

Introduction to Documents One and Two

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The year 1995 marks the fiftieth anniversary of the United Nations and its promise "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples."¹ It will also be the first year of the International Decade of the World's Indigenous People, dedicated to improvements in health, education, the environment and human rights through a "partnership in action" with member states.² In this decade the United Nations will be challenged to launch the final stage of the anti-colonial struggles, reaching at long last what the late George Manuel first described as the Fourth World.

Since 1977, some of the best minds of Aboriginal peoples have been discussing and drafting the international rights of Indigenous peoples. Their articulation of their rights has inspired a new human rights tradition in international law.³ It is useful for Aboriginal people in Canada to reflect carefully on the extent to which Canadian law, especially the *Indian Act*, compares with the evolving consensus, globally, on the authentic nature of Aboriginal rights.

Three international documents should be viewed as particularly relevant. In 1989, the *Indigenous and Tribal Population Convention* (No. 169)⁴ was adopted by the International Labour Organization (ILO); it stresses Indigenous self-determination. It recognizes the right of Indigenous peoples to define themselves, to own and control their own territories and resources, to maintain their own political and legal institutions and to veto any laws that treat them differently than non-Indigenous citizens. While Canada has not ratified the convention on the pretext that First Nations are opposed to it, there have been no consultations or hearings on the convention. Most are probably not even aware of it. Mexico has ratified the convention,⁵ and could insist on harmonizing United States and Canadian standards with the convention, under the North American Free Trade Act (NAFTA). Additionally, the central principles of self-development and cultural integrity of the Convention attained a global consensus in the Rio Summit and Declaration on the Environment.⁶

In 1993, after nine years of discussion, the U.N.'s Working Group on

Indigenous Populations finally completed its draft of a *Declaration on the Rights of Indigenous Peoples*. Composed of human rights experts, from each region of the world, the five-member Working Group on Indigenous Populations was approved in 1982 by the U.N. Human Rights Commission under the U.N. Economic and Social Council.⁷ The group's mandate was to review developments pertaining to promotion and protection of human rights and fundamental freedoms of Indigenous populations. It was also mandated to evolve new standards, since the *Martinez Cobol Report* (1983) concluded that existing human rights standards "are not fully applied" to Indigenous people and, moreover, are "not wholly adequate to the task."

To begin to remedy these conflicts and to decolonize legal systems, the working group, under the firm leadership of its chair since 1984, Dr. Erica-Irene A. Daes of Greece, has become an expert body on Indigenous rights. Always open to full participation by Indigenous peoples' representatives, the working group has become the largest regularly scheduled human rights meeting in the United Nations. Last year, in its twelfth session, about eight hundred representatives attended.

At the last session, the working group approved a new draft of the *Declaration of Indigenous Rights*, establishing a framework of rights.⁸ This declaration is the articulation of the minimal standards of Indigenous rights. It affirms that Indigenous peoples have the rights to self-determination, without limitations, to cultural integrity and to bring treaty disputes to international forums. In 1994, the European Parliament adopted a resolution that endorsed Indigenous peoples' right to determine their own destiny by choosing their institutions, their political status and the status of their territory and that called for states to honour their treaties with Indigenous peoples.⁹ The declaration must still be approved by U.N. member states, both at the level of the Human Rights Commission in February 1995, a political body that will express the view of the governments, and at the General Assembly. Canada has urged the commission to establish a new working group made up of governments to review the draft, a hint that Ottawa finds it far too strong. The government of Canada has not held any parliamentary hearing on whether to adopt the declaration, but External Affairs has had one consultation with Aboriginal representatives.

The most recent initiative has been in the field of intellectual and cultural property. This initiative began in 1989, when a U.N. seminar on the effects of racism and racial discrimination on the social and economic relations between Indigenous peoples and states concluded that racism toward Indigenous people was a new form of global racism: racism in the guise of state theories of *cultural*, rather than biological, *superiority* results

in rejection of the legitimacy or viability of Indigenous peoples' own value and institutions. In many cases theories of cultural and biological superiorities are involved and interconnected.¹⁰

Dr. Daes prepared a report in 1993, condemning the widespread and continued exploitation of traditional knowledge and culture by Western scholars, museums and, increasingly, the biomedical and genetic-engineering industries.¹¹ She described this as the final stage of colonialism, following the exhaustion of Indigenous peoples' tangible assets, and argued the urgency of taking international action to protect Indigenous peoples' dignity, privacy and identity without waiting for the adoption of the declaration. The Commission on Human Rights agreed that it would be useful to consider a special package of "guidelines" for protecting Indigenous peoples' heritage, and Dr. Daes, with the co-operation of Indigenous lawyers, tabled a first draft in July 1994. The draft principles acknowledge that the heritage of Indigenous peoples is a complete knowledge system with its own concepts of epistemology, philosophy, language, and scientific and logical validity that needs protection from Eurocentric exploitation. The second and final draft will be discussed at Geneva this coming summer, and sent to the Commission on Human Rights for action in the winter 1996 session.

