

# FOURTH WORLD



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IN COMMEMORATION OF THE LIFE AND WORK OF RUDOLPH C. RYSER



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*Grand-Chief George Manuel.*

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### Guest Editors, Commemorative Issue

Waabishka Kakaki Zhaawshko Shkeezhgokwe (White Raven Woman with Turquoise eyes) aka Amy Desjarlais, MA., Wasauksing First Nation, Ojibway/Bodwewotomi Anishinaabe, Toronto Metropolitan University

Leslie E. Korn, PhD, MPH. CWIS Director of Research

Amelia AM Marchand, (Colville Confederated Tribes) M.A., CWIS Board of Directors, Senor Tribal Climate Resilience Liaison, Affiliated Tribes of Northwest Indians

Martha Schmidt, LL.M., J.D. CWIS Board of Directors

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## ON THE COVER

Photograph of Rudolph C. Rýser, Tahola, WA., 2020

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# LUKANKA

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Lukanka is a Miskito word for “thoughts”

Christian W.C. Rýser

This commemorative edition of the *Fourth World Journal* (FWJ) is dedicated to its founder, chief editor, and prolific contributor of over 40 years, Dr. Rudolph (Rudy) Carl Rýser, my father. This special issue is the first of two compilations of selected, previously published works from this journal, from 1984 to 2023, alongside an article from the *Tulsa Journal of Comparative and International Law*, one chapter from the edited volume *Tribal Epistemologies: Essays in the Philosophy of Anthropology*, and the first chapter of his book in progress at the time of his death.

These articles were chosen by a small group of guest editors at the Center for World Indigenous Studies (CWIS), with the intent of honoring his life and work by exploring, in the first issue, the philosophical and theoretical foundations of his written work and, in the second issue, due out in June 2024, the practical application of those ideas to real world challenges.

Rudy imagined the journal as a forum to share, explore, and expand the knowledge in what he and his close friend Dr. Bernard Nietschmann collaboratively and imaginatively termed the “Fourth World”. The “Fourth” is a world to which my father and his colleagues were intimately familiar and belonged. He aimed to create a new framework that allowed us to better understand

and apply indigenous ideas and knowledge than that offered by the state-centric paradigm of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> worlds.

The *Fourth World Journal* began as a humble, dot matrix, soft-cover stapled journal, mailed to tribal leaders and sold in bookstores and coffee shops. Rudy wanted the journal to test the veracity and efficacy of his ideas alongside the experiences of others who during the early years faxed or mailed in their articles from around the world, often reporting about little-known peoples, events, and atrocities. Gaining readership was not an easy task, as many ideas and analyses appeared either ancient or novel at first glance, and even revolutionary (anarchic as one academic asserted) or illegal, to the uninitiated and unfamiliar. Bridging that gap with a clear understanding between reader and writer across cultures and worlds, especially the chasm between the academic and the “bush”—as he would often say, required an exact blend of savvy, tact, patience, and humor. He employed all these skills with great aplomb.

When I was seven, he began assigning me research tasks to complete, calling me his “first intern.” I compiled clippings from Indian Country newspapers on the office floor and puzzled over the magical complexities of the white man tools—

Compaq portable computers, word processors, alongside the developing networks of intertribal file sharing. For years, I traveled with him to reservations and sat by his side at the countless strategy meetings and tribal gatherings that defined his work and my childhood. I watched and listened, offering my perspective only if asked.

My childhood home was—like many Indian homes—always open, welcoming, and filled with extended family from the Fourth World stopping by for a meal or staying overnight. It was also an ever-evolving office filled with a deeply rooted sense of purpose, serving as a hub for council planning sessions and those seeking refuge from a violent conflict.

I remember when the term “indigenous” was first introduced as an alternative to “Indian.” I was sitting at my father’s side at one of many meetings of Pacific Northwest tribal leaders. Like many of our previous informal gatherings, we met at Shari’s restaurant over deep-fried oddities sometime in 1972. We were well into the Indian Fish Wars when Indian people fought northwestern cowboys over fishing rights. Words like “sovereignty” and “self-determination” became quickly defined by rifle shots across the bows of purse seiners, skiffs, and canoes. There were many in attendance on this afternoon, and I recall Joe Delacruz of Quinault, Kenny Hansen of Samish, Russell Jim of Yakama, Grand Chief George Manuel of Secwépemc, and Barney Nietschmann, who had flown up from the University of California, Berkeley, sitting around the table.

Amidst the din, my father posed a curious question. “What is one thing all Indians can’t stand?” It was asked rhetorically and with a playful, yet serious, hint to comment on the overcooked deep-fried mushrooms: “Horrible!” “Disgusting!” “Outraged!” All agreed in their mutual distaste; and the table asked the waiter to return the mound of hard-fried fungus to the kitchen. “Well, that’s clear. We’re all indignant in the face of such injustice!” he continued. The table roared with laughter. “A whole table full of indigenous indignants!” Thus was a term of reference born with dual meaning. They continued to scheme and plot how to mask their outrage and indignation by using the word “indigenous” as a “thought bomb”, and introduced it as a rider into all subsequent legislation and communiques.

The term indigenous was codified later at the Port Alberni meeting when the World Council of Indigenous Peoples organized in 1975. In 1979, my father founded CWIS at the request of Pacific Northwest tribal governments. Initially it served as a documentation center and evolved into a global research and education non-profit of activist scholars. He spent the next 25 years in Geneva and New York arguing for the correct terms of reference (and capitalized letters!) addressing the rights of Indigenous Peoples.

Rudy’s contribution to global Indigenous and Fourth World Studies has been far-ranging and influential, spanning international relations, political science, policy, governance, law, indigenous ecological knowledge, geography, food sovereignty, tribal epistemologies, and culinary pedagogy. His publications and papers number

in the thousands. In choosing the articles for this first issue, we identified a selection reflecting the evolution of Rudy's thinking over time, while also exploring some of the breadth of his topic areas. Our collective intent is to give shape to his extraordinary curiosity, imagination, focus on the nuance and specificity of language, and sense of purpose in his body of written work.

“The pen is mightier than the sword” held significant meaning for him, both for its nonviolence (he was a conscientious objector during the Vietnam War) and as a reminder of the transformative power of language to light a path toward understanding, balance, justice, and fairness. He always chose collaboration and rational debate to reach creative solutions when confronted with injustice, outrage, and violence, which Fourth World Peoples all too commonly experience.

His life as a writer took many forms. When he was an undergraduate at Washington State University, which he attended on a full Bureau of Indian Affairs scholarship, he sat in his first tribal meeting, at which a Colville elder asked, “Who writes English?” He did, and was thus tapped to serve as a scribe. From this moment, he considered his work to translate “English into English.” In the early days of the journal, he experienced a shortage of colleagues with whom to exchange his ideas, leading him to develop three *noms de plume*. You'll find an example in this collection: Bertha Miller—with whom he enjoyed a good debate over many years!

When asked to contribute my *lukanka*, (the Miskito word for thoughts), I accepted, feeling the weight of the task that would stretch my heart and mind. I believe my father would have wanted me to share in the spirit of *lukanka* and provide a small window of personal insight and story into his work and life so that others may read his work with a greater sense of how personal the Fourth World is to all who live it—especially to one like him, who's life work helped shape it.

Below, I share some comments to orient the reader about the articles in this issue.

### **Indigenous Nations & Modern States: Introduction**

This introduction to Rudolph Rýser's seminal book on Fourth World geopolitical power structures, *Indigenous Nations and Modern States: The Political Emergence of Nations Challenging State Power*, reflects on how personal identity influenced his early political and diplomatic thinking and skills, and provided the genesis for what is now known as government-to-government relations between Nations and States. He discusses how his work with the American Indian Policy Review Commission in the 1970s led him to confront the oxymoronic and dubious “dependent domestic sovereign” status imposed on Indian Nations by the US while attempting to answer the commission's question, “What is the political relationship between Indian Nations and the United States?”

The resulting collaboration and consultation with Onondaga Chief Oren Lyons, Quinault President Joe Delacruz, and Barney Nietschmann from the Department of Geography at the University of California, Berkeley, among many others, led to the development of “a new general theory of international relations and new modalities and institutions for international collaboration to resolve disputes between Nations and between Nations and States—to affirm the political identity and status of Indigenous Nations.”

### **Observations on ‘Self & Knowing’**

“Observations on ‘Self & Knowing,’ “ published in a collection under the title *Tribal Epistemologies*, edited by Helmut Wautischer, is an intimate and personal inspection of the influence that cultural identity in the form of “Cowlitz Consciousness” links to and affects how the structure, meaning, and makeup of self become known. Using metaphor and comparative analysis, he introduces “Weaving the Braided River” as a way of knowing one’s self and cultural identity as a “relationship between people, their natural environment and the interpretation of the cosmos.” This chapter is one of my favorites, written while he lived with the people of La Comunidad Indígena de Chacala and in the village of Yelapa. It was a remarkably peaceful and reflective time in his life, allowing for deep introspection and imagination. His language is poetic and expansive, observing and expressing the very personal nature of the braided path toward self-knowledge.

### **Conjoining: The Reawakening to Spiralism from the Age of Progressivism**

“Conjoining: The Reawakening to Spiralism from the Age of Progressivism” is a companion piece and a continuation of the ideas expressed in “Observations on ‘Self and Knowing.’” Elaborating on philosophical differences as competing “modes of thought,” Rysér expands on how mental and spiritual constructs “mediate relationships between all manner of things in the Living Universe” and that “Spiralism comprehends the totality of the Living Universe in both its material and immaterial forms and unifies knowledge instead of separates it.” He entertainingly expresses these complex relationships through an old Cowlitz story about how great mountains can be explosive yet remain related.

### **The Rules of War & Fourth World Nations**

“The Rules of War & Fourth World Nations” is one of Rysér’s earliest publications, outlining the basis for international government-to-government relations between Indigenous Nations and States to mitigate violence and genocide against the Fourth World. He carefully deconstructs the Geneva Conventions of 1949 from a Fourth World perspective, allowing that “Indigenous National initiatives in the international arena are essential to the changing of violent conditions which surrounds them.”

He asserts that “only the changes and additions to the 1949 Geneva Conventions and the World Bank’s new Indigenous Nation’s policy may be said to have significance in elevating the political status and strategic importance of Indigenous Nations.”

This is foundational in understanding Rýser’s approach toward strategically applying sovereign rights toward conflict resolution from a Fourth World geopolitical standpoint.

### **The Legacy of Grand Chief George Manuel**

As a tribute to his friend, collaborator, and brother in spirit and mind, Grand Chief George Manuel, Rýser reflects on their life and work together in “The Legacy of Grand Chief George Manuel.” He recounts the process and path from the community and tribal organizations toward Fourth World solidarity undertaken as George Manuel forged the National Indian Brotherhood.

George worked “from the ground up” to implement the international government-to-government strategies he and Rýser envisioned. Rýser led the development of the global function of the National Congress of American Indians (NCAI) and encouraged George and Mel Tonasket of the NCAI to enter into international agreements. Thus, government-to-government relations between Fourth World Nations were established with the imprimatur of the largest coalition of tribal governments in the United States of America. The movement toward global indigenous networks gained momentum, leading to the creation of the World Council

of Indigenous Peoples, which was made up of representatives of Fourth World Nations and was formally established with Chief Manuel as its first President. This heartfelt tribute is a testament to Rýser’s storytelling abilities, humility in service to friendship, and the weight of the greater good.

### **Rights of Distinct Peoples**

Written under the *nom de plume* “Bertha Miller,” Rýser’s “Rights of Distinct Peoples” walks us through the history of the United Nations’ Commission on Human Rights and the formation of the World Council of Indigenous People in 1977, with a specific focus on the General Assembly’s 1992 Draft Universal Declaration on Indigenous Peoples to which he was a significant contributor.

“Fourth World Nations will not be denied the right to freely determine their political, economic, and social future. The Draft Universal Declaration on Rights of Indigenous Peoples could have a profound effect on political relations in the world, and perhaps by having terms agreeable to both Nations and States, a more peaceful world will emerge.” Rýser spent the next 30 years refining the language and developing mechanisms to implement the declaration, which he later identified as the missing piece to actualizing the intended vision.

### **Between Indigenous Nations and the State: Self-Determination in the Balance**

Initially published in the *Tulsa Journal of Comparative and International Law*, in “Between Indigenous Nations and the State:

Self-Determination in the Balance” Rysler develops the foundational background and arguments for self-government for tribal communities in the United States. In part two, he explores further the application of the policy and strategy that he was instrumental in developing, its practical outcomes, and the progress experienced by the initial members of the Tribal Self-Governance Demonstration Project toward sovereign self-government by the Quinault, Lummi, Jamestown S’Klallam and Hoopa nations. In identifying the context of changes in the domestic political dynamics to the international, he asserts, “The transition of these Indian Nations from non-self-governing to self-governing peoples will undoubtedly have a direct impact on changing political relations between Indigenous Nations and States long into the future.”

### **Who are Original Peoples?**

The final article in this collection is from Rysler’s book-in-progress at the time of his death where he devoted his attention to the environment and the concerns of his later work, what he called biocultural collapse. Recognizing that the remaining world’s resources are in Fourth World territories, Rysler focused on developing mechanisms for accountability now that resolutions and policies like Free, Prior, and Informed Consent have been codified. This first chapter (of three completed) lays

the conceptual groundwork for strengthening indigenous governments’ self-determination and their ability to negotiate with transnational corporations and state governments around their increasing incursions to extract natural resources, which inevitably leads to environmental degradation.

Thus, this final article weaves full circle the major themes of Rysler’s career: identity, culture, geography, and self-determination, as it also lays the roadmap for issue two (forthcoming June, 2024), which focuses on strategy and tactics for implementation. Rysler’s opus was influenced by Chutupalu leader Hin-mah-too-yah-lat-kekt’s wisdom: “The earth and myself are of one mind. The measure of the land and the measure of our bodies are the same.”

Dr. Rudolph Carl Rysler; Rudy, father, son, husband, grandfather, cousin, uncle, brother, friend, colleague, author, teacher, and my dad, passed into the spirit world late in the evening on Oct. 9th /10th, 2023, a day now reclaimed as “Indigenous Peoples’ Day” in the United States. As a testament to his always impeccable timing as a teacher, pointing out a curiosity or mystifying irony, he traveled to the spirit world on a day named for him in many ways. “Never take the serious all too seriously,” as he would often say. He walked to the happy hunting grounds fearlessly and gracefully, showing us the way, as all true leaders do.



## In Commemoration of the Life and Work of Rudolph C. Rýser



Dr. Rudolph Carl Rýser was born in Elma, Washington, in 1946 to Ruth Gilham and Ernst Ryser as the youngest of eight children in Chehalis territory and with an extended family of twenty-two in the Obi family of the Quileute Tribe. He grew up in Ocean City, a town of 150 people just south of the Quinault Indian Reservation. He grew to maturity in the Cowlitz Indian culture on the US Pacific Northwest coast and is of Cree/Oneida descent on his mother's side and German-Swiss descent on his father's. He is Bear Clan.

Rudy was loved by all who knew him: a warm, loving, and generous spirit who gave his time and knowledge to help anyone who asked. He was a philosopher, author, educator, musician, and inventive chef. Rudy was a humble person

who practiced servant leadership to support individual and indigenous peoples' self-determination. He offered strategies and ideas to advance social justice that were often decades ahead of their time. He always worked collaboratively to support others without seeking any personal gain or limelight, save social change in service to indigenous self-determination.

For more than fifty years, he worked in Indian Affairs domestically and internationally. He began his career as economic development director at the Quileute tribe. He later served as a specialist on U.S. government federal administration of Indian Affairs on the American Indian Policy

Review Commission (A joint U.S. Senate/House Commission established to study U.S. and tribal policies). He authored the Federal Administration Task Force Report issued to the Commission in 1976.

He was the Executive Director for the Small Tribes Organization of Western Washington, established by twenty-three tribes to support recognition, community development, and organization. In 1979, he began serving as the Special Assistant to the World Council of Indigenous Peoples President George Manuel. He was appointed Acting Director for the National Congress of American Indians in 1983.

Rudy was a senior policy advisor and speech writer to numerous tribal leaders in the Pacific Northwest. He worked closely with his Yakama Taidnapum brother, Dr. Kiaux (Russell Jim), on the Nuclear Waste disposal project in Yakama Territory. He conceived of and developed the strategy for tribal self-government and, together with Joe DeLaCruz, President of the Quinault Nation, provided the genesis for tribal “government to government” relations with the United States government.

From 1987-1990 Rudy chaired the Puget Sound Task Force on Human Rights convening on hate crimes committed against African Americans, Asians, Jews, American Indians, Women and the LGBTQI community.

Dr. Rysér is widely recognized worldwide for the development and application of the field of Fourth World Geopolitics and is the author of the seminal book *Indigenous Nations and Modern*

*States: The Political Emergence of Nations Challenging State Power* (2012). As an author and scholar, he published and edited numerous books, monographs, encyclopedia articles, and papers in law and policy journals and helped his students and mentees publish.

At the time of his death, he was participating in a documentary series called *Pathfinder: The Untold Story of the Indian Business*, which tells about the Indigenous self-determination movement since 1950, and he was writing a book about his grandmother and grandfather’s ancestors who had also been translators and treaty makers in the 16<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup>, and 19<sup>th</sup> centuries, following contact by settler-colonists.

Rudy contributed to policies and laws affecting American Indians and indigenous peoples internationally, contributing for more than 25 years to developing the U.N. Declaration on the Rights of Indigenous Peoples (UNDRIP), the U.N. World Conference on Indigenous Peoples. Following UNDRIP, he established the International Covenant on the Rights of Indigenous Peoples to address UNDRIP limitations. The ICRIN has been ratified by numerous Indigenous nations worldwide.

At the time of his passing, Rudy was engaged in establishing and applying protocols and procedures for the accountability of UNDRIP statutes. His work established an accountability framework for Free, Prior, and Informed Consent. His environmental work included leading an indigenous peoples working group contributing to the United Nations’ Convention on Biological Diversity’s Conference of the Parties, as well as

addressing efforts to stop extractive industries on Indigenous peoples' territories.

His work internationally began in the 1980s when he worked with the peace negotiations team to protect the Miskito, Suma, and Rama peoples during the Nicaraguan War and actively engaged North American Indigenous communities in global self-determination efforts. He traveled to Ghana to support traditional healers for the AIDS epidemic, helped Biafra establish their government in exile and worked for several years to help establish the Ezidikhan government. He worked directly with First Nations communities in Canada to help them protect their land rights and resources and with Aboriginal peoples in Australia. His most recent work was collaboratively establishing the Nations International Criminal Tribunal and coordinating agreements between Indigenous nations and state governments to address war crimes against Indigenous peoples.

Beginning in the 1980s, Rudy worked with undercover researchers to document the rise of the Anti-Indian movement on Indian reservations. He was a gifted prognosticator, identifying the downfall of the Soviet Union two years prior and predicting the rise of the far-right nationalist movement taking hold in the US Congress 40 years in advance. He had a keen, extensive

knowledge of the complexity of world geographical and political dynamics.

Rudy was a natural educator: he taught at numerous universities and colleges. He was known as the teacher's teacher — for his eloquent speech giving and his commitment to mentoring students as future leaders and activist scholars. He was an Indigenous foods chef specializing in authentic cultural cuisines, authoring the book, *Salish Country Cookbook*. He received the 43rd Annual Human Rights Award, United Nations Association in 1986.

He received his PhD. in International Relations in 1996 from the Union Institute and University, where in 2020, he received the Distinguished Alumni Award. He was nominated for the Grawemeyer Award for Ideas Improving World Order and was a 2012 Fulbright Research Scholar for the Contribution of Indigenous Knowledge Systems of West Mexico to Food Security and Adaptation to Climate Change.

He is survived by his wife and colleague of thirty years, Leslie Korn; his sons Christian, Jon, and Morgan; granddaughters, Anastasia Ryser and Aliyah Ryser; sisters April, Betty, Marge, and Barb; and numerous loving nephews, nieces, friends and colleagues.

# Indigenous Nations & Modern States

## Introduction

By Rudolph C. Ryser, PhD

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The conduct of international relations is one of the oldest of social arts. It demands of individuals who will practice the disciplines of tact, discretion, poise, and finesse a special commitment and understanding of one's own culture and the cultures of other peoples. Other than holding a doctorate in international relations, my true foundation for this work is in my family heritage. I am a descendent of a long chain of Fourth World diplomats—a chain that extends to the 17<sup>th</sup> century when the kingdoms of France and the United Kingdom first set out to claim trade routes and wealth in the three rivers region of where the Algonquin, Abenaki, Five Nations Confederacy of Haudenosaunee and the Missasaqua nations had long lived. Important branches of my ancestors became cross-cultural diplomats mediating the often differing economic, social, cultural and political interests of the Kingdoms, their business colonies and the interests of nations who at first believed the small numbers of merchants, fur traders, slaves, and indentured servants to be a benefit to them.

My father's family of farmers follows a single strand to one location in Bergdorf, Switzerland, extending well before the Swiss Confederation of the 13<sup>th</sup> century. My mother's family is rooted in North America, and the Orkadian Islands off the northern coast of Scotland. This family branch contains more than 350 years of diplomatic history, helping to define the relationship between nations in North America, France, England, and eventually Canada and the United States. This history begins with my 17<sup>th</sup> century grandmother, Isabell Montour.

Isabell Montour (1667-1752) had a French father from Cognac named Pierre Couc and a mother from Weskirini or Montagnais (Algonquin people), the first of the extraordinary diplomats in my family. She and her family were involved in fur trading during the early 1700s to Fort Mackinac and Detroit (then a trading post) and Albany (also a trading post). Her brother Louis Montour (the source of their last name remains a mystery) served as a trade interpreter and negotiator between the French and various Indian nations. When the French Governor discovered that Louis Montour had been negotiating agreements beneficial to the English (in Albany), he directed that a gunman assassinate Louis. Like her brother Louis, Isabell was employed first by the Governor of New France to negotiate trade treaties with the nations in and around the three rivers (Trois-Rivières, as the French referred to the rivers) area. When she learned that the Governor had her brother killed in 1711, she shifted her talents from the French to the English colony of New York, where Governor Robert Hunter was

only too happy to have her extensive knowledge of the Indian nations and multiple languages (she spoke English, German, Algonquin dialects, Haudenosaunee and French) serve his government. She advised preparing speeches and messages to be delivered to sachems representing the various nations. Kenneth Steele and Nancy Lee Rhoden describe my 18th century grandmother in their book *The Human Tradition in Colonial America* as “a complex and multi-faceted individual who moved easily between native and settler communities, facilitating informed communication between different cultures.” She was instrumental as a cross-cultural diplomat in mediating trade arrangements and preventing violent conflicts between the nations and the English. So important were her abilities and successes that the New France Governor tried mightily to acquire her services, but she held a bitter taste in her mouth for the French as the killers of her brother. She was fully committed to working with the nations and the English.

My grandmother Isabell had been married three times. The last was Carondawana (meaning Big Tree) (1670-1729) a warrior for the Oneida who at the age of 59 was killed during a battle with the Catawba during the War that grew out of a treaty between the Five Nations and the Tuscarora between Haudenosaunee considered a threat by the Catawba. She moved to the Susquehanna River Valley and became the most influential resident of Otstuguay after the death of her Oneida husband. Carondawan

and Isabell (while living in Albany) bore a son named Sattilehu. He became known to the British and historians by his English name, Andrew Montour (1710-1774), and as he grew to manhood, he took up his mother’s profession as a cross-cultural diplomat. He learned several languages from his mother (French, English, dialects of Algonquin, Lenape, Shawnee, Oneida, and other languages of the Haudenosaunee). He also traveled with her on numerous diplomatic trips to Philadelphia, Albany, and Detroit.

Sattellihu was my 18th-century grandfather who served as interpreter, negotiator, and mediator for the Six Nations Confederacy, the Delaware Nation. On behalf of the Pennsylvania Colony, he worked with Conrad Weiser, Croghan, and Trent to negotiate trade and peace treaties. He sided with the English during the French and British War (1754-1763), working for the colonial governments of Pennsylvania and Virginia. George Washington, a young volunteer officer for the British, gave him the rank of Captain during the losing battle against the French at Fort Necessity (1754). He was one of the few Indians to travel with General Edward Braddock, the British commander in chief for North America, during the beginning of the French and British War. The Indian nations of the Ohio River Valley placed such trust in Sattellihu as a mediator and interpreter that they made him a sachem in the council. This new role caused the French Governor of New France to consider this a hostile act and subsequently put a bounty on Sattellihu’s head.

Sattellihu's children followed him into diplomacy, with his son John becoming an interpreter and negotiator for Virginia Colony, and his son Nicholas moved to Quebec when the United States was declared. Nicholas Montour helped found the Northwest Company, which eventually merged with the Hudson Bay Company. Nicholas Montour's daughter, Elisabeth Montour, became an interpreter and mediator in negotiating fur trade agreements with the Cree and Misisagau. Her daughter Charlotte Bird followed in her footsteps to become an interpreter and mediator. She married John Flett, son of an Orkadian father and a Cree mother. John Flett and Charlotte both spoke several native languages as well as English. In 1841, while in their mid-20s and with four children in tow, they were chosen to join the Sinclair Wagon Train traveling the 1700-mile wilderness from the Hudson Bay Company Red River Colony (now Winnipeg, Manitoba) to the Nisqually in the Oregon Territory. John Flett served the Hudson Bay Company and eventually the United States government as an interpreter and mediator, negotiating treaties with nations along the Pacific Coast from 1844 to 1850.

I grew up in southwest Washington State in the Taidnapum-Cowlitz culture, only having a slight inkling of my Cree, Orkadian, Oneida, and Algonquin heritage, and certainly little of my family's historic role in the diplomatic history of North America. I was and am fully Taidnapum in my identity since that is the culture in which I grew to adulthood. My interest in cross-cultural diplomacy came to

me naturally as I entered Indian Affairs as a matter of lifestyle and eventually as a profession working for the Quileute Nation, Quinault Nation, Colville Confederated Tribes, Yakama Nation, and numerous other nations. When asked to explain my profession, I would say, "I translate English into English." By this, I meant I interpreted the ideas and views of native leaders and communicated them to US representatives through written policy papers, proposed legislation, and historical analysis. Indian governments sought my help in negotiations with the United States and later talks with the United Nations and a wide range of governments, including Canada, Germany, Australia, Denmark, China, and Bolivia.

My interest in the political development of indigenous nations grew from my work with the American Indian Policy Review Commission in the mid-1970s. The Commission addressed a wide range of topics, but one very specific topic was handed to me. Commissioners wanted to know what might be the "alternative elective bodies" that Indian nations might form to facilitate their participation in the formulation of US government policies toward those nations. I consulted with Onondaga Chief Oren Lyons, Quinault President Joe DeLaCruz, and many other Indian leaders, as well as historians around the United States. I was puzzled by the tendency of all those with whom I sought advice to describe Indian nations in legal or anthropological terms. Since the question I was handed actually had to do with the political capacity of Indian nations, I was surprised to discover that none of my

informants could offer useful advice except to say that there would be an answer “sometime in the future.” Essentially, that is the report I gave the Commission after months of inquiries.

As I came to the end of my research and while writing my report to the Commission, I had the sudden realization that the question remaining unanswered was the question unasked: What is the present and future political status of Indian nations in relation to each other and in relation to the modern state? It was impossible to determine how Indian nations might form various political structures without knowing the political identity of Indian nations, generally and specifically. At the time, no one knew the answer to this question. Until that point in my thinking, the only definition of Indians was that they “are unique tribes and communities” protected by the United States government under a legally defined Trust Relationship confirmed by the US Supreme Court. I wondered if other peoples in the world had similar relationships to a government, and I could find none. I guessed, “Indian tribes are truly unique.” I was wrong.

It seemed to me that the question about “alternative elective bodies” raised by the American Indian Policy Review Commission was left unanswered as a result of my report. It proved to be only a “starter question.” “What is the political relationship between Indian nations and the United States,” I began to ask as the added question. I probed the question historically and legally and found that nowhere in the literature (either original documents or published works) did anything say that Indian nations had become

part of the US federal structure—they were, indeed, part of the United States of America. All I could find, other than writers who assumed Indian nations were part of the US, was that Indian nations had treaties that placed many (but not all) Indian nations under “the protection” of the US government, but not one treaty ever directly or indirectly suggested Indian nations would be part of the United States. My conclusion was that “Indian nations and their territories remain politically outside the political structure of the United States of America.”

I examined relations between Indian peoples and Canada and found the same political condition: Indian nations remained outside Canada’s political structure. In Australia, Mexico, and countries worldwide, I found indigenous peoples remaining outside the political structures of federated and unitary countries. However, they were “assumed to be under the control of the state.” There emerged in my mind a pattern suggesting that American Indians, Indians in Canada and in Mexico, and indigenous peoples in most countries in the world had fallen into a kind of political stasis resulting from colonial globalization begun in the early 15th century. Indigenous peoples were not defined as political communities able to engage in economic, social, and political intercourse on the same level as other peoples. Indigenous peoples were in the 1970s still defined by 19th-century social sciences as “backward” human groupings that would disappear into the dustbin of history. Indigenous peoples, so the prevailing thought supposed, had been replaced by advanced societies, and they were, from that viewpoint, irrelevant.

Throughout the 1970s, I persisted in my drive to understand indigenous nations' political or future political identities even though I lacked the vocabulary to discuss the topic thoroughly. Two things began to change how I was to approach the problem I had defined: 1.) The designation of a social scientist, Martinez Cobo, by the UN Human Rights Counsel to "inquire into the situation of the rights of indigenous populations," and 2.) my discovery of and friendship with Bernard (Barney) Q. Nietschmann, a remarkable geographer at the University of California in Berkeley, California. The UN inquiry into the situation of indigenous populations opened the door for the International Indian Treaty Council in the United States, the National Indian Brotherhood in Canada, and the World Council of Indigenous Peoples to step into the international arena as developing participants in a dialogue that would begin to create a new vocabulary around the subject of "who and what" are indigenous peoples. I joined in the process.

My friendship with Barney was the beginning of a personal dialogue where two men searched for a common language to explain events in the world (the War between the Miskito, Sumo, and Rama and the Nicaraguan government for Barney, and the political identity question for me). Barney and I conducted weekly "telephone seminars" from our homes (he in Berkeley, California, and me in Lynnwood, Washington). We talked at length about specific political and strategic problems faced by indigenous peoples in Nicaragua and in the United States. Soon our discussions widened to include the Aboriginal peoples of Australia, Papua peoples in Indonesia's

West Papua, Chakma in southeastern Bangladesh, Sami in Sweden and Norway, Catalans in Spain, Igbo in Nigeria, and Maya in Belize. We both wrote papers to each other and wondered if there weren't more people we could draw into the dialogue. For over three years, there were but a few men and women in the world we searched for who would or could engage in our discussions.

Barney and I resolved, after several years of meetings, discussions and traveling to different nations in the world together that we should co-write a book that would spell out what we had learned about indigenous nations' political and cultural identities and how indigenous nations remained vital and dynamic relations between peoples. Barney and I concluded that political identity is a product of having a map that describes where your nation is located and results from the conduct of relations with other nations (and in the modern era, with states). In other words, political identity for indigenous peoples is a consequence of understanding indigenous nations' geopolitical positions and activities. A nation assumes a political identity recognized by other nations and states and becomes a political status in relation to other nations and states. I decided that our studies and revelations about the geopolitical character of indigenous nations were a system of thought worthy of a name: Fourth World Geopolitics.

Though Barney wrote copiously, as did I in the 1980s, neither of us could settle on how to write a book about what we called a "moving target." The more we learned about more indigenous nations, the more things seemed to change. No



sooner had we written about one nation and its political decisions and actions, then new choices and actions would present themselves. We continued to observe and write about events as they unfolded in short essays and articles. After more than twenty years of working together and moving toward writing a book, Barney fell ill with esophageal cancer, and within a short time, he died in 2000. His passing was a tremendous personal loss to me, and that loss was compounded when, within months, his wife, Anje, also fell ill and died.

I began this inquiry alone with my thoughts, and now, more than thirty-five years later, many thousands of miles traveling and many thousands of hours closely observing indigenous nations worldwide, I believe I understand what is occurring with the political identity and development of indigenous nations. I now see that indigenous nations are evolving new political forms and many forms of political status, and they are elevating their political importance through interactions with other nations and states' governments. The best way to discuss my conclusions is in this book, a work that heavily depends on Barney Nietschmann's thoughtful, creative, and concise thinking.

It is the duty of an individual engaged in international relations to appreciate and advocate his or her people's global view and be sensitive to the global view of one's neighbor.

In a world of thousands of nations, peoples occupy eco-niches on virtually every continent except Antarctica. Distinct human communities

participate in a global symphony of cultural differences. They are isolated and separate yet interrelated and unified. When separate and isolated human communities encounter one another and begin to carry on relations, structured international relations become an obvious need to a community. At the very beginning of human societies and collectivities, the art of international relations became a human institution- when distinct nations came into contact.

Ancient art as it is, the practice of international relations is a recent vocation arising in the 13th century with the emergence of the Roman Catholic Church as the dominant political reality in Europe (Thompson, 1994 pp. 55-57). The Romans, the Greeks, the Catalans, Friesians, Saxons, the Flemish, and many others had earlier practiced international relations in Europe. The Phoenicians, Israelites, Palestinians, Assyrians, and Persians were, of course, nations engaged in relations with their neighbors, too. In Asia, the Han of China, Mongols, Manchurians, Tibetans, Pathan, Japanese, Koreans, Hmong, Shan, and numerous other nations have engaged in the practice of international relations for thousands of years.

