
Editor's Notes

Laws have been made among humans in one form or another for at least six millennia before the present. Historians record that while laws and rules of conduct were orally proclaimed and occasionally written in various forms throughout antiquity, no laws defining the responsibilities of a ruler and the ruled had been codified until 1068 AD. It was in that year that the *Código ó Compilación de los Ustages*, a written code defining the reciprocal rights and responsibilities of the sovereign and his subjects in Catalunya of the Kingdom of Aragon, was penned by Ponç Bofill March of Barcelona. Ponç Bofill March was appointed "judge of the palace" in 1030 AD, but he did not begin to write the *Código* until 1035 AD. One hundred forty-seven years before the English barons forced King John to accept the *Magna Carta* (1215 AD), the people of Catalunya instituted the world's first document declaring fundamental human rights. For more than 900 years, the definition and practice of human rights has continued to evolve.

As Bertha R. Miller's *Rights of Distinct Peoples* reveals, principles of human rights may be extended to peoples of the Fourth World through a *Universal Declaration on Rights of Indigenous Peoples* currently being debated in the United Nations. Miller reviews the revised first draft of the Declaration and reports the differing viewpoints of states, nations and non-governmental organizations participating in sessions of the United Nations Working Group on Indigenous Populations.

In his review of Dan Jacobs' *The Brutality of Nations*, Associate Editor Jerome E. Taylor comments on the Nigerian/Biafran war and how Jacobs' book may more accurately describe the "brutality of states."

A frequent contributor to the Journal, Bernard Q. Nietschmann reveals for the first time the detailed circumstances surrounding the death of a leading Miskito Warrior, *Bruno Gabriel*, during the war between Nicaragua and the Miskito, Sumo and Rama peoples of Yapti Tasbia in 1984. Nietschmann's closeness to the Miskito people and conversational writing style reveal the truth of a life that should have continued and a war that should never have been.

After World War II, reconstruction of war-torn Europe became both a moral and economic necessity to the countries on the winning side. Without reconstruction, the world's economy was surely to collapse along with the rubble under millions of tons of bombs. But, after Europe regained its economic footing, the International Bank for Reconstruction and Development ("The World Bank" as it is more commonly known was established in 1945) turned its attention to "developing the Third World." The World Bank became a major source of investment revenue for building roads, hydroelectric dams, communications facilities and urban and agricultural development projects. While such development efforts often failed to produce economic prosperity for Third World states, and instead seemed to serve the interests of businesses and governments of the Second and First worlds, in the 1970s and 1980s the World Bank discovered the Fourth World. Fourth World nations were discovered to be an obstacle to World Bank development projects, due in large measure to the frequent encroachment of such projects into Fourth World nation territories. In *The World Bank's Tribal Economic Policy* we discuss the 1982 policy and its impact and implications for nations and states.

WAGING WAR WITH WORDS

Rights of Distinct Peoples

The United Nations is the forum for the ten year State and Nation debate over terms contained in the Draft Universal Declaration on Rights of Indigenous Peoples

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The United Nations will consider at its General Assembly in 1992 adoption of a Universal Declaration on Indigenous Peoples' Rights. Every bit as thorny a subject as any other considered for debate by international organizations, the rights of indigenous peoples will take center stage as a matter of major importance in a world body that has long avoided conclusive consideration of the subject.

From the very beginning of modern international relations, the League of Nations in 1919 deliberated on the companion questions: What standards and procedures ought to guide states and empires as they rearrange political boundaries and allow for the self-determination of colonized peoples distant from a colonial power? What standards and procedures ought to guide states and empires if they apply the principle of self-determination to peoples inside the boundaries of existing states? Between 1919 and 1960, standards and procedures for the decolonization of peoples distant from colonial powers evolved and were encoded in international law as the *Declaration on the Granting of Independence to Colonial Countries and Peoples* (UN General Assembly resolution 1514 [XV] of 14 December 1960). Proclaiming the need to bring "to a speedy and unconditional end [to] colonialism in all its forms and manifestations" member-states of the United Nations declared:

The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment-

ment to the promotion of world peace and cooperation. (GA Resolution 1514 [XV] 1.)

With that single stroke, the international community opened the door to the establishment of scores of new states in Africa, the Caribbean, Asia, Melanesia and the South Pacific. The question of decolonizing peoples distant from colonial powers had finally been resolved after forty-one years. But, the other question of self-determination for peoples inside the boundaries of existing states remained unsettled. States with nations inside their boundaries regarded the question of self-determination for "internally colonized peoples" as too threatening to the sovereignty of the state. If "internally colonized peoples" were allowed self-determination and self-government, it was argued, some states would collapse. In view of this argument first presented in the League of Nations, the question of "internally colonized peoples" was set aside. The question was simply too threatening to the permanence of individual states and the state system itself.

Newly decolonized peoples who formed new states in Africa, Asia, and Melanesia regarded the question of "internally colonized peoples" even more threatening than established states in Europe. Their hard-won independence from European states would be seriously jeopardized if each new state was forced to consider the self-determination rights of nations on top of which the state structure was formed.

In the United Nations General Assembly, new state members quickly and without reservation joined their former colonial masters to adopt *General Assembly resolution 1803 (XVII)* on 14 December 1962 on "Permanent sovereignty over natural resources." This resolution aimed to ensure that each state had control over its domain. But in 1970, the United Nations adopted the *Declaration on Friendly Relations and Cooperation among States* specifically aimed at any action that would dismember an existing state. States governments declared any action unacceptable "which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination."

The combined meaning of the 1962 General Assembly resolution and the 1970 declaration on "non-self-dismemberment" was clear. "Internally colonized nations" were not to enjoy the rights of peoples, the right of self-determination, if their exercise of self-determination would mean the dismemberment of an existing state. By 1970, many of the world's states concluded that the issue of "internally colonized nations" and their exercise of self-determination was settled and would not present a threat to the

existing world state structure.

Despite the appearance of having settled the question of the future political status of nations ruled by a state, the United Nations Commission on Human Rights began, tentatively, to take up the question once more in 1972. In 1973, the Commission on Human Rights assigned a Special Rapporteur, Mr. José R. Martínez Cobo, to the task of undertaking a *Study of the Problem of Discrimination Against Indigenous Populations* - the very peoples whose political right of self-determination had been implicitly denied by the UN resolution on permanent sovereignty over natural resources and the 1970 Declaration on the non-self-dismemberment of existing states. The mere fact of the "Cobo Study," reopened the long delayed debate about the future of "internally colonized nations."

The "Cobo Study," which continued for ten years (it was completed in 1983), coincided with the growing politicization of what would eventually be called Fourth World nations or indigenous nations. The power of states over Fourth World nations was beginning to be more directly and widely challenged on virtually every continent. Not only did nations politically challenge states, but they began to challenge states through armed struggle. Through the 1960s and 1970s, Fourth World nations struggled with state domination and by the middle 1970s they began to challenge states on the wider-playing field of international debate.

From August 24 to August 27, 1977 delegates to the Second General Assembly of the World Council of Indigenous Peoples met in the Sammi Land city of Kiruna in the State of Sweden. Chief George Manuel presided over the Assembly as the Council's president. After careful deliberation, delegates to the General Assembly adopted a declaration on Human Rights for indigenous peoples. In speeches following this General Assembly, Chief Manuel called upon the United Nations to work with indigenous peoples to formulate a "Declaration on the Rights of Indigenous Peoples."

