INDIGENOUS RIGHTS BETWEEN THE TWO DECADES

A Working Paper

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INTRODUCTION

In December 2004, the United Nations General Assembly decreed a second International Decade of the World's Indigenous People (2005 – 2015), to continue efforts in reinforcing international cooperation and resolving problems specifically affecting indigenous communities, in particular, violations of human rights. While the first International Decade of the World's Indigenous People (1994-2004) led to significant progress, for example, creation of the Permanent Forum on Indigenous Issues at the UN, much remains to be done to more effectively promote and protect their fundamental rights and freedoms.

This paper examines the past Decade in light of the tasks that lie ahead. The three essays that follow help us understand some of the key issues underpinning the second Decade. In the first text, Kenneth Deer, long-term co-chair of the Indigenous Caucus at the UN, explains the context in which the first Decade began and the hopes it raised for indigenous peoples throughout the world. In the second, Warren Allmand, former Solicitor General, Minister of Indian Affairs and past President of Rights & Democracy, retraces the history of the recognition and participation of indigenous peoples within the United Nations system. He also reviews the main accomplishments of that Decade.

We decided not to limit our analysis to the United Nations, but to widen our discussion to include the Inter-American system. We can see that in this system as well there has been both progress and disappointment with respect to the rights of indigenous peoples. We therefore asked Isabel Madariaga Cuneo, lawyer at the Inter-American Human Rights Commission, to contribute a third text in which she describes the situation of indigenous peoples within the Inter-American human-rights system. Canada is a member of the Organization of American States (OAS) and in some respects, the work of this organization is closely linked to

that of the UN (for example, the adoption of the Declaration on the Rights of Indigenous Peoples).

To conclude, in this paper, Rights & Democracy presents its concerns and its questions and proposes avenues for work in the new Decade. What approaches should be used to ensure a greater response to the problems and aspirations that specifically affect indigenous peoples? What are the main issues and challenges to be met? How should Canada respond to these challenges? These are some of the questions that we seek to answer.

Rights & Democracy has been supporting the defence of indigenous peoples' rights at the international level for over ten years. This document provides an opportunity for us to measure the progress made and, with all of the interested stakeholders, to begin working out a strategy to respond to these challenges.

THE FIRST DECADE: A PROPHECY AND A STORM

Kenneth Deer

> *Racism has historically been a banner to justify the enterprises of expansion, conquest, colonization and domination and has walked hand in hand with intolerance, injustice and violence.*
>
> Rigoberta Menchú Tum, Guatemalan Indigenous leader and Nobel Peace Prize laureate, from *The Problem of Racism on the Threshold of the 21st Century.*

Indigenous Peoples had high hopes for the United Nations Decade of the Worlds' Indigenous People (1994-2004). They wanted the decade to be the beginning of a process in which their plight would receive worldwide attention and possibly bring some relief from their suffering.

We were disappointed that we could not get 1992 declared as the Year of Indigenous Peoples. We felt, at least those of us who are from the Americas, that the 500th anniversary of Columbus's "discovery" of the Americas was the appropriate year to commemorate Indigenous Peoples. After all, that was the beginning of the end for so many Indigenous Peoples and cultures. The onslaught that came after 1492 is well documented and the devastation of the peoples of the Americas is beyond question. We did not understand why 1992 could not be declared our year. However, we were reminded that the United Nations was a private club of governments, and that the government of Spain had big plans to celebrate the "discovery" by Columbus. Spain did not want anything to detract from their hero, so the request by Indigenous Peoples to have the UN dedicate

1992 to us was denied. The denial of 1992 as our year embarrassed some governments and, as a consolation prize, the next year, 1993, was designated the International Year of the World's Indigenous People.

That year was an important building block in the recognition of the plight of Indigenous Peoples. The international year helped give legitimacy to the international Indigenous movement, and was an indication of the growing sophistication of its lobbying efforts.

On the opening day of the Year, December 10, 1992, Human Rights Day, Indigenous representatives were invited to address the UN General Assembly in New York. However, since Indigenous Peoples were still not members of the UN, our leaders could not speak in a formal General Assembly, as it was against the rules.

Slighted again by the UN, the Indigenous spokespersons had to suffer the humiliation of having the formal session closed and an informal session opened. Some government delegations left the room, perhaps because they were not informed or for other reasons, before the Indigenous representatives from around the world, some who felt this was the speech of a lifetime, could deliver their address.

The speeches they gave were strong and statesmanlike, explaining their history, culture and pride, and at the same time describing their dispossession, their poverty, and their despair.

While the speeches were being given, a great storm, like some divine symbol, swirled around New York City and the United Nations building. High winds ripped through the streets and avenues, and a torrential rain poured down. The Hudson and the East rivers rose so high that parked cars floated away. Trees fell and power began to fail. Walking down the street was very dangerous, as umbrellas were flying down the streets like arrows.

Thomas Banyaca, a noted Hopi elder, addressing the UN at that time, said that there were troubled times ahead but the UN would be asking the Indigenous Peoples to return. He did not know when, but the number four was significant: four days, four weeks, four months, four years, four… Or could it be: 1994, 2004, 20??

Thomas Banyaca has since moved on to the Spirit World and we cannot ask him what else he saw, but the significance of his speech and the tumult outside that day still capture the imagination and give rise to the question: where are the Indigenous Peoples of the world headed in the

UN system?

The year's goals were all too vague and general. They basically asked governments to compile reports on the situation of Indigenous Peoples in their countries, evaluate the results and, supposedly, try to improve their living conditions.

The most important development was the approval of the Draft Declaration of the Rights of Indigenous Peoples by the Working Group on Indigenous Populations. In particular, the Working Group's insertion of Article 3, recognizing that Indigenous Peoples have a right to self-determination, is more important to Indigenous Peoples than all the other activities combined that were carried out during the year.

One of 1993's highlights was the appointment of Nobel Laureate Rigoberta Menchú Tum as Ambassador for the International Year of the World's Indigenous People. Menchú received the Nobel Peace Prize in 1992 for her fight for the Mayan People in Guatemala, the first Indigenous person ever to receive the prize. It was an exciting development that managed to offset the celebration of Columbus and reminded the world of the tragic consequences of European dominance over large sectors of the Indigenous Peoples in the Americas.

Her instant international celebrity sent shock waves throughout the Indigenous world and uplifted the spirits of many Indigenous Peoples who were mired in poverty and powerlessness. Her appointment as ambassador transferred some of that excitement to the Year.

The international attention focused on Indigenous Peoples, however brief, built a momentum. As the International Year did not meet the expectations of Indigenous Peoples, energy was redirected to the next step: The International Decade of the World's Indigenous People, 1994-2004.

The decade held great promise. Its theme "Indigenous people: partnership in action," was a safe, non-political slogan that threatened no one and had an air of equality to it. However, the title itself displayed anything but equality.

"The International Decade of the World's Indigenous People" was a continuation of the lack of respect of Indigenous Peoples as well as understanding about who they really are.

Using the word "people" instead of "peoples" is an insult to Indigenous Peoples that continues every time the decade title is written and read. Indigenous Peoples are not one people. The Maori are not the same people

as the Inuit who are not the same people as the Maya who are not the same people as the Aborigines who are not the same people as the Sami.

The notion of one Indigenous People is politically and anthropologically wrong. It is nonsense, yet hostile governments in the United Nations insist that Indigenous Peoples be referred to in the singular. Where is the new partnership?

The notion that Indigenous Peoples are not peoples is the basis of the dispossession and marginalization of over 300 million people in the world. The purpose of the decade was to bring attention to this fact, but the very title of the decade simply exacerbates the situation.

Every day we are insulted by terminology that describes us as populations, groups, communities or bands. Our dignity, our pride and our very existence are challenged each time we are denied our right to be peoples.

Even at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, hostile governments refused to allow the term "peoples" to be used when describing Indigenous Peoples, to the extent that an early draft of the article that dealt with Indigenous Peoples was in itself racist. It took much lobbying and many behind-the-scenes meetings before the article was deemed not to be racist. However, we felt that it still discriminated against Indigenous Peoples.

It was not until the World Summit on Sustainable Development (WSSD) in 2002 that the term "Indigenous Peoples" was allowed to be used without qualification. The United States wanted to object to the wording but was not able to raise its concerns before the gavel sounded to approve the article. The insertion of the term "Indigenous Peoples" in the political declaration of the WSSD was a matter of lobbying, luck and timing, not a change of heart by certain governments.

Much was accomplished during the decade, such as the establishment of the Permanent Forum on Indigenous Issues (again, the avoidance of the term Peoples), the establishment of a Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, and other significant activities.

However, the major failure of the decade was the incapacity of the United Nations to adopt the Declaration on the Rights of Indigenous Peoples. It should not come as any surprise that the main stumbling block in this was the right to self-determination of Indigenous Peoples, our right to land and natural resources, and our collective rights. All other articles

were secondary to these rights. All other rights flow from these fundamental rights.

If anything is to be accomplished, let it be the unconditional recognition of Indigenous Peoples as peoples, to the fullest extent of human rights standards. This would indeed be an accomplishment worthy of the United Nations. Anything less would be racism against the world's Indigenous Peoples.

THE FIRST DECADE: WHAT HAS BEEN GAINED AT THE INTERNATIONAL LEVEL?

Warren Allmand

Historical Background

While certain indigenous representatives pursued their grievances in European capitals as early as the eighteenth century, the first formal approach by indigenous peoples to have their collective rights recognized by the international community was in 1923, when Cayuga Chief Deskaheh went to the League of Nations as the representative of the Six Nations of the Iroquois in Ontario. He spent a year in Geneva working to have his cause considered, but in the end, the League denied him access.

