

AT THE EDGE OF THE STATE:

Indigenous Peoples
and Self-Determination

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the "center" represented by dominant societies. Normally well grounded in their own societies, indigenous peoples typically find themselves peripheral in relation to their surrounding states. In that position, they often see things that those at the center of power, of "normalcy", of things "as they are", do not because they do not have to. But all societies must call at times on their seers—be they artists, writers, or preachers—to guide them beyond normalcy, to offer reflection, critique, and visions of alternatives. Humankind, for its part, receives most of its paradigm shifts, as anthropologists will tell, not from "successful" societies, but from those at their fringes who are compelled by the "winners" to re-invent, or succumb. Indigenous peoples have been subordinated and injured by the modern state. Politically, and often physically as well, they live at its edge. Conceptually, however, they may be turning that edge into a cutting one as they construct new paradigms of the rightful structure, function, and relationship of states to constituent peoples. Certainly, few seem anxious to appropriate or reproduce the unreconstructed state. They thus remain, precariously but perhaps also presciently, at the edge of the state.

THE SITUATION OF INDIGENOUS PEOPLES TODAY

"I have been listening to the government officers and radio with interest about what will happen here. Sometimes I wonder how the whiteman will be able to close our river to make power for Papua New Guinea. Many of us believe that they will not be able to succeed in their attempt to close the river. To us it is a sacred place. The whole Purari, and especially up stream, is so sacred because that is where our ancestors came from. The trees, animals, birds, and even rivers are the product of our ancestors. If the whitemen close the river it will only be a short period of time before our ancestors will spoil their work and open up the river once more. How can our Black government ignore our beliefs?" Unnamed indigenous pastor.¹⁵

"The New World Order" which is engineered by those who have abused and raped Mother Earth, colonized, marginalized, and discriminated against us, is being imposed on us viciously. This is recolonization coming under the name of globalization and trade liberalization. The forces behind this are the rich industrialized nation-states, their transnational corporations, financial institutions which they control like the World Bank, the International Monetary Fund, and the World Trade Organization (WTO). They will cooperate and compete among themselves to the last frontiers of the world's natural resources located in our lands and waters." Article 6, 1995 Beijing Declaration of Indigenous Women.¹⁶

15. Reproduced in *The Indigenous Voice*, note 13, *supra*, at 196.

16. *Indigenous Women: The Right to a Voice* (Copenhagen: IWGIA, 1998), 316–326.

V. THE DISTINCTIONS BETWEEN INDIGENOUS, TRIBAL, AND MINORITY PEOPLES

Categories of peoples mean different things to different persons, including social scientists.¹⁷ In addition, semantics shift over time and place.¹⁸ The anthropologist Rodolfo Stavenhagen notes, for example, that in the settler states of Latin America, the term *indigenismo* evolved from an early usage weighted with derogatory connotation to one through which difference, between the invader and the invaded, was recognized to now become, more and more, a symbol for resistance, human rights and social transformation.¹⁹

By contrast, in Asia and Africa, where Europeans did not generally settle, the diversity of persons whom they termed "native" or "indigenous" in colonial times all became, through a feat of political and semantic metamorphosis at independence, undifferentiated "nationals" of their respective encompassing states. The new labels notwithstanding, the two continents contain large numbers of distinctive peoples, particularly in their remoter areas, who remain socially and culturally apart from adjacent societies that dominate them. These

17. The term "tribe" is particularly contentious among anthropologists, some of whom consider that it was devised to facilitate the colonial administrative project which had to find finite ethnic units to lend rationality to its task. For some of the relevant literature, see: Fredrik Barth, *Ethnic Groups and Boundaries: The Social Organization of Cultural Difference* (Boston: Little, Brown and Co., 1969); Ronald Cohen and John Middleton (eds.), *From Tribe to Nation in Africa* (Scranton: Chandler Publishing Co., 1970); June Helm (ed.), *Essays on the Problem of Tribe* (Seattle: University of Washington Press, 1968); I.M. Lewis, "Tribal Society", *International Encyclopedia of the Social Sciences*, vol. 16 (New York: Macmillan and Co. Press, 1968) 146-151; Richard J. Perry, *From Time Immemorial: Indigenous Peoples and State Systems* (Austin: University of Texas Press, 1996); Aidan Southall, "The Illusion of Tribe," *The Passing of Tribal Man in Africa*, special issue, 5 *Journal of Asian and African Studies* nos. 1-2 (1970), at 28.

18. For policy-makers' prevailing usage of the terms "indigenous peoples", "tribal peoples", "ethnic groups", "minorities", "nations", "states", see Jason W. Clay, Epilogue: The Ethnic Future of Nations," 11 *Third World Quarterly* 4 (1989), at 223.

19. "Indigenous Rights: Some Conceptual Problems", *Indigenous Peoples' Experiences with Self-Government* (Copenhagen: IWGIA and the University of Amsterdam, 1994), 9-29, at 14-5. For an equivalent discussion, critical and haunting, of the alternative claiming and repudiating of tribal identity in Turkey, see Arif Dirlik, "Like a Song Gone Silent: the Political Ecology of Barbarism and Civilization in 'Waiting for the Barbarians' and 'The Legend of the Thousand Bulls'", *Diaspora* 3 (1992).

peoples, variously designated in their respective states, have made common cause at the United Nations with indigenous peoples from the settler states of the Americas, Australia, and Aotearoa/New Zealand because, historical particularities aside, they share a contemporary condition of subjugation to the domination, exploitation, and territorial appropriation that states controlled by culturally alien peoples either inflict or allow.

Several Asian governments, for their part, have insisted at the United Nations on a distinction between the word "indigenous" on the one hand, and other terms such as "tribal" or "minority" on the other.²⁰ Those of India and China, in particular, have held that their tribal peoples or national minorities are not "indigenous" in the sense of being original occupiers of land entitled to special protection. All their native (as opposed to immigrant) constituent peoples, these states have asserted, are indigenous, or none are. Either way, they have said, an international regime that protects indigenous peoples can hold no relevance for their countries.²¹ Anthropologists would largely agree that it is usually not possible, in Asia and Africa, to determine "who came first", for a variety of reasons, including extensive population migrations and genetic exchanges harking back to prehistoric times. Important exceptions to this pattern exist, of course, as in West Papua/Irian Jaya, where the indigenous population had virtually no historical relationship with the ancestors of the transmigrants whom the Indonesian government sent, beginning in the 1960s only, to the area.²²

Chronology, however, is not the main point at issue in indigenous-state relations for, as Stavenhagen rightly insists, it is a type of unjust social relationship, and not some abstraction, that creates the "indigeneness" that many now seek to protect via an international regime:

Indigeneness, independently of biological or cultural continuity, frequently is the outcome of governmental

20. Benedict Kingsbury reviews their practice in "Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy", 92 *American Journal of International Law* 3 (1998), 414-457.

21. See Tapan K. Bose, "Definition and Delimitation of the Indigenous Peoples of Asia", *Vines that Won't Bind: Indigenous Peoples in Asia* (Copenhagen: IWGIA, 1996), 39-50.

22. This subject is further discussed in Chapter IV.

policies imposed from above and from the outside. It also quite often is the product of a "constructed discourse" enunciated by the emerging intellectual elites of the indigenous peoples and their sympathizers among other sectors of the population. In any case, the discourse of "indigenouness" leads to a denunciation of injustices (and crimes) committed against the indigenous peoples (genocide, plunder, servitude, discrimination) and to the formulation of specific rights that derive from the injustices suffered. . . .²³

At the United Nations, including its specialized agencies, indigenous and tribal peoples are for the moment seen, for purposes of special legal protection, as synonymous. Both are, furthermore, conceptually distinguished from ethnic minorities and majorities since they could be either. In Guatemala, for example, the Indian population comprises about 70% of the state's total.²⁴ More typically, however, indigenous peoples comprise minorities within encompassing states.²⁵ Either way, so long as they remain subject to cultural and political domination of a certain order, which will be discussed shortly, indigenous peoples remain indigenous for purposes of special U.N. protection.

The concern for minorities at the United Nations significantly predates that for indigenous peoples.²⁶ Indeed, the organization inherited that concern from the League of Nations which, in its time, concluded that strife between ethnic majorities and minorities in Europe lay at the root of much of that continent's instability and warfare. Proceeding on the premise that, in the typical case, majorities have the upper hand, and concluding that both humanitarian and security considerations justified the protection of minorities, the

23. See note 19, *supra*, at 17.

24. *The Indigenous Voice*, note 13, *supra*, at 114. Indigenous peoples also constitute notable majorities in Greenland (90%) and Bolivia (66%). Burger (1987), note 5, *supra*, at 11.

25. For example, in Brazil and Sweden, they represent 0.1% of the population; in the U.S., 0.5%; in Asia as a whole, 7%. Burger (1990), note 5, *supra*, at 18.

26. For a thorough review of the subject, see Patrick Thornberry, *International Law and the Rights of Minorities* (Oxford: Clarendon Press, 1991). See also Thomas D. Musgrave, *Self-Determination and National Minorities* (Oxford: Clarendon Press, 1997); and Will Kymlicka, *The Rights of Minority Cultures* (Oxford: Oxford University Press, 1995).

