1998

International Emergence: Twenty-One Years at the United Nations Symposium

Ingrid Washinawatok

Follow this and additional works at: <https://academicworks.cuny.edu/clr>

Part of the [Law Commons](#)

Recommended Citation

Ingrid Washinawatok, *International Emergence: Twenty-One Years at the United Nations Symposium*, 3 N.Y. City L. Rev. 41 (1998).
Available at: 10.31641/clr030107

INTERNATIONAL EMERGENCE: TWENTY-ONE YEARS AT THE UNITED NATIONS†

Ingrid Washinawatok

The 165 delegates from North, Central, and South America gathered in a meeting room to discuss various aspects of the historic moment they would soon inaugurate. It was September 1977 in Geneva, Switzerland, and for the first time, American Indians were the subject of a conference that would be held at the United Nations.¹ Although many of the indigenous representatives gathered were tense with anticipation, the strength of the traditional elders reminded all of their duty. After a time, the delegates decided that the spiritual leaders and the carriers of the Sacred Pipes would lead the procession of delegates as they moved into a new era.²

Larry Red Shirt of the Lakota Treaty Council took the job very seriously. He was entrusted by the elders to carry a pipe inside to open the session in the proper manner. Red Shirt led the procession with Leon Shenandoah, the Tadadaho, or principal chief of the Haudenosaunee,³ Odawa leader Art Solomon, Phillip Deere, renowned Muskogee Creek spiritual leader, and Hopi elder David Monongwe. As they made their way down the length of the walk-

† A shorter version of this paper was presented at *Bringing It Home: Building International Human Rights Law, Advocacy and Culture, A Conference to Mark the 50th Anniversary of the Universal Declaration of Human Rights* held at the City University of New York School of Law, 1 May-3 May 1998.

¹ See Rachel San Kronowitz et al., Comment, *Toward Consent and Cooperation: Reconsidering the Political Status of Indian Nations*, 22 HARV. C.R.-C.L. L. REV. 507, 613-14 (1987). The conference was not officially a U.N. Conference but rather one organized by interested Non-Governmental Organizations and held at U.N. facilities in Geneva. For full details of the conference, see BASIC CALL TO CONSCIOUSNESS 36-64 (Akwesasne Notes rev. ed. 1995).

² See Ismaelillo, *GENEVA: A Report on the Continental Movement of Indigenous Peoples*, AKWESASNE NOTES, Dec. 1977, at 4, 6.

³ The Mohawk, Seneca, Onondaga, Cayuga, Oneida, and Tuscarora are the six nations of the Haudenosaunee, the "People of the Longhouse," an alliance originally formed in pre-Columbian times by a Mohawk leader, Deganwidah, and Hiawatha, an Onondaga orator. These nations primarily inhabited the northeastern woods of the United States and southeastern Canada near Lake Erie and Lake Ontario and around the New York—Ontario border. In addition to the title Haudenosaunee, the alliance was known as the Great Peace Confederacy because it was formed to eliminate fighting among member nations. The confederacy became known as the Iroquois League or Iroquois Confederacy to non-Indians. See SHARON O'BRIEN, AMERICAN INDIAN TRIBAL GOVERNMENTS 17-19 (1989); BILL YENNE, THE ENCYCLOPEDIA OF NORTH AMERICAN INDIAN TRIBES 80 (1986).

way on the grounds of the Palais Des Nations, they were flanked by the drum, held by singers from Minneapolis and South Dakota. Behind them walked the indigenous delegates. In the venerable building that once housed the League of Nations, windows flew open, and the workers began to applaud.

In 1997, the International Non-Governmental Organizations (NGOs) Conference on Discrimination Against Indigenous Populations in the Americas marked its twentieth anniversary. For more than fifty years prior to this conference, native peoples had worked to make their presence felt among the dominant nation-states of the world. The dignified procession that marched past the cheering employees of the United Nations in September 1977 signified the beginning of a new phase of activity by Indian people in the international forum.⁴

THE 1977 CONFERENCE

The delegates, especially the Haudenosaunee, knew that the 1977 conference had been long overdue. Since Deskaheh, the Cayuga chief who sought justice from the actions of Canada in 1923 at the League of Nations,⁵ native peoples had sought to gain an audience for their grievances in the world forum. Deskaheh first went to Great Britain in 1921 to protest Canadian intrusion into the affairs of the Haudenosaunee. After World War I, Canada more actively attempted to integrate the Native Americans of the Iroquois Confederacy by enticing them into Canadian citizenship with payoffs and exerting tight control over their self-government and their ability to buy and sell their land.⁶ Deskaheh hoped the bilateral treaties signed between the Haudenosaunee and the English would give him grounds and support for resisting the Canadian coercion, but the British government was unresponsive,

⁴ This conference, held in Geneva, September 20-23, 1977, was one of many conferences held by indigenous organizations involving standard setting efforts in the field of protection of human rights. See *Report of the Working Group on Indigenous Populations on its First Session*, U.N. ESCOR, 35th Sess., Agenda Item 12, at 11, U.N. Doc. E/CN.4/Sub.2/1982/33 (1982) [hereinafter *Working Group Report 1982*].