Five years after the WCIP Second General Assembly, the United Nations authorized the establishment of the United Nations Working Group on Indigenous Populations. The U.N. Economic and Social Council gave the Working Group the specific mandate to examine the "evolution of standards for the rights of indigenous populations," and to receive information on developments that would indicate the future shape of these standards. By 1985, the Working Group received an expanded mandate to draft a Universal Declaration on the Rights of Indigenous Peoples.

Seventy years after the League of Nations first considered the subject of promoting the self-determination of nations located inside the boundaries of existing states, its predecessor the United Nations, began the formal

process of drafting new international legislation concerned with the rights of tribal and national peoples. In the Summer of 1989 the U.N. Working Group on Indigenous Populations prepared a first text of a Draft Declaration.

In consideration of remarks, comments, suggestions and proposals presented before the Working Group over a period of six years by States representatives, representatives of indigenous nations, and non-governmental organizations, the Working Group prepared a draft text with parts underlined to indicate terms and phrases currently under debate. During its eighth session (June 23 - August 9, 1990) in Genève, Switzerland, the United Nations Working Group on Indigenous Populations will consider suggested changes in the draft resolution and 30 principles below.

FIRST REVISED TEXT OF THE DRAFT UNIVERSAL DECLARATION ON RIGHTS OF INDIGENOUS PEOPLES

E/CN.4/Sub.2/1989/33
15 June 1989



The General Assembly,

Considering indigenous peoples born free and equal in dignity and rights in accordance with existing international standards while recognizing the right of all individuals and groups to be different, to consider themselves different and to be regarded as such,

Considering that all peoples and human groups have contributed to the progress of civilizations and cultures which constitute the common heritage of humankind,

Recognizing the specific need to promote and protect those rights and characteristics which stem from indigenous history, philosophy of life, traditions, culture and legal, social and economic structures, especially as these are tied to the lands which the groups have traditionally occupied,

Concerned that many indigenous peoples have been unable to enjoy and assert their inalienable human rights and fundamental freedoms, frequently resulting in insufficient land and resources, poverty and deprivation, which in turn may lead them to voice their grievances and to organize themselves in order to bring an end to all forms of discrimination and oppression which they face,

Convinced that all doctrines and practices of racial, ethnic or cultural superiority are legally wrong, morally condemnable and socially unjust,

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

Endorsing calls for the consolidation and strengthening of indigenous societies and their cultures and traditions through development based on their own needs and value systems and comprehensive participation in and consultation about all other relevant development efforts,

Emphasizing the need for special attention to the rights and skills of indigenous women and children,

Believing that indigenous peoples should be free to manage their own affairs to the greatest possible extent, while enjoying equal rights with other citizens in the political, economic and social life of States,

Bearing in mind that nothing in this declaration may be used as a justification for denying to any people, which otherwise satisfies the criteria generally established by human rights instruments and international law, its right to self-determination,

Calling on States to comply with and effectively implement all international human rights instruments as they apply to indigenous peoples,

Acknowledging the need for minimum standards taking account of the diverse realities of indigenous peoples in all parts of the world,

Solemnly proclaims the following declaration on rights of indigenous peoples and calls upon all States to take prompt and effective measures to implement the declaration in conjunction with the indigenous peoples.

PART I

1. The right to the full and effective enjoyment of all fundamental rights and freedoms, as well as the observance of the corresponding responsibilities, which are universally recognized in the Charter of the United Nations and in existing international human rights instruments.

2. The right to be free and equal to all the other human beings in dignity and rights and to be free from adverse distinction or discrimination of any

kind.

PART II

3. The [collective] right to exist as distinct peoples and to be protected against genocide, as well as the [individual] rights to life, physical integrity, liberty and security of person.

4. The [collective] right to maintain and develop their ethnic and cultural characteristics and distinct identity, including the right of peoples and individuals to call themselves by their proper names.

5. The individual and collective right to protection against ethnocide. This protection shall include, in particular, prevention of any act which has the aim or effect of depriving them of their ethnic characteristics or cultural identity, of any form of forced assimilation or integration, of imposition of foreign life-styles and of any propaganda derogating their dignity and diversity.

6. The right to preserve their cultural identity and traditions and to pursue their own cultural development. The rights to the manifestations of their cultures, including archaeological sites, artifacts, designs, technology and works of art, lie with the indigenous peoples or their members.

7. The right to require that States grant - within the resources available - the necessary assistance for the maintenance of their identity and their development.

8. The right to manifest, teach, practice and observe their own religious traditions and ceremonies, and to maintain, protect and have access to sacred sites and burial-grounds for these purposes.

9. The right to develop and promote their own languages, including an own literary language, and to use them for administrative, juridical, cultural and other purposes.

10. The right to all forms of education, including in particular the right of children to have access to education in their own languages, and to establish, structure, conduct and control their own educational systems and institutions.

11. The right to promote intercultural information and education,

recognizing the dignity and diversity of their cultures, and the duty of States to take the necessary measures, among other sections of the national community, with the object of eliminating prejudices and of fostering understanding and good relations.

PART III

12. The right of collective and individual ownership, possession and use of the lands or resources which they have traditionally occupied or used. The lands may only be taken away from them with their free and informed consent as witnessed by a treaty or agreement.

13. The right to recognition of their own land-tenure systems for the protection and promotion of the use, enjoyment and occupancy of the land.

14. The right to special measures to ensure their ownership and control over surface and substance of resources pertaining to the territories they have traditionally occupied or otherwise used including flora and fauna, waters and ice sea.

15. The right to reclaim land and surface resources or where this is not possible, to seek just and fair compensation for the same, when the property has been taken away from them without consent, in particular, if such deprivation has been based on theories such as those related to discovery, terra nullius, waste lands or idle lands. Compensation, if the parties agree, may take the form of land or resources of quality and legal status at least equal to that of the property previously owned by them.

16. The right to protection of their environment and in particular against any action or course of conduct which may result in the destruction, deterioration or pollution of their traditional habitat, land, air, water, sea ice, wildlife or other resources without free and informed consent of the indigenous peoples affected. The right to just and fair compensation for any such action or course of conduct.

17. The right to require that States consult with indigenous peoples and with both domestic and transnational corporations prior to the commencement of any large-scale projects, particularly natural resource projects or exploitation of mineral and other subsoil resources in order to enhance the projects' benefits and to mitigate any adverse economic, social, environmental and cultural effect. Just and fair compensation shall be provided for any such activity or adverse consequence undertaken.

PART IV

18. The right to maintain and develop within their areas of lands or territories their traditional economic structures and ways of life, to be secure in the traditional economic structures and ways of life, to be secure in the enjoyment of their own traditional means of subsistence, and to engage freely in their traditional and other economic activities, including hunting, fresh- and salt-water fishing, herding, gathering, lumbering and cultivation, without adverse discrimination. In no case may an indigenous people be deprived of its means of subsistence. The right to just and fair compensation if they have been so deprived.