It is significant that the working group has placed an urgent priority on Indigenous peoples' rights to their heritage and identity because this also reflects a resounding rejection of the old Eurocentric colonial and racial notion that "savages" have no civilization—that is, nothing to offer humankind in the way of wisdom, science or art, just their land and their (cheap or slave) labour. While the current focus of the draft principles is on creating the legal structure of Indigenous rights, underlying them and the need for a workshop on these topics is an attempt to articulate a process for healing or restoring the culture or language of the oppressed peoples. Within the international agencies, post-colonial states and university communities, these draft principles begin a serious or intensive discussion of the actual method and process of such healing and restoring. They create linkages to understanding and curing cultural racism and the immediate, practical processes of cultural restoration in post-colonial states. This initiative deserves a priority, not the least because it holds real promise as the basis of a concrete, practical U.N. action program, in direct collaboration with Indigenous peoples and as a major part of the International Decade, as outlined in paragraphs 53-59 of Dr. Daes' draft.

The theft and abuse of Indigenous peoples' heritage are more of an international problem than any other aspects of Aboriginal rights. The land

cannot be moved; it stays put within the borders of Canada. The treaties are with the Crown, and self-government is in our communities. However, ideas, songs, symbols, sacred objects and medicines can easily be transported anywhere in the world—as they have been, for generations. Since our heritage is being carried across international borders, only an international agreement and an international legal mechanism can ever hope to staunch the flow. Here may be our best opportunity to put the U.N. system to good use, and to challenge its ability to do justice to “all nations, great and small.”¹²

Taken together, the convention, draft declaration and principles and guidelines protecting the heritage of Indigenous people are a codification of customary Indigenous rights. In these three documents, Canadian law-makers, policy makers and the legal profession can find the context and definition of Aboriginal rights as found in section 35(1) of the *Constitution Act, 1982*.

Notes

Guidance provided by *ababinilli máheóo*, and *niskam*; however, the author assumes full responsibility for interpretation.

- 1 United Nations Charter, Article 1(b).
- 2 General Assembly Resolution 48/163 (21 December 1993) and the draft program of action in U.N. Doc. E/CN.4/Sub. 2 (1994), p. 52.
- 3 Barsh, “Indigenous Peoples in the 1990s: From Object to Subject of International Law?” *Harvard Human Rights Journal* 7 (1994): 1-86.
- 4 I.L.O., 76th Sess., reprinted in 28 I.L.M. 1382 (1989).
- 5 Bolivia, Colombia and Costa Rica have also ratified the convention. This brings 40 percent of the Indians of the Americas (roughly 12 million) under its terms.
- 6 U.N. Doc. A/Conf. 151/W6/Rev. 1, Vol. I (1993). For example, Principle 22 of the Rio Declaration recognizes that “Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interest and enable their effective participation in the achievement of sustainable development.” [p. 7]
- 7 The group is currently comprised of Judith Tsefi Attah (Nigeria), Volodymyr Boutkevitch (Ukraine), Erica-Irene A. Daes (Greece), Ribot Hatano (Japan) and Miguel Alfonso Martinez (Cuba). The group meets for five days each August at the UN headquarters in Geneva, Switzerland. It is not a court or judicial body.
- 8 C.N.L.R. (1994): 40-47.
- 9 Resolution of Action Required International Law to Provide Effective Protection for Indigenous peoples Eur. Parl. Doc. (PV 58 II) (9 February 1994, para. 2, p. 3, and paras. D and 10, pp. 2 and 4).

- 10 Report of the United Nations Seminar on the Effects of Racism and Racial Discrimination on the Social and Economic Relations between Indigenous Peoples and States, Commission on Human Rights, 45th Sess., U.N. Doc. E/CN.4/1989/22 (1989). See Barsh, "United Nations Seminar on Indigenous Peoples and States" *American Journal of International Labour* 83, no. 3 (1989): 599.
- 11 *Study of the Protection of the Cultural and Intellectual Property of Indigenous Peoples*, U.N. Doc. E/CN.4/Sub.2 (1993), p. 28.
- 12 United Nations Charter, Preamble.