League at the end of World War I executed specific treaties with targeted states for the protection of their minorities. These treaties set out case-by-case obligations that the target state undertook to observe, and the League to supervise.²⁷

The members of the United Nations, freshly sobered by the Nazi manipulation of German minorities in Europe, by contrast, first approached the question of the protection of minorities by declaring and providing for their rights in a number of general instruments setting out individual, rather than collective, human rights.²⁸ In 1992, however, the General Assembly adopted a *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (hereafter Declaration on the Rights of Minorities) which, while still conferring individual as opposed to collective rights, explicitly locates these in the context of the collective.²⁹ Significantly, the instrument does not define the term "minorities."

Earlier, in 1979, F. Capotorti, the Special Rapporteur commissioned by the United Nations to prepare a *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, offered this description of a minority:

[A] group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.³⁰

The Capotorti study thus identifies a minority as a group that is dominated in fact as well as in numbers, and that exhibits a distinct

27. This subject is further discussed in Chapter III.

28. These include: the 1945 *Charter of the U.N.*, the 1948 *Universal Declaration of Human Rights*, the 1948 *Convention on the Prevention and Punishment of the Crime of Genocide*, the 1965 *International Convention on the Elimination of All Forms of Racial Discrimination*, the 1966 *Covenant on Civil and Political Rights* (particularly Article 27), the 1981 *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, and the 1989 *Convention on the Rights of the Child*.

29. U.N. Doc. A/RES/47/135 (1992).

30. U.N. Doc. E/CN.4/Sub.2/384/Add.1-7.

identity, which it wishes to preserve, implicitly or otherwise. The 1992 Declaration on the Rights of Minorities recognizes as much. Several of its provisions guarantee the right of minority members to express and safeguard their special identity. At the same time, its article 2 declares their right to "participate effectively in cultural, religious, social, economic and public life." As is to be expected, the instrument assigns minority members no special right to territory. The Declaration on the Rights of Minorities thus encapsulates the central tension that the United Nations has associated for some time with the agenda of minorities: their wish to be able to retain their culture while participating equally in a broader society.³¹

Belatedly paralleling developments in the minorities field, the United Nations, in 1982, created a Working Group on Indigenous Populations (WGIP) to advise it on indigenous matters. The latter, in 1984, took on the task of drafting a Declaration on the Rights of Indigenous Peoples (hereafter Draft Declaration), which it completed in 1994, and sent on to its parent body, the Sub-Commission on Prevention of Discrimination and Protection of Minorities (hereafter Sub-Commission).³² The latter endorsed the Draft Declaration, as received, and in turn transmitted it to the Commission on Human Rights. This last body created, in 1995, an open-ended intersessional Working Group of the Commission on the Draft Declaration on the Rights of Indigenous Peoples (hereafter WG on the Draft Declaration) to review the document. There it now stands.

To date, neither the WGIP, nor the WG on the Draft Declaration, nor the Working Group on the Establishment of a Permanent Forum for Indigenous Peoples (hereafter WG on a Permanent Forum) which was set up in 1998 by the Commission on Human Rights, nor the International Labour Organisation (ILO), which are the main U.N. fora presently addressing a range of indigenous issues, have formally defined the term "indigenous peoples." Erica-Irene A. Daes, the Chairperson of the WGIP, reiterated in 1997 its long-held view that "no single definition could capture the diversity of indigenous peo-

31. Note that Capotorti's description esteems that a minority's sense of its solidarity may be no more than "implicit." Indigenous peoples' sense of identity, on the other hand, is seen as explicit at the United Nations. See Wolfgang S. Heinz, *Indigenous Populations, Ethnic Minorities and Human Rights* (Saarbrücken: Verlag Breitenbach Publishers, 1991).

32. See U.N. Doc. E/CN.4/1995/2, reproduced in Appendix.

ples worldwide, and it was not desirable or possible to arrive at a universal definition at the present time."³³ Indeed, from the beginning, the WGIP chose to avoid the issue of definition altogether for fear that a controversy could arise there that would derail the WGIP's more important task of developing standards for the protection of indigenous peoples everywhere.

U.N. fora and agencies now addressing indigenous matters thus proceed on the basis of descriptions, or at most working definitions, rather than formal ones. At the WGIP, the operative description that the presiding experts, indigenous representatives, and a number of participating states frequently invoke is that provided in 1986 by José R. Martínez Cobo, the Special Rapporteur appointed by the Sub-Commission in 1971 to conduct the first comprehensive U.N. study of the condition of indigenous peoples in the world. He stated:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.³⁴

Note that Cobo's definition speaks of historical continuity rather than original settlement. As such, though the definition is thought by some to refer to indigenous peoples in states created by European settlers, its terms plausibly cover both the original inhabitants of those states as well as tribal or otherwise distinctive peoples elsewhere who are historically, if not immemorially, attached to territories that other societies now infringe. Indeed, Cobo himself reports that he had

33. U.N. Doc. E/CN.4/Sub.2/1997/14.

34. *Study of the Problem of Discrimination Against Indigenous Populations: Vol. V, Conclusions, Proposals and Recommendations* (New York: United Nations, 1987), para. 379. U.N. Doc. E/CN.4/Sub.2/1986/7/Add.4.

requested information on indigenous peoples from all U.N. member states, and not just those created by Western settlers. He further records his regret at the lack of information that he had obtained from Africa as he "has always considered that certain population groups in several African countries or regions should be considered as indigenous in those countries or regions."³⁵

ILO Convention 169, entitled *Convention Concerning Indigenous and Tribal Peoples in Independent Countries*, was adopted in 1989. It specifically includes both tribal and indigenous peoples in its purview:

1. This Convention applies to:

(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of the Convention apply.³⁶

Both the WGIP and the ILO, then, intend that the regimes that they proposed and administer, respectively, protect "original" inhabitants of territories encompassed by states, as well as tribal peoples who, whether or not first-comers to a region that they traditionally inhabit, find themselves in indigenous-like conditions of cultural and political subjugation within it. With that clarification, the two bodies now

35. *Id.* at para. 19–20.

36. International Labor Conference, *Draft Report of the Committee on Convention No. 107*, Appendix I, C.C. 107/D. 303 (June 1989).

customarily refer to both indigenous and tribal peoples as indigenous, a practice that this study also follows.³⁷

To summarize, U.N. bodies today generally recognize these features in indigenous peoples: a significant historical attachment to territory; an explicit commitment to culture distinctiveness; a resolve to preserve both territory and culture as a means of reproducing a singular ethnic community. Attachment to a specific territory and insistence on the reproduction of a community, then, generally distinguish indigenous peoples from ethnic minorities. This distinction is particularly pronounced where minorities descend from immigrant or forcibly transplanted populations. In these cases, an ethnic minority typically shows, based on its generational depth in its country of transplantation, a greater or lesser degree of social integration with, and cultural adaptation to, its new environment.³⁸ Furthermore, if the reproduction of such a minority culture is already well assured in its place of origin,

37. The World Bank does likewise. Its 1991 Operational Directive 4.20 states: The terms "indigenous peoples", "indigenous ethnic minorities", "tribal groups", and "scheduled tribes" describe social groups with a social and cultural identity distinct from the dominant society that makes them vulnerable to being disadvantaged in the development process. For the purposes of this directive, "indigenous peoples" is the term that will be used to refer to these groups.

Reproduced in *Newsletter of the International Work Group for Indigenous Affairs* no. 3 (1991). Compare the Proposed American Declaration on the Rights of Indigenous Peoples, approved by the Inter-American Commission on Human Rights in 1997, Article I:

This Declaration applies to indigenous peoples as well as peoples whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations. Self-identification as indigenous shall be regarded as a fundamental criterion for determining the peoples to which the provisions of this Declaration apply.

Annual Report of the Inter-American Commission on Human Rights 1996, O.A.S. Doc. OEA/Ser.LV/II.95 Doc. 7, (1997), at 635.

38. The cultural history of the human species is, of course, that of successively migrating groups that separate themselves from parent groups to settle new spaces that, in time, become uniquely necessary and meaningful to them. Thus, the Quebecois who seek recognition for their special identity today have arguably transformed themselves from French to Quebecois. Either way, indigenous peoples find it highly troubling when, given the Quebecois' relatively shallow attachment to the American continent, the latter's claim to self-determination receives greater deference in Ottawa and elsewhere than those of aboriginal tribes with truly immemorial connections to the territory of Canada, including the province of Quebec. The July

the transplanted minority will, in many cases, insist on equality, and also freedom of cultural practice, but not the reproduction of a distinctive community since that is already safeguarded elsewhere.³⁹

Indigenous peoples, on the other hand, exhibit a singular connection to the territories that they occupy. The Oglala Sioux, for example, unlike Italian-Americans, look to the Black Hills in the West of the United States, and not to some overseas country of origin, for the affirmation of their cultural identity. And the Black Hills, in contrast to ethnic neighborhoods, bear all of the sacred sites, legendary landmarks, and specific material resources that sustain, for the Oglala Sioux, a meaningful culture and community. Withdraw that land, and sustenance and meaning, in Oglala Sioux terms, disappear.⁴⁰ For this

29, 1991 *Statement of the Inuit Circumpolar Conference on Review of Developments* presented to the WGIP illustrates this sentiment:

[T]he Canadian government continues to seek to deny the world's indigenous peoples appropriate recognition of the fundamental right of self-determination. Yet, it has remained totally silent as to Quebec's right to break up Canada. While Canada has invoked the principle of territorial integrity in relation to indigenous peoples' self-determination, in recent years it has repeatedly failed to raise the same principle in any domestic or international forum vis-à-vis Quebec. . . . Inuit have never in the past and do not now seek the dismemberment of states. However, we will not be denied our inherent right to exercise self-determination in the event of unilateral secession by Quebec. The right to self-determination must be applied to all peoples, including indigenous peoples, without discrimination.

