

THIRTY
YEARS OF
LOBBYING
AND
ADVOCACY BY
INDIGENOUS
PEOPLES
IN THE
INTERNATIONAL
ARENA

Lobbying and advocacy within international intergovernmental bodies such as the United Nations have developed into a significant area of work for many indigenous peoples within a period of almost thirty years. The earliest account of a visit by indigenous peoples to the UN or its precursor, the League of Nations, was in the 1920s. Deskaheh, the speaker of the Council of the Iroquois Confederacy, brought the Iroquois' long-standing dispute with the Canadian Government to the League of Nations.¹ Unfortunately, the League's position was that the dispute was a domestic concern of Canada, and hence outside its competence. Almost half a century passed before indigenous peoples ventured again into the United Nations.

It was not generally possible for indigenous peoples to find redress to the injustices and oppression they suffered as distinct collectivities, and even as individuals, in the countries to which they belong. Thus it became imperative to seek a space where they could air their issues, aspirations, and demands.

The increasing strength of the indigenous peoples' movements presented the world with a horrible picture of the discrimination, oppression, and marginalisation which they face. The roles played in perpetuating this situation by colonial and post-colonial governments, transnational and domestic corporations, and even financial institutions like the World Bank, were highlighted. Indigenous activists began to engage states, non-governmental organisations, academics, and human rights organisations in dialogues around these concerns.

The challenge posed by the international indigenous movement to the normative foundations of the present world order and to the discourse on human rights, environment and development, could not be

underestimated. This challenge comes amidst threats of displacement due to the global expansion of capitalism and assimilation which accompanies the expansion of the nation-state. Indigenous peoples are using existing and emerging international laws to seek redress and to project their concerns. At the same time, they are also influencing the further development of international law and the reconfiguration of international bodies.

While the United Nations Charter and the Universal Declaration on Human Rights (UDHR) were already in existence, and several human rights treaties had been ratified, these did not specifically address the particular situation of indigenous peoples. The liberal framework of human rights instruments, which focuses on the protection of the rights of the individual and the state-centric nature of the UN, limited its capacity to address the situation of indigenous peoples - their collective rights fell between the cracks. The emerging indigenous lobby, which started to gather strength in the early 1970s, perceived this inadequacy and challenged the UN and other multi-lateral organisations to look beyond the rights of states and individuals.

Since then, the efforts of indigenous peoples in these international bodies have revolved around opening up more spaces where indigenous issues, values, aspirations, and perspectives can be raised. It has involved questioning the concepts and practices of national and international law. Discourses on issues such as self-determination, collective rights, and land rights, amongst others, have become animated and dynamic in meetings and conferences where indigenous peoples are present.

Indigenous diplomacy has reached such a level of sophistication that government

diplomats sometimes experience difficulty in dealing with indigenous peoples. This is because they themselves exhibit discriminatory or patronising attitudes towards indigenous peoples; then suddenly they are forced to deal with these peoples, who have other ways of interpreting the world and man-made laws.

The international arena also provided opportunities for networking and building relations of solidarity between indigenous groups. This gave birth to new international formations of indigenous peoples.

With this long period of time spent in international lobbying and advocacy, there are a lot of questions which can be asked. For sure, those who have been involved in this work have asked themselves such questions and have been asked them by their organisations, tribes or communities. Personally, these are questions which I have asked myself and which I have been asked. One set of questions revolves around the usefulness of lobbying and advocacy in the international arena. Another set deals more with questions on the conduct and effectiveness of indigenous peoples' strategies for lobbying and advocacy.

Is it worth our while spending financial resources and human time and resources in international work? Aren't we just being distracted from what we should be doing - strengthening our own movements, communities, and organisations at the local level? Are we not being co-opted to work within the system which has helped create our problems in the first place? Considering that the UN is an organisation of nation-states and it is virtually controlled by the industrialised countries, can it help to bring about the justice and redress we are asking for?

What are our gains and setbacks in our international lobbying work? What are the contentious issues between the UN member-states and indigenous peoples and how are these being resolved? Have there been significant shifts in the international political, economic, and social context which require adjustments by indigenous peoples in their international advocacy and lobbying work? Where do we go from here?

If international lobbying remains a valid area of work, which among the various inter-governmental bodies should be prioritised and what parameters can be used to determine this? Should we just concentrate on key UN bodies, instead of spreading ourselves thinly in our desire to cover as much ground as we can? What mechanisms should we propose to international bodies to ensure that our concerns are being addressed and our active and direct participation is ensured?

