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RESUMING SELF-GOVERNMENT IN INDIAN COUNTRY: FROM IMPOSED GOVERNMENT TO SELF-RULE INSIDE AND OUTSIDE THE UNITED STATES OF AMERICA

Rudolph C Ryser

1. Introduction

Four Indian nations have been carrying forward a quiet political revolution since 1987.[1] The drive by three Indian nations in the Pacific Northwest and one in Northern California to resume self-government has been underway for more than a generation urged on by the desire to choose freely their own political and cultural futures. Their efforts are leading toward an eventual exercise of self-government. Rejecting the U.S. court system in favor of direct political negotiations with the United States government, these nations have begun blazing a new path to renewed political and economic development.[2] The policies of the Quinault, Lummi, Jamestown S'Klallam and Hoopa have already changed the domestic political and legal landscape of Indian Affairs.[3] The transition of these Indian nations from non-self-governing to becoming self-governing peoples will undoubtedly have a direct impact on changing political relations between nations and states long into the future.[4]

These four nations have begun to show that self-governing sovereign nations can coexist with a sovereign state and not threaten the dismemberment of the existing state. They have shown that there is compatibility between a nation's sovereignty and a state's sovereignty, given that a framework of government-to-government relations has been established, maintained and nurtured in order to ensure cooperative communications and systematic resolution of conflicts. Nations and states with formal treaties, compacts and other constructive arrangements can politically coexist.

The 1993 negotiation of a long-term Self-Government Compact between four Indian nations, the Quinault, Lummi, Jamestown S'Klallam and Hoopa nations, and the United States of America set a standard for future bilateral government-to-government relations between nations and states. There is, however, an obstacle to an assured constructive and positive outcome to these negotiations. The concept of self-determination, or the right of these peoples to self-government, is paramount to the obstacle. Internal and external contradictions between U.S. government policies on self-determination, as reflected in recent actions by the Department of State and the Department of the Interior, cast doubts about whether these nation and state negotiations represent a net advance in political relations or a confirmation of the status quo. The U.S. government seems to have begun a retreat from its former advocacy of self-determination of peoples and the promotion of self-government.[5]

Although the Jamestown S'Klallam, Hoopa, Lummi and Quinault are not strategically important nations in any geopolitical sense, the political initiative they have decided to undertake in the last decade of the twentieth century may turn out to have a profoundly significant impact. If they are successful in their efforts to reassume the powers of self-government, their success will point the way to peaceful resolution of conflicts between states and the nations inside their boundaries around the world.

The move to regain powers of self-government is also being propelled by a two-decade-long debate in the international community concerning evolving standards for the rights of indigenous peoples, or those millions of people around the world whose nations were absorbed into newly formed states without consent, as were Indian nations in the United States.[6]

The most visible result of the growing international debate is the formulation and imminent United Nations General Assembly approval of a Declaration on the Rights of Indigenous Peoples.[7] Participating in drafting the Declaration are the United Nations, state governments, indigenous nations and a growing number of specialized international agencies, as well as non-governmental organizations. The prospects of a new era of nation and state treaty-making is signalled by the synergy of bilateral negotiations between a nation and a state, resulting in a Compact of Self-Governance, and multilateral negotiations in the United Nations between nations and states to produce the Declaration on the Rights of Indigenous Peoples. It is a hopeful time, but as suggested already there are obstacles on the path to self-government for Indian nations.

This article will examine the historical and contemporary political relations between Indian nations and the United States in the light of efforts by Indian nations to exercise self-government. It will begin by reviewing some of the history of key points of U.S. government interference in the internal political life of Indian nations, past attempts by Indian nations to govern themselves and some obstacles to self-government by Indian nations. It will analyze how the United States government has attempted to apply the principle of self-determination to Indian nations as a matter of internal policy, and how the United States government has dealt with the principle of self-determination as a matter of external policy concerning the rights of indigenous peoples. It will conclude that there is a profound contradiction between the U.S. government's internal and external applications of self-determination and that such a contradiction may reflect the practice of many states' governments. This contradiction may have a significant effect on how Indian nations and other indigenous peoples seek to implement self-determination.

2. Background

2.1 History of Intrusions into Self-Governance

For 120 years, Indian nations saw their ability to decide freely their own political, economic, social and cultural affairs eroded by the U.S. Congress. The judicial branch of the U.S. government made efforts to take governmental powers from Indian nations, followed by similar efforts by the executive branch of the U.S. government.[8] The principal means by which the powers were taken were through preemption and usurpation.[9] Most of the erosion of Indian governmental powers, including the regulation of natural resource use, land use regulation, education, civil and criminal justice, and the making of laws, was done in the name of "protecting Indian interests."[10] The end result, however, was quite different.

The actual effect of the government's attempt to protect Indian interests was to undermine Indian governmental institutions.[11] No Indian nation has a political representative in the Congress or any branch of the U.S. government. No Indian nation shares political power with the states of union in the federal system. Yet, the United States claims and exercises its absolute dominion over Indian peoples and their territories through its self-proclaimed "Plenary Power of Congress."

Modern claims to absolute U.S. rule over Indian nations are rooted in the

1860s competition between the House of Representatives and the Senate over powers of budget.[12] The intramural Congressional contest had to do with the making of treaties with Indian nations, the cost of those treaties and the Constitutional powers of finance. It was in 1867 that the House considered passing legislation to repeal the authority given the President, the Secretary of the Interior and the Commissioner of Indian Affairs to make treaties with Indian nations.[13] Many Congressmen regarded treaties with Indian nations as creating a two-fold problem: Rapidly increasing demands for revenues in a time of budgetary restraint following the Civil War; and allowing the U.S. Senate to usurp the Constitutional power of the House by creating new budgetary demands through treaties.[14] Failing to win passage of the bill to restrain the Executive branch from making treaties, and thus unable to restrain the Senate as the Constitutionally empowered body of Congress responsible for treaty ratification, the debate continued. A compromise bill was subsequently introduced as an attachment to the Indian Appropriation Act of 1871.[15]

2.1.1 The Appropriation Act of 1871

As a compromise, language used in the bill attached to the Indian Appropriation Act of 1871 stated: "That hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe or power with whom the United States may contract by treaty; Provided . . . , That nothing herein contained shall be construed to invalidate or impair the obligation of any treaty heretofore lawfully made and ratified with any such Indian nation or tribe."[16]

The passage of the Appropriation Act into law effectively stopped making new treaties with Indian nations and severed formal government-to-government relations between the U.S. and Indian nations. While satisfying the political concerns of Congressmen worried about Senate usurpation, the breaking of government-to-government connections with Indian nations posed dilemmas for the U.S. government: were legal means available for the United States to legally acquire Indian lands, and could the government deal with the growing number of civil and criminal problems involving U.S. citizens in Indian territories. A string of court cases resulting from these dilemmas appeared in the federal courts.