(On file with author).

39. The situation on the ground is of course more complex. For example, while many African-Americans passionately advocated integration in the 50s and 60s, others, like Stokely Carmichael, as passionately advocated distinctiveness:

"Integration" as a goal speaks to the problem of Blackness not only in an unrealistic way but also in a despicable way. It is based on complete acceptance of the fact that in order to have a decent house or education, Black people must move into a white neighborhood, or send their children to a white school. This reinforces, among both Black and white, the idea that "white" is automatically superior and "Black" is by definition inferior. For this reason, "integration" also means that Black people must give up their identity, deny their heritage. . . . The fact is that integration, as traditionally articulated, would abolish the Black community. The fact is that what must be abolished is not the Black community but the dependent colonial status that has been inflicted on it.

Quoted in Gary Peller, "Race Consciousness", 1990 *Duke Law Journal* (1990), 759, at 795.

40. For a well-known account of the U.S. Army's 1876-77 campaign against

reason, the indigenous campaign at the United Nations strongly emphasized, from the start, the retention of territory and resources. Minority claims, of course, are also about resources (all political claims are), but these do not necessarily concern territory, as is the case for indigenous peoples.

Of course, not all minorities, by any means, descend from recent immigrants or transplanted persons. Many have lived *in situ* far back in time, as is often the case in Europe. The territory of the former U.S.S.R., for example, is criss-crossed with ethnic minority enclaves whose members have centuries-old roots in the areas that they inhabit. They increasingly claim those areas, with or without also asserting independent statehood. The world press has too facilely denominated the ethno-nationalist movements that these claims sometimes generate "primordial ethnic strifes." The more considered view, that modernity itself—i.e., large-scale economic development, with its far-reaching injuries and rewards, in conjunction with the fetishising of the apparatus of state that was fostered by the Soviet regime—triggered ethno-nationalism, is emerging.⁴¹ Interestingly, indigenous peoples today blame this same duo of mega-development and the intrusive state for their ills. In the final analysis, the categories "indigenous", "tribal", and "minority", like their referents, are not iron-clad but overlap, and sometimes even merge, when the conditions that their members experience converge.⁴²

B. THE GENERAL CONDITION OF INDIGENOUS PEOPLES⁴³

Richard J. Perry opens his recent study of the impact of state systems on indigenous peoples with this apt remark:

the Sioux in the Black Hills, see Dee Brown, *Bury My Heart at Wounded Knee: An Indian History of the American West* (New York: Bantam Books, 1972), 261-297.

41. See Robert J. Kaiser. *The Geography of Nationalism in Russia and the USSR* (Princeton: Princeton University Press, 1994).

42. For the range of issues that attend minority-state relations, see Gerard Chaliand (ed.), *Minority Peoples in the Age of Nation-States* (London: Pluto Press, 1989). For different conceptualizations of the subject, see Kymlicka, note 26, *supra*. See also Adeno Addis' thoughtful essay "Individualism, Communitarianism, and the Rights of Ethnic Minorities," 66 *Notre Dame Law Review* 5 (1991), at 1219.

43. Anthropologists and historians have produced several important studies of the experiences of indigenous peoples in historical and contemporary times. In addition

In A.D. 1500, an Aranda elder in a desert of the Southern Hemisphere was about as different from a Zapotec villager growing corn on the other side of the world as two human beings could be. A few centuries later, their descendants had much more in common. By the twentieth century, they were living within state systems. They were Australians and Mexicans. Their languages, beliefs, and ways of life remained distinct, but the imposition of states had placed them in situations with profound, and in some ways very similar, implications.⁴⁴

Indigenous individuals today live and work in a variety of geographical and occupational settings. They are swidden cultivators, tropical forest hunter-gatherers, pastoralists, reindeer herders, and fishermen as well as peasants, urban laborers, and the proverbial doctors and lawyers. Indigenous communities, on the other hand, remain significantly segregated from the dominant societies that surround them. Such communities typically exist on lands to which they are historically attached, use their own languages, and/or cling to cultural prac-

to the citations to Burger in note 5 and Perry in note 17, *supra*, see also John H. Bodley, *Tribal Peoples and Development Issues: A Global Overview* (Mountain View, Ca.: Mayfield Publishing Company, 1988) and *Victims of Progress* (Mountain View, Ca.: Mayfield Publishing Company, 1990); R. Brian Ferguson and Neil L. Whitehead (eds.), *War in the Tribal Zone: Expanding States and Indigenous Warfare* (Santa Fe: School of American Research, 1992); Eric R. Wolf, *Europe and the People without History* (Berkeley: University of California Press, 1983); Peter Worsley, *The Three Worlds: Culture and World Development* (Chicago: University of Chicago Press, 1984). A brief but worthy review of the problems faced by indigenous peoples—with suggested actions for governments, corporations, financial institutions, and international organizations—is found in Independent Commission on International Humanitarian Issues, *Indigenous Peoples: A Global Quest for Justice* (London: Zed Books Ltd, 1987). A work that focuses on the human rights situation of indigenous peoples is Sarah Pritchard's *Indigenous Peoples, the United Nations, and Human Rights* (London: Zed Books, 1998). Valuable bibliographies and reviews of the literature are: Bernadette Kelly Roy and Dallas K. Miller, *The Rights of Indigenous Peoples in International Law: An Annotated Bibliography* (Saskatchewan: University of Saskatchewan Native Law Centre, 1985); and Bernadette Kelly Roy and Gudmundur Alfredsson, "Indigenous Rights: the Literature Explosion," 13 *Transnational Perspectives* 19 (1987); and Chris Tennant, "Indigenous Peoples, International Institutions, and the International Legal Literature from 1945–1993," 16 *Human Rights Quarterly* (1994), 1–57.

44. See note 17, *supra*, at 3.

tices that mark them as different from, and relatively unassimilated into, surrounding mainstream societies. If, in addition, such communities subsist on resources that have been seriously plundered, which is common, they will show another key marker: poverty—plain, pervasive, and grinding. Indeed, the world over, disrupted indigenous communities, when measured by the modern world's usual indices of health, education, income, housing, incarceration rate, and so on fall to the bottom of the social welfare heap.⁴⁵

The plights of indigenous peoples today, it is generally agreed, are not of their own making but follow from the actions that others took, and continue to take, in the earlier colonial and now global phases of the industrial capitalist economy. Maurice Strong, the chair of the 1992 Earth Summit in Rio de Janeiro, recognized as much when he paid tribute to the economic proficiency of indigenous peoples when left undisturbed in the enjoyment of their resources:

Indigenous peoples have evolved over many centuries a judicious balance between their needs and those of nature.

45. See Burger (1987), note 5, *supra*, at 17–33, for an overview of the employment, health, education, and civil and political status of indigenous peoples. For a fuller discussion of the impoverishment of indigenous peoples, see Bodley (1990), note 43, *supra*. The experience of deprivation arises even in the case of the indigenous people of Hawai'i, a supposed paradise. See Kekuni Blaisdell and Noreen Mokuau, "Kanaka Maoli: Indigenous Hawaiians", in Noreen Mokuau (ed.), *Handbook of Social Services for Asian and Pacific Islanders* (Westport, CT: Greenwood Press, 1991), 131–154; B.Z. Bell (ed.), *E Ola Mau Native Hawaiian Health Needs Study Conference Proceedings* (Honolulu: Alu Like, 1985); Native Hawaiian Study Commission, *Report on Culture, Needs, and Concerns of Native Hawaiians* (Honolulu: Native Hawaiian Study Commission, 1983); M.B. Thompson (chair), *Native Hawaiian Educational Assessment Project* (Honolulu: Kamehameha Schools/Bishop Estate, 1983); U.S. Congress, Office of Technology Assessment, *Current Health Status and Population Projections of Native Hawaiians Living in Hawaii* (Washington, D.C.: 1987). Note, of course, that contemporary social welfare indices need to be viewed in context. They are the terms of a modernist outlook on what a good life is. To the extent that indigenous peoples aspire to that life and are excluded, or have no viable alternative, the indices serve their purpose. They can be misleading, however, when applied to indigenous communities that are able to choose another "good life." To take but one example, illiteracy has a wholly different value depending on whether the illiterate person is a hunter-gatherer by choice or an urban dweller by necessity. The height of cynicism consists in dispossessing indigenous peoples, and then invoking cultural relativism to say that they don't mind their poverty.