⁵ See LAURENCE M. HAUPTMAN, *THE IROQUOIS AND THE NEW DEAL* 16 (1981). See also CLINTON RICKARD, *FIGHTING TUSCARORA: THE AUTOBIOGRAPHY OF CHIEF CLINTON RICKARD* 60-61 (Barbara Greymont ed. 1973) (relating Chief Rickard's experiences with Deskaheh).

⁶ See RICKARD, *supra* note 5, at 58-59. The Canadian Government twice passed legislation, in 1920 and 1933, that sought to force Canadian citizenship on Native Americans. See J. RICK PONTING & ROGER GIBBINS, *OUT OF IRRELEVANCE: A SOCIO-POLITICAL INTRODUCTION TO INDIAN AFFAIRS IN CANADA* 13 (1980).

telling him the old treaties no longer mattered.⁷

In 1923, Deskaheh again went to Europe in an attempt to present his case to the League of Nations.⁸ While he was able to garner the support of the Netherlands and Albania—both having sponsored his effort to address the assembly—he came to realize he would not be allowed as a petitioner before a plenary session of the League of Nations.⁹

In November, 1924, Deskaheh wrote to the editor of a Swiss journal: "It is the heart broken that I must affirm that since several months I am against the most cruel indifference . . . My Appeal to the Society of Nations has not been heard, and nothing in the attitude of Governments does not leave me any hope.

. . . Too long we have suffered from the tyranny [sic] of our neighbors who tread under feet our Right and laugh at the Pact which finds them . . . Our appeal is for all those which are animated by the spirit of justice and we ask them their benevolent help."¹⁰

As a final insult, the Secretariat of the League of Nations refused to give Deskaheh and his companion, a white friend and lawyer from Rochester, New York, gallery seats so they could observe the proceedings.¹¹

For months prior to the 1977 conference, indigenous peoples held meetings in their communities to gather information and prepare the documents to present to the various commissions of the conference that would include the Economic, Legal, and Social and Cultural commissions. A remarkable group of people, representing sixty Indian nations from fifteen countries, dedicated long hours to prepare the documentation. Native women from the North American and Canadian delegations were largely responsible for presenting the historic documents and interventions that were the precursors to the Working Group on Indigenous Populations (Working Group).¹²

For the first time, an international forum heard the unencum-

⁷ See RICKARD, *supra* note 5, at 61.

⁸ See RICKARD, *supra* note 5, at 61.

⁹ See CARL CARMER, *DARK TREES TO THE WIND* 110-11 (1949).

¹⁰ *Id.* at 111.

¹¹ See *id.* at 107, 111.

¹² The Working Group on Indigenous Populations was proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its Resolution 2 (XXXIV) of September 8, 1981, endorsed by the Commission on Human Rights in its Resolution 1982/19 of March 10, 1982, and established by the Economic and Social Council pursuant to its Resolution 1982/34 of May 7, 1982. See E.S.C. Res. 34, U.N. ESCOR, 28th mtg., U.N. Doc. E/SR.28 (1982).

bered worldview of indigenous peoples. If the members of the three commissions held doubts that native peoples of the Western Hemisphere had suffered acts of discrimination, genocide, and ethnocide, there could be no such doubts after the presentations. All that might remain were questions about similar past commissions' quiescence.

It fell to Oren Lyons of the Onondaga to deliver a message that has deepened with time, when as one of the speakers that day, he said:

I do not see a delegation for the four-footed. I see no seat for the eagles. We forget and we consider ourselves superior, but we are after all a mere part of the Creation. And we must continue to understand where we are. And we stand between the mountain and the ant, somewhere and only there, as part and parcel of the Creation.¹³

The native peoples' profoundly ecological message was accompanied by an admonition to the western world: "Economics and technology may assist you, but they will also destroy you if you do not use the principles of equality. Profit and loss will mean nothing to your future generations."¹⁴

One important U.N. initiative received a big boost from the conference. One installment of a report commissioned in 1971 and authored by Jose Martinez Cobo (Martinez Cobo Study), the Special Rapporteur of the Sub-Commission on the Study of the Problem of Discrimination against Indigenous Populations, was presented and warmly received.¹⁵ Between 1981 and 1984, four volumes were formally presented by Martinez Cobo to the Sub-Commission. The study was a survey of U.N. actions relating to indigenous peoples, including the relevance and application of existing conventions that protect human rights and protest against such practices as racial discrimination, enslavement, and genocide.¹⁶ As a consequence of the work of the delegates, it was decided to hold another conference, this time focusing on indigenous people and the land.

¹³ Oren Lyons, Statement Before the International Non-Governmental Organizations Conference on Discrimination Against Indigenous Populations in the Americas (1977), in *AKWESASNE NOTES*, Dec. 1977, at 6.

