INDIGENOUS PEOPLES
experiences with
SELF - GOVERNMENT

INDIGENOUS PEOPLES' EXPERIENCES WITH SELF-GOVERNMENT

Proceedings of the seminar on arrangements for self-determination by Indigenous Peoples within national states, 10 and 11 February, 1994, Law Faculty, University of Amsterdam

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CONTENTS

PREFACE

Indigenous peoples all over the world are nowadays struggling to recover their ancestral lands, to obtain redress for centuries of oppression and even to establish some form of self-government as one, and only one, way of exercising their right to self-determination. Some would like to enter into a modest scheme of self-government e.g. a sort of municipal authority as a first step in the direction of more autonomy. Others pursue a more comprehensive settlement in the sense of being recognized as a nation within a state that would have to become a plurinational or multiethnic state. Still others do not want to engage in debates with the national states which they regard as illegitimate authorities. They want to develop their own forms of government and then demarcate their jurisdictions from those of the state that claims territorial sovereignty also over indigenous territory.

Regardless of this question of 'internal' or 'external' self-determination, almost all indigenous peoples pursue some legal and political relationship to the dominant state other than the present oppressive one. The crucial question then is how to institutionalize a new partnership in such practical ways that it serves their interests. Meaningful debate over this question would greatly be served by informative and easily accessible documentation about indigenous peoples' experiences with a wide variety of schemes of self-government and other ways to exercise and institutionalize a right of self-determination. Such documentation could serve as a means of communication between indigenous peoples, promote debate over different opinions among them, and perhaps also further understanding between them and the states in which they happen to live. There is no fixed or uniform model that suits all cases, but the experiences of others can spark a debate on common concerns and provide inspiration as to how (not) to move ahead and what proposals for self-government (not) to accept.

In 1993, the Department of Sociology and Anthropology of Law of the University of Amsterdam, with a financial grant from the Dutch foreign Ministery and support from the Law Faculty of the Amsterdam University of which the Department is a part, initiated a research project

on arrangements for self-determination by indigenous peoples. The project seeks to pursue questions raised at the UN-promoted expert conference on "Experiences in the operation of schemes of internal self-government for indigenous peoples", that took place in 1991 in Nuuk, capital of Greenland, which has Home Rule within the Danish kingdom. Such questions and practical policy issues received broader attention during the Year of the Indigenous People and will certainly continue to be debated throughout the Decade of the Indigenous Peoples and beyond.

The objective of the Amsterdam research project is to study and compare existing arrangements for self-government, to collect and assess existing visual documentation on such arrangements[1], and eventually to produce a comprehensive video-film dealing with the practical outcomes of the various ways indigenous peoples all over the world nowadays exercise self-government in a space wrenched from the dominant state.

The production of a video-film on experiences with self-government is a major objective of the project. An assessment of existing visual material showed that while there is quite of lot of documentation on the struggle for land or for meaningful self-government, the concrete strong and weak points in existing forms of self-government are hardly addressed. Even in written form evaluative reports are scarce, and by their nature these are hardly accessible to the people most concerned with the issue: the indigenous people(s) themselves. Comprehensive and easily accessible information required for a fruitful discussion of options between and with indigenous peoples, policy-makers and the broader public is therefore urgently needed. In the initial stage of the project, a modest demonstration video-film, entitled "A Sketch of Freedom", was made to show the feasibility of producing a documentary on systems of self-government, and currently a more comprehensive project is now being prepared.[2]

The video-film "A Sketch of Freedom" was presented to the public and discussed during a seminar that took place in February 1994 in Amsterdam (Law Faculty). On that occasion indigenous representatives and various scholars also presented papers on aspects of and experiences with self-government, which we now publish here with support and help from IWGIA.

The first section of the present publication contains three articles (Stavenhagen, Assies, Zanotta Machado) which provide a broad introduction to the conceptual issues of the debate on human rights, indigenous rights and indigenous peoples' self-determination. Most of the rest of the book consists of articles analyzing concrete experiences with

arrangements purporting to allow for self-determination and self-government by indigenous peoples (Rÿser, Scherrer, Turpana, Kloosterman, Hoekema, Innuksuk). The two contributions in the final section discuss the issue of policy development from a governmental perspective and from the perspective of a non-governmental organization. Although the articles are written and in English, and accessibility is therefore unfortunately limited, we hope that the present volume will contribute to the current debate over concrete arrangements for self-determination and self-government by indigenous peoples.

Notes

1 In order to do so a series of existing video-films was collected.

2 The video-film "A Sketch of Freedom" was shot during brief visits to the Quinault and Lummi nations in the USA (Washington State) and the Ngobe and Kuna peoples in Panama. Following an introductory part "Four Peoples, Four Cultures", the film deals with the question of "Who Governs?", the issue of "Doing Justice" and "The Economics of Self Rule". The film is available for educational purposes at the Department of Sociology and Anthropology of Law, Faculty of Law, Postbox 1030, 1000 BA Amsterdam, the Netherlands.

RODOLFO STAVENHAGEN

INDIGENOUS RIGHTS: SOME CONCEPTUAL PROBLEMS

The recent emergence of the theme of the ethnic rights of indigenous peoples as a special instance of human rights gives rise to a series of conceptual questions that should be approached from different angles.

In the first place the relationship between the notion of "ethnic rights" and the generally accepted conceptualization of human rights should be elucidated.

Secondly, if indigenous peoples claim the recognition of special rights precisely because they are "indigenous," the status of the concept of "indigenousness" is to be assessed.

Thirdly, the relationship between individual rights and collective rights requires clarification.

Furthermore, we have to take account of the ambiguity in the use of the term "ethnic minority" and its application to indigenous peoples.

In the fifth place, there is the need to establish the scope of the concept of "people" in general and of the concept of "indigenous people" in particular, especially in connection with the broad notion of "peoples rights."

In the sixth place, we should examine the import of state policies in any question related to the idea of "indigenous rights."

And finally, the concepts of self-determination and autonomy, or other similar concepts, have to be elaborated in relation to indigenous peoples in the context of the modern territorial state.

In the following paragraphs I shall discuss these themes one by one. Before doing so, however, the debate should be situated against the backdrop of the development of indigenous demands in the American continent over recent decades.

The national-historical context

We need not go back to the European invasion of the continent, the genocide and ethnocide of native peoples by the colonizing powers, or the structures of exploitation and oppression to which these peoples have been subjected by governments, churches and landowners, to see that the contemporary awareness of indigenous rights is associated with the institutionalization of indigenist policies all over the continent in the course of the 1940s. In the wake of the First Interamerican Indigenist Congress in Mexico in 1940, various national institutes were established and diverse policies were adopted to deal with the so-called indigenous problem. The indigenist policies of the Latin American states were essentially assimilationist: aimed at the "integration" or "incorporation" of the indigenous into the "nation." And, to be sure, it was the governing elites who defined the latter according to nineteenth century Eurocentric models that excluded and negated the indigenous cultures. Development, progress and modernization would inevitably entail the disappearance of the indigenous peoples, that is of their languages, customs, traditions, ways of life, and their specific identities and lead to the constitution of new nations and new peoples.

Despite such noble intentions, the real situation of indigenous communities was dismal almost everywhere. Anthropological studies, surveys, official and independent reports, press accounts and other research time and again document the conditions of poverty and destitution that characterized the indigenous areas of the Americas in the mid 20th century. And this documentation was complemented with the testimony of the indians themselves, as well as of missionaries, teachers, scientists and others who denounced the human rights violations that took place in indigenous areas, including massacres, destruction of villages, land grabbing, massive population transfers, arbitrary impri sonment, kidnapping of children, obligatory sterilization of women, forced religious conversion, discrimination and permanent exclusion and marginalization. The perpretators of these sometimes massive violations were shown to be the governments themselves, the army or the police, paramilitary groups at the service of the landowners, some foreign and local religious sects and congregations, agricultural or cattle-breeding colonists, mining- and logging companies, drug-traders, as well as guerrilla groups in some cases.

Generally speaking, we may say that in Latin America the war waged by the dominant society against the indigenous peoples never stopped, sometimes it was open and shameless warfare, at other times it was silent and covert but not less destructive therefore. It was in the face

of this situation that indigenous peoples started to mobilize from the 1960s onward, in a partial and fragmented way at first, but more organized and massively in the course of time, to further demands, forward programmes and demand justice, and to make their views known to public opinion, national governments and international fora.

It was thus that the debate over the human rights of indigenous peoples, or indigenous rights, took shape. Domestically, this concern was manifest in the struggle for new constitutions and legislation in countries like Brazil, Mexico, or Nicaragua in the 1980s. At an international level attention was focused on the revision of ILO Convention 107 (nowadays Convention 169) and on the work of the United Nations' Subcommission for the Prevention of Discrimination and Protection of Minorities. By the early 1990s the Interamerican Commission on Human Rights also started working on a interamerican juridical statement on the theme.

In view of these developments the theme of indigenous rights requires the attention of human-rights specialists, lawyers and social scientists. And it should be clear that the issue can not be separated from the debate on democracy, justice and citizenship in our countries.

Human rights and ethnic rights

The classic formulation of human rights, enshrined in the Universal Declaration and global conventions as well as in the American Declaration and the San José Pact in the Americas, fundamentally refers to individual rights, that is to rights vested in the human person. The basic principle underneath the modern conception of human rights is their universality which in turn implies the principles of equality between persons and non-discrimination for any motive, but notably on the basis of gender, race, language, national origins or religion. To be sure, these principles that nowadays are almost universally accepted -rhetorically at least- were revolutionary when they were enunciated. And we should not forget that as recently as the 1950s the colonized peoples of Africa, Asia and the Caribbean still did not enjoy the same rights as the citizens of the colonizing powers; that in the USA the civil rights of the black population (nowadays known as Afro-Americans) were not conquered until the 1960s; that Apartheid (as a negation of human rights) still exists in Southern Africa (though in a process of decomposition); and that the very notion of "human rights" is being rejected by some of the contemporary Islamic theocracies. And whilst the Holocaust and the genocide of the Gypsies by the Nazis deserve special mention, the post-

war period has not been exempt from massacres, repression or forced expulsion of specific persons for ethnic, racial, religious or nationality motives.[1]

It is commonly felt that the scope of the so-called *civil* and *political* rights will increase to the measure that state-intervention in these areas decreases, limiting itself to assuring that these rights can be fully enjoyed and maintaining an "environment" where they can be freely exercised. In other words, they would require a "passive," respectful, restricted, reduced and unobtrusive state. With good reason it has been argued that an interventionist state may endanger human rights and this is the way things are understood by those who claim for themselves increased rights in face of the state, particularly when they already occupy a superior or dominant position in society.

Where the so-called *economic*, *social* and *cultural* rights are concerned the issue presents itself somewhat differently. Reviewing the historical debate on human rights we can trace the acknowledgement that the exercise of civil and political rights becomes illusionary if the conditions for enjoying economic, social and cultural rights -the "second generation" human rights- do not exist. It also is pointed out that these second-generation rights do not displace but rather complement the first generation human rights (civil and political rights). Nevertheless, there are people who deny social and economic rights the quality of human rights arguing that these are at best objectives of social policy.

In contrast to the first group of rights, those of the "second generation" do not require a passive state, but a rather more "active," responsible, redistributionist, regulating state which provides the resources and services needed for the effective enjoyment of economic, social and cultural rights. It rightly has been argued that if the state renounces its responsibilities in this area the conditions for full exercise of economic, social and cultural rights will be reduced. For such reasons, the policies of structural adjustment that some international financial agencies demand from Third World governments to reduce the economic role of the state in the economy have been criticized by some as a violation of human rights. Where such policies affect the most vulnerable and poor sectors of society in particular (and in fact contribute to an increase in poverty and marginalization), it also can be argued that they are discriminatory and thus collide with the principles of equality laid down in the International Human Rights Charter.[2]

For amply documented historical and structural reasons the indigenous peoples of the Americas have traditionally been victims of major human rights abuse. The colonial state and then the republican state (and at their times the church, the colonizers, multinational enter-

prises and other institutions of the dominant society) have been responsible for all types of violence, from genocide to political exclusion and social and economic discrimination. Even before the current debate on human rights, the situation of the indigenous peoples already was a matter of concern. Without elaborating on the "struggles for justice" of the conquest period or on the legacy of De Las Casas, and limiting ourselves to the present century, we can simply state that governmental indigenist policies have traditionally revolved around two objectives: to promote the economic and social development of the indigenous peoples, and to accelerate their "integration" into the national society (that is, the dominant society and its cultural parameters as defined by the governing classes of the country).

The chasm between the ideals of indigenist policy and reality is a gaping one: socio-economic indicators document the generally catastrophic conditions in which the indigenous peoples of the Americas find themselves. At the same time, the much heralded "integration" has generally meant the destruction of indigenous cultures and identities through assimilationist, and one might say ethnocidal, policies. Though ethnocide does not figure as a violation of human rights in any legal instrument, it is commonly considered as such since in its way it constitutes a form of "cultural genocide" that clashes with the right to ones own culture proclaimed in the International Covenant on Economic, Social and Cultural Rights (art. 15).

The notion of "ethnic rights" thus makes its appearance as an obligatory reference to enunciate the human rights of ethnic groups whose situation is particularly vulnerable due to precisely the disadvantages and violence they suffer on account of the ethnic characteristics that distinguish them from the dominant society. The present (1993) efforts of the UN Commission on human rights to create instruments in relation to the rights of indigenous peoples and of minorities can be considered a collective effort of the international community to enrich and consolidate the basic structures for the protection of human rights.

In the current debate on human rights it often is asserted that in view of their universality the treatment of specific rights or rights of specific groups should not be viewed as an extension of the *concept* of "human rights," but rather as an instance of application of those rights in specific cases. Therefore, the argument goes, such rights can not be considered "human rights" in the strict sense.

In contrast to this position I and others hold the view that if we consider that human beings are not abstractions that live outside time, context and space, the concept of "human rights" only acquires its significance in specific contexts. The implications are that:

1. there effectively is a core of basic universal human rights (for all persons, under any circumstances);
2. around this "core" there is a "periphery" of specific human rights for specific categories of the population (children, women, workers, migrants, the handicapped, refugees, ethnic minorities, the indigenous, etc.);
3. The basic universal human rights can not be fully enjoyed, exercised and protected if the "peripheral" rights of the groups mentioned can not simultaneously be enjoyed, exercised and protected. In other words, there are circumstances under which it would be illusionary to talk of a basic core of "universal human rights" (if not on the most abstract, theoretical, philosophic level) without taking into account the "periphery" of specific instances.[3]

It should be noted that the specific categories mentioned under point (2) above refer to groups of the population that have traditionally been marginalized, discriminated or oppressed. The forwarding of specific rights for such groups is the outcome of lengthy historical struggles and the acknowledgement that the conceptualization of these specific rights corresponds to diversified historical and structural realities. I make no specific mention of the "rights of men" or the "rights of adults" precisely because these groups of the dominant population always have been identified with "human rights" in general and do not need a specific conceptualization in their favour. Therefore, the conceptual and theoretical construction of human rights historically reflects the assymetries and inequalities of human society.

Ethnic rights (and among them indigenous rights) thus are inscribed in the process of extension and consolidation of the basic core of human rights.

The concept of indigenousness

If the word "indigenous" refers to "origins," all human being are indigenous in some way. However, in the sociological and political vocabulary (and ever more often in the juridical usage as well), the term "indigenous" is employed as a reference to groups of the population that occupy a determined position in society as a result of specific historical developments.

In Latin America (as elsewhere) the term indigenous has gone through a process of modification. It has been transformed from a word

with discriminatory connotations (used principally as a form of stigmatization by representatives of the dominant societies) into a term through which cultural and sociological differences are recognized and which, moreover, in many occasions has been turned into a symbolic appeal to resistance, the defense of human rights and the transformation of society.

One can not deny the colonial roots of the present concept of "indigenous." The indigenous simply are the descendants of the peoples that occupied a given territory when it was invaded, conquered or colonized by a foreign power or population.[4] If this process took place relatively recently and can be historically documented, the use of the concept would not pose major problems. The invasion and colonization of the Americas in the 16th century, for instance, marks the starting point for the division between "indigenous" (naturals, natives, aboriginals, or indians, depending on the terminology used) and "Europeans" (*indianos, criollos*, whites, Spanish, English, etc.).

The same process occurred in other parts of the world: colonizers and aboriginees (in Australia) or Maoris (in New Zealand); North-American colonizers versus native Hawaiians or eskimos (Inuit) in Alaska. In other situations, however, the use of the term "indigenous" is more complicated.

In the colonial empires of in Africa and Asia the colonized population as a whole was often designed as "natives" by the colonizers. This quality of "native" commonly was compounded by the special economic, political and legal disadvantages of the colonial situation, which favoured the colonizer. With the decolonization and independence of these countries after the Second World War the "natives" became "nationals," a political as well as semantic metamorphosis. Evidently, such a situation only could arise in those territories where the colonizers' dominant position was ended with independence (Africa, Asia). It does not apply to situations where the colonizers declared their own political independence (America, Australia, New Zealand, South Africa).

Does this mean that the concept of "indigenous" is only a category of colonial situations and looses its validity under post-colonial conditions? Part of the answer must be affirmative, but this is not the case when the structure of domination within an independent country can be characterized as "internal colonialism" as in Latin America, North America, Australia and other regions.

In various South Asian countries, as in some African countries, minority ethnic groups that have historically occupied certain regions, often relatively isolated or marginalized and with a culture distinct from

the national hegemonic model, coexist with the dominant majority that identifies itself with the national state. They suffer the exploitation and domination by the economic and political representatives of the national society. These peoples frequently are known as tribal populations (a category imposed by the colonizer or the national state) and their situation is similar to that of indigenous peoples in other parts of the world. Known as "adivasis" in India, mountain tribes in Thailand and the Philippines, aboriginals in Malaya and Sri Lanka, these peoples have come to identify themselves as indigenous peoples. In recent years they have joined their efforts in conquering human rights to those of the indigenous peoples of the Americas (for example, through their ever more numerous participation in the annual sessions on indigenous peoples of the UN Subcommission for the Prevention of Discrimination and the Protection of Minorities or by their integration into non-governmental organizations at a global level).

The respective governments, however, do not easily admit the use of the term indigenous in relation to these peoples since they reject the conceptual construction that accompanies the use of this word (that is, the original occupation of a territory, its implication of "originary rights" and the characterization of state sovereignty as a form of colonialism). India, for instance, rejects the idea that the adivasi of the tribal regions (a concept introduced by the British colonizer) would be more "indigenous" that the hindu population that has been present in these areas for thousands of years. The same goes for Bangla Desh where the relations between the Bengali population and the communities of the Chitagong Hill Tracts is concerned. And in Sri Lanka both the Singhalese and the Tamil claim to be the original occupants of the island (for over two thousand years), but the state officially recognizes the existence of the aboriginal *vedas*.[5]

The current use of the concept "indigenous" implies the idea of original occupation of a given territory. In this sense, without doubt, indigenousness is an ambiguous category since in most cases original occupation can not be actually documented. No one can know for sure who were the original occupants of a given territory. Those who nowadays claim to be "indigenous" may in the distant past have replaced anterior occupants. This does not, however, prevent the concept of "indigenousness" from being used for specific political purposes. In the 19th century United States, "Nativism" was a political movement of whites of English origin who opposed themselves to immigrants from Ireland and from central and southern Europe. At the same time, this political movement also rejected the authentic "natives" (indigenous) of North-America. More recently, the Malayans claim

their quality of "sons of the land" (bumiputra) to defend rights and privileges against the Malayan population of Chinese origin, while at the same time maintaining the small aboriginal (tribal) population in a situation of marginality. In the 1980s. in Fiji, a military coup was staged against a democratically elected government in the name of the supposedly violated rights of the native population of Fiji which felt itself threatened by the demographic growth (and increasing political presence) of the population of Indian origin (introduced as cane workers by the British colonizers).[6]

Secondly, the concept of "indigenousness" suggests a historical continuity between the original population and those who presently identify themselves as direct descendants from that population. This continuity can be genetic (through biological reproduction) and cultural (maintenance of cultural forms such as language or religion that derive directly from the original group). In most of the present cases of "indigenousness," both genetic and cultural continuity have undergone changes. Biological mixing between peoples has been extensive (*mestizaje*) and indigenous cultures everywhere have been profoundly modified as a result of acculturation processes. Who are the authentic descendants of the Incas? Who are the bearers of the authentic profound Mexican culture?[7] How to achieve that populations dispersed in a multitude of villages and localities with their own traditions and their parochialism recognize themselves in this "imaginary community" that nowadays is outlined as the "indigenous or indian people or nation"?[8] Indigenousness, independently of biological or cultural continuity, frequently is the outcome of governmental policies imposed from above and from the outside. It also quite often is the product of a "constructed discourse" enunciated by the emerging intellectual elites of the indigenous peoples and their sympathizers among other sectors of the population.[9]

In any case, the discourse of "indigenousness" leads to a denunciation of injustices (and crimes) committed against the indigenous peoples (genocide, plunder, servitude, discrimination) and to the formulation of specific rights that derive from the injustices suffered and from the quality of being indigenous ("the first in time, the first in right"; "recuperation of historical rights"). The discourse of "indigenousness sustains and legitimizes the demand for specific human rights for the indigenous peoples.

Individual and collective rights

Classic doctrine holds that to the measure that human rights are individual, vested in the person, collectivities can not be the subject of human rights. They may have other rights but "human rights" in the strict sense do not pertain to social groups, whatever their characteristics. This affirmation seems to be logical and irrefutable but should be questioned nevertheless.

In the first place we need to recognize that certain individual human rights can only be exercised collectively. Thus political rights (the right of free association), economic rights (the right to belong to a trade-union) can only be thought of as collectively exercised.

Secondly, as the human being is an eminently social being, the principal activities around which the debate on human rights has been constructed are conducted in groups or collectivities with a proper personality. As a consequence, the exercise of many human rights only can take place within these collectivities that therefore should be recognized and respected as such by the state and by society as a whole. Some human groupings thus become de facto subjects of human rights (beside other types of rights). The present debate on the question exactly revolves around the type of groupings, under what circumstances, and then what type of rights may be involved.

The liberal and individualist viewpoint on human rights rejects the notion of "collective rights." For those who hold this view individual and universal human rights constitute a historic victory of individual liberty over the absolutist state and the restrictions imposed on the individual by pre-modern institutions and corporations that claim loyalty, demand submission and limit free choice. Thus, human rights are inscribed into the historical trajectory of the demise of pre-modern society and the emergence of modern "civil society." There, no institutional or group mediation should exist between the free and sovereign individual and the state, which in turn emanates from the free will of all citizens. In its most recent formulations liberal doctrine holds that individual rights culminate in the functioning of a political democracy, the free market and private enterprise.

This is not the occasion for a detailed critique of the liberal doctrine of individual rights. Its early identification with the class interests of the emerging bourgeoisie at the dawning of occidental capitalism precisely entailed the elaboration of economic, social and cultural rights as an indispensable complement to civil and political rights. On the other hand, the past hundred years of history have demonstrated, dramatically at times, that the enjoyment of individual rights turns into illusion, or at

least becomes difficult, in highly stratified societies, with great socio-economic and regional inequalities and strong ethnic (cultural, linguistic, religious and/or racial) divisions. It is precisely in this type of societies that the need for recognition of group or collective rights has been brought forward as an indispensable mechanism for the protection of individual rights.

There are situations where individual rights can not be fully realized without the recognition of collective rights, or to put it another way, where the full exercise of individual rights necessarily involves the recognition of collective rights. In fact, the authors of the international conventions on human rights understood things this way as can be seen from the first, identical, article of those conventions which reads:

"All peoples have the right to self-determination..."

Putting things this way implies the recognition that all other rights enunciated in these international instruments are subject to and derive from a primordial collective right: the right of peoples to self-determination. To be sure, this formulation has to be understood against the background of the struggles for decolonization in the post-was years (both pacts were voted by the UN General Assembly in 1966), that is they should be contextualized. The international community recognized in this way that the individual rights of persons hardly could be exercised when peoples were collectively subjected (under colonial regimes).

The situation of ethnic minorities and indigenous peoples within national or multinational states is another instance where the full exercise of individual rights depends on collective rights. The "equality of rights" between individuals becomes illusionary when by circumstances this equality is denied the collectivities to which they belong. And, conversely, equality of rights between ethnic collectivities thus becomes a necessary (though perhaps not sufficient) condition for the enjoyment of individual freedom and rights.

From the foregoing considerations a provisional and normative conclusion can be derived: *group or collective rights are to be considered human rights to the extent that their recognition and exercise in turn sustains the individual rights of members of the group.* For example: the right of members of an ethnic minority to use their own vernacular language derives from the right of any linguistic community to maintain its language in the context of the national states (as a vehicle for communication, literary creation, education, etc.).

However, there also are situations where the right of a community to preserve its traditions and customs in fact entails an infringement on or

violation of the individual rights of some of its members. Specifically, we can mention the sexual mutilation of girls in some African societies.[10] We thus arrive at a corollary to the earlier conclusion: *those collective rights that violate or infringe upon the individual rights of members of a community should not be considered human rights.*

This way of putting things presents a dilemma of no easy solution in practice, namely to decide under what circumstances primacy is to be given to the individual over the collectivity. Even in the most liberal societies the so-called common good is being invoked to limit individual rights, and this not only under circumstances of war or national emergency.[11]

The international community recognizes nowadays that there are other collective rights, that can be considered as rights of humanity as a whole, without which the exercise of individual rights would be no more that wishful thinking. A clear example of this "third generation" of human rights, also called "solidarity rights," are the environmental rights proclaimed as such by the UN General Assembly. As the Earth Summit in Rio de Janeiro in June 1992 amply testified, if humanity does not take care and conserve the environment this would mean committing collective and planetarian suicide. Therefore, environmental rights are both collective and individual rights. As an individual right they only can be assured collectively and accordingly must be considered a collective human right.

The whole conceptual apparatus of human rights rests upon a moral imperative: the intrinsic value of life, freedom and dignity of the human being. In attaining this imperative individual and collective rights are complementary.

Ethnic minorities and indigenous peoples

The minorities-issue has been a matter of concern to the international community since a long time though the UN have dedicated less attention to the issue than the earlier League of Nations. The recent events in eastern Europe have returned the question of national minorities to the agenda with unmeasured violence. With its customary leisurely pace the UN Commission for Human Rights in 1992, during its 48th session, approved a Declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities, that now has been submitted to the General Assembly. This Declaration (which still does not have the status of an international legal instrument) is based on article 27 of the Convention on Civil and Political Rights,

the only paragraph that speaks of the rights of persons belonging to ethnic minorities.

As has been shown elsewhere, this article is of limited scope[12] but it provides a valid foundation for the development of an apparatus for the protection of minority rights. It should be noted that neither article 27 nor the Draft Declaration recognize collective rights but only the "rights of persons belonging to ..." This reflects the conceptual dispute outlined above.

Most significant for the issue of indigenous rights is the implicit understanding in the mentioned documents that "minorities" exist and merit "protection" (supposedly from the state or the international community). The notion of minority can be taken in its numerical sense, as a population whose number is "inferior to the majority." Assuming that we live in a time where "majorities" govern (this being the founding idea of democracy) the identification of one or another ethnic group as a "minority" would put them in a permanently disadvantaged situation in relation to the "majority," particularly when that majority controls the state apparatus.

The notion of minority can also be understood in a sociological sense, as a marginalized, discriminated, excluded or disadvantaged group, independently of its demographic weight. (I do not refer here to privileged or "dominant minorities" which generally do not need special instruments for the juridical protection). As such, the minority requires state protection or tutelage, be it temporarily until full equality with the majority is achieved or permanently where the characteristics that set it off from the majority persist. Historically, dominant groups often have regarded minorities as *fremdkörper* to the national body. This ethnocratic view has been conducive to genocide, ethnocide, forced assimilation, expulsion, relocation, directed colonization, and numerous other measures constituting violations of the human rights of the minorities victimized by such policies.

Measures for the protection of minorities figure in many state legislations. Such measures, however, are considered insufficient by the non-governmental organizations representing these groups and therefore they have sought to bring their demands to international organisms such as the UN or the Conference on European Security and Cooperation.

The concept of "minority" directly implicates the territorial and administrative unity of the state and state policies. Some national minorities, as enclaves in the territory of another nation, are actually the outcome of historical processes and the arbitrary drawing of frontiers. The present events (1992-93) in ex-Yugoslavia dramatically reflect

these realities. Other minorities (racial, linguistic or religious) may be dispersed over the national territory and protection of their human rights can not be reduced to territorial arrangements but would involve other mechanisms (electoral, institutional, cultural).

Some scholars hold that the rights of indigenous peoples are to be considered within the framework of minority rights. They argue that national and international measures to protect minorities will provide adequate guarantee for the human rights of indigenous peoples. The organizations of the indigenous peoples, however, advance a very different view and argue that their situation is incomparable to that of minorities. In the first place, they insist that as "prior nations or peoples" they have historical rights which they do not necessarily share with other minorities (such as, for instance, immigrant ethnic groups).

Secondly, they point out that historically they have been the victims of invasions, conquests and plunder and they demand the restitution of lost rights (and frequently, of a denied sovereignty) and not the protection of accorded or conceded rights (a semantic but politically significant distinction). Thirdly, they understand that their ancestors constituted sovereign nations that were subjected against their will to be incorporated into foreign political units (states, empires). Many indigenous peoples at some stage signed or found themselves forced to sign some treaty with the invaders through which they lost their sovereignty. This is the case of the North-American Indians, the Hawaiians, the Mapuche, and many others. Later, such treaties would be violated and/or unilaterally revoked by the respective governments. In the 19th century, for instance, the US Congress abrogated the treaties the North American government had made with the Indians and in this way transformed them from sovereign nations (though already much disfigured as a result of the extermination wars waged against them) into mutilated and tutelated minorities with only restricted rights. The same happened in many other countries. The UN now has commanded a study on the present state of the treaties with indigenous peoples in the light of international law.

Lastly, they argue that indigenous populations should be recognized as "peoples" according to the terminology of the international human rights conventions (article 1) and not as "minorities" according to article 27 of the International Convention on Political and Cultural Rights.

These contrasting views informed the debates over the adoption of Convention 169 of the International Labor Organization as well as the work of the UN Subcommission for the Prevention of Discrimination and the Protection of Minorities, particularly in the drafting of a

Declaration on the rights of indigenous peoples, that was to be adopted by the General Assembly in the course of 1993, "Year of the Indigenous Peoples."[13]

Peoples' rights and the rights of indigenous peoples

Article 1 of the international conventions is clear: "All peoples have the right to self-determination...." The international human rights system is supported by two pillars: individual rights and peoples' rights. However, for reasons already discussed the concept of "peoples' rights" has been given less attention than that of individual human rights. Quite often the notion of "people" is quite simply equated with that of "nation" (do we not speak of the "United Nations"?) which in turn is confounded with the state. (States have a seat in the UN). States are very jealous in claiming all sorts of rights for themselves (sovereignty, equality, non-intervention, territorial integrity).

The concept of "people," as distinct from constituted states, made its appearance against the background of the struggles for decolonization and national liberation. International practice accords the right to self-determination to the peoples of colonized territories but not to minorities. Indigenous peoples have good arguments to show that they are or have been colonized. For this reason they demand that they be considered "peoples" and claim the right to self-determination.

Clearly, this demand meets with the resistance of states that perceive it as a menace to their own sovereignty and territorial integrity. On the other hand, the world population consists of thousands of peoples and there are only a few sovereign states. What then is the juridical value of the concept of "people"? What are the criteria to determine which peoples have the right to self-determination and which peoples do not have that right? Who decides on these questions and under what circumstances? It is the states that make the laws, but the fundamental principles that sustain the laws are forged by peoples through their aspirations and struggles.

The rapidity with which in the past few years some states that were supposed to be solid and immutable disintegrated, and the emergence of peoples with their own demands indicate that we are facing a field of shifting sands where the last word has not been said. The concepts of "peoples without a state" and "unrepresented peoples" have recently been introduced into the debates on peoples' rights, self-determination and the rights of indigenous peoples.

If the concept of "people" as subject of international right is to be

more than a simple euphemism for the population that happens to be incorporated in an existing "state," it will be necessary to develop valid sociological, cultural and political criteria to define, characterize and distinguish peoples. It also will be necessary to construct mechanisms to reach negotiated or consensual agreements on the rights of such peoples, to avoid the destructive violence characteristic of so many ethnic conflicts at present.[14]

There basically are two ways to use the concept of "people." One current option is when reference is made to the aggregate of citizens that constitutes a country: when we speak of the "sovereignty of a people," a "government that emanates from the will the people," etc. Understood in this way, the right to self-determination of a people is exercised through political democracy or, in exceptional cases, through struggles for national liberation or the revolutionary transformation of the state.

A second accepted view refers to a combination of features that characterize a human group in territorial, historical, cultural and ethnic terms which give them a sense of identity that may find its expression in nationalist or ethnic ideologies. In this second acceptation the term "people" is similar to "nation," the only distinction being that the term "nation" is generally used in relation to the ideology and politics of "nationalism" which ties it to the constitution of a state, whereas the term people can be used without necessary reference to the control of state power. It follows that the use of one term or another corresponds to conventions and is not intrinsic to the social and historical phenomena to which it refers.

There are good and valid reasons to consider the indigenous peoples of the Americas and elsewhere as "peoples" and subjects of human and legal rights in the sense the UN employs the term. Some would even say that the use of the term "nations" would be justified. The North-American Indians, for instance, refer to themselves as "nations," partly because in the past they have been denominated as such by the North-American governments. The indigenous Latin-Americans, by contrast, have in their recent encounters and conferences insisted on the use of the term "peoples."

The indigenous peoples of the Americas were present at the inception of modern international law. Francisco de Victoria, Bartolomé de las Casas and others laid the foundations for international law precisely through their argumentations on the position of the "naturals" of the Americas in relation to Spanish imperial expansion. With the establishment of the modern interstate system, the indigenous peoples ceased to be independent actors on the international stage. At present they may be making a come-back as subjects of international law as a consequence

of the legal instruments that currently are being developed.

National policies and indigenous rights

For many decades the legal fiction that all citizens are equal and that therefore no special policy with regard to the indigenous peoples is needed has been entertained in most Latin American countries. In some countries (Brazil, Colombia...) special regimes for the indians existed which in fact relegated them to a situation of tutelage and practically considered them as "minors of age." From the 1940s onward a continental indigenist policy came into being which has been characterized as assimilationist or paternalist if not simply ethnocidal. The objective of the indigenist policies of the Latin American states was to promote the social-economic development of the indigenous communities and to "integrate" them into the nation. The indigenous had (or should have) the same rights as the other citizens and if this was not the case this was attributed to failures in the mechanisms for implementation of human rights rather than in their conception.

As a result of the mobilizations and pressures exerted by indigenous peoples in recent years this liberal view has been altered. Various states adopted new constitutions or legislation which for the first time refer to indigenous rights and recognize indigenous peoples as such.[15] In Brazil, for example, chapter VIII of the 1988 constitution is dedicated to the indigenous peoples; in Nicaragua an autonomy statute for the communities of the Atlantic coast was adopted in the wake of the conflict between the Miskito indians and the Sandinista government; in Mexico article 4 of the 1991 constitution was modified to include a paragraph on indigenous rights.

Besides a reaffirmation of individual rights the new legislative texts recognize some collective rights such as the right to a language, culture, customary law or juridical customs[16] and, in some cases, the right to a territory. To the indigenous peoples these are only a few first steps on the way to full recognition of their collective rights. The constitutional principles still have to take shape in ordinary legislation. And these, in turn, have to contain jurisdictional norms, appropriate mechanisms and to create functional and effective institutions.

In this process of change the transformation of the traditional Latin American state also should enter the considerations. The unitarian centralist state has not been able to provide the necessary guarantees for the indigenous peoples; to the contrary, it most often has been the first to violate them. The emerging pluriethnic states should, of course, be

civilian and democratic, but also pluricultural and politically pluralist. Federalism, where it exists or where it is thought convenient, can be territorial but it can also be ethnic. Were this not the case, it would be illusionary to talk of the collective rights of indigenous peoples. These objectives, that frequently have been propounded by indigenous movements and organizations should be elaborated in cooperation with the representatives of the other forces of civil society.

Toward indigenous self-determination

Self-determination for indigenous peoples is anchored in the fundamental human right to self-determination for all peoples. But there still is no clarity or consensus on the issue.[17] In a narrow sense, self-determination often is understood as the secession of a people from a constituted state as an actual "exercise of the right to free determination." Over the past few years this is what happened with the republics that were part of the Soviet Union, and something similar occurred in Yugoslavia (though in this case the federation simply disintegrated without any formal declaration of "secession").

However, external self-determination does not necessarily involve political independence. It may also mean negotiation on the basis of equality between a people and the state to which it has been linked. This may result in a new form of political coexistence in the context of a transformed political unit. The case of Quebec may be cited as a recent example. Among the indigenous peoples of the Americas the case that approaches this type of arrangement is the Kuna comarca of San Blas in Panama.

Self-determination also may be "internal," that is referring to the internal political and economic organization of a people, without necessarily affecting already existing external relations. The North American government employs the term self-determination with reference to the internal economic management of indigenous reserves. But in this case this is a delusion since the indigenous tribes in this country have been reduced to total dependence on the federal government and do not have any real power to exercise the right to self-determination in the sense of a human right.

In the international context self-determination is considered as a once and for all act. Thus, a few years ago Namibia became politically independent through an act of self-determination supervised by the UN. But in the sense the term is employed here, self-determination can be viewed as an ongoing process or as a complex network of relations

between a people and the state into which it finds itself incorporated. In this way, the right to self-determination of indigenous peoples can begin with a political renegotiation of its relations with the national state and end with a new democratic pact in which, by common accord, mutual relations are defined.

Nowadays, more attention is dedicated to diverse forms of political, territorial or economic autonomy, rather than secession or political independence.[18] In this respect the recent experiences such as those in Nicaragua or Brazil (where the Yanomami people acquired rights on their traditional territories after many years of struggle) merit close attention.

Autonomy, self-government, self-determination are relative terms that presently are considered essential to the full development of the human rights of indigenous peoples. We can be sure that in the years to come ways to employ and exercise them to the benefit of the indigenous peoples of the Americas will be further defined.

Notes

1 The most recent and brutal example of this negation of human rights for ethnic motives is the Serbian aggression against the Muslim population of Bosnia-Herzegovina.

2 Cf. Héctor Gros Espiell, *Los derechos económicos, sociales y culturales en el sistema interamericano*, San José, Libro Libre, 1986.

3 There is, therefore, a dialectic relationship between the "core" and the "periphery" of human rights which has to be made explicit in every case. In a comment on this position Fernando Rojas appears to adopt an openly relativist view: that is to say that "our" (western) understanding of right does not have anything to do with indigenous right (or of other cultures). If we take this to the extreme it would lead to denial of all validity to the intention of formulating an aggregate of human rights of universal scope, a view I do not share. On the other hand, admitting that in fact human beings live under unequal circumstances, to which Rojas draws the attention, does not, in my view, undercut the effort to inscribe the moral principle of equality in juridico-social concepts in the human rights framework.

4 The special rapporteur for the UN proposed the following definition: "Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples in accordance with their own cultural patterns, social institutions and legal systems." José R. Martínez Cobo, *Estudio del problema de la discriminación contra poblaciones indígenas*, (Volúmen V, conclusiones, propuestas y recomendaciones), Nueva York, Naciones Unidas, 1987, p. 30.

5 Cf. K.N.O. Dharmadasa & S.W.R. de A. Samarasinghe, *The Vanishing Aborigines.* Sri Lanka's Veddas in Transition, New Delhi, Vikas Publishing House (International Centre for Ethnic Studies), 1990. On the use of the term "tribe" in India, see Susana B.C. Devalle, *Discourse of Ethnicity. Culture and Protest in Jharkand*, New Delhi, Sage Publications, 1992. On the tribal peoples of southeast Asia see Lim Teck Ghee & Alberto G. Gomes (eds.), *Tribal Peoples and Development in Southeast Asia*, Kuala Lumpur, University of Malaya, (special issue of the review "Manusia & Masyarakat"), 1990.

6 Michael Howard, *Fiji: Race and Politics in an Island State*, Vancouver, UBC Press, 1991; Ralph Premdas, *Ethnic Conflict and Development: the Fascistisation of the State in Fiji*, Geneva, UNRISD, 1992.

7 Alberto Flores Galindo, *Buscando un inca*, Lima, 1988; Guillermo Bonfil, *México profundo, una civilización negada*, México, CIESAS/SEP, 1987.

8 Benedict Anderson, *Imagined Communities. Reflections on the Origin and spread of Nationalism*, London, Verso, 1983. With respect to the Quintenary the Alianza Continental Indígena at its Quito meeting in July 1990, declared: "...the indian peoples, nationalities and nations are giving a combative and committed answer in our rejection of this "celebration," and we stress that our identity should lead to our definitive liberation." *Declaración de Quito*, Comisión por la Defensa de los Derechos Humanos, Quito, 1990.

9 Cf. Fernando Mires, *El discurso de la indianidad. La cuestión indígena en América Latina,* San José, Editorial DEI, 1991.

10 cf. Efua Dorkenoo & Scilla Elworthy, *Female Genital Mutilation: Proposals for Change*, London, Minority Rights Group, 1992.

11 Enrique Mayer, in a comment on this article, with good reason pointed to the difficulty of judging, from the outside, whether a collectivity (regarded as "the other") does or does not violate the individual human rights of its members (in the view of who judges from outside). This is the old problem of cultural and moral relativism, already discussed since 1948 in relation to the "universality" of universal human rights. I agree with his answer to the dilemma: if collective rights are to be recognized as human rights they should be exercised without compulsion, voluntarily by all members, and thus be juridically compatible with individual rights. I will not discuss the implications of this view here: that to be valid they only can apply to people who have attained the "age of reason," and the generally accepted norm that individuals, not even out of their own free will, can renounce their human rights (e.g. one can not voluntarily let oneselve be enslaved).

12 Rodolfo Stavenhagen, *The Ethnic Question. Conflicts, Development and Human Rights*, Tokyo, United Nations University Press, 1990, pp. 60-65.

13 See Rodolfo Stavenhagen, "Los derechos indígenas: nuevo enfoque del sistema internacional," in *Curso Interdisciplinario en Derechos Humanos. Antología básica*, San José, Instituto Interamericano de Derechos Humanos, 1990.

14 One might think of the contrast between the massacres in former Yugoslavia where the Serb government denies the right to self-determination of the other peoples, and the peaceful separation between Tchechs and Slovaks in early 1993.

