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ROBERT T. COULTER, ESQ.
EXECUTIVE DIRECTOR
TERRY L. JANIS, ESQ.
ADMITTED IN ARIZONA ONLY

July 20, 1994

By Hand Delivery

Ms. Carol H. Rasco
Director
Domestic Policy Council
2nd Floor, West Wing
The White House
Washington, D.C. 20500

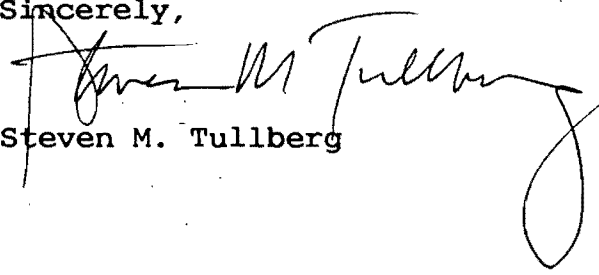
Dear Ms. Rasco:

Les Ramirez asked me to send you these materials pertaining to concerns about U.S. policy on the rights of indigenous peoples.

Please let me know if you have any questions or if you would like additional information.

Thank you for your consideration.

Sincerely,



Steven M. Tullberg

SMT:sb
Enclosure

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July 14, 1994

ROBERT T. COULTER, ESQ.
EXECUTIVE DIRECTOR
TERRY L. JANIS, ESQ.
ADMITTED IN ARIZONA ONLY

By fax: 456-6220

Ms. Loretta Avent
Office of Inter-Governmental Affairs
Executive Office of the President
The White House
Washington, D.C. 20500

Dear Ms. Avent:

The National Congress of American Indians asked me to send you a summary of concerns about the position that the United States is about to take on the rights of indigenous peoples. The United States will be expressing its indigenous rights policy in the United Nations in Geneva at the meeting on the International Decade of Indigenous Peoples (July 20-22), the Working Group on Indigenous Populations (12th session, July 25-29), and the Sub-Commission on Prevention of Discrimination and Protection of Minorities (August 1-26).

This is an especially important year for indigenous rights activities, because the Sub-Commission will be considering for the first time the draft Declaration on the Rights of Indigenous Peoples. This draft Declaration is the result of over ten years of work by the Working Group on Indigenous Populations, involving hundreds of indigenous representatives from throughout the world, scores of human rights groups and other NGOs, and many governments. A copy of the draft declaration accompanies this memorandum. I am also sending a paper by Robert T. Coulter, The Draft UN Declaration on the Rights of Indigenous Peoples: What is it? What Does It Mean?.

There is very broad support for the draft Declaration among indigenous peoples and among human rights and environmental groups as well. Many governments with forward-looking human rights policies have played a constructive role in the development of the draft Declaration.

The United States has contributed little of substance and has largely stayed on the sidelines while the indigenous rights work developed into one of the most vibrant and well-attended human

rights activities at the United Nations. Over 600 persons participated in each of the last two sessions of the Working Group on Indigenous Populations in Geneva.

The Objectionable US Indigenous Rights Policy

We learned two days ago that the United States is about to take a position on the draft Declaration which would set back this important human rights development and would embarrass the President by suggesting that the United States does not uphold at the international level the very policy on indigenous rights that the President has endorsed at home. Although the President is committed to universal human rights standards, the watered-down indigenous rights policy that has been prepared by the State Department conflicts with the policy the President has declared for Native peoples in the United States.

This is doubly troublesome because it also constitutes the declaration of an international indigenous rights policy that will be an embarrassment to the President at the Summit of the Americas in December.

The President's Policy

The President's indigenous rights policy has been forward-looking and positive, upholding the collective rights of American Indians and Alaska Natives as tribes, nations and peoples to self-determination, sovereignty and government-to-government relations. The Clinton/Gore Plan On Issues Of Concern To Native Americans, announced at the outset of this Administration, begins with a commitment to "guarantee rights." The very first guarantee listed in the Clinton/Gore Plan is "Support sovereignty and self-determination of Native American tribal governments."

At the historic White House gathering of tribal leaders, the President re-affirmed this policy:

In every relationship between our people, our first principle must be to respect your right to remain who you are and to live the way that you want to live. And I believe the best way to do that is to acknowledge the unique government-to-government relationship we have enjoyed over time.

Today I re-affirm our commitment to self-determination for tribal governments. Today I pledge to fulfill the trust obligations of the federal government. Today I vow to honor and respect tribal sovereignty based upon our

unique historical relationship. And today I promise to continue my efforts to protect your right to fully exercise your religion as you wish.

These sentiments are reiterated in the presidential directive of April 29.

The White House remarks of gaiashkibos, President of the National Congress of American Indians, contain this call for U.S. support for stronger international standards:

Mr. President, This is a critical time for native peoples around the world in terms of natural resource protection, economic progress and survival. Real self-determination for all native peoples is a policy which the United States has not yet embraced. We encourage this government to take the lead in ensuring the passage of the United Nations Declaration on Indigenous People.

Conflicting Policy From Within The State Department

At a Summit preparatory meeting on July 12, an attorney from the Legal Advisor's Office of the Department of State, Miriam Sapiro, outlined a very different US policy which she is preparing to deliver at the forthcoming United Nations human rights meetings. The policy she describes focuses on the rights of indigenous people as individuals and expressly omits reference to their right to self-determination. Ms. Sapiro said that the United States will endorse these four principles with respect to the draft Declaration:

1. We should recognize that indigenous people have the same rights as all other citizens.
2. Indigenous people cannot be adversely discriminated against.
3. Indigenous people must have an opportunity to participate in society.
4. Indigenous people have the right to maintain their distinctive cultures.

These are constructive points that are incorporated in the draft Declaration. Standing alone, however, they would treat indigenous people simply as other minority groups and would deny indigenous peoples the distinct rights to which they are entitled as tribes, nations and peoples.

Ms. Sapiro explained that the United States will not endorse self-determination for indigenous people because that would endorse secession. This is an argument without sound legal foundation. The International Covenants on human rights uphold the rights of "all peoples" to self-determination, not all peoples except indigenous peoples. International law does not hold that self-determination guarantees all peoples the right to secede from existing states. As any informed participant in the international human rights community could attest, the demands of indigenous people are focused on strengthening their autonomy within the framework of existing states, not on secession.