Document One Draft Declaration as agreed upon by the Members of the Working Group at its Eleventh Session, 1994

Affirming that indigenous peoples are equal in dignity and rights to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin, racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming also that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have been deprived of their human rights and fundamental freedoms, resulting, *inter alia*, in their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights and characteristics of indigenous peoples, especially their rights to their lands, territories and resources, which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring an end to all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing also that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the need for demilitarization of the lands and territories of indigenous peoples, which will contribute to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children,

Recognizing also that indigenous peoples have the right freely to determine their relationships with States in a spirit of coexistence, mutual benefit and full respect,

Considering that treaties, agreements and other arrangements between States and indigenous peoples are properly matters of international concern and responsibility,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights affirm the fundamental importance of the right of self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right of self-determination,

Encouraging States to comply with and effectively implement all international instruments, in particular those related to human rights, as they apply to indigenous peoples, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples:

PART I

Article 1

Indigenous peoples have the right to the full and effective enjoyment of all human rights and fundamental freedoms recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

Article 2

Indigenous individuals and peoples are free and equal to all other individuals and peoples in dignity and rights, and have the right to be free from any kind of adverse discrimination, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples have the right to maintain and strengthen their distinct political, economic, social and cultural characteristics, as well as their legal systems, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 5

Every indigenous individual has the right to a nationality.

PART II

Article 6

Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and to full guarantees against genocide or any other act of violence, including the removal of indigenous children from their families and communities under any pretext.

In addition, they have the individual rights to life, physical and mental integrity, liberty and security of person.

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.

Article 8

Indigenous peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No disadvantage of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

Indigenous peoples have the right to special protection and security in periods of armed conflict.

States shall observe international standards, in particular the Fourth Geneva Convention of 1949, for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not:

- (a) Recruit indigenous individuals against their will into the armed forces and, in particular, for use against other indigenous peoples;
- (b) Recruit indigenous children into the armed forces under any circumstances;
- (c) Force indigenous individuals to abandon their lands, territories or means of subsistence, or relocate them in special centres for military purposes;
- (d) Force indigenous individuals to work for military purposes under any discriminatory conditions.

PART III

Article 12

Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature, as well as the right to the restitution of cultural, intellectual, religious and spiritual property taken without their free and informed consent or in violation of their laws, traditions and customs.

Article 13

Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of ceremonial objects; and the right to the repatriation of human remains.

States shall take effective measures, in conjunction with the indigenous peoples concerned, to ensure that indigenous sacred places, including burial sites, be preserved, respected and protected.

Article 14

Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

States shall take effective measures, whenever any right of indigenous peoples may be threatened, to ensure this right is protected and also to ensure that they can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

PART IV

Article 15

Indigenous children have the right to all levels and forms of education of the State. All indigenous peoples also have this right and the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

Indigenous children living outside their communities have the right to be provided access to education in their own culture and language.

States shall take effective measures to provide appropriate resources for these purposes.

Article 16

Indigenous peoples have the right to have the dignity and diversity of their cultures, traditions, histories and aspirations appropriately reflected in all forms of education and public information.

States shall take effective measures, in consultation with the indigenous peoples concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all segments of society.

Article 17

Indigenous peoples have the right to establish their own media in their own languages. They also have the right to equal access to all forms of non-indigenous media.

States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity.

Article 18

Indigenous peoples have the right to enjoy fully all rights established under international labour law and national labour legislation.

Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour, employment or salary.

PART V

Article 19

Indigenous peoples have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 20

Indigenous peoples have the right to participate fully, if they so choose, through procedures determined by them, in devising legislative or administrative measures that may affect them.

States shall obtain the free and informed consent of the peoples concerned before adopting and implementing such measures.

Article 21

Indigenous peoples have the right to maintain and develop their political, economic and social systems, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. Indigenous peoples who have been deprived of their means of subsistence and development are entitled to just and fair compensation.

Article 22

Indigenous peoples have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health and social security.

Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and disabled persons.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to determine and develop all health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

Indigenous peoples have the right to their traditional medicines and health practices, including the right to the protection of vital medicinal plants, animals and minerals.

They also have the right to access, without any discrimination, to all medical institutions, health services and medical care.

PART VI

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal seas and other resources which they have traditionally owned or otherwise occupied or used, and to uphold their responsibilities to future generations in this regard.