In one of two landmark cases, Elk v. Wilkins,[17] the Court first addressed the congressionally created dilemma. It stated, "...utmost possible effect [of the 1871 Act] is to require the Indian tribes to be dealt with for the future through the legislative and not the treaty-making power."[18] One year earlier, in Ex Parte Crow Dog,[19] the Court ruled in favor of recognizing treaty obligations between the U.S. and the Brule Sioux, and recognized the power of the Brule Sioux government to administer "their own laws and customs" in connection with crimes committed by Indians against Indians.[20] Congress seized upon the court's ruling in Elk v. Wilkins and responded to the Crow Dog decision by enacting the Major Crimes Act in 1885.[21]

2.1.2 Major Crimes Act of 1885

As the first intrusion into Indian government jurisdiction by the U.S. government, the Major Crimes Act imposed U.S. authority inside Indian territory over eight subject crimes. These included: murder,

manslaughter, rape, assault with intent to kill, arson, burglary, and larceny. New crimes were added in the years to follow: statutory rape, assault with intent to commit rape, assault with a dangerous weapon, assault resulting in serious bodily injury and robbery.

The imposition of the Major Crimes Act led to a court challenge in 1886 to the law's constitutionality.[22] Attorneys for two Indians who had been indicted for the murder of a member of the Hoopa tribe argued that the Act went beyond the constitutional powers of the Congress. The court agreed, noting that the Constitution did not grant Congress power to intrude into the jurisdiction of Indian tribes.[23] Ignoring its own conclusions affirming the unconstitutionality of the Major Crimes Act, the court, however, turned to a political argument for its final decision:

But, after an experience of a hundred years of the treaty-making system of government, Congress has determined upon a new departure--to govern them by acts of Congress. This is seen in the Act of March 3, 1871. . .[24]

It seemed that Congress' own action was evidence enough that it had the power to act. The issue of the constitutionality of the law became moot. Without saying the Congress had acted in a way inconsistent with the U.S. Constitution, the court was uncertain about whether it had the competence to enter a judgment that would limit the power of Congress to undertake what was essentially a political act outside the Constitution. However, a few years later, Congress was challenged again.

2.1.3 The Plenary Power of Congress

In 1899, the court first used the term plenary power to describe Congress' exercise of extra-Constitutional legislative powers in Stephen v. Cherokee Nation[25]. The court was presented with the issue of whether Congress had the authority to establish a mechanism for determining membership rolls of several Indian tribes. The Supreme Court said: [A]ssuming that Congress possesses plenary power of legislation in regards [Indians], subject only to the Constitution of the United States, it follows that the validity of remedial legislation of this sort cannot be questioned unless in violation of some prohibition of that instrument.[26]

Thus, the Court asserted that Congress had plenary power over Indian nations. The only evidence that Congress had such power was the Appropriation Action of 1871. The Court's reach for evidence to support its conclusion only confirmed that Congress had unlawfully exercised absolute power over Indians. After establishing the Plenary Power Doctrine, the Court, three years later held that Congress' power over Indian legislation was a political question and not subject to judicial review.[27]

The Legislative Branch of the U.S. government first closed the door on government-to-government relations by enacting the Appropriations Act of 1871. It then imposed laws of the U.S. government directly over individual Indians. The U.S. courts supported Congress' actions through the Plenary Power Doctrine, and then closed the doors to judicial consideration of the lawfulness of the doctrine through the Political Question Doctrine, effectively insulating itself from criticism or challenge. Finally, the Executive Branch enforced both the Congressional and Judicial actions and assumed administrative powers of its own over Indian people. By 1902, the U.S. government's dictatorship over Indian

nations was complete: Indian nations had been stripped of the capacity to determine and decide their own political, economic and social future.

2.2 Past Attempts at Self-Governance

Ninety-three years after the U.S. Congress closed the door on nation and state treaty negotiations by passing the Appropriations Act of 1871, Indian nations took their own initiatives to regain power over their lives.[28] Beginning in 1964 with the Johnson Administration's Great Society Programs and "Indian Self-Determination Policy," Indian nations received small amounts of community development funds and began to pursue a new political course of "strengthening tribal government."[29] Further encouraged by the Nixon Administration's "Indian Self-Determination Policy,"[30] and gaining momentum with the Reagan Administration's "government-to-government policy,"[31] Indian nations moved systematically to reassume their powers of self-government. Through structured negotiations in U.S. courts, informal negotiations with the Executive Branch and work with Congress, many nations moved toward clarifying their governmental powers.[32]

2.2.1 Preliminary discussions of 1987

The events leading up to the 1993 self-government agreements officially began in October 1987 with discussions between Lummi Chairman Larry G. Kinley, Quinault President Joe DeLaCruz and the Chairman of the Interior and Related Agencies Appropriations Sub-Committee Congressman Sidney Yates of Illinois. The issue under discussion was attempting to find a solution to problems the Lummi and Quinault suffered while dealing with the Bureau of Indian Affairs, such as mismanagement of tribal and individual trust funds, and possible illegal activities in the management of natural resources.[33] Previously, as President of the National Congress of American Indians in 1983, DeLaCruz had urged Indian leaders to ". . . make a decisive departure from the recurring issues that divert our attention from the most important priorities and initiatives necessary to establish meaningful government-to-government relations with the United States."[34] While meeting with Congressman Yates, DeLaCruz reiterated his views on government-to-government relations.

In addition, Chairman Kinley appeared before Congressman Yates' Sub-Committee and delivered testimony entitled "Problems and Solutions in the Tribal-Federal Relationship"[35] which emphasized building a framework for government-to-government relations to help find solutions to persistent problems that were perceived as responsible for undermining constructive tribal development.

2. The Tribal Self-Governance Demonstration Project

As a result of these discussions and public hearings, the House Interior and Related Agencies Sub-Committee decided to include a three paragraph attachment to its annual appropriation bill that identified funds for a tribal self-governance demonstration project.[36] In addition to appropriating funds for conducting the demonstration project and identifying ten tribes as participants, including Lummi and Quinault tribes, the bill provided that the United States government and the Indian governments would negotiate demonstration agreements.[37] Without fanfare or public notice, other than the three paragraphs in the Appropriation Bill, the United States government had reopened government-to-government

relations with Indian nations through exactly the same device it had used to close them.

During the eighteen months after passage of the Appropriation Act,[38] all ten Indian nations involved in the project entered into a period of intensive research and planning to assess their political and economic interests while building a framework for formal government-to-government relations with the United States. Some of the participants did not complete the project. For example, the Mescalero Apache Indian nation[39] decided not to continue to participate in the process, and the Red Lake Chippewa[40] chose to quickly negotiate agreements with the Bureau of Indian Affairs in order to rearrange administration in their territory. Only the Jamestown S'Klallam, Hoopa, Lummi and Quinault nations continued with the project, emphasizing the formulation of government-to-government relations and standards for negotiating agreements between themselves and the United States government. In June 1990, each of the four tribes undertook bilateral negotiations with the United States and concluded a Compact of Self-Governance. The central purpose of each Compact was stated in this way:

This Compact is to carry out . . . Self-Governance Demonstration Project . . . intended as an experiment in the areas of planning, funding and program operations within the government-to-government relationship between Indian tribes and the United States. The Demonstration Project encourages experimentation in order to determine how to improve this government-to-government relationship . . . .[41]

As they cautiously move toward greater internal self-government, these nations are choosing to reassume most powers of internal self-government: taxation, control of natural resources, boundary regulation, trade, environmental regulation, civil affairs, and criminal jurisdiction. The parties to each Compact mutually recognize the sovereignty of the other and pledge to conduct relations on a government-to-government basis.[42] The internal laws of each nation are to be applied in the execution of the Compact and the decisions of the nation's courts are to be recognized and respected.[43] The balance of the Compact describes procedures for funding transfers, records and property management, retrocession, dispute resolution, ratification, and a statement of obligations for each of the parties. Treaty relations between each of the nations and the United States began again and clear steps toward self-government were taken.[44]

