

The Rights of Indigenous Peoples in Inter-Governmental Organizations

by

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Equality and dignity for all human beings in the enjoyment of human rights are well-established rules of human rights law. They have been pursued by way of non-discrimination and preferential treatment or affirmative action. The universality of the rules is guaranteed by provisions in the United Nations Charter (articles 1 and 55) and the Universal Declaration of Human Rights (UN 1948, article 2). It is, however, the experience of the human rights community that equality and non-discrimination in the enjoyment of rights afford insufficient protection.

Instruments providing for special rights or preferential treatment, from which indigenous peoples can benefit, include the Convention against Genocide (UN 1948), Convention against Discrimination in Education (UNESCO 1960), the International Convention on the Elimination of All Forms of Racial Discrimination (UN 1965), the International Covenant on Civil and Political Rights (UN 1966), the Convention on the Rights of the Child (UN 1989), the Declaration on Race and Racial Prejudice (UNESCO 1978), the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (UN 1981), and the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (UN 1992). Annex IV below will refer to the International Labour Organisation. Both individuals and groups can draw on these texts in their enjoyment of civil, cultural, economic, political and social rights.

The human rights and fundamental freedoms of indigenous peoples continue to be violated. In particular, the survival and the identity of indigenous peoples as distinct groups in many countries are endangered notwithstanding efforts undertaken by governments and the international community. Several governments expressly recognize the problems, the world press repeatedly reports on the plight of these groups, and international organizations acknowledge the existence of violations. The challenge facing the international community is a serious one: to translate the international standards into effective protection of indigenous peoples.

In international law, sovereignty and territorial integrity of states on the one hand and the promotion and protection of minority existence and identities on the other enjoy an uneasy coexistence. Governments have traditionally been reluctant to adopt and practice minority rights for fear of encouraging separatism and secession. Nevertheless and contrary to a frequently held impression, minority rights (and these are applicable to indigenous peoples) are a common sight in international human rights instruments.

Ethnic groups are nowadays much in the news. Restlessness of minorities in most parts of the world, the breakup of a few multinational states, the fragility of some of the successor entities, and ethnic conflicts within and between states illustrate the explosiveness of such issues. Intergovernmental organizations are becoming involved with the security aspects, and justice and human rights are increasingly seen as useful tools to prevent conflict and promote peace while falling in line with the purposes and principles of the United Nations as set forth in articles 1 and 2 of the Charter.

In this written presentation, the relevant issues are surveyed by way of a few annexes

ANNEX I: Statement by the Secretary-General at the opening ceremonies for the International Year of the World's Indigenous Peoples, in Press Release SG/SM/4878/Rev.1. The Secretary-General describes the problems faced by indigenous peoples and the issues and challenges pending at the United Nations.

In a recent report, entitled An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping, the Secretary-General also dealt with possible responses to conflict situations caused by ethnic, religious or linguistic groups when they claim statehood:

"One requirement for solutions to these problems lies in commitment to human rights with a special sensitivity to those of minorities, whether ethnic, religious, social or linguistic. The League of Nations provided a machinery for the international protection of minorities. The General Assembly will soon have before it a declaration on the rights of minorities. That instrument, together with the increasingly effective machinery of the United Nations dealing with human rights, should enhance the situation of minorities as well as the stability of States." (UN document A/47/277 - S/24111, 17 June 1992, paragraph 18).

ANNEX II: Draft universal declaration on the rights of indigenous peoples, from the latest report of the Working Group on Indigenous Populations (WGIP), in UN document E/CN.4/Sub.2/1992/33. WGIP is the main United Nations forum for addressing human rights relating to indigenous peoples.

Among the draft articles in the universal declaration are innovative provisions, as far as international human rights law is concerned, about traditional economic activities, land, natural resources, the environment, participation in national politics, self-government or autonomy, respect for treaties concluded with indigenous peoples, and the duty of indigenous peoples to respect human rights. Many of these provisions, if adopted, would go beyond existing minority rights. WGIP also reviews national developments in light of human rights standards.

The Sub-Commission on Prevention of Discrimination and Protection of Minorities, to which WGIP reports, has appointed Special Rapporteurs to examine several indigenous issues. A Study on the Problem of Discrimination against Indigenous Populations by Jose R. Martinez Cobo was completed a few years ago (in documents E/CN.4/Sub.2/1986/7 and Addenda 1-4; addendum 4 with the conclusions and recommendations is also available as a UN publication with the sales number E.86.XIV.3). Ongoing studies deal with the value and validity of treaties concluded between states and indigenous peoples and the question of ownership and control of the cultural property of indigenous peoples. Other Rapporteurs on the right to restitution and compensation for victims of violations of human rights and on human rights and the environment have addressed indigenous issues in their reports. So has the Sub-Commission's Working Group on Contemporary Forms of Slavery.