This article is an attempt to grapple with these questions, but it will not necessarily provide the answers. It is left to each indigenous person, tribe, nation, community, organisation, network, or movement to assess the extent of participation or non-participation and to discern where their priorities lie. What the article will try to do is to look at trends in international lobbying by indigenous peoples, and identify some general gains and setbacks.

Areas of indigenous lobbying and advocacy

The bulk of lobbying efforts by indigenous peoples has been focused initially on UN human rights bodies, particularly the United Nations Working Group on Indigenous Populations (UN-WGIP). Some have gone beyond the WGIP to the Subcommittee on Prevention of Discrimination and Protec-

tion of Minorities (Sub-Commission) and the Commission on Human Rights (CHR). Others have become involved with the International Labour Organization (ILO). A few have made use of the complaints procedure of the International Covenant on Civil and Political Rights (ICCPR), the Convention Against All Forms of Racial Discrimination, and the ILO Conventions Nos. 107 and 169.

The series of UN international conferences in the early 1990s saw varying levels of participation by indigenous peoples. The 1992 UN Conference on Environment and Development (UNCED) and its preparatory meetings had significant participation from indigenous peoples. This conference was a nodal point in terms of the participation of indigenous peoples in UN bodies which address the issues of environment and development. A few indigenous peoples kept up their participation in the sessions of the UN Commission on Sustainable Development, the body set up to monitor the implementation of Agenda 21, the main UNCED document.

Others followed up upon the Convention on Biological Diversity (CBD), the Global Environment Facility (GEF), and the Inter-governmental Panel on Forests (IPF). A few are monitoring the UN Framework Convention on Climate Change, the UN Convention on the Law of the Sea, the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal, and the Convention on International Trade on Endangered Species of Wild Fauna and Flora (CITES), amongst others.

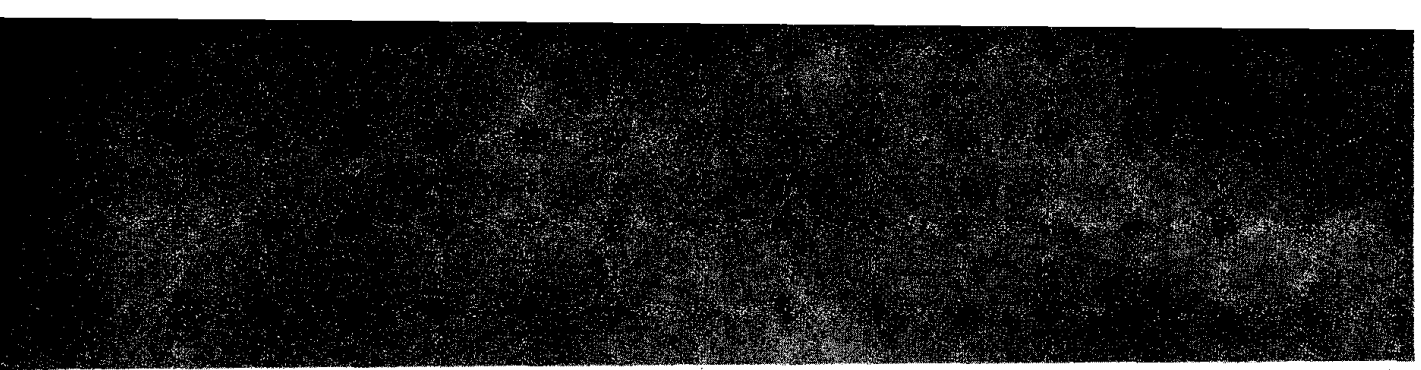
The World Conference on Human Rights held in Vienna in 1993 was well attended by indigenous peoples. It was there that the idea of a Permanent Forum for indigenous peoples in the UN was proposed. The 1993 World Summit on Social

Development in Copenhagen and the International Conference on Population and Development (1994) in Cairo, were also graced by indigenous peoples who worked for the inclusion of references to them in texts outlining programmes of action. Many indigenous women took part in the Fourth World Conference on Women held in Beijing in 1995. An indigenous women's caucus was organised, and came up with the Beijing Declaration of Indigenous Women, which criticized the official Platform of Action and highlighted indigenous women's issues and recommendations.

