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**“FIGHTING FOR GLOBAL RIGHTS**  
An anthropologist's account of how the  
United Nations Declaration on the Rights  
of Indigenous Peoples came into being”

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Les Malezer, Chairperson of the Global Indigenous Peoples' Caucus addressing the United Nations General Assembly on the occasion of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples.

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This thesis is especially dedicated to Indigenous peoples whose strength and commitment to not only securing a more just world, but also a more sustainable and holistic life continues to be a source of personal inspiration.

In particular, this thesis is to honor the memory of Dr. Andrew Gray, who at the beginning of this process represented one of the – at that time – few other NGOs dedicated to supporting the work being done at this United Nations (UN) level on the Declaration. Although a trained anthropologist, he chose to work for an NGO and served as a mentor for my own quest to

combine the academic with the practical work. The fact that he passed away early on, during a tragic accident while working for his NGO, has been a great loss for our community.

Finally, I wish to thank Dr. Prof. Andre Gingrich for his patience in allowing me the time I needed to complete this work and for his continuous support throughout ,what at times seemed to be an endless process, leading up to the completion of this thesis.

## **2. History of My Personal Involvement with Thesis Topic**

I think for the benefit of the reader it is important to clearly disclose my extremely personal involvement with the thesis topic. The level of active participatory research I was able to conduct has allowed me to gain a substantial amount of insight by actively being involved with the leading Indigenous peoples' representatives following this topic.

I have been involved with indigenous issues starting while I was living in the San Francisco Bay Area, USA, where I began being politically active on various social justice issues (anti-war, gun control, US policies in Latin America, racism) and in Native American rights issues.

In 1992, in San Francisco, I joined the activities going on around the anniversary of the 500 years since Christopher Columbus' arrival signaled the beginning invasion of the Americas. After hearing a speech by a member of the American Indian Movement I volunteered to assist in their upcoming activities. As such I was instructed to join a team preparing a Tribunal to be held against the United States Government in relation to their crimes against Afro-Americans, Euro-Americans, Mexicans, Native Americans and Puerto-Ricans. For this I worked in organizing and public relations, where I was actively involved in all activities held around this event.

In 1993, I then moved to Vienna to begin my studies in Socio-Cultural Anthropology. Through my participation in a seminar on 500 years of resistance, held by Professor Werner Zips, I came to know of a group of women active with the NGO "Society for Threatened Peoples" (The Gesellschaft für bedrohte Völker - GfbV). After hearing my seminar presentation they asked me to join them in working at the 1993 United Nations World Conference on Human Rights in Vienna, Austria as there would be a need to staff the Indigenous peoples' office for the entire three-week conference. Thereafter, I first became volunteer, eventually a paid staff person, and finally a Board member of this same NGO.

As one of the participants in this conference, the former Director of the 1992 US Tribunal was in attendance, it was during this time that he invited me to again join his team, this time in the subsequent summer in Hawai'i, where I worked as his assistant and publicist for 'The Peoples' International Tribunal Hawai'i 1993. This Tribunal put the US Government on trial for crimes against the Kanaka Maoli People (indigenous Hawai'ians, M.A.F.). This Tribunal was based not only on the US Government's own laws, but also on International Law and Kanaka Maoli Law. Here, I was able to work in a more locally connected manner with the various indigenous Hawai'ian groups, as well as with international indigenous experts in the field of human rights.

I returned to Europe in 1993 and throughout my Anthropology studies I became immersed, via various European NGOs, on indigenous issues, especially focusing on the United Nations (UN) level. 1993 therefore marks the actual beginning of my long-term field work experience.

After leaving the Society for Threatened Peoples, I helped to found the Austrian Branch of the Rainforest Foundation. In 1995, after a visit to an NGO Conference in Holland, I began working with the Netherlands Centre for Indigenous Peoples (NCIV) on a volunteer basis. Eventually I worked there on various projects, and after some time created my own position as International Human Rights & Environment Coordinator. It was especially during my many years with NCIV that I became increasingly involved with the work around the United Nations Declaration on the Rights of Indigenous Peoples.

It is important to note that it was at the World Conference in Vienna that I made the initial contact with the Secretariat of the United Nations Working Group on Indigenous Populations (UNWGIP). Since 1994, I then began to travel to the annual summer meetings of the UNWGIP. Already in 1993, I became involved with the work around the Declaration and, as it moved to various other UN bodies, I continued to follow its process as a member of various NGOs, up until its final adoption in 2007.