19. The right to special State measures for the immediate, effective and continuing improvement of their social and economic conditions, with their consent that reflect their own priorities.

20. The right to determine, plan and implement all health, housing and other social and economic programmes affecting them, and as far as possible to develop, plan and implement such programmes through their own institutions.

PART V

21. The right to participate on an equal footing with all the other citizens and without adverse discrimination in the political, economic and social life of the State and to have their specific character duly reflected in the legal system and in political and socio-economic institutions, including in particular proper regard to and recognition of indigenous laws and customs.

22. The right to participate fully at the State level, through representatives chosen by themselves, in decision-making about and implementation of all national and international matters which may affect their life and destiny.

23. The [collective] right to autonomy in matters relating to their own internal and local affairs, including education, information, culture, religion, health, housing, social welfare, traditional and other economic activities, land and resources administration and the environment, as well as internal taxation for financing these autonomous functions.

24. The right to decide upon the structures of their autonomous institutions, to select the membership of such institutions, and to determine the membership of the indigenous people concerned for these purposes.

25. The right to determine the responsibilities of individuals to their own community, consistent with universally recognized human rights and fundamental freedoms.

26. The right to maintain and develop traditional contacts and co-operation, including cultural and social exchanges and trade, with their own kith and kin across State boundaries and the obligation of the State to adopt measures to facilitate such contacts.

27. The right to claim that States honour treaties and other agreements concluded with indigenous peoples.

PART VI

28. The individual and collective right to access to and prompt decision by mutually acceptable and fair procedures for resolving conflicts or disputes and any infringement, public or private, between States and indigenous peoples, groups or individuals. These procedures should include, as appropriate, negotiations, mediation, arbitration, national courts and international and regional human rights review and complaints mechanisms.

PART VII

29. These rights constitute the minimum standards for the survival and the well-being of the indigenous peoples of the world.

30. Nothing in this Declaration may be interpreted as implying for any State, group or individual any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.



What is the Debate All About?

The very issues that prevented serious consideration of self-determination for "internally colonized nations" seventy-years ago are at the core of the present international debate concerning the Draft Universal Declaration on Rights of Indigenous Peoples. Fourth World nations argue that they have original sovereignty, and states argue that only the state can have sovereignty. Nations argue that they are distinct peoples while states argue that nations are mere populations under the control of a state. Nations argue they have territories and natural resources, and states argue that nations have lands which are under the regulation of the state. And, nations argue they should enjoy the right of self-determination and self-government like all other peoples while states argue that the exercise of self-determination by nations must be limited or completely rejected if the political integrity of an existing state is threatened.

The first revised text of the Draft Universal Declaration on Rights of Indigenous Peoples raises important questions about the legitimacy of some existing states. Excerpts from the growing debate over the specific terms of the Declaration (presented below) illustrate the different points of view expressed by states governments, indigenous peoples and non-governmental organizations. The intensity of this debate is expected to increase during the eighth session of the United Nations Working Group on Indigenous Populations meeting in Genève, Switzerland.

Excerpts from comments on Declaration Draft

The documented comments below (E/CN.4/Sub.2/1989/33/Add.1 June 20, 1989) was compiled by the Secretariat at the request of the Chairman-Rapporteur, Mrs. Erica-Irene A. Daes, and contains an analytical compilation of the observations and comments on the draft universal declaration on indigenous rights (E/CN.4/Sub.2/1988/25 and E/CN.4/Sub.2/1988/24, Annex II). These comments were received by 16 June 1989 from the Governments of Australia, Byelorussian Soviet Socialist Republic, Union of Myanmar, Canada, Czechoslovakia, Finland, Mexico, Panama, Romania, Sweden and Venezuela; the United Nations Centre for Transnational Corporations, the United Nations Educational, Scientific and Cultural Organization, the Food and Agriculture Organization of the United Nations and the following non-governmental and indigenous organizations: Four Directions Council, Indian Law Resource Centre, Inuit Circumpolar Conference, National Indian Youth Council, Regional Council on Human Rights in Asia and Survival International.

Further comments or observation were compiled in addenda to document E/CN.4/Sub.2/1989/33.

GENERAL OBSERVATIONS ON THE DRAFT DECLARATION

Australia

1. Australia supports the thrust of the draft declaration towards recognition of the right of indigenous people to be free and equal to all other human beings, to preserve their cultural identity and traditions, and to pursue their own cultural development.

2. However, there is a fundamental concern which the Australian Government believes needs addressing before further progress can be made. This concern has to do with the relationship between:

(a) The rights of indigenous peoples proposed in the draft, and

(b) Basic human rights (as enshrined in other United Nations Conventions and Covenants) and citizenship rights (as enshrined in State laws).

3. The preamble refers to "existing international standards" and "international human rights instruments," and Part I also refers to the right to enjoy all fundamental rights and freedoms as set down in the Charter of the United Nations, and in existing human rights instruments. However, it is not clear from the draft itself whether it operates within the framework of existing agreements or whether the draft declaration is conferring additional rights specifically for indigenous peoples and thus going beyond the provisions for minorities in the International Covenant on Civil and Political Rights.

4. From Australia's perspective, it is clearly the former relationship which the draft declaration should seek to present. This would entail reference at the outset to the effect that the rights recognized in the draft declaration should be read in conjunction and consistently with the major human rights instruments. Reference could also be made to the effect that "nothing in the draft declaration shall be taken to imply that rights it accords to indigenous peoples override the rights previously accorded by other international human rights instruments."

5. There also remains the question of how to make it clear that the indigenous rights reflected in the draft declaration are effective within the framework of State law and are not to be interpreted as implying separate development or statehood for indigenous people, or extra-citizenship rights. It is Australia's view that the State must remain sovereign and that, if there is a

conflict between an indigenous right and a State law or citizenship right, the latter is to be overriding.

6. It therefore needs to be specified that references to "peoples" as opposed to "populations" and references to autonomous institutions (part V) do not imply either:

(a) The right to self-determination as understood in international law, or

(b) Within the State, to the separation and singling out of a particular racial/ethnic group for a unique set of rights (to do so would be in contravention of articles 1, paragraph 4, and 2, paragraph 2, of the International Convention on the Elimination of All Forms of Racial Discrimination).

7. The difficulty lies on the one hand in recognizing the unique cultural qualities and historical circumstances of indigenous peoples and, on the other, in ensuring that those peoples operate within the framework of State laws and sovereignty. Australia's concerns relate to those principles where emphasis is placed on unique or special entitlements without any qualification being made to the overriding framework of State laws and standards.

8. Principles 1, 2, 3, 4, 7, 11 and 19 are supported by Australia. The following principles, while perhaps requiring minor changes to the form of words used, are essentially compatible with the Government's policy and are also supported: 5, 6, 8, 20, 26, 27 and 28.

9. It needs to be stressed that the Government's policy in the area of indigenous rights is still evolving. However, the remaining principles are not currently covered by the Australian Government's policy and would require further attention and discussion for Australia to support them.

Byelorussian Soviet Socialist Republic

The Byelorussian SSR supports the idea of drawing up and adopting a declaration on indigenous rights and has made a number of observations on the draft set of principles for inclusion in the declaration. We consider the draft declaration to be an important contribution towards establishing legal rules and securing more effective protection for all indigenous rights and freedoms.