A few indigenous lobbyists are tracking down the World Bank (WB), regional multilateral banks such as the Asian Development Bank (ADB), and trade organisations such as the World Trade Organisation (WTO). Others are lobbying the Organisation of American States (OAS), the European Commission, European Union and European Parliament. The participation of indigenous peoples in trade bodies such as the World Trade Organisation (WTO) is very minimal. Others are more active in regional trade bodies like the NAFTA (North American Free Trade Association) and the APEC (Asia-Pacific Economic Council).

The World Intellectual Property Rights Organisation (WIPO) and the UN Education, Scientific, and Cultural Organisation (UNESCO) also caught the interest of indigenous peoples because of the continuing appropriation of their intellectual and cultural heritage.

The list presented of the various inter-governmental bodies where indigenous peoples can be found lobbying is not exhaustive. Even from this list, however, it can be seen that indigenous peoples have significantly diversified their areas of lobbying, especially in the 1990s. Efforts are



divided between the general areas of human rights, environment, development, and trade. While the overwhelming majority of indigenous lobbyists are still found in the UN Human Rights bodies, more are taking part in the other arenas.

The early beginnings

The push for the international community to look into the situation of indigenous peoples came from the indigenous peoples themselves. The period of the '70s saw an upsurge in indigenous peoples' struggles throughout the world, in both the north and the south. Issues raised ranged from discriminatory and assimilationist laws and policies; expropriation of ancestral territories and exploitation of resources found therein by governments and corporations, and destructive projects like dams, mining and logging, to militarisation of indigenous communities. The roots of the problems were formed during the colonisation period. However, they developed further in the era of decolonisation when newly-independent nation-states in the Third World focused on political centralisation and national integration.

Local elites who took over the rule of the colonists were driven by 'nation-building' and ignored the reality that most nation-states are pluriethnic, pluricultural and in some cases multi-national in character. At the same time, the states did not totally cut their colonial ties. Neo-colonial relationships between so-called independent states and their former colonisers persisted to the further detriment of indigenous peoples. Some indigenous peoples and nations struggled on their own, while others linked up with movements such as those of the peasants and workers, and even with movements for national liberation.

The outcry, lobbying, and activism of indigenous peoples pushed the UNEconomic and Social Council (ECOSOC) to take the first giant step. In May 1971, it authorised the Sub-Commission on Prevention of Discrimination and Protection of Minorities to undertake a study of indigenous peoples and come up with recommendations. José Martínez Cobo was appointed to lead the study. This activity is a watershed in the history of the relations of indigenous peoples with the UN.

The ensuing "Study of the Problem Against Indigenous Populations"² began in 1971 and the final consolidated report was released in 1986. Extensive field information was gathered, which resulted in a tremendous wealth of data on indigenous peoples. Based on the findings, recommendations were made.

While the study was under way, indigenous peoples took part in international conferences which were organised by NGOs or human rights organisations of the UN or other multilateral bodies. One of the first conferences was held in 1977 in Geneva. This was the "International Non-Governmental Organisation Conference on Discrimination against Indigenous Populations in the Americas". More than 100 indigenous peoples from the Americas, 50 NGO representatives and 38 governments took part. The forging of significant solidarity links between indigenous peoples from different countries began.

The conference came up with a "Draft Declaration of Principles for the Defence of the Indigenous Nations and Peoples of the Western Hemisphere". Among the various recommendations it came up with, the most important was for the creation of a UN Working Group on Indigenous Populations as part of the Sub-Commis-