Thus, I have been involved with the topic for more than 15 years. When I began, most of my interview partners were fairly new to me, but by the time I ended my interviews – after the Declaration's adoption – most of these interviewees had become very close colleagues.

Due to the high level of my personal involvement with this topic, as one of the few NGO representatives working directly with the Indigenous peoples most involved with the Declaration, this has allowed me a level of access and insight into this political process that I believe makes this thesis and its results unique.

This field research owes much to the connections I was able to establish to all of the key parties involved, especially to members of the Global Indigenous Peoples' Caucus – who are the focus of this thesis - in the process of the UN Declaration on the Rights of Indigenous Peoples.

In 1993, when I first began attending the UN meetings around the Declaration, I was at first a mere observer. However, by the time of the Declaration's adoption in 2007, I had been a

member for many years already of a small core group of NGOs. This included such significant Human Rights NGOs as the Quakers and Amnesty International, as well as NGOs whose focus was entirely on indigenous issues, such as the International Work Group on Indigenous Affairs (IWGIA), all of whom were active in lobbying and coordination work around the process of the Declaration. By this time, I was also working closely and very directly with the Global Indigenous Peoples' Caucus.

This phase of my field research – including many of the early interviews focusing more on the content of the Declaration – began with a more distanced stance. However, the interviews made with the key members of the Global Indigenous Peoples' Caucus shortly after the Declaration's adoption, were by then interviews with colleagues I had been working with very closely with - in some cases – for well over a decade.

It is important to note that while I was actively working for various NGOs in support of Indigenous peoples' rights, my role was not to speak for Indigenous peoples' representatives, as they could profoundly articulate their specific concerns themselves. This view is supported by many anthropologists working or researching in this arena, who take on an active, albeit to the outside view, vocally silent role. As one anthropologist, Ellen Messer notes: *"...anthropologists speaking for native peoples are being replaced by indigenous leaders organizing their own struggles. These leaders demand legal and development advice and networking assistance, but they speak in their own indigenous voices."* (Messer 2002: p. 326)

Beyond this purely political conviction, my work in this arena has become very personal. I shared this conviction with many of my NGO colleagues, some of whom are also anthropologists. Although, not indigenous, they like myself felt that this Declaration was not just about indigenous rights, but concerned the furthering of human rights overall.

As noted anthropologist and activist Ida Nicholaisen has said: *"We (anthropologists, M.A. F.) owe it to indigenous peoples and other marginalized groups to stand up for their basic human rights when needed."* (Nicholaisen 2006: p. 6). Or as anthropologist Laura Graham notes: *"...as a humanistic field, the discipline of anthropology has an obligation to promote social justice."* (Graham 2006: p. 4)

On the issue of also being reciprocal to one's "subjects" of research I would agree with anthropologist Terry Turner who states: *"...it is more broadly a matter of principle, and includes a sense of reciprocal obligation to and solidarity with those other human beings of different culture, social practices and*

*physical traits whose differences anthropologists have made the subjects of their scientific careers.*“ (Turner 2006: p. 4, see also Nicholaisen 2006 and Graham 2006). In fact, it is with this premise, that I hope I am able to give something back to the Indigenous peoples I was “researching”. My dual career as an activist/anthropologist of course has been a very personal choice, but one which I see as having greatly enriched both my political and academic development.

I am especially pleased that for already three semesters I have been able to teach a course on *Indigenous Peoples and Human Rights* at the University of Vienna, Austria. This institution has allowed me to teach this introductory course to a new generation of anthropologists, at the time still without the academic credentials, but solely based on my experience as an activist in the field. It is thereby that I have already been able to contribute to the furtherance of this discipline and hopefully excite at least some emerging anthropologists for the rich and rewarding field of activist research.

### **3. Methodology**

#### **3.1. Initial Interviews**

It was due to the sensitive and highly political nature of the process when I began my research that all of the interviews pre-adoption of the Declaration - as per agreement with the interview partners - do not disclose their identities. However, every interview partner was informed that I was working on my master's thesis and each of them agreed to the interview knowing that this thesis might be published. Further, due to my own political involvement in this process, as a representative of various NGOs throughout this research process, I too felt that such confidentiality was essential to protecting our collective political work. However, I wish here to identify each of my interview partners as to their gender and which region they inhabit. Whenever reference is made to their nation/organization/NGO and/or the country within my thesis, I have generalized this in such a way that it will not disclose their identities. To further protect their identities I also do not disclose the year the individual interview was conducted, but here disclose that all of the interviews were held between the years 1996 to 2006, at the United Nations in Geneva, Switzerland.