The Union of Myanmar

1. In the view of the Government of the Union of Myanmar, it is imperative that the draft universal declaration on indigenous rights include a definition of the term "indigenous peoples" to be formulated in a clear, concise and unambi-

guous manner. The absence of such a precise definition may give rise to different interpretations of the term, thereby making it open to serious controversy on the applicability of the declaration. On the other hand, such a definition would surely add to the clarity not only of the objective but also of the remaining provisions of the draft. There can thus be little or no room whatsoever for ambiguities as to the "peoples" to which it applies.

2. Some declarations on human rights, such as the Universal Declaration of Human Rights, do not include definitions of terms. In this connection, it may be observed that there is a difference between the Universal Declaration of Human Rights and the proposed draft universal declaration on indigenous rights. The former is of a universal character and applies to all individuals or human beings the world over; its very universal character does not permit of different interpretations as to the individuals or groups of persons to which it applies. This is not the case with the present draft declaration, which applies only to certain groups and peoples who are still deprived of their fundamental rights. This being the case, there is an imperative need for the inclusion of a clear, concise and unambiguous definition of the term "indigenous" peoples.

3. It is a fact that the definition of the term "indigenous" in article 1 (b) of ILO Convention 107 may be taken as a model or basis for working out such a definition, if necessary with appropriate modifications for further improvement.

4. As to other provisions of the draft, the rights sought to be bestowed upon indigenous peoples are found to be far broader and more comprehensive than in ILO Convention 107. This argues more strongly in favour of the need for a clear, concise and unambiguous definition in a way, first, not to infringe upon the sovereignty and independence of the Member States of the United Nations and, secondly, to do away with any possibility of disputes regarding the applicability or application of the draft declaration.

5. The absence of a precise definition or, by the same token, the presence of a loose and broad one will be susceptible of tendentious interpretations and, if that were allowed to be the case, it would certainly not be conducive to the creation of an international climate of harmony and concord, which should be the primary objective of any attempt to draft an important standard-setting

Canada

1. Canada notes that, in formulating the draft principles the term "peoples" has been used in lieu of the term "populations;" the latter term is used throughout the United Nations system in this context and has a clear and unambiguous meaning. While different States, including Canada, may employ the term "peoples" domestically with reference to their indigenous populations, the meaning of the term "peoples" in international law is unclear. Its use may

relate to the right of self-determination, which would not be acceptable to many States.

2. In a previous submission (E/CN.4/Sub.2/AC.4/1988/2/Add.1), Canada observed that, in formulating standards for indigenous populations, principles should be framed in terms of objectives rather than of rights and/or entitlements to certain kinds of government programmes and duties imposed on States. These remarks remain applicable.

3. Furthermore, Governments and indigenous populations should be presented with objectives that are reasonable, achievable and designed to meet the needs of populations. To the extent that the draft principles prepared to date reflect these concerns, Canada expresses its appreciation to the drafters. However, it notes that, while undoubtedly well-intentioned, the achievability of certain principles may be questioned by States.

4. Canada recalls its previous comment that one way of ensuring that objectives are achievable and acceptable is to make sure that principles correspond as closely as possible to existing international norms. In this respect, Canada notes, with appreciation, the reference to the guidelines contained in General Assembly resolution 41/120 of 4 December 1986.

5. Canada appreciates that, because of the particular circumstances in which they find themselves, indigenous persons may require special international protection in order to achieve a truly equal enjoyment of rights. However, it is concerned that some of the draft principles (such as principle 21) seem to go beyond the laudable objective of ensuring indigenous persons the full enjoyment of fundamental human rights, on an equal basis with other nationals, and aim at creating new classes of rights over and above fundamental human rights.

6. In previous comments (E/CN.4/Sub.2/AC.4/1988/2/Add.1), Canada has stated that the rights contained in a draft declaration on indigenous rights should generally be oriented towards the rights of individuals, though it recognized that some of the rights would have a collective aspect. Given that this remains Canada's view, it finds the collective orientation of many of the proposed rights to be somewhat problematic.

7. In addition, Canada would expect the draft principles to reflect the fact that national laws generally make most human rights subject to certain limitations, justifiable in particular circumstances, provided that the basic content of those rights remains uncompromised.

8. Canada is of the view that terms should be clearly defined to minimize ambiguity and to ensure that desired objectives are achieved. In this respect, it is noted that the term "ethnic characteristics" referred to in the earlier principle 4 has been amended so that the clause now refers to "ethnic and cultural

characteristics." Given this differentiation between ethnic and cultural characteristics, the meaning of "ethnic characteristics" *per se* is unclear.

9. It should be noted that, despite the concerns expressed above, Canada already supports the intent of many of the draft principles and is working with indigenous groups, among others, to ensure that indigenous Canadians enjoy the full range of rights and freedoms available to all Canadians.

Czechoslovakia

1. The Czechoslovak Socialist Republic welcomes the proposal for the adoption of a universal declaration on indigenous rights, seeing its importance primarily in the fact that it is conducive to securing the future and further development of indigenous communities. In this connection, Czechoslovakia wishes to raise certain questions which, in view of the importance of the matter, should be resolved before the finalization of the draft declaration.

2. Czechoslovakia believes that if the adoption of the declaration is to make a real contribution to the welfare of indigenous populations, it is necessary to clarify the meaning of the term "indigenous peoples," i.e. to define which people are covered thereby, as it may be applicable to people living in different parts of the world under widely differing conditions. It would therefore be advisable to include the term "indigenous peoples" in the title of the declaration and to define it more precisely in the preamble or in the text of the declaration itself.

3. Clarification of the meaning of the term "indigenous peoples," i.e. peoples intended to be covered by the declaration, is all the more important in view of the fact that in certain specific situations the inclusion of a people among "indigenous peoples" might mean the limitation rather than the expansion of their rights. For example, the United Nations Charter sets forth the principle of equal rights and self-determination of peoples (Art.55). The import of this right is also set forth in article 2 of the International Covenant on Economic, Social and Cultural Rights and in article 1 of the International Covenant on Civil and Political Rights, where it is laid down in more general and wider terms than in the draft declaration on indigenous rights. Thus a people considered indigenous will have only limited rights in comparison with other peoples, as the aforementioned provisions of the United Nations Charter apply to all peoples. Yet in a number of cases full-scale application of the principle of equal rights and self-determination of peoples in respect of "indigenous peoples" would not be useful; sometimes it would be even impossible.

4. For the sake of precision, it would also be advisable to pay attention to the formulation of those provisions of the draft declaration that set forth the rights and freedoms of indigenous peoples and their obligations in a specific social structure. Provisions such as article 29, paragraph 2, of the Universal Declaration

of Human Rights and article 2, paragraph 3, of the International Covenant on Civil and Political Rights may be recalled in this connection. These are provisions which have to be observed in one way or another, according to the circumstances, everywhere, in every organized society, i.e. also in the exercise of the rights of indigenous peoples.

5. In respect of indigenous peoples, the application of such limiting provisions might be misused in a way contrary to the interests of indigenous populations and their rights, e.g. as regards the observance of "religious traditions and ceremonies," as there might be traditions and ceremonies corresponding to the customs and development of a given indigenous people yet absolutely extraneous to the ideas and morals underlying the European traditions which constitute the basis of the 1948 Universal Declaration of Human Rights as well as of other instruments on human rights adopted in the United Nations hitherto.