¹⁴ *Id.*

¹⁵ See *Working Group Report 1982*, *supra* note 4, at 4.

¹⁶ See JUDITH P. ZINSSER, *A NEW PARTNERSHIP: INDIGENOUS PEOPLES AND THE UNITED NATIONS SYSTEM* 48 (1994).

THE 1981 INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS
CONFERENCE ON INDIGENOUS PEOPLE AND THE LAND

By the time of this conference in 1981, three indigenous organizations had been approved for Category II status as NGOs within the Economic and Social Council of the United Nations.¹⁷ This status allows organizations to submit written and oral statements to the Commission on Human Rights and other U.N. forums and to be granted hearings.¹⁸ As was the case for the 1977 Conference, the 1981 Conference was organized into commissions. In examining the rights of indigenous peoples in the international law arena, the Legal Commission listened to more than forty declarations by indigenous delegates, representatives of NGOs, and observers.¹⁹ Those who testified argued that indigenous peoples have a natural and original right to live freely within their own territories. Testimonials further maintained that the special relationship of indigenous peoples to their land should be understood and recognized as basic to their spiritual ways of life, their cultures and integrity as people, and their needs for economic survival.²⁰

The Indigenous Philosophy and Land Commission was chaired by Phillip Deere, a medicine man well-respected in the international Indian movement. The commission's report concluded:

From the Indian way of viewing things, humanity is a integral part of nature—a prolongation of the Universe, according to its own laws and organizing itself in a collective and communal form.

Being is a spiritual proposition. Gaining is a material act. . . .

The fabric of native life consists of a tapestry woven of threads from nature—from the land and the plants and the animals of the homeland. To tear that tapestry asunder is to anni-

¹⁷ The indigenous peoples' NGOs recorded as participating in the first session of the Working Group were the following: International Indian Treaty Council, World Council of Indigenous Peoples, and Indian Law Resource Center. Ten other NGOs are listed as participating in the session. Numerous other indigenous organizations and groups provided information to the Working Group, including the Haudenosaunee. See *Working Group Report 1982*, *supra* note 4, at 3-4.

¹⁸ See *Arrangements For Consultation with Non-governmental Organizations*, E.S.C. Res. 1296, U.N. ESCOR, 44th Sess., at 21 (1989); see also EDMUND JAY OSMANCIZYK, *ENCYCLOPEDIA OF THE UNITED NATIONS AND INTERNATIONAL AGREEMENTS* 565 (1985).

¹⁹ See *Geneva 1981—Further Steps On The Road To International Recognition*, AKWESASNE NOTES, Late Autumn, 1981, at 16 [hereinafter *Geneva 1981—Further Steps*].

²⁰ See *id.*

hilate the Indian.²¹

The Transnational Corporations Commission heard more than twenty presentations on corporate dispossessions and invasions of native lands around the globe, including the Americas, Asia, and Europe.²² To combat destructive activities, the commission proposed a number of short-term strategies, including the following: research gathering on transnational corporations; enhancing communication between indigenous and local groups seeking support from corporation-worker groups; pressuring the shareholders of the offending corporations; advocating for boycotts and sanctions; and the promotion of both national codes of conduct and tribunals created by native peoples.²³

The Commission on the Impact of the Nuclear Arms Build-Up examined the struggles of indigenous peoples for disarmament, a struggle determining not only the welfare of indigenous societies but affecting all humankind. The commission urged the immediate halt of plans for the manufacture and deployment of an MX missile system on Shoshone lands in Nevada.²⁴

Throughout the 1981 Conference, the indigenous delegates were able to maintain a remarkable unity of thought and action. This was evident from the collective wisdom and clarity of the interventions put forward. The unity evinced, however, would become harder and harder to sustain in the coming years.

THE WORKING GROUP ON INDIGENOUS POPULATIONS

On March 10, 1982, the U.N. Commission on Human Rights adopted a resolution in support of a Working Group on Indigenous Populations (Working Group).²⁵ Mohawk Chief Jake Swamp attended the commission meeting and in an intervention in support of the initiative, commented as follows:

Existing international law and existing national law do not adequately protect us against the serious threats to our existence. Our cultures, our religions, our governments and our ways of life are all in danger. We are not simply individuals with individual's rights; on the contrary, we exist as distinct peoples, distinct communities, real functioning nations. We hold our

²¹ *International Non-governmental Organizations Conference on Indigenous People and the Land, Report of the Indigenous Philosophy and Land Commission*, (Geneva 1981), reprinted in *Geneva 1981—Further Steps*, *supra* note 19, at 17.

²² See *Geneva 1981—Further Steps*, *supra* note 19, at 17.

²³ See *Geneva 1981—Further Steps*, *supra* note 19, at 17-18.

²⁴ See *Geneva 1981—Further Steps*, *supra* note 19, at 19.