That attempt was followed in 1924 and 1925 by T.W. Ratana, a Maori leader from New Zealand, who traveled to London and Geneva to protest the breaking of the 1840 *Treaty of Waitangi*, which guaranteed the Maori ownership of their lands. Like Chief Deskaheh, he too was denied access.

These and other approaches to international bodies by indigenous peoples were made because they were denied justice at home and their only hope was to appeal to international bodies, which they believed stood for fair treatment and human rights.

While the creation of the United Nations in 1945 following World War II seemed to offer more hope, the doors of the UN were virtually closed to indigenous peoples until the 1970s.

Finally in 1971, the United Nations Commission on Human Rights (UNCHR) Sub-Commission on the Prevention of Discrimination and Protection of Minorities made a significant decision to appoint a Special Rapporteur to conduct a comprehensive study of the human rights situation of the world's indigenous peoples. The mandate was assigned to Jose Martinez Cobo, one of the twenty six experts with the Sub-Commission. Cobo worked for ten years, filing interim reports in the years following 1971, and a five-volume final report between 1981 and 1984. The reports made a strong appeal for action on indigenous rights and this process began to open the doors of the UN to indigenous peoples.

In the 1980s and 90s, subsequent to Cobo's reports, the following initiatives took place, all of which advanced recognition of the rights of indigenous peoples:

1982: The Working Group on Indigenous Populations (WGIP) was established by the UNCHR Sub-Commission on the Promotion and Protection of Human Rights.

1989: *ILO Convention 169* was adopted by the International Labour Organization and is a revision of the ILO's earlier *Convention 107*, from 1957.

1992: The Nobel Peace Prize was awarded to Rigoberta Menchú Tum, an indigenous Mayan woman from Guatemala who led the struggle for indigenous rights in that country.

1993: The Vienna Declaration and Programme of Action adopted by the UN World Conference on Human Rights repeated and re-emphasized that all peoples have the right to self-determination, and, in Article 20, urged action on the rights of indigenous people.

1993: The International Year of the World's Indigenous People was proposed by the WGIP in 1987, approved in 1990 by the UN General Assembly and proclaimed in 1993, with the theme "Indigenous People: Partnership in Action".

1994: The Draft Declaration on the Rights of Indigenous Peoples (DDIP) was completed by the WGIP on August 26, 1994 and submitted to the Sub-Commission. The Sub-Commission in turn adopted the text and submitted it to the UNCHR.

1994: The International Decade of the World's Indigenous People. Recommended in the 1993 Vienna Declaration and proclaimed by the UN General Assembly on December 21, 1993, beginning on December 10, 1994 and ending in December 2004.

1995: The open-ended Inter-Sessional Working Group on the Draft Declaration (WGDD) was established in 1995. The purpose of the WGDD was to develop a Draft Declaration on the Rights of Indigenous Peoples, considering the August 26, 1994 draft prepared by the WGIP.

The International Decade of the World's Indigenous People

As previously stated, in late 1993, following a recommendation by the Vienna World Conference on Human Rights, the General Assembly proclaimed the International Decade of the World's Indigenous People (1994–2004). Later, the General Assembly decided that the theme of the Decade would be "Indigenous People: Partnership in Action." The goal of the Decade was to foster international cooperation to help solve problems faced by indigenous peoples in areas such as human rights, culture, the environment, development, education and health.

In 1995, the General Assembly adopted the programme of activities for the Decade and identified a number of specific objectives. Among these objectives were the proposal to establish a Permanent Forum on Indigenous Issues in the UN system and the adoption of the UN Draft Declaration on the Rights of Indigenous Peoples.

According to the Secretary General's report on the preliminary review of the International Decade, dated June 24, 2004, "…despite the important institutional developments that have taken place in the framework of the Decade, the report acknowledges that indigenous peoples in many countries continue to be among the poorest and most marginalized." While there had been certain accomplishments, there were also setbacks and losses. Among unfinished business, the report cited the Draft Declaration.

Accomplishments of the Decade

As a result of the International Decade, which built on the work of the WGIP, and the Vienna World Conference on Human Rights, there was

significant progress for indigenous peoples at the global level in several areas.

Study on Treaties

On June 22, 1999, the final report by Miguel Alfonso Martínez, Special Rapporteur, entitled "Study on treaties, agreements and other constructive arrangements between States and indigenous populations" was released. This final report was preceded by three progress reports in 1992, 1994 and 1996.

In 1989, the Economic and Social Council (ECOSOC) had authorized the Sub-Commission to appoint Miguel Alfonso Martínez, a member of the WGIP, as Special Rapporteur, with the task of preparing a study on the potential utility of treaties, agreements and other constructive arrangements between States and indigenous populations. The Special Rapporteur was mandated to give particular attention to universal human rights standards, and to suggest ways of achieving the maximum possible promotion and protection of indigenous peoples' treaty rights in domestic and international law. The report provides us with some useful information and recommendations, which are particularly relevant for indigenous peoples in North America and the South Pacific, where many treaties had been concluded between indigenous nations and European states. Among Martínez's numerous conclusions, the principal ones are as follows:

- In establishing formal legal relationships with peoples overseas, the European parties were clearly aware that they were negotiating and entering into contractual relations with sovereign nations, with all the international legal implications that applied during the period under consideration (para. 110).

- In the case of indigenous peoples who concluded treaties […] with the European settlers […], the Special Rapporteur has not found any sound legal argument to sustain the case that they have lost their international juridical status as nations/peoples (para. 265).

- This leads to the issue of whether or not treaties concluded by the European settlers […] with indigenous nations currently continue to be instruments with international status in the light of international law. The Special Rapporteur is of the opinion that these instruments indeed

maintain their original status and continue fully in effect, and consequently, are sources of rights and obligations for all the original parties to them (or their successors), who shall implement their provisions in good faith (paras. 270, 271).

- [These were] treaties of peace and friendship, destined to organize coexistence in – and not their exclusion from – the same territory and not to regulate restrictively their lives […] under the overall jurisdiction of non-indigenous authorities (para. 117).

- The Special Rapporteur reaffirms the right of indigenous peoples to self-determination (para. 256), their right to their lands and resources (para. 252) and that the treaty-making process is the most suitable way to secure their rights and resources (paras. 260 and 263). [A] possible overall solution cannot be achieved exclusively the basis of juridical reasoning […] considerable political will is required (para. 254).

- Treaties must be interpreted according to their original spirit and intent (para. 278), with the understanding that indigenous treaty-making was totally oral in nature, and that negotiations took place using European languages and legal concepts (para. 281).

Special Rapporteur

In 2001, the UNCHR appointed Rodolfo Stavenhagen as Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, in response to growing international concern regarding the marginalization of and discrimination against indigenous people worldwide.

The mandate, created by UNCHR resolution 2001/57, represents a significant moment in the ongoing pursuit of indigenous peoples in safeguarding their human rights. It is complementary to the mandates of the WGIP and the Permanent Forum and aims to strengthen the mechanisms of protection of the human rights of indigenous peoples. The Special Rapporteur made an unofficial visit to Canada in 2003, when he met with First Nations peoples in British Columbia, Saskatchewan, Manitoba and Nova Scotia, and an official visit in 2004, when he met with First Nations in Manitoba, Ontario, Quebec and the Maritimes. He tabled special and annual reports with the UNCHR in 2002, 2003 and 2004.

Other Special Rapporteurs

In recent years, indigenous peoples have lodged grievances with other UNCHR Special Rapporteurs, independent experts and working groups such as the Special Rapporteurs on Contemporary Forms of Racism; Religious Intolerance; Summary or Arbitrary Executions; Violence against Women; and the Right to Development. These mechanisms provide additional avenues in which to raise indigenous issues and bring them to international attention, always with the goal of achieving justice at home.

The Permanent Forum

The Permanent Forum on Indigenous Issues was first recommended in 1993 in the Vienna Declaration as part of the International Decade. It was then proposed as one of the main objectives of the International Decade by a resolution of the General Assembly, also in 1993. Consequently, the Permanent Forum was created by the Economic and Social Council (ECOSOC) (E/RES/2000/22) to:

1. Discuss indigenous issues within ECOSOC's mandate, including economic and social development, culture, environment, education, health and human rights;
2. Provide expert advice and recommendations to ECOSOC and to the programs, funds, and agencies of the United Nations; and
3. Raise awareness about indigenous issues and help integrate and coordinate activities in the UN system.

The Forum is made up of 16 independent experts, functioning in their personal capacities, with eight of the members nominated by indigenous peoples and eight nominated by governments. The 16 members are appointed for 3 years, with the possibility of reappointment. The Forum meets for 10 days each year in New York or Geneva or another location chosen by the Forum. The first Forum took place in New York in 2002, as did the second and third in 2003 and 2004. The general theme for the 2003 Forum was indigenous children, and for the 2004 Forum, indigenous women.

Forum decisions are made by consensus. With the establishment of the Forum, for the first time, indigenous peoples have become members of a UN body, and as such, help set the Forum's agenda and determine its outcome. This is unprecedented within the UN system.

Organizations of indigenous peoples may participate as observers in the meetings of the Permanent Forum in accordance with the procedures that are applied in the WGIP, where meetings are open to all indigenous peoples' organizations, regardless of their consultative status with ECOSOC. States, UN bodies and organs, intergovernmental organizations and NGOs that have consultative status with ECOSOC may also participate as observers.