15 See Rodolfo Stavenhagen, *Derecho indígena y derechos humanos en América Latina*, México, El Colegio de México y Instituto Interamericano de Derechos

Humanos, 1988.

16 See Rodolfo Stavenhagen & Diego Iturralde (comps.), *Entre la ley y la costumbre. El derecho consuetudinario indígena en América Latina*, México, Instituto Interamericano de Derechos Humanos y Instituto Indigenista Interamericano, 1990.

17 cf. José A. Obieta Chalbaud, *El derecho humano de la autodeterminación de los pueblos*, Madrid, Tecnos, 1985.

18 See the recent contribution to this debate by Héctor Díaz Polanco, *Autonomía regional*. La autodeterminación de los pueblos indios, México, Siglo XXI, 1991. Also Hurst Hannum, *Autonomy, Sovereignty ans Self-Determination. The Accomodation of Conflicting Rights*, Philadelphia, University of Pensilvania Press, 1990.

WILLEM J. ASSIES

SELF-DETERMINATION AND THE "NEW PARTNERSHIP"

The Politics of Indigenous Peoples and States

Under the heading "A New Partnership," the United Nations have proclaimed 1993 the "International Year of the World's Indigenous People." This reflects the increasing success of indigenous peoples in manifesting themselves politically. A central demand of the international indigenous peoples' movement is the right to self-determination. The states into which indigenous peoples have been forcefully incorporated perceive this demand as a threat to their sovereignty and territorial integrity. Moreover, the demand sits uneasily with the universalistic conception of citizenship. Indigenous peoples' movements argue that they do not seek full independence, but arrangements for self-government that would allow them to preserve their ethnic identity. Such arrangements would substantiate the "new partnership."

While the political struggle over the content and extent of self-determination goes on, some arrangements allowing greater autonomy for indigenous peoples have emerged, the scope of historically existing arrangements is being expanded, and new arrangements are being negotiated in various countries.

After a brief outline of the emergence of an international indigenous peoples' movement, this paper discusses the problem of conceptualizing indigenous peoples. It is argued that rather than viewing them as "defenders of tradition," more attention should be given to indigenous peoples and their movements as a dynamic contemporary phenomenon. Subsequently, the paper outlines the discussion on self-determination as a concept of international law, and finally some of the critical issues in the implementation of arrangements for self-government are reviewed. A useful distinction can be made between arrangements based on indirect and direct consociation. In the first case administrative reorganization gives indigenous people a greater say in local affairs, while in the second case an indigenous people is recognized as such, and collective rights are involved.

THE EMERGENCE OF AN INTERNATIONAL INDIGENOUS PEOPLES' MOVEMENT

The attention now being paid to indigenous peoples is the outcome of various developments since World War II. Geo-politics and the search for new resources account for much of the escalation of the number of incursions into indigenous peoples' lands (Burger, 1987: 44; ICIHI, 1987:43-90). The post-war process of decolonization in Africa, Asia and the Pacific left many unresolved questions. Most of the newly independent countries are not linguistically, culturally or ethnically homogeneous. The new states have sought to assert their authority within the frontiers established by the former colonial powers, often resulting in increased oppression of indigenous peoples. The East-West confrontation also contributed to a preoccupation with frontier security, which turned economically uninteresting areas into areas of military concern. Early warning systems and aircraft testing grounds were installed in northern Canada by NATO, Siberia was militarized, and the Pacific basin was turned into a nuclear testing ground.

Geopolitics overlap and are intertwined with economic considerations. Exploration of forest resources, hydroelectric potential or subsoil resources contributed to the incorporation of frontier areas, as did colonization and transmigration policies. In South America, for example, settlement of the Amazon basin was promoted as a substitute for land reform.

In the "rich" countries the extension of public services and the welfare state system played a role in stimulating indigenous peoples' mobilization, as in the cases of the Greenland and Canadian Inuit and the Saami in the Nordic countries. Well intended policies also brought disruption. In the USA the emergence of an Indian movement was related to intensified threats of dispossession and policies aimed at "termination" of Indian status in the 1950s, and to the shift in social policies of the Johnson administration which provided new opportunities for resistance.

In the face of the threats to their livelihood and way of life, indigenous peoples have developed new forms of resistance, and since the 1970s an international movement of indigenous peoples has steadily developed. In the early 1970s, indigenous peoples of the Americas, the Arctic and the South Pacific formed networks, and since then several hundreds of indigenous peoples' organizations have been founded and new regional networks created. In 1977, the International Indian Treaty

Council, created on the initiative of the American Indian Movement (AIM) with roots in the USA, was the first indigenous peoples' organization which was granted consultative status in the Economic and Social Council of the United Nations (ECOSOC). By 1989 the number had grown to 11.

International action, often relying on a "politics of embarrassment" (Dyck, 1985:15), became an effective means to pressurize national governments. Indigenous peoples point to the fact that they were the prior occupants of the land, to the oppression, discrimination and marginalization they suffer, and to their low score on a variety of social indicators. The UN system has become an important platform for the discussion of indigenous peoples' concerns and promotion of their interests. In 1970, the Sub-Commission on Prevention of Discrimination and Protection of Minorities recommended a study on the problem of discrimination against indigenous populations. In 1977 and 1981 non-governmental organizations (NGOs) organized conferences on indigenous issues in Geneva, and in 1980 the Fourth Russell Tribunal in Rotterdam focused on the rights of the Indians of the Americas. These meetings, and the study by Special Rapporteur José Martínez Cobo which might never have been completed without outside pressure (Morris, 1993:29), contributed to the establishment of the United Nations Working Group on Indigenous Populations in 1982. The Working Group, though operating on one of the lowest levels of the UN system[1], has become an important forum for the international indigenous peoples' movement (Burger, 1987:44-62, 262-279; Dyck, 1985; ICIHI, 1987:31-40, 109-131; Ortiz, 1984:27-123; Morris, 1993; Scherrer, 1991; Sills, 1993).

INDIGENOUS PEOPLES

What constitutes an indigenous people is a complex question, and there is no generally accepted definition (Burger, 1987:6; Dyck, 1985:21-24; ICIHI, 1987:5). An often quoted working definition has been provided by José R. Martinez Cobo (1987:29), Special Rapporteur for the UN Commission on Human Rights:

> Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or

> parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples in accordance with their own cultural patterns, social institutions and legal systems.

As an indicative description, which contains the criteria of pre-existence, non-dominance, cultural difference and self-identification as indigenous (ICIHI, 1987:6; ACM, 1993:12-15), this may serve.

The definition is meant to cover a broad range of situations. In its practical usage, groups within the European continent itself, such as Basques or Catalans, are excluded, as well as for example the Kurds. They are considered national minorities (ICIHI, 1987:8). On the other hand, the Saami in the Scandinavian countries and the Inuit of the circumpolar states and their Siberian kin are considered indigenous. Furthermore, the definition is meant to include the Aborigines in Australia, the Maoris in New Zealand, and the indigenous peoples of North, Central and South America. The tribal and nomadic people of Asia also are considered indigenous peoples, and in Africa the term is applied to nomadic pastoralists as well as the San (Bushmen) and the Pygmies. The number of indigenous people is currently estimated at some 300 million.

The definition regards colonization and invasion as constitutive features of indigenous peoples. It should be noted that it does not contain criteria referring to economic organization (e.g. nomadic or semi-nomadic), political organization (tribal organization, consensus-based decision-making, or degree of centralization of political institutions), or cultural features attributed to indigenous peoples.[2]

Burger (1987:9) suggests a group of overlapping criteria, of which an indigenous people may contain all or just some. Indigenous peoples:

1. are the descendants of the original inhabitants of a territory which has been overcome by conquest;
2. are nomadic and semi-nomadic peoples, such as shifting cultivators, herders and hunters and gatherers, and practice a labour-intensive form of agriculture which produces little surplus and has low energy needs;
3. do not have centralized political institutions and organize at the level of the community and make decisions on a consensus basis;
4. have all the characteristics of a national minority: they share a common language, religion, culture and other identifying character-

istics and a relationship to a particular territory, but are subjugated by a dominant culture and society;

5. have a different world view, consisting of a custodial and non-materialist attitude to land and natural resources, and want to pursue a separate development to that of proffered by the dominant society;
6. consist of individuals who subjectively consider themselves to be indigenous, and are accepted by the group as such.

Other definitions can be found in the ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries (Convention 169 of 1989) and in the World Bank Operational Directive on indigenous peoples (September 1991). For comment on ILO Convention 169 and the World Bank Directive, in relation to the Draft Declaration on Indigenous Rights, see *Fourth World Bulletin* (2) 2. This reflects a certain shift in thinking among indigenous peoples themselves as well as among students of ethnic relations. Thus, Dyck (1985:24) notes how the World Council of Indigenous Peoples dropped the criterion of continuation of archaic cultures and came to emphasize the status of indigenous peoples as previous occupants of lands taken by colonizing nation-states and as peoples who lack self-determination.

Students of ethnic relations increasingly acknowledge that the interpretation of culture from the standpoint of tradition or continuity over time has its limitations. In a radical essay Barth (1969:11) argued that common culture should be regarded as an implication or result, rather than as a primary and definitional characteristic of ethnic group organization. In this way attention is shifted away from a supposedly existing, immutable, core cultural orientation of an ethnic group, to the processes of boundary construction and boundary maintenance that take place between groups. Rather than relating ethnic identity to a "traditional way of life", this way of looking at things makes it possible to see how identities are maintained and reconstructed through processes of change.[3] Pursuing this line of argument, Nagel and Snipp (1993) have advanced the concept of ethnic reorganization. Usually, they argue, four basic processes have been identified in the relations between minority and majority populations: annihilation, assimilation, amalgamation and accommodation. None of these concepts, however, adequately captures the process experienced by the North American Indians. Hence they propose the concept of ethnic reorganization to account for both the persistence and the transformation of ethnicity. They distinguish various forms of ethnic reorganization. Social reorganization includes the reorganization of community or tribal boundaries, reorganization of

marriage rules, reorganization of group or tribal membership rules as well as the reorganization of the larger American Indian ethnic identity, that is, the emergence of supertribal identification. Economic reorganization includes the modification of the community economic base and the reorganization of economic activity itself. Political reorganization involves the restructuring of political organization as well as tribal and supratribal political reorganization, while in the cultural field, processes of revision, blending or revitalization may occur.

One important point is that this approach draws attention to the dynamic process through which identities are shaped, including the very identification as "indigenous people." The definitional problems referred to are related to such issues. Definitions are operational rather than analytical and in fact are at stake in a socio-political and discursive process. Thus, the indigenous peoples of North America, the Arctic and Australia played a vanguard role in the development of the international indigenous peoples' movement, but the inclusion of Indian delegates from South America was fraught with tension. Clearly falling into the category of "indigenous peoples", their experiences and concerns were also different from those of indigenous peoples within liberal democracies. Among the South American indigenous peoples, differences exist between those from the highlands and those from the Amazon basin. The inclusion of peoples from Asia or the Middle East or African liberation movements into the international movement organization is not a matter of course (cf. Dyck, 1985). Thus, the labelling as "indigenous people" is often as much a matter of political pressure as of conforming to a legally defined category. Both ascription and identification play a role in the constitution of "indigenous peoples" as an overarching identity covering a great variety.

The argument therefore also applies to the present discourse of indigenousness, and the features and traditions this attributes to indigenous peoples. Whatever the roots in tradition, qualities such as a special non-materialist and spiritual relation to the land, consensual decision-making, communitarianism are emphasized and resignified at present. Rather than something like inherent qualities, such features and the discourse by which they are underscored should be viewed as part of the dynamics through which contemporary ethnic or indigenous identity and consciousness are constructed. The stress on certain features constitutes a contemporary and evolving critique of the societies indigenous peoples are facing.

Such an approach brings to light the social processes of reorganization and transformation, which are important to bear in mind in any discussion of indigenous peoples' movements to avoid unwarranted

romanticism. With regard to political confrontation Barth (1969:35) observed that the opposed parties tend to become structurally similar, and differentiated only by a few clear criteria. The emergence of the Shuar Federation in Ecuador, which implied the adoption of new forms of political organization and the development of a counterhegemonic discourse challenging the Ecuadorian state, is an illustrative example (Hendricks, 1991). Often such processes of indigenous mobilization strongly rely on specific sectors of indigenous society, the youth in particular, and are thus related to processes of stratification within the indigenous society. While invoking the traditional authority of elders, the process of mobilization may pose a challenge to this authority which is not easily resolved (Findji, 1992:117, 130; Jackson, 1991). Or it may give rise to new divisions between "progressives" and "traditionalists" within an emerging Indian movement, as for example in the U.S.A. (Nagel & Snipp, 1993:218; Forbes, 1985:32). Indigenous peoples cannot be regarded as homogeneous groups without internal divisions. Despite the emphasis on the consensual nature of internal decision-making processes, a system of majority decision making and representation is often adopted, not just as a result o f outside presure by a dominating state which imposes representativity requirements as is often argued, but also in response to internal differentiation among the indigenous people themselves and in relation to the formation of supra-local organizations (Duhaime, 1992).

Indigenous peoples differ in their social, economic, political and cultural organization from the dominant society and, by definition, belong to the most dominated, discriminated and marginalized groups. The claim to be entitled to special inherent rights as prior occupants of the lands constitutes the main difference from other ethnic groups. In view of their diversity and the dynamics in which they are involved, there is no facile definition, and ascription of all kinds of features should be avoided.

INDIGENOUS PEOPLES AND INTERNATIONAL LAW: FROM MINORITY PROTECTION TO SELF-DETERMINATION

For the emerging indigenous peoples' movements the UN has become an important forum, and international law provides a major framework for developing their claims. Certainly, the influence of the North

American Indian intelligentsia also played a role in framing the discussion in these terms. Their views and legal reasoning are rooted in the history of treaty making as the basis for interaction between Indian nations and the state (Sills, 1993:17).

When, in 1982, the UN Working Group on Indigenous Populations was set up, one of its tasks was to develop international standards regarding the rights and protection of indigenous peoples under international law. Much of the debate revolves around the stipulations on self-determination and minority protection in the UN Charter and subsequent Covenants and the ILO Conventions on indigenous populations. Through a critique of the assumption that their fate inevitably would be one of assimilation into the national societies, spokespersons of the indigenous peoples have contributed to a shift away from the focus on minority protection toward a claim to self-determination for indigenous peoples. The controversial character of this claim is reflected in the ongoing debate over the question of whether to speak of indigenous populations, indigenous people, or indigenous peoples and the implications this would have for the content and scope of the self-determination they claim.

THE UN DECLARATIONS AND COVENANTS

Self-determination was enshrined as a "principle" in the 1945 UN Charter, which stated as one of the purposes of the UN

> To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.

The interpretation of the notion of self-determination was strongly related to the post-war process of decolonization. In 1960, the *Declaration on the Granting of Independence to Colonial Countries and Peoples* referred to a right, rather than a principle, stating that

> All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

At the time it was specified that this right only would apply in cases of a territory geographically separate and ethnically or culturally distinct from the country administering it, that is the "classic" colonial countries separated by "blue water" or "salt water" from their subjugator. In these cases the exercise of the right to self-determination could produce

a range of acceptable outcomes, from *sovereign independence* through *free association* with an independent state to *incorporation* within it. Furthermore, following the *uti possidetis* principle which had been developed in the context of Latin American independence, disruption of the territorial integrity of states was ruled out in the UN resolutions and declarations on decolonization (Franck, 1992; Hannum, 1993: 20-26; Lerner, 1991:100; Lâm, 1992). The frontiers that had been established by the colonial powers were not to be altered in the process of decolonization. As a consequence a great number of the newly independent countries were not linguistically, culturally or ethnically homogeneous.

In 1966, however, the right to self-determination made its appearance in the *Covenant on Civil and Political Rights* and the *Covenant on Economic, Social and Cultural Rights* as a general peoples' right, no longer confined to the "classic" decolonization context. It remained unclear, however, what this right would entail in the future, particularly since the meaning of the term "peoples" who are to hold this right, was never specified (Lâm, 1992:615-616).

While granting a general right of self-determination to "peoples" the Covenant on Civil and Political Rights, in its Article 27, also referred to "minorities" (Hannum, 1993:33-35) providing that

> In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in common with other members of their group, to enjoy their own culture, to profess and practice their own religion, and to use their own language.

This article on the protection of minorities is generally regarded as an important instrument for the defence of indigenous peoples, though they were not specifically referred to in the text of the Covenant (Lerner, 1991:100).

The scope of the article, as conceived, is somewhat limited (Rehof, 1992:89; ICIHI, 1987:116). Since it speaks of "persons belonging to minorities" the rights specified tend to be interpreted in individualist terms (ACM, 1993:19). The text, however, leaves some room for a more flexible interpretation. It may be argued that it contains elements of group protection and hence provides some scope for an interpretation in terms of collective rights and that it may allow for positive discrimination of a minority (Brantenberg, s.a.:85; Lerner, 1991:15). Moreover, in jurisprudence the term "culture" has come to cover traditional economic activities (Rehof, 1992:89; Nowak, 1992). In the Norwegian debate on the relevance of this article for the protection of Saami rights, it was

concluded that "culture" implies more than creative or artistic activities and institutions and must be understood as including the material basis for culture, i.e. livelihoods and economic conditions (Brantenberg, s.a.:85).

The ILO Conventions

Among the international conventions applicable to indigenous peoples those produced by the ILO stand out as being specifically dedicated to the issue of the indigenous peoples (Burger, 1987:265; ICIHI, 1987: 118). In 1957, the ILO adopted a *Convention concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries* (ILO Convention 107). It aimed to

> assure the protection of the populations concerned, their progressive integration into their respective national communities, and the improvement of their living and working conditions (Hannum, 1993:8-19; ICIHI, 1987: 143).[4]

While rather paternalist and oriented toward "integration" and "development," this also was the only international instrument which recognized the right to collective ownership of land which these populations traditionally occupy.

The need for an update and the gradually gathering critique by indigenous peoples and their support groups resulted in a revision of the convention in the course of the 1980s. In 1989 the ILO adopted the *Convention concerning Indigenous and Tribal Peoples in Independent Countries* (ILO Convention 169) (Hannum, 1993: 45-59) which purports to eliminate "the assimilationist orientation of the earlier standards." For the first time reference was made to "peoples" rather than to "populations." This was the outcome of heated debate between states that preferred to continue to use the term "populations" and indigenous delegates who argued that the term "population" has no juridical significance in international law (cf. Morris, 1993:26). In the final version of the convention, the term "peoples" was used, but this innovation is immediately followed by a clause stipulating that

> The use of the term 'peoples' in this convention shall not be construed as having any implications as regards the rights which many attach to the term in international law.

The convention thus restricts the scope of the right to self-determination usually implied by the term peoples (cf. ACM, 1993:19; Lerner, 1991: 102; Morris, 1993:24-28; Rehof, 1992:91).

The convention also remains controversial on a number of other points. It is unclear what scope it leaves for "self-determination." In the text there is no mention of the concept itself, but one finds references to "the right to decide their own priorities," hedged in with a series of conditions (art. 6 and 7). The subordination of indigenous legal procedures to national legislation rather than international standards (art. 8, 9) is another bone of contention. And the stipulations on the forcible relocation of indigenous people (art. 16) are also ambiguous and contested (Ceinos, 1990:18; Lerner, 1991:107-110; Ministerie, 1993: 10).[5]

Toward a Declaration on the Rights of Indigenous Peoples

Since 1985, the UN Working Group on Indigenous Populations has been working on a *Declaration on the Rights of Indigenous Peoples*, intended to be a standard-setting instrument for international law purposes to be adopted by the UN General Assembly. A preliminary version of this declaration (Hannum, 1993:102-112), submitted in June 1992 [6]

> the right of self-determination, in accordance with international law by virtue of which they may freely determine their political status and institutions and freely pursue their economic, social and cultural development. An integral part of this is the right to autonomy and self-government.

The introduction to this "working paper," however, makes clear that concepts like "peoples," "self-determination" and "lands and territories" still require further specification. The unequivocal statements about "self-determination, in accordance to international law" meet with the objections of existing states. These insist on their "territorial integrity," seek to limit the rights to "lands and territories" to grants rather than inherent rights and to substitute "self-determination" with terms like "self-governance" or "self-management" (cf. ACM, 1993:55; Daes, 1992).

As a result of such objections, the paragraph on self-determination has been rephrased in the latest draft of the Declaration (May 1993) (cf. Morris, 1993) which now reads

> Indigenous peoples have the right of self-determination, in accordance with international law, subject to the same criteria and limitations as apply to other peoples in accordance with the Charter of the United Nations. By virtue of this, they have the right, *inter alia*, to negotiate and agree upon their role in the conduct of public affairs, their distinct responsibilities and the means by which they manage their own interests.

An integral part of this is the right to autonomy and self-government.This paragraph should be read in conjunction with the paragraph that states that

> Indigenous peoples have the right to autonomy and self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resource management, environment and entry by non-members, as well as internal taxation for financing these autonomous functions.

The implication is that the distinction between "internal" and "external" self-determination has been introduced in the drafting of the Declaration. Self-determination "in accordance with international law" would include the right to "external self-determination", granting peoples the right to opt between sovereign independence, free association or incorporation into an existing state. This, as we saw, supports the objection of state governments raising the specter of secession, which they claim self-determination inevitably entails. On the other hand, indigenous peoples have repeatedly stated that they do not aspire to independent statehood but seek some form of free association. But "free association" becomes a sham when the option not to associate is barred (Morris, 1993:32-33).

Internal self-determination means that "a people or group possessing a definite territory may be autonomous in the sense of possessing a separate and distinct administrative structure and judicial system, determined by and intrinsic to that people or group" (Martinez Cobo, 1987:20).[7]

The introduction of the distinction between internal and external self-determination seems to constitute an effort to shift the terms of the debate away from "peoples' rights" to the somewhat less controversial "collective rights" to be exercised within existing states. A clear-cut distinction between "internal" and "external" hardly seems possible, however, if internal self-determination is to be related to a specific territoriality.

This is the stake in the debate over the use of the terms "lands" and "territories." "Lands", indigenous peoples argue, constitute generic parcels of real estate that can be owned by anyone in an individual capacity, but which are subject to the overarching jurisdiction of the state. "Territories," in contrast, consist of lands over which sovereign authority can be exercised, and to which indigenous peoples lay claim through aboriginal rights, and over which they should have the power to exercise political and economic authority. The draft Declaration states that indigenous peoples have the collective and individual right to own,

control and use their lands and territories, and specifies that this means the total environment of the lands, air, water, sea, sea-ice, flora and fauna which indigenous peoples have traditionally owned or otherwise occupied and used (Morris, 1993:27, 32).

The introduction of the notion of "internal self-determination" furthermore sits uneasily with the draft Declaration's assertion that treaties, agreements and other constructive arrangements between states and indigenous peoples should be observed and enforced according to their original intent. The Indian nations of North America insist that these are treaties between sovereign nations and thus pertain to the realm of international diplomacy.[8]

The claims forwarded by the indigenous peoples' movements challenge some of the basic principles of the modern state. Though not aiming for independence, the free association they envision must include both a mutually satisfactory sharing of jurisdiction and the recognition that the indigenous share of that jurisdiction rests upon an inherent right, and not on a revocable grant. These two demands challenge the principles of state sovereignty and exclusive jurisdiction (Lâm, 1992:608).

The claim for collective rights is controversial in its relation to citizenship and to internationally acknowledged individual human rights. These include civil rights, political rights and social rights, usually thought to follow one another in an evolutionary succession. Whereas these rights are individualistic and universalistic, collective rights are particularistic and specific. Some students of human rights legislation fear that according collective rights may contribute to an erosion of individual rights. Collective rights also call into question the presumed equality of citizenship and rights. This not only has met with the objection of states, but also has been a source of friction between, for example, the North American Indian movement and the civil rights movement. Whereas the former demanded a special status, invoking their prior presence in the land and their sovereign status consecrated in treaties, the latter sought equal rights[9]. Similar issues underlie the South American debate on the relation between indigenous struggles and class or popular struggles, some arguing that indigenous struggles are part of a broader movement, others arguing that they represent something like a "third way" in its own right.

While the political struggle and debate over its content and extent continue, the idea that indigenous peoples are entitled to some form of self-determination has gained some acceptance. Indigenous peoples have governed themselves according to customary law and their own ways of doing politics, until they were subjugated by some state which,

more or less gradually, sought to incorporate or assimilate them. Such efforts, as we saw, have met with new forms of resistance, as a result of which a search for a "new partnership" has started. This should take more concrete form in systems of self-government, or autonomy arrangements which realize the "new partnership" now proposed (Scherrer, 1991). While international declarations suggest the orientation and standards for such arrangements, the actual arrangements cannot but be the product of a variety of local situations and experiences. In the case of South America, for example, contemporary practices of self-government often derive in part from the colonial system imposed by the Iberians, and in North America the tradition of treaty making with the colonial powers and their successors provides a framework for the present arrangements.

SYSTEMS OF SELF-GOVERNMENT: FEATURES AND ISSUES

In 1991 the UN Commission on Human Rights organized a Meeting of Experts to review the experience of countries in the operation of schemes of internal self-government for indigenous peoples, in Nuuk, capital of Greenland. In their conclusions and recommendations they included a comprehensive list of desirable features to be included in self-government schemes

> Subject to the freely expressed desire of the indigenous people concerned, autonomy and self-government include, *inter alia*, jurisdiction over or active and effective participation in decision-making on the matters concerning their land, resources, environment, development, justice, education, information, communications, culture, religion, health, housing, social welfare, trade, traditional economic systems, including hunting, fishing, herding, trapping, gathering, and other economic and management activities, as well as the right to guaranteed financial arrangements and, where applicable, taxation for financing these functions.

At the meeting a wide range of experiences purporting to realize some of these requirements to a certain degree were discussed. These included the reservations in the USA, the Home Rule arrangement in Greenland, the Saami parliament in Norway, the *comarca* in Panama, the experiences with regional autonomy in Nicaragua, China and the Philippines, the 1988 Brazilian Constitution and the *resguardos* in Colombia. This constitutes a rather mixed bag of experiences, each

with its own historical context. What they have in common is that they are institutionalized forms of political autonomy of different degrees, as opposed to factual, historical autonomy.

Ethnicity and territoriality

In practice there seem to be two basic ways to meet the claims to autonomy of indigenous peoples within national states. A distinction should be made according to the subject of this autonomy between territorial or regional autonomy and the autonomy of a people (Willemsen Díaz, 1992:25). Another way of putting it is to distinguish between direct and indirect consociation as alternative routes to permit the exercise of aboriginal rights. In the case of direct consociation, state ideology expressly acknowledges the existence of various ethnonational collectivities (for example, in constitutional charters), and thus protection is afforded explicitly to the specified (and named) ethnonational communities. In the case of indirect consociation, the ideology does not explicitly protect ethnonational communities. Rather, the philosophy of "universalism" is espoused, and protection is afforded ethnonational communities as a consequence of other principles, such as ensuring that a specified minority ethnonational collectivity forms a majority within a particular political jurisdiction (Asch & Smith, 1992).

Where the relationship between ethnicity and territoriality is concerned, we can distinguish between the following situations:

1. cases of local or regional autonomy where ethnicity formally does not play a role. Administrative boundaries are drawn in such a way that the indigenous population constitutes a majority within them and thus effectively can realize a degree of self-government within the nationally established administrative framework, e.g. municipal councils, provincial councils, federated states (e.g. the Nunavut territory in Canada, Greenland);

2. cases where ethnicity and territoriality are formally linked in self-government arrangements where, within certain limits as to scope and content, only the indigenous may partake in the government of a territory (e.g. Colombia, the Kuna in Panama or the Indian reserves in the USA);

3. cases where ethnicity is a criteria without being linked to territory, that is place of residence. The Saami parliament in Norway is drawn from the national constituency and operates at a national level,

where it is involved in representing Saami interests in sectoral policies that eventually may become territorialized in their execution. Indigenousness may also be a requirement for welfare entitlements for specific groups such as migrants to urban areas. Such cases put into question the widespread assumption that self-determination is absolutely and necessarily linked to territory (Groves, 1990).

The first, indirect approach has the advantage, as Asch and Smit (1992) argue with reference to the Canadian case, that it does not require reshaping of the constitutional order, which in the majority of the present states is based on universalistic principles. The limitations to this approach are firstly, that an indigenous people must have and continue to have the majority of the population on a certain land base and, secondly, that it requires the indigenous people to reduce its view of governance to be established. The Nunavut agreement, which is the case in point, provides for considerable control through current structures of public government without forming an expressly aboriginal government, i.e. self-government exclusively by and for Inuit. The scope of self-government thus is set by the administrative level at which it is exercised, e.g. municipal, provincial. The absence of a "distinct society" concept as a lynch pin of identity may constitute a vulnerability of the arrangement (Haysom, 1992:195).

In the second case, rights are guaranteed explicitly to an ethnonational community notwithstanding the size of its population. This type of arrangement would allow indigenous peoples to govern themselves, within a certain territory and to a specified extent, according to their own political and legal customs.[10] It seeks to institutionalize forms of political and legal pluralism.

The third type of arrangement allows an indigenous people to influence public administration and the execution of certain sectoral policies that affect them in particular. While the Nunavut territorial government basically is a public one, Inuit representatives can participate in a number of management boards and thus, for example, introduce their own wildlife management practices and safeguard priority for Inuit in according hunting licences. Similar arrangements are conceivable in policy areas such as health care or education. If such sectorwise influence or participation is embedded in a more comprehensive arrangement, as is the case for the Saami parliaments for instance, this may tend to a form of self-determination. If not, one should rather think in terms of client-group participation in public policies.

Operationalizations of ethnicity

The case of Greenland Home Rule, often cited as an example and perhaps a model for indigenous peoples' self-government, does not involve collective rights. Due to its location and population characteristics, there was no problem of fuzzy demarcations, and as Greenland's Premier Lars Emil Johansen (1992:34) put it, it has thus "to some extent been possible to avoid the unpleasant and difficult task of defining who is a Greenlander and who is not." The right to participate in elections for the Home Rule Assembly is contingent upon the elector having had his permanent residence in Greenland for at least 6 months (Foighel, 1980:7).

Of the three above-mentioned "ideal-typical" cases, the second and the third require an operationalization of ethnicity in order to specify who is entitled to rights or benefits and who is not. The actual operationalizations of ethnicity provide some illustration of the issue of inter- and intra-group relations and the relation to the state. For the recent (1993) elections for a Saami parliament in Sweden, Saami were defined as those who consider themselves Saami and 1. can prove that he has or has had Saami as his home *language* or 2. can prove that some of his parents, father's or mother's parents have or have had Saami as a home language or 3. has a parent who is or has been on the electoral list for the Saami parliament (Oreskov, 1993). Similar provisions apply in Norway, where a Saami parliament was created in 1989. Thus, in principle, the constituency for the Saami parliament is not related to a specific territory within the Nordic states, but is constituted at a national level. On the other hand, municipalities where Saami constitute a substantial part of the population may qualify for special funding earmarked for Saami. This has influenced registration as Saami and may explain the difference between the number of Saami who registrated and the number actively participating in the elections for the Norwegian Saami parliament (Brantenberg, s.a.:103-106). The tendencies of registration and active participation in these elections thus reveal the situational character of ethnic identification.

In the USA the Bureau of Indian Affairs (BIA) requires exhaustive documentation to meet seven criteria for recognition as a "tribe." The "tribe" must prove that: "from historical times to the present," it has been identified as Indian; is a community distinct from surrounding communities, or descends from Indians of a specific homeland; and holds political authority or influence over its members. The tribe must submit a copy of a governing document and/or criteria for membership, list all current members (who must trace descent from the historical

tribe), document that members do not belong to any other tribe, and show that the tribe has not been terminated by Congress (cf. Osburn, 1993:13). The tribally set rules of enrolment vary from tribe to tribe, but usually involve some designated degree (blood quantum) of tribal or Indian *ancestry, parentage, and/or residency* requirements. According to circumstances tribes may adopt more exclusionary or more inclusionary rules of enrolment as part of their strategies of ethnic reorganization (Nagel & Snipp, 1993:211). Besides the "federally recognized Indians," entitled to BIA services, one has "non recognized Indians" and "urban Indians" (Martinez Cobo, 1982:54-55).

In Canada, *genealogical ancestry* also plays a main role in determining who is to be considered aboriginal or not. Aboriginal peoples here include Indians, Inuit and Métis (persons of mixed Indian and European ancestry). The Indians are further classified into Status Indians, Non-Status Indians and Treaty Indians (Martinez Cobo, 1982: 51; Minister, 1991).

In Colombia, the National Administrative Statistics Department combines the critera of *self-identification*, as belonging to a determined ethnic group with a cultural tradition going back to before the Spanish conquest, *and residence*, that is living in a community, i.e. in the territory occupied by the community or group (Arango, 1991/92:226).

The task of determining who exactly belongs to an indigenous people remains controversial, unpleasant and difficult. It involves a balancing of the requirements of a state, the right of a people to decide whom it includes or excludes, and the right of individuals to decide whether they will be included or excluded. It goes against the almost universal tendency toward legal regimes of governance based on the territoriality of residence of the subject/citizen rather than "personality" of the individual. These problems are largely avoided in the first type of self-government arrangement mentioned above. A borderline case exists, however, when a long-term residency requirement is used to ensure that an indigenous people remain secure even if they become a minority within the jurisdiction. This is one of the safeguards proposed by the Dene in Canada (Asch & Smith, 1992:108). The second type of arrangement relies on both territoriality and ethnic identification and involves a sort of dual citizenship, whereas the third relies solely on ethnic identification. A major problem with this third type of arrangement is that it may contribute to the dilution of "tribal" content in exchange for a basically "racial" definition of aboriginality (Groves, 1990:238).

The scope of self-government

Some qualitative measures should be employed to sort out the "genuine" arrangements among the broad spectre of situations that formally might be regarded as forms of self-government. Bennagen (1992:72) suggests that certain overarching values have crystallized in the indigenous peoples' movement for self-determination, including territorial autonomy and sovereignty, democracy and justice, equity and cultural freedom. Operationally, these would imply:

a. control of territory (expressed variously as ancestral domain, ancestral homeland, indigenous territory, etc.) and its natural resources, both surface and subsurface;

b. legislative, executive and judicial bodies, to include corresponding indigenous institutions;

c. proper actual representation of the indigenous cultural communities in the various organs of power, not only in the autonomous territorial unit but also in the national Government;

d. fiscal autonomy, including the power to raise revenues, a just share of national revenues and a capable fiscal administration; and

e. respect, protection and development of indigenous cultures.

The above suggestions indicate the dimensions to be taken into account in an assessment of the qualities and limitations of contemporary systems of self-government. A series of more specific questions can be posed concerning the day-to-day practice of operational self-government arrangements, and some examples may illustrate the variety of arrangements and issues to be dealt with. One should bear in mind, however, that the dimensions of self-government are interrelated. Land rights, access to economic and financial resources, political institutions and legal systems are linked in various ways.

Territory and land rights

A first issue is the effective extent of rights to land and the indigenous institutions involved in managing such rights. How are decision-making powers distributed?

The Nunavut Agreement is illustrative of some of the complexities of the problem. As noted, the creation of the Nunavut territory is a case of indirect consociation which does not directly involve collective

rights. A public government structure will be set up for a certain land area where the majority of the population is Inuit. This political arrangement is linked, however, to a land claim settlement by which an Inuit non-profit corporation (Tungavik Federation of Nunavut - TFN) receives ownership title to 136,000 square miles of land, of which 14,000 square miles would include ownership of the sub-surface. This represents about 18% of the land area of Nunavut. Furthermore, Inuit and government will be equally represented on a series of management boards concerned with project screening, planning, wildlife management, water management in the Nunavut territory and on a surface rights tribunal with jurisdiction throughout the Northwest Territories (Fenge, 1992).

In the case of Greenland, the question of ownership of land and resources became an important issue in the political debate. Private ownership of land did not exist, but the Danish claim to state ownership was countered with the claim that land should be collectively owned by the population of Greenland. The Home Rule Act provides that Greenland and Denmark shall have equal rights in the use of non-living resources and that policy decisions should be made jointly. Thus, both parties have a veto power. Where the division and application of revenues from natural resource development are concerned, it was initially argued that the bulk of such revenues should go to Denmark in compensation for previous capital transfers to Greenland, but nowadays the net revenue is equally divided, although the division of as much of the revenue as exceeds DKK 500 million per year is stipulated by legislation, following negotiations between the Home Rule Government and the Danish Government (Greenland Home Rule Authority, 1992:3-4).

While the difference in scale in relation to the above examples should be taken into account, in Colombia, to cite an example of indigenous collective rights, the 1991 Constitution stipulates that *resguardo* lands are the collective and non-alienable property of an indigenous community to be managed by a community council (*cabildo*) according to their own habits and customs. In practice, however, families often seem to have acquired rights to certain areas or plots, and such rights can be traded within the community. The exploitation of natural resources will be regulated by law, which also will stipulate the rights of territorial entities to these resources and the mode of repartition of revenues. Such funds are to be used for the promotion of mining, environmental protection and the financing of regional investment projects.

These few examples already indicate that rights to subsurface re-

sources are usually restricted. Surface rights may involve property rights, but these may be restricted, as in the case of Colombia, by the stipulation that land is inalienable collective property, segregated from the market. In still another case only usufruct rights are accorded on what are deemed to be public lands. The geographical extent of jurisdiction over lands is another contentious question. The claim to a territory for indigenous peoples often implies the claim to a contiguous geographical area. States may be inclined to recognize communal holdings, but these would then constitute a more or less fragmented patchwork rather than a contiguous territory. In Nicaragua, to take a notorious example, the Sandinista government was willing to recognize indigenous communities' ownership of their lands, but MISURASATA's claim to extensive jurisdictional powers over about one-third of the land surface of Nicaragua was unequivocally rejected (Burger, 1987:244).

Political institutions

A second question to be asked concerns the political features of self-government. Which political institutions are prescribed and which are left to the device of the indigenous population, what are their competencies, and what is actually made of them? How do they relate to the institutions of the national state, and what mechanisms for conflict regulation exist? How do they work? How are indigenous peoples, in turn, represented in national institutions?

In his study on treaties between states and indigenous populations, Alfonso Martínez (1992:17) notes that

> In general, one can distinguish between societies based on rank, led by elders or "big men", where corporate descent groups play a fundamental role, and societies based on stratification, characterized by marked differences in the attribution of power and wealth among the constituent groups, and often led by hereditary kings. Both are contrasted in turn with so-called egalitarian societies, where authority is related to merit and exercised by some *primus inter pares*, or where leadership is limited to specific functions (e.g. war chief or priest).

Furthermore, he draws attention to the, in comparison to "modern" societies, diffuse character of indigenous legal and political organization and the multifunctional character of specific actions, roles and institutions. The ranked societies, he observes, were widespread among the indigenous peoples who entered into treaty relations with European powers, whereas, by contrast, the *primus inter pares*-type societies suffered much pressure, to the point that their political existence and

independence were denied for the lack of governing structures identifiable in dominant terms. Nor were treaties concluded with them.

Such observations at least warn us against easy generalizations, a point that obviously is valid for any of the questions discussed in this paper. What Martínez makes clear in any case is that the articulation between widely different policies and the institutionalization of some sort of political pluralism is fraught with difficulties. Indigenous societies characterized by a great diffuseness and decentralization of what we would call "politics" may be vulnerable in the face of state or social violence, but at the same time they may be highly resilient in their resistance as they cannot be attained in some "core." More centralized and stratified societies may be able to field a greater military force, but their resistance may also crumble more rapidly. The degree to which political institutions have been preserved or transformed depends on historical and local circumstances. The present quest for accommodation through self-determination and self-government arrangements usually requires a considerable amount of political reorganization. We already noted Barth's (1969:35) observation that in a political confrontation the opposed parties tend to become structurally similar, and differentiated on a few clear criteria. Such processes are thus accompanied by the adoption of new organizational structures, e.g. the Shuar federation in Ecuador, and quite often by the rise of a new type of leadership competing with the traditional leaders (Chaumeil, 1990). Historically, the confrontation that "produced" indigenous peoples has been characterized by asymmetry and only lately is some rectification, contingent upon contemporary processes of ethnic reorganization, taking place, prompting states to propose a "new partnership."

It is beyond the scope of this paper to discuss the present transformations of the "modern state," but we should take note of what Franck (1992) has referred to as a global "afferent/efferent" phenomenon. On the one hand, we can observe a trend toward secessionism, while at the same time we witness the emergence and development of supranational systems. Both tendencies contribute to a redimensioning of what until now has been understood as state sovereignty. In this paper the distinction between direct and indirect consociation provides a framework for the exploration of some features and issues related to the proposed "new partnership."

In the case of indirect consociation the political institutions basically are those of the public administration of the state into which the indigenous people are incorporated, though they form a majority within the jurisdiction. The scope of self-government in such cases is determined by the administrative level, of the jurisdiction, ranging from the

municipal level, through the provincial level to federation-type arrangements.

The autonomy statute for the Atlantic coast regions in Nicaragua as implemented after 1987 can be considered an example of indirect consociation. Essentially, it provides for the creation of two administrative regions with a directly elected Regional Council. These Councils have administrative powers to participate in the national development plan for the region. Though the Nicaraguan constitution and the Autonomy Statute refer to the multi-ethnicity of the Nicaraguan people and indicate that the different ethnic groups should be represented in the regional administration, no specific mention is made of the ethnic groups. This contrasts with the demand for recognition as sole representative of the indigenous peoples forwarded by MISURASATA and its successor organization YATAMA, which was founded in 1987. This organization, which won a majority in one of the regional councils in the 1990 elections, purports to function according to traditional political lines, with a council of elders as directing instance. In fact, the extremely complex ethnic composition of the region will make it difficult to arrive at an arrangement that will satisfy Miskito claims for control over their traditional territories, without ignoring the needs of significant mestizo, Creole, and other communities (Hannum, 1993:382; Scherrer, 1993).