Article 26

Indigenous peoples have the right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights.

Article 27

Indigenous peoples have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible, they have the right to just and fair compensation. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status.

Article 28

Indigenous peoples have the right to the conservation, restoration and

protection of the total environment and the productive capacity of their lands, territories and resources, as well as to assistance for this purpose from States and through international cooperation. Military activities shall not take place in the lands and territories of indigenous peoples, unless otherwise freely agreed upon by the peoples concerned.

Article 29

Indigenous peoples are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual property.

They have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs and visual and performing arts.

Article 30

Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands, territories and other resources, including the right to require that States obtain their free and informed consent prior to the approval of any project affecting their lands, territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. Pursuant to agreement with the indigenous peoples concerned, just and fair compensation shall be provided for any such activities and measures taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

PART VII

Article 31

Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.

Article 32

Indigenous peoples have the collective right to determine their own citizenship in accordance with their customs and traditions. Indigenous citizenship does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 33

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive juridical customs, traditions, procedures and practices, in accordance with internationally recognized human rights standards.

Article 34

Indigenous peoples have the collective right to determine the responsibilities of individuals to their communities.

Article 35

Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with other peoples across borders.

States shall take effective measures to ensure the exercise and implementation of this right.

Article 36

Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, according to their original spirit and intent, and to have States honour and respect such treaties, agreements and other constructive arrangements. Conflicts and disputes which cannot otherwise be settled should be submitted to competent international bodies agreed to by all parties concerned.

PART VIII

Article 37

States shall take effective and appropriate measures, in consultation with the indigenous peoples concerned, to give full effect to the provisions of this Declaration. The rights recognized herein shall be adopted and included in national legislation in such a manner that indigenous peoples can avail themselves of such rights in practice.

Article 38

Indigenous peoples have the right to have access to adequate financial and technical assistance, from States and through international cooperation, to pursue freely their political, economic, social, cultural and spiritual development and for the enjoyment of the rights and freedoms recognized in this Declaration.

Article 39

Indigenous peoples have the right to have access to the prompt decision through mutually acceptable and fair procedures for the resolution of conflicts and disputes with States, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall take into consideration the customs, traditions, rules and legal systems of the indigenous peoples concerned.

Article 40

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, *inter alia*, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 41

The United Nations shall take the necessary steps to ensure the implementation of this Declaration including the creation of a body at the highest level with special competence in this field and with the direct participation of indigenous peoples. All United Nations bodies shall promote respect for and full application of the provisions of this Declaration.

PART IX

Article 42

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 43

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 44

Nothing in this Declaration may be construed as diminishing or extinguishing existing or future rights indigenous peoples may have or acquire.

Article 45

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations.

Document Two

United Nations
Commission on Human
Rights Report on
Indigenous Peoples

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of Discrimination
and Protection of Minorities
Forty-sixth session Item 15 of the provisional agenda

Discrimination against Indigenous Peoples
Protection of the heritage of indigenous people

*Preliminary report of the Special Rapporteur, Mrs. Erica-Irene Daes,
submitted in conformity with Sub-Commission resolution 1993/44 and
decision 1994/105 of the Commission on Human Rights*

Introduction

1. In accordance with Economic and Social Council decision 1992/256 of 20 July 1992, the present Special Rapporteur prepared a study on the protection of the cultural and intellectual property of indigenous peoples (E/CN.4/Sub.2/1993/28), taking into account information made available to her by indigenous peoples, and relevant international standards. Indigenous peoples commented on the report during the eleventh session of the Working Group on Indigenous Populations (see E/CN.4/Sub.2/1993/29, paras. 163-176), and in the light of these comments the Working Group recommended that further work be undertaken.
2. In its resolution 1993/44 of 26 August 1993, the Sub-Commission on Prevention of Discrimination and Protection of Minorities endorsed the conclusions and recommendations contained in the study of the Special Rapporteur and requested her to expand her study with a view to elaborating draft principles and guidelines for the protection of the heritage of indigenous peoples, and to submit a preliminary report containing such principles and guidelines at its forty-sixth session. The mandate for an expanded study was endorsed by the Commission on Human Rights in its decision 1994/105 of 4 March 1994.

3. The Special Rapporteur wishes to express her appreciation to all the indigenous peoples' organizations and governments which have contributed thus far to her study.