The notion of sustainability, now recognized as the framework for our future development, is an integral part of most indigenous cultures.⁴⁶

1. The Colonial Period

Setting aside the invasions, conquests, and colonizations that attended the creations of the early empires of the Tigris-Euphrates, Egypt, China, India, Peru, Mexico, Macedonia, and Europe, persons who speak of colonialism today generally have in mind Europe's subjugation of the New World, its penetration of Asia and the Pacific, and its partition of Africa, all of which occurred in the last 500 years. The classic phase of this at first European enterprise—augmented in the 19th century by the U.S. colonization of the Philippines, Hawai'i, and Puerto Rico—may be said to run from Columbus' arrival in the New World in 1492 to the General Assembly *Declaration on the Granting of Independence to Colonial Countries and Peoples* in 1960.⁴⁷ Victims in the classic phase included peoples who had already constituted themselves into centralized nations at the time of contact with the West as well as others who, while organized on a subsistence basis, occupied territories that were accessible to Western intruders.⁴⁸

Where, as in Australia, Aotearoa/New Zealand, Canada, the United States and, to a lesser extent, Latin America, that colonial contact metamorphosed over time into the successful full-scale implantation of Western society on extra-European soil, consequences to pre-existing societies were catastrophic. The settler society, able now to satisfy its labor needs from its own ranks or from imported manpower, came to see the indigenous population as mere impediment to its expansionist destiny, to be removed by any means necessary, genocidal or otherwise. A Kansas paper, *The Weekly Leader*, put it bluntly in 1867:

46. Foreword to Burger (1990), note 5, *supra*, at 6. Compare the words of Chico Mendez, assassinated for his stand against loggers in the Amazon: "At first I thought I was fighting to save rubber trees, then I thought I was fighting to save the Amazon rain forest. Now I realize I am fighting for humanity." *Id.* at 13.

47. See note 8, *supra*.

48. For the literature, see note 43, *supra*.

A set of miserable, dirty, louse-infected, gut-eating skunks as the Lord ever permitted to live. Their immediate and final extermination all men should pray for.⁴⁹

The result in North America speaks for itself: where thousands of distinctive indigenous languages and communities thrived before the arrival of the settlers, today some five hundred only remain to attest to a continent rich once in societies that created knowledge, art, crafts, narratives, music, and social relationships that were not developed, not seen, not heard, not tested elsewhere.⁵⁰

Perversely, it was precisely when European colonists became freest to commit genocide and ethnocide against indigenous peoples, i.e. when they formed independent settler states removed from the oversight, such as it was, of their more detached metropolitan cousins, that international law accorded them the widest latitude for abuse by recognizing their absolute right to rule others. Thus, while France and England still had to account to international society for their Asian and African possessions at the end of World War II, the settler states of the Americas, because they shook off the colonial label one to two centuries earlier, did not. Indeed, so comfortably did these countries bask in an international legitimacy conceded by all, except the indigenous peoples whom they subjugated of course, that they even set themselves up to pass judgment on the likes of France and England at the mid-20th century.

Domestically, too, settlers found legitimacy, self-conferred this time, by generating a veritable manufactory of national legislation and adjudication that validated their dispossession of indigenous peoples. In the United States, the vast compendium of the laws of dispossession, counterbalanced in part by more benevolent acts, has even come to be known, and taught in its law schools, as "Federal Indian Law."⁵¹

49. Burger (1987), note 5, *supra*, at 38. For classic accounts of settlers' expansion into the West of the United States, see Brown, *supra*, note 40; and J. Drinan, *Facing West: The Metaphysics of Indian-Hating and Empire-Building* (Minneapolis: Minnesota University Press, 1980).

50. The pre-contact population of North America is estimated to have been 7,000,000. It dropped to as low as 390,000 after contact. Bodley, note 43, *supra*, at 39.

51. See David H. Getches, Charles F. Wilkinson, and Robert A. Williams, *Cases and Materials on Federal Indian Law* (St. Paul, Minn.: West Group, 1998).

The general thrust of the latter is not mysterious. Milner S. Ball, a scholar of the subject, observes that "one of the phenomena of federal Indian law is the willingness of the Supreme Court to supply whatever justification is needed for the actions of Congress [vis-à-vis Indians]."⁵²

2. The Present Period

Following World War II, independence movements in Asia (where European settler states never rooted) and Africa (where they infrequently did) successfully brought down the political apparatus of colonialism. Its economic mechanism, however, proved far more tenacious. To begin with, it is not clear that the leaders of the independence movements in these two regions saw anything fundamentally wrong with the export-oriented economies that they inherited from the West. The more socialist-minded of them certainly decried the exploitative terms of trade that were foisted on their countries and some, like Jawaharlal Nehru in India, even strenuously advocated the development of domestic substitutes for expensive imports. Few, however, seemed to fully appreciate at the start what the export economy portended for the Third World: the erosion of self-sufficient communities at home, and the marginalization of the entire national economy abroad. In fairness to these early leaders, it must be said that the dependency critique of the large-scale, capital-driven system of global exchange—which saw that the system would permanently relegate Third World countries to peripheral roles in the world industrial economy—was not generally available at the time.⁵³

52. "Constitution, Court, Indian Tribes", *American Bar Foundation Research Journal* (1987), at 1. See also Curtis G. Berkey, "The U.S. Supreme Court and the Assault on Indian Sovereignty", 2 *Without Prejudice* (1990), 27–40; and Sidney L. Harring's *Crow Dog's Case: American Indian Sovereignty, Tribal Law, and United States Law in the Nineteenth Century* (Cambridge: Cambridge University Press, 1994).

53. For the critique, see James D. Cockcroft, Andre Gunder Frank, and Dale Johnson (eds.), *Dependence and Underdevelopment: Latin America's Political Economy* (Garden City, N.Y.: Anchor Books, 1986); Theotonio dos Santos, "The Structure of Dependence", 60 *American Economic Review* 21 (1970), 231–236; Dudley Sears (ed.), *Dependency Theory: A Critical Reassessment* (London: Pinter, 1979); Mitchell A. Seligson and John T. Passe-Smith (eds.), *Development and Underdevelopment: The Political Economy of Inequality*, 2d. ed. (Boulder: Lynne Rienner, 1998).

It was for the next generation of Third World leaders to discover the germ of dependency theory, which is that, as their local economies became more and more tied to the global market, Third World countries would be left with fewer and fewer political options for the organization of their societies. Faced with the mixed blessings that the global economy conferred, i.e., dramatic material improvement for the few along with severe social dislocation and impoverishment for the many, these leaders found themselves stymied, by a variety of dynamics. These included: the opposition that they would face from the elite, possibly joined by the emerging middle class, if they reversed course; a depleted base of traditional social and material resources with which to rehabilitate the already dislocated and dispossessed; and, finally, their own inchoate trust, as quintessential products of Western colonial education themselves, in progress.

Unable or unwilling to jettison the ongoing cause of their countries' political disempowerment, these leaders instead grasped for short-term solutions, which consisted of the externally assisted capitalist or socialist development of their countries along largely extractive lines, complemented at times with heavy industrial projects, both of which served to further integrate their countries into the world economy.⁵⁴ More often than not, the development assistance they received came packaged with a military component that enabled them to contain the otherwise uncontrollable tensions mounting in their societies.

And so the vicious cycle of the enrichment of the few and dispossession of the many closed, and accelerated, deflected here and there by ameliorative programs. Indeed, the social dislocation, environmental degradation, cultural alienation, wealth differentiation, and militarization that "going global" produced in the Third World after independence surpass in scale anything seen in colonial times.⁵⁵ This complex of post-independence developments, which has been called neo-colonialism, i.e. externally controlled but internally mediated

54. The chain of events that produced the present system of global exchange has been pre-eminently developed by Immanuel Wallerstein in his monumental study entitled *The Modern World System*, vols. I–III (New York: Academic Press, 1974–1988). For a brief introduction to the subject, see his *Historical Capitalism* (London: Verso, 1983).

55. Burger (1987), note 5, *supra*, at 35.

colonialism, proved particularly threatening to indigenous and tribal peoples.⁵⁶

The reason is simple enough. As raw materials for the industrial economy ran out in accessible places, they had to be sought out in formerly inaccessible ones, where the world's remaining unassimilated peoples live.⁵⁷ Accustomed hitherto to exploiting their resources at their own pace without serious challenge from persons outside their traditional worlds, indigenous peoples today find themselves pitted against competitors, unknown and unanticipated, who are far more powerful than they: entrepreneurs and officials, local and global. Ill-equipped by virtue of their population size, level of technology, and relative seclusion for this kind of contest, which often involves them in obscure transactions that Benedict Anderson calls "ceremonies of private property", indigenous peoples now find that they cannot hope to survive without mobilizing their forces in novel ways, and aggregating them with those of allies around the world.⁵⁸

Among the development activities that have been most devastating to indigenous peoples in the last half-century are logging, mining, and dam-building.⁵⁹ Logging for the world market today proceeds wherever forests remain, in temperate as well as tropical zones. The largest remaining harvestable stands are located in the U.S. Northwest, Canada, Siberia, and the rainforests of Asia, Africa and South America.

56. See Gerald D. Berreman, "Internal Colonialism and Fourth World Movements in the Indian Himalayas", in *Native Power*, Jens Brosted et al (eds.) (Bergen: Universitetsforlaget As, 1985) at 104.

57. The interests at stake here are deducible from studies that link 1/2 of the world's recent armed conflicts to contests over indigenous territory rather than East-West politics or North-South economics. See Bodley (1988), note 43, *supra*. According to another source, 20 of 45 armed confrontations fought in 1982 involved indigenous peoples. See Rudolph Ryser, "Fourth World Wars: Indigenous Nationalism and the Emerging New International Economic Order", in Menno Boldt and J. Anthony Long (eds.) in association with Leroy Little Bear, *Aboriginal Peoples and Aboriginal Rights* (Toronto: University of Toronto Press, 1986), 305-315.