The *comarca* system in Panama provides a contrast in its recognition of an indigenous political structure which functions alongside the Panamanean state structure. The *comarca* of Kuna Yala (San Blas) can be considered a model for the Panamanean arrangement. In 1925 the Kuna revolted against the attempts at forced assimilation by the Panamanean state. A peace treaty was signed under USA supervision, recognizing the autonomy of the region without much specification. In the wake of their revolt, the Kuna undertook a comprehensive, planned reorganization of their social system under the leadership of their traditional authorities. The reform, which the Kuna referred to as "civilization" (Holloman, 1969:55), included a formalization of the political structure and the creation of new offices and was accompanied by a trend toward secularization. By 1945 the different Kuna factions united and a Kuna constitution specifying the governmental structure of local community congresses and creating a general Kuna Congress was adopted. From the Kuna point of view, this constitution specified the relation to the Republic of Panama. In 1953 a Panamanean law detailed the areas of Kuna autonomy and recognized the political structure as established in the 1945 Kuna constitution. This has provided the framework for a working relationship between the Kuna and the Panamanean

state. Some strains on the traditional organization should be noted, however. Secularization, or differentiation between religious and secular leadership at the expense of the former, has proceeded rapidly. This has been accompanied by occupational and educational differentiation among the Kuna. Such tendencies have resulted in splits between the older traditional authorities and younger men and an erosion of the authority of the congress system. Furthermore, new political channels have emerged, such as the political parties and the *juntas locales*, which were introduced in Panama in 1972 and may compete with the local community congresses. Such pressures may result in further adaptations of the Kuna political structure (Holloman, 1969; Howe, 1986; Prestán, 1991).

The Atlantic Coast and the Kuna can serve as two examples of self-government arrangements at a regional level. It is difficult to make broad generalizations about political arrangements. The Colombian *resguardos* are to function according to traditional rules, and the new constitution provides that their position will be equal to the municipality. The Greenland and Nunavut arrangements operate on a quite different scale.

Conflict mediation and some guarantees that forms of self-government are not simply overruled or eroded by higher level decision-making may constitute other important features of political arrangements. Conflict mediation and settlement can partly take place through ordinary courts or on the basis of administrative law. For conflicts that cannot be resolved through these mechanisms a special board may be set up, as for example in the case of Greenland where it consists of two government appointees, two members appointed by the Home Rule Authority, and three Supreme Court Judges. The arrangement thus seeks to combine political and legal elements.

Guarantees can be provided to a certain extent by including reference to a self-government system in the national constitution. While symbolically important, this usually does not say much about the actual scope and content of self-government. Further guarantees, protecting the indigenous people from majority decisions in national institutions, may be provided by reserving a number of seats in parliament for indigenous representatives. The weight of such seats can be increased by requiring a double majority for legislation affecting the indigenous people, implying that both the assembly as a whole and the indigenous delegates must in their majority vote in favor of such legislation. In Canada the Dene also have proposed that a Dene senate should function alongside the Legislative Assembly for a New Western Territory.

Economic and financial conditions

Indigenous peoples, it has been argued in this paper, do not simply defend their traditional ways of life. In the face of assimilationist policies they engage in processes of ethnic reorganization required to reconstruct and maintain borderlines. They claim the right to self-determination and to development on their own terms instead of being sacrificed to imposed forms of development. While the old way of life most often has been destructured beyond retrieval, the proposed self-determined development and self-government require resources to function. The question is, under what economic and financial conditions do such systems of self-government operate? How is access to economic and financial resources for the self-governing territories brought into effect?

As indigenous people have been relegated to a marginal position by the dominant society, tax revenues generated by their own administrative structure will be scant but may contribute to the running of their basic administrative structure. The Kuna, for example, generate money for local activities by levying a wharf use tax on foreign boats, airport taxes, a head tax, rents for the use of buildings by Panamanean government services, fines, income from community enterprises, and assistance from outside agencies. For the Kayapó in Brazil, the taxing of gold miners and timber companies operating in their territory and the processing of Brazil nuts have become important sources of revenue. In the USA tribal gaming operations have become an important and controversial source of revenue. Furthermore, indemnification for the use of lands or ceding aboriginal title or revenues from the exploitation of surface and subsurface resources may provide a basis for self-determined development projects. In most cases, however, local resources will not be sufficient or need to be developed to meet the requirements of self-determined development.

Resources provided by the state can complement locally generated revenues. In indirect consociation models, the allocation of resources is basically resolved through the redistribution of tax revenues within the state structure. Funds thus distributed may be to a greater or lesser degree at the discretion of the local administrations. In models approaching direct consociation, a similar system may be used, equating the indigenous jurisdiction to one of the state administrative levels. According to the 1991 Colombian constitution, the *resguardos* will be considered as municipalities, and in this condition they will be entitled to a share in the national revenue. On the other hand, indigenous territories may be exempt from some of the state taxes in order to

promote economic development, or special funds may be allocated to these territories.

Another problem is that the recognition of communitarian landholding among the indigenous people means that, by law, lands are segregated from the market. Thus, they cannot serve to obtain agricultural credit. While credit supply to smallholders already is quite complicated, this is an additional complication. Special financial schemes may be needed to further indigenous agricultural development.

One should be aware that for indigenous peoples, access to resources to sustain their own development is not a matter of social policy, as states tend to present it. In the USA, for example, the Federal Government is held responsible for protecting Indian lands and resources, providing social services and serving tribal autonomy as a result of the promises made in treaties in return for the cession of lands.

Jurisdiction and the administration of justice

A fourth question we shall touch upon here is the relation between indigenous legal systems and those of the national state. How are competencies divided, and what are the mechanisms of conflict regulation?

Compared with state systems, indigenous justice and social control often function in a diffuse way through different social institutions and have not been codified. The administration of justice, the classification of crime and regulations concerning land use seem to be among the more controversial issues (Stavenhagen, 1990). Orientations in the administration of justice often diverge. Whereas the state system is geared to punishment, indigenous systems are often oriented to conciliation and reestablishing harmony within the local community. Rather than retribution, they may be oriented toward mediation. On the other hand, indigenous systems of coping with crime or some types of crime may conflict with the conception of human rights, and this is one of the issues at stake in the theoretical discussion over the relation between collective rights and individual human rights. In this respect the classification of crimes and offenses is another area of divergence. Western legal systems do not recognize witchcraft as a problem and have no ways of coping with it. From this point of view, the "curing" or killing of a witch is murder. On the other hand, the ritual use of certain drugs may be brandished as a crime. Land-use systems and domestic and family relations may constitute other areas of friction. A most obvious case is the conflict between indigenous systems of land use and alloca-

tion and market-based systems rooted in private property. Also, a local land use system may, for example, entail the fragmentation of holdings below minima permitted by national agrarian legislation. Systems of inheritance, forms of adoption and marriage rules often escape the unitary model states seek to impose.

If states do not simply impose their unitary system and recognize indigenous systems of justice administration and social control, in view of their claim to ultimate authority and the monopoly over violence, they often reserve some areas of justice administration for themselves, as in the case of major crimes in the USA. Lesser crimes may be tried in tribal courts. A further question then is to whom and where the indigenous system should apply. Should it only apply to indigenous people and only within their territory or should it also apply to outsiders in the indigenous territory and to indigenous people outside the indigenous territory? If water rights are involved, do they also apply to upstream water outside the demarcated indigenous territory? Usually such questions are not easily settled and not once and for all. A juridical maze results with ambiguous, precarious and temporary balances between more or less codified, indigenous customs and state legislation.

CONCLUDING REMARKS

This paper started with a brief review of the emergence of an international movement of indigenous peoples. This is the outcome of processes of ethnic reorganization in the face of threats to livelihood and cultures. The context for such developments differs from one continent to another, and though we may speak of an international indigenous peoples' movement, we should be aware that the term covers an amalgam of groups with sometimes converging but also different concerns and often different political orientations.

The emergence of movements and the identification as indigenous peoples form a dynamic social process. In many cases, it is related to the appearance of new modes of organization and action sustained by a new type of leadership. Quite often, literate young people play an important role, and this may be a source of friction within the indigenous societies themselves which, in turn, impacts upon the subsequent dynamic of reorganization. Such processes account for both the persistence and transformation of ethnicity. Instead of viewing indigenous peoples' movements as simple defenders of "frozen" traditions, this alerts us to the contemporary character of the indigenous peoples' movement, its discourse and its claims.

In this paper, attention was focused on the demand for self-determination. The trajectory of this claim and the way it discredited the policies of assimilation and minority protection have been outlined as well as the controversies it gives rise to. States perceive the demand as a threat to their sovereignty and territorial integrity. Furthermore, the claim to a special status as prior occupants of the lands with specific inherent rights sits uneasily with the notion of citizenship and the conceptualization of human rights as they have evolved over the past centuries. Perhaps the framing of the debate in terms of international law and "peoples' rights" entails the risk of becoming diverted or derailed over semantic differences instead of addressing substantial issues. While the development of international standards regarding the rights and protection of indigenous peoples is important, more attention should be given to the way arrangements for self-determination and self-government could be worked out in practice.

Of course it is difficult to generalize with regard to practical arrangements in view of the diversity of situations. The broad definition of indigenous peoples covers groups widely diverging in size, mode of organization, livelihood, etc. A useful distinction can be made between two types of arrangements for increasing the opportunities to influence their own future. Arrangements tending toward indirect consociation avoid many controversial issues. The drawing of administrative borders in such a way that an indigenous people can effectively realize a degree of self-government skirts the problem of collective rights. It may work in situations where an indigenous people constitutes a clear majority within a certain area. On the other hand, it is based on the current structures of public government and thus requires the indigenous people to reduce its view of governance to be established. Arrangements tending toward a direct consociation model provide more specific safeguards and require a specification of collective rights as well as an operational definition of the people entitled to such rights. These cases entail an effective institutionalization of political pluralism and are therefore most contentious.

The final sections of this paper discussed some of the dimensions that, in conjunction, constitute the scope of effective self-government. The claim to a territory within which sovereign political and jurisdictional power can be exerted is basic and most controversial. Much depends on the scale of the territorial claim and the extent of sovereignty demanded. Using the distinction between directly and indirectly consociational arrangements, various outcomes of conflicts and negotiations have passed review as illustrative cases. While, in view of the variety of situations, the question of whether such negotiated arrange-

ments are satisfactory can only be assessed for each specific case, they reflect the tendency toward an expansion of the scope of forms of self-government and a substantiation of what the somewhat nebulous notion of "free association" may entail for a "new partnership" between indigenous peoples and states.

Notes

1 Its recommendations must pass through the Sub-Commission, then to the Commission on Human Rights, then to the Economic and Social Council (ECOSOC), then to the Third Committee, and finally to the General Assembly.

2 For an extensive discussion of definitional problems and operationalizations in variuos countries, see: Martinez Cobo, 1982.

3 In the video-film "Indian Self-Rule: a problem of history" (Selma Thomas/ KWSU-TV, 1985) Indian participants in a conference on the 1934 Indian Reorganization Act discuss the ambivalent attitudes of White Americans who wish Indians either to be "real Indians" or to assimilate, but can not acknowledge the existence of "modern Indians." It underscores the dynamism and variability of ethnic group boundaries and the strategic, emergent, situational and, to some extent, volitional features of ethnic identity. Identity thus involves a dialectic of (voluntary) identification and (forced) ascription.

4 ICIHI (1987:154) also reproduces ILO Recommendation 104 Concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries, which was addopted in conjunction with Convention 107.

5 By June 1992 Bolivia, Colombia, Mexico and Norway had ratified the convention.

6 This draft constitutes a considerable shift away from the initial draft, submitted in 1985, where controversial claims were avoided and which did not differ much from existing norms regarding minorities (Lerner, 1991:104). The right of "self-determination in accordance with international law" had made its first appearance in the 1991 draft of the Declaration which stated that by virtue of this right "they freely determine their relationship with the States in which they live in a spirit of co-existence with other citizens and freely pursue their economic, social and cultural and spiritual development in conditions of freedom and dignity" (IWGIA Yearbook, 1991:149-156; Lâm, 1992:619).

7 The formulations of the concept of "internal self-determination" are rather eliptic as they refer to "an internal level of national society" as well as to a distinct administrative structure and judicial system determined by and internal, or intrinsic, to a people or group (Martinez Cobo, 1983:41, 44; Willemsen Diaz, 1992:31-32).

8 In 1989 a Special Rapporteur, Mr. M. Alfonso Martinez, was appointed to make a "Study on treaties, agreements and other constructive arrangements between States and indigenous populations." His first progress report reinforces the principle that treaties and other agreements between indigenous nations and states are based in the equality of nations and remain binding as international agreements (E/CN.4/Sub.2/1992/32).

9 For indigenous people the development of citizenship has often been a rather brutal affair. In the USA, the 1887 General Allotment Act unilaterally bestowed US citizenship on the Indian population which also made it possible to parcel out their land (Morris, 1988/89). The introduction of individualized property rights, regarded as the foundation of civil freedom, also had detrimental impacts in Latin America from the post-independence period up to the dispossession of the Mapuche in Chili under the Pinochet dictatorship. As noted, in the Nordic countries the development of social citizenship in a welfare state framework, contributed to the mobilization of indigenous people.

10 The opposition between the first and the second type is perhaps most dramatically illustrated in the case of the Nicaraguan Atlantic coast where it constituted a major issue in the conflict. The Autonomy Statute that was accepted in 1987 allows each autonomous region to elect a regional assembly, leaving the ethnic character of the assemblies open. This elected assembly provision clashed with the claim to an ethnic territory and MISURASATA's demand that it be the sole representative of all *costeños* (Diskin, 1991:166; Ortiz, 1987:52).

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LIA ZANOTTA MACHADO

INDIGENOUS COMMUNITARIANISM AS A CRITIQUE OF MODERNITY AND ITS JURIDICAL IMPLICATIONS

The novelty of the indigenous movements since the 1970s is that they went beyond their local sphere of action to initiate wider articulations and constitute regional and global networks. In the course of a series of congresses, particularly in the Americas, the Arctic and the Southern Pacific, their multifarious local demands converged around argumentations that became generalized and consensual.

Constituting themselves at this global level, the indigenous struggles for the "right to land" came to invoke the "right to cultural difference" and the "right to autonomy." The sphere of international law was chosen as a point of reference and forum for debate. In 1970, the UN Subcommission for the Prevention of Discrimination and the Protection of Minorities commanded a study on the discrimination of indigenous people. In 1977, the American Indian Movement was accorded consultative status in the Economic and Social Council of the United Nations (ECOSOC). Non-governmental organizations arranged conferences on the indigenous issue in Geneva in 1977 and 1981 and in 1982 the Working Group on Indigenous Populations was created, which rapidly became a platform for the international indigenous peoples' movement.

The establishment of this new international forum for debate under the wings of the United Nations created the conditions for the emergence of new interlocutors. Until that time, indigenous movements had been confined to dialogue with and bargaining over the decisions of each of the states where indigenous peoples happened to be located. Now, international law became a legitimate reference in negotiations and served to consolidate and reinforce demands made on each of the states as well as to question the indigenist policies designed exclusively within the confines of these states.

The points of departure for the globalization of the indigenous movements were, on the one hand, the principle of self-determination of peoples and, on the other, the international declarations against all forms of discrimination. The principle of self-determination was originally conceived to stimulate the decolonization process of the post-war period, that is, as a principle according peoples the right to become independent and to constitute a nation-state. The principle of non-discrimination of "minorities" is rooted in the "individual right to equality." Thus, the "rights of the indigenous peoples" were being constructed at the boundary between and through superposition of the right to equality between "peoples/nations/states" and the right to equality for "individuals" and "minorities." This often contradictory and difficult path reflects the absence of indigenous peoples' rights in the consolidation and legitimation of the modern global order at the beginning and middle of this century.

The nation-states where indigenous peoples are located reacted to the new framework for indigenous demands, particularly by querying the employment of the terms "peoples" and "nationalities" and their possible consequences in terms of a right to constitute new nation-states or to become nations within a state. The majority of the indigenous movements responded that they do not aspire to total independence. They demand a certain measure of autonomy to be negotiated with each of the states. At the same time they criticize a defence of indigenous rights that limits itself to the struggle against discrimination of "minorities." It is insufficient, in their view, to be thought of as minorities that should not be discriminated against. This is too narrow a framework to deal with the indigenous problematique.

The liberal paradigm of defence of minority rights presupposes the existence of sovereign and individualized social actors within a given social system who should each respect the others and be respected by them. Indigenous peoples demand that they be respected as collectivities with an identity and a value system that differentiate them from the dominant social system. Therefore, the liberal paradigm is inadequate for the defence of indigenous rights.

They consider themselves as peoples having the right to an "autonomous way of living" and a "territory." Throughout the 1970s, 1980s and 1990s, these impasses and paradoxes informed the localized confrontations and political negotiations between states and indigenous peoples and prompted the development of politico-legal constructs of *collective rights* revolving around what we might call *communitarian rights*.

Universal rights and rights to cultural diversity

The Subcommission for the Prevention of Discrimination and the Protection of Minorities is presently working on a Universal Declaration on Indigenous Rights. This Declaration, which eventually should be submitted for voting in the UN General Assembly, features the construct of "collective rights" of indigenous peoples. The notion of "collective rights" in association with a right to "cultural difference" (collectively, and not merely individually as in the Universal Declaration of Human Rights of 1948) cannot be viewed as a simple transposition of the usual concept of collective rights. The notion of collective rights commonly applied to associations or cooperatives presupposes a collectivity established by "contract" between individuals-citizens.

While the variety of original forms of social organization is great among indigenous peoples, a common feature of these models is that they can be characterized as "holistic." By "holistic" we understand those social systems that forge their identity through the notion of the "whole" over the "parts," a "whole" constituted as a combination of the "parts" through relations of reciprocity and hierarchy. This option clearly contrasts with the various "individualist" models of the modern nation-states discussed by Dumont (1985). An indigenous people does not conceive of itself as a society established through contracts among individuals. This constitutes a major challenge in envisioning new configurations for the relation between nation-states and forms of autonomy of indigenous peoples.

In various ways, indigenous identities (self-referred and ascribed) present a broad spectrum of possible arrangements and combinations between their original forms of social and economic organization and forms introduced as a result of contact and interethnic friction (see: Cardoso de Oliveira, 1979) and the indigenist policy tradition of the respective states. Additionally, processes of re-indianization and re-organization are taking place. Over the past decades, the indigenous movements have undeniably promoted a re-signification of the idea of "cultural tradition" (see: Machado, 1993). The political right to a "traditional cultural identity" inscribes itself in modernity but at the same time modifies the existing conceptions of "tradition" and "modernity." It refers to the right of peoples to autonomously design their cultural and development profile, on the basis of a "collective political will" to delineate the intersections with and differences from the nation-states.

The pan-indigenist movement that emerged through a multinational network of indigenous and non-governmental organizations and that

communicates with UN agencies thus laid the basis for re-thinking the relationship between universalism and cultural diversity and between universal rights and rights to cultural diversity.

The presumably inevitable choice between specific and universal rights, viewed as logically excluding, is called into question for reflecting an impoverished view of the complexity of their relationship. It seems much more fruitful to examine the possibilities for different combinations between universal individual rights and rights to cultural specificity. This question seems to indicate the possible political horizons for elaborating human rights in a social order characterized by increasing globalization and inequality. The concrete and political conjunction of the relations and tensions between universal rights and rights to cultural diversity reveals its multiple dimensions and requires reconsideration of the facile solution of a simple choice between them as two exclusive options. The most promising perspective is to explore combinations that make it possible to respect both types of rights, though this certainly constitutes a major challenge in the field of international human rights.

The definition of collective rights is still a matter of debate, among states as among indigenous peoples. For the moment, a broad variety of definitions has been put forward. Without doubt we are confronting a new problematique. What is the new relation between states and indigenous peoples to be like? What new configurations are arising among indigenous peoples? How is their leadership constituted in this new interaction? How, in what contexts and on what levels will the relations between customary law and positive state law be defined, or between collective and individual rights?

Is there no risk that customary law will change its character when recognized by the state or that it will be modified through a process of "codification"? Would it not be preferable to simply recognize indigenous political leadership without regulating anything where customary law is concerned? But then, do we not run the risk that the nature of "political leadership" changes when it is "recognized" and establishes a relation with the nation-state? If the definition of political leadership is not inscribed in a framework of customary law, is there not the risk that leaderships will emerge as a mere outcome of a game of power and manipulation resulting from the relations of contact between indigenous peoples and the social forces of the encompassing society; that they will be "produced"?

Those are some questions I will discuss against the background of the Latin-American experience, analysing and contrasting the tendentially different perspectives proposed by the Andean indigenous move-

ments (in this text I shall refer to the Bolivian and Ecuadorian cases) and their Brazilian counterparts.

Political and juridical implications of the "collective rights" of indigenous peoples in the Latin American context

On the Latin-American continent, the indigenist policies of the independent countries during the post-war period were either based on a policy of creating "reserves" or "resguardos" or on the appropriation and subordination of the political arrangements of "communities." These policies were designed in a generally strongly discriminatory environment in the name of and aimed at generic integration.

The "reserves"-policy reflected a protectionist and separatist view which, considering the radical difference of the "silvicolas," invoked their "exteriority." At the same time it relied on an integrationist and authoritarian-developmentist approach to the contacted communities coupled to an understanding of assimilation in terms of "individual emancipation." This approach was and still is the predominant one in independent countries with a small indigenous population which differs from the peasantry (Brazil, Venezuela).

In countries with a dense and predominantly peasant indigenous population (the Andean countries and Meso-America), indigenist policies aimed at the subordination of the indigenous communities through an appropriation of their political forms, whether original or stemming from colonial times. In these countries the indigenous populations participating in the popular movements of the 1950s and 1960s were most often regarded, and referred to themselves, as "peasants." "Resguardos" also exist in the Andean countries, but then especially for the indigenous communities of lowland forest areas.

While "pan-indianism" could advance a generic concept of "collective rights" invoking the autonomy of peoples, the concrete historical situations of relations between states and peoples are diverse and therefore produce distinctive understandings of the collective right to autonomy.

The North American indigenous movements tend to equate self-determination with sovereignty, taking the history of "treaties" between the U.S.A. and the indigenous peoples as a framework of reference.

The Ecuadorian and Bolivian indigenous movements, by contrast, propose "self-government" within the structures of the existing states which would have to become "multiethnic and plurinational states" (see: Iturralde, 1987; 1989).

The Brazilian indigenous movements regard themselves as representatives of indigenous nations involved in political negotiation with the Brazilian state. At the juridical level, during the elaboration of the 1988 constitution, they advanced the following requirements as essential for their autonomy: recognition of full citizenship, recognition of territorial rights and exclusive usufruct right of the soil and subsoil, demarcation of lands and respect for their social and cultural organization. This involves an understanding that collective rights can be assured within the encompassing Brazilian state.

From a political perspective, a large part of the Latin-American debate over indigenous issues takes the respective nation-states as the primary framework of reference. Various local actors are involved: indigenous movements, the community of anthropologists, indigenists and non-governmental organizations. Circulation of ideas between different countries takes place tacitly, only to become more explicit with reference to specificities. Ideas on which there is a consensus and common themes are thus consolidated, whereas differences are generally perceived as particularities. This, however, may stand in the way of a real debate.

The questions thrown up by the different understandings of the possible political and legal implications of indigenous peoples' collective rights in the various countries invite further debate. I will follow two tracks: outline the importance of the national framework of reference that informs the different proposals, and underscore the importance of rethinking these proposals against the background of a comparison of situations.

In Bolivia, about 70% of the population is considered indigenous (according to estimates of the Interamerican Indigenist Institute for 1988). Some 3,000,000 are peasants who live in communities, whether these are original communities, communities reconstituted from former haciendas, or newly constituted communities. In 1990, the indigenous and peasant movements drew up two legislative proposals that reflect different perceptions and different views on the formalization of collective rights, particularly where communal property of land and political organization are concerned (see: Urioste, 1990; Untoja, Yampara & Apaza, 1990).

The project forwarded in 1990 by the Confederación Sindical Unica de los Trabajadores Campesinos proposes legal recognition of traditional communitarian forms and makes it possible to design new communitarian forms according to writen norms, both forms including the juridically recognized right to communal property. Unused lands would also return to communal property.

The Movimiento Katarista de Liberación, which pretends to represent the Aymara, Quechua and Warami nations, proposes the recognition of the *ayllus* and the communities as forms of landholding and political organization, distinguishing three categories: the original, the reconstituted and the new. Traditional authority would not be restricted to the community level. Authorities that emerge from the *ayllus* should constitute the provincial and departmental authority of the territorial community and organize themselves in confederations. A Council of the Indigenous Nations, *ayllu*-communities, should be recognized by the Bolivian state, which thus would accord a right to re-territorialization and "ethno-development."

The Bolivian debate thus revolves around the legal and juridical forms of communal landholding and the legal and political format for the alternative model of political organization: isolated communities versus articulation and centralization.

In Ecuador, the central issues in the debate on indigenous collective rights are communal landholding (the demand that conflicts over land and pending lawsuits be resolved, recognition and regularization of landholding), the recognition of "communal self-government", and the recognition by Ecuadorian legislation of "customary law" (see: Confederación de Nacionalidades Indígenas del Ecuador, CONAIE, 1990; Conférencia Continental de los 500 años de Resistencia Indígena, 1990).

The recognition of customary law in the Ecuadorian legislation seems to be an alternative response to the problematique which reveals itself in the use and understanding of the notion of "nationalities," particularly in the Andean countries where the Quechua and Aymara nations are demographically important. The idea of "nations," while not sovereign, can be understood in the sense of territory thought of as organized by the unity of each ethnic group and articulating various communities (many innovations are possible), or as "communities" in the sense that each ethnic group congregates around a territorial space.

There is, particularly in Bolivia, an ongoing debate over the political and territorial scope of indigenous rights. Should they be only of communal scope, or should they be inserted in a hierarchical ordering which is simultaneously communal, provincial and departmental? Establishing autonomous forms of power is the central issue, and the debate involves the question of whether these forms of power should be based on the traditions of *Tahuantinsuyo* or derive from the autonomous power arrangements of the different communities.

In Ecuador, consensus tends to prefer the communal level, but the need to regulate customary law is emphasized. The perspective seems to

be one of granting extensive equal status to all indigenous communities by way of a juridical regulation of customary norms.

The importance of formalizing customary law for an indigenous movement that demands "local self-government" for the communities is rooted in the similarity of the practice of customary rights "introduced and adapted" by the institution of the "cabildos." These communitarian political organizations are the outcome of Spanish colonial rule and the subsequent politics of the independent states in relation to the indigenous peoples and have been shaped through a process of imposition and resistance. The *formalization of customary law* is a way to guarantee that *the existing system of positive law will not be applied* to the indigenous population, since in a society where relations of power are highly unequal, it is the application of the law (rather than the law as such) that "ends up in a denial of the rights of the indigenous peoples."

In these countries, customary law already operates in a subordinated way in some situations, and its position is therefore precarious. The indigenous movements presently demand its legitimation, and we could say that they demand its introduction as an alternative right whose autonomy should be recognized by the states. Among the networks of organizations and persons who defend indigenous rights from an Andean and Meso-American perspective, attention should be drawn to the work of Stavenhagen, who clearly advocates the formalization of customary law as a crucial step for founding a possible autonomy of the indigenous peoples in their legal and administrative ritual procedures (Stavenhagen, 1990).

In other countries, such as Brazil, the framework for the debate over collective rights is rather different, and the questions regarding models of communitarian organization and their broader articulations or over the recognition and codification of customary law are put differently. It is thus important to differentiate clearly between the Andean context of state-indigenous community interaction in Ecuador and Bolivia and the context of interaction between indigenous communities and the encompassing state and society in Brazil.

I would characterize the context of "ethnic interaction" in the two countries discussed until now as "intensive diffuse exposure" of the indigenous peoples in the context of the states. Though they have partially maintained autonomous forms of communitarian organization, they are directly submitted to the "rules of the market" and are considered subordinated segments of civil society.

In the case of Brazil I would characterize the context of "ethnic interaction" in terms of "intensive selective exposure" which is related

to a protectionist policy of creation of "reserves." It combines a protectionist objective with integrationist-developmentist aims of contact. A permanent tension exists between the idea of protection, linked to the defence and preservation of traditional forms of organization, and the integrationist-developmentist view. While creating Indian posts in highly diverse situations and through different agents of contact, the Fundação Nacional do Indio (FUNAI) always practised a very contradictory policy.

While this policy preserved the communities from a direct integration into the market economy and from diffuse exposure to Brazilian society, it created the conditions for directed intervention and the exclusionary channeling of contacts to some very specific segments of society. The Brazilian indigenous communities are highly exposed to some privileged actors: FUNAI employees, military personnel of the frontier areas, employees of hydroelectric plants, peasants searching for land, large landowners, gold-diggers and employees of logging and mining companies.

The expansion of the economic frontier (the northern and central western regions) and the policy concern with the defence of national frontiers since the 1970s intensified contacts with areas where indigenous communities still lived relatively isolated and intact. The impact of these military, institutional and economic contacts in the wake of recent expansion brought indigenous communities into direct confrontation with the economic interests of national and multinational enterprises as well as with the developmentalist interests of the Brazilian state (Pacheco de Oliveira, 1990; Coelho dos Santos, 1992).

It is against this background that for the first time an indigenous leadership at the national level appeared. In 1974, an Assembly of the Indigenous Peoples of Brazil was created at a meeting in Diamantina. Regional and national encounters started to take place regularly and in 1979 a Union of Indigenous Nations was created, to which some 180 tribes have adhered. From the outset, these forms of indigenous organization have been connected to other networks defending the indigenous cause, such as the Indigenist Missionary Council (CIMI), the Brazilian Anthropological Association (ABA) and non-governmental organizations concerned with indigenous rights (Cardoso de Oliveira, 1988; Coelho dos Santos, 1989). These networks played a key role in the defence and definition of indigenous rights during the elaboration of the 1988 national constitution (Coelho dos Santos, 1989; Carneiro da Cunha, 1987; 1989).

The new configuration of indigenous collective rights introduced in the 1988 constitution has two important points:

a)the collective right to cultural difference which is to be sustained by the right of use of "traditionally occupied lands," which the state is obliged to demarcate;

b)"communitarian rights," that is the introduction of the concepts of "indigenous organization" and "indigenous community" as corporate bodies which, in some cases, must be "heard" obligatorily. This thus allows for a certain measure of "juridical autonomy." The idea of autonomy is to be understood in connection with the notions of "tutelage" and "protection" by the state, which have been maintained in the new constitution.

As to the first point, earlier federal constitutions contained much more imprecise and vague references to what would constitute exclusively indigenous lands: "lands where forest-dwellers are localized" (1946), "lands inhabited" by the indigenous (1967 and 1969). In 1988, the terms were more precise: "lands traditionally occupied in a permanent way (...) according to their habits, customs and traditions." The importance of this figure of law is that it constitutes a juridical innovation that provides an operational legal basis for decisions on demarcation and permits the defence of indigenous interests in the face of "white" society's demands for private property. The notion of "traditional occupation according to indigenous habits" makes it possible to distinguish between the forms of settlement of "white society" and the styles and requirements of indigenous forms of communitarian occupation. This involves the idea of customary rights of land use rooted in cultural diversity and deriving from an articulation between original and immemorial rights and customary rights.

Though only incipiently, the legal figure of "traditional occupation of lands" gains legitimacy and jurisprudential support in cases that do not directly involve indigenous populations (though these alone maintain the specificity of linking the idea of traditional with that of immemorial use). Thus, we find the attribution of a constitutional right to the lands of the old quilombos to the black communities that occupy them and various cases of demands for land invoking traditional communitarian land use by groups of descendents from Indians, some peasant communities and some black communities (see: Seminário sobre Perícia Antropológica em Processos Judiciais, ABA e Comissão Pró-Indio, 1991).

As to the second point, we should examine the articulation between "special tutelage" and "juridical autonomy."

"Special tutelage" can be the foundation for a right of protection of indigenous peoples and land in the context of the unequal distribution of power between them and segments of "white Brazilian society." Special

tutelage thus would serve as a guarantee for indigenous communitarian specificities. In relation to individual rights (the criminal and civil spheres), it serves to avoid indiscriminate application of existing legal codes to the indigenous and obliges consideration of their specificity. At the same time it does not impede full individual citizenship.

If we think of the tutorial (or tutelar) status as providing security for the possibility for an autonomous indigenous way of life, we can understand why indigenous movements and their support networks did not advance proposals concerning the formalization of customary law or the forms of political leadership that can legitimately represent the community in relation to the state. This constitutes a major difference with the Andean indigenous movements and their support networks. I will return to this point later.

What was sought during the elaboration of the Brazilian constitution was a partial introduction of the legal figure of autonomy of the indigenous communities and organizations (as pointed out above), while maintaining a right to protection and special tutelage. The Public Prosecutor was charged with the legal protection of indigenous interests, and the federal judges were attributed the legal capacity to decide in disputes over indigenous rights and interests. The objective was to undercut the hitherto exclusive and abusive dependence of the indigenous populations on the FUNAI, which decided and executed indigenist policies while at the same time being their exclusive protector and defence, thus leaving the indigenous without legal refuge from the FUNAI.

In cases where indigenous communities face situations of exploitation of natural resources on indigenous lands (hydric resources, mining, construction of dams, roads or railways), the constitution stipulates that the indigenous community "be heard." It does not, however, specify what effects or consequences this might have, and who or what might constitute an indigenous leadership capable of representing the "indigenous community."

The Brazilian networks for the defence of indigenous rights view the *principle of non-interference* as basic. Therefore, any prescription or formal rule concerning the composition of the indigenous leadership in negotiations, or which is to be consulted in relations with private business interests or the developmentalist interests of the state, is already considered an interference in the indigenous community.

Throughout the history of defence of the indigenous cause, the principle of non-interference has been equated with the principle of *autonomy*, or at least been thought of as intimately related. This history was one of the defence of the idea of the *tutelary status* in articulation

with the idea of autonomy and preservation of cultural traditions. Criticism of Indian affairs offices was not directed against their tutelary role, but against their interventionist features. In 1979, Cardoso de Oliveira argued that the *tutelary status* should be applied in a way that *includes the notion of autonomy*. This means that FUNAI must consult indigenous peoples concerning economic activities and not interfere in their forms of organization.

The question arises, however, whether this adherence to the ideas of non-intervention and autonomy does not work against the interests of the indigenous community as a whole as it precludes thinking about the legitimate representation of the indigenous community, or about legitimate customary forms of access to leadership positions.

The intense penetration by business interests into indigenous territories forced the communities into a complex power game in which the most important information is usually beyond reach of the community as a whole. Only restricted information is given by representatives of enterprises and government officials, and then in ways that serve to strengthen, destabilize or antagonize certain leaders or promote the emergence of new leaders. The anthropologist Baines has recently given an account of how this happened among the Waimiri-Atroari (Baines, 1993).

The *lack of clarity in the definition of models of leadership for the community* and the absence of discussion on this matter against the backdrop of internal and external relations of the indigenous community seem to affect the desirable levels of autonomy of the indigenous community.

In the Andean context, the indigenous movements and their leaders view the formalization of customary law and customary forms of political leadership as an underpinning of their autonomy and relative independence. They understand this political stance as an outcome of a long history of political resistance which goes back to colonial times. In Brazil, by contrast, despite a long and important history of social and political resistance, with each newly contacted community there seems to be a sort of return to the moment of first contact, from the viewpoint of the community concerned at least. The tradition of resistance has not been spread to the newly contacted community which tends to regard the experience of contact as a unique event. It seems, however, that among communities with a longer experience of contact, the national and international character of indigenous movements and the circulation of ideas start to have an effect on local issues.

Contrasting *Andean thought* with *Brazilian thought* may reveal the underlying assumptions, scope and limitations of the Brazilian ap-

proach and the risks of not defining what leadership is or how a representative leadership for the community is constituted. The Brazilian perspective, on the other hand, may expose some of the assumptions, scope and limitations of the Andean approach, as it uncovers the risk of a rigid and frozen interpretation of the system of customary authority and of customary juridical and administrative procedure. The arguments and the dialogue between Carneiro da Cunha, Stavenhagen and Iturralde (see: Stavenhagen, 1990) reflect and are informed by these different national and regional contexts. At the same time, this seems to initiate a debate over the different forms and arrangements for the exercise of collective rights in relatively autonomous ways.

For the indigenous movements and their support networks, such a debate is crucial for a better understanding of the nature and foundation of collective indigenous rights and of different arrangements for autonomy.

Modernity and indigenous rights

For a fruitful debate on the forms of and arrangements for autonomy of indigenous peoples, it is fundamental to stress the novelty and the importance of the idea of collective indigenous rights in the context of universal rights and modernity.

On an international level, the immediate post-war years saw a concordance among nations over the issues of decolonization and the right to independence of peoples ("self-determination") and over the principle of individual human rights to be applied in all states and nations. The UN General Assembly adopted the Universal Declaration of Human Rights.

In the course of the 1970s, articulations started that, despite all foreseeable obstacles, gave rise to a worldwide indigenous movement. During these decades we see a re-signification of "traditional indigenous cultures" and the forging of indigenous identities that conceive of themselves as "nations, nationalities and peoples" who with their demand for collective and communitarian rights challenge the established international and national legitimacy of the dichotomy between the rights of states and individual rights (see: Machado, 1993). The new international debate thus takes place in an environment where individual rights are considered universal, while cultural difference tends to be mistaken for particular rights that clash with the universalist principle.

There certainly is no reason for assuming that all indigenous peoples share the same "traditional model." Quite to the contrary. However,

despite the different and varied processes of change they underwent and the diversity of forms of social organization, and though some peoples are viewed as closer to their "original culture" and others as more "modern", the "indigenous populations" have continued to understand themselves as having an identity of their own and a "different" type of organization, always understanding this order in terms of "comunitas."

The novelty of the problematique of cultural diversity as a collective right in modern political thought invites a return to Rousseau's view of universality as rooted in cultural diversity rather than as its negation. Rousseau's universalism presupposes diversity and takes it as a starting point. Of course, we are thinking of the Rousseau who authored the "Discourse on the Origin of inequalities," more popular among anthropologists than among political scientists and less important than "The Social Contract" as a source of inspiration for the "Declaration of Human and Citizen's Rights" of the 1793 French Republic.

In the "Discourse on the Origin of Inequality," Rousseau constructed the notion of universality of natural human rights by contrasting modern societies with what were then called "primitive" or "savage" societies. This contrast helped him refute the evolutionist view that the origin of inequality could be attributed to so-called inferior or anterior forms of social organization, since many modern societies presented high levels of inequality. Therefore, if there is no primal reason for human inequality, inequality must derive from the social order rather than being a natural human attribute. The construction of the contrast between "natural man" and "social order" thus serves to found an abstract universality indissociably linked to the idea of cultural and social diversity. Much later, Lévi Strauss (1960) would take the "Discourse on the Origin of Inequality" as a source of inspiration for founding an anthropology that sought to be universalist and at the same time respect cultural relativism.

"The Social Contract" is Rousseau's work which became a classic of political thought and political science. It is a political treaty and a source of inspiration for the "Declaration of Human and Citizen's Rights" of 1789 and 1793. On the one hand, the Social Contract is coherent with the "Discourse on the Origin of Inequality" in understanding inequality as deriving from the social order, which therefore may be changed to attain genuine social equality. On the other hand, we observe a shift to a more restricted space: the territorial and political space of the emerging nation-state. While the principle of equality was rooted in natural (and therefore universal) human rights, the national context immediately produces an identification of human rights with the rights of the citizens of the nation-state. The universality of human

rights is particularized in a social order. The "contract" is one between individuals-citizens and a Government. The notion of "people" is that of individuals who by contract constitute themselves as Government and Sovereign People. Though other peoples and individuals may adhere to this idea and make their own contract, the idea of Contract assumes a unique societal model, based on the relation between the state and individuals-citizens.

In the unequal history of the nation-states and through the processes of expansion, colonization and decolonization of the 18th, 19th and 20th centuries, the universal principles became ingrained in the model of the hegemonic central nation-states, while the notion of the universal individual was identified with the model of its citizens. The cultural diversity of other models of social organization thus appears as contrary to, anterior to or as diverting from universal rights. The idea of universality appears as opposed to cultural diversity.

In the present world, now that the opposition between a socialist and a capitalist bloc has disappeared, with its increasing globalization of the economy and its worldwide employment crisis, we witness an intense process of ethnic and regionalist revendication, a search for forms of partial autonomy and conflicts over the rise of new national states. In this context, cultural and ethnic identities are politicized as ethnic conflicts and discrimination intensify. Fanaticism inspires religious and anti-religious movements. The positive effects of the universalism as it is being outlined by the indigenous movements tend to be overshadowed by these new conflicts.

The question of the relationship between cultural diversity and universality becomes ever more urgent for the conceptualization of a global order.

In a world context where mutual "visibility" (see: Balibar, 1993) of "the other" and of "alterities" reaches a new intensity, where all peoples partake in "contemporaneity" (see: Augé, 1994), where "localism" and "globalism" interpenetrate (see: Marcus, 1990), where "time and space are compressed" by the development of the means of transport and communication (see: Harvey, 1989), where different cultures meet, confront each other and articulate on both the local and the global level, Rousseau's view can be adopted as a principle. Its romantic suppositions, however, need to be amended, as they reflect the enormous temporal and spatial distances that separated the indigenous and European ways of life at that time. The indigenous were viewed as distant "others", and only the exterior of their "alterity" and "difference" was appreciated.

The present phase of modernity requires a critique of classical modernity which obfuscated the indissoluble link between diversity and

universalism and believed in a unique type of universalism that could be extended through a "civilizing mission." It is a particularistic and provincial "universalism" inclined to discriminate against and annihilate cultural difference. The construction of individual (not individualistic) rights for humanity necessitates the adoption of a universalism that is rooted in cultural diversity.

The confrontation and articulation of "alterities" increasingly takes place on a political plane which, though in a still very unequal way, have made possible the emergence of a variety of political voices, constituting a poliphony, a certain fragmentation, but also a globalization and a centrifugal tendency in which "alterities" are not merely "good to think with" but have become political actors. "Cultural traditions" are re-signified within modernity and at the same time contribute to a critique and re-signification of classical modernity.

For the states, the conjunction or simultaneous conceptualization of universal rights and rights to cultural diversity must have implications for the definition of citizenship as the right of a collectivity in terms of "comunitas" rather than "societas," that is, a collectivity that does not identify itself nor is organized as a contract between individuals (of the individualist type as described by Dumont). It also cannot fail to have a bearing on the legal and political (or even only political) definition of this collectivity by the indigenous communities and peoples.

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STATE CRAFT, NATIONS AND SHARING GOVERNMENTAL POWER

Exercising governmental power within the framework of a state has evolved since the 1648 Peace of Westphalia into a generally accepted system predicated on the principles of legal universality and of individual rights. While the actual arrangements for implementing these principles in each state vary, the principles remain defining features of the state. Despite the rationalist's certainty that human freedom, liberty and equality are best served by the universalist/individualist formulation, ample historical and contemporary evidence exists to suggest such certainty is not well founded--indeed such certainty may prevent realization of evolving principles that may better serve human societies.