2.2.3 U.S. Response to the Demand for Self-Government

The United States government has made its policy on Indian self-determination abundantly clear with the election of each new president since Lyndon Johnson offered self-determination as the basis of his policy in 1968.[45] Succeeding administrations affirmed the recognition of the sovereignty of tribal governments. Beyond the Executive Branch's frequent affirmation of Indian Self-Determination in policy, the Congress of the United States has placed itself on the public record repeatedly endorsing the principle of self-determination since it enacted the Indian Self-Determination and Education Assistance Act of 1975.[46]

The United States and Indian nations have entered into no fewer than 400 international treaties concerning their direct relations. Only a few multi-lateral agreements have been concluded between state governments

directly relevant to U.S. and Indian nation relations.[47] Four international agreements relevant to Indian Affairs were ratified by the United States between 1944 and 1992.[48] Representatives of the U.S. government have also actively participated in the formulation of the U.N. Declaration on the Rights of Indigenous Peoples, which directly bears on U.S. relations with Indian nations inside a framework of internationally defined standards.

2.3 Obstacles to Self-Governance

Events involving indigenous peoples worldwide have increasingly drawn the United States government into the intense international debate about the standards that ought to guide state governments in relations with non-self-governing peoples. As the number of multi-state agreements concerning human rights in general grows, and, in particular, the number of agreements concerning indigenous peoples grows, questions about state government treatment of indigenous peoples is on the rise.

2.3.1 Inside the U.S.

Despite this increased demand, the U.S. Department of State does not have special capabilities or experience in matters concerning indigenous peoples. On rare occasions the Department of State will draw a connection between the international debate on evolving standards concerning indigenous peoples and Indian nations inside U.S. boundaries. On those occasions, Department of State officials have requested assistance from the Department of the Interior, or have asked leading Indian officials to sit on a U.S. delegation in order to demonstrate the government's commitment to the interests of Indian people.

2.3.2 The International Realm

The United States government's treatment of Indian nations has regularly come under scrutiny by international agencies since 1970.[49] The result has been increased U.S. participation in international forums where indigenous peoples' issues are discussed.[50] Strong demands for new international policy in the highly specialized area concerning indigenous peoples are being made by non-governmental organizations and indigenous peoples, as well as by state governments.[51]

In 1957, the International Labor Organization (ILO) Convention 107, the Convention Concerning Tribal and Semi-Tribal Populations in Independent States came into force. In addition to the 1944 Inter-American Treaty on Indian Life between the United States and seventeen South and Central American States, the ILO Tribal Convention was, until the Helsinki Act of 1975, the only other major international instrument concerned with state government treatment of indigenous peoples. Twenty-five state governments, including the United States, ratified Convention 107.

The International Labor Organization is a tripartite organization controlled by state governments, but involving delegate participation of labor unions and businesses. Its Secretariat decided that Convention 107 should be changed to correspond with the new international standards of the United Nations. The central issue motivating the Secretariat to push for revisions in Convention 107 was the belief that the language advocating assimilation of indigenous peoples into state societies was antiquated and should be changed to reflect modern political realities.

The land rights provisions of the 1957 Convention were also considered badly formulated and, thus, required updating. The growing visibility of indigenous peoples' concerns on the international plane and the greater visibility and importance of the United Nations efforts that began in 1982 by seeking to develop the Declaration on the Rights of Indigenous Peoples.

2.4 The Convention Concerning Indigenous and Tribal Peoples in Independent Countries

After two years of preparations, a draft for a new Convention Concerning Indigenous and Tribal Peoples in Independent Countries ILO Convention 169 was tabled for final consideration in 1989. The three active groups permitted to engage in debate to determine the final language were representatives of Labor Unions, Businesses and State governments. Only the state governments had the power of decision to accept or not accept the proposed terms of reference. Representatives of indigenous nations and indigenous peoples' organizations participated as observers, with the right to lobby official delegates during the negotiations.[52] The views of indigenous peoples were represented at the table by Labor Union representatives and by Portugal, Colombia and Ecuador. The Business group representatives resisted all proposals for changes in the original Convention language. Other participating state, including Peru, Argentina, Brazil, Venezuela, India, Japan, Canada and the United States, formed into three mutually supportive blocs. The South American, Asian and North American blocs were formed with the intent to ensure that international standards remained well below the standards already set in the laws of each state.[53]

2.4.1 Issues for Consideration in the Draft

Among the leading issues concerning delegates were:

i. Whether the Revised Convention should use the term "peoples"or the term "populations" to describe the subject text;

ii. Whether the Revised Convention should use the term "self-determination" explicitly in the text;

iii. Whether the Revised Convention should use the term "land" or the term "territory" in the text; and

iv. Whether the Revised Convention should use the term "consent" or the term "consultation" in the text.[54]

The choice of these particular terms would make the difference between an international convention that enhanced the rights of indigenous peoples or a convention that had little political meaning, except as a cover for continued state exploitation of indigenous peoples. The representatives of Canada and the United States led diplomatic efforts to limit and narrow the terms of reference in the Convention's proposed text.[55] These representatives worked to defeat the use of "peoples" as a term of reference, advocating the word "populations" instead.[56] They argued, along with delegates from India and Venezuela that the word "peoples" implied the right of secession from the state, but the term "populations" implied units of metropolitan state citizens. Further, they asserted that the right of self-determination granted to "peoples" would pose an

unacceptable threat to the territorial integrity of the state, and, therefore, use of the term without qualifiers would be unacceptable.[57]

The term "peoples" constitutes a wider concept, presumably not self-governing, and each "people" is presumably distinguishable from other "peoples" by virtue of language, culture, common history or common heritage. Identification as a "people" is a requisite qualification for a nation to secure international guarantees of fair treatment in relations with state governments.[58] Use of the term "people" as language to identify the subject of the 1989 International Labor Organization (ILO) Convention No. 169[59] was deliberately narrowed by state governments to limit the number of nations entitled to exercise a claim to self-determination. In the attempt to create a new meaning for "peoples" in international law, state governments included a disclaimer in the final text of the new Convention: "The use of the term 'peoples' in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law."[60]

The pattern of confusion and constant shifting of positions established by the U.S. and Canadian representatives during the debate on the term "peoples" continued during the debates over the reference terms land and territory, self-determination, and consent and consultation.[61] Representatives of indigenous peoples lobbied for use of the term "territories" to cover all lands and resources belonging to the particular people,[62] while Canada and U.S. representatives, along with other resistant states viewed the use of "territories" as a threat to a state's integrity.[63] After two days of debate and negotiations, Article 13 of the revised text read :

"In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of the relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship."[64]

The paragraph was immediately followed by a second paragraph:

"The use of the term lands in Article 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use."[65]

By inserting the term "territories," the Article avoided inserting the term in Article 14, which dealt with the rights of ownership and possession of land for people who traditionally occupied it.[66] Similar efforts were made to emphasize the difference between "consult" and its more active counterpart, "consent," and the term "self-determination" was completely left out of the text in favor of indirect references.