58. "Introduction" in *Southeast Asian Tribal Groups and Ethnic Minorities* (Cambridge, MA.: Cultural Survival Inc., 1987), 1-15, at 11.

59. I have not verified the current status—whether enlarged, cut back, or withdrawn—of the development projects described in this section. Regardless, they illustrate the kind of activities that increasingly overwhelm indigenous communities. For a recent review of such activities in several indigenous communities, see International Work Group for Indigenous Affairs, *Indigenous Peoples, Environment and Development: Proceedings of the Zurich Conference May 15-18, 1995* (Copenhagen: IWGIA, 1997).

In all of these places, indigenous peoples are to be found, living in economic intimacy with the coveted forests. Some one million Indians inhabit the South American rainforests. Several hundred thousand Pygmies still rely on those of Africa. Thirty million Adivasi shelter in those of India. Multiple tribal communities, usually hundreds strong, support themselves in the forests of Southeast Asia and New Guinea. Together, they likely constitute the only human communities left on earth that retain the knowledge of how to abide in an environment without degrading it.⁶⁰

The United Nations estimated more than a decade ago that, at then logging rates, 1/5 of the world's remaining tropical forests would disappear by the end of millennium. Countries cutting faster than the average rate would lose more. Brazil, for example, would lose 5/6 of all its forests. Thailand and Guatemala would have lost virtually all. The North's demand for wood—16 times as much in 1984 as in 1950, and projected to rise from the 4 million tons of 1950 to 100 million tons in the year 2,000—lends an implacability to the process. Cattle-rearing, which often succeeds logging, provides the second motor to the engine of deforestation. More than 38% of the ex-Brazilian rainforest is now ranch land, as is more than a quarter of the former forests of Central America. 90% of ranching products end up in American homes as hamburger or pet food.⁶¹

A second resource that indigenous peoples have that others covet is oil, and assorted minerals. Some 30 tribes in the United States, for example, own roughly one-third of the surface-accessible coal West of the Mississippi, as well as 15% of all coal reserves, 40% of all uranium ore, and 4% of all oil found in the country.⁶² Not that these figures translate into wealth for the concerned tribes. In 1981, it is reported, the Navaho received 15-37 cents for each ton of coal mined on their lands by U.S. companies that then turned around to sell the same ton at \$70 on the world market.⁶³ Again, the largest concentration in the world of accessible uranium sits on Aboriginal land in

60. Burger (1987), note 5, *supra*, at 45.

61. *Id.* at 45.

62. *Id.* at 47. U.S. tribes' ownership of subsurface resources sets them apart from most other indigenous peoples in the world, who rarely have recognized surface, let alone sub-surface, rights.

63. *Id.* at 48.

Australia, a fact which apparently has served to pollute the Aboriginals' resources rather than lift their poverty.⁶⁴

The world has been made aware of the high costs that the transportation and consumption of oil exacts in terms of marine pollution and atmospheric disruption, respectively. It is less conscious of the costs to humans as well as flora and fauna that are generated at sites of production and paths of overland transmission. These costs are particularly injurious when generated in the territories of indigenous peoples since the latter rely so heavily on their environments.⁶⁵ Judith Kimerling has compiled a useful but also dispiriting report on what happens when oil companies descend on indigenous territories in the Oriente region of Ecuador.⁶⁶ I draw on her report, and the successive account of William Andrew Shutkin, to illustrate the impact of one such company on the lives of the Huaorani people at the beginning of the 1990s.⁶⁷

At the time, Conoco Ecuador, a subsidiary of DuPont, held a state concession to prospect for oil on 200,000 hectares in the territory of the Huaorani tribe in Oriente. The latter, in 1983 and again in 1990, had been issued legal title to some 670,000 cumulative hectares of their traditional lands, which totaled ca. 2 million hectares. The government of Ecuador, however, like all Latin American governments, retained title to subsurface minerals which it could thus, under its law, concede to third parties.

The Huaorani are a relatively unassimilated tribe, estimated at 3,000 persons or less, who engage in hunting-and-gathering as well as horticulture on lands bordered by two rivers that run through the

64. *Id.* at 47.

65. For a classic report on this issue, see Thomas Berger, *Northern Frontier, Northern Homeland: The Report of the Mackenzie Valley Pipeline Inquiry* (Toronto: James Lorimer and Co., 1977). For reports on the impact of oil drilling on the Ogoni people in Nigeria, see Ben Naanen, "Oil-Producing Minorities and the Restructuring of Nigerian Federalism: The Case of the Ogoni People", *Indigenous Peoples, Environment and Development* (Copenhagen: IWGIA, 1997), 83-99; and Claude E. Welch, Jr. and Marc Sills, "The Martyrdom of Ken Saro-Wiwa and the Future of Ogoni Self-Determination," *5 Fourth World Bulletin* 1-2, (1996), 5-21.

66. National Resources Defense Council, *Amazon Crude*, (1991).

67. "International Human Rights Law and the Earth: The Protection of Indigenous Peoples and the Environment", *31 Virginia Journal of International Law* (1991), 479, at 493-500. See also Jennifer E. Brady, "The Huaorani Tribe of Ecuador: A Study in Self-Determination for Indigenous Peoples", *10 Harvard Human Rights Journal* (1997) at 291.

Amazonian forest. The first contact between the Huaorani and the non-indigenous world apparently occurred in 1958, when the U.S.-based missionaries of the Summer Institute of Linguistics (SIL) and Christian Missions in Many Lands first reached the tribe. By 1970, SIL managed to convince a number of Huaorani groups to leave their traditional homelands and live in evangelized communities at the edge of their territory. Foreign oil companies then occupied the vacated areas. This joint oil-and-missionary scenario of pacification and relocation was then apparently re-enacted, several times over, in other parts of the tribe's traditional territory.

To reach its general drill site in the tribe's territory and lay a pipeline, Conoco first had to cut a 175 kilometer swath through the rainforest. As it moved to explore specific sites, Conoco was expected to create thousands of kilometers more of trail, and also hundreds of heliports, and an equal number of detonation pits in which to conduct seismic probes. Two to five hectares of forest needed to be cleared for each exploratory well, and ten to fifteen more for each drilling platform. Toxic wastes from all operations were simply discharged onto local soils and streams. Landfills that were initially proposed, but not constructed, did not even include provisions for pre-treatment, lining, or leachate collection.

At the exploitation phase, most of the activities mentioned are expected to multiply, with new ones being added. Already, the rivers formerly fished by the Huaorani are contaminated, and have been abandoned by them. Land-based wildlife has also scattered as erosion and pollution combine to undo the fragile ecosystem, which, incidentally, forms part of a UNESCO-designated Biosphere Reserve. Finally, the road that Conoco cut brought into the forest the entire human services network that a project like Conoco's requires, or attracts. These new arrivals, who know nothing of the forest, then and there start to determine the fate of those who do, through the introduction of disease, money, guns, gadgets, prostitution and so on.

Several other developmental activities of the last decades that targeted indigenous territory dwarf that of Conoco in Ecuador. The projected Grande Carajas Programme in Brazil, for example, was expected to assign 190 million acres to various interrelated mining, hydroelectric, agricultural, and forestry projects. The World Bank, the European Economic Community, North American together with

appropriated in 1898 when it illegally annexed Hawai'i and began to rule it as a federal territory. When Hawai'i became a state in 1959, the federal government transferred to the newly created state government the responsibility for distributing these same lands to the indigenous inhabitants. To date, indigenous Hawaiians—many of whom are doubled and tripled up in housing in the state or, worse, have had to leave it because of the high housing costs—have been placed on no more than about 20% of the acres.

Commissions of inquiry into this anomaly have found mismanagement, violations of law, corruption, and fraud on the part of the state agency, known as the Hawaiian Homes Commission, administering the returned lands allegedly on behalf of the indigenous Hawaiians. But, until 1988, only the federal government could legally bring suit to compel the state agency to perform, which Washington chose not to do. That year, under pressure from indigenous Hawaiians, the Hawai'i state legislature enacted a Bill permitting indigenous Hawaiians to sue on their own account, but only for actions arising thereafter. The Bill further provides that any damage recovered by plaintiffs must be deposited right back into state coffers to the account of the offending agency, to help it execute its mandate!⁷⁷

The Civil Code of Brazil at one time defined Indians as legally incompetent and subjected them to state guardianship, which was exercised by the state-sponsored National Indian Foundation (FUNAI).⁷⁸ Under the regime created, individual Indians could escape wardship only if they successfully demonstrated that they spoke Portuguese, understood national culture, and otherwise showed promise, as determined by FUNAI or other agencies of the state.⁷⁹ The Constitution of India exhibits a more benevolent paternalism. It allows the government to positively discriminate in favor of scheduled tribes, and also certain castes, in order, however, to secure their assimilative

77. Susan C. Faludi, "Broken Promises: How Everyone Got Hawaiians' Homelands Except the Hawaiians", *Wall Street Journal* (September 9, 1991). See also Advisory Committee to the U.S. Commission on Civil Rights, *A Broken Trust, The Hawaiian Homelands Program: Seventy Years of Failure of the Federal and State Governments to Protect the Civil Rights of Native Hawaiians* (Los Angeles: Western Regional Office, U.S. Commission on Civil Rights, 1991).