6. The relationship between the instruments on human rights adopted in the United Nations or in the specialized agencies such as ILO or UNESCO and the rights of "indigenous peoples" as set forth in the draft declaration should be defined in more precise terms.

Finland

1. In the draft declaration, the term "peoples" is used alternatively with the term "populations" with reference to indigenous populations. Although virtual unanimity seems to prevail in favour of the term "peoples," Finland finds, and the practice of international law has so far been such, that the term "populations" would be preferable. At least as regards the Finnish Sami, who live together with the rest of the population in the same territories but without anywhere constituting a majority, the concept of "population" would be clearly more descriptive of the present situation than the concept of "people." However, if the use of the term "people" is established, it will not cause practical problems for Finland.

2. As a general observation, it can be said that the present draft declaration is considerably more comprehensive than the previous version circulated in the spring of 1988. The amplifications relate partly to questions which are being discussed in connection with the revision of ILO Convention No. 107. The text of the draft declaration largely concurs in this respect with the text proposed for the ILO Convention. Finland would find it desirable that the Declaration and the Convention should as far as possible correspond, even though this may give rise to certain problems owing to the fact that agreement has not yet been reached on the amendments to the ILO Convention.

Mexico

1. The Government of Mexico considers the purpose and content of this document to be important for the promotion of measures at the national level to provide for, specify and secure the fundamental rights of indigenous peoples within its territory. It is also conducive to reflection, at both the national and international levels, on the rights of indigenous groups.

2. The Government considers that the draft universal declaration on indigenous rights should be adopted by the United Nations, in the near future, so that the various indigenous peoples can have an adequate legal framework for the protection of their rights. Furthermore, this instrument can help to promote recognition of the original cultures of many countries.

3. In addition, and subject to further information we may provide on the topic, we list below the objectives which the Mexican Government has set itself in order to improve the living standards of the indigenous communities and to promote their participation in the life of the nation:

- (a) Priority attention to solving land tenure problems and conflicts;
- (b) Halting the loss of indigenous lands and, within those lands, clarifying land tenure rights among the indigenous groups themselves;
- (c) Combating any form of intermediarism that could impede full participation of the indigenous populations in the general development process;
- (d) Respecting, and securing respect for, the rights of these groups;
- (e) Promoting their incorporation in national development while maintaining their development within their own cultural model.

Panama

1. The report of the Working Group on Indigenous Populations is a document of major significance. It encompasses the aspirations of both government representatives and indigenous organizations concerning the problems and aspirations of indigenous populations.

2. The draft universal declaration on indigenous rights reflects all contemporary assumptions regarding indigenous populations and represents genuine recognition of the rights of those populations to be observed by Governments and societies.

3. The Constitution of the Republic of Panama provides that the State shall accord special attention to rural and indigenous communities with a view to promoting their participation in national economic, social and political life. In recent years, indigenous groups, in conjunction with the Government, have drawn up various pieces of draft legislation, including that providing for the creation of the Emberá territory. Some of the other drafts have not been fully completed and are undergoing the necessary technical revisions. One of the drafts concerns the updating of the special regulations governing the San Blas territory, set up in 1953.

4. In the light of the above, the Republic of Panama considers the draft declaration to be a further contribution of the United Nations to contemporary international law and an additional instrument for the protection of indigenous rights.

Romania

1. In order to achieve its desired effect of promoting the rights of indigenous populations, the draft declaration should take account of the different situations existing throughout the world and be based on a complex approach to the problem designed to ensure not only the economic and social progress of such populations and their integration in the modern development process, but also respect for their traditions and special characteristics.

2. Accordingly, the draft declaration should provide for an undertaking by States to promote the economic and social development of indigenous populations as part of their overall national development programmes, as well as through special measures to speed up the economic modernization of the areas which they inhabit.

3. Such programmes and measures should provide for the gradual integration, in appropriate ways, of the indigenous populations in the social, economic and political life of the country in which they live, as citizens with the same rights and responsibilities, without any discrimination or distinction, while preserving their traditions and special characteristics.

4. The draft declaration should basically reflect more closely the Declaration on the right to development adopted by the General Assembly in resolution 41/128 of 4 December 1986.

5. On this basis, the draft should also provide for an undertaking by States to ensure that members of indigenous populations have access to the benefits of social progress, namely, employment, education, housing, health and social security.

6. Experience has shown that it is not enough to provide solely for the rights of given populations or individuals; those rights must be reflected in specific undertakings by the States in whose territories they live.

7. The measures provided for in the draft declaration must reflect the diversity of situations, constitutional frameworks and social systems existing in various parts of the world, as regards ownership of land and means of production, the education and health systems and measures for the preservation and protection of property and cultural and artistic objects. Only in this way can the draft declaration be of universal value.

8. Accordingly, provisions such as those contained in paragraphs 6, 8, 10 and 12 to 20 should be expanded to stipulate that the rights set forth therein will be exercised within the constitutional and legislative framework of the State concerned. This question could also be dealt with in a general provision to the effect that all the relevant rights will be exercised within the constitutional framework of the country in question and in accordance with its internal legislation.

Sweden

1. The Government of Sweden is concerned about the implications of the proposal to substitute the term "peoples" for that of "populations" in the text. If the term "peoples" is to be used, Sweden believes that a qualifying clause is necessary that clearly indicates that the right of self-determination, as that term is understood in international law, is not implied by the use of the term "peoples."

2. As for the proposal to include the concept of collective human rights in the text, Sweden is rather hesitant. The Swedish standpoint is that human rights are individual by definition. Sweden's wish is to safeguard human rights in as clear and logical a way as possible. In order to achieve that goal, Sweden thinks it necessary to avoid rendering the concept of human rights weak or ambiguous. It is also important to be able to supervise the observance of human rights.

3. Those two important aspects of the possibilities of strengthening and safeguarding the observance of human rights might be endangered in two ways by introducing the concept of collective human rights. In the first place, issues might be blurred in the sense that it would not be at all clear in what instances, where and at whose initiative the issue of a transgression of those rights was to be brought up. In this context, it seems appropriate to point to the close connection between problems of this nature and the lack of a definition of the notion of "indigenous populations" or "peoples." Secondly, it must be pointed out that the inclusion among the international normative texts on human rights of collective rights of the kind now suggested might create conflicts between such rights and individual human rights as laid down, for instance, in the International

Covenant on Civil and Political Rights. Fields where problems of this character might arise are, for instance, criminal justice and family law and, in fact, in some instances, the very principle of the rule of law. There might also be unwarranted discrepancies between rights granted to indigenous populations and rights granted to minorities under article 27 of the Covenant. This would run counter to the principle of non-discrimination.

4. All this could create a situation where the contents and field of application of traditional and essential human rights became blurred. Undoubtedly the interests of all are, on balance, better served by as clear and concrete norms as possible, that form part of a coherent system of normative texts in the field of human rights. One way of ensuring this is to make indigenous rights individual ones, as for instance minority rights in article 27 of the Covenant.