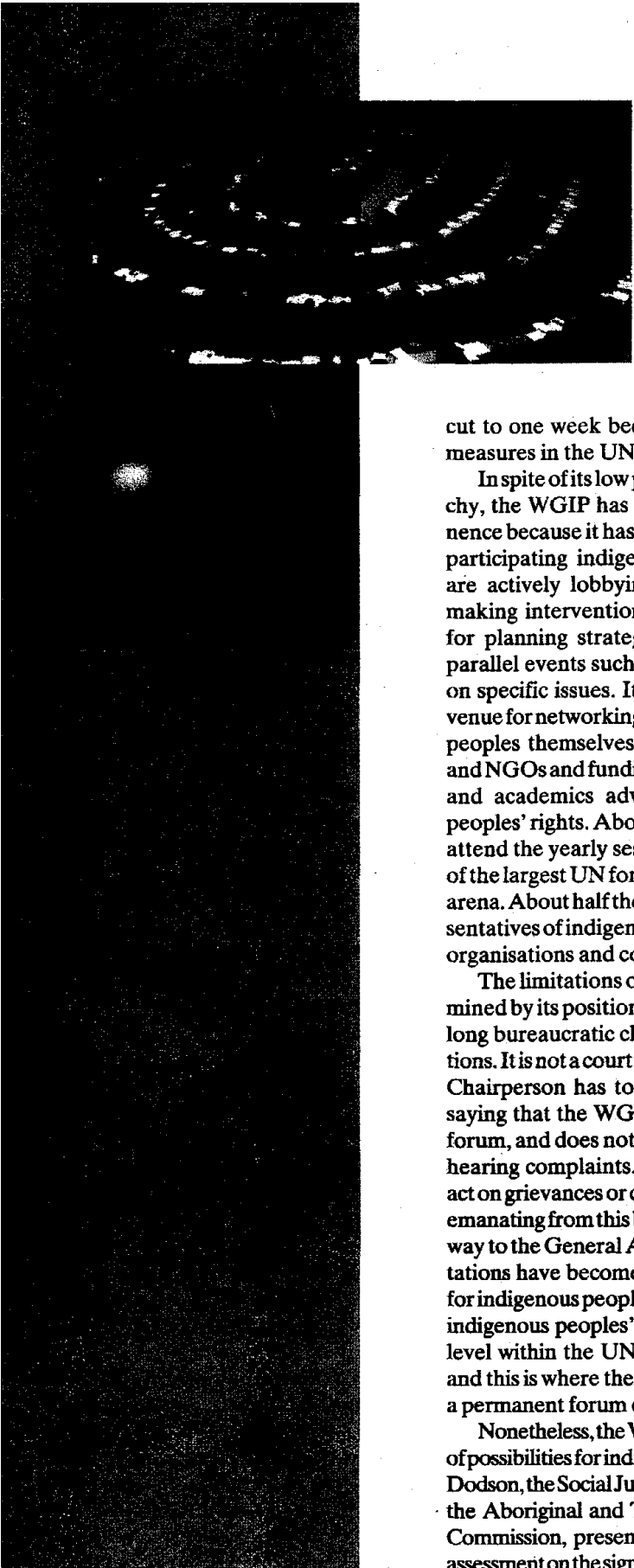
sion on the Prevention of Discrimination and Protection of Minorities.

After the conference the amount and quality of indigenous participation in UN human rights bodies started to grow. Several indigenous NGOs managed to acquire official consultative status with the UN ECOSOC, thereby giving them access to attend meetings of the Sub-Commission and the Commission. Some also gained access to the Organisation of American States, particularly the Inter-American Commission on Human Rights.

The Working Group on Indigenous Populations

The WGIP is the UN body which has seen the most active and dynamic participation of indigenous peoples. The first session was held in Geneva in August 1982. This was attended by indigenous peoples from the Americas, Australia, Europe, Japan and the Philippines. Since then, the sessions have been held every year (except 1986), and each year more and more indigenous peoples attend. The rules of procedure of the UN were made flexible in the WGIP, to allow all interested persons to present interventions and submit information. To begin with, many of those presenting interventions were non-governmental organisations advocating on behalf of indigenous peoples. However, over the years more representatives of indigenous peoples' groups have taken the floor.

The WGIP is located at the lowest level of the UN hierarchy for Human Rights. Its recommendations have to pass through the Sub-Commission, the Commission on Human Rights (CHR) and the ECOSOC before they reach the UN General Assembly (UN-GA). This body meets during the months of July or August. Initially the sessions lasted for two weeks, but this was



cut to one week because of cost-cutting measures in the UN.

In spite of its low position in the hierarchy, the WGIP has gained much prominence because it has a big constituency of participating indigenous peoples. They are actively lobbying at every session, making interventions, holding caucuses for planning strategies, and organising parallel events such as panel discussions on specific issues. It has become a good venue for networking amongst indigenous peoples themselves, and between them and NGOs and funding agencies, scholars and academics advocating indigenous peoples' rights. About 500 to 700 persons attend the yearly sessions, making it one of the largest UN fora in the human rights arena. About half the attendees are representatives of indigenous nations, peoples, organisations and communities.