As a result, at the first three meetings, there were not only a large number of indigenous organizations but also UN agencies such as the UNDP, ILO, FAO, WHO, WIPO, UNCHR, UNICEF, UNEP and many others that have general or special programs available to indigenous peoples.

The agenda provides time for all of these agencies to report on their programs for indigenous peoples and to answer questions or complaints, which are put to them by members of the Forum or by the observers. At the end of the 10 days, the 16-member Forum draws up a report that includes recommendations. Since the Forum is relatively new and still unknown to many indigenous nations, it may take some time before it is used to its full potential.

The UNCHR, the OHCHR, and the Sub-Commission.

In recent years, indigenous peoples have been making greater use of the UN Commission on Human Rights (UNCHR.), its Sub-Commission, and the Office of the High Commissioner for Human Rights (OHCHR).

The UNCHR meets annually in Geneva for a six-week session and, since 1996, two or three days are usually set aside for indigenous issues – including reports from the Special Rapporteur, the WGDD, the Permanent Forum and the Decade. It provides an opportunity for indigenous organizations and their NGO allies to lobby, make comments and to raise grievances.

The OHCHR, situated in Geneva, also has a special unit dealing with indigenous rights. While it is not large, it is made up of dedicated individuals who support and coordinate the various indigenous programs. It has also been extremely helpful to indigenous organizations in providing them with information and direction and has carried on constructive relations with the Indigenous Caucus.

Treaty Bodies

The UN treaty-based human rights system includes legal procedures through which indigenous peoples can and have sought protection for their human rights. In this respect there are six major international human rights treaties within the UN human rights system that deal with civil and political rights, economic and social rights, racial discrimination, torture, gender discrimination, and children's rights.

There is a supervisory committee (also known as a treaty body) for each of these treaties, which monitors the way in which the States Parties (countries which have ratified the treaty) are fulfilling their human rights obligations as stated in the relevant treaty. Indigenous peoples can only make use of the treaties and treaty bodies that have been ratified by the countries in which they are situated. Canadian indigenous peoples have used the treaty bodies in several important cases – the Lubicon Lake case before the Human Rights Committee in 1984; and the Lovelace Case before the same committee in 1977.

Specialized Agencies

As a result of the WGIP, the Vienna Declaration, the International Decade, and the increased participation of indigenous peoples in UN Charter and treaty-based bodies, all agencies of the UN have become more sensitive to indigenous concerns and have attempted to mainstream indigenous input into their various programs. The UN special agencies include such organizations as WHO, FAO, UNESCO, ILO, and UNDP, each of which has an interest in the situation of indigenous peoples and which now report annually to the Permanent Forum.

Participation by Indigenous Peoples

One of the greatest accomplishments of the International Decade has been the increased participation and effectiveness of indigenous peoples in the UN system. Not only are there an increasing number of indigenous organizations with ECOSOC status (which is necessary for participation in the UNCHR and the Sub-Commission), but a great many more take part in the WGIP, the WGDD, and the Permanent Forum without ECOSOC status, as a result of a less formal registration system set up to accommodate indigenous peoples and their allies. The indigenous representatives at these meetings are able to raise their concerns, lobby government and

UN officials, and network with other indigenous organizations and NGOs from all over the world.

Furthermore, there are NGOs based in Geneva whose principal objective is to help indigenous participants operate more effectively. DOCIP and ISHR provide assistance with word-processing, translation, photocopying, fax services, e-mail, accommodation, documentation and information.

Indigenous organizations have also become adept at preparing and submitting formal communications or grievances, making speeches, and in contacting the OHCHR, the Special Rapporteurs and the Working Groups.

The Draft Declaration on the Rights of Indigenous Peoples

As part of its mandate to develop international standards concerning the rights of indigenous peoples, the WGIP (a group of five experts) developed and wrote the Draft Declaration on the Rights of Indigenous Peoples (DDIP) between 1985 and 1994. In carrying out their task, the Working Group consulted closely with indigenous groups, governments, academics and NGOs.

When the WGIP had completed its work on the DDIP in 1994, it was submitted to the Sub-Commission on the Promotion and Protection of Human Rights, which in turn submitted it to the UNCHR. At this point, the indigenous caucus that had been closely involved with its development in Geneva, declared that, as set out in Article 42 of the Draft Declaration, the rights recognized therein were acceptable as a minimum set of international standards for the survival, dignity and well-being of indigenous peoples throughout the world and that they should not be changed or weakened.

The Draft Declaration consisted of 19 preambular paragraphs and 45 operative paragraphs dealing with the rights to self-determination, nationality, equality, survival, indigenous cultures, traditions, education, languages, media, health and medical care, economic and social systems, the control of their lands, waters, resources and self-government. One of the specific goals of the International Decade was the completion and adoption of the Draft Declaration before the end of the Decade in 2004.

In 1995, the Draft Declaration was referred to a new "open-ended Working Group on the Draft Declaration" (WGDD) with the purpose of com-

pleting a Draft Declaration on the Rights of Indigenous Peoples. It should be noted that this new working group, the WGDD, was made up of governments with divergent political agendas, while the WGIP, which prepared the original DDIP, was made up of experts not associated with their governments.

The WGDD has, however, continued the same tradition as the WGIP and has allowed indigenous representatives and NGOs to intervene and otherwise participate in the business of the WGDD. The practice has developed whereby final decisions are made by governments in the formal sessions of the WG, but for the most part, discussion and debate is carried on in informal sessions where indigenous peoples and NGOs participate fully with governments. Thus far, an informal agreement has been accepted in which governments will only make changes to the text or decisions with respect to procedure when there is a consensus to do so at the informal sessions supported by the indigenous participants.

Unfortunately, several governments have opposed articles in the Draft Declaration and have suggested amendments. Generally, these have been rejected by the Indigenous Caucus and progress in the WG has been extremely slow. As of December 15, 2004, after formal, informal and intersessional meetings spanning a nine year period, only two articles (Article 5, *right to a nationality*, and Article 43, *gender equality*) out of 45 have been adopted.

Lands, Waters and Resources

A major stumbling block for some governments are Articles 25-30 in Part 6 of the Draft Declaration, relating to lands, waters and resources and the right of indigenous peoples to own, develop, control and use their traditional lands, and the right to restitution of lands and resources that have been taken, confiscated, occupied, used or damaged without their free and informed consent.

In the great land-grab that occurred in all parts of the "newly discovered world," beginning in the sixteenth century, land, minerals and timber were plundered from the indigenous populations, who were often left impoverished or enslaved. Now of course, many governments and their citizens are fearful of Part 6 because it could leave them with less wealth and power than they currently possess. On the other hand, some states already have policies and institutions to deal with indigenous land claims

and some settlements have been made, but on the whole, progress has been deplorable.

The lack of progress in settling claims is one of the arguments put forth by human rights activists for the adoption of land claim provisions in an international human rights instrument. The issue of land rights is central to the question of survival of indigenous peoples and their cultures. The indigenous concept of land as collective property was alien to the new settlers in much of the world, as indigenous peoples' relationship to the land was (and still is) deeply spiritual and the destruction of that link has often been destructive to their identity. Consequently, the articles on lands and resources are critical to any international instrument on the rights of indigenous peoples.

Self-Determination

Another serious obstacle for acceptance of the Draft Declaration by several governments was Article 3 on self-determination. Although the article is an exact reproduction of Article 1 in both the *Covenant of Civil and Political Rights* and the *Covenant on Economic Social and Cultural Rights* ratified by 150 and 147 states, respectively, including Canada, the USA, and most of the countries involved in the Draft Declaration debate, some of these same states oppose its application to indigenous peoples.

Article 1 in both covenants states that "all peoples have the right to self-determination." Article 3 in the Draft Declaration states that "Indigenous peoples have the right to self-determination." Indigenous peoples argue that they are logically covered by the first article of the two covenants, since they are in fact "peoples" and that Article 3 of the DDIP is simply a confirmation of that fact. Governments, on the other hand, fearing secession and threats to their territorial integrity by indigenous peoples, have attempted all kinds of schemes to deny them this right.

There is also a fear that indigenous peoples would use this article to enact laws contrary to those in force in the surrounding federal or provincial jurisdiction and thereby create disorder and disunity. In opposing Article 3, states first used the "Blue Water Thesis," according to which only colonies separated from the colonizer by water – seas or oceans – had the right to self-determination. This theory was rejected by the International Court of Justice in its 1975 *Western Sahara* decision and has been discarded by the United Nations on several occasions.

Some governments tried to remove Article 3 from the DDIP on the grounds that "indigenous peoples" did not exist. They may be described as "indigenous people" or "indigenous populations" but they were not "peoples" and therefore not beneficiaries of Article 1 of the two covenants. This nonsense of course led to strong opposition from the indigenous caucus in Geneva and indigenous peoples around the world. While the proposal was dropped at the WGDD, the UN still uses the alternative terms for other matters (i.e., the Working Group on Indigenous Populations, the International Decade of the World's Indigenous People).

With Article 3 intact at the WGDD and the "s" still attached to "peoples," certain governments then tried to restrict the meaning of self-determination as it applies to indigenous peoples. Several attempts have been made to add a clause to Article 3 or to other parts of the draft declaration, which reads "The use of the term 'peoples' in this convention shall not be construed as having any implications as regards the rights which may be attached to the term under international law."

Similar wording was used in the final declaration of the World Conference against Racism (Durban, 2001). Such schemes were rejected by indigenous peoples who insisted that they have always had an inherent right to self-determination and that this right was never surrendered. They went on to ridicule the World Conference against Racism for formally practicing racism against indigenous peoples in its final declaration.