In Africa, the Nubians, Egyptians, Maasai, Zulu, Gambians, Zimbabweans, Ghanaians, and Berber- among the hundreds of nations- engaged in complex relations between themselves and neighboring nations for thousands of years before the 13<sup>th</sup> century. In other parts of the world, unknown to the Europeans before the sixteenth century, systematic relations between

nations had become well-developed over several thousand years. In the Americas, the Mixtec, Haida, Cree, Hopi, Mapuché, Wampanoag, Maya, Haudenosaunee, Quechua, and other nations conducted economic, social, political, and cultural relations with their neighbors. Between the hundreds of nations in Melanesia and island nations in the oceans, vast distances were no obstacle to international relations. The point I believe I am making is that rules of conduct have been evolving due to contact between nations for millennia, and virtually all nations share in experience and responsibility for the art of international relations. Despite this global character of international practices, in the modern era, we have become wholly dependent on one very limited conception of international relations (big power hegemonic control), and those ideas were born from the experience of nations in Europe largely in the 17<sup>th</sup> century.

I do not wish to cast European domination of international relations as good or bad because I do not want to discuss the moral question in the following pages. However, I wish to point out the limitations of Eurocentric conceptions of international relations and emphasize the discussion of international relations, its theory, and its application within a broader conceptual context. By including Eurocentric conceptions of international relations in a global context, I describe the broad outlines of a new general theory of international relations and *new modalities and institutions for international collaboration to resolve disputes between nations*

*and between nations and states—to affirm the political identity and status of indigenous nations.*

### **Where we are standing decides our point of view.**

In the following chapters, I offer a discussion about international relations from the Fourth World perspective, which may seem unfamiliar. What I mean by this suggestion is that the conventional wisdom in politics is that one can achieve more by going with the tide of opinion than going against it. Mine is not the conventional wisdom. I bring to the discussion of international relations a viewpoint that comes from my heritage, the vocation of my ancestors as cross-cultural diplomats and many years of working in the Fourth World.

Throughout the text, I draw on a generation of personal experience in Indian Affairs in the United States and a lifetime of experiences. Overlapping these experiences is thirty years of experience in international relations, representing nations in the growing debate over the position of Fourth World nations in international affairs. My analysis of what is a “nation” and how nations interact with each other and with states is informed by my direct participation in political activities and extensive research in connection with many Fourth World nations throughout the world. The most fundamental perspective is informed by knowledge given to me through the teachings of many throughout Indian Country in North America.

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# Observations On ‘Self’ & ‘Knowing’

By Rudolph C. Rýser, PhD

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Cowlitz is a consciousness of people, place and cosmos that holds within it the notion of eternal changeability. Cowlitz is a mixture of many parts (resulting from generations of contact with neighbors and visitors from great distances). It is a single consciousness (born from countless generations of interaction between individuals, their extended families—including other animals, other plants, waters, stones, mountains, the Moon, the Sun and stars and prairies—and revered ancestors. Shaped like the head of a deer (*mowich*), Cowlitz territory extends from the mouth of the river in the south where live the Spluglamilx and runs north and then east up the river to the mountains where live the Taidnapum—all Cowlitz. A smoke-house people, the Taidnapum of the northern upper head of *mowich* and the Spluglamilx of the southern mouth of *mowich* are bound by the river. The left cheek of *mowich* is Mount St. Helen and the right cheek is made from the Black Hills. The southern base of Tahoma, or what is now called Mt. Rainier, forms the crown of *mowich* and Cowlitz Prairie forms the flat space on the snout. We Cowlitz remain in the place that was first peopled by our ancestors.

The great river flowing from the mountains defines, nourishes and sustains the people, informs them and holds promise or disaster for their future. Living is made up of good and not so good choices taken by the people. While virtually all things change and re-cycle, certainty in the people’s mind comes from experiencing daily differences and repeated reminders of what has already occurred.

Individual personality is only distinguishable from the collective self by virtue of its physical separateness—and that is only illusion itself. The personal self is to the collective self as the upstream waters are to the full rivers below. No part of the river is truly indistinguishable from any other part. One cup of river water is the same as the water passing by. The singular distinction of the cup of river water is the “cup.” The water takes the form of the cup, an elastic attribute that permits adjustment to change. The Cowlitz who lives rightly knows that the superficial differences between the people only give meaning to relational concepts. No significant meaning can be attached to a fractional quantity of water except that it is a part of the whole. It is the totality of water that has meaning.

I use the river’s water as a metaphor for the collective self and the fractional quantity of water as a representation for the “personal self.” It is the relationship, the interdependence, and simultaneous capacity for independence of the self that must be emphasized. These seemingly contradictory

capacities are at the root of knowing. Without this simultaneity life could not exist. It is, therefore, a matter of the greatest respect that one recognizes, is aware of, the relationship between “self” and “knowing.”

This observation has greatest significance for comprehending “knowing” as a consequence of relationships discerned by the self.

### **Fluid Simultaneity and the Sense of Singleness**

When a person stands in the middle of a prairie there sometimes develops a sense of being alone, vulnerable and disconnected. Yet when one is surrounded by trees and other people<sup>1</sup> like *mowich*<sup>2</sup>, the bear and flying things there is a sense of being a part of or joined with all other things. This can be quite the opposite experience if one is born in a place that is open like the rolling lands of western Yupic territory [Alaska]. There one can be alone and vulnerable in the forest. The point remains the same. Yet it is equally possible to be in the open prairie and “lose oneself” in the immensity of things. What accounts for the singular sense and the sense of unified submersion? It can be an illusion or other trick of the mind or it can be the spirit seeing the instance of singleness when there is a separation.

Humans are not the only people who sense this singleness and contrast it with the unified submersion. *Mowich* travels always collectively, even when they can’t see each other. They can look like trees and bushes. They can even pretend to be a stone. In these ways *mowich* is at once itself and also all other things. Still, owing to

a trick *mowich* can be single, a distinct self—vulnerable, at risk. At a time like this *mowich* can give itself to a good hunter whose hunger is surpassed only by a wish to ask *mowich* for its life.

*Mowich* chooses a time when it will give up its life ... exposing its single self. When it remains a part of the whole, *mowich* is not exposed. No harm can come. Like other people, *mowich* exists simultaneously within the “collective self” even as it exposes the single self. When choosing to express the personal self *mowich* is exposed and can offer itself.

The natural condition of things is for people to experience simultaneity; and it is a trick or exercise of will to chose singleness. As a part of the collective self, one is not aware of singleness or its possibility. There is only an awareness of the tensions and inclinations that give rise to change. This awareness is shared among all people. It is a common knowing—a common consciousness. *Mowich* experiences a calm serenity and demonstrates this when it’s tail is not nervous. It’s ears do not turn every which way and it feeds quietly on grass or blackberry leaves.

These qualities can be observed in the salmon too. Throughout its life salmon exhibits a thorough serenity as it travels from its birth

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<sup>1</sup> All beings are thought of as people in different forms in the way of thinking among nations in the Pacific Northwest. Each “people” has a name and an age, and virtually all “people” are older and more experienced than human beings.

<sup>2</sup> This is the word for “deer people” used here respectfully recognizing the proper name.

place, down the river, finally to the ocean. For most of its life, salmon lives in the ocean—a part of the fluid great self—satisfied. Not until it returns to its mother river to gather in cool dimples in the river bottom and then to rush up stream to its birth place does salmon finally expose its singleness. Each individual salmon must challenge the swift stream by jumping and swimming against the down flowing water. Only those with the courage, strength and great power of *tamonowith* will meet the great challenge. Reaching the place of their birth, each salmon then spawns new life—giving up its body and rejoining its spirit with the great consciousness.

Singleness of consciousness is always temporary and fleeting while the collective consciousness is the permanent and perpetual condition of things. All the beings, all the people experience these things just the same.

### **Braided Rivers to Knowing**

Time, space and place animate the great consciousness which fills the universe. At different periods in the brief history of human beings at least five different, but related, modes of thought lead to knowing, the ultimate expression of consciousness—apprehending the living universe. To comprehend the great consciousness one might reflect on these modes of thinking that characterize different kinds of human efforts at knowing. While contemporary thinkers consider most of these different modes of thought as expressions of “more primitive ways of thinking” I suggest that they are all coincident with each other. They are merely streams originating at

different places leading to a common river—fed by the same rain. They are different strands eventually braided as a single cord—some strands in the braid more significant at times, then less significant at other times.

Consider, if you will, the different streams of thought that flow, not necessarily comfortably, into a single river of thought that offers ways of knowing. These are **Cyclicism** (typically a synthesis of Persian, Greek, Nubian and other influences rooted in eastern Mediterranean and Africa), **Cuarto Spiralism** (rooted in the Americas), **Fatalism** (rooted in Asia), **Providentialism** (transformed from the eastern Mediterranean and Africa into Europe), and **Progressivism** (formed in Europe as a synthesis of influences resulting from modern interaction between Europe, the Americas and the Pacific Islands). A brief discussion of each stream reflects the diversity of human cultures over time, and their similarities too, thus presenting a range of ways of knowing.

### **Cyclicism**

The Greek/Persian/Nubian reality of three thousand years ago comprehended a past and a present formed in a great circle. At any time before the present there is a point of the circle that is the past ... usually the remembered past. As time proceeds around the circle one encounters the past and repeats the transactions and events as the present. This mode of thought provided a closed, reassuring and satisfying existence. One could predict the future merely by remembering the past. This cyclical reality proved

quite adequate for the social, economic and political life that grew and flourished across the Mediterranean throughout Africa.

Aristotle reflected the *cyclical reality* in his thinking when he engaged in observations that served as the basis for his scientific, ethical and political commentaries. It was with the certainty of a well practiced marksman that Aristotle asserted in his *Politics* that some people are “born slaves” while others are born to rule and direct slaves. Those who were born slaves, Aristotle reasoned, shall always be slaves and shall produce new slaves because they had always been slaves before. While Aristotle’s claim was propounded as an absolute certainty and his assertion remained a key element in Christian liturgy throughout the ages, his claim is clearly wrong—even though many people still believe what is a patently absurd idea. Still, Aristotle’s idea of “born slave” is a wonderful example of cyclical reality even though it is absurd.

Limiting as cyclical thinking is it remains a potent part of the human intellectual tool- set for comprehending and engaging consciousness. Though not a dominant influence in contemporary thought, cyclicism remains a fundamental stream feeding the contemporary river of thought.

So powerful was cyclical thinking, and so weak were those competing ways of thinking three thousand years ago, it continued to dominate and shape the thinking of all peoples within the reach of eastern Mediterranean influence through to the 18<sup>th</sup> century of the common era.

The Roman Catholic church began to build its fortunes in the 5<sup>th</sup> century of the common era on the intellectual foundations of the Greeks (used here in large part due to the historical bias of the Church, but most assuredly recognizing the profound and dominant influences of the Persians and Nubians) and their successors, the Romans. As the emerging successor to the collapsed Roman Empire and the primary political body with administrative capabilities throughout all of Europe, eastern Mediterranean and northern Africa the Roman Catholic Church proceeded to define a conceptual era that still echoes in *Providentialism*.

### **Cuarto Spiralism**

Students of Mayan literature commonly depict the calendar of these ancient people, the 5,125 year “Great Cycle” as evidence of a mode of thought fundamental to the original middle American and south American cultures. Associating the Mayan mode of thought with cycles where time and space repeat in infinite circles, like the Mayan and the Aztec calendars appear to suggest, is so common among scholars that few have stopped to consider how they may be actually projecting their own cultural templates on to the evidence of Mayan and western hemispheric ways of thinking. Though satisfying to their templates, imposing cyclicism in the context of the western hemisphere tends to conceal the reality of a mode of thought unique in the world.

In an attempt to reveal the underlying character of this distinct mode of thinking, I shift the symbolism slightly from a circle to a spiral. With this change I believe it is easier to apprehend a mode of thought I have labeled “Cuarto Spiralism” or more simply, “Spiralism.” More than any iconographic image the *Hunab Ku*, translated as “One Gives of Movement and Measure,” (Argüelles 1987 Page 52) affirms *Cuarto Spiralism*. This mode of thought takes its name from the infinite repetition of four spiraling arcs, four “cycles” in the Mayan conception of time.

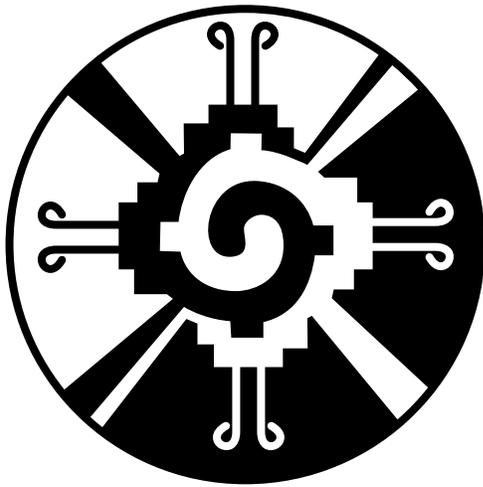


Image of *Hunab Ku*

The *Hunab Ku* symbolizes the ideas: Movement corresponds to energy, the principle of life and all pervading consciousness immanent in all phenomena.” (Argüelles 1987 Page 52)) Though similar to the Yin and Yang of the Tao, *Hunab Ku* is much more. As the symbol

of *Spiralism* the *Hunab Ku* illustrates the interconnectiveness of all life, the four cardinal directions, the four arcs of time and perpetual movement in all directions through space. The past, the present and the future are all represented in the *spiralist* mode of thought. A spiral in space moves outward, inward, forward and backward occupying space and not occupying space all at the same time. Life and death are, therefore two aspects of the same thing. Wholeness and particularity are manifestations of one and the same quality of existence. These are the central attributes of *Cuarto Spiralism*.

*Cuarto Spiralism* predominates as the underlying mode of thought of the many cultures in the western hemisphere recorded in their literature, stories, songs, dances and symbols. Peoples as remote from one another as those living in the Arctic North and those in Patagonia and the Micmac, Cowlitz, Hopi and Kiowa as well as the Mapuché, Yanomami, Aymara, Sumo, Pipil and Zapotec share a common, underlying mode of thought which infuses a wide diversity of cultures.

*Cuarto Spiralism* permits the apprehension of the universe as a whole while giving respect to particularities. The mutuality of respect is the essential glue that connects and separately identifies all parts of the whole, living universe. It is necessarily the case that all aspects of the universe are alive and possessing of the capacity to choose. It is this capacity of the living universe to choose that leaves the future unpredictable and open to surprise.

Describing this concept from the Lakota perspective, Vine Deloria, Jr. writes:

The willingness of entities to allow others to fulfill themselves, and the refusal of any entity to intrude thoughtlessly on another, must be the operative principle of the Universe. (Deloria Jr. 1996 Winter Page 41)

The discipline demanded of each entity to fulfill the obligations of mutual respect establishes yet another level of unpredictability for the future. Failure to achieve perfect discipline would most surely introduce variability and thus alter the quality of choice and the mutuality of respect. It is just this condition of the living universe that drives each entity to learn, to acquire knowledge or as Pamela Colorado says, “...to find...[a] knowledge system in the west that would be capable of ‘carrying the weight of God.’” (Colorado 1996 Winter Page 6).

*Cuarto Spiralism* shapes systems of tribal thought throughout the western hemisphere as a structure that permits aspects of experience that come before to combine with aspects of the present to provide the basis for interpreting the future. Modern Mayan Day Keepers demonstrated their reliance on this structure, on the mode of thought, when they stepped from a cave (January 1, 1994) in the highlands of Chiapas to announce the coming of the end of the fourth cycle and the impending arrival of the “Sixth Sun.” By their interpretation of the sacred texts, the Day Keepers set in motion a series of events that began to transform the Mexican and Guatemalan states and the peoples of the western hemisphere—and beyond. Such a simple

act and the events that followed demonstrates the powerful influence of the *spiralist* mode of thought.

## Fatalism

The overwhelming power of nature and its determinate control over all matters of existence is the view central to *fatalism*, a mode of thought predominant among peoples throughout Asia—particularly those who embrace the influence of Confucianism, Taoism, and Buddhism. Human beings can aspire to and achieve the attribute of “superior man” and perform acts of piety which conform to the “will of heaven.” Acting “rightly” is the goal of *fatalism*, but it is recognition of the “order of things” that ensures achievement of the “superior man.” Confucius (551-479 BCE) is commonly understood to be the primary and most influential exponent of philosophies which form the underlying structure of *fatalism*. “Li,” the term used by Confucius when discussing human conduct in relation to nature suggests the requirement that humans observe true piety and thus make it possible to interpret the “will of heaven” as acts on earth. By virtue of the preeminent order in heaven, a *fatalist* is obliged to “act rightly” to conform to this order, or to discover the path on which to travel to achieve “superior man.”

Confucius always encouraged caution and deliberate care in the pursuit of “superior man.” Where a person is surrounded by disorder, Confucius urges one to be still to take guidance from the orderly nature of things. In his words, quoted by Wilhelm, we can readily see that it is the person who must recognize limitations and await order:



Where disorder develops, words are the first steps. If the prince is not discreet, he loses his servant. If the servant is not discreet, he loses his life. If germinating things are not handled with discretion, the perfecting of them is impeded. Therefore the superior man is careful to maintain silence and does not go forth. (Anonymous 1977 Page 232)

*Fatalism* gives human beings an active role in choosing a course of action, but the greater powers of the “will of heaven” ultimately hold sway.

## Providentialism

Augustine, the powerful and influential fifth century North African Bishop of Hippo, modified the emphasis of classical Greece cyclical thinking to support the liturgical, economic and political needs of the Church even as he affirmed “original sin” and described the place of virtue in the afterlife. Bishop Augustine (A.D. 354-430), bridged what some called the classical era with the beginning of the Christian era and was the father of Christian philosophy and theology. He was also the originator of the idea of Divine Providence.

Through Incarnation, God has given assurance that an elect group will receive salvation. Augustine insists that God is just in condemning the majority for Adam’s sin. However, a few men such as Saul (who become Paul) will be saved “on the road to Damascus.” A small minority will be chosen along with the good angels for eternal salvation. They will constitute the City of God, and will live forever in heaven

in perfect peace and happiness.(Bury 1932, 1955 page 46)

As he incorporated Aristotle’s cyclical reasoning into his own, Augustine proceeded to affirm that salvation would only come at the end of time which he conceived as being virtually the end of his own life—the essence of *Providentialism*. Creating dichotomy as the basis for his analysis,<sup>3</sup> Augustine advanced the,

concepts of self-love and love of God, first, to criticize the pagan political order and especially the Roman Empire and, second, to sketch in the broad outlines of a Christian political order. The two cities are commingled on earth, and mankind will not actually be separated into the elect and the unredeemed until the end of time. (Bury 1932, 1955 page 47)

By the 12<sup>th</sup> century of the present era, *Providentialism* claimed center stage of the Christian world which, by then, had a wide reach over the world. And by the 16<sup>th</sup> century Providentialism, it could be said, claimed predominance. Louis Le Roy, a French translator of Greek classical works, began the process of de-emphasizing *cyclicism* as he claimed the preeminence of Divine Providence:

If the memory of the past is the instruction of the present and the premonition of the future, it is to be feared that having

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<sup>3</sup> The dichotomy often advanced pits feminine “paganism” against “masculine” Christianity resulting in an assertion of masculine dominance.

reached so great excellence, power, wisdom, studies, books, industries will decline, as has happened in the past, and disappear—confusion succeeding to the order and perfection of to-day, rudeness to civilisation, ignorance to knowledge. I already foresee in imagination nations, strange in form, complexion, and costume, overwhelming Europe—like the Goths, Huns, Vandals, Lombards, Saracens of old—destroying our cities and palaces, burning our libraries, devastating all that is beautiful. I foresee in all countries wars, domestic and foreign, factions and heresies which will profane all things human and divine; famines, plagues, and floods; the universe approaching an end, world-wide confusion, and the return of things to their original chaos.” (Bury 1932, 1955 at page 46-47 Quoting Le Roy from *L’Introduction au traité de la confomité des merveilles anciennes avec les modernes, ou traité préparatif à l’Apologie pour Hérodote*, ed. Ristelhuber, 2 vols., 1879. Originally published in 1566.)

Foreseeing the conceptual trap he created, Le Roy quickly affirmed Divine Providence:

“However much these things proceed according to the fatal law of the world, and have their natural causes, yet events depend principally on divine Providence which is superior to nature and alone knows the predetermined times of events.” (Bury 1932, 1955 at page 47 Quoting Le Roy from *L’Introduction au traité de la confomité des*

*merveilles anciennes avec les modernes, ou traité préparatif à l’Apologie pour Hérodote*, ed. Ristelhuber, 2 vols., 1879. Originally published in 1566.)

While *Providentialism* accepted repeating history as a mark of truth, and, indeed claimed for all of Christendom deep roots in “classical Greek culture,” a slightly different wrinkle was introduced: The purpose of all this human activity—“grace” and eternal goodness in heaven. The wealth, the chosen few, were guaranteed a good place in heaven if they led a “good life.” The poor and the enslaved were guaranteed only that they would always be poor and enslaved (thanks to Aristotle), but the privileged need only think good thoughts and occasionally extend a helping hand to those unfortunates to get a seat next to Saint Peter. Like *cyclicism* before it (and along side it, to be more precise), *Providentialism* has continued to wield a strong influence in the daily lives of people all over the world despite the absurdity of its major thesis. While *Providentialism* reached its peak in the late 19<sup>th</sup> century, a competing way of knowing was already in full bloom: *progressivism*.

## Progressivism

The predominant mode of thought in the modern era is *progressivism*. Though it cannot be said that *progressivism* began on a definite date, scholars agree that French Historian Jean Bodin’s (1566) rejection of 16<sup>th</sup> century theory of the degeneration of man and the popular notion of classical Greek virtue and felicity marked a major departure from the views of his contemporaries.

(Bury 1932, 1955 Page 36) Commenting on Bodin's departure and laying out the principle tenets of *progressivism*, Bury notes:

For history largely depends on the will of men, which is always changing; every day new laws, new customs, new institutions, both secular and religious, come into being, and new errors. (citation METHODUS, cap. VII. p.353) But in this changing scene we can observe a certain regularity, a law of oscillation. Rise is followed by fall, and fall by rise; it is a mistake to think that the human race is always deteriorating. If that were so, we should long ago have reached the lowest stage of vice and iniquity. On the contrary, there has been, through the series of oscillations, a gradual ascent. In the ages which have been foolishly designated as gold and silver men lived like the wild beasts; and from that state they have slowly reached the humanity of manners and the social order which prevail today. (Bury 1932, 1955 Page 38).

Avoiding *fatalism* and pushing aside *Providentialism* Bodin attempts to bring human history into close synchrony with the divine universe while affirming the power of man's will over events. (Bury 1932, 1955 Page 43) This conceptual view placed the human being in the dominant role as controller of destiny on earth. As progressive thinking matured with popular adoption of its basic premises it became the foundation of what is widely understood to be "western thinking," due to its association

with western Europe— the successor to the "western Holy Roman Empire." Bodin provided the stimulus for Descartes to formulate his nascent *progressivism* which in turn provided the foundation for Pascal's thinking and the development of the French Jansenist movement (similar to the Puritan movement in England) in the 17<sup>th</sup> Century of the common era. (Bury 1932, 1955 Page 69) The Cartesian formulation of the supremacy of reason and the invariability of natural law struck directly at the foundations of *Providentialism* and established the "supremacy of man" as a major pillar supporting the progressive mode of thought.

With human beings in the seat of power, profound changes in the natural environment, in relations between human beings, conceptions of history, intellectual development and religious concepts became possible. Bury attributes to Turgot the rather modern understanding of "universal history as the progress of the human race advancing as an immense whole steadily, though slowly, through alternative periods of calm and disturbance towards greater perfection." (Bury 1932, 1955 Page 155) *Progressivism* launched potent human movements from the 18<sup>th</sup> Century to the present that spread from western Europe to touch nearly every corner of the earth, virtually every society. The "inevitability" of progress became for many peoples in the industrial world a proven reality as guns, commerce, politics and disease overwhelmed peoples throughout the world and the preeminence of other modes of thought influential among those peoples.

## Weaving the Braided River

In the short span of six thousand years, human beings conceived of numerous modes of thought—reflecting the relationship between people, their natural environment and their interpretation of the cosmos. I have mentioned just five of these different modes and noted that each was comprehended as an infallible way of demonstrating consciousness. No doubt each mode of thought contains infallible truth of ultimate consciousness, but it is apparent from even the brief survey given above that there are aspects of absurdity as well.

Among the modes of thought suggested above, it might be noted that a major difference has to do with the place human beings occupy in the scheme of things. Where humans are perceived to be the dominant and therefore primary determinant of reality, consciousness is presented as a one dimensional concept—wholly dependent on human beings. Consciousness is apparently conceived as a much more multi-dimensional concept where humans are perceived as a part of a greater reality. When one takes all five modes of thought and weaves them together as a single braid the potential for a more thorough comprehension of consciousness in the universe becomes possible.

Tribal diversity reflects the evolved relationship between people, their geography and natural environment and their interpretations of the cosmos. Taken separately, interpretations seem at odds, and may, indeed, conflict. But when one sets aside the apparent conflicts it appears that humans and other peoples (including plants,

minerals, fire, water, winds, and other animals) share a common consciousness within the living universe. Where there are differences in modes of tribal thought one only need recognize “local influences,” or cultural particularities as the explanation. Such cultural particularities are important and cannot be dismissed, but they must be understood to have their unique importance in the specific context in which they appear. Differing cultural contexts help to ensure opportunities for diverse discovery, a constant source of renewal and replenishment. Yet, it is apparent, all modes of thought recognize the common consciousness in the universe.

## Relativity of Self and Knowing

For all peoples, no less for Cowlitz, particular cultural context inspires a sense of existing at the vortex of all consciousness. This is mainly due to the rather limited capacity of humans to comprehend the fullness of the living universe. It is due to the relatively recent arrival of humans on the earthly plane that humans have this limited capacity, and must, as a consequence learn from other peoples. The eagle has the ability to travel over vast distances and see events from the sky; and so it is that the eagle can teach humans. The mountain is old and has seen many things over vast amounts of time, and so it is that the mountains can teach humans. The sun, the moon and the stars play a part in the creation of all things, and so it is that the sun, the moon and the stars can teach humans.

Through the cultural practices of each distinct people individual human beings come to know their personal identities and learn to know

truth through distinct modes of thought. The diversity of human experience serves as a vast library for ways of comprehending and thus serves human beings in their effort to survive. The diversity of human cultures reflects the diversity of other peoples and shows how humans have learned. It is this immense diversity that creates the relativity of self and knowing and the appearance of particularity. All of the cultural relativity merely demonstrates the wholeness of consciousness, of self and knowing, when taken together—just as a unified mode of thought is conceivable when many modes of thought are braided.

### **Living as a part of the Universe**

In such a short time given to live each human being seeks to find a proper place in relation to all things. Achieving such a place ensures balance, alignment and happiness. When one balances relations with the river, the mountains, the flying people and four legged people, and with the cosmos one becomes properly aligned in relation to the living universe. Such alignment produces

balance when one gives respect to the nature and character of all things encountered. When one fails to comprehend the nature and character of things, it is necessary to take a moment to learn from other people. Like all people, humans have the capacity to learn, but humans have a greater need to learn owing to their relative youth, inexperience and lack of knowledge. It is owing to this serious limitation that humans have needed a brain that allows them to learn more things.

Other peoples, like the fish, the eagle and the mountain, have great knowledge that permit them to comprehend the nature of other peoples. They achieve balance in relation to other peoples because of this greater knowledge. Human beings are the “little brothers and sisters,” and so they must take special measures to learn to live in proper respect and relation to all things. The ultimate goal, as a consequence, appears to be that humans will live as a part of the universe as do all living things. Humans will come to comprehend their part in the consciousness of the living universe and its eternal changeability.

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# Conjoining

## The Reawakening to Spiralism from the Age of Progressivism

By Rudolph C. Ryser, PhD

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Comprehending the connectivity of things is the driving motive behind forming knowledge. Recognizing and experiencing relationships is the basis for knowledge. Each culture serves as the dynamic framework within which relationships between people; the natural environment and the cosmos unfold. In the myriad modes of thought created out of cultures throughout the world we find this compulsion to discover how things relate to each other, how they connect. When the question of human connection is the principal point of inquiry, there are no limits to the effort that will be mustered to find an explanation. Whole ways of thought evolved as mental and spiritual constructions to mediate relationships between all manner of things in the Living Universe. Modes of thinking evolved in different parts of the world to give us Cyclicism, Fatalism, Providencialism, Progressivism and Spiralism<sup>1</sup> among many others.

Beginning in the 17<sup>th</sup> Century of the Christian Era the idea of progress started to compete with Cyclicism, Fatalism, and Providencialism, but it was not until the 20<sup>th</sup> Century that Progressive thinking began to rule diverse parts of the world. Progressive thinking is now widely understood to dominate in the industrial/technologic parts of the world the way peoples mediate relationships between things in their surroundings. It is the dominant mode of thought among those who rule the Peoples' Republic of China as much as it dominates as the mode of thought among people in the industrialized states and countries as varied as Cuba, the Netherlands, Zimbabwe, Canada, Singapore, Iraq, Uzbekistan, South Africa, and Bangladesh.

Progressivism embraces an implicit faith in the belief that change will always improve what existed before, and supposes human dominance over the natural world for the benefit of human life. Progressivism also supposes the sanctity of the individual and the overriding validity of rational inquiry and explanation in contrast with intuitive knowledge. A more ancient mode of thought, which I have designated as Spiralism, now challenges the supremacy of Progressivism and it demonstrates that a comprehension of the Living Universe is only possible if Progressivism is restored to its utilitarian role performing simple measurements of the material world. Progressive thinking, along with Fatalism, Cyclicism and Providencialism exist as different threads of the same rope along with other threads that comprise the Spiralist mode of thought.

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<sup>1</sup> See *Tribal Epistemologies*, edited by Helmut Wautischer, 1998.

Spiralism comprehends the totality of the Living Universe in both its material and immaterial forms and unifies knowledge instead of separates it.

In the Americas there is a deeply rooted history of learning and knowledge. This tradition of knowledge has long lingered in the shadows of modern consciousness—remote, mysterious and held by only those who maintain and renew cultural bonds with the living world of the Americas. The modern overlays of Progressivism have so dominated the Americas for the last 150 years that it is difficult to reclaim the traditional roots of knowledge and the practice of thought essential to comprehend the Living Universe.

For more than twenty-five millennia the peoples of the Americas evolved a Spiralic<sup>2</sup> way of thinking that permits comprehension of intimate connections between all living things in the universe from the smallest particle of dust to the largest galaxy. Reason and intuition are not separate, but merely two parts of the same process. They are complementary. As a mode of thought Spiralism evolved out of an intense awareness of the power and influence of the sun, the moon and dancing lights in the night sky on events, affairs and changes observable among humans and other animals, and among plants, waterways, mountains and the earth itself. The early thinkers conceived of an intimate relationship between the movements of stars, the sun and the moon in great cycles of time and space connected to the personal lives of living beings on earth by an unseen tendril connected to an infinite number of other tendrils. Humans and other beings command and can be commanded

by others through this unseen force.

Fourth thousand years before the present the Olmec<sup>3</sup> found in the dark skies of the night a full and rich explanation of human connection and human destiny that later informed the Maya civilization and finally the cultures throughout the Western Hemisphere. A total reality was formed out of the comprehension of humans and other living things on earth existing as participants in the grand play of natural movements among the stars, sun and the moon as well as unseen forces on the earth. As a result of this comprehension human beings became active participants in the great cycles<sup>4</sup> of World Transformation. Understanding these spirals of movement was derived from the studied understanding of earth's alignment with the Sun, the Seven Sisters (Pleiades) and the center of the Milky Way Galaxy as well as an intuited and measured recognition of changing relationships between the earth and stars. Though held as sacred knowledge over the ages it was not until 2,200 years before the present that the people of Itzapan first codified the great transformation<sup>5</sup> catalyzed by these alignments in the sky with the writing of the Mayan Book of Counsel, the Popul Vuh.<sup>6</sup>

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<sup>2</sup> The author discusses Spiralism as a mode of thought in his essay "On Self and Knowing" in *Tribal Epistemologies*, edited by Helmut Watisher, 1998. The principal character of this mode of thought is that it embraces other modes of thought including progressivism, cyclicism and fatalism as subset modes available for apprehending knowledge that spirals within time/space and movement.

<sup>3</sup> As the Méxica, the Nahuatl speaking people of Central Mexico new them.

<sup>4</sup> According to the grandfather peoples of Southern Mexico and Guatemala, these great cycles extend over 5125 years each

<sup>5</sup> Jenkins, *Maya Cosmogenesis* 2012, p. 336

<sup>6</sup> See Tedlock's translation of the Popul Vuh.

In the 1,999<sup>th</sup> year of the Christian Era on the day of the Winter Solstice the great alignment between these bodies of light—the earth, the Sun, the Pleiades and the center of the Milky Way Galaxy—began anew. This alignment thus signaled the commencement of a twenty-six year period of World Transformation known by humans only four other times. At the momentous mid- point, December 21, 2012 of the Christian Era, and 13.0.0.0.0 of the Mayan Era we take note of the end of one great cycle and the beginning of another in the birth of what the México call the Sixth Sun. By 2025 of the Christian Era the Spiralic transformation that takes place only once every 5125 years will have been completed. A great process of World Renewal will have been enacted marked in the Christian Era as the period from 1999 to 2025.<sup>7</sup>

It is within this twenty-six year period of World Renewal that new relationships between humans, their world and the cosmos, so it is foretold, will take place. What the exact nature of that transformation will be, what shape and character it will have cannot be known until the time of transformation. An optimistic mind

must inevitably project that the transformation of which all living things and we are a part shall create a world that is different from what is now comprehensible, but still containing aspects of the present age serving as path markers. Spiralic thinking permits us to look into the future with some certainty and yet there remain surprises that await our discovery.

The universe is a living organism comprised of space and time bound together by movement that reaches from the greatest to the smallest and to all extent of the universal body. The intimacy and respect of all parts of the universe serves as the constant that ensures the well being of all things. This is a conception among the Taidnapum<sup>8</sup> of the Kowlitch Illahee that informs daily life and describes the connections between all things. It is a concept that came to the Cowlitz people who have resided on the Cowlitz River long before any other humans. This concept of the Living Universe is not, however, unique to the Cowlitz. It is, as suggested earlier, a concept recognized and applied by peoples from the Arctic, dense forests, to the deserts, the jungles and high mountains throughout the Americas.