The effect of the work of the delegations from the United States and other states was to prevent an advance in the development of international law protecting the rights of indigenous peoples. After the revision process was completed and the Convention was opened for ratification by ILO member states, Mr. Lee Swepston of the Secretariat addressed the United Nations Working Group on Indigenous Populations:[67]

"An effort was made at every stage to ensure that there would be no conflict between either the procedures or the substance of the ILO

Convention and the standards which the UN intends to adopt. Thus, the ILO standards are designed to be minimum standards, in the sense that they are intended to establish a floor under the rights of indigenous and tribal peoples and, in particular, to establish a basis for government conduct in relation to them."[68]

2.4.2 The Declaration

In 1986, the United Nations Working Group on Indigenous Populations officially became responsible for drafting and putting before the General Assembly a Declaration on the Rights of Indigenous Peoples. As work continues on the development of this document of international consensus concerning accepted standards for the rights of indigenous peoples, key terms of reference in its text have become central to the growing debate. As of July 1993, five of the 144 member ILO states had ratified the new convention. Convention No. 169 is nevertheless being used as authoritative evidence that narrow interpretations of "peoples," "territories," "self-determination," and "self-government" should be included in the United Nations-sponsored Declaration.[69] While many state governments have participated in the formulation of the Declaration, along with hundreds of representatives of indigenous nations, the work of the representatives of the United States, Sweden, Canada, Australia, New Zealand, Japan and the Peoples Republic of China should be noted. Since 1986, these representatives have been working to prevent the new Declaration from including key terms of reference such as "peoples" and "self-determination" in ways that are consistent with customary international law.

In an effort to narrow the meaning of terms like "self-determination," the U.S. government's representative before the United Nations Working Group on Indigenous Populations urged Working Group members to characterize "the concepts of 'self-determination,' 'peoples,' and 'land rights,'" as "desired objectives rather than rights" in August 1992.[70] Kathryn Skipper, a member of the U.S. delegation, expressed serious questions about the definition of "indigenous peoples" as a term of reference in July of 1993.[71] Discussing provisions of the draft Declaration on the Rights of Indigenous Peoples, she said: The draft declaration does not define 'indigenous peoples.' Hence, there are no criteria for determining what groups of persons can assert the proposed new collective rights. . . we are concerned that in some circumstances, the articulation of group rights can lead to the submergence of the rights of individuals.[72]

The U.S. government's position set the tone of state delegation interventions with the intent of narrowing and limiting the meaning of terms of reference in the same way as the ILO Convention.[73]

Dr. Rolf H. Lindholm, on behalf of the Swedish government, amplified the U.S. government's serious questions by specifically urging the narrow application of the term "peoples."[74] Stating that the Swedish government "favors a constructive dialogue between governments and indigenous people," Lindholm nevertheless called for "consensus language" that would make the Declaration acceptable to various bodies within the UN system, including the General Assembly.[75] Indicating that a consensus should be achieved as to the reference term "self-determination," Lindholm averred: It is important that we recognize in this context, as we have in others, that the concept, as used in international law, must not be blurred. It is therefore necessary to find another term in the declaration, or to

introduce an explanatory definition such as that included in ILO Convention No. 169, which provides that "The use of the term 'peoples' in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law."[76]

Delegations of indigenous peoples participating in the proceedings argued that it was necessary to maintain the term "peoples" in order to remain consistent with existing international laws. In particular, the language originally proposed in 1987 was stressed, "Indigenous nations and peoples have, in common with all humanity, the right to life, and to freedom from oppression, discrimination, and aggression."[77]

As to the state governments' efforts aimed at narrowing the meaning of the word "peoples," the United Nations Working Group on Indigenous Populations Chairman Erica-Irene Daes responded:

"Indigenous groups are unquestionably "peoples" in every political, social, cultural and ethnological meaning of this term. . . . . It is neither logical nor scientific to treat them as the same "peoples" as their neighbors, who obviously have different languages, histories and cultures. The United Nations should not pretend, for the sake of a convenient legal fiction, that those differences do not exist."[78]

She offered, ". . . the right of indigenous peoples to self-determination. . . should comprise a new contemporary category of the right to self-determination."[79]

Delegations of indigenous peoples argued the need to introduce their own paragraph on self-determination: All indigenous nations and peoples have the right to self-determination, by virtue of which they have the right to whatever degree of autonomy or self-government they choose. This includes the right to freely determine their political status, freely pursue their own economic, social, religious and cultural development, and determine their own membership and/or citizenship, without external interference.[80]

The U.S., Canadian, Japanese and Brazilian objections to the use of "self-determination" as a term of reference in the Declaration flew in the face of eighty years of expanding use in the international arena. In the case of the United States, objections to the term contradicted the long-standing Indian Affairs policy that affirmed the sovereignty of Indian nations as well as their right to self-determination.

3. Analysis

The principle of self-determination is deeply rooted in the customary and formal rules of conduct between nations and between states. The broad outline of the concept of self-determination was first delivered into international discourse by United States President Woodrow Wilson as the fifth point in his Fourteen Points Speech: ". . . free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the population concerned must have equal weight with the equitable claims of the Government whose title is to be determined."[81]

It is not merely coincidental that the subject of self-determination looms large in the developing domestic and international debate over self-determination of nations in their relation to states. Wilson's concern was the establishment of a process for non-self-governing peoples inside existing states. He sought to establish a peaceful manner in which to rearrange the political landscape without war; a way in which to encourage negotiations between state governments and nations. He felt that a nation or part of a nation inside or under the control of an existing state needed recognition in order to determine its political future without prejudice. The method for ensuring equal weight being given to such nations became identified as self-determination.

3.1 Right of Self-Determination in the United States

Though most of the 44 million refugees in the world are people from indigenous nations,[82] and though indigenous peoples' concerns are at the heart of regional instabilities in Africa, especially Nigeria, Somalia, Sudan, Kenya and South Africa in particular, in the former Yugoslavia, Spain, Georgia and Italy in Europe, and in Eurasia generally, and instabilities in the Middle East, Central Asia, South Africa and Melanesia, the United States foreign policy establishment remains oblivious. This weaknesses in U.S. foreign policy accounts for the inconsistent and often incoherent U.S. positions on indigenous peoples' issues, and on Indian Affairs in particular. The United States government policy initiatives in connection with the International Labor Organization's revision of its Convention 107, the Helsinki Final Act and the Declaration on the Rights of Indigenous Peoples illustrate the difficulty of maintaining consistency between internal Indian Affairs policy and external indigenous peoples policies. The gap between internal and external self-determination discussions is rapidly disappearing. This is due to the greater convergence between Indian Affairs, self-determination and self-government policies in U.S. domestic policy and the activities of the UN and other international organizations to undertake standard-setting activities concerning indigenous peoples at the international level. The Department of State regards Indian Affairs and concerns about indigenous peoples a very low priority: a matter of little strategic or diplomatic importance.