On this score the United States has Indian rights policies and practices in place which would be instructive to many others in the world. Notwithstanding our country's shameful history of abuses against Native people, the United States today is formally committed to legal and political processes which permit tribes and nations to strengthen their governance of their own affairs and to thereby find the dignity and freedom that has historically been denied them. The United States should take up the challenge to lead the international effort to strengthen rights for all indigenous peoples, including our own.

We have urged the State Department to establish a consultative process for review of its out-dated indigenous rights policies. A review was recently initiated by Assistant Secretary John Shattuck who presented testimony on May 10, 1994 before Congressman Robert Toricelli's sub-committee in which he stated that the United States strongly supports the draft Declaration's goals. We understand that State Department attorney John Crook presented a constructive analysis of the indigenous rights issue in a recent, off-the-record conference on the draft Declaration at the Raoul Wallenberg Institute in Sweden.

In this context, the backward-looking policy and pinched legal analysis presented by Miriam Sapiro comes as a surprise. It may not be the final word on this issue, but we are very concerned that her presentation of this policy at the forthcoming meetings in Geneva would tend to lock the United States into a position from which it would be very awkward to extricate itself. The United States should not appear to be inconsistent and at conflict with itself in a very visible and important human rights policy development.

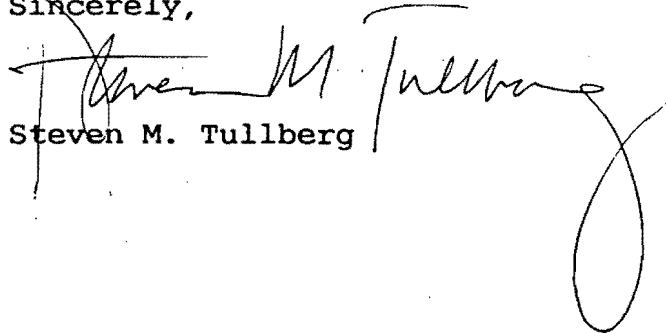
Action Needed

The White House should carefully review the indigenous rights policy that Miriam Sapiro of the legal office of the Department of State is preparing for delivery at the human rights meetings in Geneva that begin on July 20 and end August 26. The United States should give strong support to the draft Declaration on the Rights of Indigenous Peoples and should endorse the right of self-determination. The White House should consider sending a senior representative, perhaps attorney John Crook of our United Nations office, to represent the United States.

Please do not hesitate to contact me for additional information: (o)202-547-2800; (fax)202-547-2803; (h) P6/b(6)

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven M. Tullberg". The signature is written in a cursive style with a large loop at the end.

Steven M. Tullberg

SMT:sb
Enclosures

INDIAN LAW RESOURCE CENTER

THE DRAFT UN DECLARATION ON THE RIGHTS
OF INDIGENOUS PEOPLES:
WHAT IS IT? WHAT DOES IT MEAN?

by Robert T. Coulter

1994

INDIAN LAW RESOURCE CENTER

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The Draft UN Declaration on the Rights of Indigenous Peoples: What is it? What does it mean?

by Robert T. Coulter*

March 24, 1994

At its 1993 meeting, the United Nations Working Group on Indigenous Populations completed the draft Declaration on the Rights of Indigenous Peoples after almost ten years of work.¹ This historic statement of indigenous peoples' human rights will soon be considered by the higher UN human rights bodies and referred for eventual adoption by the General Assembly of the United Nations. The draft Declaration will be considered and perhaps revised this year and next year by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, the UN Commission on Human Rights and the Economic and Social Council before the draft finally goes before the General Assembly. As the draft is reviewed and debated, attention will be focused on the meaning of the Declaration and the effect it would have if adopted.

The draft Declaration has been controversial both because indigenous peoples' rights arouse many ancient fears on the part of governments around the world and because the Declaration raises some important issues for the first time in the UN -- issues such as the rights of groups or communities of people. What the Declaration really says and what it will mean in practice are not well understood even by many of those who are actively involved in the process of developing these new human rights standards. The meaning of the Declaration has remained somewhat in the mists in part because of the procedure of the UN for developing human rights standards. The UN

* Center attorneys Steven M. Tullberg and Terry L. Janis contributed to this article, as did Center Board member Dalee Sambo.

¹ The authoritative text of the Declaration as agreed upon by the Working Group members at its 1993 session is included in Report of the Working Group on Indigenous Populations on its eleventh session, E/CN.4/Sub.2/1993/29, pp. 50 - 60 (23 August 1993).

Working Group on Indigenous Populations has conducted years of open meetings to discuss the substance of the Declaration, but has written the actual text in closed sessions without issuing a detailed commentary or explanation.

This article will describe the principal features of the Declaration and discuss the meaning and probable effect of some of the more important provisions. While we cannot be sure of the meaning of all of the language in the Declaration, we will draw together some of the observations and comments that have been made by participants in the drafting process, particularly the Chairperson of the UN Working Group, Erica-Irene A. Daes.

When Indian and other indigenous leaders from the Americas planned the 1977 Non-Governmental Organizations Conference at the United Nations on "Discrimination Against Indigenous Populations in the Americas - 1977," they drafted a proposed declaration of principles on the rights of indigenous peoples for consideration at the conference. A declaration of principles has been the traditional first step in developing human rights standards on a particular topic. The NGO Conference adopted the declaration, calling it the "Declaration of Principles for the Defense of the Indigenous Nations and Peoples of the Western Hemisphere."² This early draft declaration had been circulated among indigenous nations and communities in the Americas for many months, and, with revisions, it had received wide support. This statement of human rights -- which included self-determination, environmental protection and other essential rights for indigenous peoples as nations or communities -- was adopted by consensus by the indigenous representatives and non-governmental organizations at the conference. It represented a strategy of seeking a formal recognition of indigenous peoples' rights by the United Nations, and it was the indigenous peoples' own initial proposal for the declaration that the UN would be asked to prepare.

To prepare an official UN declaration and to bring indigenous rights issues into more active consideration at the United Nations, indigenous leaders pressed for the establishment of a working group by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities.³ For several years a Special Rapporteur appointed by the Sub-Commission had been preparing a study on discrimination against

² Special NGO Committee on Human Rights (Geneva) - Sub-Committee on Racism, Racial Discrimination, Apartheid and Decolonization, Report of the International NGO Conference on Discrimination Against Indigenous Populations in the Americas - 1977: Statements and Final Documents. (Copy on file with the author.)