The limitations of this body are determined by its position as the last link in the long bureaucratic chain of UN organisations. It is not a court of law. Every year the Chairperson has to start the session by saying that the WGIP is not a grievance forum, and does not have the mandate of hearing complaints. Therefore it cannot act on grievances or complaints; proposals emanating from this body have to go all the way to the General Assembly. These limitations have become a source of concern for indigenous peoples. The need to locate indigenous peoples' concerns at a higher level within the UN is felt very strongly, and this is where the recommendation for a permanent forum comes in.

Nonetheless, the WGIP did open up a lot of possibilities for indigenous peoples. Mick Dodson, the Social Justice Commissioner of the Aboriginal and Torres Strait Islander Commission, presented a very important assessment on the significance of the WGIP³:

"...Some people say that the Working Group operates at such a peripheral level of the UN that it has no status in the UN system, and that its work will simply be undone by governments who must ultimately endorse any UN declaration of our rights. While the WGIP may not have any independent status at the UN system, it cannot be so easily dismissed. It has already had a tremendous impact, not just on indigenous peoples, ourselves. It is no exaggeration to say that the WGIP has been a small revolution in the UN system. A lot of people forget that before 1970, as far as the UN is concerned, indigenous peoples were virtually invisible..."

"...The Working Group has come to play a far more extensive role than its mandate would suggest. It is a fine example of how we can use existing structures and transform them to meet our needs and aspirations. As the meeting place between the world's indigenous peoples and key international organisations, the Working Group has provided many of us with a unique opportunity to interact with a world that would be otherwise impenetrable. We have made sure that it has functioned as a highly visible platform where we can draw attention to our grievances. ..."

"...In a sense the Working Group is all about what international law and the UN have neglected. It is about bringing Indigenous peoples into the UN system where we have been marginalised and unnoticed. It is about forcing the UN system to face its responsibility as the body charged with protecting the rights of all peoples..."

Major developments in indigenous lobbying

Lobbying and advocacy work within the WGIP has undoubtedly laid down the basis for the subsequent gains achieved in other arenas. The concentrated focus on the formulation of human rights standards for indigenous peoples, in the form of the Draft Declaration on the Rights of Indigenous Peoples, has paid off. In the first half of the '90s when various UN world conferences were convened, indigenous peoples who took part used the Draft as their main framework of reference. For example, at the UN Conference on Environment and Development (UNCED) a major recommendation of the indigenous peoples, whether in the official meetings or parallel NGO meetings, was the endorsement from the UNCED that the Draft be adopted by the UN General Assembly. This recommendation has been echoed in all the subsequent international conferences.

After the release of the final draft of the Declaration in the Eleventh Session of the WGIP in 1993, there has been a shift in the lobbying work of indigenous peoples. While many are still actively participating in the WGIP, some have given greater attention to the Sub-Commission and the Commission on Human Rights sessions, to push for the adoption of the Draft. The creation of the Working Group of the CHR has allowed the participation of a combination of seasoned and new indigenous activists and lobbyists.

Other indigenous activists have taken part in environment and development bodies, from UNCED to the Commission on Sustainable Development and the Convention on Biological Diversity. The participation of indigenous peoples in the WGIP, Sub-commission, Commission and various UN bodies and conferences has

led to the idea of a Permanent Forum for Indigenous Peoples within the UN.

There is almost a consensus among indigenous lobbyists that the mandate of the forum should be sufficiently broad to cover all issues affecting indigenous peoples. It should go beyond human rights and cover areas such as cultural, civil, political, social, economic, and human rights, health, development, education and the environment. It has also been put forward that this body

*"could contribute to the resolution of conflicts, oversee and co-ordinate UN activities relating to indigenous peoples, mobilise expertise on indigenous issues, carry out impact assessments of UN activities and policies relating to indigenous peoples, disseminate information on the conditions and needs of indigenous peoples and on the implementation and realisation of international standards relating to indigenous peoples' human rights, as well as hear complaints."*⁴

Furthermore, it is envisioned that the permanent forum would assist in following up the programmes of action of the high-level UN conferences, such as Agenda 21, the Beijing Platform of Action, and so on, as well as other decisions and resolutions on indigenous issues adopted by the United Nations. It is also hoped that the forum would provide formal mechanisms for lodging grievances and complaints, and have the mandate to bring urgent matters to the immediate attention of the relevant UN bodies.