3.2 International Right to Self-Determination

Framers of the United Nations Charter attached paramount importance to the principle of self-determination, as illustrated in Article I of the Charter. There, member states affirm the purpose of the organization to be, "...to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples."[83] In its broadest formulation, the principle of self-determination encompasses the political, legal, economic, social and cultural subjects of the life of peoples. In international law, the principle of self-determination is unique in that it is a recognized collective right which may be exercised by peoples. "The right to self-determination is a collective right, a fundamental human right forming part of the legal system established by the Charter of the United Nations, the beneficiaries of which are peoples-whether or not constituted as independent States-nations and states."[84]

While relatively amiable dialogue characterizes the continuing evolution of the social, economic and cultural aspects of self-determination,

discussions concerning the full development of the right of political self-determination has become increasingly contentious. The original, Wilsonian conception of self-determination was political. State governments have historically wanted to emphasize the less controversial subjects of economic, social and cultural self-determination. Political self-determination is regarded as a direct threat to the stability or permanence of many states where the claimed internal population includes many distinct peoples. Article 76 is the only provision of the United Nations Charter which addresses the right of peoples to political self-determination: "...to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned...."[85]

The Declaration on the Granting of Independence to Colonial Countries and Peoples[86] elaborated on Article 76 with the affirmation that peoples "freely determine their political status:" The "political status" which each people has the right freely to determine by virtue of the equal rights and self-determination of peoples comprises both international status and domestic political status. Consequently the application of the principle of equal rights and self-determination of peoples in the political field has two aspects, which are of equal importance.[87]

The United Nations Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations[88] specifically defines various modes by which peoples may determine their international political status: The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.[89]

Where state governments have assumed responsibilities for administering territories whose peoples do not exercise the full measure of self-government, they automatically acquire an obligation to advance the social, economic and political well-being of the inhabitants of those territories. Chapter XI, Article 73 of the UN Charter affirms that member states accept "as a sacred trust" the obligation to, among other things:

"...develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement."[90]

It is by virtue of this provision that non-self-governing peoples obtain an internal political status of their own choosing. If non-self-governing peoples are administered under the international trusteeship system, the process similar to Article 73 defined in the Declaration on the Granting of Independence to Colonial Countries and Peoples[91] applies.

The International Covenant on Civil and Political Rights contains the strongest and most succinct statement of the principle of self-determination: "All peoples have the right of self-determination. By virtue of the right they freely determine their political status and

freely pursue their economic, social and cultural development."[92] This statement is repeated in the International Covenant on Economic, Social and Cultural Rights[93] and the Helsinki Accords.[94]

Even if the U.S. government's position in the United Nations Working Group on Indigenous Populations accurately reflects one policy on "sovereignty," "self-determination," and "self-government," there is no ambiguity in the U.S. government's affirmation of Indian self-determination within the framework of the Helsinki Final Act. The United States government negotiated the Helsinki Accords with thirty-seven European states, including the USSR and Canada, and in 1979 issued a National Security Council approved progress report on US government Final Act compliance concerning American Indians. The report emphatically affirms, ". . . Indian rights issues fall under both Principle VII of the Helsinki Final Act, where the rights of national minorities are addressed, and under Principle VIII, which addresses equal rights and the self-determination of peoples."[95]

The National Congress of American Indians, in its statement at the 1983 session of the United Nations Working Group on Indigenous Peoples in Geneva, Switzerland,[96] expressed its confidence that the: United States of America took a revolutionary step toward clarification of international standards concerning Principle VII and Principle VIII in relation to Indian Nations, the United States has committed itself to conduct its relations in accord with the law of nations and new international law evolved since the founding of the League of Nations.[97]

The National Congress of American Indians statement went even further to say:

"The recognition of Indian nations as 'peoples'and the commitment to promote effective exercise of equal rights and self-determination of peoples for the development of friendly relations among all states [Helsinki Final Act; Principle VIII] by the United States creates a commitment to apply provisions of . . . international agreements to Indian/U.S. relations."[98]

The report asserts that the U.S. Government's policy of Indian self-determination "is designed to put Indians, in the exercise of self-government, into a decision-making position with respect to their own lives."[99] The U.S. government report further clarified the state's relationship to Indian nations by saying: ". . . the U.S. Government entered into a trust relationship with the separate tribes in acknowledgment, not of their racial distinctness, but of their political status as sovereign nations."[100]

Principle VIII of the Helsinki Final Act affirms the "right of a people to freely choose their political, economic, and social future without external interference," virtually the same language as is contained in the U.N. Charter and Article 1 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Despite recent U.S. government requests for the International Labor Organization and the United Nations to specifically narrow definitions for self-determination in connection with indigenous peoples, there is no ambiguity about U.S. commitments under international agreements to apply the full, normative meaning of these terms to its relations with Indian nations.

4. Conclusion

While it is perfectly within the right of any government to change its policy, the U.S. government's failure to advise Indian nations entering into good-faith negotiation of Self-Governance Compacts that it no longer maintains a commitment to self-government or the principle of self-determination seems a gross deception. Just as negotiations over the final text of the ILO Convention 169 were being debated to narrow the meaning of critical terms of reference, the U.S. government representative negotiated Compacts to affirm the political sovereignty and self-determination of Indian nations. By blocking international recognition of nations' rights to self-government and therefore certain international guarantees under existing international laws, U.S. actions in the United Nations and elsewhere threaten to exacerbate growing tensions between nations, and between nations and states. The policy gap on Indian self-determination from inside to outside threatens to expose the United States to international criticism and risks the stability of relations with Indian nations. The inconsistency of policy also threatens to undermine United States government's ability to formulate a new, coherent and effective post-Cold War foreign policy.

The negotiation of Self-Governance Compacts has, for all practical purposes, reopened treaty-making between Indian nations and the United States of America. Whether both parties to Self-Governance Compacts fully comprehend the significance of this process is still open to question. It is clear, however, that Indian nations are seeking a new political level of development, and they seem intent on achieving this new level with at least the appearance of U.S. government participation and support. It is also clear that the United States government is eager to have the appearance of a tolerant and benevolent political power, but policymakers are equally eager to put the "genie" of self-determination back into its bottle by seeking back-door measures to prevent international recognition of Indian rights to self-government.

NOTES:

[1] The Quinault Indian Nation, Lummi Indian Nation, Jamestown S'Klallam Tribe in the northwestern part of the state of Washington and the Hoopa Nation on the west coast of Northern California. Their decision to undertake negotiation of bilateral compacts of self-governance is a striking departure from conventional conduct of Indian Affairs which has been long characterized by legal and administrative tugs-of-war between Indian governments and officials of the Bureau of Indian Affairs..

[2] The use of bi-lateral and multi-lateral compacts negotiated between Indian nations and the United States government has increasingly become the standard for formalizing agreements to resolve disputes and particularly to establish new jurisdictional arrangements between Indian nations and the United States government and its states, i.e., tribal/state compacts on gambling.

[3] Where are these tribes located? What is the population or other related demographics?

[4] Changing from political dependence to a position of recognized sovereignty involves constructing a new framework for political relations,

and this framework necessarily reduces the role of the Bureau of Indian Affairs as a governing influence in the internal affairs of an Indian nation. Self-government not only implies, but requires that an Indian nation take responsibility for making and enforcing its decisions.

[5] Global uncertainties created by the collapse of the Union of Soviet Socialist Republics, breakup of Yugoslavia and Czechoslovakia and the new threats by indigenous nations to the possible breakup of the Russian Federation shook the normal self-confidence of U.S. Department of State.