78. Burger (1987), note 5, *supra*, at 29.

79. *Id.*

"upliftment" and "accelerated progress."⁸⁰ The Marcos regime in the Philippines, on the other hand, dispensed with niceties. It simply appointed a businessman close to Ferdinand Marcos to be the Presidential Assistant on National Minorities with plenipotentiary power to oversee the welfare of tribes. He promptly relocated several of these onto reservations and opened up their lands to extractive industries.⁸¹ The Marcos approach, in the final analysis, hewed close to that of the U.S. federal government, which esteems that Indian tribes are its wards and enjoy such rights, and such rights only, as Congress, under its plenary power, is pleased to grant them at any given time.⁸²

In sum, while change is forthcoming on several fronts, the premises guiding states in their relations with indigenous peoples in the second half of this century largely reduce to these: the global economic engagement is a river of no return; indigenous peoples are the least significant of the detritus that the river washes up; they enjoy little if any rights as distinctive communities, neither to land nor voice; out of good will, states will, on occasion, appoint a guardian or grant favors. Indigenous peoples, in other words, are peoples that things are done to, or occasionally done for. But they are not peoples who themselves do, or speak. Ironically, this silencing of indigenous peoples holds even when what they have to say could aid others.

For the present onrush on indigenous resources, it should be recalled, scatters not just peoples and species, but also knowledge. This, at a time when the world has learned that the environment, its air, waters, species and, in particular, rainforests are highly vulnerable to human onslaught. The focus on the rainforest, of course, has given some visibility to the indigenous societies that inhabit it and long engaged in the sustainable exploitation of its resources. But the world remains strangely slow in taking the next obvious step, which would be to systematically enlist the scientific expertise of these societies—from which have come the pre-eminent observers, stewards, and beneficiaries of the rainforest—in its project to save the resource.⁸³

80. Statement made by Mr. Prabhu Dayal on Behalf of the Delegation of India in the WGIP on July 31 1991 (on file with author).

81. Burger (1987), note 5, *supra*, at 29.

82. See *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272 (1955).

83. Prince Charles of Wales, who studied anthropology at Cambridge, gave this idea some prominence in a lecture he gave in 1996:

C. CONCERNS REGARDING ETHNOCIDE AND GENOCIDE

The condition of indigenous peoples in this century clearly points in the ominous direction of cultural and/or physical demise. Certainly, not every culture that ends, nor every people that succumbs, does so as the result of a legally defined act of ethnocide or genocide. The scope of actions covered by these terms, however, is surprisingly broad, as a glance at the relevant texts will show. In 1948, the United Nations adopted the *Convention on the Prevention and Punishment of the Crime of Genocide*.⁸⁴ It states, in part:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;

A crucial factor in our approach to the rainforests . . . is the importance of working with indigenous tribal peoples, and respecting them for their all-embracing knowledge and experience of the forest. Generations of observations and bodily trial and error have honed their judgement in a process as rigorous as any laboratory testing. As a result, local people often have keener insights into the intricately balanced harmony of the forests, and how simultaneously to exploit and sustain that harmony, than do the peripatetic experts. Yet local communities have too often been ignored. We must systematically, I would suggest, bring them into efforts to safeguard the forest, right from the start of the planning process. . . . Studies of Indian communities in Brazil and Venezuela show that they make use of up to 78 per cent of the tree species in the forests concerned—and with as many as 300 species of trees in an area a quarter of the size of a football pitch, this is no mean feat. To the Shuar Indians of Ecuador, the forest is a natural pharmacy—they know of 250 separate medicinal plants. The same kind of astonishingly diverse use of tropical forest species can be seen in their agricultural practices, even when dealing with varieties of staple crops such as manioc. The idea of one tribe (the Tukano Indians of the Upper Rio Negro in the Amazon) having access to no fewer than 140 varieties of manioc makes our dependence on a mere handful of staple crops look extremely primitive by comparison. H.R.H. the Prince of Wales, "Extracts from the Rainforest Lecture", London, 6 February 1990. Distributed by Survival International.

84. 78 U.N.T.S. 277.

- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

A number of elements set out in the above clauses are of particular relevance to the contemporary situation of indigenous peoples: the prohibited act must *intend* to destroy; the causing of *mental*, as well as physical, harm is genocidal; the deliberate infliction of conditions which would *bring about* physical destruction is itself genocidal. A Soviet suggestion to also forbid "cultural genocide" was defeated at the time, but the conviction that cultural genocide or ethnocide is also forbidden has since become widely accepted both inside and outside the U.N. system. UNESCO's 1981 *Declaration of San José* serves as the standard reference on the subject. It states:

Ethnocide means that an ethnic group is denied the right to enjoy, develop and transmit its own culture and its own language, whether collectively or individually. This involves an extreme form of massive violation of human rights and, in particular, the right of ethnic groups to respect for their cultural identity, as established by numerous declarations, covenants and agreements of the United Nations and its Specialised Agencies, as well as various regional intergovernmental bodies and numerous non-governmental organisations. . . . We declare that ethnocide, that is cultural genocide, is a violation of international law equivalent to genocide, which was condemned by the United Nations Convention on the Prevention and Punishment of the Crime of Genocide of 1948.⁸⁵

85. See UNESCO, Meeting of Experts on Ethno-Development and Ethnocide in Latin America, *Final Report*, San José, Costa Rica (7–11 December 1981); UNESCO, Meeting of Experts on the Study of Ethno-Development and Ethnocide in Africa, *Final Report*, Ouagadougou, Upper Volta (31 January–4 February 1983); UNESCO, *UNESCO and Resistance to Ethnocide: Conclusions of the Ouagadougou Meeting*,

UNESCO marshalls two arguments here to assert that ethnocide is forbidden: one, violations of the right to enjoy, develop, and transmit language and culture are inherently so extreme as to constitute the very violation of cultural identity that is already prohibited by various U.N. legal instruments; two, the commission of ethnocide matches, in gravity, the commission of genocide, which is unequivocally forbidden.

The WGIP affirms the right of indigenous peoples to be protected against genocide in Article 6 of the Draft Declaration. It then sets out the types of ethnocidal activities prohibited under Article 7:

Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide, including prevention of and redress for:

- (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- (c) Any form of population transfer which has the aim or effect of violating or undermining any of their rights;
- (d) Any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;
- (e) Any form of propaganda directed against them.⁸⁶

The experts who drafted the above excerpt, unlike the authors of UNESCO's 1981 *Declaration of San José* and the 1948 *Convention on the Prevention and Punishment of the Crime of Genocide*, had the benefit of hearing extensive comments on the subject by indigenous spokespersons. As such, the passage exhibits an extended awareness of the scope of the subjective experience of physical and mental

(February 1983); UNESCO, Meeting of Experts on the Study of Ethnodevelopment and Ethnocide in Europe, *Final Report and Conclusions and Suggestions*, Karasjok, Norway (29 May to 2 June 1983).

86. See note 32, *supra*.

assault that indigenous peoples experience. Article 7 of the Draft Declaration broadly prohibits any activity that has the aim or effect of dissolving social and cultural identity, of dispossessing lands, of undermining rights, and of imposing assimilation. Negative propaganda, furthermore, is prohibited. Finally, the paragraph does not require a showing of intent: "aim or effect" suffices.

That genocide occurred in the course of the European incursion into the New World is now beyond debate.⁸⁷ The decimation of North America has already been alluded to. Figures for South America are even starker. The anthropologist Darcy Ribeiro estimates that the indigenous population of South America plummeted from at least 70 million at contact to 3.5 million in the mid-17th century.⁸⁸ Even in Peru, which apparently holds the least shocking figure in this regard in South America, the Indian population was reduced to 1/4 its original size between contact and independence.⁸⁹ In the Argentinian Pampas, where settler interests ran high, ranchers in the nineteenth century virtually wiped out the prior indigenous occupants of the land. Total, as opposed to virtual, genocide befell the Indians of Uruguay and the Caribbean islands.

Finally, even where indigenous populations were not eliminated in South America, they were often wholly transformed, once their lands were seized, into an exploited labor force for the agricultural estates that rose on the very soil that the laborers once controlled, or into the anonymous proletarian masses that now converge on South America's cities in search of any available livelihood.⁹⁰ Under these circumstances, then, though individuals survived, their communities and cultures did not, a fact which, under both the *San José Declaration* and the Draft Declaration, attests to ethnocide.

But the paradoxical situation that confronts us today is this: that while similar or severer acts of cultural assault continue, in a legal climate of theoretically heightened sanction against such deeds, they remain quite unremarked, not to mention unpunished. The mainstream talk of genocide and ethnocide that was triggered in the United

87. See Drinan, note 49, *supra*, and also Brown, note 40, *supra*.

88. Burger (1987), note 5, *supra* at 37. Figures for Australia show a pre-contact population of 300,000 that sank to an all-time low of 60,500. Bodley, note 43, *supra*, at 39.

89. Burger, *id.* at 17.

90. *Id.* at 18; Stavenhagen, note 73, *supra* at 101.

States by the quincentennial anniversary of Columbus' voyages, for example, focused again and again on how shamefully executed some actions were *back then*. History became diversion: a place to which the present generation runs to align righteously with the good guys of yesterday in order to avoid having to disown the bad guys of today!