²⁵ See *Working Group Report 1982*, *supra* note 4, at 3.

lands in common, we hold our cultures and religions as nations and as communities and groups. For these reasons we face unique problems. Special measures are required to meet these problems. If these measures are not taken, more and more indigenous peoples may be destroyed and their cultures vanished forever.²⁶

The Working Group was created as a result of the findings of the Martinez Cobo Study and the efforts of both indigenous and non-indigenous NGOs. With its creation, the United Nations further acknowledged it was accepting that indigenous peoples "are separate peoples, unlike other national populations, defined by unique criteria, that they live in unique circumstances and have been denied their rights in ways others have been spared" and that they should receive "more than just protection against loss of rights, they need active promotion of the enjoyment of those rights."²⁷

In August of 1982, the first session of the Working Group on Indigenous Populations of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities was held.²⁸ The Sub-Commission reports its findings to the Commission on Human Rights, which then reports to the Economic and Social Council. That group, in turn, presents its report to the General Assembly. The Working Group is open to all representatives of indigenous peoples and their communities and organizations. In the early years, the Working Group reviewed developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous peoples, and it has continuously worked to set standards concerning the rights of indigenous peoples. The Working Group has successfully fulfilled its mandate because of the unorthodox procedures and special measures it has initiated. Its chairpersons have allowed broad participation in its discussions.²⁹ Representatives without NGO affiliation or official status are encouraged to speak, to submit statements about their peoples'

²⁶ *Working Group on Indigenous Populations: Hearing Before U.N. Commission on Human Rights*, (Geneva 1982) (statement of Jake Swamp, chief of the Mohawk nation), reprinted in *Working Group Established to Monitor Violations of Indian rights*, AKWESASNE NOTES, Late Spring 1982, at 6.

²⁷ ZINSSER, *supra* note 16, at 48-49.

²⁸ See *Working Group Report 1982*, *supra* note 4, at 4.

²⁹ See ZINSSER, *supra* note 16, at 50. The group is comprised of five members, each from different regions of the world. They are chosen by members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. See also *Working Group Report 1982*, *supra* note 4, at 3.

concerns, and to suggest changes in the draft declaration.³⁰

In 1985, a voluntary fund was established.³¹ The fund provides travel grants and daily allowances for representatives of indigenous communities and organizations, enabling many groups of limited financial resources to participate in the Working Group.³² Through late 1996, some 250 representatives of indigenous people had used the fund to attend sessions.³³

In 1989, the Working Group recommended to the Sub-Commission that a study on treaties be commissioned. The Sub-Commission approved the Study on Treaties to examine the agreements and other constructive arrangements between states and indigenous people; Miguel Alfonso Martinez was appointed as Special Rapporteur.³⁴ Another study, commissioned in 1990 to report on the protection of the cultural and intellectual property of indigenous peoples, was presented at the 1993 session of the Working Group by Chairperson Erica-Irene Daes.³⁵ The Working Group also that year initiated discussions on a permanent forum for indigenous peoples, following a recommendation by the U.N. Conference on Human Rights in Vienna.³⁶

CONVENTION NO. 169

The Working Group's initiatives complement and contrast with those of the International Labour Organization (ILO), a specialized agency of the United Nations formed in 1919 to oversee international labor standards and promote fair, humane labor conditions and implement labor rights for men, women, and children around the world.³⁷ In 1989, after two years of meetings, the ILO revised its Convention No. 107, originally drafted in 1957. The earlier document advocated the integration of native peoples into the

³⁰ See ZINSSER, *supra* note 16, at 50.

³¹ See *Report of the Secretary General, Review of the Existing Mechanisms, Procedures and Programmes Within the United Nations Concerning Indigenous People*, U.N. GAOR, 51st Sess., Agenda Item 107, at 25, U.N. Doc. A/51/493 (1996) [hereinafter *Existing U.N. Mechanisms Report*].

³² See *id.*; see also ZINSSER, *supra* note 16, at 50.

³³ See *Existing U.N. Mechanisms Report*, *supra* note 31, at 15.

³⁴ See *Existing U.N. Mechanisms Report*, *supra* note 31, at 14.

³⁵ See Erica-Irene Daes, *Study on the Protection of the Cultural and Intellectual Property of Indigenous Peoples*, U.N. ESCOR, 45th Sess., Provisional Agenda Item 14, at 5, U.N. Doc. E/CN.4/Sub.2/1993/28 (1993).

³⁶ See *Report of the Working Group on Indigenous Populations on its Eleventh Session*, U.N. ESCOR, 45th Sess., Agenda Item 15, ¶¶ 189-91, U.N. Doc. E/CN.4/Sub.2/1993/29 (1993) [hereinafter *Working Group Report 1993*].

³⁷ See Constitution of the International Labour Organization, June 28, 1919, 49 Stat. 2712, 15 U.N.T.S. 35.

economies, societies, and cultures of the dominant populations.³⁸ Under pressure from indigenous and tribal organizations and a number of governments challenging the integrationist approach of Convention No. 107, the ILO adopted Convention No. 169.³⁹ The new Convention provides for indigenous and tribal groups to maintain their ways of life without forced assimilation, and protects them from discrimination, cultural and religious oppression. It also mandates environmental and social impact studies assessing the development that was to begin on their lands. Once ratified by a member country, an ILO Convention is binding on that country. Consequently, few countries have ratified Convention No. 169.