³ The Sub-Commission is a body of experts elected by the UN Human Rights Commission. It meets annually for four weeks in Geneva. Most human rights studies and human rights instruments originate, officially, in the Sub-Commission.

indigenous populations,⁴ but the study was far from completion, and indigenous leaders felt that a working group should be created to begin developing human rights standards.

The Working Group on Indigenous Populations was created in 1982 after years of lobbying by indigenous people, and it was given a mandate to review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations and to give special attention to the evolution of standards concerning the rights of indigenous peoples. The Working Group soon became the most important international forum for indigenous representatives to discuss human rights and to propose action by the United Nations. Now hundreds of indigenous peoples' leaders and representatives participate in the Working Group meetings each July in Geneva. At the 1993 session more than 600 persons attended, including representatives of some 124 indigenous nations, peoples and organizations from all parts of the world.⁵

The Working Group itself is made up of five members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities who are appointed by the Sub-Commission Chairman. There is one member from each of the five major regions of the world as the UN sees things. These members are themselves human rights experts, and all of their work is submitted to the full Sub-Commission. The Sub-Commission makes recommendations to the Human Rights Commission, which in turn makes recommendations to the Economic and Social Council. The Economic and Social Council makes recommendations to the General Assembly on human rights matters. The General Assembly is made up of representatives of all the member nations, practically all the countries of the world.

This is the setting in which the draft Declaration has emerged. It is the product of years of work by many Indian and other indigenous leaders who have driven the process from its beginning. Indigenous people held their own meetings year after year in Geneva to develop proposals and draft language that were submitted to the Working Group as the Declaration developed. Indigenous representatives by the hundreds have reviewed, revised, criticized, debated and added to the Declaration over the course of

⁴ The study is important in that it documented some of the more prominent abuses of the rights of indigenous peoples, documented the existence of indigenous peoples world-wide and helped to establish the need for action to protect indigenous cultures and communities. The study was begun in 1971 and was finally completed in 1983. The report, submitted in parts over the years, comprises 24 volumes. The last part contains hundreds of conclusions and recommendations that have given support and direction to the Working Group. Study of the Problem of Discrimination Against Indigenous Populations: Final Report (last part) submitted by the Special Rapporteur, Mr. Jose R. Martinez Cobo, E/CN.4/Sub.2/1983/21/Add. 8 (September 30, 1983).

⁵ Report of the Working Group on Indigenous Populations on its eleventh session, E/CN.4/Sub.2/1993/29, pp. 4 - 7 (23 August 1993).

about ten years. Many member governments of the UN have also participated in the drafting and debate along with many of the most experienced and respected human rights organizations and experts.

However, it is ultimately the member nations of the United Nations that will decide whether they will adopt or reject or change the Declaration. The Working Group members have written the draft in closed sessions based upon the submissions and discussions in the open sessions. Although the Chairperson and Rapporteur of the Working Group, Erica-Irene Daes, has stated that the draft Declaration is meant to reflect indigenous peoples' views and aspirations, it is officially and in fact a document produced by the Working Group to be considered and adopted by the member nations of the UN. Indigenous people have had a great deal to say in creating and shaping the draft, but in the end the Declaration will be a declaration by member nations of the UN, not by indigenous peoples. It remains to be seen how much participation indigenous representatives will have as the Declaration is considered by the various bodies of the UN.

It is important to keep in mind that a declaration of rights is not a binding legal instrument or agreement. It is a statement of what the members states believe the rights are. A declaration can be immensely important, because it is a statement adopted by consensus of all or nearly all the countries of the world. A declaration is usually a broad statement of fundamental values and human or legal rights that ought to be respected by the countries of the world. Though it is not legally binding in a technical sense, nevertheless it is a formal statement of the most important rules and policies that should be observed by all countries in relation to indigenous peoples.

The draft Declaration on the Rights of Indigenous Peoples is somewhat unusual because it is very detailed and contains specific implementing language. Usually a declaration is not the last word on a subject but just the beginning of the process of creating human rights law. This Declaration announces that it is a statement of the minimum standards that all countries must meet. It is not a statement of all the rights or the only rights that indigenous people may have.⁶

Often a declaration is the first step toward adopting a binding convention or treaty that would impose legal obligations on the countries that ratify it. A human rights convention or treaty is usually more detailed and more specific than a declaration and includes provisions for implementing or enforcing the terms of the convention. It is widely assumed that a universal convention on the rights of indigenous peoples will be developed by the UN based upon the Declaration. There already exists an important but

⁶ See Article 42, discussed below at page 20.

somewhat limited convention on the rights of indigenous peoples that was drafted and adopted by the International Labor Organization in 1989.⁷

The Content of the Draft Declaration

The draft Declaration is a relatively long and detailed document including 18 preambular paragraphs and 45 numbered substantive articles, running about 3,000 words in all. The paragraphs of the preamble announce many of the themes and principles that run throughout the draft Declaration. The substantive provisions of the Declaration are organized and divided into nine parts. The articles are divided as follows:⁸

Part I	Basic provisions, including equality of rights, self-determination, and other rights
Part II	Physical integrity and identity, including freedom from genocide and ethnocide
Part III	Culture and religion
Part IV	Education, media and labor
Part V	Self-government, participation in decision-making, right to development, medicine
Part VI	Lands and resources, environment and intellectual property
Part VII	Self-determination and treaties
Part VIII	Implementation, financing and dispute resolution
Part IX	Savings provisions and general matters

The General Principles

The preamble is itself a strong declaration of rights, and it announces the basic principles and themes that run throughout the Declaration. **Equality of rights and prohibition of discrimination** are the first major theme. Though this principle is not controversial and not new, it may be the single most important element of the Declaration. The first paragraph makes this proclamation, which is echoed often in the draft:

⁷ International Labor Organization Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries, opened for signature June 27, 1989, entered into force, September 5, 1991.

⁸ The following are merely summaries of the parts of the Declaration. They are not titles that appear in the text.