In this essay I will discuss developing arrangements for indigenous nations to govern themselves and examine the new political realities flowing from the collapse of numerous internationally recognized states. These new conditions demand a new formulation for sharing governmental power. The universalist state clashes with persistent human requirements for cultural diversity, and increasingly it is apparent that the state is in violent conflict with biological diversity as well. The movement for self-determination of "indigenous peoples" reflects the long struggle between those who seek the permanent establishment of the state and the original nations on top of which the state was established. Leaders of the original nations call for respect of diverse cultural realities and international recognition of collective rights, while the leaders of states demand unswerving loyalty to singular state cultures and individual rights. Given the more than 6000 culturally distinct nations and the 192 recognized states, it would seem there is no contest. The sheer number of nations would seem to outweigh the states. Numbers help create illusions, however. The state systems, indeed each state, developed through the power of gun powder. This was true in 1648 and during the American and French revolutions of the late 18th

century. To a large extent, it remains true that whomever controls the greatest fire power in weapons, controls the state. Too often, it is through gun powder that power in the state is held by a ruling class drawn from immigrant populations or by one nation ruling many other nations without their consent. A result, nations find themselves engaged in violent conflicts with states, defensive wars, that number as many as 82 conflicts (1993) world-wide.

Despite this rather dark picture, there are some hopeful indicators suggesting the possibility of new and constructive alternatives. Through the efforts of scores of talented and far-sighted individuals, the United Nations has provided a forum for discussions of the situation of the world's original nations since 1982 through the United Nations Working Group on Indigenous Populations. This forum has given impetus to many more meetings internationally and inside existing states between nations' and states' representatives. They have engaged in discussions about changing state constitutions, shared or autonomous control over educational systems, health systems, policing of national territories, and regulation of natural resources. Such discussions have occurred quietly, without much fanfare in both Europe and North America and to a lesser extent elsewhere in the world.

In Europe where there are 130 nations inside the boundaries of 35 states these discussions have been taking place within the framework of the European Community (EC). Two forces are converging in Europe to create a "Europe of Nations and Regions."[1] The nations and regions of Europe seeking local control and less centralized methods of solving local problems constitute one major force. The other force is the EC proponents of a Federal Europe who regard the states and their claim to sovereignty as an obstacle to achieving their goal. These not insignificant forces are joined in a common venture by the *principle of subsidiarity* where decision-making is placed at the "scale most appropriate to the problem."[2] The political movement in Europe extends to Germany, Belgium, Luxembourg, Spain, Italy, France, Denmark, the Netherlands, Portugal, United Kingdom, Ireland and Greece.[3] New and constructive arrangements in each of these states often place a nation or region in the position of primary decision-maker on increasingly wider issues including education, public works, natural resource management, banking and trade. If this trend continues, states in Europe will soon be regarded as "multi-national organizations" representing remnants of earlier stages of political development. Indeed, given the inability of states' governments to deal with such large international problems as "international crime syndicates," environmental disasters–natural (like hurricanes killing more than 100,000 people in the Chitta-

gong region of Bangladesh) and human created (like the Chernobyl nuclear explosion that crossed states' borders), and "regional conflicts," as well as "local problems" of poverty and famine it is difficult to conceive of a long-term future role for the state. The nations and regions of Europe seem to point the way for one approach to meeting the needs of nations as well as those who see the need for large umbrella structures which extend over very large pieces of geography. The *principle of subsidiarity* may be an appropriate and workable solution to the conflict between nations and states, and, thus provide an important model for the exercise of governmental power by the world's original nations.

In the United States of America, another process is underway where America's original nations have begun to engage the state to build a framework for government to government relations. Beginning in 1964, Indian nations started to seeking direct control over their social, economic and political affairs. Much of this developing movement started with tribal councils promulgating their own laws for land use within the boundaries of reservations. Since there were relatively few non-tribal members living inside the boundaries of reservations directly affected by these new laws, there was initially little challenge. When these laws began to affect non-tribal members, resistance began to grow. Tribal governments claimed their "inherent right to govern" inside the reservation boundaries and sought to demonstrate U.S. agreement to these claims by pointing to a treaty with the United States.

While many Indian nations had during the 19th century concluded more than 400 treaties with the United States (concerning peacemaking arrangements and cession of hostilities, land cessions, and ingress/egress through Indian territories among other things) no arrangements had been established to join Indian governments and the U.S. government. Despite occupying neighbouring territories and the U.S. government claiming dominion over all the lands from the Atlantic to the Pacific oceans, no political power-sharing arrangements took form. The U.S. and Indian tribes saw themselves as politically separate entities. On the basis of this experience, Indian nation leaders like Joe Gary (Spokane/Cour d'Alene Tribes), Earl Old Person (Blackfeet), Mel Tonasket (Colville Confederated Tribes) and Joe DeLaCruz (Quinault) each in their turn called on the United States to recognize the right of Indian nations to exercise the right of self-determination. Each called on the United States to recognized the right of each Indian nation to govern itself.

President Lyndon B. Johnson was the first U.S. president to endorse the principle of self-determination being extended to Indian nations.[4] On March 6, 1968, President Johnson established by Executive Order

the National Council on Indian Opportunity (NCIO)--a new U.S. governmental body established to facilitate Indian participation in U.S. government decision-making concerning Indian Policy. The new organ of government had all of its members appointed by the President of the United States. The Executive Order provided that the NCIO would have the Vice President of the U.S., Secretaries of the Departments of the Interior, Agriculture, Commerce, Health, Education and Welfare, Housing and Urban Development and the Director of the Office of Economic Opportunity. The Council was also to include six members chosen by the President of the United States from Indian nations. The Council did not become active until the election of the next administration when membership was increased to include the Attorney General and two more representatives of Indian Nations. In January of 1970, the Indian members of the Council announced their view of this new body: that it would pursue an ambitious agenda of new programs and new policy for Indian Country.[5] Indian leaders hailed the National Council on Indian Opportunity as a new and vital connection to the President and power to implement favourable U.S. policy toward Indian peoples. Many Indian people throughout Indian Country regarded NCIO as just another imposition of bureaucracy to further strangle Indian aspirations. While NCIO did eventually contribute several important studies on Indian Affairs and stimulated the development and issuance of a new U.S. policy on Indian Self-Determination, the agency actually had very little influence in the halls of the White House. The Council's organization contributed importantly to this lack of influence:

> The structure of the organization included four parts: the Vice President and his own personal staff; the Indian members; representatives of federal agencies; and the Council staff. Each organizational unit tended to function as a separate part, with the Council staff acting as a sort of liaison between the other three parts. During the Johnson years of NCIO the Indian members of the Council were selected and appointed on the basis of experience and their representation of Indian interests. During the Nixon years the Indian members were selected and appointed on the basis of their loyalty to the Nixon administration's goals and objectives.[6]

Though the NCIO started out with good intentions and with considerable vigor, within a few years it became an "insidious political instrument"[7] filled with internal dissension and derided by Indian leaders throughout Indian Country. The Council's Executive Director was a strong partisan of the Nixon Administration who viewed the NCIO as an instrument to advance the political interests of the Administration and not as an instrument of policy development on Indian Affairs.

Despite the ultimate failure of the National Council on Indian Opportunity, its early and quick start produced an important policy change that had long-term importance. The Council is widely credited with being the source and impetus for the Indian Self-Determination Policy issued by the White House. It was on July 8, 1970 that the "right of self-determination" was officially pronounced as U.S. government policy applying to Indian tribes by President Richard M. Nixon. Despite its rocky origins, the new policy began a new era in U.S./Indian nation relations, and so to began the search for a mechanism or mechanisms to facilitate Indian participation in the formulation of new policy and programs for Indian Country.

On October 24, 1974, in San Diego, California the National Congress of American Indians met in its 31st Annual Session and promulgated the *American Indian Declaration of Sovereignty* which became a signal sent by Indian nations to the United States government that they were prepared to reassume governing powers in accord with their *right of self-determination.* The Congress of the United States added its endorsement to the movement toward Indian self-determination by enacting the Indian Self-Determination and Education Assistance Act of 1975 (PL 93-638). Another joint Indian nation/U.S agency was established to review, consider and recommend new administrative and legislative initiatives to improve U.S. government policy toward Indian nations. The U.S. Congress established the American Indian Policy Review Commission in 1975 with a membership of 3 Senators, 3 Congressmen and 5 Indian representatives acting as individual advocates for the more than three hundred Indian tribes and communities. After two years of conducting research, public hearings and consultations with U.S. and Indian publics, the Commission issued more than 200 recommendations for changes in U.S. laws, regulations, policies and practices concerning civil and criminal jurisdiction on Indian reservations, economic and natural resource management, procedures for U.S. recognition of more than 100 Indian tribes not administratively recognized by U.S. government agencies, Indian religious freedom, health policy changes, education and organization of U.S. government agencies responsible for dealing with Indian Affairs. The Commission produced the most sweeping recommendations for changes in Indian Affairs policy ever produced by the United States government. Despite its important recommendations, the Commission was unable to directly respond to one of its key mandates: consider and make recommendations for alternative elective bodies for Indian people to participation in the federal policy formation process. The Commission took the recommendation of the task force assigned responsibility for this question:

> It is our opinion that because the legal or political status of tribes today, as discussed herein, is not settled, the tribal governments are reluctant to release what authority they now have or to permit it to be further undermined; that a voluntary intertribal affiliations method is growing; and there is doubt of the sincerity of the federal government to provide an indefinite status without termination. Tribes could assume that benefits would accrue if PL 93-580 studies result in Congress improving its record and allowing stronger application of self-determination and self-government...[8]

The Commission concluded with Indian leaders that more local control by Indian tribes was more desirable than establishing an elective body which represented each of the Indian nations in relations with the United States government. Despite this view, attempts were repeated in the U.S. government and in relation with individual state governors and Attorneys General from 1977 onward to form intergovernmental policy-making bodies. Where general policy advice was being sought, U.S. government officials and Indian government officials shared responsibility on an equal plane. However, when regulatory power vested in a governmental entity must be exercised, Indian government representation is little more than perfunctory. The Pacific Ocean Salmon Fishery Commission has representatives from the federal government, and state governments proportional to their responsibility. Indian nations have one representative thought their responsibility runs the full coastline from the Canadian to the Mexican borders with the United States. The National Indian Gaming Commission, established by the United States government to regulate gambling enterprises on Indian reservations, has three members. All three members, appointed by the President, are non-Indians. After some pressure from the Chairman of the U.S. Senate Committee on Indian Affairs on President Clinton consideration is now being given to appointing an attorney who is an Indian as Chairman of the Commission.[9]

As the illustrations above indicate, though there have been virtually no formal agreements or other constructive arrangements at the federal level of state government for permitting Indian nations to participate in the regulation of broad issues of public policy, there have been some attempts at establishing advisory bodies. Advisory positions in the federal government have been used to give guidance to U.S. officials who actually have the power to effect public policy.

Indeed, this pattern of involving Indian nations in the exercise of governmental power within the U.S. federal system has been repeated at the state level where governors or other officials of state government invite tribal officials to sit on *advisory boards*, to suggest policy to persons holding the power of state government.

While the advisory role Indian officials have played in the U.S. government and various state governments has give Indian officials extensive knowledge of the functioning of those governments virtually any participant or observer would readily agree that no governmental power sharing is actually occurring. Officials in the U.S. government clearly reserve the right to ignore Indian official advice, and one must admit this is the rule rather than the exception. The same is general true with domestic state governments. Recognizing this reality, Indian leaders began in the late 1970s to formulate a new approach to working with the U.S. government and neighbouring domestic state governments: negotiating a framework for the conduct of government to government relations.

Indian leaders began to recognize fully in the early 1980s that the United States government would not, and could not without a change in its Constitution, engage in power sharing arrangements with Indian nations. The only workable arrangement for conducting U. S. and Indian nation relations would be as the American Indian Policy Review Commission concluded: improve the self-determination and self-government capabilities of Indian nations. Toward this end, Indian nations (particularly in the northwest part of the United States) proposed that the United States government enter into discussions to form a *Tri-Party Inter-governmental Mechanism* organized on the principle of mutually recognized sovereign powers and government to government relations.[10] Indian government, domestic state government and federal government representatives were proposed as co-equal members responsible for resolving inter-governmental disputes. The *Tri-partite Intergovernmental Mechanism* was urged in recognition that Indian nations were not a part of the U.S. federal system[11] Only a few U.S. Senators[12] expressed any interest in the tribal proposal. Indeed, the proposal received no other serious attention from U.S. officials.

Despite the failure of U.S. government response, President Ronald Reagan did announce a new U.S./Indian Policy in 1983 declaring the United States government's commitment to conduct relations with Indian nations on a *government to government basis* and to promote *tribal self-government.*[13] By 1987, through the initiative of the Quinault, Lummi, Jamestown S'Klallam and Hoopa nations, the so-called Reagan *government-to-government* policy was being translated into new bi-lateral treaties between Indian nations and the United States. On the way to negotiating and concluding bi-lateral Self-Governance Compacts in 1990, Indian nations in the domestic state of Washington negotiated in 1989 a multi-lateral *Accord* with that state's governor to establish a government-to-government framework between tribal governments and the state government.[14] This

flurry of treaty-making with the federal government and mutual agreement with a domestic state created new conditions for intergovernmental relations between Indian nations, domestic states and the federal government.[15] Though no formal inter-governmental mechanism has been formed, the legal framework for inter-governmental relations has been formed between some Indian nations, the federal government and neighbouring domestic states.

Instead of sharing governmental powers, Indian nations, the federal government and domestic states have moved to exercise their separate and inherent governmental powers along side each other while attempting to discover areas of dispute that can be resolved by negotiations. In much the same way, though by way of a different process, Indian nations in the United States have begun to move along a path similar to the nations and regions in Europe. Instead of sharing power, each is exercising governmental authority appropriate to its scale and proximity to the problem: another form of expressing the *principle of subsidiarity.* Nations are maintaining their safe distance from control by a central authority while not threatening the breakup of the state. They exercise powers of government which if conflicting with the interests of the state can be resolved within a framework of mutuality. In widely publicized meeting between more than 300 tribal officials and President Bill Clinton the U.S. President issued an Executive Order directing "federal agencies to deal directly with tribal councils and to consult the councils before making any decisions regarding the tribes' natural resources." [16] If this trend continues in the United States America and in Europe, self-government exercised by the world's original nations may not be seen as so much of a threat by other states.

A new era is emerging where nations and states must seek early accommodation and cooperation to avoid a future of conflict that would plunge nations and states into a period of darkness. It is no accident that after the collapse of several of the worlds' more prominent states long persistent bedrock nations re-emerge to claim their responsibility as full members of the international community.

The lessons we must collectively learn from the experience of political events over the last three years include these:

[1] The State system is not perfect, it is an experiment of human problem-solving that does not always lend itself well to solving problems for all of humanity.

[2] Nations are natural human organisms which persist and must have an acknowledged place as active participants in international intercourse coexisting with states.

[3] Where States exist and serve the needs of human society they should be nurtured and celebrated, but where States fail to serve the needs of human society, they should be allowed to disassemble in a planned process which permits the nations within to systematically reassume their governing responsibilities.

[4] If a State is no longer viable politically and economically and it does not have distinct nations within, its structure should be replaced temporarily with international supervision followed by the formation of an internationally recognized variant of human organizational structures deemed appropriate to the extant human cultures and geography of an area such as a trust territory, freely associated state, commonwealth, or other configuration established for a protected population; such a non-self-governing status must have the potential of being changed to a self-governing status in the future. Finally, [5] Nations which do not wish to remain within an existing state, must have the logical option of changing their political status through peaceful negotiations; and nations which choose not to leave a state should be permitted to exercise self-governing powers appropriate to their scale and to their proximity to the problem requiring governmental decisions.

As of the present date, there are 192 States that comprise the members of the world's state system of governments. Of these states, 183 are members of the United Nations, fewer are members of the International Court of Justice, the World Bank, the International Monetary Fund, and the International Labour Organization. The "State" is a rational organizational construct created to solve specific social, economic and political problems, and it is made legitimate by virtue of recognition extended to it by other established states. All established States are said to be sovereign political personalities having the recognized capacity to protect their own borders, carry out political intercourse with other states and perform those necessary activities (economic, social and political in character) sufficient to maintain the loyalty of an established number of human beings. Not all of these States can be accurately described as politically and economically viable. Indeed, no fewer than thirty States are in a condition of perpetual disarray, collapse, or they are essentially defunct political and legal organisms. International institutions and neighbouring states which deem the continuity of even defunct states as essential to their own stability are obliged to provide support politically, militarily and financially. Instead of strengthening the state system, this process tends to further weaken an increasingly fractured system.

More to the point of my dissertation, however, is that the economic and sometimes political instability of some states and the efforts to prop up crumbling states is bringing other states into direct conflict with nations inside these states. United Nations joint forces are at this moment militarily fighting nations inside several collapsed states. So committed are statists to the continuity of the State System that they insist that a failed state must continue even though there is no will or capacity to ensure its normal operation. The nations which often make the soul of a state become the objects of derision and attack. States denounce and fear "nationalism," or the commitment one has to the persistence of a nation. Nationalism is regarded as a primitive; emotionalism that undermines efforts to achieve "higher forms of human civilization." In reality, properly respected, the nation stands as the foundation of human organization essential for human survival. Without the nation, the State could have never come into existence, The State could not long survive without national forbearance--and, so, recent events would seem to bear this view out.

There are between six thousand and nine thousand bedrock nations in the world. They are culturally diverse and that diversity reflects the ecological diversity of the Earth. Human nations, located in their particular places demonstrate the success of natural adaptation and human creative energy. They persist because nations satisfy human spiritual, social, economic, and political (cultural) needs. Nations are evolved human organisms, self-identified, including members who share a common culture, heritage, language and geographic place. Their existence is not dependent on size, and their identity is essentially determined by their culture. The culture of each nation is determined by the relationship between the people and the land. A nation is large enough to ensure the needs of its constituents, but small enough to ensure consistency with human scale.

The nation, the human organism from which all humans originate, is the parent of the state. It is from the heart of nations that the concept of the state arose. The rational state is another of the many experiments attempted to constructively advance the human condition. As the parent from which the state springs, each nation is obligated to ensure that the state fulfils its purposes. But, when the experiment fails, there is no obligation to force the continued existence of a state. The nation, is more than adequate to serve as an independent international personality on its own. It is quite realistic that the world's political landscape contain both nations and states as independent political entities.

While states will continue to perform their function and nations will continue to function within the framework of individual states, some

states cannot continue to exist. Many nations do not chose to become states or remain within state structures. Given these realistic conditions, we must seek to ensure the peaceful means for a world in which both states and nations coexist. We must work to establish concepts like the *principle of subsidiarity* as an alternative to violence between nations and states. We must establish new international institutions, new international tools for providing the transition from a world of states to a world of nations and states. We must provide the means for nations to resolve long-standing disputes between them--most will be concerned with unresolved land and natural resource questions. We must also provide the means for nations and states to resolve disputes between them after the collapse of a state as well as before the collapse. Finally, we must create new transitional structures between nations, and nations and states to replace crumbling state structures to minimize violent conflicts and maximize systematic peaceful change.

There is room for new international institutions along side the United Nations as clearly indicated by the existence of the Commission on Security and Cooperation in Europe which came into being as a result of the Helsinki Final Act. New institutions which permit the direct, co-equal participation of nations and states are now essential for the construction of a new international political order. The breakup of states like Yugoslavia need not result in the terror that is now being experienced in Croatia, Bosnia and Serbia. Sustained, long-term conflicts like the war between the Burmese state and the Karen, Kachin and Shan nations are remnants of a failed British colonial policy and should be brought to a swift end by internationally sanctioned peace negotiations. The war between the Jumma Peoples and the government of Bangladesh should be ended through peaceful negotiations, mediated and sanctioned internationally. The expansion of states into national territories like the Peoples Republic of China's occupation of Tibet must be halted and brought to a negotiation table for peaceful disengagement. The war in Guatemala continues and the wars between the Indonesian government, the peoples of West Papua, East Timor and South Molucca continue unabated--all demanding internationally sanctioned intervention.

These are not civil wars, but conflicts between states and nations. They are conflicts which result from the failure of the state to perform its function. They are conflicts resulting from a failure of states to ensure the full sharing of political power by all nations within the framework of the state. The Geneva Conventions of 1949 provide the initial context within which new international institutions and mechanisms can be fashioned to directly address the conflicts between states

and nations and between nations after the collapse of a state. Protocols I and II of the Geneva Conventions directly address conflicts between states and between nations and states.[17] Initiatives by nations and constructive efforts by some states can serve as the impetus for new international mechanisms for peaceful conflict resolution based in part on the Geneva Conventions and particularly on Protocols I and II.

The new political era of nations and states into which we are now passing demands that the world's nations resume their duty as active participants in the formulation of international rules of conduct. What we now call indigenous nations, must become co-equal partners with states as international political personalities. They must assume their responsibilities as mature political personalities with a full commitment to the restoration of mutual coexistence between nations and states. Nations must fully commit themselves to the advancement of human rights and the democratization of international relations. Nations must also adopt existing international instruments for the promotion of peaceful relations between peoples, and they must work to establish new international instruments for the establishment of peaceful relations between nations and between nations and states.

States governments are obliged to recognize that they do sometimes fail to adequately serve the peoples for which they were established. States governments must embrace the changing world which includes many kinds of political personalities– not just states. The state system is useful for some purposes, but not all peoples in the world must live within a state structure. Where there are no mechanisms for nation and state cooperation, states must reach out to the nation and seek accommodation. States governments must rework their foreign policies to recognize that nations are a part of the international fabric--an essential element of the international arena. They must learn the courage to seek constructive new relations with nations to maximize cooperation and mutual benefit.

In a new age unfolding we are confronted by our greatest hopes and wishes. We hope for accommodation in Europe and accommodation becomes the practical, daily demand. We hope for peaceful settlements in the Middle East, and the State of Israel and the Palestinian nation engage in fourteen fateful days of negotiations for peaceful accommodation. In North America, the South Pacific Ocean and in Africa, new measures of courage are being realized as representatives of nations and representatives of states have begun to move toward peaceful accommodation, coexistence and cooperation. But, as these hopes are now being realized, we are also discovering the need for new courage and new creativity in diplomatic relations. Things are not as "perfectly orderly"

as we *would* want. The tendency is to move swiftly to an "authoritarian order" instead of a condition of mutual equality and cooperation. Diversity is sloppy and uncomfortable at times, but the new political era of nations and states is necessarily a mirror of the cultural diversity of humanity. We are looking at reality when we see many thousands of nations and scores of states. We are seeing the success of human beings in their many nations. We are seeing the experiments of the human spirit when we see the scores of states. Reality demands that we stretch our minds to find ways to creatively accommodate the many differences we see among human beings. Reality demands that we accept the challenge of human success.

I propose that the world's states governments join with the governments of the world's nations to form a temporary Congress of Nations and States to develop new international protocols which provide for new approaches to dispute resolution between nations, and nations and states. New structures, perhaps based in the Geneva Protocols I and II, for resolving existing conflicts between nations and nations and states should also be developed. The Congress of Nations and States should build on the constructive discussions among many nations and many states that have been continuing at non-government conferences and within the United Nations under the direction of the Economic and Social Council for the last twenty years. Such a Congress must take into account successful approaches to cooperative engagement between nations as states like those developments emerging in Europe and the United States of America.

The opportunity exists now like never before in history for nations to fulfil their obligations as mature members of the international community to work toward a peaceful world. States, the children of nations, must turn now to realistically work with nations to build a democratized international community which ensures broad support by all of the peoples of the world.

This is not simple idealism. The means exist for representatives of nations and states to begin the process of constructively re-ordering the world. A new political order is before us. We need now only to understand ourselves and our purpose to establish a peaceful and creative political climate for human development. We must put aside our fears and exercise maturity and courage to take the next step in the new era of nations and states.

Notes

1 Griggs, Richard A. (1993) The Role of Fourth World Nations and Synchronous Geopolitical Factors in the Breakdown of the State. Doctoral dissertation for Ph.D. in Geography, University of California - Berkeley: 164
Dr. Richard A. Griggs coined this phrase in his doctoral dissertation. In his discussion of Europe's developing regionalism he notes in his footnote 6: "This term 'Europe of Regions' was developed by the Breton nationalist Yann Fouere in his pioneering work, L'Europe aux Cents Drapeaux Paris: Presses D'Europe, 1968. The Europe of Regions is somewhat limiting since it nominally exudes nations (Fouere did not intend this). To remind the reader that many of these regions, and the most powerful advocates of this vision, are Fourth World nations I occasionally substitute my own expression a 'Europe of Nations and Regions.'"

2 Ibid., 163.

3 Ibid., Appendix C. 297-299.

4 Before he left office in 1968, President Johnson issued a not so widely noticed statement urging recognition of the right of self-determination for Indian tribes and denouncing the U.S. government's policy of "terminating" Indian Reservations (liquidating land and natural resources and removing tribal members from the reservation and U.S. protection).

5 Trimble, Charles E. "Considerations for Improved Federal-Indian Relations through Consultation," A Paper prepared for the National Congress of American Indians, Washington, D.C. May 1993: 11.

6 Report of Federal Administration and Structure of Indian Affairs Task Force, American Indian Policy Review Commission. Senate and the House of Representatives of the United States of America. Washington.,D.C.: Government Printing Office, September 1976, p. 75.

7 Trimble, 1993:13

8 Report on Federal Administration and Structure of Indian Affairs Task Force, American Indian Policy Review Commission. Senate and the House of Representatives of the United States of America. Washington.,D.C.: Government Printing Office, September 1976, p. 84.

9 Anquoe, Bunty. "Harold Monteau expected to chair National Indian Gaming Commission," *Indian Country Today*. Volume 13, Issue 43: April 20, 1994: 1,2.

10 Tribes and States in Conflict: A Tribal Proposal, Inter-Tribal Study Group on Tribal State Relations. Quinault Indian Nation 1980.

11 Ibid., Tribal officials had concluded that "Indian nations are not, nor have they ever been, a part of the U.S. Federal system of governments." This conclusion was drawn from a simple inspection of the United States Constitution which provides for the establishment of a federal government and the "governments of the several states" but does not recognize Indian nations and their governments as having powers within the federation of states. This observation left Indian leaders to finally conclude that "Indian nations are outside the United States and outside its political system of governments."

12 Senator Warren G. Magnuson of the State of Washington and Senator James Abourezk of South Dakota were simpathetic, but took no formal action to advance the tribal proposal.

13 Statement by the President: Indian Policy. The White House, Washington, D.C. January 24, 1983. "Our new nation continued to make treaties and to deal with Indian tribes on a government-to-government basis. * * * In 1970, President Nixon announced a national policy of self-determination for Indian tribes. At the heart of the new policy was a commitment by the federal government to foster and encourage tribal self-government. That commitment was signed into law in 1975 as the Indian Self-Determination and Education Assistance Act. The Principle of self-government set forth in this Act was a good starting point. * * * However, since 1975, there has been more rhetoric than action. * * * This Administraton intends to reverse this trend by removing the obstacles to self-government. . . ."

14 Centennial Accord between the State of Washington and Federally Recognized Tribes - June 1989.

15 Rÿser, Rudolph C. "Resuming Self-Government in Indian Country," *Hamline Law Review.*May 1994. In this essay I examine the U.S. government's dual policy on the principle self-determination (internal vs. external policy) and its implications for the Self-Governance Compacts concluded with the Quinault, Jamestwon S'Klallam, Lummi and Hoopa nations.

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CHRISTIAN P. SCHERRER

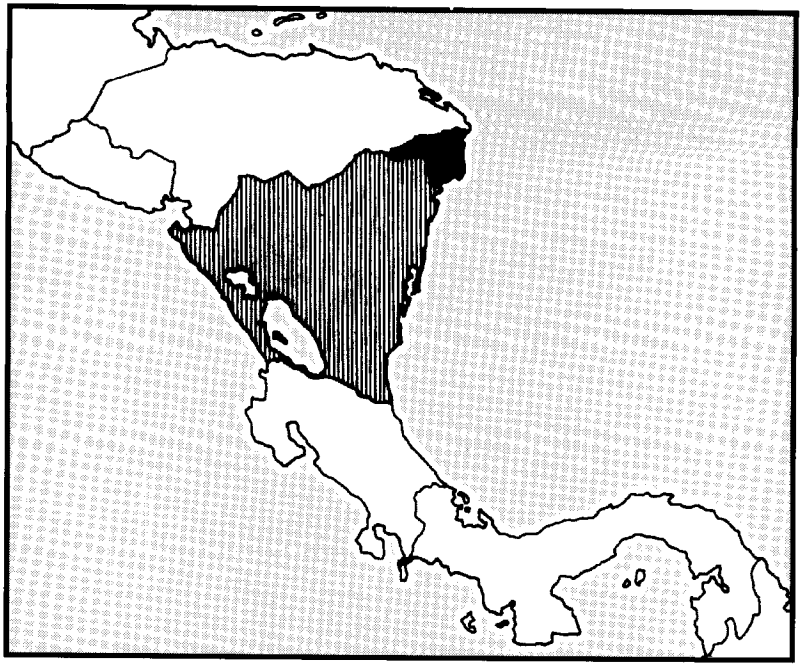
REGIONAL AUTONOMY IN EASTERN NICARAGUA (1990-94):

Four Years of self-government experience in Yapti Tasba

Ethnicity and state in Central America: Identification of the subject

Like in other Latin America countries, the so-called *ethnic question* and the perception of ethnicity in Nicaragua[1] is obscured by the myth of national homogeneity within the colonial imposed state boundaries. States consequently treat indigenous peoples' struggles for Self-Determination as non-existent or as a subordinate *internal problem.* The Esquipulas peace process in Central America has been a successful conflict management experience. It gave place for third party *confianza*-based mediation and was combined with interventions of neutral outsiders.[2] Despite of its positive influence, the Esquipulas II declaration doesn't mention the struggles of Indians and Afro-Americans. Recognizing multiplicity within Ladino-dominated societies eventually clashes with the actual character of their cultural socialisation programme. The theoretical horizon of the debate on the relationship between ethnicity and state is still clouded over by ethno-centric concepts. The following preliminary methodological and terminological remarks will be confronted with the essential notions of Central American realities:

Today struggling indigenous peoples themselves increasingly use the concept of nation which was first introduced by North American Indians. The Miskitu organizations talk about the Miskitu nation.[3] Of course governments would not use the term *nation* to describe peoples they usually call minorities. The Nicaraguan autonomy law talks about *Comunidades de la CostaAtlántica*, in order to avoid the connotation of peoples entitled to self-determination in international law. The term *community* remains vague. It is generally used to the describe both,



what is otherwise called an ethnic group as well as what is meant by a local community or a village.[4]

An ethnic community becomes a *nation* by its aspirations for statehood, self-government or self-rule. Its sense of solidarity acquires a political character and is greatly reinforced by a political struggle for survival. This is certainly what happened with the Miskitu in the late 1970's, and more so in the 1980's. A nation is distinguishable from an *éthnie* or *comunidad* by its degree of political organization and its readiness to struggle for common goals.[5] It develops a nationalist ideology and national institutions. Compared with the Miskitu, a degree of political organization could hardly be found among the Sumu. Like the Creoles they are a nationality, an incipient nation, whose political status might change in the future. For the Rama and Garifuna the official term of *comunidades* seems correct.

To make it clear, ethnicity is a universal and fundamental set of relationships that doesn't stipulate for any primordiality (as a natural thing outside time). Ethnic identity as such should not be seen in a context of genetic selection, nor in a situationally defined fluid affinity,[6] which would allegedly be used for the political interests of ethnic élites competing for power and resources.[7]

Nicaragua in the regional context of Indian peoples' struggles

Underneath the 7 Central American states are over 50 nations and nationalities with 8 million people, which accounts for 25% of the states' populations. They live on 40% of the entire territory. In the state of Guatemala, native nations (Maya-Quiché peoples) demographically constitute the majority. Today nations and nationalities increasingly refuse assimilation and/or subjugation by dominant state societies. Central American indigenous peoples survived 500 years of genocide, assimilation and strained integration into the Ladino society. Some native peoples are fighting for self-determination in the form of autonomy, self-governance or a degree of independence.[8] The Kuna (in 1927) and the Miskitu (1987) fought for and attained a higher degree of autonomy.

The majority of the Indians in Central America are the *Mayan peoples*. Their epicentre is the *altiplano* of Guatemala. Mayan peoples live throughout Mesoamerica. The Mayans form a larger population than any Central American state. In Guatemala they suffered genocidal politics exercised by the small ruling oligarchy through its instrument, the armed forces, regardless of the form of governance (military or civilian).[9] The *Pipil* and *Lenca* (21% of El Salvador's population; 60'000 Lenca in Honduras) have suffered very high casualties in the war between FMLN guerrilla and the US-supported regime.[10]

The *Ngobe* or *Guaymíes* (100'000) live in western Panama (2'500 in Coast Rica). The delimitations of the proposed autonomous area (*comarca*) are still under negotiation (since the 1980's). The *Kuna* (60'000) live along the Caribbean of south-eastern Panama. An armed uprising in 1925 forced the new state of Panama to recognize the first autonomous Indian area (*Comarca* San Blas) in Latin America. The Kuna call their lands Kuna Yala. The state of Panama has developed a reasonably successful nationality policy for its indigenous peoples (15 % of Panamá's population) since the 1960's.[11]

The indigenous *Miskitu* (130'000; 100'000 in Nicaragua) and *Sumu* (11'000; 8'000 in Nicaragua) are living along the Caribbean coast (only Miskitu) and the rivers of North-eastern Nicaragua and South-eastern Honduras.[12] They took up arms against the Sandinistas from 1981 up to 1988/89. The Miskitu have been intermixing with Africans for centuries, and are among the most populous lowland Indian peoples. Among the Sumu, a process of amalgamation of three separate units (with their own dialects spoken) may strengthen common identity.[13] The traumatic developments from 1980/81 to 1984 renewed, rather than disrupted, the

sense of common ethnicity among these two Indian peoples in Nicaragua. The much smaller group of *Rama* Indians (only 1'000) are an endogamic ethnic entity without proper language and probably without a critical mass.

The *Garifuna* (Black Caribs) were relocated by the British to Roatán island 300 years ago. They now live along the Caribbean in Creole-ruled Belize (15'000), Honduras (90'000) and Nicaragua (2'500). Garifuna have suffered racial discrimination and were/are used as cheap labour force.[14] *Afro-Americans* (Blacks and Creoles) live all along the Caribbean from Belize (majority) to Columbia, with large numbers in Panama and Honduras, smaller numbers in Nicaragua (35'000) and Costa Rica, and Guatemala (Livingston). They mixed with Indians, Ladinos and Whites. There is a growing orientation among Central American Blacks towards the Caribbean region. Afro-Americans dominate demographically and/or rule in 12 smaller states of the region.[15]

Arbitrary boundaries of today's American states not only cut across the homelands of the remaining Indian peoples, such as Miskitu and Sumu Indians who were divided as late as in 1960, frontiers also fragment the majority population of the Ibero-Americans, contrary to the situation in North America. Pan-Ladino nationalism would unite 300 million *Ibero-Americans* in some 20 states. Half of the ladino-dominated states are in Meso- and Central America and the Caribbean. European descendants continue to exert almost total hegemony on the Americas. Most Latin countries are still ruled by a small white minority. Only a few American countries are ruled by Afro-Americans.

Until recently, no country and no region was ruled by Indigenous Americans. They continue to be at the bottom of the ethnic hierarchy. They had no power, nowhere, for nobody.[16] In May 1990, the very first Indian government took an oath in Bilwi, capital of Yapti Tasba, Eastern Nicaragua.

Multi-ethnicity and the demographic situation in North-eastern Nicaragua:

A recent demographic study in the Northeast has been completed by Buvollen.[17]

The *cedularization* (distribution of ID-carts) of the urban and rural populations of Eastern Nicaragua in the course of the February 1994 regional elections was not completed, so there is still no official data. The *population in North Atlantic Autonomous Region (RAAN)*[18] according to Buvollen's study consists of:

Miskitu	84,935	57,9 %
Sumu	5,053	3,5 %
Creole	1,648	1,1 %
Mestizo	55,101	37,5 %
Total RAAN	146,853	100 %

There are so far no complete data for RAAS (the South Atlantic Autonomous Region) and the Pacific Coast. Estimates in 1993 for the Miskitu population in Nicaragua is some 100,000, the Sumu are 8'000,[19] the Rama might be 1,000, the Garifuna perhaps 2,500, the Creoles around 35'000 and the Mestizo 85'000. The Mestizo population is growing steadily through the influx of poor campesinos. The data shows that the Indians are not a tiny minority but the majority in their area.

Eastern Nicaragua: Separate history and recent developments from armed struggle to regional autonomy

The colonial history and the regional context account for conflict roots. Although the Spanish colonizers subjugated the Indian peoples of Central America's Pacific coast, they were unable to control the eastern lowlands. The native Miskitu Indians and, since 1640's, run-away African slaves fiercely resisted. The Miskitu first allied with European pirates and then with British colonials against the Spanish threat. The Mosquitia was ruled indirectly. The Miskitu Kingdom (1687-1894) was incorporated into Hispanic Nicaragua just a hundred years ago.

Separate history of the eastern half of Nicaragua was reinforced by the US-dominated enclave economy, based on timber, fish, mines and plantations, and continued during the 45 years of the Somoza family dictatorship. The Sandinista revolution in 1979, mainly a Mestizo venture, smashed the old regime. Attempts to integrate the East more tightly resulted in a tremendous upsurge of ethnic revival among the Indians and Afro-Americans. The minority peoples initially welcomed the revolution. The integrationist policy of the *Frente Sandinista de Liberación Nacional* (FSLN) and further Hispanization were first rejected by the Creoles of Bluefields. In November 1980, mass demonstrations were dashed. Repression caused apathy and civil disobedience.

A more violent conflict between the state and the Miskitu Indians developed in the north-east. The motor of it has been a small élite of university students. Soon after the revolution they proved to be effective

organizers, took over the existing Indian organization ALPROMISO and renamed it MISURASATA. Nicaragua's Indian movement has been divided during the whole period from 1981 till 1990. A pro-Sandinista civilian section (MISURASATA leaders in the FSLN, MISATAN, KISAN-pro-peace) and an anti-Sandinista militant section (MISURASATA-Rivera, MISURA, KISAN, YATAMA) were opposed. The latter organizations have in fact been *one single organzation* which has at different moments - *under various names* - represented the armed Indian opposition against the Sandinista state.[20] The militant section not only represented the majority Miskitu population but gained legitimacy through its links with the highest Indian authority, the *Council of Elders* (Almuk nani asla takanka), who is entitled to organize general assemblies of the Indian movement every couple of years ever since the movement became its organizational form in Bilwaskarma 1973. The assemblies (held in 1973, 1974, 1979, 1985, 1987, 1988 and 1993) had decisive influence on the course of the movement and on its organizational shape. Three of seven assemblies took place in the Honduran exile. A chronological list of successive Indian organizations:

ALPROMISU = Alliance for the progress of the Miskitu and Sumu under discussion at the first assembly in Bilwaskarma 1973; founded at the second assembly in Sisin 1973; renamed in Bilwi 1979

MISURASATA = Miskitu Sumu Rama Sandinista asla takanka Indians and Sandinistas all together; founded at the third assembly in Bilwi 1979

MISURASATA (in exile) Rivera's faction of MISURASATA, based in Costa Rica, kept the name till 1987

MISURA = Miskitu Sumu Rama (operating from Honduras) mainstream MISURASATA from 1981 to 1985; led by Steadman Fagoth

KISAN = Kus Indianka asla takanka (operating from Honduras) founded at the fourth assembly in Rus Rus, Honduras, in 1985; led by Wycliffe Diego

YATAMA = Yapti Tasba Mariska nani asla takanka founded at the fifth assembly in 7/1987 at Rus Rus to unify MISURASATA, MISURA and KISAN; led by Rivera, Fagoth and Diego until 5/1993, by Diego and Serapio from 5/93 to 3/94; the name of the organization was usurped by Rivera's faction for the 1994 elections.

Native demands became more radical in 1980/81. The trigger of the armed conflict between the *Sandinista Popular Army* (EPS) and various Indian organizations in Eastern Nicaragua was the question of territo-

rial claims. MISURASATA's claims were seen as a threat to the state' s sovereignty, particularly in view of the increasingly aggressive stance of the USA. About 4.000 Indians were armed by the CIA and trained mainly by former guardsmen of Somoza. Besides their co-operation with the Indian fighters, the Somocista contras had different objectives and were never sympathetic to the Indian cause. 1981-1987 there were two wars in Nicaragua which had some links.

The response of the Sandinista Front (FSLN) from 1984 onwards was a triple strategy for pacification including autonomy (as long term solution), cease-fire with armed groups and their integration into militias, and talks with some exiled leaders. The first two tracks worked, the war slowed down from 1985, but talks remained without results from 1985 until 1988. The mediation and trust-building by Moravian Church leaders and by grass-roots committees were critical to end the armed struggle and gave way for a wide political debate on autonomy. The motive of pacification, as a hoped-for result of the autonomy process which was officially started in December 1984, was obviously the immediate target. This was often denied by FSLN members since pacification was not the only aim of that process. The military pressure of some 4'000 well-equipped Indian warriors successfully challenging the Sandinista troops finally led to intensive occupation with the driving forces of that *"unexpected"* ethnic conflict on all levels of the party (FSLN) and the state apparatus, particularly the Ministry of Interior (MINT). Some anthropological studies gave advice to the government on how to deal with the problem it had created or provoked.

Antagonism persisted below the level of armed struggle (please compare section 7). Frustrated territorial demands were later brushed aside since its main protagonists allied with the opposition against the Sandinista rule just in time before the 2/90 elections.[21] The unexpected defeat of the FSLN brought Brooklyn Rivera's faction of the predominantly Miskitu Indian organization *YATAMA* (Yapti Tasba Masraka nani asla takanka; Sons of the Motherland) into higher central government posts. They were able to sabotage and oppose the YATAMA-dominated government in RAAN which was supported by the FSLN.

The dramatic economic situation of the country and specifically that of two eastern regions limited the space of the autonomous governments, while political feud among the Indian factions continued in the northern region. In the southern autonomous region (RAAS) the political polarisation led to an institutional break-down. Additionally, there was an extreme level of corruption in RAAS also involving high-ranking government officials in Managua. After pressure from a broad spectrum, the UNOp-coalition gave up its 11 month boycott of the

Regional Council. A new group among Creoles grew up in defence for autonomy, the Authentic Autonomous Coast Movement (MAAC).