While the work of the Convention improves the state of existing international law, there has been dissatisfaction.

[A]s in Convention 107 any conflicts over the right to and the uses of indigenous land, between the rights of indigenous peoples and the settler government's perception of the needs of the society as a whole, leave states with the final authority. Even the indigenous "right to participate" in such decisions is qualified by the phrase "whenever possible." In addition, governments at the ILO meetings and elsewhere universally assert that the rights and needs of territorial states supersede those of any group within the society.⁴⁰

The reaction to ILO Convention No. 169 among indigenous peoples has been extremely mixed. For some, the ratification of the convention has meant that, for the first time in history, their rights are acknowledged. For others, the Convention falls terribly short.

In addition to working towards international instruments to recognize and protect indigenous rights, native NGOs and activists have worked to include indigenous peoples on the agenda of special U.N. activities. One spectacular success was the inclusion and visibility of indigenous peoples in the highly trumpeted 1992 Earth Summit.

THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT

The impact the indigenous delegates had on the Earth Sum-

³⁸ See 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.

³⁹ Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, June 7, 1989, 28 I.L.M. 1382 (*entered into force* Sept. 5, 1991).

⁴⁰ ZINSSER, *supra* note 16, at 48 (citation omitted).

mit, formally known as the United Nations Conference on Environment and Development was substantial. The nation-states attending the Earth Summit acknowledged the need to recognize indigenous peoples' values, territories, traditional knowledge, and subsistence rights.⁴¹ They also recognized that indigenous peoples have a special relation with the Earth, and that their ecological knowledge and agricultural systems often play a vital role in promoting sustainable development.⁴² Before the indigenous leaders and delegates attended the Earth Summit in Rio de Janeiro, they met for the World Conference of Indigenous Peoples on Territory, Environment and Development, known as the Kari-Oca meeting, in a large and specially constructed meeting place in an outlying area of Rio. The delegates drafted a 109-point "Carta de la Tierra (Charter of the Earth)" in English, Portuguese, and Spanish.⁴³ The delegates were concerned that nation-states should cease all uses of nuclear material on indigenous lands, should change the incentives that promote industries to destroy ecosystems and natural resources, and should erase the concept of *terra nullius*⁴⁴ that denies indigenous peoples the rights to their lands.⁴⁵ Coinciding with the 500th anniversary of the first voyage of Columbus, the Earth Summit focused the international spotlight on indigenous peoples. That attention would manifest in an historic development within the United Nations—the declaration of 1993 as the International Year of the World's Indigenous People.

THE INTERNATIONAL YEAR OF THE WORLD'S INDIGENOUS PEOPLE

The U.N. General Assembly inaugurated 1993 as the International Year of the World's Indigenous People on International Human Rights Day, December 10, 1992.⁴⁶ Although the recognition was primarily symbolic and therefore often frustrating, this acknowledgment and observance by the United Nations marked a

⁴¹ See REPORT OF THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, RIO DE JANEIRO 3-14 JUNE 1992, ¶ 26.1, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. 1), U.N. Sales No. E.93.I.8 (1993).

⁴² See *id.* ¶ 26.3.

⁴³ See ZINSSER, *supra* note 16, at 45.

⁴⁴ The concept of *terra nullius* or "a thing or territory belonging to no One" is the basis for taking possession of ownership of land that is newly "discovered," meaning that the indigenous population is disregarded and the explorer, usually of European origin, claims the land for his home country. See ENCYCLOPAEDIC DICTIONARY OF INTERNATIONAL LAW 391 (Clive Parry et al. eds., 1988).

⁴⁵ See ZINSSER, *supra* note 16, at 46.

⁴⁶ *Provisional Verbatim Record of the 82nd Meeting*, U.N. GAOR, 47th Sess., at 2, U.N. Doc. A/47/PV.82 (1992).

turning point for many indigenous peoples. At the historic morning session with the General Assembly in full session, Secretary General Boutros Boutros-Ghali, then Secretary-General of the General Assembly, spoke to open the proceeding.

For centuries indigenous people have lived on the margins of national and international life. . . . Many have been outcasts in their own lands

Today a welcome change is taking place on national and international levels.

. . . .

The way indigenous people are treated by States and the international community will be a major test of the seriousness of our commitment to a genuinely universal human rights regime. If we are serious about development, political participation and human rights, we must address the special situation of indigenous people.⁴⁷

Stoyan Ganey, President of the United Nations, Antoine Blanca, Coordinator for the International Year, and Erica-Irene Daes, Chair and Special Rapporteur of the Working Group, also addressed the gathering.⁴⁸ Although nineteen indigenous representatives were set to address an afternoon session, the General Assembly's formal meeting ended at the lunch break.⁴⁹ While the United Nations had called for a "new partnership"⁵⁰ between member states and indigenous peoples, few delegates from settler governments attended the afternoon session to hear the aspirations of the indigenous peoples themselves.⁵¹ In that ironic context, the International Year began.