<sup>7</sup> While these ideas have long been well understood among different peoples in the Western Hemisphere for many ages (i.e., the Yup'ik, Hodenosaunee, Anishnawbe, Cowlitz, Aloné, Kiowa, Huitchole, Zapotec, Pipil, Sumo, Kúna, Yanomomi, Aymara and Mapuché) recent studies by Progressive thinkers like David Bohm (Wholeness and the Implicate Order, 1980), Sheldrake (XXXXXX, 1989), José Argüelles (The Mayan Factor, 1987), Edward O. Wilson (Consilience, The Unity of Knowledge, 1998), Linda Schele (A Forest of Kings, 1990) and John Major Jenkins (Maya Cosmogenesis 2012, 1998) have only just begun to realize the breadth and depth of the Spiralist Reality. The Wanapum thinker and spiritual leader Smohwalla, 150 years before the present, recited the transformative impact of great cycles reflected in the stars and on the earth to his own people as well as peoples all along the Pacific Coast from Haida Gwaii (Queen Charlotte's Island) to the southern tip of the Baha Peninsula. The Ute leader Wavoka also repeated what he had learned about the great world changes of the past and in the future as he encouraged his people and others to practice the Ghost Dance. Suiattle, the leader of the Suquamish and Duwamish also reflected ancient learnings in his teachings.

<sup>8</sup> This is the name of my own people living as neighbors to the Wanapum and Yakama to the east, the Klikittat to the south, Snoqualmie, Nisqually, and Puyallup to the north and the Squaxin and Chehalis to the west. While this essay speaks of ideas and views from other peoples in the Americas, it is not possible to ignore the forces and influences emanating from one's own culture. While no culture is isolated it is nevertheless true that certain threads of thought and being are stronger in one's culture than in others. Consequently the reader should recognize that Taidnapum threads of thought and being rule this piece.



In the thinking of peoples in the Western Hemisphere no living being could be conceived that did not have all of its parts connected. Accordingly, all animals, plants and earth are related to each other and the action of one affects the actions of the other. They are related as if being born of the same family. One can recognize

how each part of the Living Universe respecting the other translates to the earthly plane from this modern version of an ancient Cowlitz story that explains how, one day, a mountain in Cowlitz Country erupted (now named Mount Saint Helens which volcanically exploding in 1980).

*Some time before now—over there nearby—a great controversy arose between two mountains. One was the color of yellow and the other the color of white. The mountain over there nearby had the color of red and she was removed, but between the other two mountains. The mountain from the red direction saw that the dispute between the other two was about an unimportant difference of opinion, yet it was a dispute that would erupt into great violence that would disturb the balance of life throughout the land. First she tried to explain to each of the two other mountains how their difference over which mountain was taller could not be resolved.*

*The red mount spoke to the others. “Since the mother giving life to us all,” she said, “always changes, the fact of who is taller will also change.” Believing her voice to have been clear the mountain from the red direction turned her thoughts to other matters.*

*Still the mountain from the white direction and the mountain from the yellow direction remained unsatisfied and continued to bicker. This continued bickering and constant threat of violence between the two mountains caused the mountain from the red direction to turn her thoughts toward them once again. Becoming agitated, she raised her voice to express her displeasure with the petty dispute.*

*“Stop this bickering and calm yourselves lest you upset the tranquility our mother has provided.”*

*At first White Mountain and Yellow Mountain hesitated—startled by Red Mountain’s strong voice. Seeing that she was agitated the two mountains took to bickering with each other again.*

*Now, considering her greater age, Red Mountain believed that the bickering mountains would immediately cease and calm down. Seeing that they did not the Red Mountain began to raise her voice even louder, and then louder still. Finally, she could restrain herself no longer. She blew steam, smoke, rock and ash high into the air making the sky turn dark. So frightened by her great roar and by the sudden darkness of the sky White Mountain and Yellow Mountain immediately calmed down—shuddering slightly.*

*“There!” Red Mountain said. “You now have the same height, for I have given some of my life to each of you.”*

*And so she had. Here steam and smoke had driven great amounts of her living body into the sky so the wind spirits could carry parts of her body on to the other mountains, and over all the land. Through her own sacrifice Red Mountain settled the dispute and placed new life on the land to ensure the balance of life. The dispute was settled.*

This story reminds us that we often fail to recognize our relationship to other things because we frequently have selfish thoughts. While the tendency to think of one’s self contributes to each person’s ability to live and survive, it is also a tendency that when not well regulated may cause one to lose sight of the connection we have with all other beings. Individuals living in modern cities often experience the loss of one’s relationship to other things. This condition is produced from a need to preserve oneself owing to the great and persistent demand for self-preservation. The great paradox of the modern city is that it is a massive organism which relies on individuals to exist, but it does not provide all the things individuals require to live freely and unmolested. Modern cities, therefore, promise well being and social comity, but they separate and divide humans from each other into countless

hostile camps of selfish indifference. Individuals wishing to overcome this condition must make great efforts to establish relationships that reinforce wholeness.

To bring about a balance between unequal conditions it becomes necessary for one to make a sacrifice to repair the distortion. In the Cowlitz cosmology the notion of sacrifice is not a self-less act, but rather a self-fulfilling act that may take many forms. It is the Cowlitz cultural tradition of *Give-Away* that we see the actualization of sacrifice for self-fulfillment.

To succeed in Give-Away one accumulates large quantities of material wealth over time. These things may be blankets, animal skins, eagle feathers, cedar boxes, finely woven grass baskets or cedar root baskets, clothes, drums, dried food—all manner of wealth. According to

the role of proper respect for those beings, which gave their life to create this wealth, the one who accumulates is obliged to organize a great feast and invite all people. At the gathering of these people the one who has accumulated the wealth must be modest and speak through another person chosen for that important purpose. The Spokesperson then delivers a great speech and recognizes the different families present and says that it is the wish of the organizer of the giveaway that they should be recognized. The spokesperson then calls upon singers and dancers to share their gifts.

When the dancing is done and the great feast has been consumed the Spokesperson calls upon individuals representing different families to step forward and accept humble gifts from the giveaway organizer. These gifts are, in reality, considered quite valuable by all people present, but still humility is essential in giving these gifts away. Each receiver of a gift is then asked to express a few words, and often the receivers will deliver dramatic and expansive speeches expressing confidence and a sense of great honor and respect toward the gift giver. It is not uncommon for a gift receiver to call upon other members of his family to extend the speech with personal reminders of the respectful and humble actions of the gift-giver.

When those speeches have been completed, there is a great roar from the drums and voices of all present confirming the truth of what was just said. The Spokesperson will then begin another speech telling stories of praise for the next gift receiver, explaining important things

about the achievements of the family. Once the Spokesperson's words have come to a halt, the new gift receiver steps into the circle and expresses respect and honor for the gift-giver. This continues until all of the great wealth that was amassed has been disseminated.

The Give-Away might take several days or even a week if the gift-giver is a particularly good accumulator of wealth. As a direct reply to the gift-giver's sacrifices, obviously for the people, the gift-receivers are obliged to extend to the gift-giver and the giver's family demonstrations of respect and honorable recognition. It is in this way that sacrifice is reenacted in the form of the Give-Away—a cultural practice that was later called Potlatch (thought by many to be a mispronunciation of the word “potluck” practiced among immigrants who came to Cowlitz Country in the mid-19<sup>th</sup> Century. The Give-Away recreates harmony and balance within the society by ensuring the even distribution of wealth and a sense of well being.

The Give-Away reflects the Spiralist conception of sacrifice to achieve balance and harmony. There is an exchange for each sacrifice and in the case of Give-Away one receives respect and honor in exchange for the accumulated wealth. Accumulation of wealth is, therefore, a goal to be achieved not as an act of acquisitiveness and personal possession. Accumulation is, rather, the act necessary to respect the sacrifice once given by the original owners of wealth, and to be given away for the benefit of others in exchange for respect and honor.

Progressivism, which holds sway over most minds today, calls upon individuals to secure and accumulate wealth at the expense of the original owners and at the expense of other living things. Progressive thinkers assert King-Of-The-Mountain (whether liberal or conservative) as the highest achievement, and such “Takers” are then rewarded with status and positions of importance if they accumulate the most. “Takers,” as Cowlitz and neighboring peoples knew the early settlers from the United States, Britain, Spain, France and Russia in the early 18<sup>th</sup> and 19<sup>th</sup> centuries were responsible for tearing great holes in the social and spiritual fabric of mature societies in the US Pacific Northwest. They exhibited a lack of respect for the living world and by their actions contributed to great distortions. While all beings contribute to distortions from time-to-time, each according to its nature undertakes actions to restore the balance. The experience of the Cowlitz with the “Takers” demonstrates how greedy accumulation sets in motion more greedy accumulation that is both mindless and dangerous to the natural balance of things.

As a respected nation with the Chinook and Wishkah to the west, the Squaxin, Nisqually and Puyallup to the north, the Wanapum, Yakama and Klikitat to the East and the Wasco to the South the Cowlitz have a special duty to conjoin respectfully with the land and other living beings in the Cowlitz River Basin. By recognizing this conjoined reality the Cowlitz contribute to the balancing of relationships from the headwaters where the Taidnupum live to where the Splugumlx live at the mouth of the

river. When the “Takers” arrived to settle among the Cowlitz and neighboring peoples they began first receiving gifts from the Cowlitz while the “Takers” were weak and small in number. After the “Takers” grew stronger and more confident, they began to take the fish and not perform the rituals necessary to ensure the return of more fish. The “Takers” began to cut and remove great old trees without recognizing that the thousand year old cedars measuring six meters in diameter were members of Cowlitz families—that the taking of Cedar tree lives was a matter of grave consequence affecting the lives of not only Cowlitz families and their history, but the lives of other plants and animals. Not only were they killing ancient trees, they were killing families of human beings, other wildlife plants and even the winds. “Takers” divided and fenced the land preventing other living beings from freely living their lives in the forest, on the prairies and in the swamps. The consequence of “Takers” exploiting Cowlitz Country was distortion, imbalance, and destruction. The land, the wild things and the people are now deeply wounded—struggling to restore themselves.

More unsettling than the “Takers” exploitation was the imbalance caused between the Cowlitz. When the “Takers” first came to Cowlitz Country (beginning with the arrival of Spaniards in the late 18<sup>th</sup> century and then with the arrival of the Meriwether Lewis and William Clark expedition from the United States (1803 to 1806)) diseases later understood to be chicken pox, measles and influenza carried by them infected the Cowlitz and their neighbors. Lacking any natural immunity

to the diseases and their carriers thousands of Cowlitz died literally within weeks and months in waves resulting from “Taker” visits. Unable to immediately restore the balance caused by such a catastrophe many of the remaining Cowlitz believed they could live on a parallel path with the “Takers.” Others slowly began to learn the ways of “Takers” and after several generations some Cowlitz forgot their duties to conjoin respectfully with the natural world and continue the Give-Away. Believing that the “Takers” had the only way to survive as individuals, some Cowlitz became creators of imbalance lacking the knowledge to restore the balance. Lacking the history of their own families contained in the living cedar trees (now destroyed by the whipsaws), Cowlitz could not find their way back to the appropriate role of their people. Those who still had their grandmother/grandfather trees, and those families and Cowlitz communities that were not completely devastated by disease and settler encroachments managed to continue the duty of respectful conjoining in the natural world. The rips and tears in Cowlitz society were so extreme that they have taken generations to repair. Recognizing the great cycle and the impending period of World Renewal suggests a time of restoration for harmony and balance.

Harmony and balance cannot exist without disharmony and imbalance since each is made whole by its other part. So, we can account for these things being all around, undulating and changing from aspects of one to aspects of the other. Living beings are obliged to make sacrifices

to achieve the necessary balance between imbalances. Failure to do so endangers all living things. By not tilting the scales to achieve a new level of equilibrium one risks leaving the world mottled by distortion. Correcting the distortion restores life.

### **Spiralic Nature of Time**

Some say that time is made up of cycles where what began in one place follows an arcing path and returns finally to the point of beginning. As one of the three legs of the Living Universe time is often misleadingly presumed to be repetitive. Perhaps it is the timepiece at the end of the watch fob that creates this deception. Maybe it is the visual nature of clock hands circling the center of the clock that creates the impression that time is forever repeating. It is perhaps this same quality that gives the impression that one “doesn’t have enough time” to do one thing or another. One need not be confined to this conception of time, and, indeed, it may help one to understand the Living Universe better if this conception of time is replaced with a more appropriate concept.

Spiralic thinking comprehends time as a living quantity that exists in all places simultaneously. Like a spiral in space-time moves and stands still, it is up and it is down and it is in front and behind all at once. Time can vibrate rapidly and at the same moment vibrate very slowly. It has shape and no shape, yet it fills all space and fills no space. Time animates movement in space to connect all living things. This is the essence of the Living Universe.

An individual's being is defined by time animating movement in space. Because of this essential unity each person is respectfully conjoined with all other living beings in a great soup. Yet individuation is apparent because it is possible to inform one's present being by drawing the previous self into the present since it already exists simultaneously. The past, as we think of it, is an essential aspect of the present. It is in the nature of time that as time proceeds along the spiral image flecks of the past stick to the present parts of the spiral. Rather than repeating the past, the present simply includes parts of the past as the present. We each recognize the past in the present and, thus formalize connections between things as new knowledge. Because we are each as much a part of the past as we are of the present we are able to project this experience as a future. By so doing, we create before ourselves a pathway that is recognizable and approachable. It is a place where we exist also even as we exist in the present and the past defined by the movement in space.

Though there is the sense of separateness between past, present and future, the reality is that none can exist without the other—making them interdependent aspects of our perception of time. We have mentally separated time into these apparently separate parts in only relatively modern times. The three qualities of time, movement and space combine to form the Living Universe.

## **Birth and Death**

Time understood as an aspect of the Living Universe contains within it the sense of a beginning, middle and an end. Indeed, this sense of being is reinforced by evidence in nature all around us. We see in the stars, in the seas and on the land a constant urgency for life to burst into existence. The sheer abundance of birthed life only assures us of the presence of the Living Universe. As life dazzles us with its energy giving birth in all its varied forms we also see death. As noted earlier, like other apparent opposites, birth and death are merely two parts of the same thing. In Spiralic thinking one is obliged to recognize that at the moment of an ending there is also the moment of a beginning, which occurs simultaneously. In birth, therefore, there is also death. In death, there is also birth. Such a pattern of existence is repeated at the grandest levels of movement between stars and the sun and the moon. Similarly, these patterns repeat at the most minuscule levels of life. On the great spiral of time and movement through space birth and death exist on the same plane and mirror each other.

Progressive thinking constructs reality into cause and effect and opposing dualities. This is particularly obvious when the way Progressive thinking is applied to the “protection of the environment.” Progressive thinkers conceive that they can be both “Takers” and “Givers.” It is apparent in the language of progress upon which Progressive thinkers depend. First there is the

presumption that human beings are the “users of the land” who must dominate, control and benefit from its exploitation. The term most often used by this point of view among progressives is the word “development.” This idea supposes that an infinite supply of raw materials is available to exploit for the benefit of human beings and their ever-increasing prosperity. The essential faith in progress and the inevitable growth and consumption of the natural world suppose perpetually improving prosperity toward a kind of “Kingdom of Heaven” on earth. “God has given man dominion over the land and all the wild things,” so it is suggested. “Development” for prosperity drives such institutions and the United Nations, the World Bank, real-estate agencies, city and state planning commissions, corporations and small businesses. As one business leader was reported to have said, “All of our efforts must work to prove the inevitability of progress.”

Other progressive thinkers disagree with this notion of progress and repudiate “development” as a scourge that is to be eliminated from human activity. These progressive thinkers argue that “no developments” occur and that human involvement in nature must be severely restricted except on terms involving recreation. In this instance the presumption is that human beings are evil parasites capable of terrible damage to nature needing control by the actions of other human beings. These progressive thinkers fail to recognize that they are acting and thinking in much the same way as the people they say they oppose: the developers. They are presuming that human beings are something apart from the natural world instead of a part of nature. They

suppose that human beings are still inevitably progressing along a line of development that inevitably takes them into conflict with the natural world. This wing of environmental progressives finds itself in constant contention with the development wing of progressives.

There is yet another group of progressive thinkers who believe they have found a “middle path” between the extremes of unrelenting development and environmental exploitation verses a kind of “don’t touch that wild thing” kind of approach. The “middle of the path” Progressive thinkers believe you can “have your cake and eat it too.” These are the progressives who advocate the idea of “sustainable development.” This idea takes for granted that one can “develop;” the central meaning of which is “a progression from a simpler or lower to a more advanced, mature,

or complex form or stage”<sup>9</sup> and sustain that process without having an adverse effect on the natural world. The idea is something of an oxymoron, but many who want to avoid the extremes of the environmental debate embrace it. Indeed, the idea of “sustainable development” implies that the modifier “sustainable” mitigates the adverse impact of “development.” This is an example of how Progressive thinking gets tangled in its own presumptions of inevitability. Neither progress nor development is inevitable, though Progressive thinkers are unalterably convinced to the contrary. By being so convinced, though

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<sup>9</sup> *The American Heritage® Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from InfoSoft International, Inc. All rights reserved.

wanting to engage in activities that do not create the adverse results routinely associated with development, Progressive thinkers attempt to soften the consequences with the modifier “sustainable.” This is clearly a contradiction in thinking, even by Progressive standards.

Progressive thinking advocating “sustainable development” creates odd notions like “eco-tourism” or “archeo-tourism” or “sustainable tourism” as alternatives to “tourism.” “Eco-tourism” supposes that plants and other wildlife can be left undisturbed as humans “unobtrusively” march single-file through forests, in swamps and in jungle canopies.<sup>10</sup> “Archeo-Tourism” supposes that people can visit a traditional site of ancient beginnings and have no affect on the cultural realities of the peoples who live in these places. Again, hyphenated and other types of modifiers are meant to alter the meaning of the word “tourism” which is considered a negative human activity. It is presumed that by modifying the term “tourism” the adverse affects resulting from this activity affecting human cultures and other diverse living things can and will be avoided.

What such advocates fail to express is the reality that all of these are simply different forms of the same thing. They all produce the same outcomes: cultural disintegration, spoliation of the natural world and interruption of the

relationship between people, their place and the cosmos. The forms of tourism are all ways of commodifying places for people to visit and for recreational and tourist industries to make money. They are really all forms of development that commercially exploit regions, wildernesses and peoples in the world. This way of expressing the progressive analysis of environmental protection restates the view that progress is inevitable, but it can be implemented cautiously in a measured and conscientious way so as not to change things too rapidly and too destructively. This moderate progressivism as applied to the environment supposes development remains inevitable, but it can be done in such a way as to all for constant and perpetual development.

All three approaches to human relations with the environment imply human domination, perpetual progress and human separation from the natural world. They are all simply different ways of expressing the same idea as expressions of Progressivism. Like the “Takers” who came to Cowlitz Country in the late 18<sup>th</sup> century progressive thinkers cannot avoid the essential construction of their mode of thinking. It presupposes exploitation without the restoration of balance. It presumes that the evil, backward and primitive found in their midst will simply dissolve into the past and be replaced by refined improvements...perpetually improving prosperity.

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<sup>9</sup> Ian McIntosh, Managing Director of Cultural Survival takes this idea to a greater extreme and suggests that advocates of ecotourism ought to “honor the commitment to create the conditions under which indigenous societies can exercise self-determination; retaining the largest measure of autonomy and power of decision making over their own affairs.” (See Editorial, Cultural Survival, Summer 1999). As a modified version of Cultural Survival’s “jungle capitalism” this approach would seem consistent with their progressivistic approach to promoting the sustainability of tribal societies. What Cultural Survival has not been willing to advocate is the view that externally promoted ecotourism or any form of externally imposed development should be abandoned as nothing more or less than forms of “cultural mining.”



When Progressivism is reduced to an occasional method for interpreting material reality it must be informed by other modes of thought so as to ensure the broadest possible comprehension of reality. Blending Progressivism with other modes of thought results in Spiralism— comprehension of reality in its greatest and smallest detail. Spiralist thinking notes that there is a thing called tourism, but it does not presume that touristic behaviour is inevitable. It is not an inevitable consequence of some mysterious progression resulting from cause and effect.

Tourism, like other human actions, is intentional and can be transformed. In other words, tourism and its adverse effects are made inevitable only because we think they are inevitable. The result is that we are trapped by our own thoughts.

### **Spiralism and World Transformation**

Students of Mayan literature commonly depict the calendar of these ancient people, the 5,125-year “Great Cycle” as evidence of a mode of thought fundamental to the original Middle American and South American cultures. Associating the Mayan mode of thought with cycles where time and space repeat in infinite circles, like the Mayan and the Aztec calendars appear to suggest, is so common among scholars that few have stopped to consider how they may be actually projecting their own cultural templates on to the evidence of Mayan and western hemispheric ways of thinking. Though

satisfying to their templates, imposing Cyclicism in the context of the western hemisphere tends to conceal the reality of a mode of thought unique in the world.

In an attempt to reveal the underlying character of this distinct mode of thinking, I shift the symbolism slightly from a circle to a spiral. With this change I believe it is easier to apprehend a mode of thought I have labeled “Spiralism”. More than any iconographic image the *Hunab Ku*, translated as “One Gives of Movement and Measure,” (Argüelles 1987 Page 52) affirms *Cuarto Spiralism*. This mode of thought takes its name from the infinite repetition of four spiraling arcs, four “spirals” in the Mayan conception of time.

The *Hunab Ku* symbolizes the ideas: Movement corresponds to energy, the principle of life and all pervading consciousness immanent in all phenomena.”<sup>11</sup> Though similar to the Yin and Yang of the Tao, Hunab Ku is much more. As the symbol of Spiralism the Hunab Ku illustrates the interconnectiveness of all life, the four cardinal directions, the four arcs of time and perpetual movement in all directions through space. The past, the present and the future are all represented in the spiralist mode of thought. A spiral in space moves outward, inward, forward and backward occupying space and not occupying space all at the same time. Life and death are, therefore two aspects of the same thing.

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<sup>11</sup> Argüelles 1987, Page 52

Wholeness and particularity are manifestations of one and the same quality of existence. These are the central attributes of *Cuarto Spiralism*.

*Cuarto Spiralism* predominates as the underlying mode of thought of the many cultures in the western hemisphere recorded in their literature, stories, songs, dances and symbols. Peoples as remote from one another as those living in the Arctic North and those in Patagonia and the Micmac, Cowlitz, Hopi and Kiowa as well as the Mapuché, Yanomami, Aymara, Sumo, Pipil and Zapotec share a common, underlying mode of thought which infuses a wide diversity of cultures.

*Cuarto Spiralism* permits the apprehension of the universe as a whole while giving respect to particularities. The mutuality of respect is the essential glue that connects and separately identifies all parts of the whole, living universe. It is necessarily the case that all aspects of the universe are alive and possessing of the capacity to choose. It is this capacity of the living universe to choose that leaves the future unpredictable and open to surprise.

*Cuarto Spiralism* shapes systems of tribal thought throughout the western hemisphere as a structure that permits aspects of experience that come before to combine with aspects of

the present to provide the basis for interpreting the future. Modern Mayan Day Keepers demonstrated their reliance on this structure, on the mode of thought, when they stepped from a cave (January 1, 1994) in the highlands of Chiapas to announce the coming of the end of the fourth spiral and the impending arrival of the “Sixth Sun.” By their interpretation of the sacred texts, the Day Keepers set in motion a series of events that began to transform the Mexican and Guatemalan states and the peoples of the western hemisphere—and beyond. Such a simple act and the events that followed demonstrate the powerful influence of the *spiralist* mode of thought.

The reality as we all comprehend it is perpetual change, but only at the point of end and beginning of the great spiral first noticed by the Olmec and eventually documented by the people of Izapan 2,200 years ago. Like a child at birth the world of people, place and the cosmos begins fresh and new carrying pieces of the past into the present while change brings new and unexpected things into the present. The world has been growing older and is nearly spent after its 5,125 years journey through time and space. A World Age is nearing its death and the moment of World Renewal as the DayKeepers of Chiapas have now given notice.

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# The Rules of War & Fourth World Nations

By Rudolph C. Ryser, PhD

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During the fifteen year period between 1970 and 1985, international legislation has undergone major and significant changes recognizing the greater role being played by Indigenous Nations in international relations. These changes have also begun to be reflected in the organization and procedures of various international institutions.

In 1971, the rights of Indigenous Nations were sufficiently prominent as an issue that the Sub-Commission on the Prevention of Racism and Protection of Minorities under the United Nations Commission on Human Rights commissioned the **Study on the Situation of Indigenous Populations**. In 1975, the rights of Indigenous Nations within the territory of the United States of America were admitted to be of sufficient importance to become an issue of compliance under Principles VII and VIII of the Helsinki Final Act. The United States Government supplemented those commitments in 1979 by reporting extensively on its compliance to the Commission on Security and Cooperation in Europe. In 1977, the United Nations concluded its conference on Protocols I and II which have been the topic of this paper. In 1980, the United Nations Economic and Social Council authorized the establishment of a United Nations Working Group on Indigenous Populations to conduct a ten-year inquiry into international standards concerning the rights of Indigenous Nations.

The World Bank in 1982 issued a policy under the title of Tribal Peoples and Economic Development which has become the basis for new standards for loans to states — requiring that they provide for mitigation of World Bank project impacts on Indigenous Nations. And, in 1984, the International Labor Organization announced its intention to consider new revisions to ILO Convention 107 - Convention on the Protection of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957). All of these reflect changes in the approach state governments have taken toward Indigenous Nations, and while not substantially altering existing international law these moves have set in motion what appears to be a growing trend toward new political openings.

Of these changes, only the changes and additions to the 1949 Geneva Conventions and the World Bank's new Indigenous Nation's policy may be said to have significance in terms of actually elevating the political status and strategic importance of Indigenous Nations. For it is in the strategic and economic arenas that Indigenous Nations have shown a presence that actually makes a difference to states and their interests. The economic and strategic security of states has become increasingly unstable, and so, when any nation takes independent initiatives which further add to the unstable climate they become a political factor with which states must deal.

Indigenous Nations have increasingly taken independent political, economic and strategic initiatives that have had a profound effect on internal state stability, regional state relations and, indeed global state relations. Third World states, particularly, have experienced escalating confrontations with Fourth World Indigenous nations over the competing economic interests of the state versus the political and strategic interests of nations. These confrontations have been frequently escalated into full blown wars as a result of interventions (economic and military) by the Union of Soviet Socialist Republics and the United States of America, various European states like France, Britain and the states of China, Cuba, Israel and Brazil among others.

Of the two protocols adding to and revising the 1949 Geneva Conventions, Protocol I may likely have the most profound importance in the future relations between states and nations. Because of the role of international supervision and the exacting provisions concerning the methods and means by which parties to armed conflict may conduct warfare, the strategic significance of Indigenous Nations will become amplified and subsequently *regularized* within international and regional state forums.

### **Civilizing War**

When states aggressively and violently attack one another, they are generally considered to be engaged in acts of warfare. The military leaders of these states guide and direct combat actions

according to rules of war (in theory, at least) that have evolved over centuries. And, by virtue of these rules, the conduct of war is made more *civilized*.

Until the end of World War Two, these rules were thought to be adequate to ensure that warring parties would fight fairly. Changes in the technology of warfare, and the horrors and atrocities committed by virtually all participants in World War Two — from the massacres of Jews, Gypsies and other nationalities by the Nazis to the death camps of Japan and the Soviet Union, and the atomic obliteration of civilians by the United States — combined to create widespread guilt and revulsion. The global response was to convene an international conference that subsequently produced the Geneva Conventions for the Protection of Victims of War (August 12, 1949).

The Conventions prescribe methods and means for warfare, rules for the treatment of wounded, sick and shipwrecked civilians, conditions for determining the status and treatment of combatants and prisoners-of-war, provisions for the protection of civilian populations against the effects of hostilities, and rules for the treatment of refugees and stateless persons. The International Red Cross and other international humanitarian organizations, and a third-party state are described as parties to oversee the implementation of the Conventions in theatres of warfare. States subscribing to the Geneva Conventions, and even those states that did not sign, are subject to the rules of war as spelled out in detail.

Independence movements launched by Indigenous Nations or disenchanting religious or political minorities were not covered by the Geneva Conventions. Only war between states could *qualify*.

Before and immediately after 1949, wars of liberation peppered the globe. Vietnam fought against the French as did the people of Algeria. England, Holland and Spain were also being challenged by independence movements. The Nation of Naga fought against the newly independent forces of India, while the Baluchistan Nation fought the military forces of Pakistan. The Karen Nation engaged the state of Burma, Turks and Armenians battled the Soviet Union's military. China was also engaged in conflict with the Nation of Tibet. Colonial powers which had been victorious after World War Two became embroiled in battles internally and externally with nations and groups eager to throw off the colonial bonds. Indeed, many of these armed conflicts continue to this day.

The superstructure of colonial empires had been cleaved and nations long confined saw their chance to be free. But, no sooner had the door to freedom been opened by the post-war preoccupations of the *great powers*, it swiftly shut. Indigenous Nations which had become surrounded by newly created states were denied the right to choose their own political future, and other political and religious minorities had become unwilling captives within new states. Nations and groups long encircled by states

created during the 19th century and after the turn of the century also challenged the status quo.

Euphemisms were coined to describe the non-state combatants. *Insurgents, rebels, bandits, guerrillas, terrorists* and other such terms were invented as every-day terms to describe the forces fighting against the state. The use of these terms hide a cruel reality: Indigenous Nations or any other disenchanting group which attempts to defend itself against the violence of a state; or challenge the right of a state to exercise powers over it may have its combatant forces tortured and civilian populations massacred as a result of police actions. A state may commit genocide as long as it is battling *insurgents, or rebels*.

The modern rules of war fostered by the 1949 Geneva Conventions to safeguard the interests of victims (civilian and military) of warfare were beyond the reach of unwilling captives of a state. Whether located inside the boundaries of a state or inside a distant colony, police actions and civil conflicts were designated as an internal matter of the state.

The term *warfare* was rarely used to describe the violence between Indigenous Nations and states, or between political or religious movements and states. Brutalities between warring elements had all of the characteristics of battles among states. Yet, a state encountering resistance to its animus would be accountable only to itself. Brutalities imposed on civilian populations or prisoners-of-war would be hidden behind the shroud of state sovereignty.

## Regional and Local Wars Abound

States have been quite free to massacre civilian populations (Nigeria and the Ibo, Bangladesh and the Chakma and twelve other tribes, Indonesia and the Papuans, Timorese and Mollucans; Ethiopia and the peoples of Eritrea, Tigre and Wollo), torture captive combatants, and fear no world condemnation or even a whimper of concern. Indigenous Nations and their political organizations and the scars they bore from warfare with a state could be exhibited before the United Nation Human Rights Commission. But, no effort would be made to require state accountability; to act fairly and with some degree of civility in the treatment of prisoners of war and civilian populations. State terror against Indigenous Nations and other resistance groups has continued unabated to the present date.

By 1984, no fewer than 50 wars flared on every continent save Antarctica. (See: Occasional Paper #2 “Fourth World Wars”: Ryser) The state of Indonesia alone is engaged in three wars involving West Papua, East Timor and Molluca. Nicaragua, Ethiopia, Burma, Morocco, Spain, France, Colombia, Peru, Soviet Union, Israel, Britain, South Africa, Zimbabwe, Lebanon, Kampuchea, Guatemala and Brazil are among the states involved in armed conflicts: Wars of resistance and wars of independence. Liberation movements like the POLISARIO, Southwest African Peoples Organization (SWAPO), Palestinian Liberation Organization (PLO), Kanak Liberation Front, Asla, Eritrean People’s Liberation Front and the Free Papua Movement (OPM) are among the non-state politico-military resistance groups challenging state authority.

Indigenous Nations like the Karen in Burma, Naga of India, Kalinga and Bontac of the Philippines, Chakma of Bangladesh, Pipil of El Salvador and Yanamomu of Brazil are engaged in defensive wars against states. Of the wars currently raging, some thirty-two involve Indigenous Nations as direct combatants.

None of these internal and external wars are being conducted in accord with the Geneva Conventions of 1949. Two new Protocol Agreements expanding the coverage of the Geneva Conventions to include international and internal armed conflicts, previously excluded, may change the political and military environment now hidden from world scrutiny. If invoked by non-state combatants, Protocol I and Protocol II of the 1949 Geneva Conventions may actually cause a new political dynamic to evolve between states and Indigenous Nations — one that can reduce the violence and increase the chance for peaceful settlements to evolve.

## What do the New Agreements Say?

With the encouragement of the Southwest African Peoples’ Organization, and the Palestinian Liberation Front many non-aligned states took steps during the early 1970s to organize a United Nations Conference to consider improvements to the 1949 Geneva Conventions on the protection of victims of armed conflicts. On June 8, 1977 the Conference adopted Protocols I and II and placed the documents open for signature by state governments in Berne, Switzerland on December 12, 1977.

Before the end of the twelve-month signing period, sixty-two states had signed Protocol I and

fifty-nine states had signed Protocol II. In order for both Protocols to become accepted as binding international law, ratification or accession by two states was required. By December of 1978 El Salvador and Ghana had ratified both Protocols, and Libya had notified the Swiss Federal Council (the formal repository for the documents) that it had acceded to both Protocols on June 7, 1978. In accordance with the Protocol Agreements, they had become international law in 1979. As of June 1985, fifty-one countries had ratified or acceded to Protocol I and forty-four countries had ratified or acceded to Protocol II.

As the language of the Protocols indicate, both are concerned with the protection of *victims of armed conflict*. However, there is an important distinction between them: Protocol I applies to *the protection of victims of international armed conflicts*, while Protocol II applies to *the protection of victims of non-international armed conflicts*. While both Protocols are far reaching in their implications for the responsibility of belligerents in an armed conflict for the care and protection of civilian populations and prisoners-of-war, Protocol I is much more substantial. Protocol I requires international peace-keeping initiatives to become organized, and Protocol II simply imposes “rules of conduct” on the belligerent parties while leaving the responsibility for reestablishing “law and order” up to the state.