In May 1993, the Council of Elders held the 7th general assembly to overcome the divisions within YATAMA. Rivera was expelled, the leadership re-elected (Diego and Serapio) and the statutes were revised. YATAMA declared its support for efforts to elaborate a regimentation of the autonomy law, in order to clarify the competencies of the autonomous bodies and the rational use of Eastern Nicaragua's rich natural resources. But after an intervention of Rivera in July 1993 there was no unanimity for the adoption of a proposal made by the regional parliaments since the YATAMA councillors walked out, after claiming additional items such as the abolition of state land and the formation of a regional police force, which broke-down the process. The proposal to the hands of the crisis-ridden central parliament in Managua[22] which has been worked out by the two regional parliaments jointly was only signed by the FSLN and UNOp representatives. The urgently needed regimentation will be further delayed.[23]

The second regional elections in Eastern Nicaragua (financed by the Scandinavian countries) were held in February 1994 in the midst of internal division, strife and a nation-wide loss of credibility for every state agency. During the preparations of the elections a fatal division of YATAMA occurred (compare section 8). The regional elections have been seen by some observers as a test for the up-coming general elections of 1996. The former Indian-mainstream faction who temporarily joined the so-called liberal party (PLC) before the 1994 elections might continue its positive working relation with the equally strong FSLN in the North-eastern region into an informal alliance to defend autonomy. Presently the autonomy statutes, generally seen as an achievement by Indians in other American countries, cannot be abolished (two third majority in the central parliament necessary), but its implementation and realisation was hampered by internal division, corruption, neglect and obstruction by the central government in the past four years.

Process towards autonomy for the East Coast peoples

The process towards regional autonomy of the Caribbean coast within the framework of the state began in the midst of the war. The decisions of the FSLN in late 1984 marked a turning point towards the recognition of multiplicity in Nicaragua. Those decisions came neither voluntarily nor spontaneously. The Autonomy Statutes (law 28, issued in Septem-

ber 1987) are, as Daniel Ortega admitted at the 7th general assembly of YATAMA (Waspám May 1993), a product of the war. Today, autonomy has to be defended jointly by the former adversaries against the neo-colonial politics of the new central government in its Eastern Nicaraguan periphery.

The autonomy project was started in the midst of war[24] as the most important part of Borge's triple-strategy. The structure of the organized debate on autonomy was designed as a process of elaborating a constitution recognizing multiplicity[25] and a law granting regional autonomy and equal rights for all six ethnic reverence groups within the administrative Special Zones I and II, excluding the Spanish dominated Special Zone III which later was put together with Chontales. Late in 1984 a *national commission for autonomy* was formed.[26] The *Regional Commissions* did the bulk of the real work such as consultations, official meetings, and polls.[26]

The launching of the project first followed the usual hierarchical concept from top to bottom (an authoritarian pattern earmarking most FSLN-projects), with the central body either providing guidance or imposing directions. This was subsequently challenged by the massive participation of different social groups in the regions.[28] The central body instigated and co-ordinated research.[29] In the eastern regions the process included several steps of organized consultations involving most sectors of the *costeños*. Discussion in the regions started in 1/85 and was terminated in 4/87 with the last multi-ethnic assembly held in Puerto Cabezas, where 220 representatives prepared the law for ratification in the *National Assembly* in September 1987. In these 27 months, the process "kind of oscillated from the top to the grassroots and back"[30].

From 7/85 the results of these consultations and the research were used in house-to-house consultations. The outcome of the consultations[31] showed a very clear *identification of the problems and demands* among the southern coast peoples: 1) the people never benefited from the natural resources, 2) the new government should permit equal footing for all ethnic groups, 3) a Centre for higher education is badly needed, 4) direct relations with the Caribbean basin area shall be maintained (most Creole families have some members living outside Nicaragua). In the northern part of the East Coast, the outcome of main issues was similarly clear: 1) respect and guarantees for Indian lands, 2) profits of resources to remain in the region, 3) Miskitu, Sumu and English as official languages. But before all that, people had immediate worries.

The dynamics produced by the autonomy process had a strong impact on the negotiations between government officials and Indian

military commanders, as well as on the dialogue with the exiled political leadership of the armed Indian movement (Rivera et al). The most important impact of the autonomy process is its contribution to the relaxation and reconciliation in the northern war area: 15'000 refugees had already returned to their communities along the Wangks in 1986/87; many thousands followed in 1988. The integration of more Miskitu warriors into territorial militias continued until 1990, when the new government attempted to disarm them.

The competing Miskitu leaders had to react to the initiative taken by the FSLN and the broad support the *Peace and Autonomy Commissions* enjoyed in their areas. A general conference of most Miskitu factions took place in Rus Rus, Honduras, in June 1987, convening badly burned Indian military leaders (Fagoth, Diego, Coleman, a/o.) and the MISURASATA leadership with Rivera (in exile in Costa Rica). The 7/1987 formed YATAMA replaced KISAN and MISURASATA, reaffirmed Indian Self-Determination and approved a *"bilateral treaty"* (proposed by Rivera) to be signed by the government and YATAMA. The outcome of the meeting was unclear. The alliance soon split again, but the so-called *treaty* between the Indians and the Nicaraguan state came to the light.[32] The revision proposed by YATAMA was seen as antagonistic to the grand design of the autonomy law. When the negotiations were suspended in May 1988, the proposal was qualified as an *"absurd demand"* and as *"outright separatism which no sovereign government (would) accommodate"*.[33] In fact, Uriel Vanegas (who participated in the Managua talks 1988) believes that Rivera's chief advisor, Bernard Nietschmann, and other foreign advisors' influence might have been decisive for the break-down of the dialogue.[34] Rivera later admitted problems caused by external influence on YATAMA.[35]

The FSLN's 1988 proposals would have been more favourable for the autonomous regions than what the present practise is like. For instance a negotiated 60% share in the profits from natural resources for the region (and 40% for the central government) was not enough for Rivera. Today, each region barely gets 20% of the income from fishing licenses and, so far, zero from the mines and the logging! In the crucial question of resources, Rivera's positions in those negotiations with the Sandinistas proved disastrous.[36] The Indian movement misdealt a historic opportunity to obtain concessions from the former Sandinista government. The present government is unwilling to offer similar favourable terms.

Elections had to be postponed because a hurricane davastated the south in October 1988, and were finally held together with the general elections for presidency and parliament on February 25, 1990, as

promulgated by Daniel Ortega during the meeting of the Esquipulas II signatory states in February 1989 in Costa del Sol, El Salvador. It could only have a negative influence on the autonomy process by linking it with the ideological conflicts among the Ladino majority, since the elections became a plebiscite about the political future of the whole country and Sandinism in particular. Rivera, Fagoth et al finally came back (as the *contra* leaders did earlier), just in time to strike a deal with the united opposition forces (UNOp) before the *"most closely watched elections in the country's history"* and probably in the recent history of the Americas.[37] The FSLN suffered a major set-back from the outcome of the elections in 2/90.

Looking back on a decade of Sandinism ruling Nicaragua, the FSLN succeeded on the grand lines, in smashing oligarchic rule and building up lawful democratic institutions. Short-comings appear in the solution of two major revolutionary tasks, which are of great importance in the Latin American context: The implementation of the land reform, and the recognition of indigenous rights and ethnic multiplicity. Autonomy should be more than a simple notion of equality, it implies reparation and affirmative action. Some more reasons of why the Sandinistas were not able to achieve a real break-through in the ethnic question will be mentioned.

Establishment of the first Indian-dominated government in the Americas

The present autonomy statute has some short-comings, but it nevertheless is a historic achievement and an (incomplete) model for Latin America. It has been reported that the autonomy statute *"provoked reactions of most diverse nature"* not only in the neighbouring countries of Honduras and Costa Rica, but also in Guatemala, an epicentre of indigenous peoples.[38] Such reactions prove what Ngobe representatives in Panama told me, that *"Indians have no frontiers"*. Indian peoples have a political perception of their geographic space at a regional level. Their strategies of survival can only be radicalized by the Nicaraguan experience.

The ratified *Autonomy Law* can satisfy many of the demands which motivated the Indian rebels to take up arms. Even though some indigenous demands were left out, the law represents a big step towards regional self-governance, compared to the standards for indigenous rights and minority regulations in most Latin American countries. Some

positive elements are of particular interest, such as provisions concerning:

1. the reaffirmation of the *multi-ethnic, pluri-cultural and multi-lingual character* of the Eastern Nicaraguan society, non-discrimination (Art.11.1) and the right to preserve, develop and strengthen the distinct indigenous cultures, traditions, knowledge, arts, and languages (11.2, 11.8), through education in the mother language and bilingual education (11.5), official use of indigenous languages and English (Art.5);
2. the *recognition of the communal property* of the indigenous communities (225 Miskitu communities, 32 Sumu communities and 4 Rama communities), including their lands, waters and forests that were "traditionally used" (Art.9, 11.3, 11.6, 36);
3. the establishment of *two autonomous regions* governed by elected regional parliaments having jurisdiction over its territory (Art.6, 7, 8) and electing regional administrations;
4. the institution of a pluralistic and democratic *parliamentary system of governance* with elements of a presidential system: regional councils in each region elect an executive *junta* and a co-ordinator (commonly called *governor*) and have some political rights/duties but limited economic possibilities; the juntas are regulating the work of the councils (Art. 27, 28) while not restricting the powers of the co-ordinator (Art.30) to direct the executive activities, name functionaries, "discuss" (*gestionar*) competence matters with the central authorities and administrate funds (a special fund for development, Art.30.6);
5. the *balancing of powers* in the regions by a combination of demographic representation and the principle of equality of all six ethnic groups to avoid inter ethnic tensions and to *protect the rights of small ethnic groups*; each community is entitled to have at least one member in the regional government (*executive junta*); in RAAS settle six communities, in RAAN four;
6. the right for ethnic *self-identification* is provided (Art.12) thus members of the *communities* have the right to decide and define their own ethnic identity.

On the other side, drawbacks can be seen in the serious power limits exposed in the Nicaraguan type of regional autonomy law as for the following strategic areas:

1. the regional *administration is not very autonomous*: it can initiate its own economic, social and cultural projects (Art.8,3) but apparently on the narrow base of regional taxes (Art.8.9); for the bulk of the duties it has to "*participate*", for instance in the elaboration and execution of plans and programs affecting the region (Art.8.1-2, 23.3), such as *development* in the region (no veto-right), in administrating programs concerning health, education, culture, food supply, transports, communal services, etc., *in co-ordination* with the respective state ministries of the central government, thus following decisions taken elsewhere which results in a paternalistic rather than a autonomous process; resolutions and decisions of the regional council have to be "*in harmony* with the constitution and laws of the Republic" (Art.24);
2. the promotion of *"rational and fruitful use"* of *natural resources* and the right to *benefit* from it *"in just proportion"* (Art.9) through agreements (*acuerdos*) between the central and the regional governments, without indication of joint decisionmaking nor procedures of how to reach such agreements;
3. the possiblity of establishing *regional taxation* but *conforming* to the state laws (Art.8.9) and promotion of an (inter-)regional market including the Caribbean neighbour states (Art.8.7-8);
4. the *non-existence of an own budget,* only the elaboration of a budget proposal (*anteproyecto de presupuesto regional*, Art.23.5) by the council to the hands of the central authorities;
5. no provisions for participation in decision making (no mixed bodies), for arbitration and for the mentioned regimentation of the law (Art.44) are given;
6. the recognition of multiplicity does *not* include traditional Indian authorities (almuks) and native political institutions (assemblies); no financial attributions to traditional Indian political institutions.

These points proved very problematic: in all the sectors mentioned, the regional administration would depend on redistribution of political power and economic means by the central government. All provisions concerning the economic base of self-governance are kept in very vague terms, allowing for inaction of the central government in order to avoid the legal obligation to share benefits from resources. The non-existence of real power sharing and independent judicial or a mixed political bodies to solve possible impasse and stalemate had dire consequences for eastern Nicaragua. The past four years have shown continuous

usurpation of control over eastern Nicaragua's resources and over the budgets of the regional governments by central authorities.

Persistence of antagonistic conceptions

Nicaragua's indigenous peoples tried to abrogate the legacy of 500 years of colonialism (including 100 years of internal colonialism) in the crucial years of the early 1980's inspired and confirmed by the dynamics of the Sandinista revolution. During the war most exiled Miskitu leaders advocated exclusive Indian rights, which threatened to discriminate other oppressed communities. In order to respond on the autonomy process YATAMA proudly wrote in 4/1988 that its *Bilateral Treaty of peace* would be *"the most far-reaching manifestation of Indian self-determination in this hemisphere"*.[39] Since some of the issues dealt with in this proposal are part of ongoing struggles it is worth having a closer look at it. The YATAMA *treaty* would in fact have revised the existing Autonomy Statute totally, particularly in the following points:

*The proposal provides sweeping powers to the *"governing authorities of Yapti Tasba"* within a large Indian *reservation* covering about a third of Nicaragua.

*Indian officials would operate their *own judicial system*, instead of *"regulations reflecting the cultural particularities of the judicial system within communities conform to the Nicaraguan constitution"*, as law 28 art. 18 mentioned.

*The Indian government would raise taxes, provide services, regulate economic activities by strictly *limiting the powers of the central government* over lands, waters and resources.

*The *free association* with the Nicaraguan state would not touch some essentials, since the central government would maintain the responsibility for defending the area against outside aggression, controlling international borders and directing foreign relations.

Conclusions drawn from a comparison of the two contradicting versions of Self-Government: The grand designs of the two concepts seem antagonistic. In the law 28, rights of autonomy are assigned fundamentally to regions and their six distinct ethnic communities, not to a single ethnic group, due to ethnic heterogeneity of the Caribbean Coast society and a considerable part of mixed people. Divisions among the costeños (the coastal population) should not be artificially enlarged, as it could be imagined as the result of the YATAMA proposal. Any

"*ethnically*" or "racially" determined conception of autonomy only for Indians seems impracticable in eastern Nicaragua because of the very nature of the costeño society. Since ethnic interrelations had been dynamic during a long common history, ethnic based separation would be a break with all traditions and could provoke a serious setback for inter-ethnic coexistence.

The reproach of ethno-centrism concerning the proposal of YATAMA could be based on what is seen as discrimination of the Afro-American peoples, the Creoles and the Garifuna. The treaty clearly differentiates into *"Indian nations"* and *"ethnic communities"*, the latter are also given the definition of *"ethnic groups"* (Art.1.4). The proposal talks of *"rights of self-determination of Indian nations"* versus *"rights of ethnic minorities"*, definitions which stipulate a two-class-system. One ethnic group was even "forgotten".[40]

The designation of the Ladinos as an ethnic minority is apparently related to the proposed delimitation of the autonomous area which is less than the surface of the Special Zones I and II (equal to the present autonomous regions) and less than the original autonomous area of the old Mosquitia "*reserva*" (which existed until the so-called incorporation into Western Nicaragua in 1894) to avoid a future Ladino majority within the above mentioned areas. However, the question of territory was not a closed subject for some years (up to 1990). In both texts some flexibility could be interpreted (Law 28, Art. 6.2; YATAMA treaty 2.2).

The 9-page YATAMA treaty might only be fully understood in the context of the historical competition between the Miskitu and the formerly well established Creole élite, and could result in old animosities breaking out again. Creole representatives see a racist offence in the treaty: While excluding the Creole capital of Bluefields, to avoid majorization, all other areas sparsely populated by Afro-Americans were included into the claimed Indian territory.[41]

The critique of the YATAMA proposal[42] has to take into consideration the whole context of the *"treaty"* to be functional in the framework of the talks between FSLN and YATAMA in 1988 (two rounds, no result). Rumours say that some of the revindications were reaffirmed in YATAMA' s *"basic plan"* in February 1990, as part of the secret agreement between Rivera and the former opposition. The faction advocating exclusive Indian control was weakened considerably after Rivera's isolation by the 7th general assembly of the Indian movement (in Waspám, May 1993) and the crushing electoral defeat of his group in 2/1994 (compare next section). The former adversaries (FSLN and mainstream-YATAMA) in the course of political struggles in the past four years established an informal but stable working relation in local

politics within the RAAN. The ongoing antagonism of the basic conceptions and political strategies is not yet resolved between the different factions of the Indian movement. Rivera still sees the autonomy law as "very limited" but as a means for participation the Indians have to take advantage of:

> "We consider that with this autonomy statute we have, at least, a space, which is very limited, but it is a means for participating in some decision making and also it's a means to influence the course of actions in the Atlantic Coast; it's a possibility to have some amount of control over our own affairs. So, the strategy is to take advantage of these autonomy statutes even if we don't agree completely; it provides a tool we can use within the context of the present democratization process, where we can slowly keep moving forward according to our capacity of action in this new situation."[43]

Autonomous governance in Yapti Tasba: Four years of ambiguous experience

The unexpected and narrow victory of the opposition coalition, the *Unión Nacional Opositora* (UNOp), in the second general elections held on February 25, 1990, was likely to have a negative impact on the future autonomy process in both Caribbean regions. The victorious UNOp got a temporary majority in the south-east with the help of YATAMA, but not much influence in the former war area of the north-east, where the "first Indian dominated government in the Americas" (Mirna Cunningham) was run by YATAMA. In both areas the FSLN was the opposition but continued to influence the course of the events as the biggest and best organized political force. In the first four years of autonomous governance in Eastern Nicaragua the two governing groups (YATAMA and UNOp) never had a convincing alliance, and both lost the power after the February 1994 regional elections as a result of exceptionally bad governance.

YATAMA and two UNOp deputies initially got a one-vote-majority in the RAAN's parliament. A similar constellation occurred in the RAAS, but the political struggle in the south soon turned the former political fronts up-side down. While traditional ideological polarization dominated in the RAAS, some observers were talking about the installation of an *"ethnic dictatorship"* in RAAN.

Regional organizations (such as YATAMA or KISAN) were originally not allowed by law to participate in elections as parties, but as "popular listings" (*suscripción popular*). In the RAAS, prominent Creoles ran on FSLN-lists (some on PSC). In the RAAN non-Mestizo ran on lists of five parties (FSLN; leftist PUC/CUC and MUR; centrist PSC; right-wing UNOp). For instance, of the 45 FSLN candidates for the Regional Council there were 19 Miskitu, and even 4 of 5 FSLN-candidates for the National Assembly were Miskitu. The UNOp brought mainly unknown Mestizo candidates. That means, the representation of each of the six ethnic groups in both regions practically depended on their representation on party lists, which is a *deviation from the spirit of law 28*. This was rectified in 1994 by the emergence of quite a few popular lists in both regions.

In a first phase, the situation in the north-east remained volatile and far more polarised than in the south-east. Back home, Rivera et al began to become heavily involved in politics on the level of the central state. Thus, in total contradiction to the previous principle of YATAMA, not to mix in national policy, they originally supported Erick Ramirez' centrist *Social-Christian Party* (PSC), together with Eden Pastora, the ex-leader of the ARDE. Just 16 days before elections, they met the international press, together with Violeta Chamorro, Antonio Lacayo and ex-*contra* leader Alfredo César, to declare their support of the center-right opposition coalition called *Unión Nacional Opositora* (UNOp).

This has been seen as flagrant opportunism since the UNOp-coalition didn't even have such an item like autonomy in their party programme! Simple opportunism and greed for personal gains are not the only impulses to observe in this respect, but a phenomenon amongst Miskitu what could be called *last-minute bingo alternatives*. I am talking about strategic decisions taken under different forms of stress and pressure which were not comprehensive or "rational" decisions and proved to turn out "wrong" since they were detrimental for the Indian cause. Such *bingo alternatives* used to happen in the immediate forefront of major events such as elections or at the end of important processes; they are sudden changes of intentions, policies and alliances without further notice and particular reasoning. It could be the sudden feeling not to "stand on the right side" (on the winner side) but it could also be a sudden position of total refusal. Such processes have been described as the social psychology of minorities who feel (and are) repressed and dominated. For the Miskitu such behaviour is like falling back in history. The Miskitu are an incipient nation; they have been a minority 20 years back when they formed ALPROMISU.

In February 1994 it was Fagoth's turn to beat Rivera's opportunism: This time he abandoned YATAMA as abroad-based popular Indian movement to Rivera in order to strike a last-minute deal with the (compared to UNOp) even more right-wing *Partido Liberal Constitucionalista* (PLC) led by Managua's mayor Arnoldo Alemán, who is seen by many as the future president of Nicaragua and as a powerful ally against the alleged threat of a FSLN-majority in RAAN.[44]

The creation of INDERA and Rivera's attempted *coup d'état* in 1990:

The unexpected victory of the US-supported opposition coalition in 1990, soon disclosed the price Violeta Chamorro had to pay for YATAMA's support. It consisted of not implementing autonomy in the East Coast, but of giving Rivera a minister-director post in her government and naming Fagoth as her delegate for the RAAN. Rivera does not have a portfolio but was made head of an new body, called *Institute for the development of the East Coast* (INDERA).

Most surprising was the outcome of the 1990 elections for the *Regional Autonomous Council* in the RAAN, which was undecided with 22 attached to UNOp/YATAMA, 21 to FSLN/ KISAN and 2 independents. Consequently, the allegedly moderate former administrator of the Moravian church, Lionel Panting, was chosen *co-ordinator* (now called *governor*) of the regional government as a candidate of consensus, having most of the executive powers in his hands. The potential line of conflict between the FSLN and YATAMA in the regional parliament of Bilwi in North-eastern Nicaragua, didn't break up immediately, since a serious new institutional conflict developed rapidly, before the autonomous government was formally constituted in July 1990.

Rivera's provokingly illegal assertion of *"all powers"*, anticipated in his proposed Treaty in 1987 (Art.4.2.) as powers of a Miskitu governor, now used by himself as the first Miskitu minister of state, caused (even more ironically) the united resistance of FSLN and YATAMA. Rivera's cold *coup d'état* began immediately (in May 1990) with the tactical temporary move to appoint Fagoth as his proxy. Then he began with the arbitrary, illegal dismissal of central government delegates (*delegados*) in the two autonomous regions (sic!), who were replaced by people of his camp. Today Fagoth judges about the way INDERA's funds were used:

"Brooklyn's budget for one year is 600,000 dollars. This is public information. With the *90 % unemployment* we have in the region, you

think he won't have an influence? With the money he's got? Sure he's got influence! The people know he has the funds. What do you think he did with these funds? Do you think he built a clinic? No. Never! Brooklyn used the money to buy influence, to buy will, to buy the hearts of the people, to buy the conscience of the people. That's what he did."[45]

Rivera' s transparent attempt to build up his own personal power base, to occupy the strategic administrative positions and to distribute the club goods is, of course, a flagrant *violation of the autonomy law*; he capitalises upon weak points of the law 28 in order to prevent implementation and create "new facts". According to Panting the RAAN was "almost at the verge of a civil war" during the institutional conflict with INDERA:

"We saw how he (Rivera) turned against his own people. (...) The crisis got so bad that we were almost at the verge of a civil war. Let's look for instance at the Regional Council. We have to admit that we wanted a minimum understanding among the people in this region, which was *one of the most affected areas* during the war in the decade of 1980's. We didn't want any more division or malicious feelings. However, the political divisions prevailed, although we had shown *willingness to work together* with all, even *with the Sandinistas*, who were our political enemies. This, together with the mistakes made by Brooklyn Rivera, took us to this disastrous situation we find ourselves in right now."[46]

Panting has become an uncontrollable figure for Rivera, since he opposed INDERA's role. In April 1993 Alfonso Smith, a centrist deputy in the National Assembly and ex-MISURASATA commander, finally succeeded to overthrow Lionel Panting. He got elected as governor with some YATAMA votes and the FSLN votes from the mines.[47] Apparently, the frustration with Panting's administration became stronger than the fear to give support for a *Brooklinista*. After several scandals, such as the "Caribbean 2000 S.A." concession in 12/92 (when Panting sold the exclusive right to fish in the RAAN's waters to a dubious US-company, allegedly for some substantial kick-backs), and Panting's total neglect of the FSLN-dominated mine area, the day of revenge came. This was seen as a big *blow to the informal alliance forged between the FSLN and YATAMA* during the past three years of the Panting government. Smith was supposed to prepare the scene for Rivera's alleged aspiration to become governor.

nities, but many communities lack titles and they cannot formally claim the right to their forests. The Indian communities deeply mistrust IRENA since this institution and the foreign comopanies take off with the potential profit. There is no base for an adequate control by the regional governments. IRENA does not pay the communities their share of the income nor do the regional authorities receive anything.

For the coastal population fisheries is the lifeline. There are new actors on the scene: "Foreign resource pirates and Nicaraguan resource traffickers".[55] Since the war ended and the new government cut-down military expenses, the 650 km long coast has no surveillance anymore. As Johnny Hodgson put it:

Foreign pirates "only pay for the monthly licence, and what they catch is theirs. The law says that they should process their product here, but they don't do it. If a boat goes out and it gets 15,000 tons, they ship 14,000 to their country and bring 1,000 tons here and say: "This is all I got". They can do this because *there is nobody is controlling and supervising*. That's our main resource here in the South, and when that sea resources are finished, we will be finished."[56]

Division and crushing electoral defeat of YATAMA in 1994:

Analyzing the results of the regional elections in the autonomous area of north-eastern Nicaragua, the present situation with a strong PLC (while the UNOp disappeared), a much weaker YATAMA, and a slightly reduced FSLN, is the result of two main factors:[57]

1) The voters castigated the governing parties for their bad performance during the last four years, and 2) The division of YATAMA caused by internal contradictions, electoral pressure and blatant opportunism made PCL suddenly the strongest party.

The fatal division of YATAMA before the 1994 elections took its beginning because both Fagoth and Rivera claimed the name and

The crucial question of control over natural resources

Apart from all the controversies about influential positions, the major task of the regional councils is the establishment of an *economic basis* for the regions in order *to perform some kind of autonomy*.[48] The ordinary budget of 1,6 million Cordoba ($ 200,000) barely covers the administrative expenses of the regional governments. Alta Hooker stated: "Do you know that our budget is 0.030 percent of the national budget? That's all we have. It's practically impossible to do anything with that."[49] The central government assigned a budget to the region: "It is a ridiculous assignment. We practically can't do anything with that kind of budget."[50]

A law for the use of natural resources is badly needed but the regimentation of law 28 is pending. Among the proposals is that 80% of the revenues must be reinvested in the region. Such a proposal is facing a bunch of difficulties and its, as Dr. Rojas exposed, against the underlying "way of political thinking" in Western Nicaragua, expressed by the former minister of foreign affairs that "you cannot let go of all the *resources and riches* that are in the region", and that "you cannot put the resources in the hands of the *savages at the Atlantic Coast*":[51]

"The central government's fear is to have less and less control over the Atlantic Coast, which is where the natural riches are, and this is what they are interested in. So if they have less and less control over the Coast, they will get in a situation of coming down and establishing some kind of system in which the entire country could develop, and this would be against their way of political thinking. It's a big fear the central government has. This is why they are willing to fight against our autonomy."

While in RAAS, the lumber mill COMABLUSA (financed by Sweden) to take use lumber lost in the hurricane in 1988, has been transferred to the regional government,[52] large quantities of *lumber is pulled out* of RAAN without control. The respective state agency, IRENA, is not able to control the business. The company MADENSA has had virtual monopoly since 1991 on valuable mahogany which is shipped out. Since 1994 another foreign company, the *Central American Line*, is processing lumber and shipping it out. Governor Alfonso Smith did not even know about the details of their contract since: "They have an agreement with IRENA, not with the regional government".[53]

Taxes collected by IRENA go straight to Managua, so the region nor the community benefit much.[54] *IRENA usurped all so-called state lands* and issued concessions (on behalf of the central state). The real owners are practically expropiated. In many cases these are the Indian commu-

based popular movement to the sectarian and ambitious Rivera. This could only have negative impacts on the formation of a strong indigenous movements and on the possibilities to defend and expand the scope of autonomous governance.

The disastrous result of rest-YATAMA in the 1994 regional elections reflects the old pattern of the *division into three distinct Miskitu regional groups* still separating the river people (pro-Fagoth, now PLC), the coast Miskitu (pro-Rivera, rest-YATAMA) and the Llano (FSLN sympathies). The result clearly shows that Rivera would presently have to cut down his aspirations to zero.[58] Things look much different for the former YATAMA-mainstream. Even Fagoth took quiet late the PLC ticket, he was able to convince 38,4% of the electorate in his strongholds along Rio Coco and Llano that PLC and YATAMA is the same fight. In the mentioned three of districts are some 42,1% of the entire RAAN electorate but only 20% of the seats. PLC got 6 out of these 9 seats; it collected in the Miskitu heartland 16.2 % of the entire vote or close to half of all votes PLC received in RAAN. This shows clearly that in the Miskitu area votes for PLC were mainstream-YATAMA votes. In his home (Rio Coco Arriba), Fagoth came out as the candidate with the highest number of votes in the north-east and he has the manifest aspiration to become governor and his candidature has much more strength. Fagoth will certainly be elected as governor in May 1994 if he would be able to strike a deal with the FSLN. The precondition formulated by Mirna Cunnigham would be nothing less than breaking up the relation with the *Somocistas* of PLC.[59] Tomas Borge did not exclude a future alliance with Fagoth in order to safeguard the strategic interests of the region, in particular the struggle for real autonomy.[60]

Shifting response on the autonomy process among Creoles in the RAAS

Only an amelioration of their liv[illegible]

already a Mestizo majority. Among urban Creoles there was a growing cynical disappointment with the Sandinistas and the Spaniards in general. Rural Blacks seem more interested in autonomy than urban Creoles. In 1990 there was no party representing Afro-American interests in any form apart from the FSLN. In 1994 the *Movimiento Auténtico Autónomo Costeño* (MAAC / AACM, led by Dr. Roberto Hodgson) was the first and sole Creole-dominated group to successfully participate in the regional elections.[61]

There are two competitive tendencies among Creoles. One is advocating the development of a Caribbean cultural consciousness, the other accepts an increased Hispanization. Some influence of autonomy has shown promising but limited results in the field of restoring and developing their particular Afro-American cultural traditions, such as the famous *Maypole* (*mayo ya*) celebrations, free expression of the Garifuna rituals (particularly the *Walagayo* socio-medical ceremony), promotion of herbal medicine and the recognition of traditional medical men (*curanderos*), the promotion of Creole literature and of local arts and crafts. Caribbean *costeño* music is very popular in dancing places all over Nicaragua. Results of the 1990 and 1994 elections in the autonomous area of South Eastern Nicaragua:[62]

Affairs and corruption scandals around UNOp leaders has thrown politics in the RAAS into a complete chaos. Governor Guthrie was accused of collusion with *Mafiosi* and drug-traffickers. Guthrie was in a good position for the profitable selling-out the RAAS' riches. Deputies of his own PSC-party accused him of corruption and merchant morality.[63] Not surprisingly the voters settled their accounts with the UNOp and Guthrie in the 1994 regional elections. The UNOp lost all but 5 seats to Alemán's PLC (18 seats). The Sandinistas lost 4 (of 19) seats

RAAS	PLC	FSLN	YATAMA	UNOp	AACM	ADECO	Total
1990	0	18 + 1	5	22 + 1	0	0	45 + 2
1994	18	14 +1	5	5 + 1	2	1	45 + 2
	(35,5%)	(24,6%)	(9 %)	(9,9%)	(5,2%)	(6,2%)	

partly due to the rise of several local popular listings such as MJI, MAD and DEX,[64] particularly due to the success of popular movements such as the *Authentic Autonomous Coast Movement* (MAAC/AACM) led by Dr. Roberto Hodgson.[65] MAAC won two seats in the Pearl Lagoon area. However, the right-wing parties still hold a slight majority (23 out of 45

seats) in the Regional Council of RAAS, and they could continue to rule even without YATAMA's support. The top candidates of PLC for the election of the new government in RAAS in May 1994 have already been accused of past corruption and bad conduct (by PLI and FSLN).

Dim prospects for the autonomy process

The violent ethnic conflict in Eastern Nicaragua, starting in December 1981 and continuing until spring 1988, remained perilous and virulent as long as a *foreign power* tried to exploit it since it fitted into *neo-colonial designs* to destabilize the Sandinista revolution. The subjugation to foreign control or the temporary alliance with the historic enemy fundamentally questioned the political reliability of the Indian movement in the eyes of the Sandinistas since they attempted to undermine the FSLN's will to break with the heritage of Nicaragua being a *banana republic*, and to defend Nicaragua's right of Self-Determination in the *backyard* of the USA.

The FSLN had to come a long way to see that Nicaragua's population is not homogenous but multi-ethnic. Thus the Ladino *"nation state"* doesn't mean much to the *costeños*. Indians, Creoles and Blacks claimed Self-Determination in the face of internal colonialism and alien Hispanic nationalism. The FSLN finally began from October 1984 onwards to recognize some claims as legitimate , and gave it the *quasi-irreversible form* of law no. 28. It could serve as a model to most states of Latin Americas. A potential *change of quality in the relationship between West and East Coast* was induced by recognizing multiplicity among Nicaragua's citizens. Much depends upon full implementation of the promulgated law, as well as upon a possible revision of the law. The *Autonomy Statute* constitutes a change of quality in the relation of ethnicity and state only if it will be regulated and fully implemented.

The failure of the FSLN-government to implement the law was obvious. The FSLN has been in power for more than 10 years but started to elaborate the law in 1984. It was ratified in 1987. The reason for the delay has not been disclosed yet, but it gave the new UNOp government the chance to sabotage the implementation with the help of some Miskitu leaders. In order to dissipate doubts about the seriousness of the central state to respect regional autonomy of the costeños, the law should be implemented fully, without further delay. The law was criticised as a simple model of decentralization, which seems an inadequate criticism since it is a recognition of collective property rights and contains a lot about promoting traditional culture and languages (as

official languages beside Spanish), etc. Moreover further decentralization can only be advocated.

Three remarks concern those elements which are of decisive influence on the prospects of autonomy in Nicaragua, such as the urgent regimentation and the elimination of the weak points in law 28, the resistance or even sabotage against further decentralization by all actors involved, and the persistence of different position and division among Miskitu and Creoles:

First remark: The urgent regimentation and the weak points of the law 28

The political environment has changed dramatically since the general elections in 2/90. Anti-chauvinist alliances are now more difficult. Today YATAMA feels the necessity to defend autonomy. Rapid and *full implementation of the autonomy law* also depends upon the ability of the new regional councils and governments. So-far the performance of the autonomous administrations in the past four years has been frustrating for the costeños and shown deficiency in many aspects. The option for responsible regimentation and revision of the law should accentuate the decentralization to both regions and their municipalities. Full implementation of the law depends on the *regimentation and necessary supplements* (partial revision of the law).

At the present stage the central government has no interest at all to give hands for the enforcement and implementation and 33-pages-regimentation proposed by the two regional councils jointly in June 1993.[66] Such a regimentation could only be a deal based on initiatives taken by the FSLN and pressures on the presidency and the centrist parliamentary group. Pressures can only be exercised by the FSLN as the stabilizing power who guarantees the survival of the present administration. The UNOp-government will try to win time and continue its *strategy of inaction in order to avoid legal obligations* such as sharing the profits from the rich resources in the east. Give up its control over the resources would be a loss of a major source of income and kick-backs for top officials in the gravity of the Lacayo-Chamorro clan.

With reference to the elaborated regimentation proposal by the autonomous regions, structured in eight titles, chapters and 85 articles, some of the key elements of the implementation, legal regimentation and facilitation of the autonomy law are:

Institutional and legal administrative *division of competencies* between the central and regional governments have to be clearly defined; the regimentation proposes (in Art.50-52) nothing concrete; the same

goes for the necessity to reach agreements between central and regional governments (in Art. 36); no procedures are proposed.

Regulation of real power sharing and the establishing of an *independent judicial* or a mixed political body are necessary to solve ongoing impasse and stalemate of the autonomy process, but no arbitration body is proposed in the regimentation draft.

The highly important question of *rights over natural resources* has to be revised. The law contains only a vague formula for a just participation in the profit-sharing for the region. The bulk of the profits (such as 80% in the first 10 years) should remain for the two regions.

The regimentation proposal contains some ideas and demands (Art.33-35) to regulate *fisheries*, the most important renewable resource for Indians and Blacks, such as joint agreements between the two region on the sustainable use of the rich sea resources, and active *participation* in the policy definition of how to regulate the issuing of licences and taxation of seafood production and export. No concessions for resource exploitation without consent of the regions.[67]

Individual rights such as self-identification shall be maintained, to avoid alien classification by state authorities.

Lacking professional and moral competencies of the present government members, deputies and administrative staff has been exposed by the past four years' experience. *Training courses* for political actors and careful *selection* of representatives and personnel by the political parties and movements should focus more on professional qualification, political dedication and personal sincerity.

More decentralization seems necessary. A possible solution of divergent conceptions of autonomy put forward by the FSLN (regional autonomy) and YATAMA (territorial autonomy for the indigenous) could be a shift of powers from the regions to the municipalities, which are more likely to be ethnically homogenous, or could be designed that way (Art.41-49). The proposal for the demarcation and the organization of the municipalities has still to be worked out by the regional councils in co-ordination with the regions five deputies in central parliament (Art.37.F). Representatives of the municipalities shall participate in development programmes on all stages (Art.43).

More powers should be assigned to the *250 - 300 communities* with a sizeable number of members. Communal assemblies delegate members who shall be recognized as interlocutors (Art.48). Community-based development projects would have the most direct impact and can be managed and controlled by the community assemblies and elders. Results of the *Proyecto Wangki* in 50 Miskitu communities along the Rio Coco have to be studied carefully.[68]

Presently, the central governments *practise* of partial redistribution concerning some income from the regions' rich sea resource (fisheries, shrimps and lobster) but no sharing at all concerning other natural resources (minerals, lumber, etc.) is *unjust and illegal*. Inaction of the central authorities is encouraged by unclear or non-existent provisions concerning the mentioned areas.

Second remark: The resistance against further decentralization

The clarification of competencies including further decentralization from central to regional bodies and down to the municipalities and communities would be the best solution, but *might clash with the involved actors or parties' ideologies* as well as their organizational principles. The actors are the bourgeois parties (UNOp, PLC, PLI, PCN, PSC), the FSLN and YATAMA. Decentralisation would certainly be adequate and conform to the political system of the Indian.

*Since the change in 1990, the bourgeois parties, particularly the so-called *Liberal Constitutional Party* (PLC), once the instrument of the Somoza clan, and the Conservatives (PCN), are simply aiming at restoring the oligarchic class interests of the former ruling cliques. Regarding the ethnic and national minorities they clearly followed the old policy of *laissez-faire,* when it makes sense economically, assimilation, when it comes to culture and schools, and repression when security matters are concerned. In the past four years centralising decision-making and obstructing the regional governments were the common features of the UNOp-government's policy towards the coast. In fact their policies never meant anything else for the *costeños* than economic *underdevelopment and Hispanization*.

*At the east coast, the FSLN members are now first *costeños* and *"autonomic"*, and then they are Sandinistas.[69] The aim of democratizing the party structure seemed genuine at the party congress held in February 1991. There was widespread support for change and an unprecedented public debate took place. A new Sandinista Assembly was elected and more pluralism is now possible. Members of the assembly now dare to challenge top leaders publicly.[70] Ideological change further professionalization are going on. Before 1990/91 the FSLN was convinced that nationalising the commanding heights of the economy would be revolutionary. The whole Sandinista movement itself was structured very hierarchically.[71] Co-operative spirit of equal members, workers participation and other expressions of genuine (mass-)democracy were largely missing in the organizational framework, substituted

by top-heavy avant-garde party and central labour union, even though the rhetoric and some of the spirit was egalitarian.

*A very different concept of political *leadership* existed among the Miskitu: The 300 indigenous communities and many of the rural Blacks still live in an egalitarian environment. In the past, the only hierarchic element was the Moravian Church. It is only recently, with the tough power struggle launched against the elders by a former student group (who took the leadership of the organizations), that the Indian movement in Nicaragua has become a battlefield for a small *educational élite*. This élite largely copied the alien concept of personal leaderism.

The militarization of the ethnic conflict from 1981 to 1990 accelerated the allegedly *retarded* Indian history and made it more Ladino-like. It produced bigger and smaller *"war lords"* who were able to organize supplies. Top Miskitu leaders in the past period had to be military commanders (distribution of resources, executive power) and impressive orators (Miskitu culture and history are oral). They pretend to fight for their people's interest and to know what is their people's interest (*ethno-populism*). The Hispanic concept of *caudillismo* was for some years fully applied by the élite (Brooklyn Rivera, Steadman Fagoth, Wycliffe Diego et al). Presently civilian leaders (Pedro Mercado, Kenneth Serapio Hunter, Armando Rojas, Fornes Rabonias et al) are coming back on stage. *"Cult of personality"* meant something *"Spanish"* to the collectivist Indian communities, where decentralized structures were significant signs of a stateless society. The action of Rivera et al as the Miskitu representatives on the central state level could well be conjunctural, nevertheless it is a striking new phenomenon which calls for legitimating (for instance through elections). The recent re-enforcement of the traditional authority exercised by the *Council of Elders* (*Almuk nani asla takanka*) is a sign that the power of the young élite is limited and that there is no will among elders and community leaders to tolerate further divisions.

Third remark: The persistence of different position among Miskitu and Creoles

The cause of the costeño people has suffered from the restoration since 1990. The fundamental reasons for dissent and discomfort among Indians and Blacks are unlikely to be solved in due time. Nicaragua's ethnic conflict has not been fully resolved; it has only been fully pacified. Since the state's targets are met by now, and the irregular

troops were disarmed by June 1990, pressure for further admission of redistributing power is missing today. This is the case regarding all other concessions to be made by the central government to accommodate Indian demands. The faction of *integrationists* now definitely holds the majority in Managua's parliament and government. Legal and other political efforts to strengthen autonomy for the costeños will get less or no support from central state bodies. The systematic violation of the autonomy law by the new government (ironically initiated by an Indian leader) does not raise expectations of further decentralization and distribution of powers. Under the present circumstances the different positions of the Indians in the North-east and of the Afro-Americans in the South-east of Nicaragua as well as the deep division of the Miskitu movement are likely to persist:

Creoles and Blacks still demand real recognition as a national minority with its distinct culture, own language and a way-of-life different from the Mestizo majority and the Indian minorities. Economic amelioration would considerably and positively alter the Afro-Americans disappointment with their situation as a "forgotten minority". Presently, all indicators for economic development in Nicaragua are more negative than before. The illusion of massive US-aid and war reparations expected to flow soon has been largely disappointed after the change in 1990. For the average citizen life becomes more difficult. The standard of living has slumped below levels known in the Sandinista era. The UNOp was castigated for bad governance and political polarisation. Its local officials suffered total defeat in the 1994 elections.

A faction of *Miskitu ethno-populists* (the Rivera group) still works for exclusive Indian Self-Rule within an autonomous territory. They might not concede to participating in a regional government with limited powers, based on equal footing for all ethnic groups. The attractivity of such a venture is even lower if it is confined to administrating the present economic misery. The co-optation of individual leaders into the national élite will not solve the problem because such leaders will loose support among the militant base. Hence it is likely that some institutional and ideological controversy will continue in future.