In U.N.-speak, a "new partnership" signifies that the United Nations encourages increased international cooperation in solving the problems faced by indigenous peoples in such areas as human rights, the environment, development, education, and health. It also signifies a desire for increased awareness and response to the concerns of indigenous peoples with regard to their lands and resources and the kinds of development they seek for their cultures and their ways of life. This partnership strives to strike a balance between the legitimate aspirations of indigenous peoples and the genuine concerns of the nations in which they live.

On respective national levels, some countries went to great

⁴⁷ *Id.* at 9-13.

⁴⁸ *See id.* at 1-2.

⁴⁹ *See id.* at 2, 83.

⁵⁰ *Id.* at 8.

⁵¹ *See* ZINSSER, *supra* note 16, at 95.

lengths during the International Year to begin the "new partnership" in earnest. Others chose to do little or nothing. A voluntary fund was established for the International Year with several settler governments and some individual donors contributing a total of more than \$600,000.⁵² Money was also donated for community projects in indigenous communities.⁵³

Rigoberta Menchu Tum, recipient of the Nobel Prize for Peace in 1992 and designated as the U.N. Ambassador of Goodwill for the International Year, described the year as an "occasion for continued progress towards unity" among indigenous organizations and communities, and as an opportunity for "above all, identifying the gaps and the painful situation of poverty, marginalization and lack of respect in which we still live."⁵⁴ The year made possible a beginning "in overcoming all cultural and historical prejudices in pursuit of the social and political dimension of indigenous peoples' struggles for the reaffirmation of their dignity, identity and collective rights."⁵⁵

From the perspective of recognition by the United Nations of indigenous issues, the previous fifteen years had been nothing short of a revolution. Native peoples who at one time were not allowed to sit in the gallery had spoken to the General Assembly and participated in ways heretofore unheard of. There was also, however, a profound sense of disappointment and frustration. The high rhetoric of partnership did not match the practical aspirations of the native peoples, who wanted more than mere speeches and photo opportunities.

The demand for a stronger and more concrete relationship between the United Nations and indigenous peoples led to a recommendation at the U.N. Conference on Human Rights, held in 1993 in Vienna, that the International Year be extended to a Decade. That recommendation was forwarded to the Commission on Human Rights where it became a formal resolution and was then passed by the General Assembly.⁵⁶ The most important initiative that native peoples were pursuing, however, was becoming mired in controversy, largely due to the unwillingness of nations to adopt a document guaranteeing the rights of indigenous peoples on an international level.

⁵² See ZINSSER, *supra* note 16, at 93.

⁵³ See ZINSSER, *supra* note 16, at 93.

⁵⁴ SEEDS OF A NEW PARTNERSHIP: INDIGENOUS PEOPLES AND THE UNITED NATIONS at ii, U.N. Doc. DPI/1434, U.N. Sales No. E.94.I.16 (1994).

⁵⁵ *Id.* at iii.

⁵⁶ See U.N. GAOR, 48 Sess., 86th plen. Mtg. at 1, U.N. Doc. A/RES/48/163 (1993).

THE DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

Since 1982, leaders of various indigenous groups had been working toward an international instrument that would embody the rights and aspirations of native peoples, as well as provide recognition and afford protection of indigenous lands. In 1993, the Working Group agreed upon and published a draft Declaration on the Rights of Indigenous Peoples (Declaration).⁵⁷ The draft Declaration acknowledged the right to self-determination, the right to maintain and strengthen distinct political, economic, social, and cultural characteristics, the right to belong to an indigenous community or nation, and full guarantees against genocide and other acts of violence.⁵⁸

In 1995, the Commission on Human Rights, under the umbrella of the U.N.'s Economic and Social Council, created an open-ended inter-sessional working group to elaborate and expand upon the draft Declaration.⁵⁹ This inter-sessional working group was open to indigenous peoples affiliated with an organization even if they did not have consultative status with the United Nations.⁶⁰ Despite this apparently expansive and inclusive gesture, the full structure of the Commission on Human Rights would be in effect, thus making the rules more strict than those of the Working Group. This effectively put the member states of the United Nations in control of the discussion, allowing them to chart the Declaration's direction and change its text.

The first deliberations began with indigenous peoples attending the inter-sessional working group to defend the work on the draft Declaration that had been ongoing for twelve years. At the second meeting in October 1996, the indigenous delegates walked out.⁶¹ As the meeting opened, the delegates raised their concerns that the final version of the Declaration would not reflect the full and equal participation of the various indigenous interests and that nation-states would retain the exclusive right to determine the final

⁵⁷ See *Working Group Report 1993*, *supra* note 36, at 50.

⁵⁸ See *Working Group Report 1993*, *supra* note 36, at 50.

