of their claim on development rather than on political status as such: autonomy is not an end in itself or a first step to political independence but

rather an instrument necessary for their develop ent and the development of their members, as well as the state as a whole. Such development-oriented interpretation of rights of groups could be helpful in the present efforts for the further elaboration of international standards relating to these groups.

As shown by the example of autonomy the concept of the right to development could be useful in the elaboration of "indigenous rights". There may be other areas in which the Declaration on the Right to Development, adopted recently by the UN General Assembly, might be useful. In this connexion I wish to mention one of the conclusions of the Independent Commission on International Humanitarian Issues. On page 124 of its report "Indigenous Peoples - a Global Quest for Justice" we read:

"...at the conceptual level, the Working Group should help clarify specific details relevant to the indigenous in the application of the 'right to development' as elaborated in the specific General Assembly resolution. We believe that, in the case of the indigenous, the 'right to development' has a special historical and substantive significance."

In conclusion, Mme Chairman, I wish to emphasize once again that the tasks ahead are complex, yet manageable. We have to be aware both of their magnitude and their importance. Some of the questions which we have to discuss will require an in-depth discussion and a process of maturation.

We must also be aware that "our part" of international standard setting could lead to a declaration which will contain relatively general principles. Some of the specific rules could be elaborated in other contexts - for instance in the context of the revision of the ILO Convention No. 107 or within the national legal systems.

All these aspects should be seen as constituting a logical whole as parts of a global and overall process of recognition and elaboration of indigenous rights in a global quest for justice.