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

And further, the fourth paragraph reads:

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

The second major principle or theme, the **right to be different and to live as such**, is also announced in the first paragraph quoted above. The third major theme is closely related, the **protection of the unique character and attributes of indigenous peoples, including culture, religion and social institutions**. The sixth paragraph of the preamble reads:

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

One of the most important and ground-breaking principles running throughout the Declaration is that the **rights of indigenous peoples are rights of groups or communities as well as individual rights**. This is most evident from the use of the term "indigenous peoples" in the paragraph just quoted and throughout the draft Declaration. One of the key purposes of the Declaration is to protect the right of indigenous nations, tribes and peoples to exist as nations, tribes or peoples. Practically all human rights now expressly recognized in international law are rights of individuals, with the major exception of the right of self-determination in the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and certain provisions in the International Labor Organization Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries. Indigenous representatives have from the beginning insisted that the human rights of most importance for indigenous peoples are the rights of the indigenous nation, people, tribe or community. The proclamation of collective or group rights in the Declaration will be an historic step in the international law of human rights, and it has sparked considerable comment by some countries.⁹ It is clear that the draft Declaration expresses both the rights of peoples or groups and the rights of indigenous individuals.¹⁰

⁹ See Report of the Working Group on Indigenous Populations on its eleventh session, E/CN.4/Sub.2/1993/29 at p. 20.

¹⁰ The subject of group rights in the draft Declaration is discussed at greater length in D. Sambo, "Indigenous Peoples and International Standard Setting Processes: Are State Governments Listening?," 3 Transnational Law and Contemporary Problems 13, at 21 - 23 (1993).

Another of the basic themes of the Declaration is the proposition that **indigenous peoples are denied rights and prevented from exercising rights as the result of colonization and dispossession of their lands.** This view, which has been overwhelmingly documented by the Working Group and which is important in interpreting the provisions of the Declaration, is set out in the fifth paragraph of the preamble:

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

The right of indigenous peoples to control matters affecting them, including the right of self-determination, is another of the great, over-arching principles of the Declaration. As will be seen in the articles of the Declaration, the principle of requiring free consent by indigenous peoples to decisions that affect them is a principle that is repeated often. The principle of indigenous control is stated in the eighth paragraph:

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

The importance of self-determination as a broad principle is underlined by the fact that it is referred to three times in the preambular paragraphs. The main reference is as follows:

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

A closely related theme of the draft Declaration is the call to **democratize the relationship between indigenous peoples and state governments and to uphold democratic values through the rule of law.** The longstanding relationship between indigenous peoples and states has been compared to colonial relationships of the sort that the United Nations condemned in the 1960 Declaration on the Granting of Independence to Colonial Countries and Territories.¹¹ Such relationships are the very antithesis of democratic relationships. A relationship based on the democratic rule of law requires equality and dignity for everyone and is established on the principle that the rightful power of government derives from the consent of the people, not from the imposition of force or other acts of naked dominion.

The draft Declaration's insistence that consent and agreement be hallmarks of the relationship between indigenous peoples and states is fundamentally an affirmation of

¹¹ Resolution 1514 (XV) of the General Assembly, December 14, 1960, 15 GAOR, Suppl. No. 16 (A/4684) at 66-67.

democratic values. This is a giant stride away from rule by elites in distant capital cities and towards government of, by and for indigenous peoples themselves. This Declaration reflects as well a broad commitment by indigenous peoples to secure justice through democratic legal means.

Another general principle that shapes the Declaration is the **right to own and use land, resources and all manner of property and the right to protection of the environment**. These rights are mentioned in the paragraphs quoted above and are given detailed attention in Part VI of the articles.

Finally, the preamble makes it clear that this Declaration calls for **concrete action to implement the Declaration and to promote and protect indigenous peoples' rights** both on the part of the United Nations and on the part of member nations. At the urging of indigenous representatives, the Working Group has included language calling for action and implementation, and this is an important and somewhat unusual feature for a declaration. It should help to make the Declaration more meaningful and useful in achieving the realization of the rights that are proclaimed.

The Substantive Articles

To understand the draft Declaration there is no adequate substitute for reading the full text, but it may be useful to examine and discuss the provisions that may be of greatest significance for indigenous peoples.

Part I: Equality of Rights, "Peoples," Self-Determination

The first two articles declare what at first seems obvious, that indigenous peoples have the right to enjoy all the human rights that are recognized by the United Nations and by international law, and that indigenous peoples and individuals may not be subjected to any form of adverse discrimination. In fact, most countries have laws and policies that discriminate against indigenous peoples and individuals and that deprive them of basic rights that other groups and individuals enjoy. These first two articles, in their unarguable simplicity, may be the most practical and important parts of the Declaration, because they are aimed directly at the ubiquitous laws, policies and practices that deprive indigenous communities of basic legal protections and rights and that subject indigenous peoples to undemocratic and discriminatory control by others.

The Declaration provides no definition of the term "indigenous peoples." The Working Group's Chairperson and Rapporteur, Erica-Irene A. Daes has stated,¹² however, that the definition to be applied is the one that was formulated in the 1983 Study of the Problem of Discrimination Against Indigenous Populations.¹³ That definition is as follows:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.¹⁴

Indigenous representatives have consistently opposed including a definition of indigenous peoples in the Declaration, principally on the ground that almost any definition might eventually be used by countries as a means for denying that certain groups are entitled to the rights in the Declaration. The intention of the Working Group has been to make the Declaration as widely applicable as might be appropriate. For a time the Declaration was known as the "Universal Declaration on the Rights of Indigenous Peoples." By omitting a formal definition, the Working Group chose to leave the term open-ended and as widely applicable as possible.¹⁵

¹² Report of the Working Group on Indigenous Populations on its eleventh session, page 15.

¹³ See note 3 above.

¹⁴ Id at page 50.

¹⁵ The ILO Convention No. 169 contains a definition that may be relevant. The Convention in Article 1 states that it applies to:

...

(b) peoples in independent countries who are regarded as indigenous on account of their descent from the population which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social economic, cultural and political institutions.

The article continues:

Likewise the Declaration does not attempt to define the term "peoples." The term has been used by the Working Group and by indigenous representatives throughout the process as a broad and inclusive term for practically all kinds of indigenous nations, communities, bands, tribes and other groups. Indigenous representatives have espoused the use of "peoples" in place of "populations" on the ground that the latter term does not reflect the social, cultural and political integrity of indigenous groups. "Peoples," by contrast, implies a distinct identity and the existence of a social, political or cultural body. Even more important is the fact that international discourse, including the Sub-Commission's Study on the Problem of Discrimination Against Indigenous Populations, had generally spoken of "peoples." Both the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights state, "All peoples have the right of self-determination." (Article 1) To speak of "populations" in the Declaration would signify that indigenous groups do not have the status and dignity of peoples and do not qualify for the rights of peoples. Such an outcome would have relegated indigenous groups to an inferior category of rights without any proper justification. The use of the term "peoples" has become a symbol for the respect, dignity and equality that indigenous peoples are demanding in the international community.