Discussion

4. In the Rio Declaration on Environment and Development, the United Nations Conference on Environment and Development stressed the "vital role" that indigenous peoples may play in achieving sustainable development "because of their knowledge and traditional practices" (A/CONF.151/26 (vol. I), annex I, principle 22). The Conference also called on Governments and intergovernmental organizations, "in full partnership with indigenous peoples," to take measures to recognize traditional forms of knowledge and enhance capacity-building for indigenous communities based on the adaptation and exchange of traditional knowledge (A/CONF.151/26 (vol. III), para. 26.3). It is the view of the Special Rapporteur that these conclusions and recommendations not only apply to indigenous knowledge which is narrowly biological, botanical or ecological but—in view of the special relationship that exists between indigenous peoples and their territories—to all aspects of indigenous peoples' heritage.

5. The Special Rapporteur has also been particularly mindful of the principle that "every people has the right and the duty to develop its culture," adopted by the General Conference of UNESCO in article 1 of the UNESCO Declaration of the Principles of International Cultural Cooperation (4 November 1966). The central role of traditional forms of cultural transmission and education has been stressed in the guidelines set out in the annex to the present report in the belief that this will be the most effective means of ensuring that indigenous peoples control the further development of their own heritage, as well as its interpretation and use by others.

6. In elaborating the principles and guidelines, contained in the annex to this report, the Special Rapporteur has drawn extensively on the Kari-Oca Declaration of the World Conference of Indigenous Peoples on Territory, Environment and Development (Kari-Oca, Brazil, 15-30 May 1992), and the Mataatua Declaration of the First International Conference on Cultural and Intellectual Property Rights of Indigenous Peoples. Their own conception of the nature of their heritage and their own ideas for ensuring the protection of their heritage are central to the "new partnership" with indigenous peoples symbolized by the International Year of the World's Indigenous People in 1993.

7. The Special Rapporteur wishes to underscore the fact, emphasized by the Mataatua Declaration, that indigenous peoples have repeatedly expressed

their willingness to share their useful knowledge with all humanity, provided that their fundamental rights to define and control this knowledge are protected by the international community. Greater protection of the indigenous peoples' control over their own heritage will not, in the opinion of the Special Rapporteur, decrease the sharing of traditional cultural knowledge, arts and sciences with other peoples. On the contrary, indigenous peoples' willingness to share, teach, and interpret their heritage will increase.

8. In developing the principles and guidelines, the Special Rapporteur found it useful to bear in mind that the heritage of an indigenous people is not merely a collection of objects, stories and ceremonies, but a complete knowledge system with its own concepts of epistemology, philosophy, and scientific and logical validity. The diverse elements of an indigenous people's heritage can only be fully learned or understood by means of the pedagogy traditionally employed by these peoples themselves, including apprenticeship, ceremonies and practice. Simply recording words or images fails to capture the whole context and meaning of songs, rituals, arts or scientific and medical wisdom. This also underscores the central role of indigenous peoples' own languages, through which each people's heritage has traditionally been recorded and transmitted from generation to generation.

9. The Special Rapporteur also considers it fundamental to recognize and renew the central and indispensable role of land as the classroom in which the heritage of each indigenous people has traditionally been taught. Heritage is learned through a lifetime of personal experience travelling through and conducting ceremonies on the land. Much or all of an indigenous people's traditional territory must therefore remain accessible to and under the control of the people themselves, so that they can continue to teach, develop and renew their knowledge systems fully by their own means of cultural transmission. Indeed, ceremonies and traditional artistic works are regarded as means of renewing human relationships with the land, even as "deeds" to the territory, so that they can never be detached geographically, and used elsewhere, without completely losing their meaning.

10. This special relationship is not merely with the physical aspects of the land, but is conceived of as a direct and personal kinship with each of the species of animals and plants that co-exist with people in the same territory. Biological, zoological and botanical knowledge is not simply a matter of learning the names, habits and uses of species, but of carefully maintaining and periodically renewing ancient social and ceremonial relationships with each species. An indigenous person does not only harvest medicinal plants, for instance, but visits them, prays with them and, through ceremonies,

helps them. For this reason, indigenous peoples do not believe that their knowledge of ecology, the uses of plants and animals, rituals or medicine can ever be alienated completely. Like human family relationships, these forms of knowledge are permanent and collective. They can be shared, however, under the right circumstances, with properly initiated persons.