I have chosen the participants for the pre-adoption interviews with a view to achieving a regional balance. Thus, I have divided the regions according to the present Permanent Forum division of the world, which was the division proposed to the UN by the Indigenous Peoples' Caucus themselves and which is the accepted international regional division at this point in time. These regions are Asia, Africa, South & Middle America and the Caribbean, North America, the Pacific, Arctic/Europe and the Russian region. For Asia, as the vastest of regions, I interviewed three participants from varying areas. For Africa, I interviewed one English and one French-speaking participant. For South America, I interviewed one South and one Middle American/Caribbean participant. For North America, I interviewed two participants representing two of the main nations/organisations/NGOs in USA with varying viewpoints, plus I also interviewed one representative from Canada and one from Alaska. For the Pacific I interviewed one participant each, one representing the smaller island nations, one from Aoeteraroa (New Zealand) and one from Australia. For the Arctic/Europe region I chose one participant as I did for the Russian region.

I selected a wide range of participants from old to young, long-term to first-time participants, also in terms of those more active on the local level, working primarily at home in their communities or nations, to those working primarily regionally, to those working primarily at the international level. Some of my interview partners are lawyers, community leaders, chiefs,

activists and some are NGO representatives. I wished for more gender balance, but due to the fact that the participation in this forum was at this stage still male dominated, I interviewed a total of twelve men and four women which accurately represents the ratio of women to men involved in the process at that time.

### **3.2. Post-Adoption Interviews**

This process continued for many years and in the end it was the core group of the globalized Indigenous peoples' movement that maintained my interest and focus for this thesis. It is for this reason that I decided to conduct additional, in-depth interviews post the adoption of the Declaration. I chose to interview five Indigenous peoples' representatives who truly had been most actively involved in this process and at present were regional representatives in the Steering Committee of the Global Indigenous Peoples' Caucus. These interview partners all agreed to full disclosure and thus their identities are revealed. These include the following representatives:

- 1) Vicky-Tauli-Corpuz, 54 female, the current Chairperson of the United Nations Permanent Forum on Indigenous Issues, representing the Asia region.
- 2) Mattias Ahren, 35, male, in charge of the Human Rights file for the Saami Council, representing the Arctic/Europe region
- 3) Mililani Trask, 56, female, Director of the Indigenous World Association and the main leader of the Pacific region, involved in this process from its inception
- 4) Adele Wildshut, 51, female, representing the main organizing body for the Indigenous Peoples of Africa, the Indigenous Peoples' of Africa Coordinating Committee (IPACC), and the Africa region.
- 5) Les Malezer. 55, male, Chairperson of the Foundation for Aboriginal & Islander Research Action (Australia), who although from the Pacific region, was representing the Global Indigenous Peoples' Caucus as its Chairperson.

### **3.3. Participant Observation**

My main method of working was participant observation in that I was involved in this Declaration process since 1993 until its adoption in 2007. During this time, I worked directly with the Global Indigenous Peoples' Caucus, then later on with its Indigenous Peoples' Steering Committee, where I worked especially close and directly with its Chairperson, Les Malezer. In addition, I worked with a small and tight-knit NGO community who were working with the Global Indigenous Peoples' Caucus in general, and especially with its Steering Committee during the end phase of this process.



In line with anthropologist Charles Hale, I understood myself to be conducting what he so appropriately described as ‘activist research’: *“By activist research I mean a method through which we affirm a political alignment with an organized group of people in struggle and allow dialogue with them to shape each phase of the process, from conception of the research topic to data collection to verification and dissemination of results.”* (Hale 2006: p. 97). This I think far better describes the type of anthropology I was engaged in, compared to the more broad term ‘applied anthropology’. More fitting perhaps is also the term used by anthropologist Laura Graham of ‘engaged anthropology’ (see Graham 2006).

Naturally, my research focus was constantly reshaped by my active and direct participation in the same process that was also the focus of my thesis. I will revisit this issue more specifically in Chapter 12.