[6] The United Nations Commission on Human Rights authorized its Sub-commission on Prevention of Discrimination and Protection of Minorities to undertake a Study of the Problem of Discrimination Against Indigenous Populations beginning in 1973. See, "Study of the Problem of Discrimination Against Indigenous Populations," Special Rapporteur, Mr. Jose R. Martinez Cobo. Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, (E/CN.4/Sub.2/1983/21/Add.1-12). On a parallel, but converging historical track indigenous nations began organizing communications between themselves through new international organizations (i.e., International Indian Treaty Council, World Council of Indigenous Peoples, Inuit Circumpolar Conference). International activity concerning indigenous peoples affairs increasingly involved non-governmental organizations like the World Council of Churches, International Commission of Jurists, and the Anti-Slavery Society. All of these trends contributed to an expanding dialogue concerned with international standards concerning the rights of indigenous peoples. See, the Human Rights Monitor published by the International Service for Human Rights in Geneva, Switzerland for commentaries and reports describing the dialogue.

[7] Beginning in 1986 the United Nations Working Group on Indigenous Populations took under consideration the formulation of a new international Declaration. It worked under the direction of the UN Commission on Human Rights to draft a declaration flowing from its annual review of developments concerning the rights of indigenous peoples and its responsibility to consider international standards for the application of international rules to the conduct of relations between states and indigenous nations. In 1993, the Working Group on Indigenous Populations finished drafting the instrument for the Declaration and sent it to the Sub-Commission on Prevention of Discrimination and Protection of Minorities. After a cursory review in 1994 the Sub-Commission sent the Draft Declaration for review by the Commission on Human Rights. The final draft of the new Declaration would be considered for ratification by the UN General Assembly in 1995 or 1996.

[8] See Milner Ball's discussion of this phenomenon in his Constitution, Court, Indian Tribes, Research Journal: American Bar Foundation. Volume 1987, Winter, Number 1 , p. 58 and p. 59 "Indian nations have prevented recent congressional deployment of plenary power against them. But the plenary power does not lie idle. Like Ariel, it reappears, transported from Congress to the Supreme Court, where its lack of both limits and legitimacy is matched by a lack of appeal from its results.

[9] Ibid., p. 57

[10] The United States, it is argued by scholars, has a fiduciary duty to American Indians (See Chambers, Judicial Enforcement of the Federal Trust

Responsibility to Indians, 27 Stan. L. Rev.1213 (1975)), and President Richard M. Nixon declared in his July 1970 statement (116 Cong. Rec. 23,131, 23,132) the existence of a "special relationship between the Indian tribes and the Federal government. Nixon claimed that the special relationship "continues to carry immense moral and legal force:" obligating the United States to protect Indian interests. Milner Ball expressed the view in his Constitution, Court, Indian Tribes (See footnote 8 above) at p. 62: "Although the trust doctrine has undeniably served as a remedy in certain instances of federal mismanagement of tribal lands and money, it appears in fact primarily to give moral color to depredation of tribes."

[11] For most of the last century, the United States of America presented itself as the paramount advocate of self-determination for non-self-governing peoples throughout the world. U.S. government officials pushed France, Britain and Spain to free their colonial holdings. The Union of Soviet Socialist Republics was under constant pressure to release its control over Lithuania, Estonia and Latvia--characterized as "captive nations." World War II losses by Germany, Italy and Japan also included lost colonies which were "liberated to determine their own political future." Yet, little if anything was ever said about the extra-Constitutional legislative dictatorship the U.S. government extended over the lives of Indian peoples.

[12] At Article 1, Section 7 Paragraph 1 the United States Constitution provides "All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills."

[13] Antoine v. Washington, 420 U.S. 194, 202 (1975).

[14] The costs associated with the Civil War were monumental and members of the House of Representatives felt the burden of their Constitutional responsibility (Article 1, Section 7, Paragraph 1), and the Senate's Constitutional authority to ratify treaties negotiated under the authority of the President (Article II, Section 2, Paragraph 2 "...shall have Power, by and with the Advice and Consent of the Senate, to make Treaties") created new financial obligations--especially in connection with Indian/U.S. treaties. These agreements usually involved commitments by the U.S. government to pay for land.

[15] Ch. 120 16 Stat. 544 at 566 (1871).

[16] Id., carried forward into _ 2079, Rev. Stat. (1878), 18 Stat. 364; current version at 25 U.S.C. _ 71).

[17] 112 U.S. 94 (1884).

[18] Id. at 107.

[19] 109 U.S. 556 (1883).

[20] Id. at 568.

[21] 18 U.S.C. _ 1153 (1885).

[22] United States v. Kagama, 118 U.S. 375 (1886).

[23] Id., pp. 378-379, 382.

[24] Id.

[25] 174 U.S. 445 (1899).

[26] Id., p. 478.

[27] Cherokee Nation v. Hitchcock 187 U.S. 294 (1902).

[28] Some Tribal Councils began adopting resolutions intended to set aside some tribal lands as wilderness zones (Yakima Nation), to establish taxation on business transactions (Quileute Indian Tribe), others imposed (without Secretary of the Interior approval)restrictions on waste disposal, and still others began to draw up complete "law and order codes" and other land use regulations (Quinault Indian Nation, Red Lake Chippewa, Colville Confederated Tribes).

[29] Though the "Great Society Programs" were not specifically targeted to Indian reservations, they were open to "pockets of poverty," a category under which, alas, Indians could qualify. The "Indian Self-Determination Policy" was so overshadowed by the traumatic political events choking American political leaders and the general public, little notice was given to this policy which had been the Administration's late response to the 1961 "Declaration of Indian Purpose" which grew out of an intertribal conference in Chicago.

[30] U.S. President Richard Nixon issued the "Indian Self-Determination Policy" declaring that the earlier "termination policy" was ended and replaced by a policy to encourage Indian nations to decide their own future with the support of the United States government.

[31] U.S. President Ronald Reagan offered an Indian Policy that emphasized reservation economic development and the conduct of relations with each Indian government on a "government-to-government" basis. This policy implied a partnership between the U.S. government and Indian governments within a mutually defined framework that respected tribal sovereignty and U.S. sovereignty -- in other words, a treaty relationship.

[32] Indian nations' leaders organized a systematic strategy within the National Congress of American Indians to carefully select and advance only those pieces of legislation (in the U.S. Congress) or litigation (in the Federal Courts) that supported a return of tribal governmental powers. In efforts to deal with the Executive Branch of the Federal Government, Indian leaders targeted their efforts to reduce Bureau of Indian Affairs control over Indian nations' internal affairs.

[33] More specifically, Congressman Sydney Yates (Dem. Illinois) was preparing to convene hearings concerning allegations of B.I.A. mismanagement of tribal and individual trust funds, as well as probable illegal activities associated with the management of oil, coal and land leases appearing in reports published by an Arizona newspaper. He invited these tribal chairmen to give suggestions as to what might be done. Both tribal chairmen recited extensive complaints about B.I.A. mismanagement of resources and finances in connection with their reservations. These exchanges naturally led to their consideration of "taking back control"

from the B.I.A. Source: Interview with Quinault President Joe DeLaCruz.

[34] Quoted in Shaping Our Own Future, and Overview and Red Paper, a joint publication of the Quinault, Jamestown S'Klallam and Lummi Indian Nation. Published by the Lummi Government. 1989. p.23.