### **Protocol for Wars of Libetation**

The fifty-one pages of Protocol I contain statements about definitions of parties, care and treatment of the wounded, sick and shipwrecked; methods and means of warfare

and combatant and prisoner-of-war status, protection and treatment of civilian populations, measures for executing the conventions and the Protocol, conditions under which breeches of the conventions and the Protocol are determined, regulations concerning identification: Of medical facilities, provision of emblems, use of light, radio and electronic signals, identity cards for civil defense; and identity cards for journalists on dangerous professional missions. The parties to a conflict are responsible for establishing mechanisms within their own organization to ensure compliance with all of the provisions.

### **Scope**

Protocol I extends to a wide range of *international* conditions of armed conflict. As is indicated in the first part, the provisions of Protocol I apply to situations of armed conflict *in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination*. (Protocol I, Part I, Article 1, Paragraph 4) No fewer than fifty wars currently characterized as regional or *sub-regional* would fall within the Scope of this Protocol. Consequently, Protocol I and the original conventions drawn up in 1949 would extend to conflicts as apparently unsimilar as the wars of Indonesia with West Papua, the Republic of Molluca and East Timor; and the Soviet Union’s war against the Indigenous Nations of Afghanistan. This Protocol would apply to Nicaragua’s war with the Miskito, Sumo and Rama Nations and France’s war with the Kanak Nation in New Caledonia. Ethiopia’s wars with Eritrea, Tigre and Wollo; Morocco’s war with the

Saharawi peoples (Polisario Front); the Philippine wars against the Kalinga and Bontac peoples; Israel's war with the Palestinian peoples, and Bangladesh's war with the Indigenous Nations of the Chittagong Hill Tract Region would also be applicable under Protocol I.

Article 2 under General Provisions specifies that the Geneva Conventions and the Protocol apply from the beginning of a conflict to the *general close of military operations*. But, it notes that certain provisions remain in force until the release, and repatriation of prisoners and displaced persons, and reestablishment of normalcy. None of the parties to armed conflict may denounce or *deny applicability* of the Protocol and the Geneva Conventions after a conflict has begun. And, though only one of the parties may be bound by virtue of ratifying the Conventions and Protocol, and the other party is not, both are bound for the duration of the conflict. (Part VI, Articles 96,99).

### **Protecting Powers and other International Supervision**

Significantly, Protocol I does not attempt to define the legal status of either the parties to an armed conflict or the status of the territory which may be the focus of the conflict. In this respect, the Protocol is neutral. But, it does allow for international measures which seek to ensure compliance by the belligerents with the provisions of the Protocol and the 1949 Conventions. One or more Protecting Powers may be secured through a process involving the International Committee of the Red Cross, or similar neutral party, to supervise the implementation of the Geneva

Conventions and the Protocol. The Protecting Powers, once secured, have the responsibility for *safeguarding the interests of the Parties to the conflict*. (Part I, Article 5, Paragraph 1) Though this is a clearly rational approach to conflict resolution, this provision has not been invoked by any of the parties to conflicts presently raging in the world despite the requirement that such steps must be initiated *from the beginning of any situation* of armed conflict as defined within the scope of the Protocol.

Acting as the depository for the Protocol, the Swiss Federal Council has the duty to convene a meeting (at intervals of five years) of representatives from those states which have ratified or acceded to the Protocol for the purpose of electing a fifteen member International Fact-Finding Commission. (Part V, Section II, Article 90) The Commission is established to inquire into *any facts alleged to be a grave breach* of the Protocol or the Geneva Conventions. It also has the obligation to *facilitate the restoration of an attitude of respect for the Conventions and this Protocol* by all parties to an armed conflict. The Commission's initiatives are to be carried out by a *Chamber consisting of seven members* including five individuals appointed from the Commission and two independent ad hoc members. And, any initiatives taken by the Chamber will be predicated on a request by one of the parties, and all parties to a conflict giving consent.

By virtue of this process, the International Fact-Finding Commission functions as a *quasi-judicial body*, which gathers evidence, discloses the evidence for review by all parties and permits



each party the opportunity to challenge the evidence. After preparing a report on its findings, the Commission is then authorized to make recommendations to the conflicting parties for ensuring their compliance with the Geneva Conventions and the Protocol.

If a state or non-state party to armed conflict is found to have violated provisions of the Geneva Conventions or the Protocol, it is bound by the agreements to *pay compensation, and retain responsibility for all acts committed by persons forming part of its armed forces.*

By specifying a roll for international institutions and individual states in a supervisory capacity, Protocol I suggests that the international community is willing to accept a non-state combatant (i.e. Southwest African Peoples' Organization, the Nations of Miskito, Sumo and Rama; Free Papua Movement, the Nation of Chakma, or Kanak Liberation Front) as a legitimate sovereign to be treated with the same level of respect as a state. In no other, so-called, new international legislation has such admission been made. In no other new international legislation is there a provision included which implicitly grants international recognition of sovereignty to an Indigenous Nation or other organized group resisting state power. This is a major change in international law which has long asserted the supremacy of state sovereignty and state power even at the expense of Indigenous Nations and other resistance groups.

## Methods and Means of Warfare

Few individuals outside of diplomatic or military circles are aware that extensive and detailed rules have been specifically developed to guide the conduct of warfare. Despite the requirement contained in practically all pieces of international legislation that each state widely disseminate the actual documents of international agreement, few states actually do this. It should not be surprising, therefore, that little is generally known about the extent to which crimes are committed during acts of warfare.

Provisions expressly forbid attack or injury to a person or persons who have surrendered, taken prisoner or who have been rendered unconscious or incapacitated by wounds or sickness. (Part III, Section I, Article 41) Protocol I specifically addresses the status of combatants and prisoners-of-war.

Where a member of an armed force fails to abide by these rules and falls under the control of an adversary, the right to be classified as prisoner-of-war is forfeited. The individual may then be treated as a civilian prisoner and may be tried and punished for any offenses committed.

Spies and other persons engaged in espionage are not considered to have the right to the status of prisoner-of-war. Provision is, however, made for individuals who *gather or attempt to gather information* inside the adversary's territory if they are wearing a uniform identified with his or

her armed forces. In this situation, the person is considered a prisoner-of-war if captured. Individuals who participate in hostilities as mercenaries, do not have the right to prisoner-of-war status.

While engaged in actual combat, participants in armed conflict are regarded as being in compliance with the Geneva Conventions and Protocol I if they direct their military operations against military objectives and military personnel only. If, however, such military operations become directed at civilian populations or civilian objects the offending party is considered in violation of the agreements.

### **Protection of Civilian Populations**

An often used tactic in warfare is the killing and destruction of civilian populations and their homes and property. In armed conflicts involving non-state and state combatants, civilian populations are frequently considered strategic targets because they represent material support to the armed forces. The Geneva Conventions and Protocol I pay significant attention to prohibitions in connection with civilian populations. The Rules of War expressly deny the legitimacy of attacks by armed forces on civilian populations either as indiscriminate acts, overt acts or as acts of reprisal. Belligerents are also prohibited from moving civilian populations in such a way as to shield military objectives from attacks or to shield military operations.

Conflicting parties are required to avoid the destruction of *cultural objects* (historic monuments, works of art, places of worship), and they are enjoined from using these objects to

support the military effort.

It is considered a violation of the Geneva Conventions and Protocol I for any party to an armed conflict to engage in practices aimed at the starvation of a civilian population or destruction of *objects indispensable to the survival of the civilian population, such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works for the specific purpose of denying them for their sustenance value to the civilian populations or to the adverse Party. (Part IV, Section I, Chapter III, Article 54).*

Treatment of women and children is also specifically mentioned in Protocol I. Rape, forced prostitution and other forms of *indecent assault* are strictly forbidden, and if committed they are considered a violation of the Geneva Conventions and the Protocol. Assaults on children are also banned. Provision is made for the protection of journalists who are *accredited to the armed forces* or provided identification cards by the state, non-state organization or news organization.

State and non-state parties to armed conflict are obliged to grant safe passage to the International Committee of the Red Cross or other international humanitarian organizations to ensure their ability to assist civilian populations. Indeed, all parties to a conflict are required to furnish assistance to humanitarian organizations (i.e. Red Cross Red Crescent, Red Lion and Sun among them) as they carry out their efforts to aid civilian populations and refugees.

## Protocol II: “Internal Conflicts”

Many wars between states and non-state interests are being prosecuted solely within the boundaries of an established state. These wars are thought to involve dissident armed forces with whom, presumably it is thought that future reconciliation with the state is possible. Protocol II extends certain provisions of the 1949 Geneva Conventions to these situations. Emphasis is placed on *humanitarian principles and fundamental human rights protections*. Virtually all aspects of armed conflict within the framework of warfare are absent from Protocol II, as distinct from Protocol I. But, it is clear that many of the same obligations imposed on belligerent parties by the Geneva Conventions remain intact as they relate to the treatment of prisoners, protection of the wounded, sick and shipwrecked, and the protection of civilian populations.

The circumscribed character of Protocol II does suggest a narrowing of applications, but it does have the potential for modifying the political and military behavior of both state and non-state parties to armed conflict. But, because of its limited scope, it is unlikely that many contemporary or future conflicts will have this Protocol applied to them.

Furthermore, because of its narrow scope, few parties to whom the Protocol would apply would be able to invoke its provisions since their access to international institutions and the state are, by definition, severely restricted. But, surprisingly, despite these limitations Protocol II is generally considered the most controversial of the two agreements. Signatory states, and

states which have ratified or acceded to Protocol I have demonstrated greater reluctance and more reservations toward Protocol II. The Philippine government willingly signed Protocol I, and with Vietnam, Greece and Cyprus failed to sign Protocol II. Vietnam and Cyprus ratified Protocol I with seventeen other states, but they were unwilling to ratify Protocol II. Similarly, thirty-two states acceded to Protocol I though only twenty-seven acceded to Protocol II. Included among the thirty-two states acceding to Protocol I are Mexico, Mozambique, Zaire, Syria, Cuba, Angola and Zaire. These states were unwilling to agree to Protocol II.

Signature, Ratification and Accession provisions for Protocol II are the same as for Protocol I. The Protocol is exactly the same as Protocol I where provisions for amendments, denunciations, modifications and entry into force are concerned.

## Nations must Act

Before a change in relations between nations and states can become a reality, Indigenous Nations must initiate steps in accordance with the Geneva Conventions and their Protocols to invoke provisions of the agreements within the responsible forums. In addition, Indigenous Nations must take steps to formally review and ratify the accords, register their agreement with the Swiss National Council and notify the relevant international institutions. While this latter step is clearly not stipulated by the protocols specifically in terms of Indigenous Nations, there is no provision in either protocol limiting the definition of High Contracting Party to states. Indigenous

Nations can become High Contracting Parties to the Geneva Conventions and the subsequent protocols on their own initiative.

By becoming a party to the Geneva Conventions and the Protocols, and by invoking the provisions of particularly Protocol I, Indigenous Nations can, perhaps decidedly, cause a shift in the balance of power in their current conflicts with states. By causing such a political shift to occur, Indigenous Nations can, for the first time, introduce impartial international parties (i.e. International Red Cross and Protecting Powers) as legitimate supervisors of the conflict, and potential parties to facilitating a peaceful settlement of the conflict.

Without the invocation of impartial parties, and without the benefit of enforceable international rules of conduct, Indigenous Nations are left to the currently “protected” will of state powers. With the imposition of the Geneva Conventions in current armed conflicts, both states and Indigenous Nations will have a structure and a forum through which peaceful alternatives to the conflict can be formulated – in accordance with standards accepted by state and national peers.

Furthermore, new mechanisms can be evolved through internationally sanctioned institutions which can assist in the resolution of seemingly unending and growing conflicts between Indigenous Nations and States which currently have no such forums. Political alternatives to the intractable confrontations may be possible if-and-only-if the actual reasons for armed conflict can be aired.

These potential peace-making alternatives can be substantially enhanced by the prospects that civilian populations will become protectable in accordance with internationally accepted standards. Indigenous Nations have suffered extensive deprivations at the hands of state terrorism under the guise of police actions or civil actions to establish law and order. Were the thirteen Indigenous Nations of the Chittagong Hill Tracts Region of Bangladesh to invoke the Geneva Conventions and Protocol I, the State of Bangladesh may have second thoughts about its transmigration program and police actions which have resulted in the destruction of hundreds of indigenous villages and the killing of in excess of 200,000 Indigenous Nationals since 1972. Similarly, Indonesia may reconsider its unfettered attacks on West Papua, the Republic Of Molluca and East Timor which have resulted in an estimated killing of 300,000 Indigenous Nationals since 1969. The State of Nicaragua may reconsider its persistent attacks on the Nations of Miskito, Sumo and Rama; and Ethiopia, Morocco and the Soviet Union may reconsider their attacks on Indigenous Nations.

So called regional wars, may become manageable according to accepted international law if Indigenous Nations took the initiative to invoke the Rules of War now ratified by many states. Super powers and secondary powers which choose to intervene in nation and state wars to protect what they consider to be their strategic interests may be restrained if they saw that an alternative to their intervention was possible.

As has always been the case, Indigenous National initiatives in the international arena are essential to the changing of violent conditions which surround them. Perhaps, if Indigenous Nations will take the initiative to embrace the Geneva Conventions and Protocols I and II, they can not only shift the balance of power in relations between nations and states, but they can significantly alter the anarchic climate created by self-interested super powers to establish important alternatives to the resolution of conflict

within states and regions of the world. It is possible that the smallness of Indigenous Nations is not a disadvantage to affecting international change, but rather the most important advantage that large states do not enjoy. The political and strategic opening which is apparent by the existence of Protocols I and II may be the first real opportunity available to Indigenous Nations since the beginning of the colonial era to once again become full members of the family of nations — joining states on an equal plain.

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# The Legacy of Grand Chief George Manuel

*“Neither Left nor Right, we must find our own path as the Fourth World”*

By Rudolph C. Rysler, PhD



Grand-Chief George Manuel.

The ground was wet and puddles collected in the low spots reflecting the grayness of the clouded sky. The smell of winter approaching filled the air and an eagle floated on the air currents above the nearby mountain ridge. Hundreds of people from many nations were milling around the building, talking softly while others slowly filed through the weathered double doors at one end. More people waited patiently in their cars on the highway in front of the Community Center -waiting for the Neskonlith Band Police and volunteer helpers to give directions for parking.

Inside the Community Center, which sits on a somewhat hilly and grassy meadow between the highway and a wall of mountainous granite dotted with pine trees, more people crowded inside the entryway to join the line moving slowly past the chestnut casket bearing the body of Grand Chief George Manuel to pay their last respects. He laid there as if at peace for the first time during his sixty-eight years, in a beaded deer skin jacket and in his right hand an eagle feather fan. As in life, George Manuel gave you a sense of confidence and strength - a feeling each person carried into the comforting embrace of Marlene Manuel, sons and daughters, grandchildren, a great-granddaughter, brother, sisters and a cousin.

Late in the day, at the Neskonlith Cemetery, the hundreds of people who had come to the Neskonlith Reserve in the Southwest part of Shuswap territory on November 20, 1989 joined as one to give George Manuel's body back to the earth and to send his spirit to the next world. The air was crisply cold and small flakes of snow began to fall. Leaders of many nations stepped up to each participate in the burial by taking a shovel in hand and moving the rich soil from a mound into George's grave. When George's body was safely in its resting place, old and young women sang. Russell Jim of the Yakima Nation then sang an ancient song from his people to help George's spirit into the other world.

The Neskonlith people had prepared a great feast of deer, salmon, potatoes, corn and salads and all joined in a large hall in Chase as darkness fell. As people ate, George Manuel's friends and family rose one-by-one to speak - to remind everyone through stories and song what this man had given this world. The Nuxalk people performed an ancient dance in costumes and carved masks to finally carry George's spirit to the other world. It was done.

Some seek greatness, others are called to greatness and still others are destined from the beginning of their lives. Grand Chief George Manuel was destined to greatness. He began his life on February 21, 1921 in Shuswap in a time when the Canadian government had made it a crime for native people to practice their ancient religions, the customs of the Potlatch. By the time George was six years old, the Canadian

government had also made it a crime for native people to organize and raise funds for political action to support aboriginal rights. Like so many Shuswap boys before him, George Manuel was sent by the government to a Residential School to "become a white man" as he once told me. In his childhood, George contracted tuberculosis which forced him to live in a sanatorium. The attempts to distort his spirit and his body were always a source of shame, and so he never volunteered to talk about these things. He preferred to remember the desperate poverty his people were forced to endure "because of Canadian government and British Columbian government policies toward the Indian."

Instead of bowing to his own personal tragedies and to the demeaning privation Indians suffered, Chief Manuel turned his mind, his spirit and his withered body to changing the social, economic and political conditions that brought Indian people to such humiliation. As a young man, he began to raise a family. He supported his family and what he called his "political work" by operating a small seed farm and then as a boom boss in the logging and lumber industry. In the 1950s, when the Canadian government began to repeal its laws denying religious and political freedom to Indians, Chief Manuel became more public about his political organizing in Shuswap communities and in neighboring nations. He put his energies into organizing political field workers and he focused on community development. George began to understand through these activities that organizing Indian people at the community level was essential if they were to

regain economic and political power -to eliminate poverty and to rebuild cultural strength.

For George Manuel in the late 1950s, the increasingly popular ideal of self-determination would not simply be an idea, it would become a force of Indian communities to decide for themselves how they would live. In 1959, he broadened his experience and honed his knowledge and his leadership when he became the President of the North American Indian Brotherhood of British Columbia. For seven years as Chief of the Shuswap Indian Reserve and President of the Brotherhood George worked to promote community development on reserves throughout the province of British Columbia and to press for reforms in Canadian federal and provincial government policies toward Indians. To achieve reforms in the government he later took a position in the Department of Indian Affairs. But George became impatient with reforms when in 1969 Canadian Prime Minister Pierre Trudeau issued the White Paper, a government policy document which announced Canada's intention to dissolve Indian nations and promote the "assimilation of Indian people into Canadian society."

Trudeau's White Paper was the last straw for Chief Manuel. His years spent trying to reform Canadian government policies had failed. "Canada was dead set on wiping out Indians once and for all," George recalled later. Collecting what he called the "best and the brightest Indian people I could find," George Manuel sought and won the Presidency of the National Indian Brotherhood

in 1970. With the added power and resources of a country-wide organization and his "best and brightest," he set his mind and the whole of Indian Country in Canada to a strategy to defeat "Trudeau's White Paper." In countless speeches, meetings, interviews and strategy sessions, he beat the drum of resistance to Canada's assimilation policy. He urged the mightiest to turn the policy around and he pushed for more community political organization in the reserves.

"If we didn't fight then," he recalled later, "Trudeau would have destroyed all the Indian people in Canada." In search of "help for my people" Chief Manuel traveled to Tanzania as a member of a Canadian government delegation. And quite by coincidence and absence of the delegation's leader, Tanzania's President Julius Kambarage Nyerere received Chief Manuel as the Canadian government's chief representative. Treated as a head of state, Chief Manuel decided to take advantage of the situation and entered into lengthy private discussions with President Nyerere about ways that Tanzania could help "your brown brothers in Canada."

President Nyerere, as George retold the story, responded by describing how Tanzania achieved her independence in 1964 without a revolution or a shot fired.

"I traveled from village to village among all the tribes in what was then called Tanganyika," Nyerere recounted. "By meeting with the people directly, I was able to persuade them of how we could achieve independence and freedom."



“You have an independent country now. Won’t you help the Indians in Canada?” George queried.

“No, I won’t help now, not until you organize your people first. Only after the people decide on what they really want can I be of any help,” Nyerere responded.

“I was so mad at what Nyerere had said, I couldn’t believe a black man wouldn’t help brown people,” George later recalled. He thought he had wasted his time, and he was now deeply troubled that a leader of another tribe who was the President of a Third World state wasn’t willing to help Indian people.

In 1971, George was asked to be a member of another Canadian Delegation, this one made up of Members of Parliament. The delegation traveled to New Zealand on “an evaluation tour of Maori programs.” Here Chief Manuel discovered quite a different response to his calls for support of the Indians of Canada. Visiting with Maori people he learned “they were just like us!” George began to understand that there were “other peoples in the world who had the same kinds of experiences as Indians in Canada.” “I thought,” he recalled, “the Maoris could help us and we could help them!.” With this realization came yet another: “Nyerere was right! The people must first be organized at the community level and they can help each other.” What George discovered was something he had already known.

With ideas beginning to crystallize about community organization and international cooperation, Chief Manuel sought out his counterpart in the United States: President Mel Tonasket of the National Congress of American

Indians. George traveled to Washington, D.C. to meet with Tonasket and eventually they signed an international agreement in 1973 to establish technical exchanges between the National Brotherhood and the National Congress of American Indians. This agreement led to another agreement between the two organizations to coordinate a number of meetings between “Indians in Africa, the Americas and the Pacific” as George would often call other native peoples.

Meanwhile, Chief Manuel’s ideas began to take shape about how the Shuswap people could be helped by neighboring tribes and other native peoples in the world could help each other. His fifty-two years of growing and learning by actual experience were then to be condensed into a book: *The Fourth World: An Indian Reality* (Collier Macmillan, Canada, Ltd. 1974; Free Press, New York 1974). Realizing that while Shuswaps must help themselves and “decide for themselves what they want” they must also work with other peoples to give and receive help as well.

Seeing with his own eyes as he had through years of “political work,” George concluded that the First World, Second World and the Third World would not come to the aid of his people. But he had made a profound discovery as a result of his travels to other parts of the world and his visits with other native peoples: “We share the same vision and the same experiences and we are alike in our traditional ways.” He learned that the concepts of the “Sacred Four Directions” and the “Sacred Circle” were common to nearly all native peoples he had met. The original nations throughout the world, George reasoned, are the Fourth World.

With this new structure of ideas and the agreement he had forged with the National Congress of American Indians, he continued to travel across Canada, South America, Central America, Australia, and Northern Europe to meet with “those other Indians.” The frenetic pace he set caused many to tire, but finally in 1975 at Port Alberni, Canada Chief George Manuel presided over the first meeting of native representatives from throughout the world - a meeting that founded the World Council of Indigenous Peoples. Based on the principles of “community consent” and self-determination, the World Council of Indigenous Peoples made up of representatives from Fourth World Nations was formally established with Chief Manuel as its first President.

From 1975 to 1981, George remained the President of the World Council of Indigenous Peoples. With the energy of a man half his age, he traveled extensively to Indian villages in Northern Argentina, to the Quechua villages in the high mountains of Peru, to Samiland in Sweden, Indian reservations in the United States, to Yapti Tasbia in Eastern Nicaragua, to Mapuche villages in Chile and to the Mayan refugee camps on the border between Mexico and Guatemala. Everywhere he went, the people recognized George Manuel, even though they had never actually seen his face before.

At the Second General Assembly of the World Council of Indigenous Peoples in Samiland, Sweden (1977) Chief Manuel pressed for the Council to adopt a declaration calling for the international community to proclaim a Universal Declaration on the Rights of Indigenous Peoples.

With respect for his wishes, the Council not only adopted the declaration, but by virtue of that act set in motion a political wind that brushes the face of Fourth World peoples on every continent even today. Within ten years from the Council’s declaration, the United Nations began deliberations on the principles and terms to be contained in a Universal Declaration on the Rights of Indigenous Peoples.

While giving his strength to the formation of a global network of Fourth World nations, Chief Manuel continued to emphasize community organization among his Shuswap people. To emphasize his commitment to the continuing struggle against Canadian government policies of assimilation, George had, in addition to his commitments to the World Council of Indigenous Peoples, become the President of the Union of British Columbia Indian Chiefs. By the end of the 1970s, Chief Manuel recognized that while Canadian Premier Trudeau’s White Paper had been effectively defeated, the same threat in a different form had surfaced. Trudeau revealed in the middle 1970s that the White Paper was only the first volley aimed at Indian nations. Indeed, it became apparent that the assimilation policy of 1969 was to become an important element of Canada’s effort to become independent from Great Britain. Prime Minister Trudeau had begun to fashion what would become known as the “Constitutional Process” or the Canadian goal to “repatriate the Canadian Constitution.”

A key obstacle to Canadian independence was the political visibility of Indian nations. Premier Trudeau considered Indian claims to vast areas of what Canada claimed as its domain a threat

to Canadian stability. His solution, originally enunciated in the “White Paper” remained high as a hidden policy in the “Constitutional Repatriation Process.”

Chief Manuel recognized early that Trudeau had shifted his attack on Indian nations into the constitutional initiative. It was his recognition of the subtle shift that caused George to place before the Union of British Columbia Indian Chiefs the “Aboriginal Rights” position paper. Asserting original ownership to aboriginal territories, the position paper provided the foundation for a strategy to counter Trudeau’s subtle attack on Indian nations through the constitutional process. In 1980, Chief Manuel called upon the British government and the Canadian government to recognize in a new Canadian Constitution a “third level of government” - Indian governments alongside provincial governments and the federal government in confederation.

To give emphasis to his call, Chief Manuel began to direct the organization of a monumental movement called the “Constitution Express.” As a politicizing device for Indian communities and a political force aimed at dramatizing the right of Indian nations to exercise self-government as a third level of government within the federation of Canada, the “Constitution Express” was literally a train carrying Indians from scores of reserves to Ottawa to meet with members of the Canadian parliament. At the same time, George organized and sent a delegation of sixty Chiefs and tribal

members to New York City to conduct “briefing sessions” with key state missions to the United Nations. Meanwhile, about six hundred Indians from many nations were organized to travel to England to meet with members of parliament there and to meet with political leaders in other European capitols. His ability to mobilize thousands of Indians to lobby Canadian Members of Parliament, British officials, other European officials and United Nations officials shocked Canadian politicians. Never had they conceived the ability of one man to command the allegiance of so many to promote Indian Rights - Indian Government.

As if to say to President Nyerere, “I have visited the villages, and the people of the Fourth World know what they want - self-government and freedom,” Chief George Manuel had demonstrated that the Indian peoples of Canada could reach for self-determination and make a choice. He had expanded upon the concept of community organization by reaching out to other native peoples and conceiving of the Fourth World. He had breathed life into native communities all over the world where hopelessness became replaced with confidence and high aspirations. He opened the eyes of millions to the wrongs being done to native peoples; and he instilled in millions more the desire to achieve great things to right those wrongs. Grand Chief George Manuel’s legacy to us all are these things and more.

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# Rights of Distinct Peoples

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

Bertha R. Miller (Rudolph C. Ryser, PhD)

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

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

The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and cooperation. (GA Resolution 1514 [XV] 1.)

With that single stroke, the international community opened the door to the establishment of scores of new states in Africa, the Caribbean, Asia, Melanesia and the South Pacific. The question of decolonizing peoples distant from colonial powers had finally been resolved after forty-one years. But, the other question of self-determination for peoples inside the boundaries of existing states

remained unsettled. States with nations inside their boundaries regarded the question of self-determination for “internally colonized peoples” as too threatening to the sovereignty of the state. If “internally colonized peoples” were allowed self-determination and self-government, it was argued, some states would collapse. In view of this argument first presented in the League of Nations, the question of “internally colonized peoples” was set aside. The question was simply too threatening to the permanence of individual states and the state system itself.

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

In the United Nations General Assembly, new state members quickly and without reservation joined their former colonial masters to adopt *General Assembly resolution 1803 (XVII)* on 14 December 1962 on “Permanent sovereignty over natural resources.” This resolution aimed to ensure that each state had control over its domain. But in 1970, the United Nations adopted the *Declaration on Friendly Relations and Cooperation among States specifically* aimed at any action that would dismember an existing state. States governments declared any action unacceptable “which would dismember or

impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination.”

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

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

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

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

Five years after the WCIP Second General Assembly, the United Nations authorized the establishment of the United Nations Working Group on Indigenous Populations. The U.N. Economic and Social Council gave the Working Group the specific mandate to

examine the “evolution of standards for the rights of indigenous populations” and to receive information on developments that would indicate the future shape of these standards. By 1985, the Working Group received an expanded mandate to draft a Universal Declaration on the Rights of Indigenous Peoples.

Seventy years after the League of Nations first considered the subject of promoting the self-determination of nations located inside the boundaries of existing states, its predecessor the United Nations, began the formal process of drafting new international legislation concerned with the rights of tribal and national peoples. In the Summer of 1989 the U.N. Working Group on Indigenous Populations prepared a first text of a Draft Declaration.

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

## **First Revised Text of the Draft Universal Declaration on Rights of Indigenous Peoples**

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

The General Assembly,

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

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

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

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

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

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

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

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

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

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

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

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

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

## Part I

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

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

## Part II

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

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

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

6. The right to preserve their cultural identity and traditions and to pursue their own cultural development. The rights to the manifestations

of their cultures, including archaeological sites, artifacts, designs, technology and works of art, lie with the indigenous peoples or their members.

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

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

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

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

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

## Part III

12. The right of collective and individual ownership, possession and use of the lands or resources which they have traditionally occupied or used. The lands may only be taken away from



them with their free and informed consent as witnessed by a treaty or agreement.

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

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

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

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

17: The right to require that States consult with indigenous peoples and with both

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

#### **Part IV**

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

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

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

## Part V

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

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

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

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

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

26. The right to maintain and develop traditional contacts and cooperation, including

cultural and social exchanges and trade, with their own kith and kin across State boundaries and the obligation of the State to adopt measures to facilitate such contacts.

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

## Part VI

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

## Part VII

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

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

## What is the Debate All About?

The very issues that prevented serious consideration of self-determination for “internally colonized nations” seventy years ago are at the core of the present international debate

concerning the Draft Universal Declaration on Rights of Indigenous Peoples. Fourth World nations argue that they have original sovereignty, and states argue that only the state can have sovereignty. Nations argue that they are distinct peoples while states argue that nations are mere populations under the control of a state. Nations argue they have territories and natural resources, and states argue that nations have lands which are under the regulation of the state. And, nations argue they should enjoy the right of self-determination and self-government like all other peoples while states argue that the exercise of self-determination by nations must be limited or completely rejected if the political integrity of an existing state is threatened.

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

### **Excerpts from comments on Declaration Draft**

The documented comments below (EJCN.4/Sub.2/1989/33/Add.1 June 20, 1989) was compiled by the Secretariat at the request of the Chairman Rapporteur, Mrs. Erica-Irene A. Daes, and contains an analytical compilation of the observations and comments on the draft universal

declaration on indigenous rights (E/CN.4/Sub.2/1988/25 and E/CN.4/Sub.2/1988/24, Annex II). These comments were received by 16 June 1989 from the Governments of Australia, Byelorussian Soviet Socialist Republic, Union of Myanmar, Canada, Czechoslovakia, Finland, Mexico, Panama, Romania, Sweden and Venezuela; the United Nations Centre for Transnational Corporations, the United Nations Educational, Scientific and Cultural Organization, the Food and Agriculture Organization of the United Nations and the following non-governmental and indigenous organizations: Four Directions Council, Indian Law Resource Centre, Inuit Circumpolar Conference, National Indian Youth Council, Regional Council on Human Rights in Asia and Survival International.

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

### **General Observations on the Draft Declaration**

#### **Australia**

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

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

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

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

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

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

5. There also remains the question of how to make it clear that the indigenous rights reflected

in the draft declaration are effective within the framework of State law and are not to be interpreted as implying separate development or statehood for indigenous people, or extra-citizenship rights. It is Australia’s view that the State must remain sovereign and that, if there is a conflict between indigenous right and a State law or citizenship right, the latter is to be overriding.

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

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

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

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

8. Principles 1,2,3,4,7,11 and 19 are supported by Australia. The following principles, while

perhaps requiring minor changes to the form of words used, are essentially compatible with the Government's policy and are also supported; 5, 6, 8, 20, 26, 27 and 28.

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

### **Byelorussian Soviet Socialist Republic**

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

### **The Union of Myanmar**

1. In the view of the Government of the Union of Myanmar, it is imperative that the draft universal declaration on indigenous rights include a definition of the term "indigenous peoples" to be formulated in a clear, concise and unambiguous manner. The absence of such a precise definition may give rise to different interpretations of the term, thereby making it open to serious controversy on the applicability of the declaration. On the other hand, such a definition would surely add to the clarity not only of the objective but also of the remaining provisions of the draft.

There can thus be little or no room whatsoever for ambiguities as to the "peoples" to which it applies.

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

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

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

possibility of disputes regarding the applicability or application of the draft declaration.

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

### **Canada**

1. Canada notes that, in formulating the draft principles the term “peoples” has been used in lieu of the term “populations;” the latter term is used throughout the United Nations system in this context and has a clear and unambiguous meaning. While different States, including Canada, may employ the term “peoples” domestically with reference to their indigenous populations, the meaning of the term “peoples” in international law is unclear. Its use may relate to the right of self-determination, which would not be acceptable to many States.

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

3. Furthermore, Governments and indigenous populations should be presented with objectives that are reasonable, achievable and designed to meet the needs of populations. To the extent

that the draft principles prepared to date reflect these concerns, Canada expresses its appreciation to the drafters. However, it notes that, while undoubtedly well-intentioned, the achievability of certain principles may be questioned by States.

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

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

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

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

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

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

## **Czechoslovakia**

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

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

3. Clarification of the meaning of the term “indigenous peoples,” i.e. peoples intended to be covered by the declaration, is all the more important in view of the fact that in certain specific situations the inclusion of a people among “indigenous peoples” might mean the limitation rather than the expansion of their rights. For example, the United Nations Charter sets forth the principle of equal rights and self-determination of peoples (Art.55). The import of this right is also set forth in article 2 of the International Covenant on Economic, Social and Cultural Rights and in article 1 of the International Covenant on Civil and Political Rights, where it is laid down in more general and wider terms than in the draft declaration on indigenous rights. Thus a people considered indigenous will have only limited rights in comparison with other peoples, as the aforementioned provisions of the United Nations Charter apply to all peoples. Yet in a number of cases full-scale application of the principle of equal rights and self-determination of peoples

in respect of “indigenous peoples” would not be useful; sometimes it would be even impossible.