### **3.4. Field Research**

I have conducted extensive field research, spanning a period of more than 15 years, in which I followed the UN Declaration and the international Indigenous peoples’ movement from the halls of the UN in Vienna, to the UN in Geneva and finally to the UN in New York. In addition, I also conducted numerous travels outside of the UN context to join regional, national and even local meetings where this Declaration was the focus. Thus, I firmly wish to counter the classic notion of field research having to be outside of the anthropologist’s native culture and language (see Baba and Hill 2006, Schwartzman 1993, Freidenberg 2001 and Messerschmidt 1981). In this vein, I would agree with the view of anthropologists Marietta Baba and Carole Hill that these *“...assumptions guarded the gates of professional status and served to devalue anthropology focusing on contemporary problems...”* (Baba and Hill: p. 189). I would add here that it is very much the anthropologist’s role to look at contemporary problems from a unique social science perspective, thereby contributing to their examination and, if possible, also their solution.

I would also define my type of field research along the lines of what anthropologist Sally Merry Engle calls ‘deterritorialized ethnography’: *“It is similar to what others have called multi-sited ethnography, but insofar as it focuses on information flows, the Internet, and global conferences, it is not restricted to sites”.* (Merry 2000: p. 130). Quite clearly this description fits, as my research was conducted from the UN halls to villages in the Philippines to the office of the International Indian Treaty Council, in San Francisco, to name just a few of the varied sites.

Sally Engle Merry also cites the important role anthropologists play “...as advisors, consultants, and activists, particularly in the area of indigenous rights.” (Merry 2005: p. 130). In fact, precisely in my role as the International Human Rights and Environmental Coordinator of an organization like the Netherlands Centre for Indigenous Peoples, a position I held throughout most of this research, I was very all of these - advisor/consultant/activist - e.g. informing indigenous about developments in regards to the UN Declaration, lobbying with the European Union on this issue, and so forth.

### **3.5. Literary Research**

In addition to the interviews and participant observation, library research was also conducted. Due to the specificity of the topic this research brought forth mainly recent anthropology articles on similar topics. Other sources of course included the UN documents themselves, the yearbooks put out by the International Work Group for Indigenous Affairs (IWGIA) and, most appropriately, books by such authors as Arjun Appadurai (1996, 2001 & 2006) in relation to the theoretical focus of my thesis, i.e. globalization.

#### 4. Key Concept 'Indigenous peoples'

As the focus of this thesis is a group defined as 'Indigenous peoples' I wish to dedicate this chapter to this key concept.

The exact number of Indigenous peoples is hard to determine. This is due to the difficulty in identification as well as to the fact that many countries do not recognize these peoples as a distinct category, such as in their census. However, estimates put the rough number at 300 million (UN Document 1997a: p. 1). Indigenous peoples have over 5,000 distinct cultures, speak as many varied languages, and inhabit more than 70 countries in the world (Chernela 2005: p.14).

In general, for the regions of the Americas, Australia, New Zealand and the Pacific the definition of this term is closely tied with their colonial invasion and settler's history (see Wolf 1982). Thus, Indigenous peoples were considered to be those already present in the "discovered" territories. However, in Asia and Africa there are also Indigenous peoples such as the Adivasi in India, the Tuareg in various North African countries, or the Ainu in Japan. However, these peoples define themselves as Indigenous peoples based on other criteria, namely that they are unique peoples with their own culture, language, practices and do not form part of the main society.

At present, there is one definition that has been most commonly used and cited. It was developed and accepted as a preliminary definition in 1972 as put forward by Mr. José Martínez Cobo, the United Nations Special Rapporteur for the *Study of the Problem of Discrimination against Indigenous Populations*. It states as follows:

*"Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from the other sectors of 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. In short, Indigenous Peoples are the descendants of a territory overcome by conquest or settlement by aliens."* (UN Document 1986: para. 379, p. 29)

This definition was later revised, due to the application limitations cited already above, which would exclude many Indigenous peoples located e.g. especially in Africa or Asia. Therefore, in 1983, the UNWGIP expanded this definition to then also include the following criteria:

- a) they are the descendants of groups, which were in the territory at the time when other groups of different cultures or ethnic origin arrived there;*
- b) precisely because of their isolation from other segments of the country's population they have almost preserved intact the customs and traditions of their ancestors which are similar to those characterised as indigenous;*
- c) they are, even if only formally, placed under a state structure which incorporates national, social and cultural characteristics alien to their own.” (UN Document 1983: p. 79)*

In 1986, in the conclusions to the extensive study by Martínez Cobo, self-identification was already recognized as an important criterion: *“On an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group).” (UN Document 1986: para. 381 p. 29)*

In terms of the Indigenous peoples’ own position on this issue, a prime example can be found in the 1996 report of the UNWGIP which states as follows:

*“We, the Indigenous Peoples present at the Indigenous Peoples Preparatory Meeting on Saturday, 27 July 1996, at the World Council of Churches, have reached a consensus on the issue of defining Indigenous Peoples and have unanimously endorsed Sub-Commission resolution 1995/32. We categorically reject any attempts that Governments define Indigenous Peoples. We further endorse the Martínez Cobo report (E/CN.4/Sub.2/1986/Add.4) in regard to the concept of “indigenous”. Also, we acknowledge the conclusions and recommendations by Chairperson-Rapporteur Madame Erica Daes in her working paper on the concept of indigenous peoples (E/CN.4/Sub.2/AC.4/1996/2).” (UN Document 1996: para. 31, p. 4)*

Although there were always attempts by various governments to force the issue of definition throughout the drafting process of the Declaration on the Rights of Indigenous Peoples, in the end this did not form part of the basis of this Declaration.

According to the former Chairperson of the Working Group on Indigenous Populations, Ms. Erica Irene Daes, this stance had to be held because *“...historically, indigenous peoples have suffered, from definitions imposed by others” (UN Document 1995a: p. 3).*

Important to note is that there have been two international conventions developed in regard to Indigenous peoples. The first was the *Convention concerning the Protection and Integration of Indigenous*

*and Other Tribal and Semi-Tribal Populations in Independent Countries*, developed by the International Labour Organization (ILO), adopted on 26 June 1957. It was then replaced by its revision, the *Convention concerning Indigenous and Tribal Peoples in Independent Countries* (known as ILO Convention No. 169) which was adopted by the ILO on 27 June 1989.

The definition of Indigenous peoples used by the International Labour Organization regarding Convention No. 169 states as follows:

- “a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;*
- b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.”* (ILO Convention No. 169 1989: p. 1)

However, this convention already accepted self-identification as an important criterion as it states that: *“Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.”* (ILO Convention No. 169 1991: p. 1)

Another description with regard to definition was used by the World Bank which states that:

- “For purposes of this policy (World Bank policy on “Indigenous Peoples”) the term ‘Indigenous Peoples’ is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees:*
- (a) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;*
  - (b) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories;*
  - (c) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and*
  - (d) an indigenous language, often different from the official language of the country or region.”* (The World Bank 2005: para. 4, p. 1)

Especially paragraph b), cited above, highlights one of the most important aspects, and one which is continually emphasized by Indigenous peoples themselves: that they have a special relationship to their lands and territories, a relationship comprised of strong spiritual and cultural ties to the lands and territories they inhabit. This specificity is key, as it is also what is seen as the

dividing line when they or others set out to explain the difference between ‘minorities’ and ‘Indigenous peoples’. This explains why e.g. the Roma and Sinti choose the UN bodies related to minorities instead of those dealing with Indigenous peoples’ issues.

In the end, due to the many variables and differences, and despite pressures from the governments’ side, Indigenous peoples have held fast to their own primary criterion, that of self-definition. This criterion allows for Indigenous peoples to determine for themselves their culturally appropriate criteria for this status within their own communities and nations. In fact, the final version of the UN Declaration on the Rights of Indigenous Peoples was adopted without an official definition of ‘Indigenous peoples’ which clearly supports the continuance of self-definition as the primary identifying criterion.

In relation to the fact that this Declaration does not contain a definition, prominent indigenous human rights lawyer James Anaya highlighted self-actualization as a key issue: *“...notwithstanding the fact that the Declaration provides no definition of the term indigenous peoples, the involvement of indigenous peoples in this drafting process allowed them to articulate and present a vision of themselves different from that previously advanced and articulated by dominant sectors.”*(Anaya 1996: p. 45)

*“‘Indigenous peoples’ – so long the objects of anthropological study – have emerged over the past thirty years both as widely accepted subjects of international law and as global actors in charge of their own destinies.”* (Colchester 2002: p. 1). This is a position I definitely share. Therefore, within the context of this thesis, I hope to bring an understanding as to how these global actors have engaged themselves in the process around the UN Declaration on the Rights of Indigenous Peoples.

## 5. The United Nations Declaration on the Rights of Indigenous Peoples

As the focus of this research is upon the process of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) this chapter will outline the basic aspects of this document.