[35] "Problems and Solutions in the Tribal-Federal Relationship," Testimony of Larry G. Kinley, Lummi Indian Business Council, Lummi Indian Nation, House Appropriations Sub-Committee on the Interior and Related Agencies. October 1987.

[36] Conference Report 100-498 accompanying H.J. Res. 395. 100th Congress, First Session December 22, 1987.

[37] Id.

[38] The key language concerning the self-governance initiative is contained in the 1988 Appropriation Act: $1 million is to be used by the Bureau for a tribal self-governance demonstration project. The project allowed up to ten tribal governments, named in the department's letter to the Appropriations Committee dated December 15, 1987, the opportunity to design their own budgets to address tribally determined priorities. The managers were to direct the Bureau to analyze all budgets and functions at all levels of the Bureau, and to formulate a proposal for the equitable distribution of resources and service responsibilities between these demonstration tribal governments and the remaining tribal governments in multi-tribal agency and area offices. The Bureau was to prepare proposals for reduction or transfer of personnel and consolidation of program functions to accommodate the eventual transition...[T]he negotiated agreements were to include clear delineations of trust responsibility protections assumed by the tribes and retained by the U.S. government. To document tribal progress under self-governance, mutually determined baseline measures were to be incorporated into each demonstration agreement between the federal government and the tribes.

[39] Mescalero Apache Chairman Wendel Chino sent a letter (shared with leaders of other tribal leaders) to the Secretary of the Interior advising the U.S. government that the Mescalero Apache government would not further pursue planning toward negotiation of a self-government agreement (1988)

[40] Well before the self-government planning process began, Red Lake Chippewa Chairman Roger Jourdain had begun negotiation of a memorandum of understanding with representatives of the Assistant Secretary for Indian Affairs in the U.S. Department of the Interior. This agreement conveyed Bureau of Indian Affairs Agency Superintendent administrative powers to the Chippewa Chairman, thus, making the Red Lake Chippewa Chairman effectively an employee of the U.S. government AND the Chairman of the Red Lake Chippewa.

[41] Compact of Self-Governance between the Lummi Indian Nation and the United States of America, in Article I, section 2, paragraph (a), June 29, 1990. This language is duplicated in the bi-lateral agreements of Quinault, Jamestown S'Klallam and Hoopa as well.

[42] Id., Article 1 , section 2, paragraph (c).

[43] Id., Article 1, section 3.

[44] Just as the United States and Indian nations were beginning to negotiate Self-Governance Compacts in 1989 and 1990, the United States government was participating in meetings of the International Labor Organization and the United Nations concerning new standards for the rights of indigenous peoples, including Indian nations. Despite concluding several Self-Governance Compacts, representatives of the U.S. Government in Geneva, Switzerland delivered statements opposing the raising of international standards that recognize the right of Indian nations and other indigenous peoples to the exercise of self-determination and self-government. On five key international agreements concerning the rights of indigenous peoples or U.S. obligations to advance the human rights of Indian peoples, the United States government delivered mixed messages which often conflicted with internally proclaimed Indian Affairs policies concerning recognition of the sovereignty of Indian nations and their right of self-determination.

[45] In the last months of the Lyndon Johnson Presidency, his administration announced its fundamental rejection of the "tribal termination policies" of earlier administrations and urged that a new policy be adopted which fosters self-determination. On July 8, 1970, President Richard M. Nixon announced the first comprehensive Executive branch policy on Indian Affairs: Rejecting tribal dissolution and termination of the trusteeship, and instead the "Indian Self-Determination Policy." (American Indian Policy, White House, July 1970) The Congress enacted the Indian Self-Determination and Education Assistance Act (Public 93-638, 1975) with the expressed intent of increasing tribal self-government and a systematic reduction in the staff and powers of the Bureau of Indian Affairs. A joint Congressional commission (the American Indian Policy Review Commission) reaffirmed the Johnson, Nixon and Congressional affirmations of the principle of self-determination in its May 1977 final report to the Congress. While neither the Gerald R. Ford Presidency nor the James E. Carter Presidency issued Indian Affairs policy statements, both continued the previous administrations' administrative policies. On January 14, 1983 President Ronald Reagan issued his "Indian Policy Statement" which affirmed that "The Administration will deal with Indian tribes on a government-to-government basis . . . . Excessive regulations and self-perpetuating bureaucracy have stifled Tribal decision-making, thwarted Indian control of reservation resources, and promoted dependency rather than self-sufficiency . . . . This Administration will reverse this trend by removing obstacles to self-government and by creating a more favorable environment for development of healthy reservation economies." ("Indian Statement," White House, January 14, 1993) By associating itself with the "government-to-government policy" the Reagan administration substantially advanced the political debate about tribal self-determination and moved the dialogue one step closer to defining a new political framework for relations between Indian nations and the United States.

[46] Public Law 93-638.

[47] Since the end of World War I and the Treaty of Paris in 1918, states' governments have repeatedly affirmed and reaffirmed the principle of "non-intervention" in the internal affairs of states. Indeed, this principle is deeply rooted in European international relations. The Peace of Westphalia in 1648 ended the Thirty Years' War and defined the basic rules of relations between states. Chief among these rules were:

Affirmation of states' territorial boundaries, proclaiming state sovereignty and a recognized policy of non-interference in the domestic affairs of other states. Contemporary restatements of these principles effectively eliminated any perceived need for multi-lateral treaties concerning indigenous nations. This was particularly true of the United States of America because of its youthfulness as a state. Only after World War I did other states governments regard the United States of America as a significant player in international affairs. This new role as a player on the international stage gave rise to the United States government needing to affirm its basic identity as a state. Indian Affairs was considered an "internal matter." This view remained unexamined until Bureau of Indian Affairs Commissioner John Collier began to work toward extending President Franklin Roosevelt's "New Deal" to Indian Affairs in the late 1930s and early 1940s. It was in these years that the international dimension was added to Indian Affairs. See, Footnote 43.

[48] The four international agreements are: 1. The Inter-American Treaty on Indian Life, ratified in 1944 by the Organization of American States (OAS); 2. The Convention Concerning Tribal and Semi-Tribal Populations in Independent States, ratified in 1957 by the International Labor Organization (ILO); 3. The Helsinki Final Act, ratified in 1975 and forming the Commission on Security and Cooperation in Europe (CSCE) [The organization was renamed in 1995 the Organization on Security and Cooperation in Europe (OSCE)]; and 4. The International Covenant on Civil and Political Rights, ratified in 1992 by the United Nations (UN) 1966. 5. The Declaration on the Rights of Indigenous Peoples is currently being considered within the United Nations Organization (UN). See supra notes .....

[49] Charges of U.S. mistreatment of Indian people by the Indian Health Service (sterilization of Indian women), and the Bureau of Indian Affairs created demand for information and clarifications by the Commission on Security and Cooperation in Europe and resulted in "American Indians" becoming a chapter in the 1977 report of the U.S. Commission on Security and Cooperation in Europe discussing U.S. compliance with the Helsinki Accords. The United States government has also been asked to respond to queries from United Nations Special Rapporteur Jose R. Martinez Cobo who conducted the 1983 Commission on Human Rights "Study of the Problem of Discrimination Against Indigenous Populations." See, United Nations Economic and Social Council Document E/CW.4/Sub.2/1983/21/Add 1-12. The United States government has also been asked to respond to queries from the International Labor Organization on its treatment of Indian peoples, and by the United Nations Special Rapporteur Miguel Alfonso Martinez on Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous Peoples. The United States and other states governments was a recipient of a special questionnaire sent by the Special Rapporteur in 1992. See, UN Economic and Social Council Document E/CN.4/Sub.2/1992/33.