The Danish government and the Greenlandic Home Rule government, in close consultation with indigenous peoples, worked for a resolution which would push the gains in this area further. At the Fifty Fourth Session of the Commission on



Human Rights a resolution sponsored by 29 governments was passed on 9th April 1998⁵. The resolution says, amongst other things, that the CHR is⁶:

"..to establish an open-ended inter-sessional ad hoc working group, from within existing United Nations resources, to elaborate and consider further proposals for the possible establishment of a permanent forum for indigenous people within the United Nations system";

At the Conference of Parties of the Convention on Biological Diversity, indigenous peoples focused their lobbying on Article 8j. This article basically obliges the Contracting Parties to:

- * respect, preserve, and maintain knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biodiversity.
- * promote the wider application with the approval and involvement of the holders of such knowledge, innovations and practices.

- * encourage the equitable sharing of the benefits arising from the use of such knowledge, innovations, and practices.

Intensive lobbying by indigenous peoples led to Decision 1V/9 Implementation of Article 8j and Related Provisions at the Fourth Conference of the Parties. Basically, the Decision recommends that:

"An ad-hoc open-ended intersessional working group be established to address the implementation of Article 8j and related provisions of the Convention."

The gains achieved by indigenous peoples in their lobbying for Article 8j are substantial, as seen by the comprehensive coverage of the decision reached at COP 4. The implications are tremendous for indigenous peoples. It means that indigenous peoples should be able to organise themselves more effectively to cover the whole range of activities and concerns which will be addressed by the working group. This means monitoring and lobbying not only on the international level, but more importantly on the national level.

Conclusion

The global scenario does not look very encouraging for indigenous peoples. The concerted efforts of multilateral trading bodies (WTO, APEC, NAFTA, etc.) and international financial institutions such as the World Bank and the IMF to perpetuate the dominance of the global capitalist market economy heavily influence what is taking place at the UN. The gains achieved by indigenous peoples in lobbying UN bodies - the Draft Declaration, the working group to discuss a permanent forum for indigenous peoples, the working group within the CBD to implement Article 8j, and so on - could be derailed if indigenous peoples are not ever watchful and vigilant.

Even indigenous peoples' gains at the national level, in terms of establishing national laws which recognise their fundamental rights defined in the Draft Declaration, strengthening their movements, gaining control over their ancestral territories, opening the way for self-government, and so on are constantly under threat of withdrawal. Transnational corporations and the industrialised countries are working very hard to put their global agenda in place in the UN, WTO, WB, IMF and the Conventions. The economic growth paradigm of development remains the dominant framework for development in most countries in both the North and the South.

Sustainable development has become a catchword for governments, environmentalists, human rights activists, indigenous peoples, and also for industry, but it has not challenged the economic growth paradigm effectively. In fact, Agenda 21 still promotes trade liberalisation as one way to bring about sustainable development.

In this context, the assertion by indigenous peoples of their basic rights could still be seen as a major obstacle to achieving the global agenda of the powerful nations and corporations. There will be some accommodation of these rights as long as it leads to the alienation of territories, resources and even indigenous knowledge and cultures. For example, programmes for ancestral land delineation would get the support of the World Bank because this process can facilitate the alienation of lands by indigenous individuals, clans or tribes who now have ancestral land titles or claims over the lands. Ecotourism, which has a strong potential to commercialise and vulgarise indigenous cultures, will be promoted because it will increase the business of travel and tour agencies, hotels, and so on.

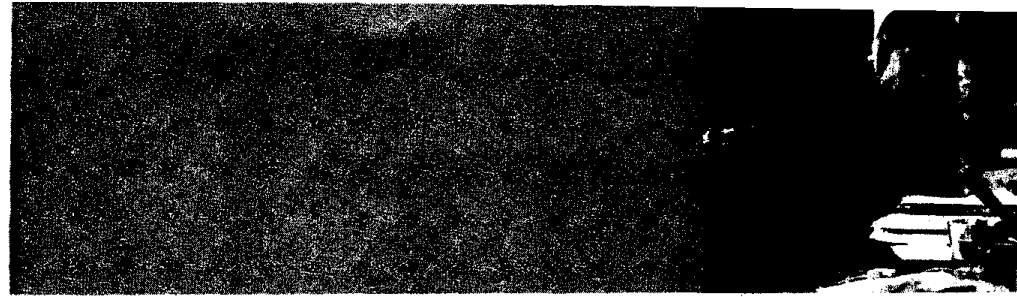
This is not to say that the lobbying and advocacy work done by indigenous peo-

ples at the international level is of little use because of this situation. The situation could be much worse if indigenous peoples did not participate in these processes, because it would be very convenient for governments and even NGOs to ignore indigenous issues and perspectives. The gains achieved cannot easily be swept aside by governments and intergovernmental bodies.