Recommendations

11. The Special Rapporteur recommends that the Sub-Commission decide to request the Secretary-General to submit the attached principles and guidelines to indigenous peoples' organizations, Governments, specialized agencies and non-governmental organizations concerned for their comments. On the basis of these comments and those of the members of the Sub-Commission, the Special Rapporteur should be entrusted with presenting her final report to the Sub-Commission at its 47th session, in 1995, for the Sub-Commission to consider and adopt these principles and guidelines, as a first formal step towards committing the United Nations to the protection of indigenous peoples' heritage. With the support of indigenous peoples, these principles and guidelines may be transmitted to the General Assembly, through the Commission on Human Rights and the Economic and Social Council, for adoption.

12. In the context of developing the programme of activities for the United Nations Decade of the World's Indigenous People, proclaimed by the General Assembly in its resolution 48/163 of 21 December 1993, the Special Rapporteur encourages the convening of a series of practical workshops in this field, with the participation of professional, academic, and scientific experts and indigenous peoples, as previously recommended by the Working Group on Indigenous Populations (E/CN.4/Sub.2/1993/29, para. 225), as well as in her study (E/CN.4/sub.2/1993/28, para. 181). Such workshops could be aimed at increasing awareness of and respect for indigenous peoples' heritage among researchers, scholars, legislators, representatives of Governments, business and industry, and educators, and at the development of model national legislation.

Annex

PRINCIPLES AND GUIDELINES FOR THE PROTECTION OF THE HERITAGE OF INDIGENOUS PEOPLES

PRINCIPLES

1. The effective protection of indigenous peoples' heritage will be of long-term benefit to all humanity. Cultural diversity contributes to the adaptability and creativity of the human species as a whole.

2. To be effective, the protection of indigenous peoples' heritage should be based broadly on the principle of self-determination, which includes the right and the duty of indigenous peoples to develop their own cultures and knowledge systems.
3. Indigenous peoples should be recognized as the primary guardians and interpreters of their cultures, arts and sciences, whether created in the past or developed by them in the future.
4. International recognition and respect for indigenous peoples' own customs, rules and practices for the transmission of their heritage to future generations, and for the sharing of their heritage with others, is essential to these peoples' enjoyment of human rights and dignity.
5. Indigenous peoples' ownership and custody of their heritage must continue to be collective, permanent and inalienable, as prescribed by the customs, rules and practices of each people.
6. The discovery, use and teaching of indigenous peoples' knowledge, arts and cultures is inextricably connected with the traditional lands and territories of each people. Control over traditional territories and resources is essential to the continued transmission of indigenous peoples' heritage to future generations and its full protection.
7. To protect their heritage indigenous peoples must control their own means of cultural transmission and education. This includes their right to the continued use and, wherever necessary, the restoration of their own languages and orthographies.
8. To protect their heritage indigenous peoples must also exercise control over all research conducted within their territories, or which uses their people as subjects of study.
9. The free and informed consent of the traditional owners should be an essential precondition of any agreements which may be made for the recording, study, use or display of indigenous peoples' heritage.
10. Any agreements which may be made for the recording, study, use or display of indigenous peoples' heritage must be revocable and ensure that the peoples concerned continue to be the primary beneficiaries of commercial application.

GUIDELINES

Definitions

11. The heritage of indigenous peoples is comprised of all objects, sites and knowledge, the nature or use of which has been transmitted from generation to generation, and which is regarded as pertaining to a particular peoples,

clan or territory. The heritage of an indigenous people also includes objects, knowledge and literary or artistic works which may be created in the future based upon its heritage.

12. The heritage of indigenous peoples includes all moveable cultural property as defined by the relevant conventions of UNESCO; all kinds of literary and artistic works such as music, dance, song, ceremonies, symbols and designs, narratives and poetry; all kinds of scientific, agricultural, technical and ecological knowledge, including cultigens, medicines and the phenotypes and genotypes of flora and fauna; human remains; immoveable cultural property such as sacred sites, sites of historical significance, and burials; and documentation of indigenous peoples' heritage on film, photographs, videotape or audiotape.

13. Every element of an indigenous peoples' heritage has traditional owners, which may be the whole people, a particular family or clan, an association or society, or individuals who have been specially taught or initiated to be its custodians. The traditional owners of heritage must be determined in accordance with indigenous peoples' own customs, laws and practices.

Transmission of heritage

14. Indigenous peoples' heritage should ordinarily be learned only by the means customarily employed by its traditional owners for teaching the specific knowledge concerned. Each indigenous people's rules and practices for the transmission of heritage and sharing of its use must be recognized generally in the national legal system.