The term "peoples" has aroused debate, because some states fear that the term will imply that indigenous peoples have the right to secede from the countries where they live.¹⁶ However, the Declaration proclaims explicitly that indigenous peoples have the right of self-determination, and Erica-Irene Daes has written in detail about what this provision of the Declaration is intended to mean.¹⁷ The arguments about the term "peoples" may be actually moot, but the debate will surely continue.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of the Convention apply.

¹⁶ The debate preceding adoption of the ILO Convention No. 169 resulted in a clause in the Convention stating that the use of the term "peoples" shall not be construed as having any implications as regards the rights which may attach to the term under international law. Article 1, paragraph 3. No such reservation is included in the draft Declaration. For a discussion of the ILO debate by one of the participants, see S. J. Anaya, "Indigenous Rights Norms in Contemporary International Law," 8 Arizona Journal of International and Comparative Law 1 (1992).

¹⁷ E.-I. A. Daes, "Some Considerations on the Right of Indigenous Peoples to Self-Determination," 3 Transnational Law and Contemporary Problems 1 (1993); UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, "Explanatory note concerning the draft Declaration on the rights of indigenous peoples," E/CN.4/Sub-2/1993/26/add.1 (19 July 1993).

The right of self-determination is proclaimed for indigenous peoples in article 3 in the same language as that used for all peoples in other human rights instruments:

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

Three other articles, along with the preambular paragraphs quoted earlier, must be read together in order to understand the scope of the rights of self-determination and self-government. The other articles are:

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

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

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

What all of this may mean is not entirely clear, because the concept of self-determination is a complex and evolving one that has never had an absolutely fixed meaning.¹⁸ Indigenous representatives have consistently demanded, in principle, the fullest measure of self-determination, without limitations that would mean indigenous peoples have only some second-class form of the right. Indigenous people are not to be discriminated against in regard to the right of self-determination. In general, from their countless statements in the Working Group and elsewhere, it is clear that indigenous leaders mean self-determination to include freedom from political and economic domination by others; self-government and the management of all their affairs; the right to have their own governments and laws free from external control; free

¹⁸ For a discussion of some of the issues, see for example S.J. Anaya, "A Contemporary Definition of the International Norm of Self-Determination," 3 Transnational Law and Contemporary Problems 131 (1993); S.J. Anaya, "Indigenous Rights Norms in Contemporary International Law," 8 Arizona Journal of International and Comparative Law 1 (1992); H. Hannum, Autonomy, Sovereignty and Self-Determination (1990).

and agreed-upon political and legal relationships with the government of the country and other governments; the right to participate in the international community as governments; and the right to control their own economic development. Practically no indigenous representatives have spoken of a right to secede from an existing country, but, in principle at least, indigenous peoples must have the right to the same extent as other peoples. Through the years of debate and redrafting, the Working Group has gradually accepted the position of the indigenous leaders.

The intended meaning of the self-determination provisions of the Declaration has been explained in an article by the Working Group's Chairperson¹⁹, and her writing is probably the best guide the meaning of the Declaration at this time. Ultimately the Declaration will mean primarily what the countries that adopt it say it means, and these member countries of the UN will no doubt have a great deal to say about this before the Declaration is adopted.

Erica-Irene A. Daes' views on the meaning of the right of self-determination in the draft Declaration can be summarized as follows.

1. Self-determination and the right of secession cannot be denied any people that meets the classic criteria for the right:

a. It applies to a territory that is geographically separate and ethnically or culturally distinct.

b. It may be exercised by a distinct people.

2. "Indigenous peoples are unquestionably 'peoples' in every social, cultural, and ethnological meaning of this term."

3. But there is a limit. Where there is an existing state, the constituent peoples must act through that state's political system and government, unless the system is "so exclusive and non-democratic that it no longer can be said to represent the whole of the population." There is a continuing right to secession under these extreme circumstances.

4. She sums up as follows:

Self-determination has consequently taken on a new meaning in the post-colonial era. Ordinarily it is the right of the citizens of an existing, independent state to share power democratically. However, a state may sometimes abuse this right of its citizens so grievously and irreparably that the situation is tantamount to classic colonialism, and may have the

¹⁹ See note 12 above.

same legal consequences. The international community discourages secession as a remedy for the abuse of fundamental rights, but as recent events around the world demonstrate, does not rule out this remedy completely in all cases. The preferred course of action, in every case but the most extreme, is to encourage the state in question to share power democratically with all groups, under a constitutional formula that guarantees that it is effectively representative.

5. Indigenous peoples have, in most cases, not been a part of state-building in the countries where they live; that is, they have not participated in constituting the state or in national decision making. Daes writes:

[T]he existing State has a duty to accommodate the aspirations of indigenous peoples through constitutional reforms designed to share power democratically. This approach also would mean that indigenous peoples have the duty to try to reach an agreement, in good faith, on sharing power within the existing State, and, to the extent possible, to exercise their right to self-determination by this means.

With regard to indigenous peoples, then, I believe that the right of self-determination would ordinarily be interpreted as the right of these peoples to negotiate freely their political status and representation in the States in which they live.

What this means in practical terms is that an indigenous people does not automatically have a right to secede at will; it can only separate from an existing state if the government is so unrepresentative as to be, in effect, a colonial government. In all other situations, the indigenous people have the right to demand constitutional reforms to guarantee a true partnership in governance in order to share power democratically on agreed-upon terms.

The Declaration, then, would call upon states to recognize the right of indigenous peoples, Indian nations and tribes, Alaska Native villages and nations, and other indigenous peoples, to negotiate freely new relationships of law, governance and power. Even more significant could be the obligation of states to amend their constitutions if called upon to do so to share power with indigenous peoples and to recognize indigenous governments and institutions.

It is well to keep in mind, however, that Erica-Irene Daes' views are not all written into the Declaration.²⁰ The meaning of self-determination in the Declaration may well continue to be uncertain and ambiguous.

Some elements of self-determination are made very clear in the draft Declaration. The right of indigenous peoples to create and to maintain their own governments or "institutions" and their own laws and legal systems (this would include courts) is plainly set out in articles 4, 21, 31, 32, 33 and in other articles as well. Many of the provisions of Part VII, particularly article 33, are aimed at stopping the interference and control over indigenous governments that are often exercised by countries.