5. This would undoubtedly be the best way of ensuring a clear, coherent and functional normative system in the field of human rights, which would be in accordance with the aims set out in General Assembly resolution 41/120. For those reasons, Sweden is not prepared to endorse collective human rights in the draft declaration. The objectives sought by introducing collective human rights must be served through governmental commitments formulated in other ways in the draft declaration.

6. What has been said above naturally does not imply that individual rights could not be invoked by several individuals together or by a group of individuals. Such, for instance, is the case as regards the rights enumerated in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

Venezuela

1. In accordance with Venezuelan constitutional law, all the country's inhabitants are protected, and their rights guaranteed, by identical legal provisions, on the premise that one of the State's fundamental duties is to maintain social and legal equality, without discrimination based, among other factors, on race, as proclaimed in the preamble to the Constitution, article 61 of which guarantees everyone the enjoyment of equal treatment in all matters pertaining to social relations and the benefit of equal opportunities.

2. With regard to the special position of the indigenous populations, who are gradually being incorporated into the life of the country, article 77 of the Constitution makes provision for the possibility of establishing by law any exceptional system required to protect these indigenous communities and incorporate them into the social, economic and political life of the State.

3. Venezuela has always taken a very clear stand in defence of the indigenous

inhabitants and will continue to do so, but it also takes a clear stand on safeguarding and effectiveness of the rule of law, and on equality before the law for all the inhabitants of the Republic.

4. In consequence, Venezuela supports all efforts being made at the international level to secure recognition for indigenous communities of the essential and basic human rights, with due regard for their special characteristics and life-styles, and it agrees that States should extend them special protection.

5. Upon examining the draft universal declaration on indigenous rights, Venezuela notes that the draft purports to go even further than protection of indigenous persons and efforts to prevent discrimination against them; it seeks to create a special situation that would place them in a privileged position with respect to the rest of the community of the country in which they live.

6. The draft declaration tends not so much to prevent discrimination as to increase it by fostering the establishment within States of independent compartments or communities, something that Venezuela cannot by law accept, ensure or protect under its constitutional regime.

Food and Agriculture Organization of the United Nations

1. It is felt that the draft declaration provides a comprehensive and detailed coverage of fundamental indigenous rights as well as a suitable legal framework for the socio-economic development of indigenous communities under a variety of national circumstances and situations. FAO would like to stress the importance of establishing - in consultation and co-operation with all the parties concerned - an effective implementation system of the universal standards of indigenous rights.

2. FAO has no major modifications or additions to propose to the present text of the draft declaration. As regards procedures for resolving conflicts and disputes (para. 28, part VI) of the draft declaration, it would suggest that the word "arbitration" be inserted after the word "mediation."

Four Directions Council

1. The draft prepared by the Chairman-Rapporteur of the Working Group, as appended to the Working Group's sixth report, is thorough, precise, and represents a fair balancing of the aspirations of indigenous peoples and the legitimate concerns of States.

2. The draft declaration distinguishes, in several articles, between "individual" and "collective" rights. In the Council's view, all the rights of indigenous

peoples have both individual and collective aspects. Individuals are the beneficiaries of these rights, but individuals exercise them through participation in their own collective institutions, such as tribal, social, political and religious organizations.

3. It is suggested that the terms "individual" and "collective" should generally be avoided in the operative part of the declaration. Instead, the final preambular paragraph should refer to "the following individual and collective rights of indigenous peoples," to make it unambiguous that the rights described may all have both individual and collective aspects.

4. The expression "individual and collective," should be retained in paragraph 28 of the declaration, however, to make it clear that both individuals and groups are subjects of the rights contained in the declaration. As such, both individuals and groups should have access to national, regional and international mechanisms for redress of violations of these rights.

5. As it stand, the draft avoids the question of self-determination in the traditional sense, anticipating instead that indigenous autonomy will be exercised within the territorial and constitutional framework of existing States. While this may be true, it would be prudent to avoid any possible misuse of the declaration as a pretext for denying the right to self-determination to peoples who would otherwise clearly be entitled to its exercise - for example, the indigenous majority of South Africa. This suggests the propriety of including a saving clause in the preamble to the effect that:

"Mindful that nothing in this declaration may be used as a pretext for denying to any people, which otherwise satisfies the criteria generally established by international law, its right to self-determination;"

6. The Council takes the liberty also of suggesting the procedure which might be followed by the Working Group in continuing the drafting of the declaration. It will be essential to build on the widest possible exchange of views among Governments and indigenous peoples' organizations. For this reason, no substantive revision of the draft should be attempted this year. Instead, the Council recommends the following:

(a) At the seventh session of the Working Group in 1989: general discussion of the draft declaration; circulation of the text for further comments and proposals; preparation by the Chairman-Rapporteur of an article-by-article compilation of comments and proposals received, for discussion at the Working Group's eighth session;

(b) At the eighth session of the Working Group in 1990: article-by-article review of the draft declaration, and appointment of small drafting groups,

including representatives of Governments and indigenous organizations, to suggest ways of consolidating the proposals made on specific articles or groups of articles; one or more sessional meetings of the Working Group during the forty-second session of the Sub-Commission to receive the preliminary suggestions of the drafting groups; preparation, by the Chairman-Rapporteur and members of the Working Group, of a substantive revision of the draft declaration, for discussion at the Working Group's ninth session in 1991.

Indian Law Resource Center

1. The Center supports the decision to prepare a declaration of rights rather than a more general declaration of principles. It feels that this is a more positive and useful contribution towards the goal of promoting and enhancing respect for the human rights of indigenous peoples.

2. The Center also supports the decision to declare explicitly certain rights as collective rights or rights of collectivities as well as to declare rights which belong to individuals. It is in the area of collective rights that the declaration will make its greatest contribution, but the individual rights of indigenous persons are equally important.

3. Certain ideas have guided the Center's thinking on a draft declaration. These ideas are in many ways reflected in the draft universal declaration on indigenous rights. The Center believes it preferable to establish a few broad and specific rights which will address all major concerns and issues vital to indigenous peoples rather than to attempt to elaborate a large number of items to cover every conceivable problem or violation of rights. More specific and detailed provisions for implementing, protecting and enforcing these rights is the proper function of a covenant or convention on indigenous rights. In the Center's view, it is best to declare universal rights for indigenous peoples in broad, ringing and enduring terms.

Inuit Circumpolar Conference

1. The Conference continues to be concerned about the lack of uniformity in the terminology of the draft declaration when referring to the collective and individual rights of indigenous peoples. The terms "right," "collective right," "individual rights," and "individual and collective right" are all used in the draft. As a result, it is uncertain, for example, whether the draft is affirming both collective and individual language rights when it refers to the "right to maintain and use their own languages" (art. 9).

2. As a general rule, the draft declaration should use terminology that accommodates all the basic rights of indigenous peoples (i.e. both collective and

individual), while at the same time emphasizing the centrality of collective rights to indigenous peoples and cultures. This vital perspective could be highlighted in the preamble. Specific references to "individual rights" or "collective rights" should be used only when the context of the provision does not permit a broader meaning.

National Indian Youth Council

A. Self-determination

1. The draft does not specifically include self-determination among the rights of indigenous peoples. This omission raises concern, given the importance attached to the right by indigenous representatives attending the various Working Group sessions as well as the attention focused on the principle by the Working Group itself.