⁵⁹ See *Establishment of a Working Group of the Commission on Human Rights to Elaborate a Draft Declaration in Accordance with Paragraph 5 of General Assembly Resolution 49/214*, E.S.C. Res. 1995/32, U.N. ESCOR, 52nd plen. mtg. ¶ 2 (1995).

⁶⁰ See *Applications from Organizations of Indigenous People not in Consultative Status with the Economic and Social Council for Participation in the Open-ended Inter-sessional Working Group of the Commission on Human Rights to Elaborate a Draft Declaration on the Rights of Indigenous Peoples*, E.S.C. Res. 1996/218, U.N. ESCOR, 4th plen. mtg. (1996).

⁶¹ See Jens Dahl & Andrew Gray, *Indigenous Peoples Keep the U.N. Declaration Intact for a Second Year*, in *THE INDIGENOUS WORLD 1996-97* 287, 293 (Christian Erni ed. & Jeffrey Lazarus (Stokrose) trans., 1997).

contents of the document.⁶² When the inter-sessional working group's chairman, José Urrutia of Peru, confirmed these fears by making it clear that the indigenous delegates could only attend and speak at the meeting without being considered full and equal participants and that they could not initiate proposals for discussion, the delegates felt they should not sanction the proceeding with their presence.⁶³ The chairman was essentially telling them they could agree to and approve the proposals and consensus-making going into the Declaration as modified by the national governments, but they could not disagree with a consensus of governments.⁶⁴ Negotiations over the next few days between the delegates and Chairman Urrutia eventually yielded some movement on his part, allowing the indigenous delegates to put any requested statements into the meeting's report while still denying them full and equal participation. The upshot was that some indigenous groups withdrew from the meeting in the spirit of their initial walkout and some chose to remain.⁶⁵ This split coincided with jockeying among some NGOs as individual and organizational interests took precedence over broader goals, further undermining the unity among the indigenous peoples that had marked the early process.

In late October and November of 1997, the inter-sessional working group met for its third annual two-week session with some harmony and satisfaction along with a unified sense of purpose restored to the indigenous delegates.⁶⁶ After his re-election at the outset of the gathering, Chairman Urrutia consulted with indigenous representatives and governments, producing a compromise that divided the meeting into formal and informal sessions, with the indigenous delegates having rights to full participation in the informal sessions.⁶⁷ Only after reaching a consensus in an informal session would any decision be passed to the formal sessions, which remained the domain of the national governments.⁶⁸ This process gave the indigenous representatives a "de facto veto over any formal decision-making,"⁶⁹ providing great leverage over any

⁶² See *id.* at 292.

⁶³ See *id.* at 292-93, 294.

⁶⁴ See *id.* at 293.

⁶⁵ See *id.* at 294-95.

⁶⁶ See Andrew Gray & Jens Dahl, *U.N. Declaration Enters a Third Year at the U.N. Commission on Human Rights*, in *THE INDIGENOUS WORLD 1997-98* 347, 347-49 (Christian Erni ed. & Elaine Bolton trans., 1998).

⁶⁷ See *id.* at 348, 350.

⁶⁸ See *id.* at 350.

⁶⁹ *Id.* at 348.

proposed changes to the draft Declaration, although still keeping the group in a weak position with regard to approval of the session's final report, which would be done in a formal plenary session.⁷⁰ While this procedural change finally gave the indigenous groups some meaningful authority, the veto power it created did not have to be used as the governments did not agree on any changes to existing Articles of the draft Declaration.⁷¹ In sum, the indigenous representatives were pleased with their ability, through a coordinated defense and expert counter-arguments, to keep the draft Declaration unchanged for another year.⁷² Although some indigenous peoples consider the Declaration not forceful enough, most believe it to be a significant step forward. The challenge to maintain the document's integrity will continue.

OTHER CURRENT ISSUES

On December 10, 1994, the inauguration of the International Decade of the World's Indigenous People was held at the United Nations. The theme for the ten-year commemoration was to be Indigenous People: Partnership in Action.⁷³ One goal of this ten-year observance is to further cultivate and promote the partnership sought between indigenous peoples and others in the international community. Another goal is to strengthen cooperation for the solution of problems faced by indigenous peoples in such areas as human rights, the environment, development, education and health.⁷⁴ To achieve these goals, a voluntary fund, similar to the fund for the Working Group, was established.⁷⁵

A major agenda item for the International Decade is consideration of a permanent forum for indigenous people within the United Nations.⁷⁶ For more than five years, the Working Group has contemplated a permanent forum. The idea was part of a resolution coming out of the Human Rights Conference in Vienna.⁷⁷ In June of 1997, a second workshop examining the issues surrounding a permanent forum convened in Santiago, Chile.⁷⁸ A

⁷⁰ See *id.* at 350.

⁷¹ See *id.* at 361.

⁷² See *id.*

⁷³ See G.A. Res. 214, U.N. GAOR, 49th Sess., Supp. No. 49, at 238, U.N. Doc. A/RES/49/214 (1995).

⁷⁴ See *id.*

⁷⁵ See *id.* at 239.