4. For the sake of precision, it would also be advisable to pay attention to the formulation of those provisions of the draft declaration that set forth the rights and freedoms of indigenous peoples and their obligations in a specific social structure. Provisions such as article 29, paragraph 2, of the Universal Declaration of Human Rights and article 2, paragraph 3, of the International Covenant on Civil and Political Rights may be recalled in this connection. These are provisions which have to be observed in one way or another, according to the circumstances, everywhere, in every organized society, i.e. also in the exercise of the rights of indigenous peoples.

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

6. The relationship between the instruments on human rights adopted in the United Nations or in the specialized agencies such as ILO or UNESCO and the rights of “indigenous peoples”

as set forth in the draft declaration should be defined in more precise terms.

## **Finland**

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

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



## Mexico

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

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

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

- (a) Priority attention to solving land tenure problems and conflicts;
- (b) Halting the loss of indigenous lands and, within those lands, clarifying land tenure rights among the indigenous groups themselves;
- (c) Combating any form of intermediarism that could impede full participation of

the indigenous populations in the general development process;

(d) Respecting, and securing respect for, the rights of these groups;

(e) Promoting their incorporation in national development while maintaining their development within their own cultural model.

## Panama

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

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

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

technical revisions. One of the drafts concerns the updating of the special regulations governing the San Bias territory, set up in 1953.

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

## **Romania**

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

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

3. Such programmes and measures should provide for the gradual integration, in appropriate ways, of the indigenous populations in the social, economic and political life of the country in which they live, as citizens with the same rights and

responsibilities, without any discrimination or distinction, while preserving their traditions and special characteristics.

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

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

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

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

8. Accordingly, provisions such as those contained in paragraphs 6, 8, 10 and 12 to 20 should be expanded to stipulate that the rights set forth therein will be exercised within the constitutional and legislative framework of the State concerned. This question could also be

dealt with in a general provision to the effect that all the relevant rights will be exercised within the constitutional framework of the country in question and in accordance with its internal legislation.

## Sweden

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

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

3. Those two important aspects of the possibilities of strengthening and safeguarding the observance of human rights might be endangered in two ways by introducing the concept of collective human rights. In the first place, issues might be blurred in the sense that it would not be at all clear in what instances, where and at whose initiative the issue of a

transgression of those rights was to be brought up. In this context, it seems appropriate to point to the close connection between problems of this nature and the lack of a definition of the notion of “indigenous populations” or “peoples.” Secondly, it must be pointed out that the conclusion among the international normative texts on human rights of collective rights of the kind now suggested might create conflicts between such rights and individual human rights as laid down, for instance, in the International Covenant on Civil and Political Rights. Fields where problems of this character might arise are, for instance, criminal justice and family law and, in fact, in some instances, the very principle of the rule of law. There might also be unwarranted discrepancies between rights granted to indigenous populations and rights granted to minorities under article 27 of the Covenant. This would run counter to the principle of non-discrimination.

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

5. This would undoubtedly be the best way of ensuring a clear, coherent, and functional normative system in the field of human rights, which would be in accordance with the aims

set out in General Assembly resolution 41/120. For those reasons, Sweden is not prepared to endorse collective human rights in the draft declaration. The objectives sought by introducing collective human rights must be served through governmental commitments formulated in other ways in the draft declaration.

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

## Venezuela

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

2. With regard to the special position of the indigenous populations, who are gradually being incorporated into the life of the country, article

77 of the Constitution makes provision for the possibility of establishing by law any exceptional system required to protect these indigenous communities and incorporate them into the social, economic and political life of the State.

3. Venezuela has always taken a very clear stand in defense of the indigenous inhabitants and will continue to do so, but it also takes a clear stand on safeguarding and effectiveness of the rule of law, and on equality before the law for all the inhabitants of the Republic.

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

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

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

## Food and Agriculture Organization of the United Nations

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

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

## Four Directions Council

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

2. The draft declaration distinguishes, in several articles, between “individual” and “collective” rights. In the Council’s view, all the rights or indigenous peoples have both individual and collective aspects. Individuals are the beneficiaries of these rights, but individuals

exercise them through participation in their own collective institutions, such as tribal, social, political and religious organizations.

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

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

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

“Mindful that nothing in this declaration may be used as a pretext for denying to any people,

which otherwise satisfies the criteria generally established by international law, its right to self-determination;”

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

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

(b) At the eighth session of the Working Group in 1990: article-by-article review of the draft declaration, and appointment of small drafting groups, including representatives of Governments and indigenous organizations, to suggest ways of consolidating the proposals made on specific articles or groups of articles; one or more sessional meetings of the Working Group during the forty-second session of the Sub-Commission to receive the preliminary suggestions of the drafting groups; preparation, by the Chairman-

Rapporteur and members of the Working Group, of a substantive revision of the draft declaration, for discussion at the Working Group's ninth session in 1991.

### **Indian Law Resource Center**

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

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

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

## Inuit Circumpolar Conference

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

2. As a general rule, the draft declaration should use terminology that accommodates all the basic rights of indigenous peoples (i.e. both collective and individual), while at the same time emphasizing the centrality of collective rights to indigenous peoples and cultures. This vital perspective could be highlighted in the preamble. Specific references to “individual rights” or “collective rights” should be used only when the context of the provision does not permit a broader meaning.

## National Indian Youth Council

### A. Self-determination

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

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

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

4. The contours of the right to self-determination as applied to indigenous peoples

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

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

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

culture, etc. - in which indigenous peoples are entitled to exercise limited autonomy.

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

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

9. A more appropriate approach would be to accede to indigenous peoples's repeated suggestions and affirm their right to self-determination as a foundational principle. The suggested approach would decline to define in universal terms the outcome of the right's exercise, i.e. integration, autonomy, associated statehood, secession, etc.; instead, the outcome of the right's exercise would be considered



a function of the specific character of each indigenous people and of its consent to the terms fits existence within the relevant larger social, economic and political structures.

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

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

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

### **B. The duty of States to take affirmative measures**

12. For the most part, the rights specified in the draft declaration are formulated as static

guarantees, e.g. “The right to manifest, teach, practice and observe their own religious traditions and ceremonies...” Only in some instances is the statement of a right complemented by the statement of a duty or a can for positive action on the part of States, e.g. “The duty of States to seek and obtain their consent” for mineral exploration on their lands.

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

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

### **Survival International**

1. Survival International is very pleased by the overall progress being made in the elaboration of a declaration on indigenous rights. There are a number of positive aspects in the draft declaration. The draft refers to “indigenous peoples” rather than indigenous populations,”

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

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

corresponding duties of nation States to ensure respect for land and territorial rights are not enumerated.

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

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

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

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

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

## Comments on the Preamble

### Venezuela

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

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

## United Nations Educational, Scientific and Cultural Organization (UNESCO)

### First preambular paragraph

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

### Third preambular paragraph

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

### Fourth preambular paragraph

The use of the term “Rebellion” is misleading and makes the struggle against discrimination and all forms of oppression seem less legitimate. Another wording of this phrase is proposed, e.g. “which in turn has led them to voice their grievances and to organize

themselves in order to bring an end to all forms of discrimination and oppression which they face.”

#### Seventh preambular paragraph

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

### **Indian Law Resource Center**

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

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

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

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

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

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

### **Inuit Circumpolar Conference**

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

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

declaration but only “in conjunction with the indigenous peoples affected,” and not unilaterally.

As the above comments, suggestions and recommendations illustrate, there is a wide gap between many of the state’s positions and the positions of indigenous nations as reflected in views expressed by non-governmental organizations like the Inuit Circumpolar Conference and the Indian Law Resource Center. As long as the state’s governments insist on the view that “self-determination equates to secession” and the state must have absolute control over indigenous territories and peoples, it may not be possible to achieve a political settlement between nations and states through an instrument like the Draft Universal Declaration now under consideration.

By not compromising with the indigenous nations on terms to be contained in the Draft Declaration, state’s government risk a quite natural reaction by nations which seek greater control over their own political, economic and social destinies. By continuing to deny the right of self-determination to indigenous nations, and by denying the territorial integrity claimed by Fourth World nations, states avoid reality. As many of the world’s wars now waged in the world demonstrate, Fourth World nations will not be denied the right to freely determine their own political, economic and social future. The Draft Universal Declaration on Rights of Indigenous Peoples could have a profound affect on political relations in the world, and perhaps by having terms agreeable to both nations and states, a more peaceful world will emerge.

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# Between Indigenous Nations and the State Self-Determination in the Balance

By Rudolph C. Rysler, PhD

Along with territorial issues and cultural issues, the principle of self-determination is profoundly influential in the relations between states and between states and Fourth World (“indigenous”) peoples. Stated simply, the principle of self-determination asserts that it is the right of all peoples to freely choose their social, economic, political and cultural future without external interference.<sup>1</sup> Since the formulation by the Christian states of Europe in 1648 of basic principles defining the existence and legitimacy of a state, no idea has had as monumental an effect on international affairs as this principle. U.S. President Woodrow Wilson introduced on Jan. 8, 1918 the idea of political self-determination into international affairs when he proposed the establishment of a “general association of nations” as a part of his Fourteen Point Peace Program to the U.S. Senate.<sup>2</sup> Both Wilson and Britain’s Prime Minister Lloyd George proposed new principles for international cooperation and collective security, thus accelerating the break down of empires and the making of what would become more than 150 states over the next sixty years. Despite this auspicious beginning, the United States today offers to lead world opinion in fundamental opposition to the application of the principle of self-determination to indigenous peoples, and particularly to American Indians. Under the administration of President William J. Clinton, the U.S. government has joined with China, Japan, France, Iran, Iraq, England and the likes of Guatemala and Peru to prevent the application of international standards of human rights to indigenous peoples. The external U.S. position contradicts its internal policy of self-determination by distorting international law to favor authoritarian states in their efforts to suppress the rights of indigenous peoples.

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<sup>1</sup> *The Historical and Current Development of the Right to Self-Determination on the Basis of the Charter of the United Nations and Other Instruments Adopted by United Nations Organs, with Particular Reference to the Promotion in Protection of Human Rights and Fundamental Freedoms*, U.N. ESCOR, 31st Sess., at 21, U.N. Doc. FJCN.4/Sub.2/404 (Vol. 11) (1978) [hereinafter *Historical and Current Development*].

<sup>2</sup> See STEPHEN S. GOODESPEED, *THE NATURE AND FUNCTION OF INTERNATIONAL ORGANIZATION* 30 (1967); see also DANIEL P. MOYNIHAN, *PANDAEMONIUM: ETHNICITY IN INTERNATIONAL POLITICS* 78-79 (1993).

This article will examine the historical and contemporary political relations between Indian nations and the United States in the light of efforts by Indian nations to exercise self-government. Part II will begin by analyzing the recent movement by four Indian nations toward self-governance. Part III reviews some key points in the history of U.S. governmental interference in the internal political life of Indian nations. Part IV evaluates past attempts by Indian nations to govern themselves and some obstacles to self-government by Indian nations. Part V addresses attempts by the U.S. government to apply the principle of self-determination to Indian nations as a matter of internal policy, and how the U.S. government has dealt with the principle of self-determination as a matter of external policy concerning the rights of indigenous peoples. Part VI discusses the international efforts on behalf of indigenous peoples and the status of an international principle of self-determination. Parts VII and VIII observe that there is a profound contradiction between the U.S. government's internal and external applications of self-determination and that such a contradiction may reflect the practice of many state governments. The article concludes in Part IX that this contradiction may have a significant effect on how Indian nations and

other indigenous peoples seek to implement self-determination.

## II. Four Nations and the USA

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

Changing from political dependence to a position of recognized sovereignty involves constructing a new framework for political relations. This framework necessarily reduces the governing role of the Bureau of Indian Affairs

<sup>3</sup> These Indian nations are the Jamestown S'Klallam Tribe, Lummi Indian Nation, and Quinault Indian Nation, located in the northwestern part of the state of Washington, and the Hoopa Nation on the west coast of Northern California. Their decision to undertake negotiation of bilateral compacts of self-governance is a striking departure from conventional conduct of Indian affairs which has been long characterized by legal and administrative tugs-of-war between Indian governments and officials of the Bureau of Indian Affairs.

<sup>4</sup> The use of bi-lateral and multi-lateral compacts negotiated between Indian nations and the U.S. government has increasingly become the standard for formalizing agreements to resolve disputes and particularly to establish new jurisdictional arrangements between Indian nations and the U.S. government and the states, e.g., tribal/state compacts on gambling.

(BIA) in the internal affairs of an Indian nation. Self-government's implicit requirement is that the Indian nation takes responsibility for making and enforcing its decisions.

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

The 1993 negotiation of a long-term self-government compact between the Hoopa, Jamestown S'Klallam, Lummi, and Quinault Indian nations and the United States of America set a standard for future bilateral government-to-government relations between indigenous peoples and states. There is, however, an obstacle to an assured constructive and positive outcome to these negotiations. The principle of self-determination, or the right of these peoples to self-government, is a serious obstacle to

their success. Contradictions between domestic and external U.S. government policies on self-determination, as reflected in actions by the State Department and the Department of the Interior,<sup>5</sup> cast doubts about whether these negotiations between Indian nations and the United States represent a net advance in political relations or a confirmation of the status quo. The U.S. government seems to have begun a retreat from its former advocacy of self-determination of peoples and the promotion of self-government.<sup>6</sup>

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

The move to regain powers of self-government is also being propelled by a two decade long debate in the international community concerning evolving standards for the rights of indigenous peoples. These millions of people around the world whose nations were absorbed

<sup>5</sup> See discussion *infra* Parts VII and VIII.

<sup>6</sup> Global uncertainties created by the collapse of the Union of Soviet Socialist Republics [hereinafter U.S.S.R.], the breakup of Yugoslavia and Czechoslovakia and the new threats by indigenous nations to the possible breakup of the Russian Federation shook the normal self-confidence of the U.S. Department of State [hereinafter State Department]. Evidence of this uncertainty emerged during meetings in the Russian Embassy in September 1992 when the author met with German, Russian, and U.S. diplomatic representatives to discuss measures to help relieve building tensions between Russian and non-Russian peoples inside the Russian Federation after the collapse of the U.S.S.R. The U.S. representatives expressed strong reservations about participating in efforts to reduce Russian and non-Russian tensions. In subsequent meetings at the State Department and two years later in Geneva, the author engaged U.S. diplomatic representatives in extensive colloquies regarding the level of confidence the U.S. State Department had in its own ability to address issues concerning state and indigenous nation relations.



into newly formed states without consent included the Indian nations in the United States.<sup>7</sup>

Self-government by indigenous peoples within existing states (similar to Indian nations inside the United States) is part of a rapidly developing global debate. This debate involves representatives of indigenous peoples and states, as well as international organizations like the United Nations, International Labour Organization (ILO), and the Organization on Security and Cooperation in Europe (OSCE). The most visible result of the growing international debate is the formulation of a Draft United Nations Declaration on the Rights of Indigenous Peoples (Draft U.N. Declaration),<sup>8</sup> awaiting U.N. General Assembly approval. Those participating in composing the *Draft U.N. Declaration* are state governments, indigenous nations, the United Nations, and a number of specialized international agencies, as well as non-governmental organizations (NGOs). It is a hopeful time for indigenous peoples, but as suggested already, there are obstacles on the path to self-government for Indian nations involving

questions about self-determination and its applicability to indigenous nations located inside existing states.

### III. Recovering the Power to Decide

#### A. History of Intrusions into Self-Governance

From 1871 to 1991, Indian nations saw their ability to decide freely their own political, economic, social, and cultural affairs eroded by the U.S. Congress. The judicial branch of the U.S. government also made efforts to take governmental powers from Indian nations, followed by similar efforts by the executive branch of the U.S. government. Milner Ball noted this phenomenon in his examination of the relations between Indian nations and the United States when he wrote: “indian nations have prevented recent congressional deployment of plenary power against them. But the plenary power does not lie idle. Like Ariel, it reappears, transported from Congress to the Supreme Court, where its lack of both limits and legitimacy is matched by a lack of appeal from its results.”<sup>9</sup>

<sup>7</sup> The United Nations (U.N.) Commission on Human Rights authorized its Sub-Commission on Prevention of Discrimination and Protection of Minorities to undertake a study of the problem of discrimination against indigenous populations beginning in 1973. See *generally Study of the Problem of Discrimination Against Indigenous Populations*, U.N. ESCOR, 36th Sess., Agenda Item 11, U.N. Doc. E/CN.4/Sub.2 (1983) [hereinafter *Study of the Problem of Discrimination*]. On a converging historical track, indigenous nations began organizing communications between themselves through new international organizations such as the International Indian Treaty Council, World Council of Indigenous Peoples (“WCIP”), and Inuit Circumpolar Conference. International activity concerning the affairs of indigenous peoples increasingly involved non-governmental organizations like the World Council of Churches, International Commission of Jurists, and the Anti-Slavery Society. All of these trends contributed to an expanding dialogue concerned with international standards concerning the rights of indigenous peoples. The Human Rights Monitor, published by the International Service for Human Rights in Geneva, Switzerland, contains commentaries and reports describing the dialogue.

<sup>8</sup> Beginning in 1986 the U.N. Working Group on Indigenous Populations took under consideration the formulation of a new international Declaration. It worked under the direction of the U.N. Commission on Human Rights to draft a declaration flowing from its annual review of developments concerning the rights of indigenous peoples and its responsibility to consider international standards for the application of international rules to the conduct of relations between states and indigenous nations. In 1993, the Working Group on Indigenous Populations finished drafting the instrument and sent it to the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities subsequently adopted the Draft U.N. Declaration. *Report of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities*, 46th Sess., Annex, at 115, U.N. Doc. E/CN.4/2 (1995), E/CN.4/Sub.2/56 (1994). The Draft U.N. Declaration was then sent on for review by the Commission on Human Rights. The final draft of the new Declaration is awaiting ratification by the UN General Assembly.

<sup>9</sup> Milner S. Ball, *Constitution, Court, Indian Tribes*, 1987 AM. BAR FOUND. RES. J. 1, 59 (1987).

The principal means by which the powers of Indian nations were taken was through preemption and usurpation.<sup>10</sup> Most of the erosion of Indian governmental powers, including the regulation of natural resource use, land use regulation, education, civil and criminal justice, and the making of laws, was done in the name of “protecting Indian interests.”<sup>11</sup> The end result, however, was quite different.

The actual effect of the U.S. government’s attempt to protect Indian interests was to undermine Indian governmental institutions.<sup>12</sup> No Indian nation (as a whole political entity) has a political representative in the Congress or any branch of the U.S. government. No Indian nation shares political power with the States of the Union in the federal system. Yet the United States claims and exercises its absolute dominion over Indian nations and their territories through

the self-proclaimed doctrine of the “plenary power of Congress.”<sup>13</sup> Modern claims to absolute U.S. rule over Indian nations are rooted in the competition during the 1860s between the House of Representatives and the Senate over powers of budget.<sup>14</sup> This intramural Congressional contest had to do with the making of treaties with Indian nations, the cost of those treaties, and the constitutional powers of finance.

It was in 1867 that the House considered passing legislation to repeal the authority given the President, the Secretary of the Interior, and the Commissioner of Indian Affairs to make treaties with Indian nations.<sup>15</sup> Many Congressmen regarded treaties with Indian nations as creating a two-fold problem: rapidly increasing demands for revenues in a time of budgetary restraint following the Civil War;<sup>16</sup> and allowing the U.S. Senate to usurp the

<sup>10</sup> See *id.* at 57.

<sup>11</sup> The United States, it is argued by scholars, has a fiduciary duty to American Indians. See generally Reid Peyton Chambers, *Judicial Enforcement of the Federal Trust Responsibility to Indians*, 27 STAN. L. REV. 1213 (1975). U.S. President Richard M. Nixon declared in his July 1970 statement to Congress the existence of a “special relationship between the Indian tribes and the Federal government.” 91 CONG. REC. 23, 132 (1970) [hereinafter Nixon 1970 Statement to Congress]. President Nixon claimed that the special relationship “continues to carry immense moral and legal force,” obligating the United States to protect Indian interests. *Id.* Milner Ball expressed this view as well: “Although the trust doctrine has undeniably served as a remedy in certain instances of federal mismanagement of tribal lands and money, it appears in fact primarily to give moral color to depredation of tribes.” Ball, *supra* note 9, at 62.

<sup>12</sup> For most of the last century, the United States has presented itself as the paramount advocate of self-determination for non-self-governing peoples throughout the world. U.S. government officials pushed France, Britain and Spain to free their colonial holdings. The U.S.S.R. was under constant pressure to release its control over Lithuania, Estonia and Latvia - characterized as “captive nations.” World War II losses by Germany, Italy and Japan also included lost colonies which were “liberated to determine their own political future.” Statement on Indian Policy, 1 PUB. PAPERS 96 (Jan. 24, 1983) (Ronald Reagan). Yet, little if anything was ever said about the extra-Constitutional legislative dictatorship the U.S. government extended over the lives of Indian peoples.

<sup>13</sup> U.S. Supreme Court Chief Justice John Marshall first addressed the question of the plenary power of Congress when he wrote in 1824: “This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution. If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations, and among the several States, is vested in Congress as absolutely as it would be in a single government.” *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 196-197 (1824); see also Ball, *supra* note 9, at 47.

<sup>14</sup> The tension between the houses of Congress is built in the United States Constitution at Art. I, § 7, cl. 1 which provides: “all Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.”

<sup>15</sup> This is discussed as recently as 1975 in the U.S. Supreme Court decision of *Antoine v. Washington*, 420 U.S. 194, 202 (1975).

<sup>16</sup> See D’ARCYMCNICKLE, *THEY CAME HERE FIRST* 205-06 (1975).

constitutional power of the House by creating new budgetary demands through treaties.<sup>17</sup> The debate continued when passage of the bill to restrain the Executive branch from making treaties failed and the Senate was confirmed as the constitutionally empowered body of Congress responsible for treaty ratification. A compromise bill was subsequently introduced as an attachment to the Indian Appropriation Act of 1871.<sup>18</sup>

### **1. The Appropriation Act of 1871**

As a compromise, language used in the bill attached to the Indian Appropriation Act of 1871 stated:

that hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe or power with whom the United States may contract by treaty; Provided ... that nothing herein contained shall be construed to invalidate or impair the obligation of any treaty heretofore lawfully made and ratified with any such Indian nation or tribe.<sup>19</sup>

The passage of the 1871 Indian Appropriation Act into law effectively stopped the making of new treaties with Indian nations and severed formal government-to-government relations between the United States and Indian nations. While satisfying the political concerns of Congressmen worried about Senate usurpation, the breaking of government-to-government connections with Indian nations posed dilemmas for the U.S. government. Questions arose as to the legal means available for the United States to legally acquire Indian lands, and how the U.S.

government should deal with the growing number of civil and criminal problems involving U.S. citizens in Indian territories. A string of court cases resulting from these dilemmas appeared in the federal courts.

In one of two landmark cases, *Elk v. Wilkins*,<sup>20</sup> the Court first addressed these congressionally created dilemmas. The decision stated that the “utmost possible effect [of the 1871 Indian Appropriation Act] is to require the Indian tribes to be dealt with for the future through the legislative and not the treaty-making power.”<sup>21</sup> One year earlier, in *Ex Parte Crow Dog*,<sup>22</sup> the Court ruled in favor of recognizing treaty obligations between the United States and the Brule Sioux, and recognized the power of the Brule Sioux government to administer “their own laws and customs” in connection with crimes committed by Indians against Indians.<sup>23</sup> Congress seized upon the court’s ruling and responded to the Crow Dog decision by enacting the Major Crimes Act of 1885.<sup>24</sup>

### **2. Major Crimes Act of 1885**

As the first intrusion into Indian government jurisdiction by the U.S. government, the Major Crimes Act imposed U.S. authority inside

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<sup>17</sup> See *Antaine*, 420 U.S. at 202.

<sup>18</sup> Indian Department Appropriations Act of March 3, 1871, ch. 120, 16 Stat. 544.

<sup>19</sup> *Id.* at 566.

<sup>20</sup> 112 U.S. 9:4 (1884).

<sup>21</sup> *Id.* at 107.

<sup>22</sup> 109 U.S. 556 (1883).

<sup>23</sup> See *id.* at 568.

<sup>24</sup> 23 Stat. 385 (1885).

Indian territory over eight subject crimes. These included: murder, manslaughter, rape, assault with intent to kill, arson, burglary, and larceny.<sup>25</sup> New crimes were added in the years to follow: statutory rape, assault with intent to commit rape, assault with a dangerous weapon, assault resulting in serious bodily injury and robbery.

The imposition of the Major Crimes Act led to a court challenge in 1886 to the law's constitutionality.<sup>26</sup> Attorneys for two Indians who had been indicted for the murder of a member of the Hoopa tribe argued that the Act went beyond the constitutional powers of Congress. The Court agreed, noting that the Constitution did not grant Congress power to intrude into the jurisdiction of Indian tribes.<sup>27</sup> Ignoring its own conclusion affirming the unconstitutionality of the Major Crimes Act, however, the Court turned to a political argument for its final decision: “[b]ut, after an experience of a hundred years of the treaty-making system of government, [C]ongress has determined upon a new departure, -to govern them by acts of [C]ongress. This is seen in the act of March 3, 1871.”<sup>28</sup>

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

### 3. The Plenary Power of Congress

In 1899, the Court first used the term plenary power to describe Congress's exercise of extra-Constitutional legislative powers in *Stephens v. Cherokee Nation*.<sup>29</sup> The Court was presented with the issue of whether Congress had the authority to establish a mechanism for determining membership rolls of several Indian tribes.<sup>30</sup> The Court said: “assuming that Congress possesses plenary power of legislation in regards to [the Indians], subject only to the Constitution of the United States, it follows that the validity of remedial legislation of this sort cannot be questioned unless in violation of some prohibition of that instrument.”<sup>31</sup>

Thus, the Court asserted that Congress had plenary power over Indian nations. The only evidence that Congress had such power was the Appropriations Act of 1871. The Court's reach for evidence to support its conclusion only confirmed that Congress had unlawfully exercised absolute power over Indians. After establishing the plenary power doctrine, the Court three years later held that Congress's power over Indian legislation was a political question and not subject to judicial review.<sup>32</sup>

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<sup>25</sup> *See id.*

<sup>26</sup> *United States v. Kagama*, 118 U.S. 375 (1886).

<sup>27</sup> *See id.* at 378-79.

<sup>28</sup> *Id.* at 382.

<sup>29</sup> *See* 174 U.S. 445,478 (1899).

<sup>30</sup> *Id.* at 476.

<sup>31</sup> *Id.* at 478.

<sup>32</sup> *See Cherokee Nation v. Hitchcock*, 187 U.S. 294,308 (1902).

The legislative branch of the U.S. government first closed the door on government-to-government relations by enacting the Appropriations Act of 1871. It then imposed laws of the U.S. government directly over individual Indians. The U.S. courts supported Congress's actions through the plenary power doctrine, and then closed the doors to judicial consideration of the lawfulness of the doctrine through the political question doctrine, effectively insulating itself from criticism or challenge. Finally, the executive branch enforced both the congressional and judicial actions and assumed administrative powers of its own over Indian people.

By 1902, the U.S. government's dictatorship over Indian nations was complete: Indian nations had been stripped of the capacity to determine and decide their own political, economic and social future.

#### **IV. Past Attempts at Self-Governance**

##### **A. Beginning Initiatives**

Ninety-three years after the U.S. Congress closed the door on treaty negotiations by passing the Appropriations Act of 1871, Indian nations took their own initiatives to regain power over their lives.<sup>33</sup> Beginning in 1964 with the Johnson Administration's "Great Society Programs" and "Indian Self-Determination Policy," Indian nations received small amounts

of community development funds and began to pursue a new political course of "strengthening tribal government." Though the "Great Society Programs" were not specifically targeted to Indian reservations, they were open to "pockets of poverty," a category under which, alas, Indians could qualify. The "Indian Self-Determination Policy" was so overshadowed by the traumatic political events choking American political leaders and the general public that little notice was given to this policy. The policy had been the Johnson Administration's late response to the 1961 "Declaration of Indian Purpose" which grew out of an intertribal conference in Chicago. Further encouraged by the Nixon Administration's "Indian Self-Determination Policy,"<sup>34</sup> and gaining momentum with the Reagan Administration's "government-to-government policy," U.S. President Ronald Reagan offered an Indian policy that emphasized reservation economic development and the conduct of relations with each Indian government on a "government-to-government" basis. This policy implied a partnership between the U.S. government and Indian governments within a mutually defined framework that respected tribal sovereignty and U.S. sovereignty, i.e., a treaty relationship. Indian nations moved systematically to assume anew their powers of self-government. Through structured negotiations in the U.S. courts, informal negotiations with the executive branch

<sup>33</sup> Some Tribal Councils began adopting resolutions intended to set aside some tribal lands as wilderness zones (Yakima Nation), to establish taxation on business transactions (Quileute Indian Tribe), others imposed (without Secretary of the Interior approval) restrictions on waste disposal, and still others began to draw up complete "law and order codes" and other land use regulations (Quinalt Indian Nation, Red Lake Chippewa, Colville Confederated Tribes).

<sup>34</sup> U.S. President Richard Nixon's 1970 statement to Congress called for a new federal policy of "self-determination" for American Indians, declaring that the earlier "termination policy" was ended and replaced by a policy to encourage Indian nations to decide their own future with the support of the United States government. See Nixon 1970 Statement to Congress, *supra* note 11, at 23, 132.

and work with Congress, many Indian nations moved toward clarifying their governmental powers.<sup>35</sup>

## **B. Preliminary Discussions of 1987**

The events leading up to the 1993 self-government agreements between the United States and the Hoopa, Jamestown S’Klallam, Lummi, and Quinault Indian nations, officially began in October 1987 with discussions between Lummi Chairman Larry G. Kinley, Quinault President Joe DeLaCruz, and the Chairman of the Interior and Related Agencies Appropriations Sub-Committee, Congressman Sidney Yates (Democrat Illinois). The issue under discussion was how to find a solution to the problems the Lummi and Quinault suffered while dealing with the BIA, such as mismanagement of tribal and individual trust funds and possible illegal activities in the management of natural resources. More specifically, Congressman Yates was preparing to convene hearings concerning allegations of BIA mismanagement of tribal and individual trust funds, as well as probable illegal activities associated with the management of oil, coal, and land leases appearing in reports published by an Arizona newspaper. He invited these tribal chairmen to give suggestions as to what might be done. Both tribal chairmen recited extensive complaints about BIA mismanagement

of resources and finances in connection with their reservations. These exchanges naturally led to their consideration of “taking back control” from the BIA.<sup>36</sup> Previously, as President of the National Congress of American Indians (“NCAI”) in 1983, DeLaCruz urged Indian leaders to “make a decisive departure from the recurring issues that divert our attention from the most important priorities and initiatives necessary to establish meaningful government-to-government relations with the United States.”<sup>37</sup> While meeting with Congressman Yates, DeLaCruz reiterated his views on government-to-government relations.

In addition, Chairman Kinley appeared before Congressman Yates’s Sub-Committee and delivered testimony entitled “Problems and Solutions in the Tribal-Federal Relationship,”<sup>38</sup> which emphasized building a framework for government-to-government relations to help find solutions to persistent problems that were perceived as responsible for undermining constructive tribal development.

## **C. The Tribal Self-Governance Demonstration Project**

As a result of these discussions and public hearings, the House Interior and Related Agencies Sub-Committee decided to include a three paragraph attachment to its annual

<sup>35</sup> Leaders of Indian nations organized a systematic strategy within the National Congress of American Indians to carefully select and advance only those pieces of legislation (in the U.S. Congress) or litigation (in the Federal Courts) that supported a return of tribal governmental powers. In efforts to deal with the Executive Branch of the Federal Government, Indian leaders targeted their efforts to reduce Bureau of Indian Affairs control over Indian nations’ internal affairs.

<sup>36</sup> Interview with Joe DeLaCruz, President of Quinault Indian Tribe, in Taholah, Wash. (May 12, 1995).

<sup>37</sup> See generally JAMESTOWN BAND OF KLALLAM, QUINAULT INDIAN NATION, TRIBAL SELF-GOVERNANCE: SHAPING OUR OWN FUTURE - A RED PAPER 8 (1989) (referring to an interview with Joe DeLaCruz, President of the Quinault Indian Tribe).

<sup>38</sup> LUMMI INDIAN BUSINESS COUNCIL, PROBLEMS AND SOLUTIONS IN THE TRIBAL-FEDERAL RELATIONSHIP (1987).

appropriations bill that identified funds for a tribal self-governance demonstration project.<sup>39</sup> In addition to appropriating funds for conducting the demonstration project and identifying ten tribes as participants, including the Lummi and Quinault tribes, the bill provided that the United States government and the Indian governments would negotiate demonstration agreements.<sup>40</sup> Without fanfare or public notice, other than the three paragraphs in the Appropriations Bill, the U.S. government had reopened government-to-government relations with Indian nations through exactly the same device it had used to close them.

During the eighteen months after passage of the Appropriations Act (1988), all ten Indian nations involved in the project entered into a period of intensive research and planning to assess their political and economic interests while building a framework for formal government-to-government relations with the United States. Some of the participants did not complete the project. For example, the Mescalero Apache Indian nation<sup>41</sup> decided not to continue to participate in the process, and the Red Lake Chippewa<sup>42</sup> chose to quickly negotiate

agreements with the BIA in order to rearrange administration in their territory. Only the Hoopa, Jamestown S'Klallam, Lummi, and Quinault nations continued with the project, emphasizing the formulation of government-to-government relations and standards for negotiating agreements between themselves and the

U.S. government. In June 1990, each of the four tribes undertook bilateral negotiations with the United States and concluded a Compact of Self Governance. The central purpose of each Compact was stated in this way:

This Compact is to carry out ... a Self-Governance Demonstration Project ... intended as an experiment in the areas of planning, funding and program operations within the government-to-government relationship between Indian tribes and the United States. The Demonstration Project encourages experimentation in order to determine how to improve this government-to-government relationship.<sup>43</sup>

As they cautiously move toward greater internal self-government, these Indian nations are choosing to reassume most powers of internal

<sup>39</sup> H.R. CONF. REP. No. 100-498, at 899 (1987).