The *mainstream YATAMA* has in practice moved towards an alliance with its former enemy, the FSLN, in order to defend autonomy. After four years of frustrating experience with a hostile central government changes were in urgent need. The regional elections of February 1994, financed by the European Nordic countries, brought a crushing defeat for the governing groupings of UNOp in RAAS and rest-YATAMA in

RAAN, since mainstream-YATAMA (with Fagoth, Vanegas and Panting) made some last-minute-agreements with Alemán's PLC and surrendered the YATAMA platform to the Rivera group.[72] No group or party has won a majority in the two regions. Within the resulting new power constellation the three main contenders (FSLN, rest-YATAMA and PLC) are compelled to find workable alliances in order to give autonomy a second chance.

Conclusions

The Sandinista triple-strategy of pacification launched in 1984 attempted to resolve the armed conflict with the Indians. It could stop the war. Demands for Indian militias were acceptable for the FSLN, but the new government disarmed them in mid 1990. Claims for an Indian territory leading to Indian sovereignty were rejected by the FSLN and are unlikely to be realized by any other government. The division of the two autonomous regions (designed by the former FSLN government) prevented Mestizo control in Eastern Nicaragua and led to an Indian dominated region (RAAN) and Creole influence in the South (RAAS).

Indians constitute the majority population in RAAN, despite of representing a small minority (of 3%) in all Nicaragua. Claims for a contiguous Indian-ruled territory (by Rivera's YATAMA faction), covering a third of Nicaragua, seem not only exaggerated (compared to the settlement area) but inadequate to local conditions. Indians concentrate along the Wangki and the northern coast, while they are scattered along other rivers, lagoons and the southern coast, interspersed with other communities. A Miskitu reservation would be cut off from major resources such as the gold mines and most rich forest resources.

Regional autonomy as the long-term solution to recognize Indian historic rights in the lowlands of Eastern Nicaragua seems more adequate to local conditions than a North American-style reservation, regarding the multi-ethnic costeño society comprising six ethnic groups on half of the state' s territory and accounting for 10% of the total population. However, territoriality and self-determination are difficult to separate.

The effects of the armed ethno-nationalist conflict (1981-87) are still felt strongly in RAAN. The victims of the war were mostly civilians and great damage was done to the Eastern Nicaraguan economy. The once prosperous regions are now among the most underdeveloped. Of decisive influence for the escalation of ethnic contradictions into warfare was the aggressive US policy to capitalise upon internal division in its

attempt to overthrow an "unfriendly government".

The regimentation of the law has the highest priority for all parties in defence for autonomy. Additional regulations or a partial revision might clarify the competencies of central and regional bodies. The autonomous regions urgently need their own appropriate economic instruments (own budget, own taxes, benefits from resources). The main bone of content is the control of the coast's rich natural resources. But even the provisions of the present statute for the Caribbean coast are unlikely to be implemented fully and without further delay by an UNOp dominated government. President Chamorro should remind her promises (before 1990 elections) to deepen autonomy.

Nevertheless Eastern Nicaragua could develop one of the few advanced experiences of self-governance and autonomy in America within the legal framework provided by the former regime. Regional autonomy combined with full recognition of the indigenous settlement area with its land-base could be seen a possible development of the *comarca*-type of autonomy within a multi-ethnic context.

The non-recognition of traditional Indian political authorities and institutions by the law 28 is problematic but has so far only contributed to enhance their respectability in the Mosquitia. It avoids tight central government control as the structural problem in most existing Indian reservations in North America, and it might restrict or even prevent repressive internal control and the latent instability of the Latin American *cacique-congreso* (chief and native congress) system, without excluding traditional leadership in the native communities' real life and practice.

The recognition of the underlying, inherent aboriginal rights, such as the collective rights and communal property of Nicaragua's indigenous peoples became a constitutional law in 1987 (as later in Brazil). It is a limited attempt to eventually break with euro-centrism characterizing legal systems in Latin America. Ironically these achievements can only be defended by an alliance of the former adversaries, the Sandinistas and the Indian movement. Measures to benefit Indian nations, peoples and communities include provisions for their land base, respect for their cultures and languages, and affirmative action (regarding own mass-media and access to higher education), as a humble attempt at reparation of historic injustice done to indigenous peoples during 500 years.

Notes

1 Analysis of the hitherto successful resolution of the armed conflict in eastern

Nicaragua is based on fieldwork carried out in the area in the years 1987, 1989 and 1993.

2 The *confianza*-based mediators were Nicaraguan nationals, thus insiders (mainly Moravian Church leaders). Outsiders were members of international organizations and NGO's such as Witness for peace, AI; indigenous organizations, the Carter Center in Atlanta, etc. Compare also: Wehr, Paul / Lederach, John P. 1991. Mediating conflict in Central America. In: Journal of Peace Research, vol. 28, no. 1, pp 85-98.

3 Some expressions are kept in Spanish since they have been used by the interviewed and are common in Eastern Nicaragua. *Miskitu* is used instead of *Miskito*, since the Miskitu do not have the vocal o in their language. The same is valid for *Sumu* instead of *Sumo*. These generic terms do not need an s in the plural form.

4 Attributes of an ethnic community are in dispute: Instead of *common ancestry* according to Smith (1991, 21), I prefer the terminus of "creation myth" as a collective historical memory and consciousness. The most important objective attribute is probably the common *distinct language*. Instead of *homeland* and its negative connotations I use the terminus territory. The *sense of solidarity* is primarily reproduced by political struggles.

5 The *Unrepresented Nations and Peoples Organization* (UNPO) based in the Netherlands, a organization of presently 30 threatened peoples, applies conditions for membership, such as a geographic space (territory), common language and culture, common history, a sense of solidarity based on objective criteria.

6 In the case of the Miskitu, a minimum situationist definition was given by Judy Butler (in: Scherrer 1990): One becomes a Miskitu by speaking their language, behaving like a Miskitu, and defending Miskitu interests. Attachment and association with the Miskitu lands (of the forefathers) might be primary, additionally adherence to the Moravian Church, and the love for turtle meat (...) could be mentioned.

7 To overstate the fluidity of ethnic identity, as some authors did in the case of the Miskitu, would make any understanding for the durability of their ethnic ties impossible.

8 For a general overview: Burger 1987. World-wide, there are 3'000 to 5'000 éthnies, nationalities and nations still existing, but there are presently only 190 states, of which only a minority are homogenous nation states.

9 Counter-insurgency against leftist guerrilla forces (EGP, FAR, ORPA; URNG) imposed *"total war"* on the Indian peoples, with mass relocation into *"model villages"* and forced *"civilian self-defence patrols"* (PAC). The nobel prize for Rigoberta Menchú drew attention of western media on the sad situation in Guatemala.

10 *"Peasant disappearances"* were systematically caused by state security and death squads. Pipil lands of high fertility were expropriated by "land reforms". Two million Pipils are *"invisible"* (Nietschmann 1987a).

11 The Kuna experience gave way to the creation of other *comarcas* for Panama's indigenous peoples such as for the Huahunán or Emberá Choco (15'000) and Terribe-Buglede (2'000), not for the Bribri (reserve in Panama and Costa Rica). Compare: Scherrer 1990. Interview with Primero Cacique of Kuna Yala, Leonidas Valdez, p 102.

12 See: Buvollen, H.P. 1993. Democraphic study on Eastern Nicaragua (publ. in Wani no. 15, Managua).

13 Ronas Dolores Green (CIDCA) in: Scherrer 1990

14 In Honduras, the Garifuna, Tawahka Sumu, Miskitu, Petch (Payas), Sikakes (Stolopán) and Lenca recently formed the *Confederación de los Pueblos Autóctonos de Honduras* (CONPAH) led by a Miskitu, Jacinto Molina, in Yoro Yoro. As the Miskitu in Nicaragua (with Radio Miskut, Bilwi) they have a radio in Puerto Lempira with emissions in four indigenous languages and in Spanish.

15 Mainly on the islands (Haiti, Jamaica, most Caribbean micro-states) and on the continent (Belize, three Guayanas); large numbers of Blacks live in Ladino-dominated states such as Brazil (over 35 million), Columbia, all along the Caribbean, etc. There are probably 100 million Afro-Americans, including 30 million in the USA. Blacks are the third largest group (next to 300 mio. Ibero-Ladinos and 210 mio. white Europeans) in the Americas. From Brazil through the Caribbean Basin to Southern USA, there is a contiguous cultural space of Black America.

16 *Indigenous Americans* are the fourth group, numbering 40 million. (North America contributes only 5%). Even though they are the majority of the citizen in 3 of 20 Ladino states, they rule nowhere: Not in Bolivia (an estimated 70-85% are Indians), not in Paraguay (70%) and not in Guatemala (55%). There are large Indian minorities in seven more Ladino states (Peru 40%; Ecuador and El Salvador 21%, Mexico 15%; Chile, Panama and Belize 10%). In Mexico, where they make up 75% in central and southern provinces; in 1993/94 Indians of the Zapatista Liberation Army (*Ejercito Zapatista de Liberación Nacional*) continued to revolt and fight against *"a state of submission and almost colonial oppression"* (4th Russell Tribunal).

17 Buvollen, H.P.: Report from the Coast. No. 6, Managua, June 1993; published in Wani no. 15.

18 Abbreviations: RAAN = Región Autonoma Atlantico Norte; RAAS = Región Autonoma Alantico Sur.

19 Including estimates for Bocay (1,400) and Karawala (800), the Sumu population in Eastern Nicaragua is presently some 7,250 (RAAN and RAAS). Additionally, the estimated Miskitu population in Managua is some 3,500, the Sumu less than 50. In Matagalpa and other western areas there are probably less than 1'000.

20 For a chronological list of oppositional Indian organizations compare: Scherrer and Buvollen 1993, Interview with Horacio Chacon and Mitchell Clinton.

21 The FSLN's political and institutional strongholds are far from being broken by an electoral verdict. An unique situation developed. The Chamorro administration could be characterized as *restricted governance*, protected by a dramatically shrinking Sandinista army, under the command of general Humberto Ortega (the brother of the ex-president), and the *Sandinista Police (policia sandinista)*. Apart from being the strongest party in the parliament (which led to unusual alliances in certain questions), the FSLN's mass-organizations still exist. A whole organizational network, from the top to the grassroots, was more or less intact and could still be mobilized, such as the trade-unions (CTS) and the peasant and smallholders organizations (ATC), the women (AMNLAE), the youth (*Juventud Sandinista*) and the neighbourhood organizations.

22 The prolonged crisis in the central parliament since early 1993 left only the Sandinistas and the small *centristas* (centrist) group to support the central government. The two former governors of RAAS (Alvin Guthrie) and RAAN (Alfonso Smith) are members of the PSC thus of the centrists supporting the shaking government. The boycott by the UNOp-majority faction in Managua made it impossible to pass new laws in Nicaragua.

23 Consejo Regional Autonomo RAAS y RAAN: Anteproyecto de reglemento de la ley no. 28. Bluefields 6/1993. The proposal of 85 articles was a product of intensive joint work by FSLN, YATAMA and UNOp. There was no unanimity for acceptance of the proposal by the regional authorities in September 1993 (Art. 71). The submission of the text to the presidency in 1993/94 was delayed.

24 Talks with exiled leaders and cease-fire agreements with military commanders (of MISURA/KISAN) were continuing. The first agreement was signed in May 1985 with Eduardo Panting (KISAN) in Yule.

25 The Nicaraguan constitution contains 202 articles; provisions concerning the Atlantic Coast were issued in: § 8, multi-ethnic character of Nicaraguans; section VI. Rights for the communities of the Atlantic Coast to preserve their culture (§89 + 90), non-discrimination (§ 91); bilingual education (§ 121); own status, profit from resources and communal property (§ 180); autonomy (§181)]

26 Members included MINT-minister Tomas Borge, three social scientists and two representatives from the Coast, the Creole leader Ray Hooker and the MISURASATA leader Hazel Lau, both became FSLN members first. Compare: Ray Hooker: "The autonomy statute a model for the Third World?", in: Scherrer 1990, 2, p 34; Hazel Lau: "Autonomy is an opportunity for all ethnic groups to take power", in: Scherrer 1990, 3, p 90.

27 RAAS, Bluefields: Johnny Hodgson, "Identification of autonomy as a just demand", in: Scherrer 1990, 2, p 35 f. RAAN, Puerto Cabezas: Amalia Dixon, "Institutionalizing the process of autonomy", in: op.cit., 3, p 69f

28 Judy Butler (Instituto Historico Central Americano), "How much autonomy..." op.cit., compiler 2, 16f

29 Research was done on existing nationality policies, autonomy laws, other regulations and constructive arrangements between states and indigenous peoples. An international symposium on autonomy was held in Managua 7/86, with indigenous leaders and scientists from different places examining a draft law.

30 Michael Grey (CIDCA), "Autonomy is probably the best solution", op.cit., 4, p 39f, Judy Butler, op.cit. The two regional commissions included members of all ethnic groups. There was some political pluralism, including members of Managua-based parties hostile to the FSLN (PCN, PLI, PSC). The regional commissions consulted representatives of the communities and all sectors of the society, espec. the woman's organizations.

31 Scherrer 1990, interviews with Michael Grey and Burdis Coleman, 4/ pp 39

32 In January 1988, Rivera accompanied by Fagoth submitted his proposal during a new round of negotiations with the government held in Managua. His initiative was joined by most Indian factions, excluding Coleman's group, who had been won over by the CIA and came with the FDN-contras to the Sapoa talks in 3/88.

33 Carlos Tunnermann. Nicaraguan embassador to UN. in: New York Times. Letters

to the editor.

34 Scherrer/ECOR 1993. Peace talks in 1988 and the role of foreign advisors (Interview with Uriel Vanegas in Waspám 5/93). 184-187

35 Scherrer/ECOR 1993, 15: "During the years of exile and armed resistance, there were internal *problems within our organization because of external influence.* We were under serious difficulties because of the abnormal situation we were living in, outside Nicaragua, as an armed resistance against a powerful regime such as the Sandinista regime. Some of our members got involved with other groups and interests..."

36 Talks with exiled Indian leaders became obsolete during 1988. Rivera's faction had no troops left but continued to reject law 28. He told me (in an interview in San José, 7/88) that the *"Sandinista autonomy"* was no good for the *"real aspirations of the Miskitu"*. Internal leaders put pressure on Rivera to change his position to accept the law 28 (which is still doubtful; Scherrer 1994, Interview with Rivera. Managua 5/93). This has been analysed by Nietschmann as *"division of labour"* among a sort of collective leadership (compare: Scherrer 1990, Interviews with Bernard Nietschmann, San José 1989).

37 Laffin 1991, p 55

38 C. Ochoa Garcia: "Identidad, proceso cultural y conflicto", in: Revista IRIPAZ, vol.1, no.2, Cuidad de Guatemala 1990 (Institut for international relations and peace research), p 118.

39 YATAMA 1988, The "treaty" is a revison of MISURASATA' s 1981 "Proposal on land-holding" in a more systematic and radical form (concerning self-government).

40 The Garifuna are non-existent in the proposals of YATAMA (1987/88). They were earlier known as pro-Sandinista and fiercely resisted the infiltration of the "bushmen" (contras) in the Upper Pearl Lagoon area.

41 The whole Pearl Lagoon area which is multi-ethnically populated by rural Creoles, Garifuna and creolized Indians, as well as by urban Creoles in smaller towns out of Bluefields. The proposed territory for the 800 Rama for instance, shown on maps provided by Nietschmann, is much bigger than the surroundings of Bluefields populated by some 55'000 people. Creoles never fully supported MISURASATA or YATAMA because of their explicit indianist bias. Nevertheless, Rivera pretended to represent the Afro-American's interests. In 1990 YATAMA and MOJUME got 5 of 45+2 seats in the RAAS parliament: a decisive position between 23 UNOp and 19 FSLN *consejales*. But YATAMA was divided with two deputies supporting Guthrie.

42 The YATAMA treaty of 1988 made it clear that only members of *one* Indian organization (Art.1.1) could be signatories of the proposed treaty and it *"shall constitute the provisional government of Yapti Tasba"*, confirming fears of exclusive Miskitu Self-Rule having *"all powers"* (Art.4.2.) over virtually all social sectors and institutions, including the political parties and labour unions, the press and mass media, etc., and even culture (sic!), thus a concept for a rather totalitarian and ethnically determined rule of a *"chosen people"*.

43 Rivera in: Scherrer/Ecor 1993, 15

44 Some rumours say that Fagoth first wanted to get a FSLN ticket but was refused.

However, Fagoth might have his own plans and the alliance with PLC might well be temporary.

45 Steadman Fagoth Müller (YATAMA, MISURASATA and MISURA top-leader, San Esquipulas (Rio Coco): "Who are the ones who divide? The leadership!". Bilwi, May 1993; in Scherrer/ECOR 1993, 12.

46 Scherrer/ECOR 1993, 34-39.

47 The FSLN party leader of Puerto Cabezas, Henry Hermann, publicly opposed the vote of the FSLN delegates from the mines. Also compare: Scherrer 1993. Interview with Alfonso Smith.

48 Scherrer, C.P./Buvollen, H.P.: Nicaragua: Indians and new alliances; in: IWGIA: Indigenous Affairs no. 1, Copenhagen 1-3 1994, 28-29. Interviews in: Scherrer / ECOR 1993: Autonomous governance in Yapti Tasba: Three years of ambiguous experience. Especially: 2: Weak economic fundament of autonomy: Control of resources, budget and taxes, 58-88; 5. Divisions and new alliances in RAAN, 111-149; 6. Chaos, corruption and new hopes in RAAS, 149-178.

49 Alta Hooker (Head of the *bancada* of the *Frente Sandinista de la Liberation National* (FSLN) in the Autonomous Council of the *North Atlantic Autonomous Region* (RAAN), Member of the Directive Board of the Autonomous Government),Puerto Cabezas, June 1993; in: Scherrer/ECOR 1993, 82

50 Pedro Mercado (President of the Regional Council of RAAN, YATAMA member), Bilwi, May 1993; in: Scherrer/ECOR 1993, 62

51 Dr. Armando Alberto Rojas Smith, lawyer in Puerto C., veteran leader of the Nicaraguan Indian movement, representative for WCIP, CORPI, adviser to the Miskitu's *Consejo de Ancianos*, delegate for the *Dialogo Nacional,* Puerto Cabezas / Bilwi, May 1993, in: Scherrer/ECOR 1993, 66

52 Buvollen/Scherrer 1994, 28: "The workers have been on strike and there are problems with the management. The mill's size has been over proportional and has taken too long to be completed. The downed lumber has to a great extent rotted and the huge investment of some 30 million US dollars now needs raw material from the forests to prove its utility. It still has to be shown if this is really a benefit to the region."

53 "The central government does not respect the regional government". Interview with Alfonso Smith. Puerto Cabezas 5/93; in: Scherrer / ECOR 1993: 79-82, cit. 80.

54 For instance the Sumu community Awastingni has proved to possess rich areas of mahogany. MADENSA and free lancers offer agreements with the community to fell the trees. The community does not receive any tax benefits and little is also paid to IRENA. A new law on forest administration that has been issued in order to implement a general policy on all forest lands in the country is not enforced.

55 Nietschmann 1993, 7. Ironically the author is complaining about the collapse of the former Sandinista naval forces who once prevented supplies for armed groups supported by B.N. to come in.

56 Johnny Hodgson (Co-ordinator of the Frente Sandinista de Liberation Nacional (FSLN) in RAAS), Bluefields, June 1993; in: Scherrer/ECOR 1993, 45

57 Legend: PLC = Partido Liberal Constitutionista (led by Fagoth's Miskitu majority in RAAN); FSLN = Frente Sandinista de Liberación Nacional (multi-ethnic); YATAMA = Yapti Tasba Mariska nani sla takanka = Sons of the Motherland all United, today only the Rivera faction (Miskitu only); UNOp = Unión Nacional Opositora (Mestizo); + 1 means that the respective party has a deputy in the National Assembly in Managua, elected in 1990 for 6 years. The deputies have voting power in the regional assembly. Percentage is related to the vote.

58 Only 7 seats were won by rest-YATAMA (Rivera's YATAMA faction). Rivera significantly has its strongholds along the coast (3 seats in Bilwi, 2 in the Littorals and 1 seat in Rio Abajo. Just in two of the 15 districts rest-YATAMA got a majority of two seats. No seats were won in Rio Coco area and in the mines. Rivera's potential allies, the YAAD and the *Partido de Resistencia Nacional* (PRN) of the ex-*contras*, were defeated. YAAD's electoral performance was below 10% of the vote even in its alleged strongholds.

59 Mirna Cunningham in: Barricada 3/3/94: "A menos que (Fagoth) rompa el cordón umnilical con Alemán".

60 Op.Cit.; Borge also calls Fagoth an "elemento muy cuestionado" but a potential ally. Fagoth got his save municipality at home, in Rio Coco Arriba, and in some areas of Llano Norte, Litoral Sur and Prinzapolka. He might well be supported by the strong Sandinista party (the mines and Bilwi) and could easily get more votes than Rivera (since the FSLN would not run its own candidate and not support Rivera).

61 The MAAC was expected to win more seats, especially to win votes in the Black residential areas of Bluefields. But MAAC got only faction of the vote in the central barrios, compared to 41% of the vote in the Creole communities of Haulover and Pearl Lagoon.

62 Legend: AACM = Autentic Autonomous Coast Movement; ADECO = Alianza Democrática Costeña

63 Interview with Prof. Edwardo Arguello Rankin, ex-president RAAS-Regional Assembly, in: Scherrer 1993b.

64 MJI = Movimiento Juvenal Indigena (joined YATAMA); MAD = Movimiento Acción Democrática (related to ex-ARDE leader Eden Pastora); DEX = Salvemos la Costa Atlántica (led by Thomas Kelly Bent)

65 Interview with Dr. Roberto Hodgson, leader of the *Movimiento Auténtico Autónomo Costeño* (MAAC / AACM), in: Scherrer 1993b. 181-188

66 Consejo regional autonomo RAAS y RAAN: "Anteproyecto de reglamento de la ley no. 28." Bluefields 1993

67 The *costeño* communities shall have quota priority and get technical assistance and cheap credits through the regional Fund for Development (Art.33.B). Creation of regionally controlled *unidades economicas* (apparently public enterprise) which guarantee the use of the natural resources by and for the *costeños*. The population shall have a right to compensation payment for damages caused by resource exploitation (for instance the intoxication of the water sources and rivers with mercury by the gold mining).

68 The project's headquarters are based in Waspàm; the funds are provided by the EU. All collaborators are Nigaraguan, except for the Spanish co-director, V.

Aguilar Cerezo. (Scherrer 1993. Interview with V. Aguilar)

69 Even the National Directorate of the FSLN reflects some of the different factions. Observers speak of three factions emerging. Compare: Vickers, George R. / Spence, Jack. 1992. Two years after the fall. Nicaragua's balancing act. In: World Policy Journal, Vol. IX, no. 3, 533-562, p 545.

70 Recently a costeño deputy publically asked Daniel Ortega not to run as candidate for the 1996 elections. Interview with Ray Hooker: "Evitemos lo fatal para FSLN en 1996"; in: El Nuevo Diario. Managua 25.4.94.

71 The FSLN was constituted as an Avantgarde. Slogans on the walls, such as *"national directorate order"* expressed voluntary subjugation under the command of top leaders seen as heroes and as sons of Sandino.

72 Scherrer 1993: Interview with Uriel Vanegas. Waspám 5/93

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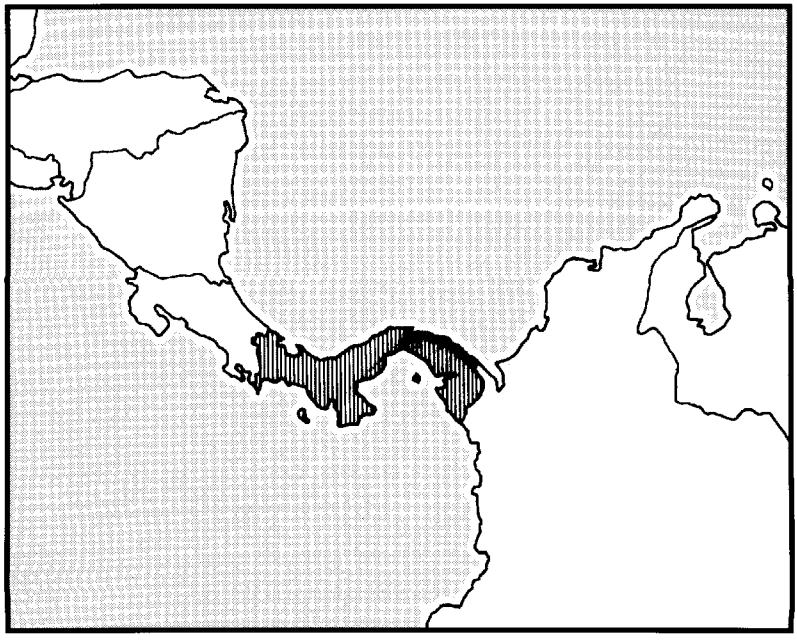
ARYSTEIDES TURPANA

THE DULE NATION OF THE SAN BLAS COMARCA: BETWEEN THE GOVERNMENT AND SELF-GOVERNMENT

The Dule or Kuna are well-known in the world for inhabiting the famous San Blas archipelago, for their *morra* [1], for the "Kuna Parc," a forest zone of 60,000 hectares administered by the Proyecto de Estudio para el Manejo de Areas Silvestres de Kuna Yala (PEMASKY), and for their autonomy. It is this last aspect that concerns us here.



The Dule or Kuna

Ever since 1930 the word *Kuna* has been gaining ground as the denomination for an indigenous nation that refers to itself as *gunasdule, gungidule* or simply *dule*, which means people of the land, the golden people or the golden race, or human person, respectively. In this article I shall employ the word *Dule.*

Spanish colonial plunder did not fail to affect the Kuna, and it was for this reason that in 1680, Captain Wright, as representative of England, and the Dule John Gret[2], in the name of his compatriots, signed a Pact of Fraternal Solidarity to combat the violent raids by the Spanish.

In the 18th century we find the French and the Dule united in a struggle against a common enemy, the Spanish conquerors. Though the Spanish were eventually forced into signing a peace treaty in 1741, treacherous as they were, they frequently broke the treaty. Therefore, the agreement lasted only 20 years, after which we once again find the Dule and the English in the Alto Bayano or Madungandi, united in the struggle against the bandits, that is to say, the Spaniards.

The 19th century was relatively quiet, partly due to the fact that the Spanish empire had entered its phase of decomposition.

On the 28 of November, 1821, Panama declared itself independent from Spain and subsequently united itself with Colombia. This union lasted until 1903, when Panama seceded with the support of the Yankees who were interested in the country, where they would construct their interoceanic canal. At that time Justo Sierra, a Mexican, commented that the new republic had seen the light through a ceasarean operation. This secession resulted in a break-up of the Dule nation, which lived partly in Colombia and partly in Panama. The frontiers observed by the two now independent countries were the same as those that had been traced by the Spanish colonizer. Though the Dule of the San Blas *Comarca* at the time did not know whether they were Panamaneans or Colombians, the Panamanean republic knew that the area fell under its sovereignty. Fearing that the Dule might happily let the terrain be annexed by Colombia, Panama set out on the arduous task of incorporating the area by law and by act. To begin with, in Panama city a school was founded for Dule children where they would be brainwashed and occidentalized and then returned to their nation as examples to be imitated by the other Dule. They were to represent the superior and civilized, in short the Panamanean Indian.

To increase control over the area, the Panamanean Republic created the special circumscription of San Blas and the colonial police and, in

1915, started to introduce schools and ballrooms, to promote the sale of liquor, and in effect turned the comarca into a police state to show the world how to "civilize" the "indians."

The greatest masquerade staged by the *ladinos* took place in 1918 when the Intendent of San Blas, Humberto Voglio, took *saila dummad* (politico-religious leader) Inabiginya prisoner and removed him to the presidential palace. When this cacique returned to San Blas, he hoisted the Panamanean flag in front of his house and started to receive a salary: the Panamanian government had made him General of a Brigade, and it was thus that cacique Inabiginya became a general without an army.

By 1918, the Colonial Police began to be supported by the young Dule, who returned to their villages as agents of change. On their return, they proved to be extremely violent against their maternal culture; they founded the Indigenous Youth Society whose first president was Claudio Iglesias, who was later murdered in Güebdi. On that occasion, a woman from Güebdi, who had moved to Yanndup, returned to Güebdi because she did not want to abandon her traditional dress as the "civilizatory" process required. To force her to return to Yanndup, the Colonial Police were called in, and they imprisoned her daughter, her son-in-law and her cousin. The Panamanean Colonial Police had a habit of imprisoning women and violating them. During the night of April 20, 1921, the police arrived under the protection of the darkness, and it was then that Claudio Iglesias was killed. Subsequently, the inhabitants of Nusadup, Yanndup and Güebdi fled the islands to go and live on the coast, in Aidirgandi, Ukubba, Irgandi, Mayungandi, etc.

In the wake of the events at Güebdi, the violence of internal colonialism was unleashed with full force against the autochthonous population: there was a ball every night, and soldiers would force the local women to accompany them to the Club; when they refused, they would be imprisoned, fined and raped, while the men who refused to let their women go would be put into chains, imprisoned, fined and forced to do hard labor: Panama behaved just like colonial Spain. Nevertheless, resistance did not falter. Conspiracy continued. The colonial police had become an occupation army and introduced the "booklet of filiations" or "register of qualifications" where they noted the names of free-thinkers.

During the carnival of 1925, on the 21st of February, the Panamanean government was violently shaken by an armed insurrection of the Dule. From their canoes, accompanied by the sound made by blowing their shells, they proclaimed the Republic of Tule, the first Indo-American republic in the world. It formally lasted until the 4th of March.

From the 27 of May to the 2nd of July, 1927, the Swedish ethnographer Nordenskjold visited the Comarca of San Blas, and through his publications he made Dule culture known to the world, practically founding Panamanean ethnography.

From 1925 onward, that is, after the Tule Republic both the Dule and the central government sought dialogue, eventually culminating in the meeting of 13 August, 1930, as a result of which the San Blas Reservation was created on 12 December of that year. Nevertheless, on 9 January 1962 a group of National Guardsmen, commanded by the then Major Omar Torrijos Herrera, attacked the isle of Digir, and 24 years later, on 10 October 1986, during the "dictatorship," the General Congress of the Kuna consented to the creation of the XII military zone covering Kuna Yala.

The Dule, the national states and the law

On 10 January 1871, when the Republic of Panama did not yet exist and the Dule were still Colombians, a conversation took place between the Dule and the Colombian government. The outcome of this dialogue was the Decree of 29 April 1871 which created "the Comarca Tulenega administrated by a General Commissary nominated by the executive of the nation" (i.e. Colombia). Article 2 of the Decree states that "the territorial extension occupied by this tribe (the Dule) shall be called Tulenega, the name used by the indigenous inhabitants." In Article 3 the word comarca is used, and we may infer that "territorial extension" and "comarca" are synonyms. Upon Panama's separation from Colombia, this decree lost force as Tulenega was split up between a Colombian and a Panamanean part.

In 1880, when Rafael Núñez was president of Colombia, he was visited by *saila dummad* Inanaginya, who asked him to concede the independence of Tulenega. The president answered that the Dule first should learn the Colombian laws and establish schools, but that "these lands would belong to them." When Panama made itself independent, *saila dummad* Inanaginya addressed the government of the new country, to no avail. He returned to Colombia, but there he and his secretary were imprisoned and killed "accidentally" a few days later. According to the history as told by the Dule people, they were both beheaded by the Colombians while in prison. In any case, the result was that the pro-Panamanean faction of the Dule gained sympathy to the point that there could be no discussion of any other option than to become Panamanean.

Let us briefly see how the Comarca appears in the Panamanean Constitution. It was only in 1928, that is, three years after the Tule Republican uprising, that Panama reformed its 1904 Constitution and endorsed that: "Article 4: The National Assembly may establish comarcas governed by special legislation with a territory separated from one or more provinces." Later, in the 1941 Constitution, Article 5 established that: "By law comarcas can be created, subject to a special regime, and other territorial divisions may be established..." In the 1946 Constitution, Article 5 read that, "By law comarcas, subject to a special regime, can be created and other territorial divisions may be established for reasons of administration or public service." This Constitution also referred to "indigenous collectivities" in its article 94 and to "indigenous communities" in its Article 95. Twenty-six years later, in the 1972 Constitution, also known as "the constitution of the military," in the midst of Torrijismo and with indigenous parliamentaries in the Assembly, the word comarca was erased from the Constitution; Article 5 now established that, "The territory of the Republic of Panama is divided into provinces, subdivided into districts, constituting *corregimientos* which form the political basis of the state."

> "By law other political divisions may be created, be it to establish special regimes or for the conveniences of administration or public service." And in Articles 120, 122 and 123 mention is made of "peasant and indigenous communities."

The Comarca of San Blas

We have already seen how the Decree of 19 April 1871, created the Comarca of Tulenega, which subsequently disappeared again with Panama's independence from Colombia. On the 6th of March 1915, after 12 years of independence from Colombia, Panama created the circumscription of San Blas and regulated its administration. This Decree legalized the colonization of San Blas by non-Dule, and the Panamanean government committed itself to providing the colonists with all facilities, including transportation, medical care, medicine and sowing-seed. If a colonist fell seriously ill, the state would provide for his return to the city. Article 51 stipulated that the Colonial Police would be charged with the "maintenance of order and national sovereignty in the regions inhabited by indigenous tribes." And Article 52 referred to the nomination of 10 indigenous agents, a post that was to be given to *sailas* [3] "who through their loyalty have shown to merit this recompensation." They were to receive $ 5.00 per month.

However, five years later, on 13 August 1930, a group of sailas submitted a petition to President Florencio H. Arosemena, which reported that the 1925 treaty was not being respected. The ensuing dialogue resulted in Law 59 of December 1930 by which the San Blas Reserve was created. On 16 September 1938, Law 2 transformed the Reserve into the Comarca de San Blas. It became the task of the executive to organize the public forces (the police) in the Comarca, and for electoral purposes, San Blas was incorporated into the province of Colón.

Through Law 16 of February 1953, the San Blas Comarca was further organized, and it is this law that presently is in force. A proposal for modification has been drawn up, but it still has not been voted on by the National Assembly.

The political structure of the San Blas Comarca

The political regime of the San Blas Comarca combines elements from traditional and national government. A comarca is an administrative subdivision that presumably concedes and guarantees territorial rights, the maintenance of a traditional administrative system, and the preservation of a proper culture. In San Blas, this is more or less the case.

Recently, some indigenous people have adopted the fashion of calling the San Blas Comarca by the name of Kuna Yala. Kuna Yala is an "underground" name, since it does not figure in Law 16 nor in any official document. What is worse is that even those Dule who use this name do not employ it in their official papers. If a demagogue of this type talks to you about Kuna Yala, ask him for his passport, and you will see that it says he was born in *San Blas*.

Law 16 of 1953 outlines the territory of San Blas, its governmental and administrative organization, the competencies of the *intendente* (governor), and the role of the indigenous congresses. It also deals with the status of foreigners, education, public finance, agriculture, trade and industry, public works, health care and subaltern officials. We should note, however, that Article 94 of the National Constitution stipulates that "the State will provide special protection for peasant and indigenous collectivities with the objective of effectively integrating them in the national community as regards their norms of life, economics, politics and intellectual standards. Activity concerning the indigenous simultaneously aims at preserving and developing the values of traditional culture." In fact, the state is concerned with assimilating the indigenous into the capitalist system by all possible means, while

neglecting the development of indigenous values and culture. Could it be *that for the state* we do not have culture and that therefore there is nothing to develop?

According to Law 16 the highest administrative authority in the Comarca is the Intendent, whose status and competencies are equal to those of the governor of a province. It also accords the status of inspector of police to the local caciques, who receive a monthly wage of $ 90.00. The sailas from villages with over 500 inhabitants are equated with First Rank Commissioners and receive $ 60.00 per month, while those of villages with between 100 and 500 inhabitants have the status of Second Rank Commissioners and are paid $ 25.00 per month. The sailas are obliged to put offenders of the law at the disposal of the Intendent. Article 9 provides for the construction of a prison in villages with over 100 inhabitants.

At the same time, the existence of the Organic Charter gives an aura of autonomy to San Blas. It provides for the creation of the following communal institutions: the General Kuna Congress, the local congresses, the three general caciques, the saila abargined for villages of over 500 inhabitants, the saila bipi for villages with between 100 and 500 inhabitants, the argar (speakers) and the sualibed (guardians).

The General Congresses meet every six months. The seat changes every time. The Congress consists of the sailas of each of the islands, and every one has the right to vote. The debates in the Congress are directed by the General Secretary, who also is the secretary of the caciques. The Intendent has the right to speak at the Congress, but he does not have voting rights.

Though the decisions of the Congress have force in the area, the central government hardly pays them any attention. More colonists are always seeking to invade San Blas, and the government does nothing to stop this from happening, despite the complaints of the indigenous population. As far as financing is concerned, the Congress functions on the basis of support by officials in the public service, the Smithsonian Institute that pays a tax of $ 2,000.00 per month for the use of a laboratory island, and the tax levied from transatlantic tourist operations. Only recently, the Congress received half a million dollars for the development of an agriculture and fishery project. The precise conditions of this grant from the European Community are not known to me.

By way of conclusion, I want to state that our present caciques are on the payroll of the national government, not as caciques but as employees who perform cultural promotion tasks. How then, can we speak of autonomy? The Dule, however, have some experience: when they founded the Republic of Tule in 1925, nobody paid the caciques.

Notes

1 Handicraft on the blouses worn by Kuna women. It consists of a superposition of different layers of tissue, creating a pattern representing the flora, fauna and myths of Kuna culture. These are known by the name of "mola" which, however, in Dulegaya (Kuna language) simply means shirt or tissue. Therefore, morra and mola are not the same thing.

2 As a child he was adopted by Captain Wright who took him on his trips and became his godfather.

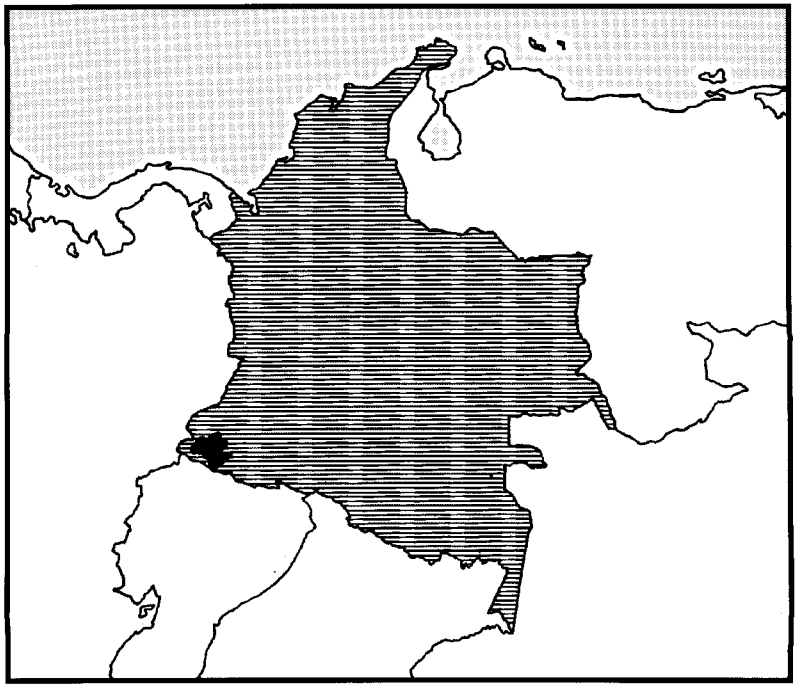
3 A sage who knows the Bab Igar, a collection of traditional holy chants. Mistakenly, the word is translated as "chief." In fact, the saila is a spiritual authority.

J. KLOOSTERMAN

INDIGENOUS SELF-GOVERNMENT IN COLOMBIA: THE CASE OF THE MUELLAMUÉS *RESGUARDO*

Introduction

In this article I want to discuss the self-government of an indigenous group, the Pastos, who live in southwest Colombia in the department Nariño, in the *resguardo* Muellamués. In 1990 and 1991 I did fieldwork in this *resguardo* for my PhD research on the human rights of indige-



nous peoples, especially the right to self-determination and, closely connected to this, the collective right to land. First of all, I shall clarify the concept *resguardo*, which cannot be translated by the term "reservation" because it will make a lot of people think about the reservations in North America, while legally, the *resguardo*-system in Colombia is quite different. I shall also describe the history of these *resguardos* and their specific indigenous government, the *cabildos*. At the end of the 1960s both institutions had almost disappeared, but in the 1970s in various departments indigenous peoples organized themselves once again. Different indigenous movements emerged from this mobilization. In this paper I would like to talk in particular about the *Movimiento de Autoridades de Colombia* because I think the members of this movement have some interesting ideas on the subject of indigenous rights. They call them their Principal Right. In 1991 indigenous representatives in the National Constituent Assembly succeeded in changing the old constitution significantly. I shall compare these changes with the Principal Right. I am also going to consider the application of these changes in daily practice. Some of the material I collected during my fieldwork in the *resguardo* Muellamués will be used for this. I shall conclude with some final considerations.

The history of the *resguardos* and *cabildos*

In colonial times the Spaniards created the *resguardos* in Nariño. They wanted to concentrate the Indians who were dispersed as a consequence of the conquest. Concentrated in the *resguardos*, the Indians could easily be converted to the Catholic religion, and it was also simple to recruit them as laborers. The colonial officers defined the boundaries of the *resguardos*, together with the Indians, during the 17th and 18th centuries. However, this demarcation did not occur in a systematic way. The boundaries between the *resguardos* were set on large pieces of communal land used together by different communities for hunting and collecting wood and fruit. To the Spaniards, this land seemed not to belong to anyone and could be divided between the different indigenous communities. However the Indians were not used to placing fixed demarcation lines on their lands. As a result, the demarcation gave rise to conflicts between different indigenous communities and also to conflicts with Spaniards. The latter had established themselves on the communal lands since the end of the 16th century, because they thought the Indians were not using those lands very productively. The demarcation process took years. Certain natural features, such as rivers,

rifts or stones, were assigned to mark the boundaries of the *resguardos*. Because some of these features disappear with time, after a few hundred years the boundaries have become unclear (rivers dry up, and stones tumble down mountains). Another reason the boundaries still cause difficulties, is that some of them later were moved (Friede 1972, Colmenares 1972). So, right from the beginning, the formation of the *resguardos* has been problematic. As we shall see in this article, the conflicts about boundaries and land are still continuing.