⁷⁶ See *id.* at 238.

⁷⁷ See *id.*

⁷⁸ See *Coordination of the Policies and Activities of the Specialized Agencies and Other Bodies of the United Nations System Related to the Coordinated Follow-up to and Implementation of*

number of governments have shown support for the establishment of a permanent forum, and some have said such a forum should have a broad mandate to extend beyond just a narrow human rights focus.⁷⁹ Supporters suggest including issues of economic, social, cultural, political, civil, and educational development as well as providing that indigenous NGOs have a role in all relevant U.N. activities. The suggestions included placing the forum at a high level within the United Nations and putting it on equal status with the Economic and Social Council.⁸⁰ A statement issued by indigenous peoples' representatives attending a 1996 meeting in preparation for a Working Group session stated that the permanent forum should not take the place of the Working Group.⁸¹ Another proposal maintains the forum be a U.N. commission on the status of indigenous people.⁸² The great question to indigenous peoples is whether their view of what a permanent forum should look like will be compatible with how supporting governments view it.

The United Nations recommends that its specialized agencies and organizations designate focal points for coordination with the Center for Human Rights concerning activities related to the International Decade. For example, the United Nations Educational, Scientific and Cultural Organization (UNESCO) established in 1993 a focal-point unit to work on indigenous issues within its cultural wing.⁸³ Priorities for the work included obtaining money for activities and projects originating with the indigenous people involved, with special emphasis given to projects directed at enhancing the capabilities of indigenous peoples. Such efforts are centered on training and creating human resources in areas related to mother-tongue or native-language education, cultural heritage awareness, including the promotion of native crafts, examining and furthering traditional skills for use in protecting and responsibly developing natural resources, and encouraging regular means of dialogue with member states.⁸⁴ This UNESCO policy has long-range goals based on continuing and expanding consultation with indigenous peoples.⁸⁵

the Vienna Declaration and Programme of Action: Report of the Secretary General U.N. ESCOR, Substantive Session, Provisional Agenda Item 4, at 17, U.N. Doc. E/1998/60 (1998).

⁷⁹ See *Existing U.N. Mechanisms Report*, *supra* note 31, ¶ 154.

⁸⁰ See *Existing U.N. Mechanisms Report*, *supra* note 31, ¶ 154.

⁸¹ See *Existing U.N. Mechanisms Report*, *supra* note 31, ¶ 157.

⁸² See *Existing U.N. Mechanisms Report*, *supra* note 31, ¶ 156.

⁸³ See *Existing U.N. Mechanisms Report*, *supra* note 31, ¶ 79.

⁸⁴ See *Existing U.N. Mechanisms Report*, *supra* note 31, ¶ 79.

⁸⁵ See *Existing U.N. Mechanisms Report*, *supra* note 31, ¶ 79.

In evaluating the results of decades of work by indigenous peoples, it is sad to note that, despite all of the activity surrounding the United Nations, very little has changed since Deskaheh first tried to go to the League of Nations in 1923. While native peoples have come a long way in the past twenty years, making great strides in moving the international community to recognize their existence, the justice sought by indigenous people will apparently not be dispensed at the United Nations; it will only be talked about there. Many member-states continue to refuse to acknowledge any basic rights to indigenous peoples.⁸⁶ Brazil continues to act against indigenous peoples, blatantly violating human rights and continuing to take lands upon which the native populations depend.⁸⁷ Indigenous lands continue to disappear as the demands for resources—oil, coal, and forests, for example—overwhelm the rights of the nearly powerless local populations inhabiting the targeted areas.⁸⁸ While many of the member-states of the United Nations now purport to be listening, they do so without meaningful response. This listening, perhaps a slight step forward in contrast to the days when the League of Nations denied Deskaheh a voice in 1923, reflects shameful progress in a context of seventy-five years.

For many years, the United Nations represented a means to attain justice for indigenous peoples. This is, however, proving to be an illusion—a representation only and not a reality. The present challenge is to define an indigenous model for resolving conflicts, setting standards of justice, and furthering international dialogue—a model that would transform the United Nations into an institution that truly responds to the problems of the world. Native peoples have an opportunity to provide leadership in breaking down the monopoly of the controlling nations and to push the United Nations towards truly becoming a forum for all peoples of the world, a forum with an identity transcending the boundaries set by lines drawn on maps.

⁸⁶ See *Report of the Expert Seminar on Practical Experience Regarding Indigenous Land Rights and Claims*, Hum. Rts. Comm., 14th Sess., Provisional Agenda Item 9, ¶ 15, U.N. Doc. E/CN.4/Sub.2/AC.4/1996/6 (1996).

⁸⁷ See *id.* ¶ 23; see also ZINSSER, *supra* note 16, at 20-21.

⁸⁸ See Richard Howitt et al., *Resources, Nations and Indigenous Peoples*, in *RESOURCES, NATIONS AND INDIGENOUS PEOPLES* 1, 24-25 (Richard Howitt et al. eds., 1996).