The extent of the governing powers of indigenous governments is set out in article 31 quoted above. This provision would give an indigenous people the right to govern for themselves essentially all internal and local affairs. When read, as it must be, in conjunction with the articles concerning control over lands and resources, control over matters affecting indigenous interests, control over cultural matters and intellectual property, control over education and other such provisions, it is evident that this article contemplates the fullest possible self-government, with practically no exclusions. The question of external affairs, that is, relationships with other governments, is covered by the provisions on self-determination discussed earlier.

It is important to note that the Declaration declares self-government, self-determination and autonomy to be rights that an indigenous people may exercise at their option. They are not required. The Declaration throughout provides that indigenous individuals and peoples also have the right, at their option, to participate in the political, social and economic systems of the countries where they live. The draft Declaration envisions a pluralistic state in which indigenous individuals have the right both to participate fully in the larger society and to participate in their own system of indigenous self-government. (See articles 4, 9, 19 and 20.) By promoting equality and prohibiting discrimination, the draft Declaration promises fuller and more effective participation than most indigenous peoples are now permitted.

The Right to Exist; Genocide, Ethnocide and Cultural Genocide

Part II, articles 6 - 11, establish the right of indigenous peoples to exist as peoples, and they deal in detail with the subjects of genocide, ethnocide and cultural

²⁰ Daes' article refers to the language of the draft before the changes made at the Working Group session in 1993. The changes however alter very little the meaning of the provisions on self-determination. Her analysis that indigenous peoples would not have the right to secede unless certain conditions were met, is arguably the law now, and would be the probable interpretation of either version of the Declaration.

genocide. The Declaration is significant because it deals with specific problems affecting indigenous peoples, such as removal of children, and it calls for the prevention of ethnocide and cultural genocide. Ethnocide and cultural genocide include actions that deprive indigenous peoples of their integrity as peoples, population transfers, imposed assimilation and integration, and any form of propaganda against indigenous peoples. (Article 7.) These provisions reach out to cover a wide variety of threats to indigenous peoples' culture and integrity.

Article 10 completely prohibits the forcible removal of indigenous peoples from their lands or territories. This striking provision has long been needed to stop the abuses that have occurred in recent years in the Americas and in other parts of the world. Special protections are also declared for periods of armed conflict aimed at preventing the abuses that have often occurred to indigenous peoples. (Article 10.)

Cultural, Religious and Language Rights

The Declaration gives extensive treatment to cultural, religious and language rights in Part III and includes requirements that states take "effective measures" to protect these rights. (See articles 13 and 14.) In addition to declaring the rights to practice and develop indigenous cultures, spiritual and religious traditions, languages and philosophies, the provisions of this part specifically seek to deal with problems such as the repatriation of human remains, the protection of burial sites and other sacred sites, and the protection of historical and cultural places and artifacts. These articles are detailed and exhaustive, and they evidence an intent to comprehensively protect all indigenous cultural, religious and linguistic interests and values.

The implementation clause of article 13 is as follows:

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

This provision would require states to enact legislation or take appropriate administrative or police action to actually achieve protection of sacred sites and burial sites. Such action is not to be taken unilaterally by states, but in cooperation with the affected indigenous people to assure that actions are effective and appropriate. The "effective measures" provision of article 14 on language rights is written so as to require the state to take effective measures "whenever any right of indigenous peoples may be threatened," and it requires the state to provide interpretation or other means to assure that indigenous individuals can understand and be understood in political, legal and administrative proceedings.

Education, Media and Labor

Comprehensive control by indigenous peoples over their own education and media are the subjects of articles 15, 16 and 17. Educational systems and educational subject matter were often identified in the Working Group meetings as potent threats to indigenous peoples' cultures. Among other rights, indigenous peoples are declared to have the rights to establish and control their own educational systems and to provide education in their own languages. Indigenous children must also have access without discrimination to all levels of education provided by the state in their own culture and language, and states are required to provide the necessary resources.

As with education, indigenous peoples are to have equal access to the media and the right to establish their own radio stations, television broadcasting and other media. (Article 17) All forms of discrimination in employment are proscribed. (Article 18)

Participation in Governance, Right to Development, Health

Article 19 calls for direct, representative participation of indigenous peoples in all levels of decision making by states, that is by countries, where indigenous peoples are located. It reads:

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

Article 20 provides that indigenous peoples have the right to take part in the development of all laws or administrative measures that may affect them. States may not adopt or implement any such laws or measures without the consent of the affected indigenous peoples. These provisions are consistent with the Declaration's philosophy of self-determination and agreed-upon partnership in governance. They are intended to overcome the longstanding problem of states unilaterally imposing laws and other harmful measures on indigenous peoples without their consent.

The right to development is one of the most crucial in the draft Declaration. The right to economic and social development, the right to determine development priorities, and the right to determine and administer all health, housing and other economic programs affecting them are some of the specific rights enunciated. (Article 23) The Declaration also calls for states to take special measures to improve the economic and social conditions of indigenous peoples. This latter provision responds to the extreme conditions of poverty and deprivation that many indigenous communities experience and to the fact that these conditions are often the result of past government actions or inactions.

Traditional medicines and health practices are declared to be a right, and vital medicinal plants, animals and minerals are to be protected. (Article 24)

Lands, Resources, Environment and Intellectual Property

One of the thorniest issues in the Declaration is the question of land and resource rights. The central concept, and it is a great step forward, is that indigenous peoples have the legal and unrestricted right of ownership of their lands, waters and all related resources. This provision would, if implemented, end the countless legal fictions and discriminatory devices which in almost all countries have been used to deny indigenous peoples the full, legal ownership of their territories and resources. The matter of rights to land is set forth twice, first in a manner reflecting indigenous values and relationships (Article 25) and second in a manner compatible with general legal concepts (Article 26):

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

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

The most difficult question, and it is one that cannot be clearly answered, is: What lands does an indigenous people have a right to own? The answer in the Declaration is: lands, territories and resources "which they have traditionally owned or otherwise occupied or used." This phrase was crafted to overcome the problem that indigenous peoples in many countries are not now regarded as actually owning any lands or resources. Thus the area may be described in terms of traditional use or occupancy.