2. The Council understands the concern that States - which ultimately must assent to a United Nations declaration on indigenous rights - will resist any language suggesting a basis for their dismemberment. The broad right to self-determination, however, is not simply interchangeable with the narrow means of secession. Secession was the appropriate means for application of the right in colonial situations. It does not follow that application of the right to self-determination beyond colonial situations entails the same remedy. Nor does it follow that self-determination applies only where secession is at issue.

3. An increasingly common view among international law scholars is that the right to self-determination has applications beyond the decolonization process in which secession was the norm (e.g. Chen, "Self-determination as a human right," in *Toward World Order and Human Dignity* (M. Reisman and B. Weston eds., 1976); Ronen, *The Quest for Self-Determination* (1979)), and that indeed the right should be understood to apply to indigenous peoples (see Brownlie, "The rights of peoples in modern international law," and Falk, "The rights of peoples (in particular indigenous peoples)" in *The Rights of Peoples* (J. Crawford ed., 1988)). This view reflects the universality attached to the principle as included in the United Nations Charter (see Umozurike, *Self-Determination in International Law* 44-54 (1972)).

4. The contours of the right to self-determination as applied to indigenous peoples will develop within international law according to the relevant factors. Prominent among such factors is that few indigenous peoples assert that the vindication of their rights lies in reconstituting themselves into independent States. The case can be made that the varying structures of indigenous societies are in fact inimical to the structure of the modern State (see Crone, "The tribe and the State," in *States in History* 58-68 (1986)), and thus it makes even less

sense in this context to speak of self-determination in terms of secession and the establishment of new States.

5. The real concerns here are preventing the oppression of indigenous societies by existing States and other modern structures, and creating a positive condition for the development of indigenous societies. What indigenous self-determination requires is the recognition of a duty by States to make structural accommodations and to secure entitlements for the indigenous peoples within their borders in order that each may continue its unique existence according to its desires. Only in the rarest of circumstances would the true expression of an indigenous people's self-determination require the dismemberment of a State willing to realize these goals.

6. The farthest the draft declaration goes in addressing self-determination rights in the political - and most contentious - sphere is in asserting in article 23 the "collective right to autonomy in matters relating to their own internal local affairs." Article 23 goes on to list substantive areas - education, information, culture, etc. - in which indigenous peoples are entitled to exercise limited autonomy.

7. This provision is problematic first of all because of the amorphous nature of the term "autonomy." Far from being identified with some clear minimum standard of self-government, autonomy has become a catch-all term with little understood meaning beyond the notion of special State measures directed at a region with a minority or indigenous population to govern the region's participation within the larger State apparatus. Furthermore, the listing of substantive areas over which indigenous peoples are deemed entitled to exercise autonomy could be construed as exhaustive and thus is in itself potentially limiting.

8. To the extent that article 23 envisages a certain kind of arrangement in the term "autonomy," it is likewise flawed. Emphasis on any such prescription as universally applicable to indigenous self-determination interests ignores the diverse qualities and situations that pertain to the multitude of indigenous peoples throughout the world, and assumes the consent of all indigenous peoples to one formula.

9. A more appropriate approach would be to accede to indigenous peoples' repeated suggestions and affirm their right to self-determination as a foundational principle. The suggested approach would decline to define in universal terms the outcome of the right's exercise, i.e. integration, autonomy, associated statehood, secession, etc.; instead, the outcome of the right's exercise would be considered a function of the specific character of each indigenous people and of its consent to the terms of its existence within the relevant larger social, economic and political structures.

10. It is thus submitted that the right to self-determination of indigenous peoples be affirmed as:

"The right of each indigenous people to maintain and develop freely the institutions and attributes that constitute its particular character as a distinct community; including the right of an indigenous people to consent to the terms of the mechanisms governing its status vis-à-vis the State and other relevant structures, through direct negotiation or other appropriate procedures."

11. Such a formulation, focusing on the specific character of each indigenous people as controlling, would meet indigenous self-determination interests and negate all but illegitimate status concerns about dismemberment. The right to secede in international law would not be expanded, in that secession would remain an issue only in specific instances where a particular people possessed attributes under circumstances already acknowledged as warranting independent statehood (see generally Buchheit, *Secession* (1978)).

B. The duty of States to take affirmative measures

12. For the most part, the rights specified in the draft declaration are formulated as static guarantees, e.g. "The right to manifest, teach, practice and observe their own religious traditions and ceremonies" Only in some instances is the statement of a right complemented by the statement of a duty or a call for positive action on the part of States, e.g. "The duty of States to seek and obtain their consent" for mineral exploration on their lands.

13. Apparently the assumption is that the bare statement of a right will be construed to carry with it an affirmative duty of the States concerned to implement the right. But such an optimistic construction will not necessarily be upheld in practice, as prior experience demonstrates. The duty of States to take positive measures should be affirmed as to each right and not just a few of the asserted rights. This could be accomplished, inter alia, by amplifying the 10th paragraph of the preamble, which calls upon States to implement existing international human rights instruments as they apply to indigenous peoples.

14. A universal declaration on indigenous rights should forestall any such limiting interpretation of the rights affirmed by including specific and comprehensive language on the duty of the State to implement the rights by positive action.

Survival International

1. Survival International is very pleased by the overall progress being made in the elaboration of a declaration on indigenous rights. There are a number of

positive aspects in the draft declaration. The draft refers to "indigenous peoples" rather than "indigenous populations," which is a good sign of the progress being made towards a recognition of indigenous demands. The draft declaration confers collective as well as individual rights and is clearly opposed to national policies of integration and assimilation. It also seeks to protect the identities of indigenous societies by ensuring respect for their cultures, languages, religions, traditions and customs. The corresponding duties of nation States to ensure respect for these rights are not enumerated, however.

2. The draft declaration also contains some strong provisions regarding the rights of indigenous peoples to the use and ownership of their traditional lands. Provisions are included which appear to recognize the right of indigenous peoples to the collective ownership of their lands (art. 13). Survival International considers, however, that this right should be made more explicit and that the concept of territories, which is preferred by many indigenous peoples, should be adopted in the declaration in the context of the right of ownership, rather than just the right of control (art. 14). The provision that no lands may be taken away from indigenous peoples without their free and informed consent (art. 12) is a major advance on existing international law. However the draft declaration is weaker than existing international law in not making explicit the right of indigenous peoples to full compensation with land for land lost, in cases where they agree to relinquish a certain piece of land. Another deficiency is that, again, the corresponding duties of nation States to ensure respect for land and territorial rights are not enumerated.

3. Survival International is concerned that the draft declaration appears to make no provision to secure the customary grazing rights of pastoral peoples where these rights are held on lands that are customarily considered to be owned by others. Survival International is also concerned that the provision made to ensure indigenous control over the exploitation of subsurface resources is not adequate to defend the rights of indigenous peoples.

4. The draft declaration attempts to make provision to ensure that indigenous peoples maintain control over their own development. However, the language used to secure these rights is weak and ambiguous. Indigenous peoples have made explicitly clear to the Working Group that they demand the right to "self-determination," by which they mean the right to control all their own affairs through their own institutions, including in some instances the right to secession from the State. The draft declaration does not extend this right to indigenous peoples and uses instead the language of "consultation," "participation," "informed consent" and so on.