<sup>40</sup> See *id*

<sup>41</sup> Mescalero Apache Chairman Wendel Chino sent a letter in 1988 (shared with other tribal leaders) to the Secretary of the Interior advising the U.S. government that the Mescalero Apache government would not further pursue planning toward negotiation of a self government agreement.

<sup>42</sup> Well before the self-government planning process began, Red Lake Chippewa Chairman Roger Jourdain had begun negotiation of a memorandum of understanding with representatives of the Assistant Secretary for Indian Affairs in the U.S. Department of the Interior. This agreement conveyed Bureau of Indian Affairs Agency Superintendent administrative powers to the Chippewa Chairman, thus, making the Red Lake Chippewa Chairman effectively an employee of the U.S. government and the Chairman of the Red Lake Chippewa.

<sup>43</sup> LUMMI INDIAN BUSINESS COUNCIL, COMPACT OF SELF-GOVERNANCE BETWEEN THE LUMMI INDIAN NATION AND THE UNITED STATES OF AMERICA (1990) (stating that the language is duplicated in the bi-lateral agreements between the Quinault, Jamestown S'Klallam, and Hoopa Indian nations and the U.S. government).

self-government, including taxation, control of natural resources, boundary regulation, trade, environmental regulation, civil affairs, and criminal jurisdiction. The parties to each Compact mutually recognize the sovereignty of the other and pledge to conduct relations on a government-to-government basis.<sup>44</sup> The internal laws of each nation are to be applied in the execution of the Compact and the decisions of the nation's courts are to be recognized and respected.<sup>45</sup> The balance of the Compact describes procedures for funding transfers, records and property management, retrocession, dispute resolution, ratification, and a statement of obligations for each of the parties. Treaty relations between each of the nations and the United States thus began again and tentative steps toward self-government were taken.<sup>46</sup>

## V. U.S. Response to the Demand for Self-Governance

The U.S. government has made its policy on Indian self-determination abundantly clear with the election of each new president since Lyndon B. Johnson, who offered self-determination as the basis of his Indian Affairs policy in 1968.<sup>47</sup> Succeeding administrations affirmed the recognition of the sovereignty of tribal governments. Beyond the executive branch's: frequent affirmation of Indian self-determination in policy, Congress has placed itself on the public record repeatedly endorsing the principle of self-determination since it enacted the Indian Self-Determination and Education Assistance Act of 1975 (Self-Determination Act).<sup>48</sup>

<sup>44</sup> *See id.*

<sup>45</sup> *See id.*

<sup>46</sup> Just as the United States and Indian nations were beginning to negotiate Self-Governance Compacts in 1989 and 1990, the United States government was participating in meetings of the International Labor Organization and the United Nations concerning new standards for the rights of indigenous peoples, including Indian nations. Despite concluding several Self-Governance Compacts, representatives of the U.S. Government in Geneva, Switzerland delivered statements opposing the raising of international standards that recognize the right of Indian nations and other indigenous peoples to the exercise of self-determination and self-government. On five key international agreements concerning the rights of indigenous peoples or U.S. obligations to advance the human rights of Indian peoples, the U.S. government delivered mixed messages which often conflicted with internally proclaimed Indian Affairs policies concerning recognition of the sovereignty of Indian nations and their right of self-determination.

<sup>47</sup> In the last months of the Johnson Presidency, his administration announced its fundamental rejection of the "tribal termination policies" of earlier administrations and urged that a new policy be adopted which fosters self-determination. See Special Message to the Congress on the Problems of the American Indian: "The Forgotten American," 1 PuB. PAPERS 335, 336 (Mar. 6, 1968) (Lyndon B. Johnson). President Nixon's 1970 statement announced the first comprehensive Executive branch policy on Indian Affairs that rejected the policy of forced termination and the implication of trustee responsibility that it carried. See Nixon 1970 Statement to Congress, *supra* note 11, at 23,132. Instead, President Nixon urged the formulation of a new "Indian Self-Determination Policy." See *id.* at 23,133. Continuing this thought, Congress enacted in 1975 the Indian Self-Determination and Education Assistance Act (P.L. 93-639) with the expressed intent of increasing tribal self-government and a systematic reduction in the staff and powers of the Bureau of Indian Affairs. A joint Congressional commission (the American Indian Policy Review Commission) reaffirmed the Johnson, Nixon and Congressional affirmations of the principle of self-determination in its May 1977 final report to the Congress. While neither the Gerald R. Ford Presidency nor the James E. Carter Presidency issued Indian Affairs policy statements, both continued the policies of the previous administrations. On January 14, 1983 President Ronald Reagan issued his "Indian Policy Statement" stating "excessive regulation and self-perpetuating bureaucracy have stifled local decision making, thwarted Indian control of Indian resources, and promoted dependency rather than self-sufficiency. This administration intends to reverse this trend by removing the obstacles to self-government and by creating a more favorable environment for development of healthy reservation economies. Our policy is to reaffirm dealing with Indian tribes on a government-to-government basis and to pursue the policy of self-government for Indian tribes without threatening termination." Statement on Indian Policy, 1 PuB. PAPERS 96 (Jan. 24, 1983) (Ronald Reagan). By associating itself with the "government-to-government policy" the Reagan administration substantially advanced the political debate about tribal self-determination and moved the dialogue one step closer to defining a new political framework for relations between Indian nations and the United States.

<sup>48</sup> Pub. L. No. 93-638, 88 Stat. 2203 (codified as amended at 25 U.S.C. §§ 450(a)-(n), 458(a)-(hh) (1994).



The United States and Indian nations entered into no fewer than 400 international treaties between 1787 and 1871 concerning their direct relations.<sup>49</sup> Only a few multi-lateral agreements have been concluded between state governments

directly relevant to United States and Indian nation relations.<sup>50</sup> Four international agreements (See Table 1 below) relevant to Indian Affairs were ratified by the United States between 1944 and 1992.

**Table 1: State Obligations toward Nations under International Law**

International legal instrumen	Administerin body	Year coming into force	Year ratified by U.S.
The Inter-American Treaty on Indian Life	Organization of American States	1941	1944
Convention Concerning Tribal and Semi-Tribal Populations in Independent States #107	International Labour Organization	1957	1957
Helsinki Final Act {Accords}	Organization on Security and Cooperation in Europe	1975	1975*
International Covenant on Civil and Political Rights	United Nations Organizatio	1963	1992

(\* Initialed, but not ratified by the U.S. Senate. All parties have operated as if this instrument carries the full force of law.)

Representatives of the U.S. government have also actively participated in the formulation of the Draft U.N. Declaration since 1986. The Draft U.N. Declaration directly bears on the conduct of U.S. relations with Indian nations inside a framework of internationally defined standards. I will discuss this evolving instrument and the U.S. government's role in its development at greater length below.

### A. Obstacles to Self-Governance

Events involving nations worldwide have increasingly drawn the U.S. government into the intense international debate about the standards that should guide state governments in relations with non-self-governing peoples. As the number of multi-state agreements concerning human rights in general grows, and in particular, the number of

<sup>49</sup> More than eight hundred treaties were actually negotiated, but only about half were ever ratified by both by the United States Senate and each nation.

<sup>50</sup> Since the end of World War I and the Treaty of Paris in 1918, state governments have repeatedly affirmed and reaffirmed the principle of "non-intervention" in the internal affairs of states. Indeed, this principle is deeply rooted in European international relations. The Peace of Westphalia in 1648 ended the Thirty Years' War and defined the basic rules of relations between states. Chief among these rules were affirmation of the territorial boundaries of states, proclaiming state sovereignty and a recognized policy of non-interference in the domestic affairs of other states. Contemporary restatements of these principles effectively eliminated any perceived need for multi-lateral treaties concerning indigenous nations. This was particularly true of the U.S. because of its youthfulness as a state. Only after World War I did other states governments regard the U.S. as a significant player in international affairs. This new role as a player on the international stage gave rise to the U.S. government needing to affirm its basic identity as a state. Indian Affairs was considered an "internal matter." This view remained unexamined until BIA Commissioner John Collier began to work toward extending President Franklin Roosevelt's "New Deal" to Indian Affairs in the late 1930s and early 1940s. It was in these years that the international dimension was added to Indian Affairs.

agreements concerning nations grows, questions about the treatment by state governments of indigenous peoples will also grow.

### **B. Inside the U.S.**

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

### **C. The United States in the International Realm**

The U.S. government's treatment of Indian nations has regularly come under scrutiny by

international agencies since 1970.<sup>51</sup> The result has been increased U.S. participation in international forums where issues of indigenous peoples are discussed. The U.S. government hosted the 9th Inter American Congress on Indian Life in Santa Fe, New Mexico in 1989 and has participated in this quadrennial Congress since 1944. The United States has also participated in virtually all annual sessions of the United Nations Working Group on Indigenous Populations since 1982 and convened an annual sessions of meetings between government officials responsible for "indigenous peoples" involving the United States, Australia, New Zealand and the Hawaiian State Office of Hawaiian Affairs. In addition, the United States participated actively in three years of meetings designed to revise ILO Convention 107<sup>52</sup> and produce ILO Convention 169.<sup>53</sup>

## **VI. Other International Efforts on Behalf of Indigenous Nations**

Strong demands for new international policy in the highly specialized area concerning indigenous nations are being made by NGOs and indigenous

<sup>51</sup> Charges of U.S. mistreatment of Indian people by the Indian Health Service (sterilization of Indian women), and the BIA created demand for information and clarifications by the Commission on Security and Cooperation in Europe and resulted in "American Indians" becoming a chapter in the 1977 report of the U.S. Commission on Security and Cooperation in Europe discussing U.S. compliance with the Helsinki Accords. The U.S. government has also been asked to respond to queries from U.N. Special Rapporteur Jose R. Martinez Cobo, who conducted the 1983 Commission on Human Rights Study of the Problem of Discrimination Against Indigenous Populations. See *Study of the Problem of Discrimination Against Indigenous Populations*, U.N. ESCOR, 36th Sess., Provisional Agenda Item 11, U.N. Doc. FJCW.4/Sub.2/1983/21/Add. 1-12 (1983). The United States government has also been asked to respond to queries from the ILO on its treatment of Indian peoples, and by the United Nations Special Rapporteur Miguel Alfonso Martinez on Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous Peoples. The United States and other state governments were recipients of a special questionnaire sent by the Special Rapporteur in 1992. See *Discrimination Against Indigenous Peoples, Report of the Working Group on Indigenous Populations on its Tenth Session*, U.N. ESCOR, 45th Sess., Agenda Item 15, Annex II, at 53, U.N. Doc. E/CN.4/Sub.2/1992/33 (1992) [hereinafter *Discrimination Against Indigenous Peoples*].

<sup>52</sup> International Labour Organization Convention (No. 107) Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, June 26, 1957, 328 U.N.T.S. 247 (entered into force June 2, 1959) [hereinafter ILO Convention No. 107].

<sup>53</sup> International Labour Organization Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989, 28 I.L.M. 1382 (entered into force Sept. 5, 1991) [hereinafter ILO Convention No. 169].

peoples, as well as by state governments. The World Council of Churches (Geneva), the Anti-Slavery Society (London), International Working Group on Indigenous Affairs (Denmark), and Amnesty International (London), are among the NGOs pressing for new standards protecting the rights of indigenous nations. The Haudenosaunee (Six Nations Iroquois Confederacy), West Papuans, Yanonami, Cree, Quechua, Mapuche, Maori, and Chakma are among the indigenous nations playing an active role. Norway has been the most active state pressing for the formulation of an international declaration on “indigenous peoples’ rights,” but the Netherlands is perhaps the only state that is actively developing a new foreign policy based on evolving standards concerned with the rights of indigenous peoples.

### **A. The International Labour Organization**

In 1959, ILO Convention 107 came into force. In addition to the 1944 Inter-American Treaty on Indian Life between the United States and seventeen South and Central American States, Convention 107 was, until the Helsinki Act of 1975, the only other major international instrument concerned with state government treatment of Fourth World nations as distinct peoples. Twenty-five state governments, including the United States, ratified the Convention 107.

The ILO is a tripartite organization controlled by state governments, but involving delegate participation of labor unions and businesses. Its Secretariat decided that Convention 107 should be changed to correspond with the new international standards of the United Nations. The central issue motivating the Secretariat to push for revisions in

Convention 107 was the belief that the language advocating assimilation of indigenous peoples into state societies was antiquated and should be changed to reflect modern political realities. The land rights provisions of Convention 107 were also considered badly formulated and, thus required updating. This movement for revision arose in conjunction with the growing visibility of indigenous peoples’ concerns on the international plane and the greater visibility and importance of the United Nations efforts that began in 1982 by seeking to develop the Draft U.N. Declaration.

After two years of preparations, a draft for a new ILO Convention, Convention 169, was tabled for final consideration in 1989. The three active groups permitted to engage in debate to determine the final language were representatives of labor unions, businesses and state governments. Only state governments had the power of decision to accept or not accept the proposed terms of reference. Representatives of indigenous nations and indigenous peoples’ organizations participated as observers, with the right to lobby official delegates, but not to speak during the negotiations.<sup>54</sup> Andrew Gray reports that the representatives of Four Nations, Treaty Six Chiefs, the Federation of Saskatchewan Indians, the Four Directions Council of Canada, the Ainu of Japan, and the National Coalition of Aboriginal Organizations of Australia were joined by representatives of the

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<sup>54</sup> See Andrew Gray, *Report on International Labor Organization Revision of Convention 107*, 1989 INT’L WORKGROUP FOR INDIGENOUS AFF. [hereinafter *Report on Revision of Convention 107*].

World Council of Indigenous Peoples (WCIP), Nordic Sarni Council, the Pacific Council of Indigenous Peoples, and the Indian Council of South America. In addition, the Coordinadora of the Amazon Basin, indigenous peoples of Brazil, Inuit Circumpolar Conference, and delegates of the Mohawk nation participated in what became known as the “Indigenous Peoples’ Caucus.”

Representatives of indigenous nations were not allowed to present their positions personally so their views were represented at the negotiating table by Labour Union representatives and by delegations representing the states of Portugal, Colombia and Ecuador. The business group representatives resisted all proposals for changes in the original language of Convention 169. Other participating states, including Peru, Argentina, Brazil, Venezuela, India, Japan, Canada, and the United States, formed into three mutually supportive blocs. The South American, Asian and North American blocs were formed with the intent to ensure that international standards remained well below the domestic standards already set in the laws of each state.<sup>55</sup>

Among the leading issues concerning delegates were whether the revised Convention should use the term “peoples” or the term “populations” to describe the subject text; whether the revised Convention should use the term “self-determination” explicitly in the text; whether the revised Convention should use the term “land” or the term “territory” in the text; and whether the revised Convention should use the term “consent” or the term “consultation” in the text.<sup>56</sup> The choice of these particular terms would make the

difference between an international convention that enhanced the rights of indigenous peoples, or a convention that had little political meaning, except as a cover for continued state exploitation of indigenous peoples.

The representatives of Canada and the United States led diplomatic efforts to limit and narrow the terms of reference in the proposed text of Convention 169. These representatives worked to defeat the use of “peoples” as a term of reference, advocating the word “populations” instead.<sup>57</sup> They argued, along with delegates from India and Venezuela that the word “peoples” implied the right of secession from the state, but the term “populations” implied units of metropolitan state citizens. Further, they asserted that the right of self-determination granted to “peoples” would pose an unacceptable threat to the territorial integrity of the state, and, therefore, use of the term without qualifiers would be unacceptable. The term “peoples” constitutes a wider concept, presumably not self-governing, and each “people” is presumably distinguishable from other “peoples” by virtue of language, culture, common history or common heritage. Identification as a “people” is a requisite qualification for a nation to secure international guarantees of fair treatment in relations with state governments.<sup>58</sup>

<sup>55</sup> *See id*

<sup>56</sup> *See id*

<sup>57</sup> *See id*

<sup>58</sup> Aureliu Cristescu, Special Rapporteur to the U.N. Commission on Human Rights, gives a clear and incisive history of the term’s usage in the UN system. *See Historical and Cu”ent Development*, *supra* note 1.

Use of the term “peoples” as language to identify the subject of Convention 169 was deliberately narrowed by state governments to limit the number of nations entitled to exercise a claim to self-determination. In the attempt to create a new meaning for “peoples” in international law, state governments included a disclaimer in the final text of the new Convention:

“the use of the term ‘peoples’ in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.”<sup>59</sup>

The pattern of confusion and constant shifting of positions established by the U.S. and Canadian representatives during the debate on the term “peoples” continued during the debates over the reference terms “land,” “territory,” “self-determination,” and “consent and consultation.”<sup>60</sup> Representatives of indigenous peoples lobbied for use of the term “territories” to cover all lands and resources belonging to the particular people,<sup>61</sup> while Canadian and U.S. representatives, along with other resistant states, viewed the use of “territories” as a threat to a state’s integrity.<sup>62</sup> After two days of debate and negotiations, Article 13 of the revised text read:

In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of the relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.<sup>63</sup>

This paragraph was immediately followed by a second paragraph: “the use of the term ‘lands’ in Article 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.”<sup>64</sup>

By using the term “territories” in Article 13, the drafters avoided inserting the term in Article 14, which dealt with the rights of ownership and possession of land for people who traditionally occupied it.<sup>65</sup> Similar efforts were made to emphasize the difference between “consult” and its more active counterpart, “consent,” and the term “self-determination” was completely left out of the text in favor of indirect references.

The effect of the work of the delegations from the United States and other states was to prevent an advance in the development of international law protecting the rights of indigenous peoples. After the revision process was completed and Convention 169 was opened for ratification

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<sup>59</sup> ILO Convention 169, *supra* note 53, at 1385.

<sup>60</sup> See *Report on Revision of Convention 107*, *supra* note 54.

<sup>61</sup> They noted that the strongest part of the 1957 Convention was Article 11: “the right of ownership, collective or individual, of the members of the population concerned over the lands which these populations traditionally occupy shall be recognized.” ILO Convention 107, *supra* note 52, at 256.

<sup>62</sup> See *Report on Revision of Convention 107*, *supra* note 54.

<sup>63</sup> ILO Convention 169, *supra* note 53, at 1387.

<sup>64</sup> *Id.*

<sup>65</sup> See *id.*

by ILO member states, Mr. Lee Swepston of the Secretariat addressed the United Nations Working Group on Indigenous Populations:<sup>66</sup>

an effort was made at every stage to ensure that there would be no conflict between either the procedures or the substance of the ILO Convention and the standards which the UN intends to adopt. Thus, the ILO standards are designed to be minimum standards, in the sense that they are intended to establish a floor under the rights of indigenous and tribal peoples and, in particular, to establish a basis for government conduct in relation to them.<sup>67</sup>

## **B. The Draft U.N. Declaration**

In 1986, the U.N. Working Group on Indigenous Populations officially requested from the Commission on Human Rights the responsibility for drafting and putting before the General Assembly the Draft U.N. Declaration. The initial impetus for developing such a declaration had come from a combination of sources. Strong encouragement came to the Working Group from the twelve-year study and final recommendations

by Human Rights Commission Special Rapporteur Jose R. Martinez Cobo.<sup>68</sup> The WCIP adoption of resolutions calling for the enactment of new international laws to protect nations,<sup>69</sup> and an international conference of NGOs sponsored by the U.N. Economic and Social Council, Sub-Committee on Racism, Racial Discrimination, Apartheid, and Decolonization of the Special Committee on Human Rights in 1977<sup>70</sup> combined to reinforce Cobo's recommendations and the U.N. Working Group on Indigenous Populations' favorable embrace of the job of formulating a declaration.

As work continues on the development of this document of international consensus concerning accepted standards for the rights of indigenous peoples, key terms of reference in its text have become central to the growing debate. Convention 169 has played a role in the evolution of the Draft U.N. Declaration. As of July 1993, five of the 144 member ILO states had ratified Convention 169. Despite the low level of interest by state governments, Convention 169 is nevertheless being used as authoritative evidence to support

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<sup>66</sup> The United Nations Working Group on Indigenous Populations was established in 1982 after NGOs and representatives of indigenous peoples urged the establishment of a United Nations mechanism to examine the situation of indigenous peoples. The Sub-Commission on Prevention of Discrimination and Protection of Minorities proposed in its resolution 2 (XXXIV) of Sept. 8, 1981, the establishment of the working group. The Commission on Human Rights endorsed the Sub-Commission's proposal in its resolution 1982/19 of Mar. 10, 1982. The United Nations Economic and Social Council formally authorized in its resolution 1982/34 of May 7, 1982 the Sub-Commission to establish annually a working group to meet for the purposes of reviewing developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous peoples, and examining the evolution of standards concerning the rights of indigenous peoples.

<sup>67</sup> Lee Swepston, Paper Presented to the Working Group on Indigenous Peoples (July 31, 1989) (International Labour Organization, on file with author).

<sup>68</sup> See generally *Study of the Problem of Discrimination Against Indigenous Populations*, *supra* note 51.

<sup>69</sup> See World Council of Indigenous Peoples, Resolution of 1975; see also World Council of Indigenous Peoples, Resolution of 1977 (on file with author).

<sup>70</sup> International NGO Conference on Discrimination Against Indigenous Populations, Paper Read at the Geneva Conference (Oct. 1977) (on file with author).

arguments for narrowing the interpretations for the terms “peoples,” “territories,” “self-determination,” and “self-government” in the Draft U.N. Declaration.” The more limited meanings, states like the United States and Sweden argue, should be included in the Draft U.N. Declaration. While many state governments have participated in the formulation of the Draft U.N. Declaration, along with hundreds of representatives of nations, the work of the representatives of the United States, Sweden, Canada, Australia, New Zealand, Japan and the Peoples Republic of China should be noted. Since 1986, these representatives have been working to prevent the Draft U.N. Declaration from including key terms of reference such as “peoples” and “self-determination” in ways that are consistent with customary international law.

In an effort to narrow the meaning of terms such as “self determination,” the representative of the U.S. government before the U.N. Working Group on Indigenous Populations urged Working Group members to characterize “the concepts of “self-determination,” “peoples,” and “land rights,” as “desired objectives rather than rights” in August 1992.<sup>71</sup> Kathryn Skipper, a member of the U.S. delegation, expressed serious questions about the definition of “indigenous peoples” as a term of reference in July of 1993.<sup>72</sup> Discussing provisions of the Draft U.N. Declaration, she said:

the draft declaration does not define ‘indigenous peoples.’ Hence, there are no criteria for determining what groups of persons can assert the proposed new collective rights ... We are concerned that

in some circumstances, the articulation of group rights can lead to the submergence of the rights of individuals.<sup>73</sup> The position of the U.S. government set the tone of state delegation interventions with the intent of narrowing and limiting the meaning of terms of reference in the same way as Convention 169.<sup>74</sup>

Dr. Rolf H. Lindholm, on behalf of the Swedish government, amplified the U.S. government’s serious questions by specifically urging the narrow application of the term “peoples.” Stating that the Swedish government “favors a constructive dialogue between governments and indigenous peoples,” Lindholm nevertheless called for “consensus language” that would make the Draft U.N. Declaration acceptable to various bodies within the United Nations system, including the General Assembly.<sup>75</sup> Indicating that a consensus should be achieved as to the reference term “self-determination,” Lindholm averred:

<sup>71</sup> *Discrimination against Indigenous Peoples*, *supra* note 51, at 14.

<sup>72</sup> Kathryn Skipper, Statement Before the United Nations Working Group on Indigenous Populations, 11th Sess. (July 12, 1993) (on file with author).

<sup>73</sup> *Id.*

<sup>74</sup> Rudolph Rýser, Indian Nations & United States Debate Self-Determination and Self Governance at the United Nations (July 18-31, 1993) (unpublished paper, on file with the Center for World Indigenous Peoples).

<sup>75</sup> Rolf H. Lindholm, Statement Before the United Nations Working Group on Indigenous Populations, 11th Sess. (July 12, 1993) (on file with author).

it is important that we recognize in this context, as we have in others, that the concept, as used in international law, must not be blurred. It is therefore necessary to find another term in the declaration, or to introduce an explanatory definition such as that included in ILO Convention No. 169, which provides that “the use of the term ‘peoples’ in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.”<sup>76</sup>

Delegates of indigenous peoples participating in the proceedings argued that it was necessary to maintain the term “peoples” in order to remain consistent with existing international laws. In particular, the language originally proposed in 1987 was stressed: “indigenous nations and peoples have, in common with all humanity, the right to life, and to freedom from oppression, discrimination, and aggression.”<sup>77</sup>

As to the efforts of state governments aimed at narrowing the meaning of the word “peoples,” the Chairman of the U.N. Working Group on Indigenous Populations, Erica-Irene Daes, responded:

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

She offered, “the right of indigenous peoples to self-determination . should comprise a new contemporary category of the right to self-determination.”<sup>79</sup>

Delegates of indigenous nations additionally argued the need to introduce their own paragraph on self-determination:

all indigenous nations and peoples have the right to self-determination, by virtue of which they have the right to whatever degree of autonomy or self-government they choose. This includes the right to freely determine their political status, freely pursue their own economic, social, religious and cultural development, and determine their own membership and/or citizenship, without external interference.<sup>80</sup>

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

<sup>76</sup> *Id.*

<sup>77</sup> *Declaration of Principles on Indigenous Peoples*, (as amended). Adopted by a Consensus of Indigenous Peoples’ Organizations Meeting at Geneva, 27-31 July 1987. U.N. Doc. E/CN.4/Sub.2/1987/22/Annex V.

<sup>78</sup> Erica-Irene A. Daes, *Discrimination Against Indigenous Peoples, Explanatory Notes Concerning the Draft Declaration on the Rights of Indigenous Peoples*, U.N. ESCOR, 45th Sess., Agenda Item 14, at 2, U.N. Doc. F/CN.4/Sub.2/1993/26/Add.1 (1993).

<sup>79</sup> *Id.* at 3.

<sup>80</sup> *Declaration of Principles on Indigenous Peoples*, *supra* note 77.



as their right to self-determination. As a response to general state objections to the use of this term in association with indigenous nations, delegates of indigenous nations at the 12th Session of the

U.N. Working Group on Indigenous Populations authorized the preparation and distribution of the Covenant on the Rights of Indigenous Nations<sup>81</sup> for direct ratification by nations all over the world. The paragraph on self-determination in this document now pending before the councils of indigenous nations states: "Indigenous Nations have the right of self-determination, in accordance with international law, and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development without external interference."<sup>82</sup>

The United States and other states will clearly have to contend with the consequences of their own obstruction to the application of international principles to indigenous nations. Of perhaps greater importance is the growing movement by indigenous nations to take international law into their own hands by actively formulating new laws such as the Covenant on the Rights of Indigenous Nations and thus

establishing the probability that they will seek to enforce such laws.

## VII. International Obligation Denied

The principle of self-determination is deeply rooted in the customary and formal rules of conduct between nations and between states. The broad outline of the concept of self-determination was first delivered into international discourse by U.S. President Woodrow Wilson as the fifth point in his Fourteen Points Speech:

tree, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the population concerned must have equal weight with the equitable claims of the Government whose title is to be determined.<sup>83</sup>

It is not merely coincidental that the subject of self-determination looms large in the developing domestic and international debate over self-determination of indigenous nations in their relations to states. Wilson's concern was the establishment of a process for non-self-governing peoples inside existing states. He sought to

<sup>81</sup> Covenant on the Rights of Indigenous Nations. Drafted in 1994 this new international instrument is a culmination of nearly twenty years of meetings between indigenous delegations striving to formulate new language to instruct international law concerning the conduct of relations between indigenous nations and between indigenous nations and states. The Covenant draws on evolving language offered in meetings concerned with social, economic and political relations as well as strategic and cultural issues. Materials generated by meetings organized by the World Council of Indigenous Peoples, International Indian Treaty Council, South American Indigenous Regional Council, Central American Indigenous People's Organization, North American Indigenous Peoples' Regional Council (comprised of representatives from the National Indian Brotherhood, the First Nations Assembly and the National Congress of American Indians) the Inuit Circumpolar Council, meetings of the United Nations Working Group on Indigenous Populations, special seminars of the United Nations on indigenous peoples, and many other regional and sub-regional indigenous peoples organizations. The Covenant on the Rights of Indigenous Nations was initiated by representatives of indigenous nations in West Papua, Central Africa, Canada and the Eurasia.

<sup>82</sup> *Id.*

<sup>83</sup> Woodrow Wilson, *On Self-Determination (1918)*, in Tu: E HUMAN RIGHTS READER, 151 (Walter Laqueur & Barry Rubin eds.) (1979).

establish a peaceful manner in which to rearrange the political landscape without war; a way in which to encourage negotiations between state governments and indigenous nations. He felt that a nation or part of a nation inside or under the control of an existing state needed recognition in order to determine its political future without prejudice. The method for ensuring equal weight being given to such nations became identified as self-determination.

### **A. Right of Self-Determination in the United States**

The U.S. government's policy initiatives in connection with the ILO's revision of its Convention 107, the Helsinki Final Act, and the Draft U.N. Declaration, illustrate the difficulty of maintaining consistency between internal Indian affairs policy and external policies concerning the rights of indigenous peoples under international laws. Most of the 44 million refugees in the world are non-state populations,<sup>84</sup> and the concerns of indigenous nations are at the heart of regional instabilities around the world. In Africa, the countries of Nigeria, Somalia, Sudan, Kenya, and South Africa, are implicated. In Europe, particularly the former Yugoslavia, Spain, Georgia, and Italy, and in Eurasia generally, there are instabilities. In addition, there are instabilities in the Middle East, Central Asia, and Melanesia. To all of these, the U.S. foreign policy establishment remains oblivious. This weakness in U.S. foreign policy accounts for the inconsistent and often incoherent U.S. positions on issues of indigenous peoples, and on Indian affairs in particular.

With the greater convergence between Indian affairs, self-determination, and self-government policies in U.S. domestic policy, and the intensification of activities by the United Nations and other international organizations undertaking standard-setting activities concerning indigenous peoples at the international level, the gap between internal and external self-determination discussions is rapidly disappearing. Despite this convergence of internal and external policy realms, the State Department continues to regard Indian affairs and concerns about indigenous peoples generally as a very low priority, i.e., a matter of little strategic or diplomatic importance.

### **B. International Right to Self-Determination**

Framers of the U.N. Charter attached paramount importance to the principle of self-determination.<sup>85</sup> In its broadest formulation, the principle of self-determination encompasses the political, legal, economic, social and cultural subjects of the life of peoples. In international law, the principle of self-determination is unique in that it is a recognized collective right which maybe exercised by peoples. "The right to self-determination is a collective right, a fundamental human right forming part of the legal system established by the Charter of the United Nations,

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<sup>84</sup> Paul Lewis, *Stoked by Ethnic Conflicts, Refugee Problem Consumes Resources*, N.Y. TIMES, Nov. 9, 1993, at A6.

<sup>85</sup> See U.N. CHARTER art. 1, para. 2. (The U.N. member states there affirm the purpose of the organization to be "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples").

the beneficiaries of which are peoples-whether or not constituted as independent States nations and states.”<sup>86</sup>

While relatively amiable dialogue characterizes the continuing evolution of the social, economic and cultural aspects of self-determination, discussions concerning the full development of the right of political self-determination have become increasingly contentious. The original, Wilsonian conception of self-determination: was political. State governments have historically wanted to emphasize the less controversial subjects of economic, social and cultural self-determination. Political self-determination is regarded as a direct threat to the stability or permanence of many states where the claimed internal population includes many distinct peoples. Article 76 is the only provision of the U.N. Charter which addresses the right of peoples to political self-determination.<sup>87</sup>

The U.N. Declaration on the Granting of Independence to Colonial Countries and Peoples (“Declaration on Granting of Independence”)<sup>88</sup> elaborated on Article 76 with the affirmation that peoples “freely determine their political status:”

the “political status” which each people has the right freely to determine by virtue of the equal rights and self-determination of peoples comprises both international status and domestic political status. Consequently the application of the principle of equal rights and self-determination of peoples in the political field has two aspects, which are of equal importance.<sup>89</sup>

The U.N. Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations (“Declaration on Principles of International Law”)<sup>90</sup> specifically defines various modes by which peoples may determine their international political status: “the establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.”<sup>91</sup>

Where state governments have assumed responsibilities for administering territories where indigenous peoples do not exercise

<sup>84</sup> Paul Lewis, *Stoked by Ethnic Conflicts, Refugee Problem Consumes Resources*, N.Y. TIMES, Nov. 9, 1993, at A6.

<sup>85</sup> See U.N. CHARTER art. 1, para. 2. (The U.N. member states there affirm the purpose of the organization to be “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”).

<sup>86</sup> *Historical and Current Development*, *supra* note 1.

<sup>87</sup> U.N. CHARTER art. 76 (stating the purpose to be “to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned”).

<sup>88</sup> See G.A. Res. 1514 (XV), U.N. GAOR, 15th Sess., Supp. No. 16, at 66, U.N. Doc. N4684 (1960).

<sup>89</sup> *Id.*

<sup>90</sup> See G.A. Res. 2625 (XXV), U.N. GAOR, 25th Sess., Supp. No. 28, at 121, U.N. Doc. N8028 (1970).

<sup>91</sup> *Id.*

the full measure of self-government, they automatically acquire an obligation to advance the social, economic and political well-being of the inhabitants of those territories.<sup>92</sup> It is by virtue of this provision that non-self-governing peoples obtain an internal political status of their own choosing. If non-self governing peoples are administered under the international trusteeship system, the process similar to Article 73 defined in the Declaration on Granting of Independence<sup>93</sup> applies.

The International Covenant on Civil and Political Rights (ICCPR) (ratified by the United States in 1992) contains the strongest and most succinct statement of the principle of self-determination: “all 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.”<sup>94</sup> This statement is repeated in the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>95</sup> and in the Helsinki Accords<sup>96</sup> as Principle VIII.