Since Article 3 is a key provision of the Draft Declaration, essential to the practice and implementation of the other rights of the instrument, the opposition of governments to this article has resulted in a stalemate.

Anticipating the end of the International Decade and the possible demise of the Draft Declaration, the Grand Council of the Crees, supported by other indigenous groups and NGOs, made a joint submission to the OHCRH on March 30, 2004, assessing the International Decade, and urging a renewed mandate for the WGDD and improvements in the standard-setting process. They said that the adoption by the UN General Assembly of a Declaration on the Rights of Indigenous Peoples was a major objective of the Decade and that among indigenous peoples it was of grave and widespread concern that this essential goal could be facing impending failure. Rather than penalizing over 300 million indigenous peoples worldwide by terminating the standard-setting process related to their human rights, they said that the UN should examine ways to ensure

that all participating states fulfill their responsibilities and respect their obligations under international law.

Fortunately, as a result of this and other efforts, some progress was made at the September and November-December (2004) sessions of the WGDD. As a result of more open, flexible and frequent meetings between the indigenous caucus and some governments, including Canada, a new proposal concerning the right to self-determination (Article 3) was put forward by the Indigenous Caucus. In summary, this proposal would add to preambular paragraph 15 a reference to principles of international law and add a new paragraph on harmonious relations between states and indigenous peoples, keeping article 3 intact. This initiative, supported by Canada, Mexico, Guatemala, Peru, Brazil and Ecuador, constituted an important breakthrough in developing a consensus on this provision, which must be pursued with other governments.

Canadian Developments Concerning Self-Determination

Canada has finally acknowledged its domestic developments regarding self-determination. In a judgment of the Supreme Court, in the *Reference re Secession of Quebec* case of 1998, Canada formalized principles on the interpretation of the right to self-determination that have been legislated in the *Clarity Act*. This policy supports its recent position at the WGDD which is in turn consistent with the *Royal Proclamation* of 1763; Articles 25, 35, and 35.1 of the *Constitution Act* of 1982; the establishment of Nunavut and the recommendations of the 1996 Royal Commission on Aboriginal Peoples.

With respect to the *Reference re Secession of Quebec* case, the Supreme Court said that Québec did not have, either under Canadian or international law, the right to secede unilaterally. Consequently, although Canada has ratified the *International Covenant on Civil and Political Rights*, which includes Article1, the right of all peoples to self-determination, this right does not automatically trigger the right to secede.

The same principles would apply to the First Nations. As stated previously, Canada would be respecting a people's right to self-determination as long as it recognized their right to determine their unique political status and to pursue their own economic, social and cultural development. The Supreme Court went on to say that Canada would only have to

negotiate secession with a province if in a referendum, the people of that province voted by a clear majority on a clear question to secede.

To a certain extent, the creation of the Nunavut Territory in the eastern Arctic as a homeland for Canada's Inuit is a recognition of their right to self-determination. The same is true for the James Bay Cree Nation in northern Québec.

As for Article 35 of the 1982 *Constitution Act*, it should be noted that this article speaks of the "aboriginal peoples of Canada." In other words, that these are "peoples" in accordance with Article 1 of the ICCPR, and consequently, they have the inherent right to self-determination. Article 35 goes on to say that the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed. There is no doubt in the authors' mind that "aboriginal and treaty rights" in this article include the right to self-determination and the right to traditional lands, waters, resources and cultures. As a result, there should be no difficulty with the Draft Declaration, which simply spells out these same rights in greater detail. As stated above, this position is further supported by the *Royal Proclamation* of 1763 which recognized the "nations of Indians" on North American territory, and their right to their lands, territories, waters and hunting grounds.

Continuing Opposition

The new positive approach of Canada has not thus far discouraged continuing opposition by some governments to the Draft Declaration in general and to Article 3 (*self-determination*) in particular. In many instances, this opposition is based on grossly exaggerated, unreasonable, unrealistic and untenable scenarios. According to most international legal experts, the right to self-determination is now a peremptory norm of international law (*jus cogens*) from which there can be no derogation. This is supported by Article 53 of the *Vienna Convention of the Law of Treaties*. The codification of the right to self-determination has been set out in the following international instruments and judicial decisions:

The *UN Charter*, Article 1 (2), Article 55, chapters XI and XII – 1945

Declaration on the Granting of Independence to Colonial Countries and Peoples, 1960

Declaration on Friendly Relations, 1970

International Covenant on Civil and Political Rights, 1966(76)

International Covenant on Economic, Social and Cultural Rights, 1966 (76)

The Helsinki Declaration, 1975

The International Court of Justice, *Western Sahara Case*, 1975

Human Rights Committee, *Canada's Report 1999, Concluding Observations*

It appears that the fears of governments with respect to secession and territorial integrity are exaggerated, not only because of the limitations to self-determination set out in the above-mentioned instruments, but also because Article 3 in the Draft Declaration is balanced by Article 31 (*self-government in certain matters as an exercise of self-determination*), by Article 33 (*actions limited by international human rights standards*) and by Article 45 (*nothing in the declaration would permit activities contrary to the UN Charter*).

While most experts agree that the right to self-determination includes secession, it does not automatically trigger secession, and in fact, most international instruments would only permit secession as a remedy of last resort. Consequently, if a state conducted itself in compliance with the principal of equal rights and possessed a government that respected the rights of indigenous peoples within its state boundaries to determine their unique political status and to pursue their own economic, social and cultural development, then such a state would be respectful of the right to self-determination and have no fear of secession.

Finally, the Draft Declaration is a "declaration" and not a "treaty." As a result, it is an aspirational instrument with moral and political value, but it is not legally binding. Regretfully, governments have dissected and opposed it as if it were a legally binding treaty.

Conclusions

The growing importance of international instruments to indigenous peoples and their recourse to international tribunals is demonstrated in a number of cases. In 1977 Sandra Lovelace, a Maliseet woman from Tobique N.B. appealed to the UN Human Rights Committee (HRC) under several sections of the *International Covenant on Civil and Political Rights* to contest Section 12 (*1*) (*b*) of the Canadian *Indian Act* and to claim her rights to gender equality, which had been denied to her by the Canadian courts.

In 1981 the HRC ruled in her favour and the Canadian Parliament amended the law to conform to the ruling. In a similar way, Chief Bernard Ominayak of the Lubicon Lake Band appealed to the HRC in 1990 on a land issue. While the Band did not succeed under Article 1 of the *International Covenant*, it did win its case under Article 27.

Since 1998, Committees on Human Rights, on Economic, Social and Cultural Rights, on the Rights

of the Child, and on the Elimination of Racial Discrimination, have issued several recommendations concerning indigenous peoples, in particular, recommending the implementation of their right to self-determination.

There have also been significant successes before the Inter-American Commission on Human Rights by Mary and Carrie Dann of the Western Shoshone of Nevada, USA (2002) and by the Mayagna (Sumo) Awas Tigni Community versus the government of Nicaragua in 2001.

The creation of the Permanent Forum on Indigenous Issues and that of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples enables indigenous peoples to assert their rights and improve their lives.

Ted Moses, now chief of the Grand Council of the Crees of Northern Québec, has been a long-time advocate of indigenous rights at the United Nations, having first attended meetings in Geneva in 1981. On several occasions, he has explained why international law, international institutions and the Draft Declaration are essential to indigenous peoples. In 1998 he said "The Crees brought their issues to the international community as a last resort… it was easier to gain a hearing in Canada by stepping outside of Canada and speaking to the rest of the world," and "when domestic laws fail to provide adequate protection against racism, the antidote is recourse to international human rights law."

Earlier, in 1994, he wrote "indigenous peoples finally turned to the international community when confronted with a situation where their own laws had been arbitrarily and unilaterally replaced by an entire other system of law. The remedy was to be found in the international community." He then went on to say, "indigenous peoples must have recourse to a neutral jurisdiction and the possibility of the Draft Declaration which recognizes the dignity of indigenous peoples, their rights to self-determination, their right to land, to control resources, to practice their own religions, to manifest their own cultures, and their right to their own

identity […] the declaration, in its present form, would be non-binding but it would establish an appropriately high standard, set a principle and place the administration of justice for indigenous peoples on a level with other principles of international law and the aspirations of the indigenous peoples themselves."

Above all, the International Decade of the World's Indigenous People demonstrated the ability of indigenous peoples to mobilize the United Nations system in order to defend the recognition and implementation of their rights.

INTER-AMERICAN HUMAN RIGHTS SYSTEM AND INDIGENOUS PEOPLES' RIGHTS

Isabel Madariaga Cuneo[1]

In 1948, the Organization of American States (OAS) adopted the American Declaration of the Rights and Duties of Man, which was the formal beginning of the Inter-American system of promotion and protection of human rights (Inter-American system). The Inter-American Commission on Human Rights (Inter-American Commission) and the Inter-American Court of Human Rights (Inter-American Court) are the two bodies that make up this system.

The Inter-American Commission is an autonomous organ of the Organization of American States (OAS), mandated through the OAS Charter and the American Convention on Human Rights (American Convention) to promote the observance and the defence of human rights. Among its main functions is to receive, analyze and investigate allegations of violations of the human rights set forth in the American Declaration of the Rights and Duties of Man (the American Declaration), the American

[1] The opinions expressed in this text are personal and should not be interpreted as official position of the Inter-American Commission on Human Rights, nor should they be attributed to the General Secretariat of the Organization of American States, its organs or employees.