5. Survival International is committed to defend the right to self-determination. Article 23 of the draft comes nearest to recognizing this right through its recognition of a collective right to autonomy in matters relating to internal affairs. This right, while welcome in itself, falls far short of the full right to self-

determination. Moreover, actual examples where regional autonomy has been granted to indigenous peoples within a nation State reveal all too clearly how extensively nation States can manipulate such arrangements to their advantage.

6. Survival International welcomes the fact that a Special Rapporteur has been appointed to examine the legal complexities that arise from relations between indigenous peoples and States secured through treaties. Modifications in the declaration following the report of the Special Rapporteur and its discussion in the Working Group should be envisaged.

COMMENTS ON THE PREAMBLE

Venezuela

1. The passage in the first preambular paragraph relating to recognition of the right of all individuals and groups to be different and to be regarded as such is inappropriate; one fails to see how a State could create a variety of regimes, different for each particular person or group, when the aim in every community organized as a State is precisely to ensure that all persons will be on an equal footing before the law.

2. Similarly, the statement in the ninth preambular paragraph to the effect that indigenous peoples should be free to manage their own affairs is very general and could give rise to conflicts which the State must avoid. The State has a responsibility to ensure that all its inhabitants are governed and protected by legal rules that apply to everyone, without exception.

United Nations Educational, Scientific and Cultural Organization (UNESCO)

First preambular paragraph

The "right to be different" is indeed an ambiguous notion. It could lead to treating indigenous peoples in a paternalistic way because they are considered different, or to closing them up in ghettos because they are so different that they should be "protected" and hence become objects of museology. Indeed, the very first words of this preambular paragraph are puzzling: the paragraph provides that indigenous peoples are equal to all other human beings in dignity and rights, which seems to imply at the outset that on the one hand there exist indigenous peoples and on the other hand "all other human beings." This is simply inappropriate, since indigenous peoples are human beings.

Third preambular paragraph

Indigenous culture should be included along with the traditions, social structures and lands traditionally occupied by indigenous populations.

Fourth preambular paragraph

The use of the term "Rebellion" is misleading and makes the struggle against discrimination and all forms of oppression seem less legitimate. Another wording of this phrase is proposed, e.g. "which in turn has led them to voice their grievances and to organize themselves in order to bring an end to all forms of discrimination and oppression which they face."

Seventh preambular paragraph

UNESCO does not recommend the use of the term "ethnodevelopment," which implies that indigenous peoples may be set apart and isolated from the benefits of the national society. They may very well receive separate and unequal treatment. Another wording is proposed, e.g. "through development based on their own needs and value systems."

Indian Law Resource Center

In the seventh preambular paragraph, it is recommended that the words "through ethnodevelopment" be omitted. This term is unclear and may be taken as limiting the meaning of the paragraph. Secondly, the institutions and economies of indigenous societies should be strengthened as well. The paragraph should read:

"Endorsing calls for the consolidation and strengthening of indigenous societies and their institutions, economies, cultures and traditions and comprehensive participation in and consultation about all relevant development efforts."

The Center would recommend adding an additional preambular paragraph to introduce the principle of the "right to be left alone." The additional paragraph would be as follows:

"Believing that States and others should respect the desire and needs of those indigenous peoples who wish to be left alone."

In the ninth preambular paragraph, the Center would suggest deleting the phrase, "to the greatest possible extent." In the Center's view, this phrase adds no significant meaning to the statement and could serve to negate the right in question without any particular reason. It unnecessarily limits the statement.

To the final preambular paragraph, the Center proposes adding the following phrase: "and recognizing that certain indigenous peoples may have additional and more extensive rights according to their particular characteristics and circumstances."

Inuit Circumpolar Conference

In the third preambular paragraph, it should be made more clear that the rights of indigenous peoples are a direct consequence of their original use and occupation of their traditional territories. The Conference feels that the essential spiritual and material relationship that indigenous peoples have with their lands, resources and environment should be emphasized.

In the seventh preambular paragraph, development is specifically linked to indigenous peoples but not to their traditional territories. The Conference believes that Inuit society and culture could be strengthened through the right of development and through control of and participation in orderly developmental activities in and affecting their territories. In addition, it should be made clear in the last paragraph of the preamble that States should take prompt and effective measures to implement the draft declaration but only "in conjunction with the indigenous peoples affected," and not unilaterally.

As the above comments, suggestions and recommendations illustrate, there is a wide gap between many of the state's positions and the positions of indigenous nations as reflected in views expressed by non-governmental organizations like the Inuit Circumpolar Conference and the Indian Law Resource Center. As long as the state's governments insist on the view that "self-determination equates to secession" and the state must have absolute control over indigenous territories and peoples, it may not be possible to achieve a political settlement between nations and states through and instrument like the Draft Universal Declaration now under consideration. By not compromising with the indigenous nations on terms to be contained in the Draft Declaration, state's government risk a quite natural reaction by nations which seek greater control over their own political, economic and social destinies. By continuing to deny the right of self-determination to indigenous nations, and by denying the territorial integrity claimed by Fourth World nations, states avoid reality. As many of the world's wars now waged in the world demonstrate, Fourth World nations will not be denied the right to freely determine their own political, economic and social future. The Draft Universal Declaration on Rights of Indigenous Peoples could have a profound affect on political relations in the world, and perhaps by having terms agreeable to both nations and states, a more peaceful world will emerge.

Book Review:

Dan Jacobs: *The Brutality of Nations*, Paragon House Publishers, 1987. 383 pages.

An Internal Matter of a Sovereign Nation, a review of *The Brutality of Nations*, by Dan Jacobs.

"An internal matter of a sovereign nation," thus United Nations Secretary General U Thant described the war between Nigeria and Biafra. What he meant by this was that the genocide being committed by the government of Nigeria was not of direct concern to the United Nations. It was also not of direct concern to the governments of England and the United States. The human suffering, the loss of lives perhaps in the millions, did not draw a reaction from the U.N., the United States or England, nor did it deter them from their goal of helping Nigeria retain control over Biafra.

But this lack of concern would not have been publicly acceptable. The starvation caused by the Nigerian blockade had to be covered up and denied. This was made difficult by wide publicity given to the famine and a world-wide relief effort to provide food to civilians in Biafra. In order to constrain knowledge of the Nigerian use of starvation as a tactic of war and to prevent food aid from reaching Biafra, the International Committee of the Red Cross (ICRC) was suborned into frustrating the relief efforts it claimed to be running.

The stories of starvation were denied as Biafran propaganda. All relief effort was forced to go through the ICRC. Nigeria prevented any food from reaching Biafra while being praised by the U.S. and England for its willingness to allow the food in. And the Red Cross sat on its hands while claiming that Biafra was refusing the food in order to use the starvation of its people to gain world sympathy. Biafra was turned into a giant concentration camp and the war was won by Nigeria.

That this was done, and was done actively by England with the assistance of the U.S. and the U.N., is carefully laid out in great detail in this book. Sixty pages of notes document the sources of Jacob's informa-