Yet there is no doubt that certain economic development projects undertaken right now in indigenous territories rival anything one could charge to the conquistadors.⁹¹ Fundamentalist missionary activities, in addition, have soared, entailing at least ethnocidal effects.⁹² Ongoing victims of progress, indigenous peoples today continue to be denied en masse the right to enjoy, develop, and reproduce their societies and cultures, as promised by various international instruments. When these denials cause serious physical and mental harm that leads to their demise, in whole or in part, the 1948 *Convention on the Prevention and Punishment of Genocide* is implicated. It is likewise implicated when they are forcibly removed from their homelands if that removal brings about their destruction in whole or in part.

91. *Id.* at 102–107.

92. The missionary group known as the Summer Institute of Linguistics has been cited as especially aggressive, and has figured as the target of expulsion petitions circulated by Indians in a number of Latin American countries. Burger (1987), note 5, *supra*, at 113. See also the statements of Colombia's Asociacion Nacional de Usuarios Campesinos (ANUC) and the Wangurina Federation of Quicha Indians of the River Napo region of Peru reproduced in *The Indigenous Voice*, note 13, *supra*, at 249–251. Relevant passages state:

But in many areas we have removed the Summer Institute of Linguistics from our lands because we have realised that it is they, also, who are destroying our culture, traditions and customs. As well as this they exploit their knowledge of ourselves, of our lands and the riches of our earth in order to help the 'gringos' who follow them to open oil wells, to extract timber and gold etc.

and:

So we ask you [the authorities] not to permit, under any circumstances, this SIL with its fantastic and fanatic sects to come to the Napo. We already have our religion and that is enough. We also have bilingual teachers approved by the Ministry of Education itself and we do not need them to come here and cause conflict and division because of religion when there is no need to do so. We also have health promoters and we do not want their health workers or pastors disguised as health workers. We, the Kichwarunas of the Napo, are the only tribes undivided by such sects.

Admittedly, the 1948 Convention requires that the removal be with intent to destroy. However, can any corporation or government today plausibly claim absence of intent when, moving people out of the pathway of a dam, it does so with the knowledge that such moves regularly produce physical hardship, mental anguish, cultural disintegration, and physical demise for at least a portion of the group affected? Modern social science and the communications revolution have, in this respect, robbed today's governments and entrepreneurs of the innocence that some may still hold out to the original conquistadors. But while innocence, if any, has dissipated, so too apparently, in our crisis-saturated age, has our capacity for the kind of outrage mounted by the friar Bartolomé de Las Casas and others in the 15th century.

The world public now registers acts of genocide, if at all, only in connection with the tribes of the Amazonian rainforest. The situation there is certainly of utmost gravity, for well-known reasons: many Amazonian tribes number in the bare hundreds; their hitherto total seclusion from the non-Indian world means that they have no biological immunity to its contagious diseases; finally, the remoteness of their communities, while no longer sufficient to keep out intruders, operates still to shield the latter's depredations until, too often, it is too late.⁹³ But the question of survival, understood in its cultural as well as physical aspects, in fact looms large for nearly all indigenous communities as long as the global economy continues its unchecked quest for coveted resources into the last recesses of the earth from which, to use an extreme but perhaps accurate word, it "cleanses" indigenous peoples.

Where this "cleansing" leads to physical demise, the action is properly called genocide. Where, instead, the effect is the destruction, or severe disruption, of the social and material bases necessary to a people to sustain its human relations, body of knowledge, and sense of existential purpose, such that an essentially "de-knowledged" community now looks out at a world of chaos in which it may never again find its place, the result is properly called ethnocide. The rupture of community that ethnocide produces differs fundamentally, it must be emphasized, from the kind of change whose pace and direction the

93. Mortality from measles and whooping cough among Amazonian Indians has been as high as 30%. In Brazil alone in this century, 87 Indian groups became extinct after contact with the outside world. Burger (1987), note 5, *supra*, at 24.

persons being changed essentially initiate, understand, control or approve—a situation that indigenous peoples do not enjoy.

So grave is the question of cultural and physical survival for indigenous peoples that some indigenous lawyers, impatient at the seemingly inconclusive time spent on the question of self-determination at the United Nations, advocate instead an immediate *sui generis* regime of international legal protection against ethnocide and genocide for indigenous peoples.⁹⁴ Ethnocide and genocide, in sum, figure as current happenings, and not past calamities, in the lives of indigenous peoples. Their ongoing occurrence, furthermore, is exacerbated by the sense of inevitability, spilling over into justifiability, that has settled over the issue of the dismantling of indigenous homelands. For if the world believes that the march of the global economy is inexorable, it necessarily accepts the victimization that it produces as unavoidable: that is, beyond human control. The historian Arif Dirlik cautions that this is exactly how relationships of power are consecrated: “the distancing of history from its living subjects . . . which is implicit in its reification, conceals a power relationship.”⁹⁵ It is a reification that indigenous peoples have refused to accept as they set out to remake their history, using, in the process, the tool of international law. Kenneth Deer, a Mohawk long active at the WGIP, puts it this way:

Because indigenous peoples could not get protection in their own countries, under domestic law, the feeling was that there should be an international instrument for the protection of indigenous people against assimilation or from genocide.⁹⁶

D. THE INDIGENOUS/NGO ALLIANCE

Indigenous peoples are, in the task that Deer describes, supported by a significant collection of non-governmental organizations (NGOs),

94. Robert T. Coulter, “Are Indigenous Populations Entitled to International Juridical Personality?”, *American Society of International Law Proceedings* (April 1985), 189, at 198–200.

95. See note 19, *supra*, at 349.

96. In Pierre Trudel, (ed.), “The U.N. Draft Declaration on the Rights of Indigenous Peoples”, *Autochtones et Québécois: La Rencontre des Nationalismes* (Montreal: Recherches Amérindiennes au Québec, 1995), 19–25, at 20.

indigenous and non-indigenous, that, between them, detain considerable experience by now in international advocacy work. Indigenous activism on the international plane first emerged in the early 19th century with the assistance, even then, of the period’s NGOs.⁹⁷ An early supporter was the British Anti-Slavery Society which, in 1835, established the Aborigines Protection Society to help guide Australia’s Aborigines to metropolitan fora where they could report and appeal the depredations of whites in their territories.⁹⁸ Until the creation of the League of Nations, however, such appeals remained confined to national political systems: Maoris, Aborigines, and Indians from Canada could do little more than reach over the heads of local officialdom to submit their stories of injustice to metropolitan authorities that, in the final analysis, enabled that injustice.⁹⁹

With the establishment of the League in Geneva after World War I, the first truly international acts of protest and appeal coalesced. A famous visitor to Geneva, and indeed its resident from 1922 to 1923, was Deskaheh, a leader of the Six Nations Iroquois Confederacy, who petitioned the League to prevent Canada from taking over the Iroquois reserve.¹⁰⁰ Deskaheh failed, but not before putting the United Kingdom and Canada through quite an ordeal as they scrambled to overcome the Dutch, Irish, Panamanian, Estonian, and Persian support that he managed to muster in support of his request that the League hear the Iroquois petition. A Maori spokesperson, Ratana, also sought League help in 1922. In 1945, the Iroquois again sought out international assistance. This time they attempted to address, again

97. Douglas Sanders, “The Re-Emergence of Indigenous Questions in International Law”, 3 *Canadian Human Rights Yearbook* (1983), at 12–13. The cited work is one of the clearest and most insightful works on the history of international law’s consideration of indigenous needs and claims. For comments on the current work of NGOs in the human rights area generally, see Henry J. Steiner, *Diverse Partners: Non-Governmental Organizations in the Human Rights Movements* (Cambridge: Harvard Law School Human Rights Program and Human Rights Internet, 1991); and David Weissbrodt, “The Contribution of International Nongovernmental Organizations to the Protection of Human Rights”, in Theodor Meron (ed.), 2 *Human Rights in International Law: Legal and Policy Issues* (Oxford: Clarendon Press, 1984), at 403.

98. Sanders, *id.* at 13–14.

99. Sanders notes the following trips indigenous peoples made to England to petition the Crown: by Maoris in 1882, 1884, 1914, and 1924; by Indians from British Columbia in 1906 and 1909. *Id.*

100. *Id.* at 14.

without success, the founding conference of the United Nations in San Francisco. Further attempts to invoke U.N. intervention were made over the next decade, but generally floundered on the U.N. response that it could not deal with private, as opposed to state, submissions.¹⁰¹

Real progress came only in the 1960s, and more particularly the 1970s, as a result of increased indigenous mobilization, which in turn was set off by the increased intrusion of the global economy. The post-war reconstruction of Europe and Japan, the economic boomlets in North America triggered by the Korean and Vietnam wars together with their ripple-effects in Asia and the Pacific, the consequent economic ascendancy of Japan followed by the "take-off" of the "tiger" countries, the increased activities of the World Bank—these developments all exerted strong global pressure on resources, indigenous and otherwise. Indigenous peoples, confronted by this latest phase of the global economy's expansion, saw that they had no further possibility of retreat, and quite simply organized to resist.