Would this mean all of the territory once used or occupied by an indigenous people, including land that was taken from them and occupied long ago by others? Probably not, because article 27 deals with return of lands, and that article clearly contemplates that some land, territories and resources cannot be returned. On the other hand, the article does not use the present tense, "occupy," as the ILO Convention No. 169 does in its analogous article 14, thus indicating that ownership is not to be confined only to lands that are presently occupied by indigenous peoples. In this way, the Declaration tries to walk a line between the principled position that indigenous peoples

have true legal rights to their lands and resources including ownership of some lands from which they are presently dispossessed and the recognition that the Declaration could not be adopted if it demanded the return of all indigenous territories and resources.

The full text of article 27 demonstrates this compromise:

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

Issues such as this and the issue of self-determination, where very important interests are at stake, are not likely to be resolved entirely on the basis of a United Nations Declaration. They will no doubt continue to be the subject of intense debate negotiation and legal action. What is important is that the Declaration takes a principled position based upon fundamental concepts of fairness and justice which may in some way guide future struggles over these issues.

The Declaration provides for a right to conservation and environmental protection and prohibits storage or disposal of hazardous wastes on indigenous peoples' lands. (Article 28) Again, states are required to take effective measures and provide assistance in regard to environmental protection and prevention of interference with land and resource rights.

A separate provision has been included to recognize and protect the rights of indigenous peoples to their cultural and intellectual property. (Article 29) The intent of the provision is to respond to the widespread concern about abusive appropriation by pharmaceutical and other companies of indigenous peoples' knowledge of plants and their uses, and the appropriation of indigenous peoples' designs and other arts. The provision is intended to provide comprehensive protection for all intellectual property, and it calls for special measures by states for this purpose.

The subject of cultural and intellectual property rights is now undergoing a thorough and separate study by the Chairperson/Rapporteur.²¹ The study is expected to result in the drafting of separate principles and guidelines for the protection of "indigenous heritage."

²¹ UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Study on the protection of the cultural and intellectual property of indigenous peoples, by Erica-Irene Daes, E/CN.4/Sub.2/1993/28 (28 July 1993).

Treaty Rights and Border Crossing

One of the most positive and principled statements in the Declaration is the unqualified statement that treaties between states and indigenous peoples are to be observed and enforced. Article 36 reads as follows:

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

This provision would call into question laws in a number of countries, including the United States, that permit the national government to violate, abrogate or ignore treaties with indigenous peoples without any legal recourse whatever. In most countries indigenous people have no legal remedy when the government violates treaties or other agreements. Treaties and other such agreements are also the subject of a long-term study under the direction of one of the members of the Working Group.²²

Border-crossing rights are also declared. Indigenous peoples often find that international borders have been created by others that divide a single indigenous people. This results in hardships and broken families. Article 35 provides that indigenous peoples divided by international borders have the right to develop contacts and activities for most purposes across borders. This implies that there is a right to freely cross international borders and to take goods freely across borders for "spiritual, cultural, political, economic and social purposes."

Implementation

Part VIII contains a number of detailed provisions calling upon states to take action to give effect to the provisions of the Declaration. Such actions are to be taken in consultation with indigenous peoples and must include national legislation that makes it possible for indigenous peoples to actually exercise and enjoy the rights set out in the Declaration. (Article 37) Indigenous peoples are also declared to have the right to financial and technical assistance from states and international bodies for political, social, economic, cultural and spiritual development and for enjoyment of the rights in the Declaration. (Article 38)

²² The first progress report on the treaty study was submitted in 1993. E/CN.4/Sub.2/1992/32. See Report of the Working Group on Indigenous Population on its eleventh session, above at note 1.

Another implementing provision calls for access to fair procedures for settling disputes between states and indigenous peoples. This article (39) requires that states provide effective remedies for all infringements of individual and collective rights in the Declaration. Finally the UN itself and its agencies are called upon to provide assistance in realizing the rights in the Declaration, and the UN is directed to create "a body at the highest level with special competence in this field and with the direct participation of indigenous peoples." (Article 41) This particular action may be undertaken independent of the Declaration. The World Conference on Human Rights in Vienna in 1993 recommended that the UN create a permanent forum for indigenous peoples in the United Nations, and the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted a recommendation in 1993 calling, among other things, for the UN Secretary-General to consider establishing such a forum as soon as possible.

Minimum Standards

One of the important miscellaneous provisions in Part IX is the following:

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

This section has far greater significance than first appears. One purpose of the provision is to establish that these rights are the rights that all indigenous peoples are entitled to as a minimum. This article is intended to make it clear that the rights in the Declaration are not the only rights or the greatest rights to which indigenous peoples may be entitled. Certain indigenous peoples or peoples in certain countries or in particular circumstances may have or be entitled to other or greater rights, and nothing in the Declaration is intended to limit or detract from any such rights. This point is reiterated in article 44.

Conclusion

The draft Declaration is a powerful elaboration of basic human and social values and fundamental legal principles. It is remarkable for its adherence to principle and its thoroughness. The full meaning of the draft Declaration will become clearer as debate and discussion take place in the UN. Indigenous representatives need to participate actively and directly in all these debates and discussions.

Others who have been involved in the drafting process should be encouraged to give further explanation and analysis of the Declaration's many provisions. In particular,

it would be of great value for the Chairperson/Rapporteur of the Working Group to prepare her own commentary on the draft as a guide for others.

About the author. Robert T. Coulter has been extensively involved in advocacy of indigenous peoples' rights at the United Nations since 1976. He is a lawyer, a member of the Citizen Band Potawatomi Tribe and Executive Director of the Indian Law Resource Center. The Indian Law Resource Center is a non-governmental organization with consultative status with the Economic and Social Council of the UN.

UN DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

As Agreed Upon By The Members Of The Working Group On Indigenous Populations
At Its Eleventh Session - 1993

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

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

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

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

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

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

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

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

institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

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

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

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

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

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

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

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

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

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

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

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

ARTICLES

PART I

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

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

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

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

5. Every indigenous individual has the right to a nationality.

PART II

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

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

7. Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide, including prevention of and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;

(e) Any form of propaganda directed against them.

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

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

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

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

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

(a) Recruit indigenous individuals against their will into the armed forces and, in particular, for use against other indigenous peoples;

(b) Recruit indigenous children into the armed forces under any circumstances;

(c) Force indigenous individuals to abandon their lands, territories or means of subsistence, or relocate them in special centres for military purposes;

(d) Force indigenous individuals to work for military purposes under any discriminatory conditions.

PART III

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

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

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

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

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

PART IV

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

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

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

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

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

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

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

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

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

PART V

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

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

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

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

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

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

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

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

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

PART VI

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

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

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

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

States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands and territories of indigenous peoples.