Even if the U.S. government’s position in the U.N. Working Group on Indigenous Populations accurately reflects one policy on “sovereignty,” “self-determination,” and “self-government,” there is no ambiguity in the U.S. government’s affirmation of Indian self-determination within the framework of the Helsinki Final Act. The U.S. government negotiated the Helsinki Accords with thirty-seven European states, including the U.S.S.R. and Canada, and in 1979 issued a National Security Council approved progress report on the U.S. government’s final act compliance concerning American Indians.<sup>97</sup> The report emphatically affirms that “indian rights issues fall under both Principle VII of the Helsinki Final Act, where the rights of national minorities are addressed, and under Principle VIII, which addresses equal rights and the self-determination of peoples.”<sup>98</sup>

The NCAI, in its statement at the 1983 session of the U.N. Working Group on Indigenous Peoples in Geneva, Switzerland, expressed its confidence that the:

<sup>92</sup> See U.N. CHARTER art. 73 (affirming that member states accept “as a sacred trust” the obligation, *inter alia*, to “develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement”).

<sup>93</sup> G.A. Res. 1514, *supra* note 88.

<sup>94</sup> International Covenant on Civil and Political Rights, Dec. 19, 1966, art. 1, para. 1, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

<sup>95</sup> See International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, art. 1, para. 1, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR].

<sup>96</sup> See Conference on Security and Co-operation in Europe, Final Act, Aug. 1, 1975, 73 DEP’T ST. BULL. 323 (1975), 14 I.L.M. 1292 (1975) [hereinafter Helsinki Final Act].

<sup>97</sup> See COMMISSION ON SECURITY AND COOPERATION IN EUROPE, FULFILLING OUR PROMISES: THE UNITED STATES AND THE HELSINKI FINAL ACT (Nov. 1979) (on file with author) [hereinafter FULFILLING OUR PROMISES].

<sup>98</sup> *Id.*

United States of America took a revolutionary step toward clarification of international standards concerning Principle VII and Principle VIII in relation to Indian Nations, the United States has committed itself to conduct its relations in accord with the law of nations and new international law evolved since the founding of the League of Nations.<sup>99</sup>

**The NCAI statement went even further to say:**

the recognition of Indian nations as ‘peoples’ and the commitment to promote effective exercise of equal rights and self-determination of peoples for the development of friendly relations among all states by the United States creates a commitment to apply provisions of... international agreements to Indian/U.S. relations.<sup>100</sup>

The National Security Council report asserts that the U.S. government’s policy of Indian self-determination “is designed to put Indians, in the exercise of self-government, into a decision-making position with respect to their own lives.”<sup>101</sup> The U.S. government report further clarified the state’s relationship to Indian nations by stating that “the U.S. Government entered into a trust relationship with the separate tribes in acknowledgment, not of their racial distinctness, but of their political status as sovereign nations.”<sup>102</sup>

**Principle VIII of the Helsinki Final Act affirms:**

by virtue of the principle of equal rights and self-determination of peoples, all peoples

always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference and to pursue as they wish their political, economic, social and cultural development.<sup>103</sup>

This language is virtually the same as is contained in the U.N. Charter and Article 1 of both the ICESCR and the ICCPR.<sup>104</sup> Despite recent U.S. government requests for the ILO and the United Nations to specifically narrow definitions for self-determination in connection with indigenous peoples, there is no ambiguity about U.S. commitments under international agreements to apply the full, normative meaning of these terms to its relations with Indian nations.

**VIII. The Future Struggle with the Opposition of States to Self- Determination**

While it is perfectly within the right of any government to change its policy, the U.S. government’s failure to advise Indian nations entering into good-faith negotiation of self-governance compacts that it no longer maintains a commitment to self-government or the principle of self-determination, seems a gross deception. Just as negotiations over the final text

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<sup>99</sup> National Congress of American Indians, On the Evolution of Standards Concerning the Rights of Indigenous Populations, Statement Before the United Nations Working Group on Indigenous Populations (Aug. 10, 1983).

<sup>100</sup> *Id.*

<sup>101</sup> FULFILLING OUR PROMISES, *supra* note 97.

<sup>102</sup> *Id.*

<sup>103</sup> Helsinki Final Act, *supra* note 96, at 325-26, 14 I.L.M. at 1295.

<sup>104</sup> See ICESCR, *supra* note 95, at 5; see also ICCPR, *supra* note 94.

of Convention 169 were being debated to narrow the meaning of critical terms of reference, the U.S. government's representative negotiated compacts to affirm the political sovereignty and self-determination of Indian nations.

As recently as November 30, 1998 before the U.N. Commission on Human Rights, the U.S. government reiterated its opposition to applying international standards for self-determination to "Indian tribes and other indigenous peoples." U.S. government opposition was carried before one of the most important United Nations organs addressing the language to be included in the Draft U.N. Declaration. Deputy Assistant Secretary of State Leslie A. Gerson made five points concerning language in the Draft U.N. Declaration for the United States delegation.<sup>105</sup>

The first point that Gerson discussed was the process. The Draft U.N. Declaration should build on principles established in basic human rights instruments such as the Universal Declaration on Human Rights, the Human Rights Covenants and the 1992 Declaration on the Rights of Persons Belonging to Linguistic Minorities.<sup>106</sup> The process "should not... convert aspiration or objectives into "rights."<sup>107</sup> "Rights" should be reserved for those duties that governments owe their people.<sup>108</sup>

In her second point, Gerson referred to universality. The term "indigenous peoples" should be defined, but not narrowly such that certain countries would exclude indigenous groups inside their territories.<sup>109</sup> She emphasized that the U.S. government does "not believe that the focus of the declaration should be the privileging of historically prior inhabitants."<sup>110</sup>

In other words, peoples who claim original occupation of the land should not be identified as "indigenous peoples" and their long occupation of the land must not give them "privileges" or "rights."<sup>111</sup>

Gerson next dealt with the issue of local realities. State governments and indigenous populations "may take local realities into account when applying the draft declaration" and not be concerned about the universal application of various principles (i.e., land rights, treaty rights, etc.).<sup>112</sup>

Next, Gerson addressed the question of autonomy by saying "the U.S. has made clear in several of its statements, we do not believe that international law accords indigenous groups everywhere the right of self-determination."<sup>113</sup>

Lastly, Gerson addressed individual rights. "Since international law, with few exceptions, promotes and protects the rights of individuals, as opposed to groups, it is confusing to state that international law accords certain rights to 'indigenous peoples' as such. International instruments generally speak of individual, not collective, rights."<sup>114</sup>

<sup>105</sup> Leslie A. Gerson, General Statement on the Draft Declaration on the Rights of Indigenous Peoples, Address Before the Commission on Human Rights Working Group (Nov. 30, 1998).

<sup>106</sup> *See id.*

<sup>107</sup> *See id.*

<sup>108</sup> *See id.*

<sup>109</sup> *See id.*

<sup>110</sup> Gerson, *supra* note 105.

<sup>111</sup> *Id.*

<sup>112</sup> *See id.*

<sup>113</sup> *See id.*

By attempting to block international recognition of the rights of indigenous nations to self-government and therefore certain international guarantees under existing international laws, U.S. actions in the United Nations and elsewhere threaten to exacerbate growing tensions between nations, and between nations and states. This is particularly evident in the failure of U.S. government foreign policies to effectively deal with the conflicts in Africa,<sup>115</sup> in South America, Melanesia, Southeast Asia and Central Europe and Eurasia-particularly involving the peoples of Chechnya, Dagastan, Serbia, Kosovo, Bosnia, Croatia and Macedonia. Indeed, the U.S. government's failure to squarely reconcile its contradictions over self-determination for peoples seeking to change their political status undermines U.S. interests by forcing the U.S. to act more undemocratically and more supportively of authoritarian and even dictatorial regimes.

The gap between domestic U.S. government Indian self-determination policy and U.S. government international self-determination policy threatens to expose the United States to international criticism, undermine confidence in accepted international principles, and it risks the stability of relations with Indian nations and the stability of other countries in the world where indigenous nations are present. U.S. government and the efforts of other States to modify the meaning of accepted international principles to deny nations the opportunity to express their international identity threatens to further erode international compliance with widely accepted human rights standards as well. Finally, the inconsistency of policy also threatens

to undermine the U.S. government's ability to formulate a new, coherent and effective post Cold War foreign policy.

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

## IX. CONCLUSION

By the beginning of 1995, the nations of Hoopa, Lummi, Quinault, and Jamestown S'Klallam had been joined by twenty-nine other Indian nations that had negotiated bi-lateral compacts with the U.S. government. Within a period of ten more years, Indian government officials suggest, there will be as many as 150 or

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<sup>115</sup> The U.S. government failed miserably to recognize the role of indigenous peoples in the collapse of Somalia and consequently contributed to massive violence instead of stabilization. In the Sudan, a neighbor of Somalia, and in Kenya, Uganda, Rwanda, Burundi, and the former Zaire (now the Congo), U.S. foreign policy has continued to reflect a fundamental obstinacy as relates to the application of self-determination to indigenous peoples in those countries. The result has been nearly universal disaster in policy and in the lives of the many peoples in Africa.

more Indian nations negotiating self-government compacts with the U.S. government.<sup>116</sup> The members of the Tribal Self-Governance Demonstration Project believe that the idea of self-governance is very exciting, particularly the advancement of the government-to-government relationship between national governments and tribal governments. Five years after negotiating the first compacts, Indian government hopes and aspirations remained high, as a growing number of Indian nations cautiously worked to structure a new relationship with a reluctant U.S. government. A study of the self-governance initiative by the U.S. Department of the Interior<sup>117</sup> strongly suggests that the high hopes of the Indian nations may be too optimistic and greater caution is warranted. The Department of the Interior study suggests that the desired government to-government framework Indian nations seek as a pillar supporting the self-government process has begun to appear much more like a “government-to-agency” relationship similar to the one existing before the Self Government Compacts.<sup>118</sup> Indeed, a study commissioned by the Indian nations themselves found that Indian communities have been enjoying “vigorous and creative developments ... as a direct result of the Self-Governance Demonstration Project,”<sup>119</sup> but that “the United States government generally is not seriously participating in the development and conduct of the self-government initiative.”<sup>120</sup> The findings of both studies tended to agree that the failure of

the U.S. government to enter into a genuine effort aimed at the elevation of Indian nations to a full level of self-government foreshadows growing tensions between Indian governments and the United States.

As if to give credence to these warnings, the U.S. Senate voted to cut by nearly one-half the total funds allocated to permit the U.S. government to comply with self-government compacts.<sup>121</sup> Remarkably, it was the action of one Senator (serving as chairman of the Senate Appropriations Sub-Committee on the Department of the Interior and one who has been characterized as a militant advocate of “white rights on Indian reservations”), that precipitated in 1995 a growing political confrontation between Indian governments and the U.S. government. Indian nations may now take this growing controversy and the related failure to negotiate a formal government-to-government relationship into the international arena where the swirling debate over self-determination is rapidly taking center stage in the discussions over the role of human rights in international relations.

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<sup>117</sup> See KEN REINFELD, U.S. DEP'T OF THE INTERIOR, DRAFT STUDY OF THE TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT (1995).

<sup>118</sup> See *id.* at 14.

<sup>119</sup> SELF-GOVERNMENT PROCESS EVALUATION PROJECT (The Government of Lummi, 1995) (on file with author).

<sup>120</sup> See *id.*

<sup>121</sup> See Ulrich, Roberta, Clinton Threats Help Tribes in Budget Fight, THE OREGONIAN, Sept. 17, 1995, at D5.

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# Original Peoples

By Rudolph C. Ryser, PhD

Fourth World peoples constitute a combined population of an estimated 1.9 billion people in more than 5000 nations. Located on all continents except Antarctica, Peoples also referred to as “indigenous” are located in territories they have used since long before the formation of the global system of states. As Figure 1 illustrates these nations have populations that are concentrated in varying degrees from the arctic, to the savannas, rainforests, semi-tropical regions, mangroves, on rivers, lakes and surrounded by oceans and seas across the Earth.

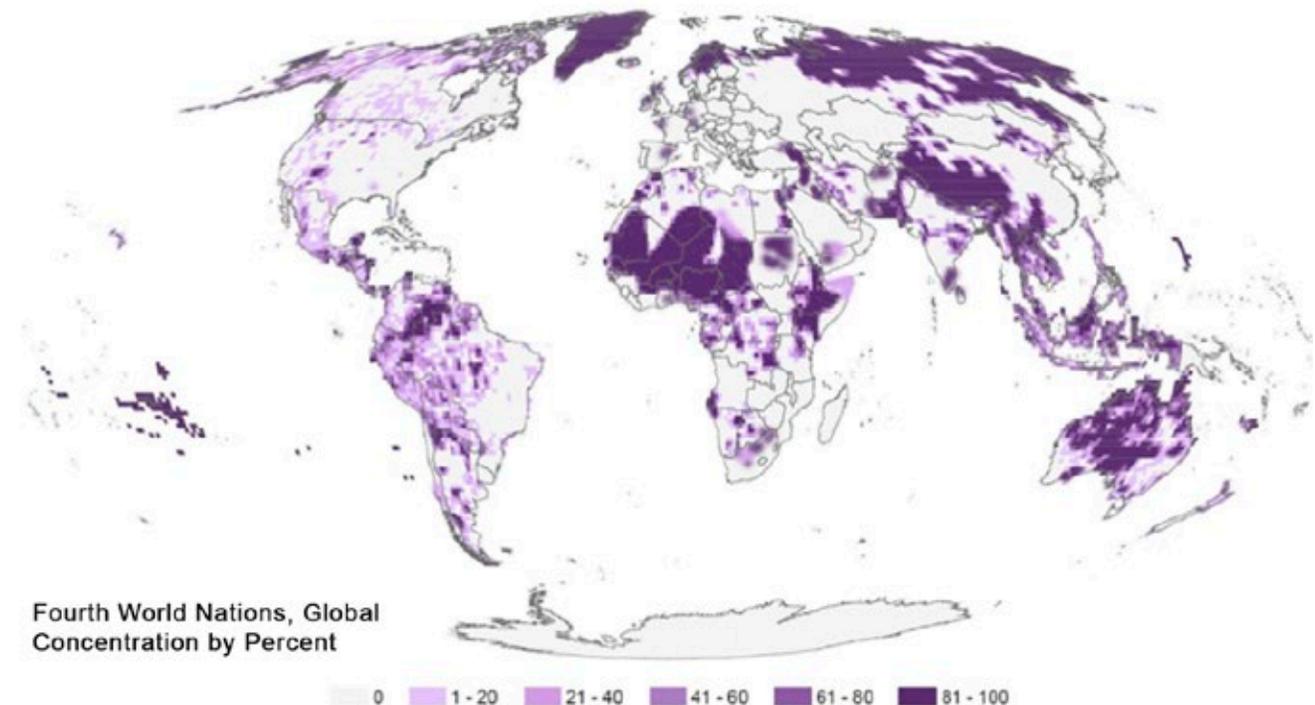


Figure 1 Concentration of FW Nations Globally 2020

It is “universally accepted” wisdom in state-based international law that all peoples have the right to freely choose their political status and their social, economic, political and cultural future without external interference<sup>1</sup>. Peoples have rights and the right to exist.

<sup>1</sup> United Nations Charter (1945); International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, and the Optional Protocol to the International Covenant on Civil and Political Rights (1966); International Labor Organization Convention Number 169: Indigenous and Tribal Peoples Convention (1989); Alta Outcome Document: Global Indigenous Preparatory Conference for the United Nations High Level Plenary Meeting of the General Assembly to be known as the World Conference on Indigenous Peoples, 10-12 June 2013.

These rather forthright assertions in various forms are included in a wide range of internationally approved declarations, treaties, conventions, and documents issued by Fourth World (indigenous) Nations and UN Member States. Indeed, state-based international law relies heavily on the concept of “peoples’ rights” that is grounded in the commonly held view that “all peoples” have the right to dignity and protection of their rights in the international as well as domestic environments. Despite the common principal of “peoples’ rights,” however, state-based international laws and discourse fail to define who or what these “peoples” are that possess “rights.” Such an omission rather renders state-based international laws and agreements that assert that “all peoples” possess certain rights muddled and fundamentally open to obstructive interpretations convenient to obscure accountability when those “rights” are violated. Chair and Special Rapporteur for the UN Working Group on Indigenous Peoples Erica-Irene Daez clarified this point when she wrote:

Indigenous groups are unquestionably “peoples” in every political, social, cultural and ethnological meaning of this term. It is neither logical nor scientific to treat them as the same “peoples” as their neighbours, who obviously have different languages, histories and cultures. The United Nations should not pretend, for the sake of a convenient legal fiction, that those differences do not exist. *(Erica-Irene Daez, Chair of the UN Working Group on Indigenous Peoples. 1993)*

I have here paraphrased the central controversy between the world’s more than 5000 distinct peoples commonly referred to as “indigenous peoples” and the world’s 203 recognized and non-recognized states (196 states are recognized by the United Nations including the permanent observers Holy See, Palestinian, and Taiwan while different states recognize different numbers of countries.).

Recognition is a political process that usually connotes one or more states claiming sovereignty to recognize another “sovereign state” but leaves “peoples” undefined. In the international environment many terms are left undefined due in large measure to the many different ways that words may be translated and defined in different languages. “Peoples” is one of these terms. The failure to define “Peoples” leaves ambiguous whole parts of the human family and permits interpretations preferred by states. So central is this term to the reasonable conduct of international relations for self-determination, Fourth World Nations retaining their territories and relationship to the natural world, and the meaning of international law and agreements that it must be given primary consideration to advance peaceful relations between peoples and political entities. The political entities were only formed in the last 370 years since the first modern states were negotiated into existence by the Roman Catholic Church at the end of the 30-years’ war in Europe.

While the word “peoples” poses challenges to UN Member States and state-based international law the word “peoples” does not pose a challenge for Fourth World peoples (indigenous peoples). The word(s) in the language used by various nations to designate their collective identity usually means “the people” or “human beings.” Reflecting on collective names of peoples in North America and the Arctic region we can readily recognize self-identifying names translate to mean “people.” For example, Inuit, Anishinabe, Lenape, Nuxbaaga (for modern usage Hidatsa), Onandaga’ono (now referred to as Seneca), Terawken, Tsitsistas (modern usage is Cheyenne), or Wampanoag. Depending on language many peoples in the western hemisphere identified as “a people.” Elsewhere in the world the pattern is repeated where various nations use words unique to their culture and language. In other words, the idea of “people” is commonly understood throughout the world as an ordinary word meaning humans living in society in a particular territory and practicing a common culture.

### **Peoples’ Rights and Self-determination**

Fourth World peoples are “peoples” in the ordinary sense and in the international legal sense. All states’ governments and

indigenous nations agree that “peoples” rights exist extending to not only the right to self-determination but also the right to exist freely without external interference<sup>2</sup>. Why am I making such a point to stress that the term “peoples” applies to the 5000 Fourth World polities? I do so to establish that the word “peoples” though undefined in state-based international law actually has concrete meaning and must be understood to have its meaning applied especially when concerned with the “rights of peoples.”

Indeed, the ability of Fourth World nations to exercise the right of self-determination and to govern themselves<sup>3</sup> is directly connected to the sustainability of biodiversity and global cultural diversity— essential to sustaining life on the planet. It is no coincidence that where healthy Fourth World nations live and prosper based on their freely chosen political, cultural, economic and social way of life the living Earth also thrives. Thus, it is no surprise that Fourth World nations occupy 80% of the world’s remaining biodiverse rainforests, plains, tundra, mountain regions, estuaries, rivers and streams, and deserts.

As peoples they possess the knowledge, experience and cultural practices essential for maintaining a balanced relationship between

<sup>2</sup> Without reference to “states” possessing rights, the rights of Peoples are clearly stated in state-based international laws and nation-based international agreements and policy. For example, under the 1948 Convention on Genocide, International Labor Organization Convention 169 (1989), UN Declaration on the Rights of Indigenous Peoples (2007 and the Alta Outcome Document (2013) the rights of peoples to exist is explicitly stated. General Assembly resolution 41/128 of 4 December 1986, “Declaration on the Right to Development” (affirming in article 1 (2) “the right of peoples, which includes, subject to the E/CN.4/Sub.2/2004/30 page 22 relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources”) (Emphasis added). In the 1955 Report of the UN Secretary General this statement affirmed agreements in the General Assembly: “The right of peoples to self-determination shall also include permanent sovereignty over natural wealth and resources. In no case may a people be deprived of its own means of subsistence on the ground of any rights that may be claimed by other States.” Ibid. para. 19.”

<sup>3</sup> As “peoples” the right of self-determination and the exercise of self-government is a conceptual connection that undergirds the aspirations of Fourth World nations the world over.

their communities and the natural world. For that achievement, all humanity benefits.

The United Nations Educational and Scientific Organization (UNESCO) rather renders the concept of “peoples’ rights” explicit when in its 1989 report<sup>4</sup> it states:

- Peoples’ rights are not State rights;
- Peoples’ rights may not be used to derogate from individual human rights;
- Peoples’ rights, to the contrary, provide the pre-conditions necessary to the fulfillment of individual human rights;
- Peoples’ rights, far from justifying anti-democratic actions by States against peoples, assert and protect peoples from anti-democratic actions against them by the State, where it is undemocratic or otherwise illegitimate.<sup>5</sup>

The UNESCO Expert Meeting went further to list characteristics inherent in the description of a “people:”

- a) A group of individual human beings who enjoy some or all of the following common features:
  - i) A common historical tradition; ii) Racial or ethnic identity;
  - iii) Cultural homogeneity;
  - iv) Linguistic unity;
  - v) Religious or ideological affinity; vi) Territorial connection;
  - vii) Common economic life;

b) The group must be of a certain number which need not be large (e.g. the people of micro-States) but which must be more than mere association of individuals within a State;

c) The group as a whole must have the will to be identified as a people or the consciousness of being a people—allowing that groups or some members of such groups, though sharing the foregoing characteristics, may not have that will or consciousness; and possibly;

d) The group must have institutions or other means of expressing its common characteristics and will for identify.<sup>6</sup>

The UNESCO Experts’ Report conclusions are instructive and pertinent to my discussion here:

i) The concept of peoples’ rights is now established by universally recognized international law. Its existence cannot now validly be controverted.

ii) Some peoples’ rights are universally accepted. These include the right to existence, the peoples’ right to self-determination and other rights.

iii) There is however a continuing and legitimate debate about the precise content of still other rights claimed to be peoples’ rights.

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<sup>4</sup> United Nations Educational, Scientific and Cultural Organization. International Meeting of Experts on further study of the concept of the rights of peoples. UNESCO, Paris. 27-30 November 1989. SHS-89/CONF.602/7 (English)

<sup>5</sup> (UNESCO 1989. Page 7)

<sup>6</sup> (UNESCO 1989. Page 8)

iv) The concept is a dynamic one which is in the process of elucidation and clarification. International and regional legal instruments, resolutions of the General Assembly of the United Nations, national constitutions, scholarly writings and other texts contribute to this process.<sup>7</sup>

The right of a people to self-determination and to choose their form of government is a straightforward way to assert these conclusions. Furthermore, it should be noted that UNESCO's experts conceived of peoples' rights to include "a safe global environment for such issues as the so-called Greenhouse Effect and global warming or in response to disasters of transnational significance..." and the right to peace.

When we talk about Fourth World peoples (indigenous peoples), various institutions, scholars, political leaders and governments seek to narrow our understanding and even deny altogether the existence of or presence of Fourth World peoples inside the boundaries of many states. Indeed, the United Nations claims there are just 370 million individuals who can be identified as "indigenous" in 70 countries.<sup>8</sup> Such a limitation by states undermines the "recognized rights" of Fourth World peoples. And

of equal importance the intentional obscuration of Fourth World peoples obstructs the exercise of Fourth World peoples' rights that could prevent the destruction of the world's biodiversity and the world's biocultural diversity. It is, therefore, critical to the rule of international law and to peaceful relations between peoples and states that we understand who are "peoples" that possess rights that must be recognized and guaranteed? The rule of law as a key mechanism for the conduct of domestic state and international relations must rely on an understanding of "peoples."

Ultimately the prevention of mass destruction of peoples and biodiversity is dependent on our understanding and respect for the rights of peoples.

State-based international law does not recognize indigenous peoples as separate or distinct peoples. They are claimed by states as minorities or ethnic groups constituting a sub-demographic within a state's claimed dominant population. They fall with few exceptions under the state's general population. Despite this claim by states' governments Fourth World peoples do, however, share the characteristics of "peoples" as noted by UNESCO even as they do not share the benefits of the universally recognized

<sup>7</sup> IBID

<sup>8</sup> The United Nations, International Labor Organization, UN Permanent Forum on Indigenous Issues, and other multilateral state institutions identify "recognized" indigenous peoples. Russia claims 41 indigenous nations comprised of more than 250,000 people occupying territory two-thirds of currently defined Russia. Russia has decided not to recognize. According to the UN Human Rights Council (2015), "the Committee expresses its concern at "insufficient measures being taken to respect and protect the rights of indigenous peoples and to ensure that members of such peoples are recognized as such." The lack of recognition particularly concerns the situation of the Izhma Komi or Izvatas, who are denied recognition as indigenous peoples, excluding them from decision-making over their territories, which are ever more devastated by oil exploration and extraction." UN Member states choose to "recognize" or not recognize according to economic and political considerations denying most of the world's 1.9 billion indigenous peoples (CWIS study 2019) international endorsement of their inherent rights as peoples.

body of international law. And, nor do Fourth World peoples benefit from lawful rights under domestic laws of states. The concept of “a people” designates each Fourth World community just as the term can designate a State. Indeed, though Fourth World peoples created and are therefore represented by many forms of government—many of which are not well known to States—they have the capacity to represent themselves. A common characteristic of Fourth World peoples not mentioned by UNESCO is that each engages in cultural practices specific to their environment and location. And here we note that culture helpfully means: *The dynamic and evolving relationship between a people, the land and the cosmos*. With this designation it can be said without confusion that all Fourth World peoples have a culture whether they are sedentary in their territory, or they occupy territory as migrants as do many aboriginals in Australia and Bedouins and Roma.<sup>9</sup>

Understanding that Fourth World peoples are “peoples” is directly relevant in terms of the principle 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” that stands as a common article in numerous state-based international laws and agreements. It is

particularly noteworthy that the state-based Convention on Biological Diversity recognizes the primary role of Fourth World Nations as major contributors to the perpetual existence of diverse eco-systems. The states’ ratified convention inserts under Article 8 (j) the principle that Fourth World nations are the regulating authorities over the “conservation and sustainable use of biological diversity.”

The central reality is that understanding that Fourth World nations as occupants of territories and practicing distinct cultures helps firmly establish their status as “peoples” and as peoples they actively engage directly in reciprocal relationships with Earth’s natural life. Their existence without external interference is critical to the maintenance of the world’s biodiversity and life on the planet.

To understand this in concrete terms one need only place a world map on a table depicting all of the world’s natural environments in color. Then overlay that map with the locations of Fourth World nations. You immediately see that where Fourth World nations occupy or use territories their locations are green and rich with life. Anthropologist Mac Chapin<sup>10</sup> overseeing a research team including Dr. Bernard Nietschmann from 1992 to 2002 interviewed

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<sup>9</sup> A Fourth World nation’s territory cannot be reasonably limited to the constraints imposed by the definition of a state where boundaries are claimed affirm absolute jurisdiction. Some Fourth World nations migrate with seasons from one land area to another. Other nations remain settled in an area for generations and still others possess a territory that traverses across lands as if in a wandering pathway. The state claim to territory with boundaries, internal police powers, universal law within the boundaries, claimed sovereignty and recognition of the boundaries by other states is the definition of a state. A nation does not fit this restricted definition that was first proclaimed for new states by the Westphalian Treaty (1648) in Europe.

<sup>10</sup> Chapin is a PEW Research Fellow (1995) and applied the support of PEW to his research including the “First Indigenous Conference on Land, the Environment and Culture” held in June 1996 and was attended by nearly 200 people representing 98 organizations, including 57 indigenous groups from all seven countries in Central America and from South America, Mexico and the United States. The objectives were to increase dialogue among indigenous peoples working on land and natural resource issues in Central America, to share experiences, to learn more about concrete, technically solid conservation activities, to begin networking to implement action plans and initiate communication on environmental issues among indigenous peoples, NGOs and the governments of the region.

more than 3,500 individuals from Fourth World nations during 130 workshops in Central America to identify various nations' territorial bounds. The resulting information was plotted on a satellite generated regional map of Central America's seven countries.

The map illustrates how Fourth World nations are located on territories where the ecosystems remain intact (green on the map) while areas occupied by unsustainable economic models of land use are mainly in collapse (brown on the map).

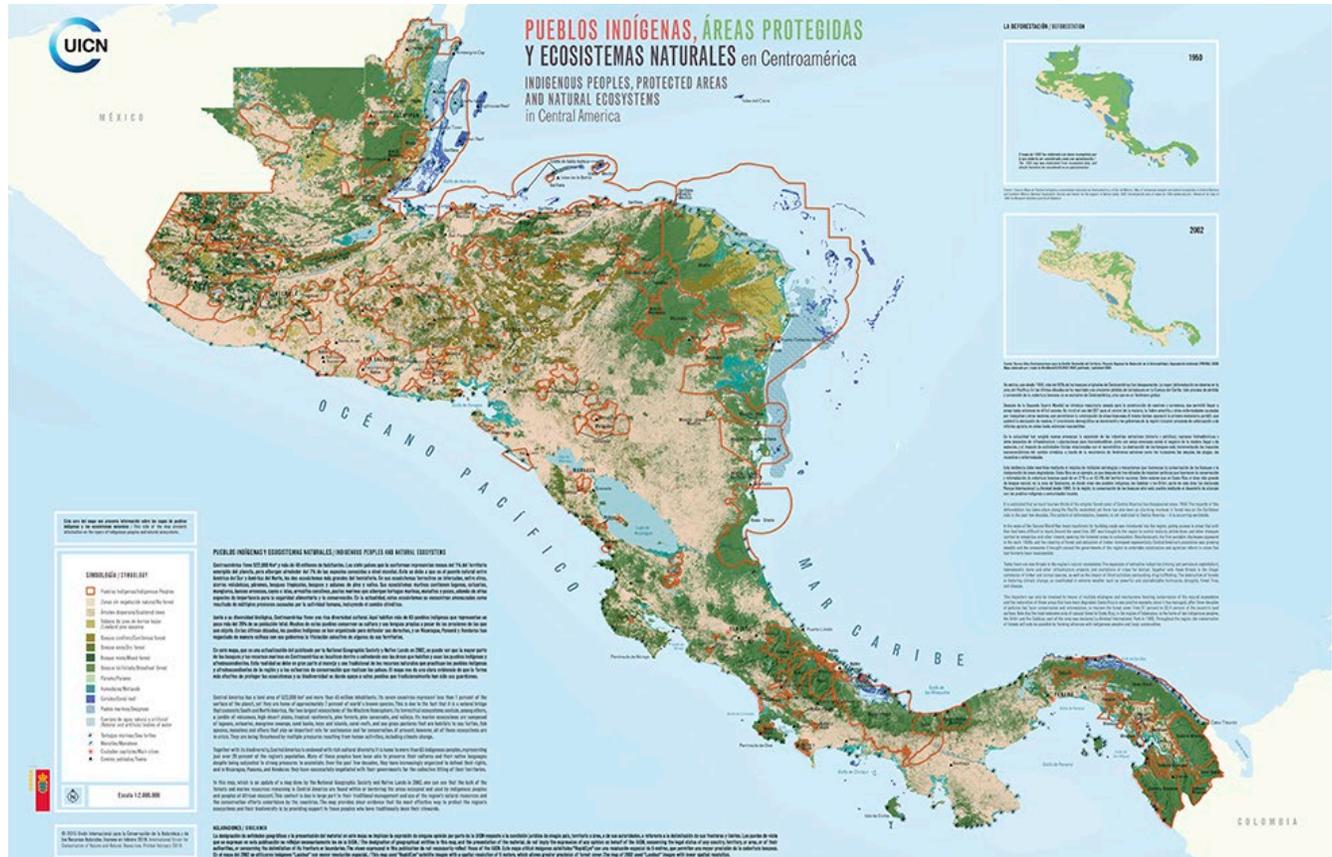


Figure 2 Indigenous Peoples, Protected Areas & Natural Ecosystems - Central America (Printed with permission from the Unión Internacional para la Conservación de la Naturaleza (IUCN), San Jose Costa Rica)

The International Union for Conservation of Nature (IUCN) (Switzerland & Costa Rica) verified the findings of Chapin’s researchers and Fourth World nations’ information by generating a satellite map (See Figure 2) of the Central American countries (2016) illustrating the homelands of 63 Fourth World nations

occupying 40% of the region. The map clearly illustrates with scientific precision<sup>11</sup> correlation between Fourth World territories and sustained natural life on the land and in the seas. Where

<sup>11</sup> The map used “Red Eye” satellite images with a special resolution of 5 meters. Such precision ensured accurate forest cover resolution unobtainable by other methods.

Fourth World nations are displaced or replaced by corporate societies those locations are brown or dead, though when states set aside protected areas and animal sanctuaries those parcels tend to be green though separated from larger green areas. Fourth World nations perpetuate the world's natural life and therefore they are essential to sustaining biodiversity and all life on the planet.”

The IUCN map gives weight to the assertion that the presence of Fourth World nations located in and using biodiverse ecosystems ensures sustained biodiversity. By way of illustration the Chapin map and the IUCN map both draw attention to the fact that two thirds of the forest cover in Central America has been significantly diminished since 1950.

Due to extensive road building and construction, timber extraction and colonization the various states' governments introduced agrarian reforms that extended their reach into otherwise unreachable areas originally thick with forests. After 52 years' time the natural forests had been significantly reduced to small areas preserved primarily by Fourth World nations and small state authorized preservers.

The remaining land area is brown and essentially no longer part of the vital and diverse natural ecosystem. Fourth World peoples have been warning against unrestrained development and its adverse effects on the living earth.