The style of their resistance, at least initially, owed something to the American, European, Australian and New Zealander protest movements of the 60s, in which some indigenous young people cut their political teeth, thereby later providing their communities with new leaders who had important contacts to other indigenous peoples as well as the non-indigenous world.¹⁰² One of the first inter-indigenous organizations created in this period was the International Indian Treaty Council (IITC), founded in 1974 in the United States. It quickly mapped out an international strategy for highlighting Indian causes and, in 1977, obtained consultative status at the United Nations. The following year, the Indian Law Resource Center was established, also in the United States, and dedicated to the more specific goal of selecting and pursuing legal action, in domestic as well as international fora.

In 1975, the Assembly of the National Indian Brotherhood of Canada decided that the time had come for indigenous peoples to organize internationally. It consequently launched a new organization called the World Council of Indigenous Peoples (WCIP), which first met under that name in 1977. The WCIP at that meeting orga-

101. *Id.*

102. *Id.* at 58–60.

nized itself on the basis of 5 regions: North America, Central America, South America, the South Pacific, and Northern Europe.¹⁰³ The organization became very active, held several meetings around the world and, by 1981, submitted wording for an international covenant on the rights of indigenous peoples to the United Nations.

Many other international, regional, and local indigenous NGOs came into being in the last decades. A prominent organization in the southern hemisphere, the Consejo Indio de Sud America (CISA), was founded in 1980 near the ancient Inca capital of Cuzco in Peru. It espoused "Indianism", or self-determination and self-management, and rejected "indigenismo", which was then the Latin American states' code-word for the benefactor/ward relationship they envisaged between themselves and Indian communities. An earlier organization, the Regional Coordinating Body of Indian People (CORPI), had been formed in 1977 in Panama to speak for the indigenous communities of Central America. CISA and CORPI also doubled as the representatives of WCIP in their respective areas.

Australia too saw the birth of a number of indigenous organizations at this time. Two that played a prominent role at the United Nations early on were: the Federation of Land Councils and the National Organization for Aboriginal and Islander Legal Services. Maoris also came to participate at the United Nations, through a number of specialized groups rather than a single overarching organization. The Inuit Circumpolar Conference (ICC), which speaks for groups living below the Arctic in Greenland, Canada, Alaska, and the former U.S.S.R., has been very active, as have Sami representatives from the Nordic countries.

Indigenous and tribal peoples from Asia and Africa were not, at the beginning, as organized internationally as those from the Americas and the Pacific, but delegates from Asia are now conspicuous and vocal at the United Nations. Many speak with a united voice at the United Nations through an umbrella organization called the Asia Indigenous Peoples Pact (AIPP), which gathers together about 20 indigenous organizations in South Asia, Southeast Asia, and Taiwan. The mobilization of indigenous peoples in Africa is at an early stage, but a networking organization, the Indigenous Peoples of Africa

103. Douglas Sanders, *The Formation of the World Council of Indigenous Peoples* (Copenhagen: IWGIA, 1977).

Coordinating Committee (IPACC), has recently been formed.¹⁰⁴ All told, over a hundred indigenous organizations, more concentrated in some regions of the world than others, now regularly attend meetings of the WGIP. Indeed, the Indigenous Peoples' Center for Documentation, Research and Information in Geneva, known to those who have relied on its excellent services as doCip, listed some 150 indigenous organizations as submitting comments at the WGIP meeting in 1998!¹⁰⁵ In addition, indigenous representatives now also participate in the WG on the Draft Declaration. Its 1998 session drew members from 47 indigenous organizations.¹⁰⁶ However, a smaller number of these have achieved U.N. observer status, which would enable them to participate in other U.N. fora as well.¹⁰⁷

One of the earliest, ablest, and most devoted non-indigenous NGOs to work in support of the global recognition of indigenous needs and rights is the International Working Group for Indigenous Affairs (IWGIA), based in Copenhagen. It was started in 1968 by anthropologists attending the 37th International Congress of Americanists in Stuttgart.¹⁰⁸ Through its publications and networking services, IWGIA has contributed invaluable information and support to the indigenous cause. Groups with somewhat similar track records are: London's Survival International, founded soon after IWGIA; the Anthropology Resource Center and the Cultural Survival Organization, founded in Cambridge, Massachusetts, in 1975 and 1976 respectively; the Pro-Indian Commission, established in Brazil in 1978; and the Dutch-based Workgroup for Indigenous Peoples.¹⁰⁹ A 1987 listing of non-indigenous NGOs that focus on supporting indigenous peoples

104. Naomi Kipuri, "The Human Rights Situation of Indigenous Peoples in Africa", *Indigenous Affairs* (January-February-March 1999), 18-25.

105. *doCip Update*, 25/26 (July/October 1998), 14-15.

106. *Id.*, March/April 1999 at 2.

107. As of 1991, these were: Grand Council of the Crees (Quebec), Consejo Indio de Sud America (CISA), Indian Law Resource Center, International Organization of Indigenous Resource Development, Inuit Circumpolar Conference, National Aboriginal and Islander Legal Services Secretariat, National Indian Youth Council, Nordic Saami Council, and the World Council of Indigenous Peoples. See United Nations, *Discrimination Against Indigenous Peoples: Report of the Working Group on Indigenous Populations on its Ninth Session*, U.N. Doc. E/CN.4/Sub.2/1991/40.

108. For an account of its first 20 years, see *Yearbook 1988: IWGIA—20 Years* (Copenhagen: IWGIA, 1989).

109. Sanders, note 97, *supra*, at 15.

identified 16 well-known groups, concentrated in Europe (12) but including the United States (1), South America (2), and Asia (1).¹¹⁰

NGOs not primarily concerned with indigenous issues have also contributed resources and experience. They include: the International Commission of Jurists, the World Peace Council, the Women's League for Peace and Freedom, and the World Council of Churches (WCC). The latter's Program to Combat Racism co-sponsored a conference in Barbados in 1971 on the theme of inter-ethnic conflict in South America, at which anthropologists drafted a *Declaration of Barbados* that called for an end to internal and external colonialism in Latin America and urged the construction of multi-ethnic, rather than culturally homogeneous, states.¹¹¹ The WCC convened a second conference in Barbados in 1977, to which several indigenous representatives were invited. The latter issued a statement that decried their physical domination by economic development projects and their cultural domination by assimilationist policies.¹¹² Likewise, the Catholic Church has rallied, on occasion, to the indigenous cause, particularly in South America and the Philippines.¹¹³

The first major international NGO conference on Indigenous Peoples of the Americas was held, with U.N. support, in Geneva in 1977.¹¹⁴ It produced a Declaration that, among other things, urged the recognition of indigenous peoples as nations and as subjects of international law. Acting on its own initiative, the United Nations then placed, the following year, an indigenous item on the agenda of its World Conference to Combat Racism and Racial Discrimination. That conference issued a statement that included the following passage:

8. The conference urges States to recognize the following rights of indigenous peoples;

- (a) To call themselves by their proper name and to express freely their ethnic, cultural and other characteristics;
- (b) To have an official status and to form their own representative organizations;

110. Burger (1987), note 5, *supra*, at 186-7.

111. Sanders, note 97, *supra*, at 15; Burger, *id.* at 273.

112. Burger, *id.* at 273-4.

113. *Id.* at 274-5.

114. The conference drew some 60 indigenous representatives from 15 countries and about 50 international NGOs. *Id.* at 60.

(c) To carry on within their areas of settlement their traditional structure of economy and way of life; this should in no way affect their right to participate freely on an equal basis in the economic, social and political development of the country;

(d) To maintain and use their own language, wherever possible, for administration and education;

(e) To receive education and information in their own language, with due regard to their needs as expressed by themselves, and to disseminate information regarding their needs and problems.¹¹⁵

The statement was endorsed, along with other conference resolutions, by the General Assembly in 1978.¹¹⁶

An NGO conference on Indigenous Peoples and Land followed, in 1981.¹¹⁷ A notable achievement of that conference was its successful call for the establishment of a U.N. Working Group to address indigenous concerns. In 1985, an academic association, the Inter-American Indianist Congress, recommended that states recognize the customary laws of Indian peoples.¹¹⁸ Finally, the most conspicuous project undertaken on behalf of indigenous peoples in this period may have been the fourth Bertrand Russell Tribunal, which convened in 1980 in Rotterdam to expose genocidal and ethnocidal activities against indigenous peoples.

Developments in the 60s, 70s, and 80s thus radically transformed the world's consciousness regarding indigenous affairs. The following data illustrate the point: as late as 1968, the Organization of American States (OAS) put out a 35,000 word report on human rights in the Americas, less than 200 of which dealt with Indians; in 1969, U.N. Secretary-General U Thant flatly turned down a request that a committee be appointed to advise the United Nations on indigenous matters; two years later, the world body agreed to commission a major report on indigenous peoples; in 1982, it appointed a Working Group

115. Reproduced in Sanders, note 97, *supra*, at 23-4.

116. *Id.* at 24.

117. Some 130 indigenous delegates participated as did a very large number of NGOs, showing rising world interest. *Id.* at 60.

118. Stavenhagen, note 73, *supra*, at 115.

on Indigenous Populations to identify and propose remedies for the plight of indigenous peoples.¹¹⁹ From the start, the WGIP has heard, not only from indigenous representatives, but also their many faithful allies in the non-indigenous NGO community.

119. *International Work Group for Indigenous Affairs Yearbook* (Copenhagen: IWGIA, 1988), at 17, 23.