[50] The United States government hosted the 9th Inter-American Congress on Indian Life in Sante Fe, New Mexico in 1989 and participated in this quadrennial Congress since 1944; has participated in virtually all annual sessions of the United Nations Working Group on Indigenous Populations since 1982; convened annual sessions of meetings between government officials responsible for "indigenous peoples" involving the United States, Australia, New Zealand and the Hawaiian State Office of Hawaiian Affairs, and participated actively in three years of meetings designed to revise ILO Convention 107 and produce Convention 169.

[51] The World Council of Churches (Geneva), the Anti-Slavery Society (London), International Working Group on Indigenous Affairs (Denmark) and Amnesty International (London) are among the non-governmental organizations pressing for new standards for the protection of indigenous peoples rights. The Haudenosaunee (Six Nations Iroquois Confederacy), West Papuans, Yanonomi, Cree, Quechua, Mapuche, Maori, and Chakma are among the indigenous nations playing an active role. Norway has been the most active state pressing for the formulation of an international declaration on indigenous peoples' rights, but Holland is perhaps the only state that is actively developing a new foreign policy based on evolving standards concerned with indigenous peoples' rights.

[52] Gray, Andrew. "The ILO Meeting at the UN, Geneva, June 1989. Report on International Labor Organization Revision of Convention 107," in International Work Group for Indigenous Affairs (IWGIA) Yearbook 1989, p.174 1990. Gray reports that the representatives of Four Nations, Treaty Six Chiefs, the Federation of Saskatchewan Indians and the Four Directions Council of Canada, the Ainu of Japan and the National Coalition of Aboriginal Organizations of Australia were joined by representatives of the World Council of Indigenous Peoples (WCIP), Nordic Sami Council, the Pacific Council of Indigenous Peoples (PACIP), and the Indian Council of South America (CISA). In addition, the Coordinadora of the Amazon Basin, indigenous peoples of Brazil, Inuit Circumpolar Conference and delegates of the Mohawk nation participated in what became known as the "Indigenous Peoples' Caucus."

[53] Id. at p. 178-79.

[54] Id., pp. 180-186.

[55] Id.

[56] Id., p. 178.

[57] Id.

[58] See: "The Historical and Current Development of the Right to Self-Determination on the basis of the Charter of the United Nations and other instruments adopted by United Nations Organs, with particular reference to the promotion and protection of Human Rights and Fundamental Freedoms." Special Rapporteur Mr. Areliu Cristescu, UN Commission on Human Rights (E/CN.r/Sub.2/404 Vol. II). Mr. Cristescu gives a clear and incisive history of the term's usage in the UN system.

[59] Convention concerning Indigenous and Tribal Peoples in Independent Countries, International Labor Organization, Geneva, Switzerland. Convention 169. 1989.

[60] Id., Article 1, paragraph 3.

[61] Gray, Andrew. "The ILO Meeting at the UN, Geneva, June 1989. Report on International Labor Organization Revision of Convention 107," in International Work Group for Indigenous Affairs (IWGIA) Yearbook 1989, pp.18 0-186, 1990.

[62] They noted that the strongest part of the 1957 Convention was Article

II: The right of ownership, collective or individual, of the members of the population concerned over the lands which these populations traditionally occupy shall be recognized. Gray, Andrew. "The ILO Meeting at the UN, Geneva, June 1989. Report on International Labor Organization Revision of Convention 107," in International Work Group for Indigenous Affairs (IWGIA) Yearbook 1989, p. 185. 1990.

[63] Gray, Andrew. "The ILO Meeting at the UN, Geneva, June 1989. Report on International Labor Organization Revision of Convention 107," in International Work Group for Indigenous Affairs (IWGIA) Yearbook, 19891, p. 185. 1990.

[64] ILO Convention 169. Article 13,1.

[65] Id., Article 13, 2 (emphasis added).

[66] Id., Article 14,1.

[67] The United Nations Working Group on Indigenous Populations was established in 1982 after non-governmental organizations and indigenous peoples' representatives urged the establishment of a United Nations mechanism to examine the situation of indigenous peoples. The Sub-Commission on Prevention of Discrimination and Protection of Minorities proposed in its resolution 2 (XXXIV) of 8 September 1981 establishment of the working group. The Commission on Human Rights endorsed the Sub-Commission's proposal in its resolution 1982/19 of 10 March 1982. The United Nations Economic and Social Council formally authorized in its resolution 1982/34 of 7 May 1982 the Sub-Commission to establish annually a working group to meet for the purposes of: Reviewing developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous peoples, and examining the evolution of standards concerning the rights of indigenous peoples.

[68] Swepston, Lee., "Paper presented to the Working Group on Indigenous Peoples, United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities," Geneva, Switzerland, July 31, 1989 (emphasis added).

[69] As of this writing, the U.N. Declaration on the Rights of Indigenous Peoples is moving to a probable 1995 vote in the U.N. General Assembly.

[70] United Nations, 1992:14 para. 52 (E/CN.4/Sub.2/1992/33).

[71] The Government of the United States of America, Statement of Kathryn Skipper, Observer Delegation of the United States of America, before the United Nations Working Group on Indigenous Populations, Geneva, Switzerland, July 21, 1993.

[72] Id. at p.4.

[73] Ryser, Rudolph C. "Indian Nations & United States Debate Self-Determination and Self-Government at the United Nations, GenHve, July 18-31, 1993," Center for World Indigenous Studies, Olympia, Washington, U.S.A.

[74] The Government of Sweden, Statement of Dr. Rolf H. Lindholm, before the United Nations Working Group on Indigenous Populations, Geneva,

Switzerland, July 1993.

[75] Id.

[76] Id., p.3.

[77] United Nations, 1987: para. 1.

[78] United Nations, 1993:2.

[79] United Nations, 1993.

[80] United Nations, 1989-a:para 2.

[81] Walter Laqueur and Barry Rubin, The Human Rights Reader 151 (1979).

[82] Lewis, Paul. "Stoked by Ethnic Conflicts, Refugee Problem Consumes Resources," New York Times, Nov 9, 1993.

[83] Charter of the United Nations, Article 1, Para. 2.

[84] United Nations, 1978-b:91.

[85] United Nations Charter, Article 76.

[86] United Nations General Assembly Resolution 1514 [XV] 1960.

[87] United Nations, 1978-a:2.

[88] United Nations, 1970 General Assembly Resolution 2625 (XXV).

[89] Id.

[90] Charter of the United Nations, Chapter XI, Article 73.

[91] United Nations, 1960.

[92] United Nations, 19666: Article 1 paragraph 1.

[93] Article 1 paragraph 1.

[94] Principle VIII contains the complete language on the right of a people to self-determination.

[95] United States, 1979:149.

[96] National Congress of American Indians, "On the Evolution of Standards Concerning the Rights of Indigenous Populations" United Nations Working Group on Indigenous Populations; 10 August, 1983, Palais de Nacions, Geneva, Switzerland

[97] Id., p. 3.

[98] Id., p.4.

[99] United States, 1979:149.
[100] Id.