If governments choose to surrender their right to regulate the operations and behaviour of transnational corporations and foreign investors, indigenous peoples will have to do their part to ensure that their territories and resources will not be squandered once more. Most of the resources are non-renewable, so indigenous peoples should build their capacities at the national and international levels to protest and stop the developments which will violate their rights.

The most effective way of pre-empting the devious schemes of corporations and even governments to appropriate indigenous territories and resources is to strengthen the struggles of indigenous peoples at the local level. However, the complementary role of advocacy at the international level should not be underestimated. Indigenous peoples should be able to use the instruments, whether legally binding or not, which have something to say in their favour. Thus, it is important that the information contained in negotiated instruments such as the Draft Declaration, Article 8j and related articles, ILO Convention No. 169, and so on should be disseminated as widely as possible.

The creation of alliances and networks between indigenous peoples themselves and with NGOs are also gains from international work. Most transnational corporations operating in specific lines of industry, such as mining, agri-business, or pharmaceuticals, are found in more than one indigenous territory. The value of link-



ing peoples who are affected by the operations of the same transnational corporation should not be underestimated. The reason why it is not so easy for mining companies to deceive indigenous peoples any more is because there are networks and information exchanges where the track records of these corporations can be counter-checked.

Indigenous peoples have come a long way in terms of projecting and articulating their issues, views, and perspectives. The influence they have in changing the nature of debates, and even the questions being asked, is very important. The assertion of their right to continue exercising their own indigenous economic and resource management systems, forms of government, customary laws and practices in developing and protecting indigenous knowledge, and so on is the first step in ensuring that these sustainable practices will not disappear in oblivion.

In this era where the dominant economic paradigm is now seen as a major reason for the continuing environmental and social crisis, the search for alternatives is crucial. Many alternatives are still being practised by indigenous peoples, and among those who are unable to do so because they are dislocated from their ancestral territories, the memories are still with them. Indigenous peoples are on the moral high ground when they criticize the dominant economic and political dispensation. More importantly, they possess world views and practices which maintain distinctive spiritual and material relationships with lands, territories and oceans, as well as the ethics of upholding responsibilities for the future generations.

Indigenous peoples, therefore, should be given support by governments, intergovernmental organisations and processes, and NGOs and the society at large for the recognition and respect of their rights. This is so not only because of the

imperative to correct the historical injustice committed against them, but also because the crucial help which is needed to bring about a sustainable and humane world will have to come from them. Only then will 'Building Partnerships' become a reality - which is the theme of the World's Decade for Indigenous Peoples (1994-2004).

Notes

- ¹ S. James Anaya, *Indigenous Peoples in International Law*. Oxford University Press, New York, 1996, p.46
- ² José R. Martínez Cobo, Special-Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities - "Study on the Problem of Discrimination Against Indigenous Populations", United Nations documents E/CN.4/Sub.2/1986/1-7.
- ³ This is part of a commentary made by Mick Dodson in the book "Indigenous Peoples, the United Nations and Human Rights", edited by Sarah Pritchard, Zed Books, 1998, p.62-64.
- ⁴ UN Doc: E/CN.4/1998/11, 19 Sept. 1997, INDIGENOUS ISSUES: Report of the second workshop on a permanent forum for indigenous people within the United Nations System held in accordance with Commission on Human Rights resolution 1997/30. p.7
- ⁵ The countries which sponsored Resolution 1998/20 are; Argentina, Andorra, Bangladesh, Belgium, Bolivia, Canada, Chile, Colombia, Costa Rica, Cyprus, Denmark, Estonia, Finland, Greece, Guatemala, Honduras, Iceland, Latvia, Lithuania, Mexico, Nepal, Netherlands, Norway, Portugal, Russian Federation, Spain, Sweden, Switzerland, and Ukraine
- ⁶ UN Doc: E/CN. 4/1998/L.24, 9 April 1998

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