States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

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

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

30. Indigenous peoples have the right to determine and develop priorities and strategies for the development or

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

PART VII

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

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

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

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

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

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

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

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

PART VIII

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

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

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

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

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

PART IX

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

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

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

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

The text of the draft Declaration is contained in the Report of the Working Group on Indigenous Populations on its eleventh session, United Nations, Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1993/29, (23 August 1993).

Additional copies of this document and further information are available from:

The Indian Law Resource Center

508 Stuart Street, Helena, MT 59601 • (406)449-2006 • FAX (406) 449-2031, or
601 E Street, Southeast, Washington D.C. 20003 • (202)547-2800 • FAX (202) 547-2803.

Media Release

Minister for Aboriginal and Torres Strait Islander Affairs

The Hon Robert Tickner MP

Wednesday, 27 July 1994

NEW IMPETUS TO UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLE

Australia No Longer a Lone Voice

The adoption by the United Nations of a Declaration on the Rights of Indigenous People is now far more likely following strong support given to the initiative by the United States of America, the Federal Minister for Aboriginal and Torres Strait Islander Affairs, Robert Tickner, said in Geneva today.

Mr Tickner is in Geneva representing the Australian Government at the United Nations Working Group on Indigenous Populations which has formulated the Draft Declaration prior to the consideration of the Declaration by Governments and its further passage through the processes of the United Nations.

Mr Tickner said, "Over the past four years I have been attending this forum, the Australian Government has largely been a lone voice at the UN Working Group in its strong stand in support of the international recognition of the rights of indigenous people.

"In an address to the Working Group yesterday I have urged that the Draft Declaration now be urgently considered by Governments and progressed to adoption in its final form by the General Assembly of the United Nations during the International Decade of the World's Indigenous People to be launched on 10 December this year.

"I also urged that representatives of indigenous people continue to be involved in the drafting of the Declaration.

"I announced to the Working Group that Australia would again take the lead on this by formally proposing the continuing involvement of indigenous people at the Commission on Human Rights when it meets in Geneva in 1995. Australia's lead on this issue was greeted with unprecedented applause by indigenous people attending the Working Group.

"There is no doubt, however, that the stance taken yesterday at the Working Group by the Clinton Administration in support of the Draft Declaration adds a significant new impetus to the consideration of the Draft Declaration by the United Nations.

"The US Government's statement to the Working Group has confirmed that the Clinton Administration 'supports the basic goals of the Draft Declaration'.

"The US Government has confirmed that it is determined to work with other Governments to ensure a strong and useful Declaration that recognises the rights of indigenous people and promotes dialogue, negotiation and cooperation between Governments and indigenous people.

"The US Government is now on the UN record confirming that there were no insurmountable obstacles to the adoption of a strong Declaration," Mr Tickner said.

Following the meeting of the UN Working Group in Geneva Mr Tickner will travel to the United States to hold high level discussions in Washington with representatives of the Clinton Administration on indigenous issues.

Mr Tickner will then meet with US indigenous representatives and travel to Arizona, New Mexico, and Oregon visiting Indian Reservations, before returning to Washington for further talks.

"While Australia must develop its own national responses to indigenous issues we can learn much from comparable democracies such as the United States, Canada and New Zealand as we seek to advance the reconciliation process and to address indigenous aspirations."

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NOTE: A copy of the United States Government's statement to the Working Group is attached.

***Observer Delegation
of the Government of the
United States of America***

STATEMENT TO THE WORKING GROUP ON INDIGENOUS POPULATIONS

Geneva, 26 July 1994

As many of you know, the Clinton Administration is deeply committed to the promotion and protection of human rights, both at home and abroad. Unfortunately, indigenous people have too often been subject to serious abuse and often lack the means to ensure that their governments recognize their human rights, including their right to dignity and full equality.

The members of the Working Group on Indigenous Populations should be congratulated for the substantial time and effort that they have put into preparing a document that is worthy of the proud heritage of indigenous people throughout the world. The chairperson of the group, Mrs Erica-Irene Daes, deserves special praise for her organizational role and her substantive contributions to the promotion of the human rights and cultural heritage of indigenous people.

My government strongly supports the basic goals of the draft declaration. We are determined to build a relationship with indigenous people in the United States based on recognition and respect for their cultural identity, and acting in partnership and consultation with tribal governments.

We are determined to work with other governments to ensure a strong and useful declaration that recognizes the rights of indigenous people, and that promotes dialogue, negotiation and cooperation between governments and indigenous people.

At the same time, certain provisions of the draft declaration appear to be potentially problematic. We believe these issues should be discussed and can be resolved. None of them appears insurmountable. None of them should hinder the adoption of a strong declaration on the rights of indigenous people.

The United States can offer a working model of how these rights can be recognized and implemented. Since the 1970s, the U.S. Government has supported the concept of self-determination for Indian tribes and Alaska Natives within the United States. In our domestic context "self-determination" means recognizing tribal self-governance and autonomy over a broad range of issues. This is a positive development, which reinforces the status of indigenous people within an existing state. The uniqueness and importance of our policy of self-governance was highlighted by President Clinton when he spoke to tribal leaders at the White House on April 29. In his words:

"In every relationship between our people, our first principle must be to respect your right to remain who you are and to live the way you wish to live. And I believe the best way to do that is to acknowledge the unique government-to-government relationship we have enjoyed over time. Today I reaffirm our commitment to self-determination for tribal governments. I pledge to fulfill the trust obligations of the Federal Government.

"I vow to honor and respect tribal sovereignty based upon our unique historical relationship. And I pledge to continue my efforts to protect your right to fully exercise your faith as you wish."

These are powerful words and we want to explore how this concept of self-determination might be translated into international terms. This means moving the draft declaration farther along towards eventual adoption by the UN General Assembly. Accordingly, we urge that the Sub-Commission on Prevention of Discrimination and Protection of Minorities review the draft and refer it to the 1995 session of the Commission on Human Rights. In this manner, perhaps it may prove possible to adopt the declaration during the early years of the International Decade of the World's Indigenous People.

We are committed to working with other governments, members of the Working Group, indigenous representatives, non-governmental organizations, and other interested parties, to achieve a solid document that advances the cause of indigenous people's rights everywhere. The sooner that we can begin the better. While our history has not always been a proud one, our future can be.

Thank you, Madame Chairperson.