In addition to concentrating the Amerindians territorially, the Spaniards tried to undermine the traditional pre-colonial indigenous authorities, the *caciques*. They did so by introducing the so-called *cabildos* as new authorities in the *resguardos*. These *cabildos* were a group of Indians who could speak Spanish and were willing and able to negotiate with the Spanish colonial officials. At that time, the *cabildantes* had to be elected by the inhabitants of the *resguardos* every year. The *cabildos* stood under the authority of the *Corregidor de Naturales* or a Catholic priest. The traditional *caciques* were not allowed to take a seat in the *cabildos*. This gave rise to a double power-system in which the *caciques* existed next to the *cabildos* (Pachón 1981). In the 17th and 18th centuries the *caciques* succeeded in keeping their position next to the *cabildos*. They even instructed the community members as to who should be elected as *cabildante*. It was only in the 19th century that the *caciques* bequeathed their power to the *cabildos*. However, members of these old *cacique* families and elders in the community, did influence for a long time the elections and the functioning of the *cabildos*.

In colonial times, the tasks of the *cabildantes* were provided by law. Their most important one was to administrate the communal lands which belonged to the *resguardos* and to divide this land among the community members who could only have usufruct of the land. They also had to organize and provide indigenous laborers, first for the *encomenderos* and later for the Spanish *hacendados*. Another task was the collection of taxes and its delivery to the *Corregidores* (Pachón 1981).

Thus, under Spanish rule we could say that the Indians more or less received some protection from the Spanish Government. Because of the *resguardos*, the Indians could at least not be deprived of all their land, and the taxes could only go up to a certain extent. Through the *cabildos*, some indigenous authority was recognized. Nevertheless, by the end of the colonial period, the indigenous population was very much impoverished by the tax system, and the *mestizos* or *criollos* tried to abolish the *resguardos*. Also the *hacendados* wanted to incorporate all Indians as labourers on their *haciendas*. The Indians resisted all attempts, and the

resguardos continued to exist. When the Latin American colonies became independent from Spain, a new period started.

After 1810 the new republican governments introduced the idea of equal citizenship, based on the liberal ideas that came from Europe. In line with this liberal ideology, the Indians and their culture had to be incorporated into the national state, which was based on "liberty, equality and fraternity". The communal lands of the *resguardos* were seen as an obstacle to this policy. As early as 1810, Simón Bolivar promulgated a decree which aimed at the immediate abolition of the *resguardos* (Decree 24, 1810, also law 11, 1821). In 1829 however, he was forced to restore the old tax system because of economic difficulties and poor functioning of the state machinery in la Gran Colombia. In contrast to former decrees and laws, he decided in 1829 that the *resguardos* and the *cabildos* should not yet be abolished. In the period 1829 to 1890, many laws and decrees were promulgated, some of them abolishing, others protecting the *resguardos* and *cabildos*. The attempts to carry out hostile legal measures against the *resguardos* failed, however, not least because the Indians resisted the division of their communal lands. In the end, in 1890, law 89 was adopted. This law determines

> '...The way in which the savages should be governed, so that they will dissolve in civilized society...'[1] (Triana 1980:121)

To the indigenous peoples in Colombia, this law became very important for the defense of their *resguardos* and territories. Although it was discriminatory, (it denominated the Indians as savages or semi-savages and declared that all Indians were minors), for a long time this was the only law which protected and recognized the *resguardos* and *cabildos*. According to law 89, the division of the *resguardos* into private land-ownership had to be postponed for 50 years. The territorial integrity of the *resguardos* was protected because the ownership-titles of the *resguardos* were declared imprescriptible and titles of illegal land-sales invalid. Law 89 also confirmed the fact that the Indians did not have to pay tax for their communal land. The *cabildo* became the economic government of the *resguardos*, and as in colonial times, it administrated the communal land. The community members only had usufruct of this land which meant that they could not sell it, lease it, inherit it or take out a mortgage on it. The *cabildos* also were also responsible for punishing small crimes and taking a population count every year. Law 89 was confirmed later by decree 74 (1898).

Despite the protecting character of law 89, at the same time it breathed the spirit of the 19th century of liberalization and progress. Whereas the Spaniards recognized the *cabildantes* as official authori-

ties, law 89 degraded the Indians to minors and savages who had to be civilized as quickly as possible. So it came as no surprise that in the beginning of the 20th century, the legalization of Indian affairs became very hostile again. The non-Indian authorities tried to abolish the *resguardos*. However, at that time the Indians started to organize themselves. In 1922 the *cabildos* of Nariño organized a protest march to Pasto against the implementation of law 104 (1919), which stated that the *resguardos* should be dissolved within 4 months. However, from 1930 onwards, many *resguardos* did indeed disappear. In 1935 there were still 90 colonial *resguardos* in Nariño (Sanchez 1984:122). In 1964 there were only 17 left (Rubio Orbe 1972:1111-1114). The causes of this rapid dissolution were, on the one hand, the hostile legalization, already mentioned. But there was another reason.

In the 1950s some important roads in Nariño, such as the Pan-American Highway and the road from Túquerres to Pasto, were finished. These roads opened up the countryside of Nariño, which up till then had been isolated from the rest of the country. Because of this, the area became easily accessible for the commercial market. In comparison with the beginning of the independence period, the indigenous culture had not changed much. After the 1950s it changed very rapidly, and in the end centuries of forced cultural incorporation and deprivation had their effect. As a consequence, the *cabildos* lost some authority, and many inhabitants of the *resguardos* started to desire individual, private landownership. The disintegration of the *cabildos* and the preference for private land-ownership were important reasons for the dissolution of the *resguardos* (Chaves et al 1959, Fals Borda 1959).

In spite of all this, the population of some *resguardos* did resist complete abolition, among them the people of Muellamués. One reason was that if the land remained communal, they would not have to pay taxes. To administer this communal land, the *cabildo* was needed. Eventually, the *resguardo* of Muellamués did not disappear, nor did its *cabildo*. At this time, the most important task of the *cabildo* became the administration of the land. However, even here the *cabildantes* lost authority. As time went on, more and more Muellamueses changed their communal *cabildo*-title into a private landtitle, even though this was prohibited by law, to get a loan from the agricultural bank which did not accept a communal landtitle. Although the *cabildos* and the *resguardos* had a rough time staying intact, in the late 1960s and in the 1970s, the indigenous movement, as we will see in the next section, became stronger. In 1988, finally the *resguardo* was defined in decree 2001 as

> "A legal, social political institute with a special character that is shaped by an indigenous community which owns by a communal

landtitle her territory. Internally the *resguardo* must be governed by an organization which will be regulated by indigenous law or by cultural customs and traditions of the community"

In the same decree, the *cabildo* was defined as

"A special public entity whose members must be elected and recognized indigenous people by a localized community in a particular territory. They have the task to represent their group legally and execute the functions that the law and their customs adjudge them. The *cabildantes* must be members of the community that elects them and the election will be realized conform article 3, law 89 from 1890 or conform their own forms of traditional organization."[2]

The mobilization in indigenous movements

So far, I have dealt with the history of the *resguardos* and *cabildos*, especially in the department of Nariño. However, in the 1970s an important change took place in Colombia, when the *resguardos* and *cabildos* had almost disappeared. In the department of Cauca, which lies north of the department of Nariño, the Indian movement started to evolve. It started with the *Asociación Nacional de Usuarios Campesinos* (ANUC, 1970), which was a peasant movement. The principal aim of this movement was the restitution of land from the large landowners to the peasants. At the same time, however, the Indian movement in Cauca became organized. In 1971 the *Consejo Regional Indígena del Cauca* (CRIC) was established. Because of the importance of the Indian movement, the ANUC tried to incorporate the CRIC. In 1974, the Third Congress of the ANUC was held in Bogotá. At this congress a special indigenous commission came together involving Indians from Cauca, Vaupés, Sierra Nevada, Llanos Orientales, Chocó, Nariño, etc. These representatives of the indigenous communities founded the third secretaryship of the ANUC which was supposed to look after the special interests of indigenous groups in Colombia. It soon became apparent, though, that the interests of the Indians were different from those of the peasants. The Indians wanted autonomy in the management of their organization and more attention for specific problems of indigenous communities. At the third congress in 1974, the CRIC formulated a severe critique of the ANUC. Because of this, the relationship between the ANUC and the CRIC was completely wrecked by 1975 (Sanchez 1986:1782-1786).

In the meantime, the Paez Indians, who live in Cauca, occupied the land of large landowners. Because of archeological and historical stud-

ies these Indians were changing their ideology little by little. The studies showed that the knowledge of the Paeces about the boundaries of their territory was based on real events in the past. This knowledge was passed on through generations by oral tradition. The older Paeces had always referred to the past when they claimed their landrights. The fact that the land once really belonged to the ancestors of the Paeces became important to legitimize the struggle for land. The Paeces and later also the Guambianos, living (in Silvia) in Cauca, too, and the Indians from Nariño characterized themselves as Indians and not as peasants, by legitimizing the struggle for land on the basis of the history of their ancestors. This was very different from the CRIC, and later also from the *Organización Nacional Indígena de Colombia* (ONIC, founded in 1982). The majority of the CRIC and ONIC members interpreted the struggle for land in terms of class differences. These movements supported, for example the policies of the *Instituto Nacional de la Reforma Agraria* (INCORA), the Colombian Institute for Land Reform, which aimed to privatize the land and integrate the indigenous populations of Colombia in the national state. The Paeces, on the other hand, wanted the recaptured land to be awarded as communal property to the *cabildos* and remain under the administration of the *cabildos*.

The MAIC with the concept of the Principal Right

The land recoveries of the Paeces led to the Guambianos taking action. These Indians also began to claim the restitution of their land. They organized themselves in the *cabildos luchadores*, the combative *cabildos*, in order to achieve this goal. Because the CRIC ignored the different opinions within the movement about Indian or peasant identity, the *cabildos luchadores* separated themselves from the CRIC and started a new organization which was called the *Movimiento de Autoridades Indígenas del Sur-Occidente*. Later, when many Indian groups in the whole of Colombia began to support this local movement, the name was changed into *Movimiento de Autoridades Indígenas de Colombia* (MAIC). From now on, I shall speak of the MAIC when I refer to this movement. After 1980, the Guambianos strengthened the ideas of an indigenous territory and Indian identity at meetings (Findji 1992:127).

Another difference between the CRIC and the ONIC on the one hand and the MAIC on the other hand was the interpretation of law 89 (1890). As stated before, this law labels the Indians as savages and minors but it protects the *resguardos* and the communal lands. In 1979, the govern-

ment of Julio César Turbay Ayala (1978-1982) rejected a proposal from the parliament to reform the existing indigenous legalization. In that period, the members of the CRIC decided to use the existing legalization without changing the institutional structure. The members of the MAIC, however, wanted to change the indigenous legalization, which they saw as discriminating. In 1980, the Guambianos organized a large meeting where they presented themselves as *indigenous* authorities. The representatives of the MAIC demanded to be approached and treated in the same way as the authorities and representatives from the national government. At the same meeting the Guambianos demanded their "Derecho Mayor", their Principal Right. This concept has its origins from the Arhuacos, the Arsarios and the Koguis, three important indigenous groups living in the north of Colombia. These Indians consider themselves the older members of a family. The non-Indian population of Colombia are the younger members, and they have different rights and duties to the older members (Findji 1992:133). The Paeces, and later the Guambianos and Pastos, adopted this concept. They consider themselves the older members because they are the descendants of people who lived in that part of the world before the Spaniards arrived. This corresponds with what I pointed out before, namely, that the Indians base their right to the land on the fact that their ancestors once owned it. Thus, the Indians make a strong appeal to their indigenous history and descent. This does not mean that they see themselves as fossils from an unchanged past. The members of the MAIC are well aware of the social and economic changes in their communities. Despite these changes, they see their communal indigenous identity as a guiding principle in the struggle for land and not the individual need of land (Findji 1992:130); the members of the MAIC do not accept the privatizing of the land.

In the 1980 meeting the Guambianos further distinguished the terms "race" and "people". They claimed: "we are not a race, we are a people" (Findji 1992:123). Contrary to the use of the term people by leftist movements, who associate this word with the lower classes, the Guambianos connected the term with the right to exist as a Guambiano people. Again, the Guambianos presented themselves as equal to the Colombian people. This shows the new position the Guambianos want to have in mutual relationships. Another important connotation of the use of the term people is that it implicitly points at the right of self-determination as it is formulated in international human rights legalization. Article 1 of the International Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights states that all *peoples* have the right to self-determination. If the

indigenous populations in Colombia are seen as indigenous peoples, it would have far-reaching consequences for the status quo and the autonomy of these groups. So, in fact, the Arhuacos, the Arsarios, the Koguis, the Paeces, the Guambianos, the Pastos and all the other indigenous groups that became involved with the authorities movement were changing their political and social identity, and the entire political and administrative system of Colombia was questioned. The concept of "the Principal Right" is clearly based on a collectivity, namely all Colombian people, all members from one family. It is important to note here that the Indians do not exclude other Colombians from this law principle. It indicates that the members from the MAIC do not wish to secede from the state when self-determination is adjucated to them.

The reform of the Constitution

Since 1988, the position of the MAIC has become even more prominent in comparison with the CRIC and the ONIC. The MAIC developed into a serious negotiator with the government regarding indigenous matters. The CRIC and the ONIC had to recognize this (Findji 1992:128). When one of the MAIC's leaders, Lorenzo Muelas Hurtado, ran as a candidate for the National Constituent Assembly, the MAIC became well-known. During his campaign and election, many indigenous groups started to support the MAIC. It was in this period that the gap between the MAIC on the one hand and the CRIC and ONIC on the other became more visible. In December 1990, Lorenzo Muelas Hurtado was elected to the National Constituent Assembly to represent the MAIC. Francisco Rojas Birry was elected to represent the ONIC. The reform of the Constitution began in February 1991 and lasted till July 1991. The results of the indigenous participation in this reform can be called amazing. I will give a few examples of the important changes that were made in favour of the Indian population.

Articles of the old constitution (1886) were reformed, and new articles were added with the support of various representatives of different indigenous communities all over the country, of intellectuals and of *solidarios* (these are sympathizers with the Indian struggle). The greatest and most important change was the revision of the territorial division of the country. The departments, municipalities and indigenous territories received the name "territorial entities". According to article 287 of the new constitution, in future those entities will be governed by authorities who are elected by the people (Henao Ospina et al 1991: 116). According to article 330, the indigenous territories will be gov-

erned by indigenous councils. These councils will have the following functions: applying the national legal norms about the use and exploitation of natural resources within the territories, and deciding about and designing economic and social projects in the indigenous territories. These projects however, will have to conform with the national development policies. It is important to note that both in the management of natural resources and in development matters, the indigenous councils remain subordinated to the national legislation. Article 330 also provides that the exploitation of natural resources should never cause any damage to the economic, social and cultural identity of the indigenous inhabitants of a territorial entity. Other functions of the indigenous councils include stimulating public investment in the indigenous territories and ensuring that this money is used properly. They also have to take care of the coordination of the programmes and projects that will be instituted by different communities, keep law and order in the indigenous territories and represent the indigenous councils in the national government. Article 329 stipulates further that, in case an indigenous territory exceeds the limits of one or more departments, the indigenous councils shall cooperate with the governors of these departments (Henao Ospina et al 1991:135). Representation in the national government is guaranteed by reserving two places for indigenous senators in the senate. Next to this, the participation of ethnic groups, political minorities and Colombians who live abroad is assured by five delegates in the Chamber. Finally, the government promised to create a commission to study the new territorial division which has to formulate recommendations for the adaptation of the existing territorial division of the country to the authorities within three years.

If we now compare the achievements of the new constitution to the principles of the Principal Right, we can conclude that the special cultural, economic and social identity of the indigenous groups in Colombia has been recognized. Officially, government institutions do not aim at the privatization of the land nor at the integration of the indigenous population in the national society any longer. With the new constitution the existing indigenous legislation is changed structurally, and in the creation of indigenous territories and indigenous councils, the authority of the Indians is affirmed. In this new approach there is room for the communal identity of indigenous groups and also for the possibility to exist next to the non-indigenous Colombians. However, the new constitution does not recognize the indigenous groups in Colombia as indigenous peoples. In articles 96 and 246 is stated that "...the members of indigenous peoples who share territories..." and "The authorities of the indigenous peoples will be able to execute..." So

here the constitution refers to individuals who are part of an indigenous people and not to an indigenous people in itself. The same reference can be found in article 27 of the International Covenant on Civil and Political Rights which states that "...persons who belong to minorities...". (Stavenhagen 1988:130, de Gary-Fortman 1989:30) What is at stake here is that in the concept of the Principal Right the communal identity is more important than "an individual who belongs to a minority" or "a member of an indigenous people". In the new Colombian constitution the indigenous peoples otherwise are referred to as ethnic groups and *etnias*[3]. As already stressed, the MAIC does want recognition of the indigenous peoples of Colombia as peoples. This would also include the right to self-determination as defined by international law in article 1 of the International Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights.

Developments in the *resguardo* Muellamués

Of course, the provisions in the new constitution will have to be translated into the legislation of Colombia and be enforced in daily practice. This will take time, and it will be problematic. Let us consider the local situation in the *resguardo* of Muellamués to clarify to some extent the character of the problems that can be expected. As mentioned before, since the beginning of the 1980s, the *cabildos* in Nariño associated with the MAIC and started to organize themselves. In Nariño, too, the inhabitants from the *resguardos* started to reclaim the land from large landowners. Together with the *solidarios*, who interfered in the expansion of the authorities movement and the organization of the *cabildos*, the *cabildos* emphasized their Indian identity and history. Accordingly, in Muellamués a fever of discovering traditions started. Forgotten traditions were remembered; some taken over unchanged, others were renewed and modernised[4]. An example of this is the "indigenous feast", organized every year by the *cabildo* since 1988. At this feast the inhabitants of every *vereda* (in total, Muellamués consists of eleven *veredas*) perform a play in which they act out an event or a custom from the past. In 1990, the inhabitants from the *vereda* Santa Rosa, for example, presented the surrender of the rural estate Santa Rosa by the old *cacica* Rosa to the *cabildo*. In the play the *cacica* was the owner of the land, the cattle and the houses. But she was old and sick and decided to give all her properties to the *cabildo*. The *cabildo* accepted this gift. After that, the *cacica* could die in peace. However, when I asked the players in which year the surrender of the estate took

place, they could not give me an answer. Neither could I find the name of the *cacica* Rosa when I studied the documents in the archive of the *cabildo*, whereas the names of other *caciques* are prevalent in the same documents. The people in Muellamués also could not tell me the last name of the *cacica* Rosa. This is strange because the last names of important *caciques* are very well known in the community and still used today. What does appear from the documents is that until the 18th century the estate Santa Rosa belonged to the *cacique* Paspur, a well-known *cacique* who once was the owner of the section *arriba* ("above")[5]. I have the impression that the *cacica* Rosa in reality never existed. In the play, the inhabitants of Santa Rosa partly invented the history of their *vereda*. Of course, the indigenous feast is an outstanding opportunity to do so. Apart from that, the surrender of the properties of the *caciques* to the *cabildos* is actually based on facts from the past.

Because of the increasing organization and mobilization of the *cabildos*, especially with regard to the reconquest of land, some conflicts also arose in Muellamués. As the authority of the *cabildos* and the credibility of the *resguardos* had fallen considerably during the 20th century, many inhabitants in Muellamués did not want to emphasize or revive their Indian identity. They saw or see themselves as peasants, not different from any other peasant in Colombia. This group did not agree with the reclaiming of land because in their opinion the land legally belonged to the large landowners. Thus, to get the population in the *resguardo* organized, the *cabildo* made a list of "*afiliados*", the members of the *cabildo*. Thereafter, the population of the *resguardo* was divided into two groups, almost equal in size; a little more than half of the adult population became affiliated to the *cabildo*. To be a member of the *cabildo* meant that one was obliged to participate in the recovery of the land and to pay a certain amount of money every month so that the *cabildantes* could make trips to Cauca, where the headquarters of the MAIC are located, or visit government officials.

In 1983, the *cabildo* from Muellamués began with the recovery of the estate Simancas. This estate is known for its extensive history of conflicts, principally because it is situated on the border between the Colimba and Guachucal *resguardos* . As mentioned earlier, in colonial times the demarcation of the *resguardos* was not done properly, especially concerning the communal lands. In 1983, Simancas was the property of a large landowner who lived in the municipality Guachucal. According to the *resguardo* titles of the *cabildo* of Muellamués, however, the estate belonged to the *resguardo*. For that reason, the *cabildo* started to recover the land in the following way. At night, at about 3 or 4 a.m., many people gathered and went to Simancas. They took agri-

cultural implements with them to work the land. When they arrived, they first chased away all of the landowner's cattle .Then they started to plough and plant, until dawn. Usually, by then the police had arrived and drove the Indians back to their houses. This happened regularly. As a result of actions of the police, and also of the landowner and her family, many people were injured. After some time, the leaders of the movement were sought and had to flee to Ecuador or to other parts of Colombia. Some of them were caught, put in prison and tortured. During the land recoveries, two Indians were killed. These problems in Nariño were reported in the national newspapers, however, and the national government was sensitive to this propaganda, even more so when, due to the national and international lobbying of the Indian movement, the problems and struggles over the land became internationally known. In the end, INCORA bought the estate Simancas from the landowner and handed it over to the *cabildo* of Muellamués. In 1988, the government accepted decree 2001 and law 30 in which INCORA was given the task to buy all the land within the *resguardos* that currently belonged to someone not from the indigenous community. This land had to be given to the *cabildos*. This was a great victory for the Indians in Muellamués.

After the allotment by INCORA, the *cabildo* exercised responsibility over the land. It was agreed that the land should be allotted in usufruct to all the persons who participated in the struggle and who were affiliated to the *cabildo*. The size of Simancas was 135 hectares, and there were 876 persons involved, making 1540 m^2 for every Indian. It was agreed that the Indians who suffered most in the struggle, that is to say, who had been in prison, who had been tortured or who had lost a family member, would get an extra piece of land. But the division of Simancas led to serious problems. The *cabildantes* who carried out the allotment assigned more land to themselves than to others. They also favored friends or family above other members of the *cabildo*, who therefore got a smaller piece of land. Because of this, the *cabildo* lost credibility, and some *afiliados* withdrew their support. Since 1988, however, the *cabildos* have been trying to make up for the mistakes in the past. In 1990, Simancas was divided once more, and the *cabildo* of that year took back any unfairly allotted portion of land of the ex-*cabildantes*.

Then another problem surfaced. The allotted pieces of land were so small, that it did appear not to be remunerative. Many Indians sold their land, after they had struggled so hard to get it back. This evoked a lot of indignation among those who were proud of their reconquered land. In addition, the land of a *resguardo* cannot be sold legally, as we saw

before. The *cabildo* of 1991 punished those who sold land by not allotting them any portion when INCORA handed over another estate in 1989.

We see that within the affiliated *cabildo* group problems arose. Because of this, the organization of the *cabildo* has weakened; at least, this was the case in 1991. In the *resguardo* there was also another group which did not agree with the activities of the *cabildo* and did not want to be called Indians. The difference between the two groups became clear in 1990, when an indigenous secondary school was established in Muellamués, the *Instituto Técnico Agrícola de San Diego*. The establishment of the school can also be viewed in light of the government policy, which by that time had been changed somewhat in favour of the indigenous groups and cultures in the country. The school was partly financed by the *Plan Nacional de Rehabilitación*. The intention was that the *cabildo* should take care of the management of the school and that the teachers should be indigenous persons who could teach the children in Muellamués about their own background and culture. Over the issue of the teachers, a fight resulted between the *cabildo* members, and the group of non-members, most of whom were in this case affiliated to the political liberal party. The latter group had also raised some funds for the school of the liberal mayor of the municipality Guachucal, of which the *resguardo* Muellamués forms a part. That is why the non-members also had some influence in the establishment of the school. Of course, this group promoted the appointment of liberal teachers. As there were no educated indigenous candidates available, the personnel of the school were non-indigenous, although they did come from other parts of Nariño. The appointed teachers did not see themselves as indigenous; in fact, when I talked with them, they even denied the indigenous background of the people in Muellamués. The *cabildo* as the manager of the school was side-tracked, and some members of the *cabildo* did not send their children to the school.

Final considerations

These are only some examples of the problems that exist in Muellamués as a result of the growing mobilization of the *cabildo* and the increasing emphasis on the indigenous identity of the *resguardo* inhabitants. We must realize, however, that the true reason for these problems is the destruction of indigenous societies that has been going on for five centuries. The indigenous community has been broken down, so it is logical that economically, socially and culturally these societies find

themselves in a kind of chaos. This, of course, carries much weight in the daily life and activities of the *cabildos*. We can ask ourselves whether the prestigious achievements in the constitution are compatible with the complex local situation. To what extent do the people in Muellamués share ideas about territorial entities and indigenous councils? And to what extent do these ideas come from the community-level? If it is not possible to reach agreement about the indigenous territories or about the policy in educational matters, the implementation of the new constitution and new laws will cause even more problems in the future than there are now.

The play about the estate Santa Rosa shows us that the people of Muellamués do invent traditions. This happens in many ways. The indigenous feast is also an example of the strategic attitude of the *cabildo*. The feast is organized because the Muellamueses want to search for the past and to remember events from the past. This was actively stimulated by the *solidarios*, who are people from outside the *resguardos*. The conflicts within the group affiliated to the *cabildo* show us that the ideas about the administration of land are ambiguous. The separation into an affiliated group and a non-affiliated group makes it even clearer that, for example, the concept of the Principal Right of the MAIC is not shared by everyone in the *resguardo* and that there is a cultural mixture in the *resguardo*. Half of the adult people in Muellamués are affiliated to the *cabildo* because they are conscious of their right to the land, but economic motives also play an important part in this decision. In the *resguardo* there is simply too little land to make a good living. When the land was assigned to the *cabildo*, some problems arose in the division of the estate. The dishonest conduct of the *cabildantes* indicates that individual interests exist next to collective interests. However, part of the affiliated group has continued to resist personal enrichment, and new *cabildos* have tried to correct previous mistakes. Obviously, the authority of the *cabildo* is not absolute. Ethnic, cultural, individual and collective contradictions play a significant role in this.

If we relate the situation in Muellamués to the ideas of the MAIC, we see that the inhabitants do make an appeal to historic continuity and to events in the past. This is how they partly legitimize the land recoveries. They also use oral tradition. The history of the conflicts over Simancas is well-known by almost everyone. Concern about their children's future is another reason stimulating the Muellamueses in their land struggle. They will need the land to survive, not only economically but also culturally. The land is an important prerequisite for the survival of the indigenous community. At the same time, however,

the recovered land is being sold and privatized. Even *cabildantes* commit this fault, which is forbidden by law. In reality, it thus appears that private landownership is accepted, as well as the communal use of land. Here it is important to note that, despite increasing capitalistic influences, cultural principles determine the section in which the land is bought[6]. Other cultural features determine the territorial division and the assignment of land in Muellamués, too. The *cabildo*, for example, assigns the land, thereby performing a special ritual in which the collective use of land is emphasized. In addition, the territorial division into two sections is reflected in the assignment of the land in the recovered estates; Simancas was divided in strict order according to the sections and the *veredas*. This is also the case with the cemetery situated in the village in the middle of the *resguardo*. In fact, the *cabildo* and the inhabitants of Muellamués handle different cultural influences in a very creative way. Collective indigenous structures do influence the behavior of the Muellamueses, whereas many inhabitants do not notice this and call themselves peasants. We may conclude that the community as a collective actor is very much present in the struggle for land.

The interpretation by the MAIC of law 89 caused some trouble in Muellamués. For one whole century, this law was very significant for the *cabildos* and *resguardos*, because it was the only law protecting them. Therefore, the *cabildos* in Nariño do not want law 89 abolished, especially as many *cabildantes* and community members do not understand the provisions of the new constitution. In time new laws will be implemented, and the inhabitants of the *resguardos* will have to accept the abolition of law 89.

Another point in the MAIC is the presentation of indigenous authorities on an equal footing with the Colombian authorities. I do not think in Muellamués or in all of Nariño that the *cabildantes* feel powerful. Centuries of discrimination have produced a very deeply rooted submissive attitude of the Indians towards the state authorities. This may be one of the most important obstacles to a truly equal treatment in the relationships with non-Indian people. The Indians themselves think they are inferior. The consciousness of an indigenous people as real *people* in Nariño is consequently not very well developed. Because of the discriminating attitude of white people and laws, the Indians are now ashamed of being Indian.

Comparing the situation in Muellamués and in Nariño with the stipulations in the new constitution, I would like to add the following comment. Muellamués could become, together with the other *resguardos* in Nariño, one territorial entity, an indigenous territory of the Pastos. The government of this territory could be an indigenous council,

a kind of *cabildo mayor*. Under these *cabildos mayores*, smaller *cabildos* would function on a local level. From the *cabildos mayores* delegates could be elected for representation in the national government. This would be an administrative form of government, however, without a strictly demarcated territory. The people who do not consider themselves Indians must also be able to live in Nariño and be represented in the government of the territorial entity. In Muellamués, for example, people who are not affiliated to the *cabildo* should have a vote and a place in the council of the territorial entity. Naturally, this will cause trouble. There is still a long way to go in the struggle for mutual respect. Another important point is that the achievements in the new constitution are not indigenous in themselves, but created by all kinds of people, Indians and non-Indians alike. I do not think this is bad, but it is important, because it makes clear that in Colombia the government and the indigenous movement are not turning the clock back. Indeed, that would be impossible.

Notes

1 This is my translation from the rather difficult juridical formulation in Spanish: '...La manera como deben ser gobernados los salvajes que vayan reduciéndose a la vida civilizada...'.

2 Original Spanish: "The Resguardo indígena es una institución legal y sociopolítica de carácter especial, conformada por una Comunidad o Parcialidad Indígena, que con un título de propiedad communitaria, posee su territorio y se rige para el manejo de éste y de su vida interna por una organización ajustada al fuero indígena o a sus pautas y tradiciones culturales". The *cabildo* es una "Entidad pública especial, cuyos miembros son indígenas elegidos y reconocidos por una parcialidad localizada en un territorio determinado, encargado de representar legalmente a su grupo y ejercer las funciones que le atribuye la Ley y sus usos y costumbres. Los cabildantes deben ser miembros de la Comunidad que los elige y la elección se hará conforme a lo dispuesto en el artículo 3 de la Ley 89 de 1890 o por sus propias formas de organización tradicional" (Pardo Rueda 1989:144). The translation is mine.

3 Theoretically seen, the concept of "ethnic groups" or "*etnias*" is very much disputed. In the Working Group on the Rights of Indigenous Peoples of the United Nations, the definition of José R. Martinez Cobo is used. See the paper from Willem Assies.

4 See for example Cohen 1989, Clifford 1988, Baud 1992, Barth 1969, Spicer 1971, Roosens 1982, Hobsbawm 1983.

5 Muellamués is divided in two sections, the section "below" and the section "above". This duality has to do with a pre-colonial territorial division and has nothing to do with differences in altitude.

6 People from the section "above" do not like to own land in the section "below" because of a very deep rooted antipathy between the sections. This antipathy is

based on the pre-colonial division of *cacicazgos*. In this division the section "above" is higher in hierarchy than the section "below" (see also Gomez 1985).

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DO JOINT DECISION-MAKING BOARDS ENHANCE CHANCES FOR A NEW PARTNERSHIP BETWEEN THE STATE AND INDIGENOUS PEOPLES?

Introduction

In this paper I want to deal with one aspect of institutional arrangements for self-government exercised by indigenous peoples. In almost all such arrangements I know of, national governments reserve for themselves the ultimate responsibility and ultimate decision-making power in matters like the following: management of natural resources, land-use planning, creation of nature reserves, granting of mining concessions and determining the conditions under which mining activities can take place. All these matters relate strongly to crucial elements of the life of an indigenous people over which they certainly want to have control and treat as their own. For example, the land base always ranks as topic number one in the struggle for self-government. Control over land and territory, including at least renewable but preferably also non-renewable resources, is crucial for their survival as a distinct people able to conduct their own life. As they say in Nicaragua: no autonomía sin economía. The struggle for land often forms the first step in a broader struggle for economic, cultural and political autonomy within the dominant state. For obvious reasons this topic provokes the most bitter fights between the indigenous people claiming full control over a vast track of land and national government wanting to keep sovereign power over what are commonly called crown lands, i.e. state-owned property. The main issue concerns who controls the largest part of the traditional indigenous land in matters like its rational use of its use for daily subsistence, commercial exploitation of resources, ecological conservation measures to prevent species from dying out or to prevent outside people coming in and depleting that resource, granting of concessions for large-scale mining and logging operations, and determination of the conditions under which those concessions may be given, as well as the

assessment of whether a proposed development or mining operation violates these conditions or not.

At best, the national State is prepared and willing to grant full control over just small portions of land directly around the villages and fields of the indigenous communities. In exchange for giving up any aboriginal unwritten claim to territory, the people obtain full title to a relatively tiny lot of land, often excluding subsurface deposits, but occasionally including those for a still smaller part of its new land base (like the Nunavut agreement in Canada, see below). For the remainder of the territory, mixed regimes are set up.

The most likely outcome of protracted negotiating is an expression of the willingness by the State to accept participation of indigenous representatives in the process of making decisions about, e.g., regulations involving the use of renewable natural resources (forests, land, water) and sometimes as well in the process of determining and assessing the effects of mining or commercial logging operations on the life of the local people. Sometimes, representatives of indigenous people are allowed to take part, as advisors, in the decision-making process about granting mining concessions.

In various systems of self-government, a provision is made for some form of sharing control over the greater part of the traditional territory by way of formally organized and guaranteed mechanisms of coordination between national authorities and the leadership of the indigenous people. The typical example is the wildlife management boards and a plethora of other boards instituted in the Nunavut agreement concerning the Northern Territories of Canada and various other agreements struck in Canada, such as the James Bay and Northern Quebec agreement. It stands to reason that in view of a principle of partnership between national states and indigenous peoples - as is sometimes called for in the old treaties, like the Waitanga Treaty[1] - indigenous peoples would be better off having full sovereign control over their traditional territory. For various reasons, however, that is not the arrangement likely to be wrestled from the state. Joint decision-making boards with ultimate responsibility vested in a national minister are the most probable compromise.

The national State, under such systems, binds itself to consider seriously the outcome of a joint decision-making body in a consultative status. The typical form is a body in which half of the seats belong to representatives of the self-governing group and the other half to state officials and non-indigenous representatives. Sometimes, an independent chairman is present.

Within those bodies, fierce debates and struggles are to be expected as the respective interests tend to be antagonistic, and connected with

this, the underlying concepts and views tend to be highly divergent. This can be illustrated with an anecdote drawn from my experience last year (Dec. 1993) in the Mosquitia area of Honduras where the Miskito Indian nation and other indigenous peoples are fighting for land. Two national agencies claim competence in the regulation of the "tierras nacionales" (crown lands) which, not surprisingly, cover almost all of the lands used by the indigenous peoples. The local head of one agency said that in terms of "uso racional" (rational use) the indigenous peoples did an excellent job, and there was nothing to worry about. His colleague from the other agency, with its headquarters next door, said that "rational use" in his view had an objective meaning deduced from sound forestry principles and that certainly the way the Indians used the land and forests could not be described. He called the local people depredators. So, should the Honduran government decide that the present time calls for the meaningful participation of an indigenous people in conducting their own affairs and that therefore a joint body should be set up to regulate jointly the rational use of the resources, there will be conflicts. In admittedly very vague terms, they instituted just that in the concept of a law providing for a vast "reserve" that covers an area in which a distinct indigenous Indian people now live (the Tawahka Sumu).[2]

With regard to these joint management boards I want to put two types of questions:

1. how effectively does this device of power-sharing lead to a genuine, meaningful and long-term system of self-government?
2. What type of legal or otherwise formal regulation or agreement provides better conditions for such a new partnership in matters of resource management?

For practical purposes I shall restrict myself almost completely to systems of joint management of natural (renewable) resources. Thus the far more difficult and conflict-prone topic of granting mining concessions (and sharing of revenue from it) will not be handled in full. In passing, I would like to note that the way the control over such mineral deposits is regulated forms the acid test for any self-government arrangement.

To answer these questions, I shall look through the scarce literature in which experiences with this type of body are documented, mostly literature on Canada. Also, I shall discuss some legal provisions that create such bodies, and elaborate on some weak and strong aspects of those legal provisions in terms of chances for meaningful participation.

To prevent misunderstandings some other preliminary remarks may be useful.

1. Although the management of natural resources is the most important aspect of any scheme of self-government by an indigenous people, it does not by any means exhaust the vast range of topics to be included in any serious arrangement for self-government. As to provoking examples, the law creating the San Blas comarca of the Tule people in Panamá only numbers 39 articles and can be printed on about 8 rather small pages, and the Estatuto de la Autonomía de las regiones de la costa atlántica de Nicaragua has 45 articles, some of which do contain multiple subheadings and subdivisions, but the Nunavut Agreement pertaining to the Eastern Part of the Northwest Territories in Canada numbers nearly 300 pages with thousands of articles, whereas the concept of a law implementing the Nicaraguan Estatuto de la Autonomía already covers 33 pages with 89 lengthy and complex articles. From this brief overview, we can appreciate at least in quantitative terms that I am dealing here with a tiny part of what would be called a serious arrangement of self-government.

2. The analysis will concentrate on the level of formal, mostly legal arrangements, but it will not be an exercise in comparative law. Rather, I want to focus on the question: are some legal provisions better suited than others to promote and enhance the long-term pursuit of indigenous self-governance? What provisions are more effective in promoting the cause of self-government, and why? Thus, I have to base my account on evaluations of the practical experiences of indigenous peoples with that sort of coordinating body. So this paper is an exercise in the anthropology and sociology of law perceiving legal arrangements as one, admittedly just one, condition of failure or success of systems of self-government. It is my contention, however, that the legal element forms an indispensable part in any effective system of self-governance. It makes for stability and continuity in the efforts to get that system going, it provides for means of seeking institutional support in case of conflicts, especially when a national court system or, better, a special court has jurisdiction over the behaviour of the national government. It rallies under its banner forces supportive of self-government in the national society and symbolically underpins the mission of the nation to turn itself into a really pluralistic and multi-ethnic whole. On a more prosaic plane we may note that having a law means having procedures that even in stormy weather and adverse conditions keep participation going, unless full dictatorship holds sway.

3. This approach also intends to draw attention to themes that should be included in any comprehensive visual documentary on weak and strong points of existing systems of self-government. We should most definitely include in such an educative documentary a visualization of the ways in which those wildlife management boards proceed, concentrating on the question of whether real power-sharing takes place or whether a coordinating committee is used just to ratify decisions taken elsewhere within the state apparatus. Also, we want to know and to show how relations between the indigenous representatives on the Board and their own people develop in the course of the Board's life. There is a widespread fear that an indigenous alienated elite will form during the implementation of a self-governing scheme, partly because of the very structure of those boards and their procedures.

I now turn to the two questions stated earlier.

I. What can be learned from experiences with those Boards?

It will be useful to have a common view on the basic features of the sort of Boards I have in mind. Here the Nunavut agreement in *Canada* serves us best.[3] As far as I know it contains the most elaborated schema of coordinating efforts on wildlife management, water management, land use planning, etc. Its article 5 for instance, on wildlife, numbers not less than 196 provisions or subheadings. Its total of 42 articles fills a book of 280 pages. It provides Inuit leadership a right to participate in a series of new institutions to manage land, water and wildlife and to evaluate the impact of resource development throughout the whole territory of Nunavut and offshore. Now, this scheme has yet to be put into practice, but in view of its quite elaborate structure, we may use the Nunavut Wildlife Management Board as the prototype of a modern, fully fledged Board of the sort I want to discuss. So let us begin with a short presentation of the main features of that Board.

a. The Nunavut Wildlife Management Board (NWMB).

Article 5.2.1. reads:

"There is hereby established on the date of ratification of the Agreement an institution of public government to be known as the Nunavut

Wildlife Management Board (NWMB) consisting of nine members (...)"

Membership is equally divided between Inuit leaders and members appointed by the national or provincial authorities (four of each). From nominations provided by NWMB a chairperson is appointed as member number 9.

Article 5.2.33: "Recognizing that Government retains ultimate responsibility for wildlife management, the NWMB shall be the main instrument of wildlife management in the Nunavut Settlement Area and the main regulator of access to wildlife and have the primary responsibility in relation thereto in the manner described in the Agreement. Accordingly, the NWMB shall perform the following functions:

(follows a long list, among which we encounter:)

- participating in research;
- conducting the Nunanut Wildlife Harvest Study;
- rebutting presumptions as to need;
- establishing, modifying or removing levels of total allowable harvest;
- ascertaining the basic needs level;
- allocating resources to other residents;
- establishing, modifying or removing non-quota limitations;

Article 5.3.9. :

"After receiving a decision of the NWMB pursuant to section 5.3.8., the Minister may:

a. accept the decision; or
b. disallow the decision in accordance with section 5.3.11.

Section 5.3.11. requires that any disallowance takes place within 30 days and with reasons given in writing.

From this point in the procedure onwards, in cases of a conflict the matter has to go back and forth between the Board and the Minister for another tour of consideration until the moment of a final decision eventually made by the Minister.

It is important to draw attention to one of the principles that govern this article on the NWMB as expressed in 5.1.2. (g): "The wildlife management system and the exercise of Inuit harvesting rights are governed by and subject to principles of conservation". This principle, together with two others, forms the only criteria the Minister may use to override the Board's decisions. It is said in 5.3.3.:

"Decisions of the NWMB or a Minister made in relation to part 6

[that regulates the harvesting over the whole territory]* shall restrict or limit Inuit harvesting only to the extent necessary:

a. to effect a valid conservation purpose;

b. to give effect to the allocation system outlined in this Article, to other provisions of this Article or to Article 40 [which regulates harvesting by other aboriginal groups];

c. to provide for public health or public safety".

Precisely by tying the hands of the Minister to this extent, the system lends itself to a rather tight judicial control not unlike the way the European Court of Human Rights exercises control whether the escape clauses in the Treaty of Rome (European Convention on Human Rights) are used properly by the national states or not. In the Agreement no special judicial bodies are set up, but recourse can be had in the ordinary judicial system.

The other Boards basically adhere to the same pattern.

b. The Denendeh Conservation Board.