The concerns of indigenous peoples have come up in still other United Nations fora, including a global consultation on the right to development (report in document E/CN.4/1990/9/Rev.1 and in publication HR/PUB/91/2); a seminar on racism and racial discrimination in the social and economic relations between indigenous peoples and states (report in document E/CN.4/1989/22 and in publication HR/PUB/89/5); a meeting to review the experience of self-government for indigenous peoples which adopted "The Nuuk Conclusions and Recommendations on Indigenous Autonomy and Self-Government" (report in document E/CN.4/1992/42, with a series of expert papers reproduced in Addendum 1); and a 1992 seminar on sound environment and sustainable development for indigenous peoples.

ANNEX III: Andrew Gray, "The UN Working Group - Where the Sublime Meets the Ridiculus," IWGIA Newsletter, no. 4, 1992, pp. 23-27 (International Work Group for Indigenous Affairs, Copenhagen, reproduced with permission).

The article is a good if somewhat undiplomatic description of the scene at WGIP. Representatives of indigenous groups and communities are free to participate in WGIP meetings with or without the consultative status which is normally required for non-governmental organizations attending the Economic and Social Council and its subsidiary organs. Thirteen international and national indigenous organizations, including the Inuit Circumpolar Conference and the Nordic Sami Council, have obtained this status which allows them to participate in meetings of the Group's parent bodies.

In 1985, the General Assembly established the United Nations Voluntary Fund for Indigenous Populations with the purpose of financing the attendance of indigenous representatives at WGIP sessions in Geneva.

ANNEX IV: Convention concerning Indigenous and Tribal Peoples in Independent Countries. ILO Convention No. 169, 1989.

The Convention was adopted by the International Labour Conference in 1989. It has recently entered into force, and Norway was among the first countries to ratify the text. Part II on Land contains the most frequently quoted provisions. Regular supervisory activities by the International Labour Office of the standards set forth in this and other Conventions have resulted in specific opinions and requests to governments relating to violations of indigenous peoples' rights.

Specialized agencies and organs of the United Nations, which have addressed indigenous issues, include UNESCO, the World Bank, the United Nations University, the United Nations Research Institute for Social Development (UNRISD), the Centre on Transnational Corporations, and the 1992 United Nations Conference on Environment and Development (UNCED). Other institutions are noted by their absence from such listing.

ANNEX V: Gudmundur Alfredsson, "Article 17" in The Universal Declaration of Human Rights. A Commentary, edited by Asbjorn Eide and others, Scandinavian University Press: Oslo, 1992, pp. 255-262.

It was stated above that indigenous peoples, like everyone else, should enjoy equality and dignity in the enjoyment of all human rights and freedoms. This observation extends to the right to own property; hence the inclusion of this annex. The rights to land and natural resources are major concerns of indigenous peoples, as partly reflected in the ILO Convention and the UN draft declaration.

Over the last few years, indigenous peoples or non-governmental organizations acting on their behalf have on several occasions resorted to international implementation procedures relating to existing standards.

Acting under the Optional Protocol to the International Covenant on Civil and Political Rights, the Human Rights Committee has found that traditional economic activity, if it is an essential element in the culture of an ethnic community, may fall under article 27 of the Covenant concerning the protection of minority culture (views on communication no. 197/1985 submitted by Ivan Kitok, with Sweden as the State Party concerned, UN document CCPR/C/33/D/197/1985, issued 10 August 1988, paragraph 9.2). A few other cases have been decided.

Treaty-based monitoring bodies, in examining state reports, are more and more frequently concerned with the rights of indigenous peoples. This is true for the Human Rights Committee and the Committee on Economic, Social and Cultural Rights set up under the two International Covenants on Human Rights and for the Committee on the Elimination of Racial Discrimination set up under the Convention on the Elimination of All Forms of Racial Discrimination.

Special Rapporteurs of the Commission on Human Rights investigating religious intolerance and the human rights situation in certain countries have also addressed indigenous concerns. The Secretary-General and the Under-Secretary-General for Human Rights have taken good offices action on behalf of indigenous peoples.

Non-discrimination and preferential treatment, based on objectivity and the rule of law with judicial avenues for redress, offer the best chances of bringing relief and justice to minorities and at the same time stability to states and peace to the international community. Minorities and members of minorities could utilize the United Nations system more effectively, and they should be given greater access and encouragement to do so. While existing procedures can be improved, new mechanisms could be set up not least for the purpose of facilitating dialogue and national reconciliation. It will be tested this summer, at the World Conference on Human Rights in Vienna, whether recent developments in world politics have led to greater readiness to tackle these issues.

ANNEX VI: Suggested reading list.

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