Convention and other Inter-American human rights instruments, when committed by member states of the OAS.

For the organs of the Inter-American system, the protection and respect of the rights of indigenous peoples is of special importance. In 1972, the Inter-American Commission declared that, for historical reasons and to uphold moral and humanitarian principles, the special protection of indigenous peoples was a sacred commitment of States. In 1990, it created the Special Rapporteur on the Rights of Indigenous Peoples, with the objectives of paying special attention to the indigenous peoples of the Americas, who are particularly vulnerable to human rights violations, and of strengthening, promoting and systematizing the work of the Inter-American Commission.

Since the 1980s, the Inter-American Commission has systematically included statements about the rights of indigenous peoples in its special reports,[2] through the case system, in Admissibility Reports, Reports on Merits, Reports of Friendly Settlements, the mechanism of precautionary measures, and through requests to the Inter-American Court to take provisional measures. In the same way, the Inter-American Commission has supported the process of the Draft American Declaration on the Rights of Indigenous Peoples since its inception.

The text that follows is a brief commentary on the evolution of jurisprudence in the Inter-American human rights system with regard to the rights of indigenous peoples; it includes background on the process of the Draft American Declaration on the Rights of Indigenous Peoples and refers to the main resolutions on the rights of indigenous peoples governed by the organs of the Inter-American human rights system.

[2] The following Special Reports of the Inter-American Commission contain chapters on the rights of indigenous peoples: *Justice and Social Inclusion: the Challenges of Democracy in Guatemala* (2003); *Fifth Report on the Human Rights Situation in Guatemala* (2001); *Third Report on the Human Rights Situation in Paraguay* (2001); *Second Report on the Human Rights Situation in Peru* (2000); *Third Report on the Human Rights Situation in Colombia* (1999); *Report on the Human Rights Situation in Mexico* (1998); *Report on the Human Rights Situation in Brazil* (1997); *Report on the Human Rights Situation in Ecuador* (1997); *Second Report on the Human Rights Situation in Colombia* (1993); *Fourth Report on the Human Rights Situation in Guatemala* (1993); *Second Report on the Human Rights Situation in Surinam* (1985).

The Evolution of Jurisprudence

The Inter-American System has developed a body of jurisprudence on the rights of indigenous peoples, through judgments it has rendered with the objective of preventing or resolving issues of domestic jurisdiction involving OAS member states. This has permitted the recognition of ingrained individual and collective rights, compensation for victims and the development of guidelines. Through jurisprudence, the necessity for special protection of the territorial rights of indigenous peoples has been expressed, because their effective enjoyment of their territories implies not only the protection of an economic unit but also the protection of the human rights of groups that base their economic, social and cultural development on their relationship with the land. In its *Fourth Report on the Situation of Human Rights in Guatemala* in 1993, the Inter-American Commission stated

> *From the standpoint of human rights, a small corn field deserves the same respect as the private property of a person that a bank account or a modern factory receives.*[3]

Under the individual system of petitions and supervision of the situation of human rights in the hemisphere, the Inter-American Commission has established that respect for indigenous peoples' collective right to property and possession of their ancestral lands and territories constitutes an obligation of States Parties to the OAS and that non-observance of this obligation becomes an international responsibility.

The interpretation of international instruments protecting human rights by the organs of the Inter-American system has evolved with respect to the rights of indigenous peoples. In effect, in the case of the Mayagna Community of Awas Tingni, the Inter-American Court stated that Article 21 of the American Convention protects the right to property in such a way to include, among other things, the right of members of indigenous communities to hold property communally.[4]

[3] Inter-American Commission on Human Rights, Fourth Report on the Situation of Human Rights in Guatemala, 1993.

[4] Through an evolutionary interpretation of international instruments for the protection of human rights, taking into account applicable norms of interpretation and pursuant to article 29(b) of the Convention -which precludes a restrictive interpretation of rights-, it is the opinion of this Court that article 21 of the Convention protects the right to property in a sense which includes, among others, the rights of members of the indigenous communities within the framework of communal property, which is also recognized by the Constitution of Nicaragua. Inter-American

In that case, the Inter-American Court deemed that some precisions were required with respect to the concept of property in indigenous communities and that among indigenous peoples there is a communitarian tradition regarding a communal form of collective property of the land, in the sense that ownership of the land is not centered on an individual but rather on the group and its community.

The Court therefore determined that the close relationship indigenous peoples maintain with their land should be recognized and understood, adding that

> *Indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival.*[5]

In addition, the Court established that

> *For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.*[6]

The Inter-American Court also established that possession of land and territory should be sufficient for official recognition of the right of ownership, taking into consideration the customary law of indigenous peoples.[7]

In the case of Mary and Carrie Dann, the Inter-American Commission stated that the American Declaration on the Rights and Duties of Man should be interpreted in light of the particular principles of international law in matters of human rights that govern the individual and collective rights of indigenous peoples.

Court of Human Rights, Case of the Mayagna (Sumo) Awas Tingni Community vs. Nicaragua, Ruling of August 31, 2001. Series C No. 79, Paragraph 148.

[5] Inter-American Court of Human Rights. Case of the Mayagna (Sumo) Awas Tingni Community vs. Nicaragua, Ruling of August 31, 2001. Series C No. 79, paragraph 149.

[6] Inter-American Court of Human Rights. Case of the Mayagna (Sumo) Awas Tingni Community vs. Nicaragua, Ruling of August 31, 2001. Series C No. 79, paragraph 149.

[7] Indigenous peoples' customary law must be especially taken into account for the purpose of this analysis. As a result of customary practices, possession of the land should suffice for indigenous communities lacking real title to property of the land to obtain official recognition of that property, and for consequent registration. Inter-American Court of Human Rights, Case of the Mayagna (Sumo) Awas Tingni Community vs. Nicaragua, Ruling of August 31, 2001. Series C, No. 79, paragraph 151.

The Commission concluded

> *(I)n addressing complaints of violations of the American Declaration it is necessary for the Commission to consider these complaints in the context of the evolving rules and principles of human rights law in the Americas and in the international community more broadly, as reflected in treaties, custom and other sources of international law. Consistent with this approach, in determining the claims currently before it, the Commission considers that this broader corpus of international law includes the developing norms and principles governing the human rights of indigenous peoples.*[8]
>
> *Based upon the foregoing analysis, the Commission is of the view that the provisions of the American Declaration should be interpreted and applied in the context of indigenous petitioners with due regard to the particular principles of international human rights law governing the individual and collective interests of indigenous peoples. Particularly pertinent provisions of the Declaration in this respect include Article II (the right to equality under the law), Article XVIII (the right to a fair trial), and Article XXIII (the right to property). As outlined above, this approach includes the taking of special measures to ensure recognition of the particular and collective interest that indigenous people have in the occupation and use of their traditional lands and resources and their right to not be deprived of this interest except with full informed consent, in conditions of equality and with fair compensation. The Commission wishes to emphasize that by interpreting the American Declaration so as to safeguard the integrity, livelihood and culture of indigenous peoples through the effective protection of their individual and collective human rights, the Commission is respecting the very purposes underlying the Declaration which, as expressed in its Preamble, include recognition that "Since culture is the highest social and historical expression of that spiritual development, it is the duty of man to preserve, practice and foster culture by every means within his power.*[9]

Through the provisional measures mechanism, at the request of the petitioners in the case of the Mayagna Community of Awas Tingni, on September 6, 2002, the Inter-American Court ruled that the State of Nicara-

[8] Inter-American Commission on Human Rights. Case of Mary and Carrie Dann vs. United States of America. Report Nº 75/02 of December 27, 2002, paragraph 124.

[9] Inter-American Commission on Human Rights. Case of Mary and Carrie Dann vs. United States of America. Report Nº 75/02 of December 27, 2002, paragraph 131.

gua must adopt the measures necessary to ensure the use and enjoyment of the lands by the community, with the participation of the petitioners in the planning and implementation of the measures.[10]

In 2004, the Inter-American Commission requested that the Inter-American Court adopt provisional measures in favour of the Kankuamo people of Colombia. It ruled that the State must 1. Protect the life and personal integrity of the members of the Kankuamo people of the Sierra Nevada of Santa Marta and respect their cultural identity and the special relationship with their ancestral lands; 2. Investigate the events that led to the request for provisional measures, in order to identify and judge those responsible and impose the appropriate sanctions; 3. Ensure that the beneficiaries are able to continue to live on their ancestral territory without any type of coercion or threats and provide them with humanitarian assistance any time that it is necessary; and 4. Guarantee the conditions of security for the return to ancestral lands of Kankuamo people who have been forcibly displaced.[11]

In addition, in 2004, the Inter-American Commission also requested that the Inter-American Court order the State of Ecuador to adopt without delay whatever measures necessary to 1. Protect the life and personal integrity of the Sarayacu indigenous people and their defenders; 2. Abstain from illegally restricting the right to free circulation of Sarayacu people; 3. Investigate the aggressions committed against Sarayacu people; and 4. Protect the special relationship of the Sarayacu Kichwa people with their ancestral territory, in particular, protecting the use and enjoyment of collective property and the natural resources existing there, and adopt measures to avert immediate and irreparable damages resulting from activities of third parties who enter community territory or who exploit the natural resources existing there, until such time as the organs of the Inter-

[10] The Inter-American Court of Human Rights resolved: 1. To order the State to adopt, without delay, whatever measures are necessary to protect the use and enjoyment of property or lands belonging to the Mayagna Awas Tingni Community, and of natural resources existing on those lands, specifically those measures geared toward avoiding immediate and irreparable damage resulting from activities of third parties who have established themselves inside the territory of the Community or who exploit the natural resources that exist within it, until the definitive delimitation, demarcation and titling ordered by the Court are carried out. 2. To order the State to allow the applicants to participate in planning and implementation of those measures and, in general, to keep them informed of progress regarding measures ordered by the Inter-American Court of Human Rights. In Inter-American Court of Human Rights, Case of The Mayagna (Sumo) Awas Tingni Community vs. Nicaragua, Provisional Measures, September 6, 2002.