The peoples of Maya encoded these warnings in their ancient Popol Vuh while Fourth World nations leaders around the world have sounded the alarms in the current era.

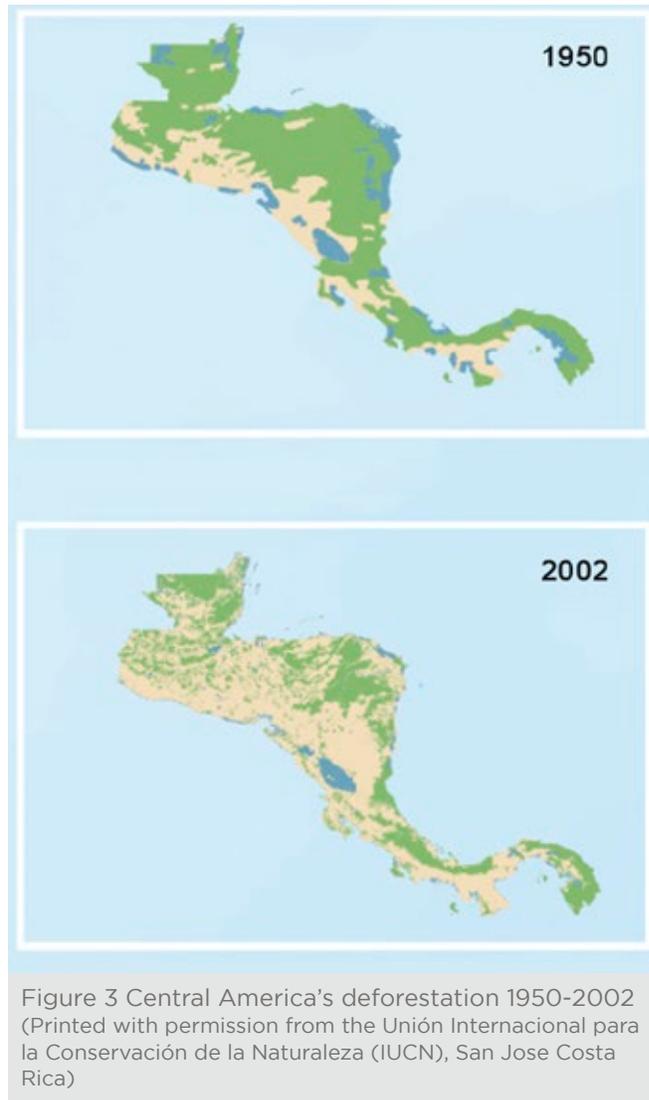


Figure 3 Central America's deforestation 1950-2002 (Printed with permission from the Unión Internacional para la Conservación de la Naturaleza (IUCN), San Jose Costa Rica)

### **Making an “enemy of the Earth?”**

The twentieth century Chutpalu<sup>12</sup> leader Hin-mah-too-yah-lat-kekt has been quoted to say: “The earth and myself are of one mind. The measure of the land and the measure of our bodies are the same” In these two simple

<sup>12</sup> This is the name of the people the French came to call “Nez Perce” (pierced nose) due to the ornaments worn on the face.



sentences the man English speakers called “Chief Joseph of the Nez Perce” captured the essential thinking of most Fourth World nations. They are egalitarian and engaged in a reciprocal relationship with the environment in a constant balancing act. It is the reality and spirit of Hinmah-too-yah-lat-kekt’s thought that explains why there is such a close relationship between the continuing existence of these nations and the continuity of Earth’s biodiversity.

The Popol Vuh (The Mayan Book of Life) states the concept in starker terms, “S/he who makes an enemy of the earth makes an enemy of here or his own body.” Fourth World nations are located in or near 80% of the world’s biodiverse ecosystem and it is their presence in these ecosystems that ensures biodiversity. In other words, biocultural diversity (the interdependence of culture and human biology) equals biodiversity (the variability of living organisms of all kinds). The perpetual existence of biodiversity equals sustainability for human life on the planet. To ensure global biodiversity that is widely recognized as threatened now, it is essential that states, companies, militias, and multi-lateral organization cease targeting Fourth World nations as targets for destruction. In other words, states in particular must cease considering Fourth World nations as threats to state continuity but must open the door to coexistence under new international rules of nation and state conduct.

While Fourth World nations may from time-to-time cause damage to the biosphere, their actual effect is comparatively small and quickly restorable. When massive damage is perpetrated against ecosystems by corporate societies through

the establishment of massive cities, mining operations, river diversions, nuclear detonations and testing, toxic chemical contamination and nuclear/ hazardous waste storage and any number of other forms of development and consequent ecological disruption the damage is often permanent and therefore fundamentally destructive of natural life.

The Kings and Empires of the 15th century and before introduced into the world the concept that human beings must dominate all of nature for the benefit of some human beings. This thinking is captured in the Christian Biblical verse Genesis 1:28 that reads, “Be fruitful, and multiply, and replenish the earth, and subdue it: and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth.”

This pronouncement was and continues to be fundamental to became in the 16th century vast colonization of the earth by just a few European Kingdoms and Empires. The Christian biblical verse has been taken explicitly or implicitly as a commandment from God and thus serves as the justification for unrestrained occupation and destruction of Fourth World peoples, lands and ultimately unrestrained development and constantly increasing levels of consumption at the expense of earth’s natural life.

Some followers of the Christian faith such as Justin Holcomb, Pastor of the Mars Hill Church in Seattle, Washington (USA) interpret Genesis 1:28 as personal “responsibility” and that “It is important to avoid flawed convictions about the right and power of humankind in relation

to the rest of the natural world.” But Holcomb’s interpretation appears to be a minority view among Christians and others who tend to accept the more aggressive “false view of dominion” that has played a role in the “mistreatment of creation” according to Holcomb.

It is undeniable, however, that Medieval Christians acting on behalf of European kings and Emperors actively pursued the aggressive interpretation of Genesis 1:28 by confiscating lands (under concepts such as *terra nullius* – Latin expression for “nobody’s land,” engaging in “treaty making” and then violating the agreements, extracting natural resources and colonizing peoples to enrich royal coffers. For centuries their descendants pursued the aggressive challenge to “natural creation” into the present day.

The contrast between the Chutpalu leader’s perspective and the Biblical commandment practiced as a form of aggression against “*natural creation*” couldn’t be starker. The long-term sustainability of Earth’s biocultural and biodiverse ecologies depends on finding a reversal of the *unrestrained dominion approach and the emergence of balance between human need and Earth’s capacity to restore approach*. That is the challenge we face and throughout this volume I recount the ways that “domination” and “balance” clash just as the perspectives of corporate societies and Fourth World people’s perspectives clash. Remedies to this clash, is essential to the prospects for ending the centuries long struggle for domination and balance through new regional and international mechanisms for cooperation

and coexistence. Fourth World nations have the potential and the capacity to reverse the drive toward biodiversity collapse by asserting their role as equal and active players in the human dialogue—in the proactive efforts to move Fourth World nations and states societies together to restore balance in the global ecology.

I suggest later in this volume that Fourth World nations must now proactively author new international rules for conduct between nations and between nations and states to alter the destructive path on which most states travel. While many Fourth World nations conceive of their peoples as victims of predatory kingdoms and states, they are under the new circumstances obligated to abandon “victimhood” and they must adopt a proactive engagement between the different Fourth World nations and with corporate societies and their governments. Corporate states must now realize that their predatory conduct is not sustainable for their continued existence (considering that some 52 states are in near or total collapse). Human societies are at ultimate risk.

### **Is “Nation” a Pejorative?**

Political scientists and lay political observers have since the early 19th century engaged in a tug and push over the meaning of “nation.” The result has been confusion and frequent extremist exhortations by popular uprisings in defense of “blood relations.” So distorted have many such claims become by state citizens that the powers of a state are invoked to sully whole populations as being somehow illegitimate—not worthy—because they are not considered part of what

often turns out to be a fictive “nation” claimed on the basis of skin color or blood relations that is actually a cabal seeking to control a state. Since states are by definition centrally organized under one set of laws, formalized boundaries, central governmental authority, recognition by other states and asserted sovereignty (absolute internal rule) individuals claiming this power can exercise domination in extraordinary ways. This is especially true when exercising centralized state power in the name of “nationalism.” Indeed, centralized states often act to legitimize bigotry to preserve and express state power by claiming a national identity at the exclusion of other nations within state boundaries. Legitimized bigotry is a more accurate description of conduct where a group exercises centralized power of the state control and sometimes violently threaten nations that have been included within a state without their consent.

When I mention “fictive nationalism” to be clear, I am asserting that claims of national dominance are not expressions of nationalism at all, but the most profound expression of chauvinism intended to benefit a criminal clique holding on to power and wealth.

In this volume I refer to “Fourth World nations,” an expression that may be unfamiliar to many.

In light of the confusion about the term “nation” and the perhaps greater confusion about the use of “Fourth World” I simply state that there are more than 5000 Fourth World nations ranging in size from perhaps few hundred people to as many as tens of thousands. These are not

“states”, and non-self-governing territories of which there are at this writing some 203 in the world. Fourth World nations are the foundation of all human societies—the original peoples defined by their culture (relationship between people, the land and the cosmos) from which virtually all other populations have emerged. Within the original Latin meaning of the word “nation” these Fourth World nations are commonly understood to exist by virtue of their relationship to the land or use of land. While some analysts wish to assert “blood” or “geneticities” in a population as definitional of a “nation” this narrow claim has no basis in human history. Virtually all nations include people tied to other nations. It is self-serving nonsense to engage in such sophistry.

While individuals in nations may have different loyalties to cultural identities in other nations by virtue of clan associations, marriage, and familial relations, “peoples” as defined earlier are nations in the “Latin” sense of the word.

### **Nations Under Duress: Celti Peoples Ancestors to Modern Europe**

Peoples in Europe were for more than 400 years (beginning about 2447 years ago) subjected to what we now understand to be cultural genocide targeted by the Roman Republic to eliminate their cultures. The peoples we commonly think of as “Celts” entered and have occupied most of what we now think of as Europe since about 3720 years before the present. These peoples settled in what we now refer to as Lombard [Italy], Ireland, Breton [France] for 1,273 years before the Romans began to systematically strip Celti peoples of their

language, heritage, social, economic and political practices and their traditions.<sup>13</sup> They had been settled in nations and communities and in the first years of the present millennium they fell under the control of the Roman Republic and then the Roman Empire.

I traveled with my partner Leslie Korn to southwestern Germany in the summer of 2019 in search of new knowledge about the indigenous peoples of Europe and I found—much to my delight—an abundance of evidence of the still present and influential Celti people known as the Vindelici Confederation including the Brigantii (named after the Goddess of the Alps) and the Suevi or Swabians. These descendants of the Celti peoples (of which there are many in southwestern Germany) celebrate the summer solstice in a manner deeply rooted in their heritage—they light bonfires atop their mountains in the late night to restore the light of the Sun.

Perhaps the most influential peoples in the last 4000 years are the peoples who called themselves Celti dominating the European continent and sending their members and descendants throughout the world. Evidence of their presence in southwestern Germany 2,700 years ago was documented by researcher under an Iron Age mound that proved to be a grave site in the Kappel near the Rhine River predating the Roman presence by more than 700 years. The Suevi—ancestors to peoples in southern Bavaria

and southeastern Baden Württemberg Germany remain a powerful influence through their contributions to modern scholarship.

Originating in what we now think of as Central Europe, Celtic peoples were formed in large and small distinct aggregates for centuries. They began migrating about 2500 years ago to the west, north, east and south into new enclaves. Many of the nations crossed the Rhine river west into what is now France and Spain and within two hundred years they began moving north into what is now the British Isles, Scotland and Ireland (See Figure 4). Meanwhile, other Celtic nations moved to the south east into what is Bulgaria and Turkey. Teutonic peoples to the Central European north blocked Celtic movements. They became more settled in their territories. To their south they faced the Roman Republic and eventually the Roman Empire. While the Celts adapted to their local cultural and territorial environments, several Celtic nations pushed south into Rome, sacking it and taking control. But that was not for long. The Roman Republic reversed its losses and vigorously extended its political controls over many Celtic nations. But, unlike the Celtic posture of adapting to local cultures and lands, the Romans chose to replace Celtic cultures with Roman ethos, language and religion—effectively destroying many cultures through Roman replacement.

<sup>13</sup> The Truth and Reconciliation Commission sponsored by the Canadian government defined cultural genocide in this way: ““Cultural genocide is the destruction of those structures and practices that allow the group to continue as a group. States that engage in cultural genocide set out to destroy the political and social institutions of the targeted group. Land is seized, and populations are forcibly transferred, and their movement is restricted. Languages are banned. Spiritual leaders are persecuted, spiritual practices are forbidden, and objects of spiritual value are confiscated and destroyed. And, most significantly to the issue at hand, families are disrupted to prevent the transmission of cultural values and identity from one generation to the next.” (Washington Post, June 5, 2015)

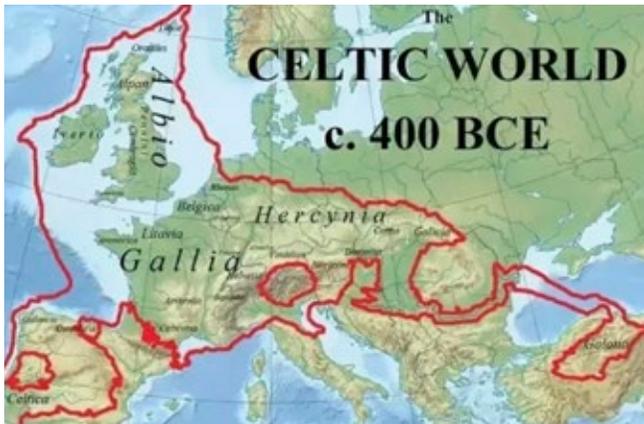


Figure 4 Extent of Celtic influence c. 400 BCE

“Celtic Time” is carefully documented in contrast to the time when the Roman Republic took control of many parts of the Celtic Region (See Figure 5). Celtic descendants are deeply conscious of their history and the time when the Romans came to dominate their societies.

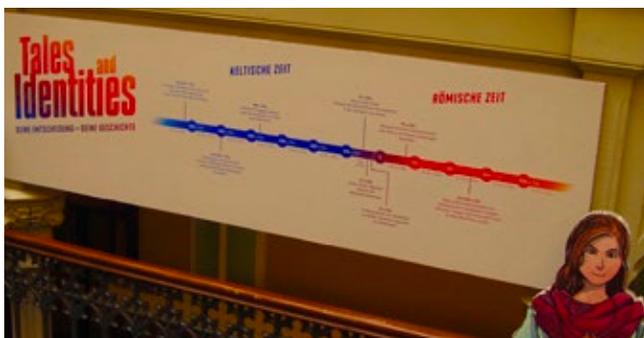


Figure 5 Personalized Timeline for Celtic Times and Roman Times  
Celtic Time (Keltische Zeit) and Roman Time (Römische Zeit) in Germany (Photo by the Author)

Indeed, their generalized name remains a common term that now refers to peoples in western and northern Gaelic Ireland and Scottish Gaelic, the Welsh, Cornish and Manx of western and central England, and Breton's of western France. But these are the only Celti peoples

on whose lineage millions in the Western Hemisphere, parts of Africa, the Pacific Islands and even parts of Asia depend. The peoples of Spain have Celti ancestors, as do Bohemians and Slovaks; and the Celti Lombards in northern Italy who once ruled Rome. As peoples they have shaped world history and do so in the politics of the present. Suevi and other Celti peoples are further revealed by the artifacts of earlier times in architecture, and pottery.

Among the contemporary state citizens of Europe's 27 countries rarely refer to their origins or cultural connections to their ancestors who predate the fixed boundaries of modern-day states such as Spain, Italy, Germany, Slovakia, Italy, Poland, Austria and England. These state designations are relatively recent labels attached to geographic regions whose boundaries have come into existence only in the last 400 or 500 years. Before this time boundaries were quite flexible and frequently non-existent except to define “duchies” as small territories ruled by a relative or designee of a King or self-proclaimed Emperor. The foundation of Europe's heritage is rooted in Teutonic peoples and Celti peoples. These broad references provide a collective umbrella under which many distinct peoples (or some would say “tribes) coexist in the European “culture-scape.” As the 1999 Richard Griggs map of resurgent nations published in the Encyclopedia Britannica clearly demonstrates many Fourth World nations rooted in Celtic heritage remain fixtures in Europe. Griggs' map points notably to Swabia in the upper right-hand corner in Figure 6.



Figure 6 Resurgent Nations of Europe - 1998

## Europe's Nations

To illustrate the modern day meaning of these observations I point to the Brigantii and Suevi peoples along the borders of Bavaria and Baden Württemberg, Austria and Switzerland—southwest Germany. The Vendelici Confederation identifies a collection of distinct peoples (Brigantii, Consuanetae, Estiones, Leuni, Licates, Runicates and Vennonetes including the Suevi). The principle walled settlement of the Confederation was until 2,030 BP located at what is now Manching, Bavaria with a population of about 7,500 people.



Figure 7 Oppidum of Manching Central Settlement (right) and Architecture (left)

While these names are not widely used to self-identify the specific peoples, their descendants continue to prosper in Baden Württemberg and Bavaria as did the peoples who originally located in this area by 2,700 BP.

About 800,000 people especially in western and southern Bavaria provide echoes of their tribal reality in their brand of the German language and their cultural practices. To the present, they practice the pre-Christian celebration of lighting bonfires at the top of the mountains around Garmish-Partenkirchen in southern Bavaria. More than 800 men and women climb the mountain carrying wood to build fires along the mountain crest marking the summer solstice (See Figure 8). This Swabian tradition demonstrates their cultural identity through the act of affirming the relationship between the people, the land and the cosmos.



Figure 8 Solstice Bonfires atop mountains Garmish-Partenkirchen - Bavaria, Germany 2019

The Vindelici and their sub-nation of Suevi and many smaller culturally related groups were subjugated by Rome's Tiberius in 2004 BP. In particular the Romans claimed to have defeated the Cosuanetes, Rucimates, Licates and the Catenates at that time. The cultural influence of

these ancient peoples lives on in the modern places of Swabia, Bavaria and Thuringia (regions and states in southern Germany) that received their names from the Suevi.

At the Center for World Indigenous Studies (CWIS) we call on our employees, interns and volunteers to engage in a study of their individual “cultural connections” to understand that each of us is culturally influenced by our ancestors. In other words, the Fourth World nations with whom CWIS engages every day are often culturally connected to the many different peoples in Europe, Central Asia, the Americas Africa and the Pacific region. One’s cultural connections more often than not reach into different cultures producing a multi-cultural heritage that is worth knowing and understanding. Such understand reveals how the migrations of peoples over the span of time mingle cultural ties and affirm our collective heritage in the root cultures reaching into antiquity.

Migrations of peoples are not a new phenomenon, but a dynamic process extending back more than 50,000 years producing transformational changes in societies. It was the “tribes” of Celti that confronted the “civilized” Roman legions more than 2000 years ago that eventually formed the basis of what we now know as modern Europe. The presence of tribal roots for the Suevi in southern Germany and other Celti peoples throughout Europe and now virtually all parts of the world is evidence that migration is a normal part of life enriching as much as altering the cultural landscape.

## **Where we are standing decides our point of view**

Discussing international relations and, in particular, geopolitics from the Fourth World perspective may seem unfamiliar to you, and that is not surprising. The conventional wisdom in politics is that one can achieve more by going with the tide of opinion than going against it.

Thus, the political and diplomatic importance of the Fourth World perspective that often goes against the conventional tide goes missing in international discourse. My analysis of history and relations between nations and states is not conventional wisdom. Instead, it reflects how we see the world: that operates from the view of standing on Fourth World soil and not merely how we wish it to work. Understanding the Fourth World Nations perspective on the development and advance of international and domestic policies requires that you engage the discussion while standing on Fourth World Nations’ territory. If you are located in the territory of a Fourth World nation, the perturbations by and among the world’s states’ governments can be seen as responses to insecurities acted out in violent strikes, often against Fourth World peoples. States’ anxieties too frequently arise from fears about the loss of territorial control and challenges to the exercise of state sovereignty. The actions of states too often demand access and control over Fourth World nations’ lands, resources, and other forms of wealth—ultimately to deny Fourth World peoples’ access to the lands, foods, and wealth that ensures their survival. From the view inside a Fourth World nation, the

state seems insatiable in its demands for raw materials, lands, and exclusion of various peoples. These demands necessitate that each nation applies a Fourth World geopolitical analysis to states' actions and their decisions to anticipate where the next challenges will emerge—and consider and implement countermeasures, defenses, and alternative political and strategic decisions.

It is well established in the international legal and political space that “peoples” have the right to choose their own social, economic, political and cultural future without external interference. As we now must understand, the usage of this word “peoples” applies to Fourth World nations. The word “peoples” is considered an international norm to identify the beneficiary of “natural rights.”

As a UNESCO Expert panel in 1989 stated (I have noted elsewhere) defined “peoples” as a group of individual human beings who enjoy some or all of... common features of common history, cultural homogeneity, linguistic unity, territorial connection, as well as a common economic life.” The panel asserted that “peoples” have rights. States do not have rights.

As we know, many diverse peoples have historically located in biologically and bioculturally diverse territories. They tend to view their inherent right to self-determination to ensure safe and secure biodiversity—the foundation for life on the planet. Indeed, self-determination of peoples is the norm on which the United Nations founding Charter of 1945 served to guide the implementation of the right of

peoples to political self-government. The rights of peoples accelerated a process that formed many new states containing a majority of Fourth World nations in the 1950s through the 1980s. The UN language originally drew on earlier interstate agreements made at the Paris Peace Conference of 1919-1920 that established the League of Nations (1919-1946). Post-World I political initiatives taken by members of the League of Nations proved disastrous for the world with the rise of authoritarian states and the onset of economic collapse.

Haudenosaunee Sachem Deskaheh, of Cayuga and Maori spiritual leader Tahupōtiki Wiremu Ratana of the Ngati Apa and Ngā Wairiki iwi, opened the 20th century with their attempt to present their political concerns representing their nations at the League General Assembly in Geneva, Switzerland In 1923. They were both denied access to the Assembly to speak their concerns. Notably, however, the Haudenosaunee and Maori initiative to step into the League of Nations launched the current period during which Fourth World nations began to step forward to engage in diplomatic relations—seeking to engage states and other Fourth World Nations on a political plane—as political equals.

The events following the Great War (1914 – 1918) carried forward fundamental realignments between states in the international space. Japan, in 1931, invaded Manchuria and started a bloody war against China. Germany's new government in 1933 rejected the demands for reparations for the damages caused by World War I, thus providing the impetus for the ultimate rise of the Nazi



Party that would be joined by the Fascists in Italy, Spain, and Japan. What followed in 1939 was what would become World War II (1939 – 1945). This war was really an extension of the Great War and it ushered in significant changes in relations between states and eventually the actors in the United Nations. Before the end of the War states' leaders were already planning for changes in the international political space that had long been occupied primarily by Kingdoms and Imperial powers. States assumed a major role in the conduct of relations between peoples throughout the world, culminating in the formulation of new international laws touted as measures to stabilize relations between states. States' governments at the United Nations approved the Declaration of Human Rights (1948), the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), the Convention on the Elimination of All Forms of Racial Discrimination (1965) and seven additional Conventions affirming "peoples'" rights under state-based international laws and declared norms.

All of the so-called "non-self-governing" territories under colonial control were considered candidates for decolonization. Virtually all of these territories were populated by Fourth World peoples and were located distant from their colonizers. (SEE Figure 9). The United Nations settled on what would become known as the Belgian Thesis or the "Saltwater Thesis" as the rationale for decolonization. . The principle was so-called since the government of Belgium decided to give up its colonial possessions.

Belgium offered its plan: In exchange for the United States government decolonizing American Indian nations, Belgium would, at the same time, decolonize its claimed territories.

Belgium's perspective was based on the recognition that distinct peoples, or what I refer to as Fourth World peoples, have an inherent political identity, and the international community must recognize all such peoples. Belgium's gambit was defeated when the UN General Assembly at the behest of the United States declared that for a territory to be eligible for decolonization, the presence of "blue water" between the colony and the colonizing country or a discreet set of boundaries would be needed. The US delegation obtained general UN member state support, especially from those states that had large numbers of Fourth World peoples "inside" their boundaries. From that point on, the "blue water rule" held sway over future UN decolonization decisions. The result? Thousands of Fourth World nations remained under "re-colonial" rule of more than sixty new states created by the 1980s, and thousands more nations remained under control inside existing

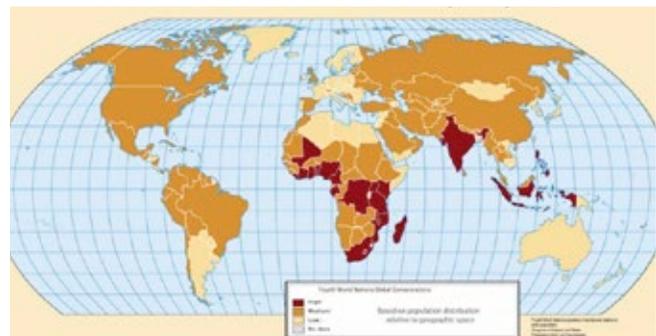


Figure 9 Fourth World Nations Globally Colonized

UN member states. Fourth World nations were then and are now concentrated in territories of settler states as well as decolonized states.

In 1945 the newly established United Nations debated what to do with 750 million people or about 30% of the world's 2.5 billion people living in so-called dependent territories. France, the United Kingdom, the Netherlands, the United States, Australia, Belgium, Spain, Portugal were the leading colonial states, all of which stood as founding members of the United Nations. Many of the colonized peoples held by these states were in territories primarily located in the African continent, southeast Asia and islands in the Indian, Atlantic, and the Pacific Oceans (SEE Figure 10).

Decolonization under the “blue water rule” created a radical shift in political, economic, and strategic relations between states. This change was despite the process of decolonization leaving more than 700 million Fourth World peoples still under the colonial control of settler and decolonized states throughout the world (e.g., Russia, China, United States, France, Saudi Arabia, Iraq, Brazil, New Zealand, Chile, Australia). Indeed, the decolonization process carried out over fifty years resulted in the “recolonization” of many thousands of Fourth World nations. They were inside the newly decolonized states that were often ruled by one dominant Fourth World nation (e.g., Burma, Nigeria, Congo, Rwanda, Melanesia, Sri Lanka

[Ceylon], Kenya, Madagascar, Aden [Yemen]). Recolonization followed the same pattern of colonization implemented by Empires. Peoples were recolonized by states that were formed from collapsed Empires. Many Fourth World nations fell under the control of political systems created by recolonizing powers such as in Pakistan and India, Nigeria, and Indonesia. Consent of the peoples to be governed under the “new state” rulers was not obtained when the Empires collapsed, and so the pattern repeated.

When the States “decolonized” Fourth World nation consent was not obtained to ensure that participation in the new state was freely chosen.

While occasional plebiscites were organized, the minority voices of Fourth World nations often lost out. Under the “decolonized states” nations have remained in an agitated condition. Their claims to “land rights” as well as “self-determination” have consistently been the basis for Fourth World tensions resulting from “newly created state” denial of these fundamental rights. At the center of decolonization, as with the breakdown of Empires, has been questions of consent, territory and all that means for life support from the natural Earth, and the choice to freely decide a political future without external interference. Decolonization of the “recolonized” and the “still colonized” must now give way to the exercise of “peoples” rights to determine their own social, economic, political, and cultural future in accord with the international principle.



Figure 10 States Mandates and Dependencies - 1945

The Post-UN Charter era constituted a marked change in global geopolitics. The UN Charter introduced a new period that would continue for seventy-years during which many Fourth World nations under the guise of newly formed states took steps to engage in political, economic and security relations between themselves, international state agencies and with the UN founding member states.

Non-state Fourth World nations began to participate in United Nations meetings in the 1970s and became full-blown contributors in the fashion of non-governmental organizations. They did so at the UN Working Group on Indigenous Populations, at sessions of the International Labor Organization and meetings on climate

change, intellectual property, human rights, labor relations, and other subjects. The UN Member States, the states with limited international recognition and Fourth World Nations engaged on the international stage defining a new Fourth World Geopolitical framework. Multi-lateral state organizations such as the United Nations, Organization of America States, and the International Labor Organization allowed Fourth World nation representatives to offer recommendations and criticisms, but at no session of these organizations were nations' representatives permitted to express their political will through voting.

In the period from 1970 through to the present, the more than 5000 Fourth World

nations (a global population is now estimated at 1.9 billion) still located inside existing states took political and diplomatic actions to establish their claim to the right of self-determination—indeed to the full exercise of self-government without external interference in accord with the widely accepted norm defining the rights of peoples. Within European states, there are many Fourth World nations seeking to exercise their right of self-determination—to govern themselves (SEE Figure 11).



Figure 11 Europe's Fourth World Nations and Political Separation 2020

The unresolved tensions between Fourth World nations located inside existing states threaten the survival of both nations and states. The persistent political distance between many Fourth World nations and the states that claim them has resulted in the generational nation and state conflicts that have the nature of chronic political tension (Warm wars) and violent confrontations (Hot wars) on all continents. As

illustrated in Figure 12, no fewer than 540 Fourth World Nations are engaged in warm or hot wars with 25 UN member states in the present.



Figure 12 Nations and State Warm and Hot Wars

The central motives behind the warm and hot wars for Fourth World nations have been to protect their territories or access to their territories; and the desire to exercise the right of self-determination—to practice self-government.

The States' central motive for engaging in tensions with Fourth World nations has been the exploitation of Fourth World nation raw materials (forests, petroleum, minerals, water, agricultural lands), maintain control over territory inside of claimed boundaries. In other words, States seek to prevent the dismemberment of the state and to preserve the state's exercise of sovereignty over the claimed territories. These tensions have contributed to the rapid decline of biodiversity, genocides against Fourth World nations (156 such incidents since 1945 involving 52 UN member states), and destabilization of states. Fourth

World nations' unresolved claims to exercise the right of self-determination and state opposition to exercising such a right stand in the way of the peaceful conduct of relations between nations and states. The continuing political and violent conflicts prevent the full realization of "all peoples' rights" to freely choose their political, social, economic, and cultural future without external colonial interference.

The diversity of Fourth World peoples acting to preserve and ensure the continuity of diverse ecological systems as well as their cultures is intimately connected to global human survival. Fourth World peoples' diversity and ecological diversity ensure perpetual biological diversity on which all humanity depends on for life-giving foods, medicines, clean waters, and clean air. Fourth World geopolitical realities where lands and resources are the central tension between states and nations present us nevertheless with a focus for moving toward comity between nations and states. It is evident to all who notice radical climate changes that the persistent, unrestrained exploitation of Earth's living wealth and destruction of Fourth World peoples' living cultures must cease. The alternative is for states and nations to work toward comity and consequently reverse damage to biodiversity and human diversity. Respect between nations and

states as political equals is essential to eliminate the destructive conduct that threatens both the existence of Fourth World nations and the world's states as well.

For more than one hundred years, Fourth World peoples and the citizens of states have agreed in principle on the basic requirements for organizing mutually established forums to develop and settle the few points of disagreement. The evidence of such agreement is spelled out in language developed and adopted in such instruments and the UN Declaration on the Rights of Indigenous Peoples. Fourth World nations located inside existing states and the states that claim sovereignty over them have agreed in principle to social, economic, political, security, and environmental measures needed to bring about peaceful relations for the good of humanity. While there are some disagreements still, the next steps must be defined and carried out to establish new mechanisms that ensure nations and states engage on an equal political plain. From that point, they can implement the agreed-upon principles, sort out the remaining disagreements, and thus establish comity for all humanity. The framework for engagement will necessarily rely on modifications in state-based international laws and also nation-based international laws. Comity between nations and states to realize the "rights of peoples" as for all of humanity can require no less.

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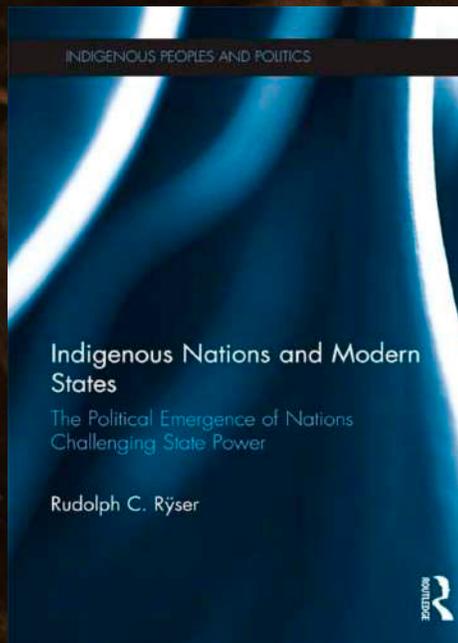
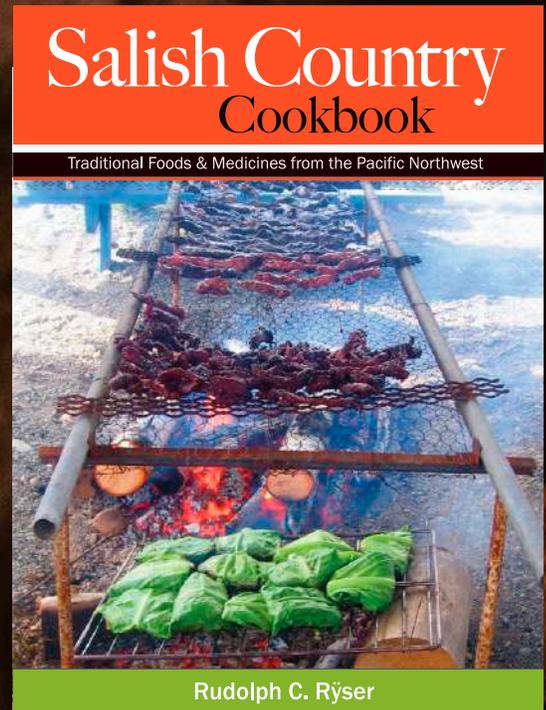
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—Erich Steinman, Pitzer College