What are the experiences with this sort of Board? Evaluation materials on those coordinating bodies are scarce, to the best of my knowledge. I came across some interesting studies, however: one by the ex-president of the so called Denendeh Conservation Board in the Western part of the *Canadian* Northern Territories, John Bayly,[4] one by a Canadian anthropologist, Harvey Feit, as well as another one by a lawyer, Andrew Chapeskie, on administrative structures set up by the James Bay Cree and Northern Quebec Agreement, also in *Canada*.[5]

John Bayly served as the chairman of the Denendeh Conservation Board, a board that functioned for four years from 1987 to 1991. The Dene nation, living in the western part of the Northwest Territories of Canada, in the course of prolonged negotiations over a land claim accepted the institution of the so-called Mackenzie Valley Renewable Resources Management Advisory Board, later renamed Denendeh Conservation Board. As its title indicates it had an advisory role, to advise the minister, in this case the minister of the Northwest Territories, not the Federal Canadian Minister, on renewable resource policy and legislation: e.g. matters like the prevention or control of non-Dene hunters that entered the area with small aeroplanes to flush game, particularly

*author's comments in brackets

moose (a species of elk) and to hunt them down. This, local people felt, gave non-Dene hunters such an advantage over water-borne hunters and favoured the high-income hunter so much that the Board advised a strong measure to be taken against this practice. The Board consisted of ten members plus a chairman. Five members were appointed by the minister, the five others by the local indigenous leadership. The Minister voluntarily agreed to consider all the recommendations and report back as soon as possible. If the Minister wanted to disagree, an exchange of views was provided for. Should the Minster stick to his disallowal, he had to inform the Board in writing and give reasons.

Although the Board had some successes, the overall picture is gloomy according to John Bayly, who documented many cases on which the Board took action. Gradually, the Board became so busy with following the Ministers agenda, acting upon matters put before them by the government, and trying to outdo the bureaucracy in skills and to triumph as people able to put out state laws, that "The Denendeh Conservation Board became more like an agency of State and less a useful tool for its aboriginal sponsors" (p. 47 original paper). He continues: "As the Denendeh Conservation Board turned its face towards the devices of the State and tried to acquire for itself some state-like powers it turned its back on the priorities and approaches of the Dene (...) and their folklaw ways which were preferred and recommended to it by Dene groups who initially saw the Board as an extension of themselves rather than an extension of the state" (p. 47 and 48).

Nobody mourned the disbandment of the Board in Oct. 1991.

The main causes of the demise of the Board can be summarised as follows (paraphrasing Bayly).

As a board you can have an easy success the moment an issue is non-controversial,but the moment the issue in question is controversial or not high on the national political agenda, negotiations between the Board and the national bureaucracy tend to continue endlessly. All sorts of formal problems not brought in for the rather uncontroversial case appear. Ministers claim not to have competence, utter legal niceties, ask for further study, and the Board becomes sucked into a morass. Meanwhile, this consumes a lot of energy, while the stalling of the process cannot be explained to the Dene nation that eventually finds itself at odds with its own representatives.

In particular, the Board failed to address management issues in an informal way, refraining from seeking state laws and regulations and

instead investing more trust in the local communities and in local informal solutions. An example of such informal undertakings is the way another Board handled a problem. That Board, the Porcupine Caribou Management Board, informally promoted a boycott of local communities against people selling caribou antlers, which was leading to the unnecessary killing of caribous both by local and by outside people. They alerted public consciousness through a wide variety of informal, educative means.

The lesson is that if the national bureaucracy opposes plans persistently, they have it their way easily. Trying to negotiate their consent consumes years and years of most precious indigenous time, will not meet with success and, most crucially, will neither promote recognition and use of aboriginal ways of resource management nor spread knowledge about it in public, both aboriginal and non-aboriginal.

c. James Bay and Northern Quebec Agreement.

Harvey Feit, in his article[6] on the wildlife management board set up in the context of the James Bay and Northern Quebec Agreement in favour of the Cree nation, discusses the failure and successes of the Board in five points:

1. What the basic rights of native hunters are;

2. How to manage wildlife;

3. How to allocate resources among conflicting users,

- and two other points.

As in the Nunavut Agreement it was accepted by the provincial and national State that the Cree[7] would enjoy hunting rights over the whole area, also on so-called crown lands. Normal practice up to that time was that the Crown could and would one-sidely change such rights at will. But in this agreement the right to harvest everywhere, at all times and by means of their own choice was recognised in such a way that no governmental authority could alter or constrain it. There was only one restraining clause, which is also in the Nunavut arrangement: the right to harvest is subject to the principle of conservation. So, that right may be limited, but only for that reason and only through the procedure laid out in the agreement. Recourse in the event of a breach of the agreement was to the courts.

Basically, the government would allow the Cree themselves to manage the natural resources, in their own traditional ways that in

normal times had functioned quite well. But as Feit notes, "Means were still needed to regulate non-Cree users and the effects of this use on wildlife" (o.c.: 81). To manage resources in that broad sense, the Cree needed the government. Numbers of hunters, times, places and sizes of catches had to be regulated (a quota system, for example). After quite a quarrel over the final decision-making authority on this point, a joint system came into being, a coordinating commission with equal representation from the two sides but, as in the Denendeh case, only with a consultative status. Also, a complex procedural system of consultation had to be followed before the advice of the committee could be overruled.

Feit, like Bayly, signals the plethora of procedures in which the system tends to drown, as well as the point that in contested cases the governmental representatives can drag their feet and do just nothing. He concludes: "Inaction has become a major tool of the government for avoiding their legal obligations, thereby making it more difficult for the Cree to bring court challenges based on contentions that government has acted in violence of the Agreement" (p. 82). Moreover, many times the government did not have conservation interests in mind, but for political reasons favoured non-Cree users.

All in all: "while some improvements have occurred as the process has been longer in place and as experience with it develops, it has nevertheless remained a largely paternalistic and only sometimes responsive process". A firm and loyal commitment of governmental agencies to this form of new partnership seems to be the essential condition for its success (as Feit rightly tells us, p. 83 - just following procedures and rules never does the trick), but that commitment is often lacking. Without that commitment from the national bureaucrats, any legal structure to regulate relationships between indigenous peoples and nation states, but particularly those of an advisory nature, will fail to deliver its promise. So far, that summarises Feit's general assessment of this management resources board.

Chapeski[8] also assesses the responsiveness of consultative joint decision-making bodies to local indigenous needs and local chances for determination of their own development. He focuses on the way the James Bay Agreement "coordinating committee for hunting, fishing and trapping' is organised structurally (section 24.4 of the Agreement). This device, like the commissions for economic development, environmental protection and administration of justice, basically performs an advisory function (although on some topics it has regulatory power of its own). Thus, it is meant to influence the decision-making process within the national government, without actually challenging the au-

thority of the government to legislate or regulate[9] As a rather formal committee, created after long, technical, and somewhat bitter negotiations in which technical consultants played a large part, this body fosters Euro-Canadian ways of thinking about resources management and promotes the coming into being of a Cree elite that risks being alienated from the local harvesters. Decisions are made along procedural lines and in terms that are alien to the local people. The structural factor here is the professional status of the participants in decision-making. Because university-trained technicians, consultants and advisors do not feel comfortable any more with informal and locally differentiated practices, the latter are marginalised in good management practices.

"However, not only are Committee decisions which might conflict with customary practices of harvesting and management structurally removed from the life-space level, the effective control of the power to make those decisions within the (...) committee (...) appears to have moved to those indigenous people who possess the skills to work within the technocratic idiom. Further, because State managers are most comfortable working within State resource management paradigms, do they not have a structurally entrenched advantage in the decision-making process concerning resources management in this setting?" (p. 11)

So, Chapeski feels that the way the coordinating committee is organised will

- foster a European style of thinking about resources management, and therefore
- produce a Cree elite that possesses the very skills needed to deal with the matter in that way, and therefore
- cause a social split in the Cree community as well as
- neglect the local customary wildlife management practices and knowledge that hitherto prevailed among the Cree.

All this in spite of the fact that the James Bay and Northern Quebec Agreement explicitly wants to maintain and strengthen "indigenous culture and traditions especially as they relate to the customary activities of hunting, fishing and trapping" and as such meant a giant step forward compared with older schemes that completely ignored local practice and knowledge, such as the Alaska Native Claims Settlement Act (Chapeski, o.c.: 208 ff, and 209).

Without offering alternative schemes, Chapeski keeps asking if it is possible to open up spaces within such a coordinating structure "for the

the massive entery of non-indigenous hunters with sophisticated equipment to hunt down wildlife, etc. Sometimes it even means harassing the indigenous people themselves by forbidding traditional practices, which amounts to catching the small fish, while letting the big sharks roam freely.

II. Pros and cons of the legal structure of these boards.

The example of the Emberá comarca in *Panamá* forms a ready transition to the second and last question. Are there better and worse ways of legally instituting such boards?

Obviously, the provision in the Emberá law will prove troublesome. Just to state that a responsibility is shared amounts to saying nothing and evades the question. This phrasing weak as it is may be a symbolic step forward in a long battle over power and as such can only be evaluated within the context of the local conditions. However, in itself, this provision legitimizes complete control by the State over the natural resources, provided some token consultation takes place. The topics to be dealt with are not specified, a procedure of how to do these things "together" is not spelled out, nor is the strength of both parties in terms of casting votes; no jurisdictional provision is to be found or implied that would give an aggrieved party access to an independent court or an institution of arbitration capable of shielding itself from the bureaucratic interests of the national representatives or from their clientele relationships. Nor is there any guarantee that the offended party can resort to publicity to try to appeal to public opinion. All is left to the goodwill of the national authorities, and that really is a very weak base for the constitution of a new partnership.

In many countries joint coordinating bodies in natural resources management, etc., are being formed. Cases in point are Venezuela and the Philippines. In an existing self-governance regime in Nicaragua, implementation is still lacking, and the mixed bodies that are provided for have yet to be instituted and regulated. It should be possible to compare those texts as well as other ones to see if they provide for a viable system. In this respect, let us have a closer look at the *Venezuelan* draft. In my translation, the relevant paragraph reads as follows[16]:

Article 25: "The state through its competent branches and agencies will recognise and guarantee the right of indigenous peoples and communities to occupy, to enjoy and to use the collective lands either owned by them or in their possession, with its forests, waters and other natural resources, within the terms of this law.

The Consejo Nacional de Asuntos Indígenas CONAIN will establish guidelines as to the ways the use and enjoyment of the forests, waters and other natural resources may take place, in accord with the principles of sound ecological practice ("ecosofía"), with the ecosystem in question as well as with the ways of life of each people and community in particular."

In article 51 the composition of CONAIN is spelled out. Five representatives of the President and various Ministries sit on it together with four representatives of indigenous peoples. No independent members are provided for. The council clearly represents the national and official point of view better than the indigenous' point of view. Resource management rules will be laid down by this body (art. 52 - 7).

Here we find just the sort of body I discussed earlier, with all the pro's and con's that go with it. On top of the fact that its composition is biased towards the national point of view, no procedural requirements are laid down that at least would see to a serious consideration of the indigenous point of view in case the "national" and the indigenous members oppose each other as two blocks. Neither can the aggrieved party have resort to an independent judicial or arbitration body.

In view of all that has been said so far, I cannot be optimistic about the result in terms of a new partnership as regards clauses in a *Russian Federation* draft law on the legal status of indigenous peoples of the Russian North (which is not an official draft, but a proposal from anthropological circles). One of those clauses reads:

"Indigenous peoples of the North, especially small ones, have the right to:

- [...]
- participating in elaboration of the programmes which contemplate siting and development of industrial installations on the territories of traditional management" (part of article 8).

However, another paragraph in this article strikes a different tone:

"Indigenous peoples of the North (...) have the right to

- "concluding treaties and obtaining licences on exploitation of regenerating natural resources in places of their traditional nature management".

Of course, much depends on the question of who is going to decide how to define those "places of their traditional management" and how well the implementation will be carried out, but in principle we do encounter so it seems an unrestricted right to exploit their own renewable re-

sources themselves and to ward off non-indigenous initiatives if they do not accord with the indigenous view. The Russian draft on almost no occasion enters into details as to procedure, decision-making powers, ways to enforce broadly formulated rights, etc. This is a pattern that one meets very often indeed. Risks are extremely high that such schemes only create some token participation by and consultation of indigenous representatives in matters that deeply affect their lives.

The Nunavut Agreement in *Canada* does far better, provided that you accept or are forced to accept the dominant position of the national state in matters of management of natural resources. It provides for precise specification of the subject matter, the parties involved, the division of competences, an elaborate scheme of procedure, publicity and judicial review, including the possibility of suing the Canadian government with some chance of success for breach of the agreement and particularly neglect of its duty to collaborate in measures protecting the natural resources and preventing depletion of the land, wildlife, etc. especially by outsiders. The sitting-still of national bureaucrats to a certain extent can most probably be overcome.

But the Nunavut Wildlife Management Board suffers from the same drawback I discussed earlier. Ultimate decision-making power rests in the hands of the national Minister. We have to face the definite risk that indigenous leaders will spend an enormous amount of time in trying to keep up with the national and provincial governments agendas and to outdo the bureaucrats in relevant skills. As access to the ultimate decision-making power is still divided unevenly between both parties, one has to expect that Inuit proposals, if contrary to Euro-Canadian views and interests, will not stand a good chance of being successful. Moreover, chances are that local management knowledge will not be used as a source of valuable information. Eventually, the aboriginal representatives and their consultants will form an urbanised elite that alienates itself from the rest of the population. If responsibility over matters of management of natural resources is not handed over completely to the indigenous authorities, no development will take place in the local style of regulation, in the local style of persuading people to use natural resources rationally. Local knowledge and practices of wildlife management will not be used as then could be, time will be wasted in extremely drawn-out procedures. In the long run people will turn bitter. No sustained and harmonious partnership between the two nations can spring from it.

Notes

1 The *1840* Treaty between the Maoris of New Zealand and representatives of the British Crown in New Zealand which stresses the patnership between the Crown and Maori (albeit in puzzling wording). See Ian Macduff, Biculturalism, partnership and parallel systems: the context of Maori rights, in: W. Twining (ed.) Issues of self-determination, Aberdeen University Press, Aberdeen 1991 : 102 - 114.

2 See Peter H. Herlihy and Andrew P. Leak, The Tawahka Sumu: a delicate balance in Mosquitia, In: *Cultural Survival Quarterly*, 14 (4), 13-16

3 Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada. Indian and Northern Affairs Canada, Ottawa 1993. There is also a French version.

4 John U. Bayly, The Denendeh Conservation Board: an experiment in aborignal resources and environmental management. Paper presented at the 13 th int. congress of anthropologial and ethnological sciences, Mexico City 1993, commission on folk law and legal pluralism. See the collection of papers for the commission.

5 Harvey A Feit, James Bay, Cree self-governance and land management, In: E.N. Wilmsen (ed.), *We are here, Politics of aboriginal land tenure*. Univ. of California Press, Berkeley, Los Angeles, London, 1989: 68 - 98
Andrew J Chapeskie, Indigenous Law, State Law, renewable resources and formal indigenous self-government in northern regions. In: *Commission on Folk Law and Legal Pluralism, Proceedings of the VIth. int. symposium, Ottawa, Canada*, Aug. 1990, Vol 1, Under the presidency of Harold W. Finkler. Some interesting remarks can also be found in the article by Andrew Chapeskie on: Indigenous Law, State law and the management of natural resources: wild rice and the Wabigoon Lake Ojibway Nation. In: Law and Anthropology, Internationales Jahrbuch für Rechtsanthropologie, #5, VWGö - Verlag, Vienna, 1990: 129 - 166.

6 See footnote 5 before.

7 Agreement also pertains to Inuit communities, but the story remains basically the same.

8 See his article (1990) mentioned in footnote 5.

9 Here Chapeski quotes from: Negotiating a Way of Life: Initial Cree experience with the Administrative Structure Arising from the James Bay Agreement, Montreal, ssDcc inc. 1979: pages 95 and 96. This report was prepared for the Research Division, Policy, Research and Evaluation Group of the Department of Indian and Northern Affairs, Ottawa. It is explained in this report that the Cree negotiators preferred to have as much participation in the management structures as they could politically grab, instead of being satisfied with a restricted, residual decision-making power in matters of purely local significance.

10 Compare the exclamation by one of the speakers during the Seminar, an Inuit: we all wanted to have those councils, but nobody came forward to sit on them.

11 Greenland Home Rule Authority, The Ministry of Finance and Economic Affairs, Information Memorandum on Greenland, Nov. 1992: 3 and 4.

12 Greenland Home Rule Authority, The Ministry of Finance and Economic Affairs,

Information memorandum on Greenland, Nov. 1992: 4.

13 In the Greenland Home Rule Act a special body with a special procedure is set up to settle matters concerning the respective jurisdictions of the home rule authorities and the Danish authorities (section 18). Obviously, stalemates in joint decision-making about mineral exploration, etc., cannot be presented as a doubt about the respective jurisdictions, but the section 18 model could be copied for solving stalemates in the joint decision-making process.

14 See on the experiences so far: Finn Breinholt Larsen, The quiet life of a revolution: Greenlandic Home Rule 1979 - 1992. In: *Etudes Inuit Studies*, 16 (1992, 1-2: 199 - 226; published by Université Laval, Pavillon Jean-Durand, Québec, Canada)

15 See F. Guionneau-Sinclair, Legislatión Amerindia de Panamá, Universidad de Panamá, Centro de Investigaciones Antropológicas, 1991: 126 ff.

16 See Proyecto de Ley Orgánica de comunidades, pueblos y culturas indígenas. Already discussed and approved for the first time on 12 Nov. 1991 in the Cámara de Diputados and since then transmitted to the Permanent Commisson on Social Affairs (Subcommission of Indigenous Affairs) of the cámara. On October 8, 1992 this draft law was presented to the Cámara de Diputados for a second round of discussion.

RHODA INNUKSUK ON BEHALF OF INUIT CIRCUMPOLAR CONFERENCE

INUIT AND SELF-DETERMINATION: THE ROLE OF THE INUIT CIRCUMPOLAR CONFERENCE

Inuit society has been highly organized and self-governing for centuries. As a result of colonization Inuit are adapting their tradition of self-determination to systems of government new to them. This is occurring not only on the local, regional, and national levels, but also, through the Inuit Circumpolar Conference, on the international level.

Inuit - Indigenous Peoples of the Arctic

There are about 120,000 Inuit living in communities scattered across the arctic, in Canada, Greenland, Alaska, and Russia. Inuit have lived there for thousands of years.

Southerners see the arctic as harsh and forbidding - bitterly cold for much of the year, the sea covered with ice, and the ground without trees in most places. Inuit see it as the homeland that has allowed them not only to survive, but also to flourish and live life to the full.

The Inuit way of life has always been based on knowledge of the arctic environment and wildlife. The most important resource for most Inuit is the sea - they use a wide variety of marine mammals, fish, shellfish, and seaweeds. They also use land resources: caribou, fur-bearers, plants and berries, and other wild species; soapstone, copper, and other rocks and minerals have also been important over the centuries.

While some may think Inuit hunting patterns are random, they are actually highly organized. Each family has areas its members have been using for generations. If a person wishes to hunt in another family's ancestral land, he is expected to ask permission; and permission is usually granted.

Cooperation has always been an essential part of Inuit life. In the past Inuit lived in small camps, relying on each other in the struggle to obtain food. Hunting caribou on land in the days before firearms, for example, meant that people worked together to frighten the animals within range of the hunters' arrows. Food sharing partnerships meant that as long as there was food, everyone ate. Sharing and cooperation within camps and families were essential, and each person was expected to fulfil his or her responsibilities - and to treat others with honesty, fairness, and respect.

Those who were most competent were most respected. When people were recognized to have superior ability, they became leaders. The arctic environment does not forgive mistakes; people chose to follow those who were known to make the fewest errors. Individuals developed expertise according to their interests and talents - weather prediction, animal behaviour, clothing design, human relations, or whatever - and these specialists were consulted and valued for their knowledge. This is still true today. Elders were highly respected because of the wisdom and expertise they had accumulated over the years. This also is still true.

Inuit Law

Inuit law and codes of conduct governed the way people lived. Elders were in charge of dealing with conflict, and rather than emphasizing punishment, they tried to find the cause of the unacceptable behaviour and persuade the offender to correct it. Although southern justice has now been imposed on Inuit communities, today's elders still know these laws.

Nation States and Colonization

Inuit in Alaska, Canada, and Greenland have had to accommodate many changes brought by foreign traders and missionaries, and later military interests and governments.

Inuit welcomed the first foreign visitors. They were exotic and rich loaded down with valuable materials like wood and metal, and equipped with highly useful devices like firearms - but in other ways they were unbelievably poor and incompetent, ill-equipped for arctic conditions, and unable to survive without Inuit help. Since their behaviour was unpredictable and sometimes uncivilized, they could also be frightening.

As foreigners visited more frequently and stayed longer, adapting

themselves to the arctic, Inuit life began to change, slowly at first; but in the last few decades as southern administration has moved north change has been rapid and profound - and Inuit have been forced to adapt.

The impacts of colonization have included:

1) loss of resources to commercial exploitation: large whales, for example, were overhunted in arctic waters by whaling companies from England, Scotland, and the United States.

2) loss of lands and resources taken for military purposes: the Thule Air Base in Greenland, the Prudhoe Bay Naval Reserve in Alaska, and the distant Early Warning sites and NATO low-level flying areas in Canada.

3) environmental impacts of inappropriate development, such as oil and gas, and mining.

4) erosion of human rights and cultural integrity: in Canada, the government kept track of Inuit by giving each person a number engraved on a disc to be worn around the neck. Parents were told their children had to be educated, and the children were then taken away to residential schools. There they spent most of the year learning English - some were punished for speaking Inuktitut - and learning southern culture, visiting home only during the summer. This weakened their knowledge of their own culture, and some lost their language. Government policy was to concentrate Inuit in communities, persuading them to move from their scattered camps into newly built settlements. Hunting became regulated by law.

These changes were caused by newcomers, and there was little consultation with Inuit, who had to learn quickly how to defend their interests and to maintain their rights and culture.

The Inuit Response: 1960 - 1994

Inuit are aware that, even in their own communities, they do not really have control over their own lives. This has led them to work for many years in Alaska, Greenland, and Canada, building organizations and lobbying and negotiating for rights to their lands, culture, and self-government. This is also the foundation of the Inuit Circumpolar Conference and its work on self-determination.

In Alaska, the land claims movement resulted in the signing of the Alaska Native Claims Settlement Act in 1971. This was followed by the creation of the North Slope Borough and other municipalities. The

Borough, a public government incorporated under state law, has powers of taxation and zoning over its 146,000 square kilometre territory. Eben Hopson, its first mayor, founded the Inuit Circumpolar Conference in 1977.

The most extensive system of Inuit self-government is Greenland Home Rule, proclaimed in 1979, through which powers have been transferred gradually from Denmark. Among the responsibilities of the Home Rule Government are cultural affairs, education, health, environment and taxation. Denmark retains control of some areas including defence and currency. In the mid 1980's Greenland withdrew from the European Common Market to protect its fishery by gaining sovereignty over its waters.

In Canada Inuit were given the right to vote in the early 1960's and only ten years later the land claims movement was under way. A national Inuit organization, the Inuit Tapirisat of Canada, had been established and land claims organizations were at work in the Western Arctic and Northern Quebec. Self government initiatives, like the Western Arctic Regional Municipality, the Kativik Regional Government in Northern Quebec, and the original Nunavut proposal to divide the Northwest Territories, were proposed but either dropped or diluted because of government reluctance to negotiate self-government. In 1982, a process began to amend the Canadian constitution in order to include the recognition of aboriginal rights. The Inuit Committee on National Issues was created to promote Inuit interests in the constitutional debates. The Nunavut claim, the most recent land claim to be resolved and also the largest was signed in 1993. As a result, in 1999 the Northwest Territories will be divided and in the eastern part the new territory of Nunavut will be created. Nunavut, where Inuit make up the majority of the population, will have a public government.

Inuit have been reinforcing their work toward self-determination within their own countries by re-establishing their circumpolar links. In the past they travelled freely and traded among themselves without hindrance from international boundaries. Colonization, with its borders and jealously guarded sovereignties, interrupted communication; relatives living in Alaska and Russia, for example, found they could no longer visit each other, and Greenlanders became illegal aliens in their polar bear hunting territories in Canada. Through the Inuit Circumpolar Conference, communication among Inuit residing in different nation-states is being restored.

The Inuit Circumpolar Conference

The ICC was founded in 1977 as an international non-governmental organization to work for Inuit rights internationally and to support Inuit initiatives within national jurisdictions. Its governing body is the ICC General Assembly comprised of delegations from Greenland, Canada, Alaska, and Russia. Between General Assemblies, held every three years, the ICC is led by a president and an executive council.

Over the past 15 years, the ICC has made a number of achievements:

- In 1980 the ICC General Assembly adopted the ICC Charter in Greenland.
- In 1983 the ICC obtained permanent consultative status within the U.N. system.
- In 1983 the ICC initiated the Arctic Policy Process.
- In 1986 the ICC initiated the Inuit Regional Conservation Strategy (IRCS).
- In 1988 the ICC received the Global 500 award from the United Nations Environmental Program for its work on the IRCS.
- In 1991 the ICC hosted the first Arctic Indigenous Leaders Summit which included representatives of the Sami and the Russian Northern Indigenous Peoples.
- In 1992 the ICC Arctic Policy was adopted by the Inuit delegations from Greenland, Canada, Alaska, and Russia.

ICC Policies and Initiatives: Their Relationship to Self-determination

Comprehensive Arctic Policy Principles

This major document sets out ICC guidelines for Arctic policy development on a wide range of issues. Following are excerpts from the section entitled *Principles and Elements on Self-Government*[1]:

Inuit Right to Self Government

Impact of Lack of Self Government

Relations With Inuit in Different Regions

Coordination of Transnational Policies

Conclusion

To avoid suffering discrimination Inuit must be vigilant as international standards and values which bind nation-states in their domestic dealings are determined at intergovernmental meetings. If Inuit values and aspirations are not represented internationally it is unlikely that those who set international standards will consider the views of isolated Inuit communities.

For Inuit, self determination is essential at all levels, from the community through to the international. Each is important and connected to the rest. Inuit culture will survive as long as there are Inuit and Inuit hunters; they in turn will survive as long as there is wildlife and a healthy environment to sustain it. Self determination for Inuit goes to the very roots of survival.

To be self-determining, Inuit must participate at all levels in all matters affecting them. ICC is a critical vehicle for Inuit participation internationally; and it also plays a role in the coordination of policy development, from the local community trying to control its affairs, to regional government, to national negotiations on self-government and constitutional reform.

While some aspects of Inuit life have changed profoundly this century, others have changed little. Inuit still have a close relationship with the environment, hunt the same animals, and eat the same food; and they still cooperate and rely on each other. Eben Hopson, who was responsible for the creation of the North Slope Borough in Alaska, saw the many changes coming to the arctic. He also saw that Inuit would survive them - if they stood together throughout the circumpolar world. The ICC is both the result of Eben Hopson's vision and proof of its accuracy.

Notes

1 Inuit Circumpolar Conference. *Principles and Elements for a Comprehensive Arctic Policy*, Montreal: McGill University Centre for Northern Studies and Research, 1992

2 ibid

L. VAN SCHAIK

THE NETHERLANDS GOVERNMENT'S POLICY ON INDIGENOUS PEOPLES

I would like to discuss the main points of the Netherlands Government's policy on indigenous peoples. This policy was laid down in a document presented to the Dutch Parliament in March 1993.

I will briefly address three issues:

1) the origins of Dutch policy on indigenous peoples, as outlined in the document

2) the ideas behind it

3) some facts about the implementation

1) The foundation for Dutch policy on indigenous peoples was laid by the report 'A world of difference' (1990).[1]

Let me quote a few lines from the chapter on culture and development: "Cultural cooperation calls for a more pluralist society, for greater scope for grassroots initiative, for a greater input of local knowledge and expertise". The formulation of a policy on indigenous peoples is a logical extension of this statement.

At the international level, significant interest in indigenous peoples was generated during the process leading up to the Rio Conference on Environment and Development in 1992 (UNCED). This interest culminated in the KARI-OCA conference during UNCED. The participation of indigenous peoples in the official proceedings of the conference was more than symbolic. Several proposals formulated by them found their way into official documents, such as Chapter 26 of Agenda 21.

From UNCED it was but one step to the creation of the UN Year of Indigenous Peoples in 1993, which then gave birth to a UN decade, that will start on 10 December 1994.

2) Indigenous peoples are not butterflies in suspended animation. Their culture is not static. 'A world of difference' states: "In Dutch policy, culture is not seen as immutable or sacred, but as being in a state of constant flux. Development activities should therefore link up with processes of cultural change."

One reason for focusing on indigenous peoples is the individual and original contribution which they make to cultural and social diversity, thus providing a welcome counterbalance to the trend of increasing uniformity in the world. Another reason is that they are often in a marginal position and that their cultural identity may be threatened. As the Dutch Minister for Development Cooperation Pronk has stated in Parliament: "We focus on indigenous peoples, not because they are poor, but because they want to maintain their cultural identity."

What are indigenous peoples? Let me repeat some of the main elements of the definition of UN Rapporteur Martínez Cobo: "Indigenous peoples consider themselves distinct from the dominant sectors of the societies now prevailing in their ancestral territories. They want to preserve their territories and their cultural identity".

How should their rights be protected? The Dutch Government considers legal protection or the protection of human rights as one of the most important priorities in its policy. It is clear, however, that indigenous peoples, by the very nature of their marginalized and oppressed position, have difficulty in making optimal use of the existing legal mechanisms.

On the complex issue of individual versus collective rights, we take the rights of the individual as a point of departure. But it must be recognized that certain collective rights, for instance relating to land, cannot easily be transposed into individual rights. At present, the Government is waiting for a report on this subject that the Advisory Committee on Human Rights and Foreign Policy is drawing up. On the basis of this report, the subject will be debated at greater length.

From collective rights it is but one step to the main theme of this seminar: self-determination for indigenous peoples. The Netherlands Government is in favour of interpreting Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights to mean that the right of internal self-determination is recognised in the sense that it must be possible to hold national governments accountable. Article 27 of the ICCPR offers a certain amount of scope for distinctive identity within a state. External self-determination for 5000 indigenous peoples would seem to be in the interests neither of the individual members of such peoples nor of the international legal order.

Many answers to questions relating to indigenous peoples resemble the Hydra of Lerna, in the sense that every answer generates a new question. But this should not keep us from thinking about this sensitive subject.

3) In addition to supporting indigenous peoples during the UNCED process, the Dutch government has supported the UN Working Group for Indigenous Populations and has contributed to the UN Voluntary Fund for Indigenous Peoples and the Special Fund for 1993.

The Dutch government has not yet signed ILO Convention 169 concerning Indigenous and Tribal Peoples because the subject is not directly related to the situation in the Netherlands. However, both P.H. Kooijmans, the Minister of Foreign Affairs, and J. Pronk, the Minister for Development Cooperation, stated in Parliament that, in view of the importance of this Convention to indigenous peoples, formal considerations should not prevail. They promised to reconsider the possibility of signing the Convention within the Cabinet.

A wide range of bilateral development activities that are directly linked to indigenous peoples have been carried out, from assistance in the teaching of indigenous languages in Guatemala to rural development programmes for the Maasai in Kenya.

A programme was launched in 1993 to increase public awareness in the Netherlands on the issue of indigenous peoples. In this context the Dutch government contributed to the "Voices of the Earth" project (Amsterdam, November 1993), in which indigenous representatives from all over the world participated.

The contribution by the Dutch government to improve the status of indigenous peoples amounted to 35 million guilders in 1993. Minister Pronk has explicitly stated that the government will continue to focus on the issue of indigenous peoples.

Note

1 Ministry of Foreign Affairs, *A world of difference*: a new framework for development cooperation in the 1990s, policy document. Den Haag, SDU, 1991

HANNIE LOERMANS

SNV[1] AND INDIGENOUS PEOPLES: SELF-DETERMINATION FROM A DEVELOPMENT PERSPECTIVE

Self-determination as a concept of international law is not an easy issue for a development organisation to deal with. We tend to be cautious with this concept, because the implications of self-determination may be desirable when on paper but can be very far-reaching when applied in concrete situations. But it seems that SNV is not the only organisation that is cautious.

Look, for example, at the case of the Zapatistas. In a way, it might be considered an extreme case, because not many indigenous peoples take up arms against their government. But I also got the impression that the international community remained remarkably silent, apart from the European Parliament and some NGOs like Amnesty International. Where were all the UN institutes and development organsations that wholeheartedly embraced the UNYear of Indigeous People with numerous policy documents and well-meant promises?

But let me return to SNV and the concept of self-determination from a development perspective.

Although you will not often find the word self-determination in our policy papers, SNV's objectives are closely related to what is commonly understood by this concept. Our keyword, however, is empowerment.

Our main objective is to increase the social, economic and political empowerment of groups of poor, discriminated and oppressed people in developing countries.

We try to achieve this by supporting our target groups:

- to acquire or defend their rights
- to acquire knowledge, land or money
- to increase their self-confidence and
- to increase their decision-making power

In this sense, empowerment can be seen as a pre-condition in the process of exercising the right of self-determination, by virtue of which, as the definition says: people freely determine their political status and institutions and freely pursue their economic, social and cultural development.

Here is a brief idea of the type of projects we are involved in. SNV has supported for quite some years several indigenous groups in 15 countries. In the Andes countries, for example, it works on organisation building and sustainable agriculture with indigenous groups such as the Pech in Honduras or the Chiquitano in Bolivia.

In the Philippines we support tribal populations in community development. In Cameroon SNV is involved in environmental research in the tropical forest with respect to the Baka or Pygmies.

In Tanzania we are conducting a feasibility study on responsible tourism that can be of benefit to the Maasai, rather than only making use of them.

And in order to strengthen the cultural identity of the Bushmen from Botswana, we recently contributed to the exhibition of modern Bushmen Art in the Ethnological Museum in Rotterdam.

Like many other organisations we used the Year of Indigenous People to define our policies towards this specific target group. In April last year, SNV organised a seminar and formulated a set of guidelines and strategies[2]. Although these documents may be useful in some respects, paper won't blush: when working with indigenous people in the field, many questions remain unanswered.

To give an example: Two years ago a group of Bushmen, who called themselves the First People of the Kalahari, indicated to the Government of Botswana that they wanted to establish a kind of national Bushmen Council. Their written statement said that they do not feel represented by the official district councillors, who did not seem particularly interested in the special needs of the Bushmen. The government's answer, however, was: go back to your district councillors and use the formal channels for your complaints. Thus, the government completely denied the Bushmen's request to choose their own representatives, which is not only important in the process of empowerment, but also a crucial aspect of self-determination.

For our field office in Botswana, this so-called 'incidence' caused a dilemma. If we openly support the organisation First People, we run the risk of antagonizing the government, with which we have cooperated for several years in a development programme for Bushmen. If the field office decides not to support the First People, whether for tactical or principle reasons, we might not only lose our credibility with the

Bushmen, we should also ask ourselves whether the level of empowerment to be reached by the target group can be determined by us.

My aim, therefore, is not to summarize SNV's policy paper; rather would I like to discuss some of the difficulties we come across when trying to support indigenous peoples.

Firstly, there is the issue of the UN definition and its practical applicability.

The definition which has been developed by UN Rapporteur Cobo and which is commonly used poses some problems to a development organisation like SNV. The reality of our indigenous target groups seems to be more complex. Well-known is the rather aggressive reaction of Asian governments towards the term indigenous. Also on the African continent, the concept 'indigenous' is, in the light of colonialism, a difficult word. "We are all indigenous" is a common reply heard from African civil servants in their reaction to the UN proclamation of last year.

Not only SNV but also the Dutch Ministry of Foreign Affairs raised questions about the general applicability of the definition in Africa in their recent policy document on indigenous peoples.

With all due respect to Mr. Cobo's work, in our opinion the UN definition does not reflect that there are major differences between indigenous groups, that the level of integration in the dominant society differs from one group to another, and that there may be large power variations among indigenous peoples themselves. Our field offices stressed that we should pay more attention to the dynamic and heterogeneous character of indigenous peoples.

SNV therefore prefers to focus on the historical and regional context of indigenous peoples, rather than running the risk of using definitions which do not reflect the reality of the people we work with. As a development organisation we constantly have to keep in mind that indigenous peoples are in a continuing process of change, a change which is for them more drastic and which goes much faster than for most other people.

We do, however, acknowledge that certain aspects are common to most indigenous peoples, such as marginalisation and cultural values that differ considerably from the dominant culture in their countries.

Although the reasons for their marginalisation cannot simply be reduced to a limited set of factors, it is most often caused by the expansion of dominant economic or political systems. The consequences differ depending on specific situations, but common features are discrimination, the loss of cultural identity, and poverty. In one aspect indigenous peoples do not differ from others: indigenous women usu-

ally bear the heaviest burden and are in many cases more marginalised than men. SNV recently published a study on the changed position of San women in the Kalahari, which is an example of the difficult situation in which especially indigenous women find themselves today[3]

But distinct cultural values and marginalisation are not limited to indigenous people only. This makes the issue of definition even more complicated.

For example, the Tonga people in Zimbabwe and Zambia have many things in common with indigenous peoples elsewhere in the world, but they have never identified themselves, nor have they ever been identified by others, as more indigenous than other ethnic groups in those countries.

The other way around also occurs: the Maasai certainly do not belong to the poorest people in Eastern Africa because of the large herds that many of them possess, but they themselves seek to be designated as an indigenous people, and to this end they have approached the UN Centre for Human Rights in Geneva.

In this respect SNV agrees with the subjective element in Mr. Cobo's definition, which emphasizes the importance of self-identification. A short story told by Astrid Roemer, a Dutch-Surinam author, illustrates this point [4]

> "Pinto, who lives in a village of Indians in Surinam, was baptised by Catholic missionaries and received the name Johannes. One Friday Pinto was just enjoying a piece of game meat when one of the priests entered his house. "But Johannes," the priest said, "didn't you know that it is not allowed to eat meat on Friday?" Pinto smiled: "I don't eat meat father, just like you called me Johannes, I call this meat fish".

Self-definition has acquired a significant political dimension. It also means choosing to change a stigma into a status.

Several organisations of indigenous peoples have asked us to pay more attention to the cultural aspect of their lives and to acknowledge their specific claims and rights. Therefore, SNV considers the UN definition as a point of reference, which tells us little about the problems of people's daily lives, but which indicates something about the political position they choose and the claims they want to make.

This brings me to my second question, which is, I suppose, specifically of interest to anthropologists of law: how can we contribute to the protection or compensation of collective rights of indigenous peoples?

One of the main problems of indigenous peoples is the lack or loss of land. The papers presented over the past two days clearly illustrate this. One of the few examples of a successfull solution is that of Eastern-

Bushmenland in Namibia, or Nyae Nyae as the area is called in the local language. With the help of anthropologists and lawyers, the Bushmen managed to get their traditional n!ore-system formally recognised by the Namibian government as a land use system, and the Nyae Nyae Farmer's Cooperative has been accorded a relatively high level of management of that area.

But not many indigenous groups have been that successful; on the contrary, a lot of them have not only been deprived of their land, but also of the right to use its resources. Not only land rights, but also hunting and harvesting rights need to be protected. But besides land, they now are also tending to lose their intellectual property. That Western companies such as the Bodyshop suddenly appear to be safeguarding indigenous knowledge systems is, I'm afraid, more inspired by self-interest than by respect for the owners of this knowledge. The issue, however, is complicated. Who should, for example, be given the patent right on the commercial development of say indigenous herb tea when the knowledge is the intellectual property of a whole community?

The issue of cultural identity is even more complex. By working together with indigenous organisations and listening to what they have to say, SNV realised that more attention needs to be paid to the cultural component of development work. Being indigenous is a dynamic aspect of people's lives, which sometimes has major political significance, but which can never be considered a fixed characteristic. Ramon Rivas, one of our programme officers from Honduras, formulated this as follows:

> "Indians feel like Indians when they get up in the morning and when they come home at night. But during the day, when working as farm labourers, they can feel quite different. At this point two world views are in conflict with each other. We might have worked with indigenas, but we will never completely know what reality is like for them. That's why we have to stay open-minded and stay in dialogue with them."

In this respect the concept of 'internal colonialism' which has been described by Rodolfo Stavenhagen is an important addition to the analysis of the situation of indigenous peoples, because it combines ethnicity and class.

It is clear that SNV still has many questions but few answers. From the discussions we have had, both within and outside our organisation, some preliminary conclusions can already be drawn.

SNV defines the right to self-determination of indigenous peoples as the right to development on their own terms. As a Dutch development organisation we are fully aware of the political sensitivity of the

situation of indigenous peoples in many countries. In some cases it is even impossible to openly support indigenous organisations without antagonizing the government. This means that sometimes we are cautiously balancing on the edge, while at other times we are not able to do what needs to be done. In some situations we might be able to build strategic coalitions with, for example, embassies or UN organisations. In other cases SNV has to refrain from direct activities but will be able to support other NGOs that can work with indigenous peoples.

The role that we see for ourselves is to support indigenous peoples whenever possible to enter into a dialogue with their governments, even when it has to be enforced by silent diplomacy. Such a dialogue will hopefully result in the development of solutions that are acceptable to both parties and in which the interests of indigenous peoples are seriously taken into account.

One of the main challenges for the Decade of Indigenous Peoples is in my opinion the acknowledgement of their collective rights, with respect to land, language or intellectual property.

One of the resolutions of the Indigenous Peoples Conference, held in November 1993 in Amsterdam, called upon the international community to develop effective measures for the protection and compensation of intellectual, cultural and scientific property. I truly hope that development organisations and human rights specialist or lawyers can work in close consultation with indigenous organisations in order to develop such regulations or laws.

Thus, it can be made clear that the recognition of collective rights will increase the possibilities for indigenous peoples to self-determination, and that this does not necessarily mean a threat to governments. This, however, is only possible when dominant economic and political systems make space for alternative ways of development.

By showing that alternative land-use systems and the recognition of indigenous language, cultural values and knowledge systems may also contribute to sustainable development for other poor and deprived people, we can see the self-determination of indigenous peoples in a broader perspective.

Notes

1 SNV Netherlands Development Organisation, Bezuidenhoutseweg 161, 2594 AG The Hague.tel.: 31-70-3440244, telefax 31-70-3855531.

2 SNV-seminar reports no. 1: Indigenous Population Groups: points for special attention, SNV, The Hague, 1993

3 Loermans, H.: Sustainable Development in the Kalahari from a Genderperspective, SNV The Hague, 1993.

4 SNV-seminar reports no 1: Indigenous Population Groups, SNV, The Hague, 1991.

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