[11] Inter-American Court of Human Rights. Case of the Kankuamo Indigenous People. Resolution of July 5, 2004.

American System of Human Rights have adopted a definitive decision on the issue.[12]

In the above-mentioned cases, the Inter-American Court ordered the respective States to adopt without delay the measures necessary to protect the life and personal integrity of the indigenous peoples affected, to guarantee them the right of free circulation and to investigate the events that motivated the adoption of provisional measures, with the objective of identifying those responsible and imposing the appropriate sanctions.

With respect to cultural rights, an interesting case of jurisprudence in the Inter-American system of human rights is that of Efraín Bámaca Velásquez. In that case, the Inter-American Court, with respect to compensation, considered the Mayan origin of the victim and his cultural relationship with his family.

> *This Court deems that care for the mortal remains of a person is a form of observance of the right to human dignity. This Court has also pointed out that the mortal remains of a person deserve respectful treatment before that person's next of kin, due to the significance they have for them. Respect for those remains, observed in all cultures, acquires a very special significance in the Mayan culture, Mam ethnic group, to which Efraín Bámaca Velásquez belonged. The Court has already recognized the importance of taking into account certain aspects of the customs of the indigenous peoples of the Americas for purposes of application of the American Convention on Human Rights (Mayagna (Sumo) Awas Tingni Case vs. Nicaragua). As was reiterated at the public hearing on reparations in the instant case, for the Mayan culture, Mam ethnic group, funeral ceremonies ensure the possibility of the generations of the living, the deceased person, and the deceased ancestors meeting anew. Thus, the cycle between life and death closes with these funeral ceremonies, allowing them to "express their respect for Efraín, have him near and return him or take him to live with the ancestors", as well as for the new generations to share and learn about his life, something that is traditional in his indigenous culture.*[13]

Another interesting case of jurisprudence in the Inter-American system of human rights is the Case of the Plan de Sanchez Massacre, in which the

[12] Inter-American Court of Human Rights. Case of the Sarayacu Indigenous People. Resolution of July 6, 2004.

[13] Inter-American Court of Human Rights. Case of Bámaca Velásquez vs. Guatemala. Reparations (art. 63.1 of the American Convention on Human Rights). Ruling of February 22, 2002. Series C No. 91, paragraph 81.

Inter-American Commission declared, in the demand presented to the Inter-American Court, that the massacre had been perpetrated as part of the government of Guatemala's genocidal policy and carried out with the intention of destroying, totally or in part, the Mayan indigenous people. In paragraph 51 of its sentence, the Inter-American Court stated that for contentious cases it was only competent to rule on violations of the American Convention on Human Rights and other human rights instruments of the Inter-American system. However, it remarked that the events that had been brought to light seriously affect the identity and values of the Maya Achi people and occurred as part of a pattern of massacres, causing a serious impact that compromised the international responsibility of the State, and that this would be taken into account when making the ruling on compensation.[14]

American Draft Declaration on the Rights of Indigenous Peoples

In 1989, the General Assembly asked the Inter-American Commission to draft a legal instrument respecting the rights of indigenous "populations." The Commission undertook the task and carried out a series of national and regional consultations with indigenous organizations, experts on the topic, and governments. After several years of work, in 1997 the Commission approved the "Draft American Declaration on the Rights of Indigenous Peoples" and submitted it to the General Assembly of the OAS.

To analyze and discuss the draft submitted by the Inter-American Commission, the "Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Populations" was created, composed of representatives of member OAS States.

In 1999, the special sessions of the Working Group began, with the participation of indigenous peoples' representatives and/or experts. In the April 2001 session, the participation of indigenous peoples' representatives was definitively consolidated in the Draft Declaration debate process. In the same session, as a result of the interventions and proposals from various member States and indigenous peoples' representatives, the

[14] Inter-American Court of Human Rights. Case of the Plan de Sanchez Massacre vs. Guatemala, Ruling of April 29, 2004. Series C No. 105.

Working Group decided to change the term "populations" to "peoples," both in the text of the draft declaration and in its own name.

The participation of indigenous peoples' representatives has continued to grow stronger, as was clearly demonstrated in the special sessions of the Working Group in 2002 and 2003, and in the negotiation sessions in November 2003 and January and April of 2004. Issues as important as the very concept of "peoples," "self-determination," and "lands, territories and natural resources" have been discussed in the various sessions, with the participation of both delegations from States and indigenous peoples' representatives.

Although there are some fundamental issues yet to be resolved, the participation of indigenous peoples' representatives in the special sessions and the negotiations is not only an innovative mechanism for the structure of the OAS, but it has also been a way to seek consensus between OAS member States and the beneficiaries of the draft declaration.

The Inter-American Commission, through the Office of the Special Rapporteur on the Rights of Indigenous Peoples, has provided permanent collaboration in this process with the objective of supporting the Working Group from the perspective of respect of human rights and in monitoring the permanent and effective participation of indigenous peoples' representatives.

Resolutions of the Inter-American System

In the case system, the main resolutions published by the Inter-American Commission related to the rights of indigenous peoples and their members are as follows:

Case	Resolutions
Indigenous Mayan Communities and their members. Belize	Admissibility Report 78/00. October 5, 2000 Report 96/03. October 24, 2003
The Yanomami People. Brazil	Resolution 12/85. March 5, 1985
Ovelario Tames. Brazil	Admissibility Report 19/98. February 27, 1998 Report 60/99. April 13, 1999
Grand Chief Michael Mitchell. Canada	Admissibility Report 74/03. October 22, 2003
Guahibos. Colombia	Resolution 1.690 in Annual Report 1972
"CALOTO" Massacre. Colombia	Admissibility Report and Report 36/00. April 13, 2000
Aucan Huilcaman et al. Chile	Admissibility Report 09/02. February 27, 2002
Mercedes Julia Huenteao Beroiza et al. Chile	Friendly Settlement Report. March 11, 2004

Mary and Carrie Dann. USA	Admissibility Report 99/99. September 27, 1999 Report 75/02. December 27, 2002
Alejandro Piché Cuca. Guatemala	Report 36/93. October 6, 1993
Juan Chanay Pablo et al. (Colotenango). Guatemala	Friendly Settlement Report. March 13, 1997
Samuel de la Cruz Gómez. Guatemala	Admissibility Report and Report 11/98. April 7, 1998
Pedro Tiu Cac. Guatemala	Admissibility Report and Report 59/01. April 7, 2001
Plan de Sánchez Massacre. Guatemala	Admissibility Report 31/99. March 11, 1999
Community of San Vicente Los Cimientos. Guatemala	Friendly Settlement Report Nº 68/03. October 10, 2003
Alfredo López Álvarez. Honduras	Admissibility Report 124/01. December 3, 2001
Severiano and Hermelindo Santiz Gómez. "Ejido Morelia," Mexico	Admissibility Report 25/96. April 29, 1996 Report 48/97. February 18, 1998
Rolando and Atanasio Hernández Hernández. Mexico	Admissibility Report and Report. May 5, 1998
Ana, Beatriz and Celia González Pérez. Mexico	Admissibility Report 129/99. November 19, 1999 Report 53/01. April 4, 2001
Tomás de Jesús Barranco. Mexico	Admissibility Report 10/03. February 20, 2003
Human Rights Situation of a Sector of the Nicaraguan Population of Miskito origin. Nicaragua	Report on the Human Rights Situation of a Sector of the Nicaraguan Population of Miskito origin. May 16, 1984
YATAMA. Nicaragua	Admissibility Report 125/01. December 3, 2001
Aché People. Paraguay	Resolution Nº 1802. Annual Report of the Inter-American Commission of Human Rights, 1977
Enxet-Lamenxay and Kayleyphapopyet Indigenous Peoples –Riachito. Paraguay	Friendly Settlement Report 90/99. September 29, 1999
Yakye Axa Indigenous Community of the Exnet–Lengua People. Paraguay	Admissibility Report 2/02. February 27, 2002
Sawhoyamaxa Indigenous Community of the Exnet People. Paraguay	Admissibility Report 12/03. February 20, 2003
Xakmok Kásek Indigenous Community of the Enxet People. Paraguay	Admissibility Report 11/03. February 20, 2003
Cayara. Peru	IACHR and IAHR Court. Petition and Reports on the Cayara Case. March 12, 1993
Town of Moiwana. Surinam	Admissibility Report 26/00. March 7, 2000

In turn, with respect to the mechanism of precautionary measures,[15] the Inter-American Commission has requested that member States of the OAS adopt special measures in order to prevent irreparable harm to indigenous peoples, as well as those who defend their rights. The precau-

[15] The mechanism of precautionary measures is provided for in Article 25 of the Rules of Procedure of the Inter-American Commission. It establishes that, "[i]n serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons."

tionary measures decreed have mainly been aimed at protecting the life and personal integrity of leaders, defenders, or members of affected indigenous peoples. However, in certain situations, the State has been ordered to adopt measures to protect the special relationship of an indigenous people with its ancestral territory.[16] Precautionary measures published by the Inter-American Commission in relation to indigenous peoples are as follows:

Year	Beneficiary
1996	Zenu Indigenous People. Colombia
	César Ovidio Sánchez Aguilar and the indigenous organization in Santa Barbara, Huehuetenango. Guatemala
	Rosalina Tuyuc, Manuela Alvarado, Amílcar Méndez and Nineth Montenegro. Guatemala
	Brenda Mayol et al. Guatemala
	Rosario Hernández Grave, Manuel Hernández Ajbac, Manuel Mendoza Jolomocox, Jesús Chaperón Marroquín, Gustavo Vásquez Peralta and Rogelio Cansi. Guatemala
	Union of Indigenous Communities of the Northern Zone of the Isthmus (UCIZONI). Mexico
1997	Pablo Tiguilá Mendoza, Pedro Tiguilá Hernández and Manuela Tiguilá Hernández. Guatemala
	Survivors of the December 22, 1997 Massacre in Acteal. Mexico
	Indigenous Community of Awas Tingni. Nicaragua
1998	Maximiliano Campo and eleven other leaders of the Paez Indigenous People. Colombia
1999	Patricia Ballestero Vidal, Lee Pope and Arnold Fuentes. Chile
	Mary and Carrie Dann. USA
	Lombardo Lacayo Sambula and Horacio Martínez Cáliz. Honduras
	José Rentería Pérez and 14 people from La Humedad, Oaxaca. Mexico
2000	Mayan Indigenous Communities. Belize
2001	National Association of Indigenous and Campesina Women of Colombia (ANMUCIC). Colombia
	Kimy Domicó and members of the Embera Katio Community of the Alto Sinú. Colombia
	Anselmo Roldán Aguilar. Guatemala
	Aldo González Rojas and Melina Hernández Sosa. Mexico
	Yaxye Axa Indigenous Community. Paraguay
2002	Zenilda Maria de Araujo and Marcos Luidson de Araujo (Cacique Marquinhos), indigenous leaders of the Xucuru people. Brazil
	Members of the Embera Chamí Indigenous People. Colombia
	Members of the Rigoberta Menchú Foundation. Guatemala
	De Vereninig van Saramakaanse. Suriname

[16] See, for example, the precautionary measures in favour of the Sarayacu Indigenous People of Ecuador in the Inter-American Commission's 2003 Annual Report, where it states: "The information available indicates that at least 10 members of the community have been disappeared since January 26, 2003, and that the girls of the community were subject to harassment by members of the Army and civilians from outside the community. In view of the risk to which the beneficiaries are exposed, the IACHR asked the Ecuadoran State to adopt the measures needed to protect the life and physical integrity of the members of the Sarayacu indigenous community, to protect the community's special relationship with its territory, and to investigate judicially the events of January 26, 2003, at the "Tiuthualli Camp for Peace and Life."

2003	Kankuamo Indigenous People. Colombia
	Members of 15 community organizations and reserves of the Pijao indigenous People. Colombia
	Sarayacu Indigenous Community. Ecuador
	Mercedes Julia Huenteao et al. Chile
	Rosalina Tuyuc. Guatemala
	Amílcar Méndez. Guatemala

Likewise, the Inter-American Court is currently examining the following petitions lodged by the Inter-American Commission, on behalf of indigenous peoples: Case of the Mayagna (Sumo) Community of Awas Tingni;[17] Case of the Plan de Sanchez Massacre;[18] Case of Stefano Ajintonea et al. vs. Surinam (Massacre of Moiwana);[19] Case of the Yakye Axa Indigenous Community of the Enxet-Lengua People;[20] Case of YATAMA;[21] Case of Alfredo López Álvarez.[22]

In the matter of provisional measures that seek to prevent irreparable harm to persons, the Inter-American Court has pronounced a series of measures whose beneficiaries are indigenous peoples. See, for example, the following provisional measures granted by the Inter-American Court: Case of Chuminá (Guatemala – 1991); Case of Colotenango (Guatemala - 1994); Case of Serech and Saquic (Guatemala - 1996); Case of Clemente Teherán et al., Zenú Indigenous Community (Colombia – 1998); Case of Bámaca Velásquez (Guatemala - 1998); Case of the Mayagna (Sumo) Awas Tingni Community (Nicaragua - 2002); Case of the Kankuamo Indigenous People (Colombia - 2004); Case of the Sarayacu Community (Ecuador - 2004); Case of the Plan de Sanchez Massacre (Guatemala - 2004).

[17] Inter-American Court of Human Rights. *Case of the Mayagna (Sumo) Awas Tingni Community vs. Nicaragua*, Ruling of August 31, 2001. Series C No. 79. Ruling being implemented.

[18] Inter-American Court of Human Rights. Case of the Plan de Sanchez Massacre vs. Guatemala, Ruling of April 29, 2004. Series C No. 105. Ruling on compensation pending.

[19] Inter-American Commission on Human Rights, Press Release No. 4/03.

[20] Inter-American Commission on Human Rights, Press Release No. 30/03.

[21] Inter-American Commission on Human Rights, Press Release No. 30/03.

[22] Inter-American Commission on Human Rights, Press Release No. 30/03.

Conclusion

As a result of the petitions presented to the Inter-American Commission, we can affirm that indigenous peoples are using the Inter-American human rights system as a recourse with greater frequency, as a place where they can denounce violations of their rights, both individually and collectively.

Also, it can be deduced from the jurisprudence emanating from the organs of the Inter-American human rights system that the Inter-American Commission and the Inter-American Court of Human Rights have developed specific jurisprudence with regard to the rights of indigenous peoples, which confers special importance on the relationship that indigenous peoples have with their ancestral territories.

With respect to the process of the American Draft Declaration on the Rights of Indigenous Peoples, the General Assembly has indicated that one of the priorities of the OAS is the adoption of the Declaration, emphasizing the importance of the effective participation of indigenous peoples in the drafting process. In this regard, the participation of indigenous peoples' representatives has been strengthened as part of this process, becoming a requisite for obtaining the necessary consensus.

We also feel that the Rapporteur on the Rights of Indigenous Peoples of the Inter-American Commission has managed to make significant progress and improved the processing of petitions and cases submitted in favour of indigenous peoples and their members, and has specifically supported the process of the American Draft Declaration on the Rights of Indigenous Peoples.

Finally, we consider that the Inter-American human rights system is an effective body that indigenous peoples can approach when they believe that their fundamental human rights have been violated. While many challenges remain, and despite their current limitations, the Inter-American Commission and the Inter-American Court of Human Rights have been able to respond to the challenges placed before them.

CANADA'S ROLE AND THE SECOND DECADE OF THE WORLD'S INDIGENOUS PEOPLE

As the Decade of the World's Indigenous People drew to a close, the Secretary General of the United Nations gave it a lukewarm evaluation in his report (E/2004/82) to the UN Economic and Social Council:

> *However, despite the important institutional developments that have taken place in the framework of the Decade, the report acknowledges that indigenous peoples in many countries continue to be among the poorest and most marginalized. It also notes that the adoption of a declaration on the rights of indigenous peoples, one of the main objectives of the Decade, has not been achieved. The report considers that further efforts are needed by the Member States concerned and the international community to ensure that all indigenous peoples everywhere enjoy full human rights and enjoy real and measurable improvements in their living conditions.*

Important Developments

The creation of the Permanent Forum and the position of Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous People are important steps toward the full recognition of indigenous peoples by the international community. These advances lead us to hope that the situation of indigenous peoples will continue to receive the attention of various United Nations agencies and be the subject of their policies (see W. Allmand's essay). Another positive development

is that indigenous peoples' representatives are increasingly participating in the various forums of interest to them at both the UN and the OAS.

The development of an analysis and the building of a body of case law emanating from various organs of the United Nations must also be mentioned. The Monitoring Committees of international conventions, the Committee on Human Rights, the Committee on Economic, Social and Cultural Rights and the Committee for the Elimination of Racial Discrimination have all issued recommendations regarding the situation of indigenous peoples, particularly with respect to their right to self-determination (Article 1 of the two conventions). Numerous reports from Special Rapporteurs have provided guidelines for an analysis of intellectual property and traditional knowledge, treaties and other constructive arrangements between indigenous peoples and States, their particular relationship with the land, and their permanent sovereignty over natural resources.

At the Inter-American level, in spite of chronic under-funding, progress has also been noted, particularly with respect to jurisprudence from the Inter-American Court and the opinions of the Inter-American Commission on Human Rights (see I. Madariaga's essay). We have also witnessed substantial advances in the respect for indigenous land and territories, the notion of collective property and the special or particular relationship that indigenous peoples have with the land.

However, in spite of the progress made by the committees and organs of the United Nations that include independent experts, those bodies constituted by State representatives have been slow to follow suit. Both draft declarations, one from the United Nations and the other from the Organization of American States, are still under discussion in working groups composed of governmental delegations. Certain State representatives have even refused to take note of progress made in analyses and international law. Political bodies are lagging behind legal entities, and this gap must quickly be closed if we truly want to take action against the conditions of violence, poverty and marginalization that indigenous peoples continue to experience everywhere in the world.

There is still no international instrument specific to indigenous peoples, aside from Convention 169[1] of the International Labour Organization,

[1] In the report of the Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous People on his official mission to Canada, he recommended that Canada ratify Convention 169.

whose application remains relatively limited (17 countries have ratified it). The adoption of a universal declaration such as that of the United Nations and a regional one such as that of the OAS would constitute a gesture of recognition toward indigenous peoples and an expression of the will of the international community to establish a new relationship between States and indigenous peoples.