15. In the event of a dispute over the custody or use of any element of an indigenous people's heritage, judicial and administrative bodies should be guided by the advice of indigenous elders who are recognized by the indigenous communities or peoples concerned as having specific knowledge of traditional laws.

16. Governments, international organizations and private institutions should support the development of educational, research and training centres which are controlled by indigenous communities, and strengthen these communities' capacity to document, protect, teach and apply all aspects of their heritage.

17. Governments, international organizations and private institutions should support the development of regional and global networks for the exchange of information and experience among indigenous peoples in the fields of science, culture, education and the arts. This may include electronic networks where feasible and appropriate.

18. Governments, with international cooperation, should provide the necessary financial resources and institutional support to ensure that every

indigenous child has the opportunity to achieve both fluency and literacy in his/her own traditional language.

Recovery and restitution of heritage

19. Governments, with the assistance of international organizations, should assist indigenous peoples and communities in recovering control and possession of their moveable cultural property and other heritage.

20. In cooperation with indigenous peoples, UNESCO should establish a programme to mediate the recovery of moveable cultural property from across international borders, at the request of the traditional owners of the property concerned.

21. Human remains and associated funeral objects must be returned to their descendants and territories in a culturally appropriate manner, as determined by the indigenous peoples concerned. Documentation may be retained, displayed or otherwise used only in such form and manner as may be agreed upon with the peoples concerned.

22. Moveable cultural property should be returned wherever possible to its traditional owners, particularly if shown to be of significant cultural, religious or historical value to them. Moveable cultural property should only be retained by universities, museums, private institutions or individuals in accordance with the terms of a recorded agreement with the traditional owners for the sharing of the custody and interpretation of the property.

23. Under no circumstances should objects or any other elements of an indigenous people's heritage be publicly displayed, except in a manner deemed appropriate by the peoples concerned.

24. In the case of objects or other elements of heritage which were removed or recorded in the past, the traditional owners of which can no longer be identified precisely, the traditional owners are presumed to be the entire people associated with the territory from which these objects were removed, or where the recordings were made, or the direct descendants of that people.

National programmes and legislation

25. National laws should guarantee that indigenous peoples can obtain prompt, effective and affordable judicial or administrative action to prevent, punish and obtain full restitution and compensation for the acquisition, documentation or use of their heritage without proper authorization of the traditional owners.

26. National laws should deny to any person or corporation the right to obtain patent, copyright, or other legal protection for any element of indigenous peoples' heritage without adequate documentation of the free

and informed consent of the traditional owners to an arrangement for the sharing of ownership, control and benefits.

27. National laws should ensure the labelling and correct attribution of indigenous peoples' artistic, literary and cultural works whenever they are offered for public display or sale. Attribution should be in the form of a trademark or an appellation of origin, authorized by the peoples or communities concerned.

28. National laws for the protection of indigenous peoples' heritage should be adopted following consultations with the peoples concerned, in particular the traditional owners and teachers of religious, sacred and spiritual knowledge, and wherever possible, should have the consent of the peoples concerned.

29. National laws should ensure that the use of traditional languages in education, arts and the mass media is respected and, to the extent possible, promoted and strengthened.

30. Governments should provide indigenous communities with financial and institutional support for the control of local education, through community-managed programmes, and with use of traditional pedagogy and languages.

31. Governments should take immediate steps, in cooperation with the indigenous peoples concerned, to identify sacred and ceremonial sites, including burial sites, and protect them from unauthorized entry or use.

Researchers and scholarly institutions

32. All researchers and scholarly institutions should take immediate steps to provide indigenous peoples and communities with comprehensive inventories of the cultural property, and documentation of indigenous peoples' heritage, which they may have in their custody.

33. Researchers and scholarly institutions should return all elements of indigenous peoples' heritage to the traditional owners upon demand, or obtain formal agreements with the traditional owners for the shared custody, use and interpretation of their heritage.

34. Researchers and scholarly institutions should decline any offers for the donation or sale of elements of indigenous peoples' heritage, unless they have first contacted the peoples or communities directly concerned and ascertaining the wishes of the traditional owners.

35. Researchers and scholarly institutions must refrain from engaging in any study of previously-undescribed species or cultivated varieties of plants, animals or microbes, or naturally-occurring pharmaceuticals, without

first obtaining satisfactory documentation that the specimens were acquired with the consent of the traditional owners, if any.

36. Researchers must not publish information from indigenous peoples or the results of research conducted on flora, fauna, microbes or materials discovered through the assistance of indigenous peoples, without identifying the traditional owners and obtaining their consent to publication.

37. Researchers should agree to an immediate moratorium on the Human Genome Diversity Project. Further research on the specific genotypes of indigenous peoples should be suspended unless and until broadly and publicly supported by indigenous peoples to the satisfaction of United Nations human rights organs.

38. Researchers and scholarly institutions should make every possible effort to increase indigenous peoples' access to all forms of medical, scientific and technical education, and participation in all research activities which may affect them or be of benefit to them.

39. Professional associations of scientists, engineers and scholars, in collaboration with indigenous peoples, should sponsor seminars and disseminate publications to promote ethical conduct in conformity with these guidelines and discipline members who act in contravention.

Business and industry

40. In dealings with indigenous peoples, business and industry should respect the same guidelines as researchers and scholarly institutions.

41. Business and industry should agree to an immediate moratorium on making contracts with indigenous peoples for the rights to discover, record and use previously-undescribed species or cultivated varieties of plants, animals or microbes, or naturally-occurring pharmaceuticals. No further contracts should be negotiated until indigenous peoples and communities themselves are capable of supervising and collaborating in the research process.

42. Business and industry should refrain from offering incentives to any individuals to claim traditional rights of ownership or leadership within an indigenous community, in violation of their trust within the community and the laws of the indigenous peoples concerned.

43. Business and industry should refrain from employing scientists or scholars to acquire and record traditional knowledge or other heritage of indigenous peoples in violation of these guidelines.

44. Business and industry should contribute financially and otherwise to the development of educational and research institutions controlled by indigenous peoples and communities.

45. All forms of tourism based on indigenous peoples' heritage must be restricted to activities which have the approval of the peoples and communities concerned, and which are conducted under their supervision and control.

Artists, writers and performers

46. Artists, writers and performers should refrain from incorporating elements derived from indigenous heritage into their works without the informed consent of the traditional owners.

47. Artists, writers and performers should support the full artistic and cultural development of indigenous peoples, and encourage public support for the development and greater recognition of indigenous artists, writers and performers.

48. Artists, writers and performers should contribute, through their individual works and professional organizations, to greater public understanding and respect for the indigenous heritage associated with the country in which they live.

Public information and education

49. The mass media in all countries should take effective measures to promote understanding of and respect for indigenous peoples' heritage, in particular through special broadcasts and public-service programmes prepared in collaboration with indigenous peoples.

50. Journalists should respect the privacy of indigenous peoples, in particular concerning traditional religious, cultural and ceremonial activities, and refrain from exploiting or sensationalizing indigenous peoples' heritage.

51. Journalists should actively assist indigenous peoples in exposing any activities, public or private, which destroy or degrade indigenous peoples' heritage.

52. Educators should ensure that school curricula and textbooks teach understanding and respect for indigenous peoples' heritage and history and recognize the contribution of indigenous peoples to the creativity and cultural diversity of the country as a whole.

International organizations

53. The Secretary-General should publish an annual report, based upon information from all available sources, and in particular information requested from UNESCO, the World Intellectual Property Organization (WIPO) and indigenous communities, on problems and solutions experienced in the protection of indigenous peoples' heritage in all countries.

54. The Secretary-General should also prepare a note, in cooperation with indigenous peoples' organizations, on progress made and problems still to

be overcome for the protection of indigenous peoples' heritage, for consideration by the World Summit for Social Development in 1995.

55. In cooperation with indigenous peoples, WIPO should bring these principles and guidelines to the attention of the member States of all of the intellectual and industrial property unions which are under its administration, with a view to promoting the strengthening of national legislation and international conventions in this field.

56. Indigenous peoples and their representative organizations should enjoy direct access to all relevant negotiations administered by WIPO and the World Trade Organization, to share their views on measures to improve the protection of their heritage through international law.

57. In collaboration with indigenous peoples, UNESCO should develop a list of sacred and ceremonial sites that require special measures for their protection and conservation, and provide financial and technical assistance to indigenous peoples for these purposes.

58. In collaboration with indigenous peoples, UNESCO should also establish a trust fund with a mandate to act as a global agent for the recovery of compensation for the unconsented or inappropriate use of indigenous peoples' heritage, and to provide assistance to indigenous peoples to strengthen their institutional capacity to protect their own heritage.

59. United Nations operational agencies, as well as the international financial institutions, and regional and bilateral development assistance programmes, should give priority to providing financial and technical support to indigenous communities for capacity-building and exchanges of experience focused on local control of research and education.