Canada's Role at the UN and within the OAS

Canada needs to demonstrate leadership in a spirit of collaboration with indigenous peoples' representatives. It can play a key role in the adoption of a strong UN declaration. In this respect, Canada's cooperation in and contribution to the UN Working Group on the Draft Declaration since September 2004 has substantially improved, particularly with respect to the right to self-determination. But more remains to be done. The Canadian government should use the same positive approach to Part 6 of the Draft Declaration (Articles 25-30) – Lands and Resources. The principles in Part 6 are not new to Canada but have been used in some of the major land claims settlements in recent years. These articles in the Declaration (it is not a treaty) constitute norms to be aspired to in the settlement of land and resource issues and do not place an inflexible straightjacket on negotiating any specific claim.

The Canadian government should not assess the provisions of the Draft Declaration in terms of existing Canadian laws and antiquated court precedents. Many of them were formulated at a time when there was little or no recognition of human rights standards, let alone indigenous rights. If the provisions of the Draft Declaration are correct in terms of human rights, then Canada should amend the laws and overhaul the institutions that run contrary to them. That is what was done when Canada ratified the *Treaty for the International Criminal Court* (ICC), the *Convention on the Rights of the Child* (CRC) and other key international human rights instruments. It was also the case when we adopted the *Charter of Rights*.

This is basically a political and human rights issue, not a legal one. If Canada adopts and implements the principles of the Draft Declaration, it will result in greater justice, peace and economic self-reliance for aboriginal peoples in Canada and greater Canadian unity.

Canada can and should demonstrate leadership in pressing ahead with the Declaration on the Rights of Indigenous Peoples. Not only will Can-

ada be serving justice and human rights, but it has everything to gain and little to lose. Just as Canada played a key role in the *Land Mines Treaty*, the establishment of the International Criminal Court, the *Child Soldier Protocol*, trafficking in small arms and the human security agenda (despite opposition from major States and allies), it can do the same here. Leadership by Canada at the UN will help break the log-jam at the Working Group on the Draft Declaration, assure timely passage of the DDIP, and contribute to justice, survival, peace and opportunity for millions of indigenous peoples around the world.

Recent changes in Canada's position regarding the UN Draft Declaration also have repercussions in the debates on the OAS American Declaration on the Rights of Indigenous Peoples. Currently, these changes specifically concern the right to self-determination, but, little by little, we are seeing more flexibility with respect to the article on treaties, and we hope to see the same with respect to the section on land and resources.

It is reasonable to believe that a strong declaration will soon see the light of day, in a time-frame of about five years. Over the past 20 years, some countries in the Americas have made major changes to their constitutions and legislation to recognize certain rights of indigenous peoples. These changes facilitate the discussion in which indigenous and governmental representatives participate on equal footing. Even though it is slow, the process of drafting an American declaration obliges constant dialogue between States and indigenous peoples, thus contributing to the reinforcement of democracy in the Americas. Parallel to these meetings, exchanges among indigenous peoples within the Caucus have gradually led to a common understanding of the rights that should be included in an American declaration.

Since Canada joined the OAS in 1990, its commitment has been noteworthy. For example, at the Québec Summit in 2001, Canada was responsible for the indigenous theme and provided funding for a parallel indigenous summit. Canada is preparing to do the same for the next Summit of the Americas, which will take place in Argentina in 2005.

However, Canada's commitment is limited by the fact that it has not yet ratified the *American Convention on Human Rights*, an essential prerequisite to the Inter-American Court and other OAS conventions. For example, Canada has access to the Inter-American Commission on Human Rights – where, of the 23 cases underway, three concern indigenous peoples – but as it has not yet ratified the American Convention, it cannot ac-

tively participate, for example, by appointing judges to the court or in developing Inter-American case law. The OAS is building a significant corpus on the rights of indigenous peoples and First Nations citizens of the continent increasingly have recourse to its appeal tribunals.

For many years, Rights and Democracy has supported ratification of the *American Convention on Human Rights* by Canada. We believe that the issue of indigenous peoples' rights constitutes an additional reason to ratify this instrument. And perhaps ratification would enable Canada to appoint a Canadian indigenous commissioner or judge to the Inter-American human rights system.

We are also concerned with the extreme financial precariousness of the Inter-American human rights system. In fact, even the activities that are at the very heart of the mandate of the Inter-American Commission on Human Rights are funded through foreign cooperation projects. Canada must therefore work to ensure that adequate funding is allotted to the Commission to ensure it the stability necessary to carry out its tasks.

The Challenges of the next Decade

Unfortunately, as Kenneth Deer recounts in his essay, the hope held by indigenous peoples to see themselves fully recognized as "peoples" has not yet been realized. In December 2004, the United Nations General Assembly adopted a resolution in favour of a second Decade of "indigenous people," not yet adopting the term "peoples." It appears that we must wait for a third decade before it will be that of "indigenous peoples."

The first challenge of this second decade is of course to finally adopt a United Nation Declaration on the Rights of Indigenous Peoples. It is an essential element in the future development of international norms. The second challenge must be to make a significant impact on the economic, cultural and social conditions of indigenous peoples. That is why the UN gave the mandate of coordination of this second decade to the UN's Economic and Social Council, and not to the High Commissioner for Human Rights (as in the first decade).

That said, no matter which United Nations organ ensures the coordination of the Decade, economic, cultural and social conditions remain integral to human rights. It has been demonstrated time and time again that there is an undeniable link between the impoverishment of indigenous peoples and the denial of their rights, particularly their rights to self-

determination, land and the control of natural resources. These rights are set forth in Article 1 of the *International Covenant on Civil and Political Rights* and in the *International Covenant on Economic, Social and Cultural Rights*:

> *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 co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*
>
> *3. The States 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.*

Economic and social indicators also show that ethnic discrimination and social exclusion are causes of poverty. Everywhere in the Americas, indigenous peoples are poorer than most citizens of countries where they live, and indigenous women are found at the very bottom of the social scale. However, little work has been done to document the situation of indigenous women and to identify with them priorities to end poverty. In 2004, the third session of the Permanent Forum chose indigenous women as its theme. The recommendations formulated during this session must be taken into account and indigenous women must be a focal point of the programme and activities of the new International Decade so that we can hope to have an impact on the economic, cultural and social conditions of indigenous peoples.

We believe – and indeed it is one of our priorities – that the improvement of economic conditions must not take place to the detriment of human rights. Increasingly, multilateral institutions are pointing to the negative consequences of natural resource exploitation on human rights, especially indigenous peoples' rights. Canada should therefore re-examine its support to investment in this sector, in light of the recommendations issued by United Nations' committees of experts and in a recent review of the World Bank's policies regarding extractive industries (the *Extractive In-*

dustries Review), which stresses the link between territorial rights, the right to self-determination and poverty reduction.

> *"Without the protection of human and property rights, and a comprehensive framework of laws, no equitable development is possible."*[2]

In addition to these issues, human rights violations, threats to security, forced displacements, kidnappings, forced disappearances, and the invasion of traditional territories, such as in Latin America, continue to be very worrying. In certain cases, in Colombia in particular, attacks on the human rights of indigenous peoples have had disastrous consequences. The assassination of leaders and the control of territories by armed groups threaten the very existence of peoples and their cultures. The work of the Inter-American Commission on Human Rights bears witness to this; each year it issues protective measures to try to avoid the worst. Often, threats against the lives of leaders and defenders of indigenous peoples' rights go hand-in-hand with the invasion of indigenous territories, or the illegal or unwelcome exploitation of natural resources.

The difficulty of ensuring respect of the most elementary right, the right to life, raises questions about the impunity practiced by many governments. How can we come to terms with the fact that some countries systematically ignore the protective measures issued by the Inter-American Commission on Human Rights, as well as the recommendations of monitoring committees of treaties that they have signed at the international level? We believe that it would be useful for Canada to set an example, by submitting to the permanent committees of the House of Commons an annual report of its own efforts to implement the recommendations made to it by the various committees of the United Nations responsible for monitoring the implementation of pacts and conventions.

If we take no action on full recognition of the rights of indigenous peoples in international instruments, we cannot have a significant impact on the improvement of living conditions or on the preservation of cultural diversity. Indigenous peoples have a special relationship with their lands. This relationship is not simply economic, but is also cultural and spiritual. Their right to self-determination and to the control of their lands and resources is intimately linked to their survival as peoples and as cultures.

[2] James Wolfensohn, President of the World Bank, quoted in *Extracting Promises: Indigenous Peoples, Extractive Industries and the World Bank*, May 2003, www.eireview.org/doc.

One of the challenges in the coming years will be for States take another step toward full recognition of the rights of indigenous peoples. Without this, it is difficult to expect significant improvement in the situation of indigenous peoples. Enshrining their rights in a Declaration and eventually in a Convention would demonstrate the political will of the international community and its commitment to the 300 million indigenous people in the world.

Canada has a responsibility to this effect, not only to the indigenous peoples who live in Canada, but also to the peoples elsewhere who suffer the consequences of Canadian investments and development policies supported by Canada. The Canadian constitutional framework allows for the adoption of a strong international instrument in favour of indigenous peoples. It is in Canada's interest to defend the recognition of indigenous peoples' rights and to work to reconcile the interests of Canadian businesses with this recognition. This is true of the survival of cultural diversity for which Canada has been fighting at the international level, notably at UNESCO. It also goes for the development of a sustainable environment, of greater equality between men and women and the consolidation of peace, all values held dearly by Canadians.