Anthropologist Janet Chernela succinctly summarizes the meaning of the Declaration:

*“Authors of this document note that the rights mentioned within it must be considered a minimum standard for the survival and well-being of the world’s indigenous peoples who represent 5,000 languages and cultures, inhabiting more than 70 countries in the world.”* (Chernela 2005: p.14)

Patrick Thornberry, a notable legal expert on Indigenous peoples and human rights described the legal importance of the Declaration as follows: *“The draft declaration positions itself in the firmament of international law and organisation, human rights and the rights of peoples.”* (Thornberry 2002: p. 374)

The Declaration was formally adopted by the United Nations General Assembly during its 62nd Session on 13 September 2007. It is not a legally binding instrument under international law. However, it is considered to be the standard setting instrument with regard to the promotion and protection of the human rights of Indigenous peoples and is to be morally binding upon all UN member states.

The final version of the Declaration consists of 24 Preambular paragraphs and 46 Articles (see Annex A to this thesis).

In brief, this document has tried to cover all key aspects related to the promotion and protection of Indigenous peoples’ rights and can be seen as divided into the preambular and the main sections. The preambular section lays the framework and introduction. The actual articles can be seen as roughly divided into nine sections as follows:

Section 1, Articles 1 through 6, cover fundamental rights including human rights, fundamental freedoms, equality and self-determination; political, legal, economic, social and cultural institutions; participation in the political, economic, social and cultural life of the state, and nationality.

In this first section is contained what Indigenous peoples consider to be the lynchpin article of this entire declaration, Article 3, which reads as follows:

*“Indigenous 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.”* (UN Document 2007: p. 4)

Section 2, Articles 7 through 10, covers life and security including issues related to existence, assimilation, discrimination, dispossession, forced removal, and cultural integrity and identity.

Section 3, Articles 11 through 13, covers culture, religion and language laws including cultural traditions and customs; spiritual and religious traditions, and the right to interpretation.

Section 4, Articles 14 through 17, cover education, media and employment including the right for indigenous to establish and control their educational systems and institutions; dignity and diversity of cultures, traditions, histories; establishment of their own media in their own languages, and rights to labor laws.

Section 5, Articles 18 through 24, cover issues related to participation and development including participation in decision-making; free, prior and informed consent; maintenance and development of political, economic and social systems or institutions; improvement of economic and social conditions; particular attention to rights of elders, women, youth and children; right to development, and rights to traditional medicine and health practices.

Section 6, Articles 25 through 32, deal with lands and resources, including Indigenous peoples’ spiritual relationship to their lands and territories; rights to their lands, territories and resources; recognition of indigenous land use systems and laws; redress for lands, territories and resources; conservation and protection of environment; military activities on Indigenous peoples’ lands and territories; cultural heritage protection, and priorities and strategies for indigenous development.

Section 7, Articles 33 through 37, covers issues related to identity, self-government and indigenous laws including rights to determination of their own identities; institutional structures; determination of responsibilities to their communities; cross-border relations, and the right to recognition, observance and enforcement of treaties, agreements and other constructive arrangements with states.

Section 8, Articles 38 through 42, cover the implementation of the Declaration including consultation and cooperation with Indigenous peoples; access to financial and technical



assistance from states in relation to the enjoyment of the rights contained in the Declaration; access to fair and just procedures regarding conflicts and disputes; a call to the specialized agencies of the UN to contribute to the full realization of the Declaration, and a call to the UN and states to fully promote the Declaration.

Section 9, Articles 43 through 46, deals with understanding the Declaration as setting the minimum standards for Indigenous peoples including the fact that these rights constitute the minimum standards for the survival of Indigenous peoples; the principle of equality for indigenous men and women; highlighting that nothing in this Declaration may be construed as diminishing or extinguishing Indigenous peoples' rights, and a long last article citing that this Declaration may not be used to go against the Charter of the United Nations nor to dismember or impair sovereign and independent states.

In fact, the final Article 46 had to be added to the original version of this document, which only contained 45 Articles, in order to address the fears of states related to secession. I will address this in the next chapter on self-determination but cite here the full text of Article 46:

*"1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.*

*2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law, and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.*

*3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith."* (UN Document 2007: p. 11)

This compilation should provide the reader with the necessary brief overview in order to comprehend the enormity of the task of actually drafting and coming to such an agreement on a Declaration that has been designed to touch upon all of the issues related to the promotion and protection of the human rights and fundamental freedoms of Indigenous peoples.



## 6. Self-Determination

### 6.1. Introduction

*“Self-determination is, to indigenous peoples, the most fundamental of the rights they ask the world, and above all, the States they have been made part of to recognize.”* (Erni and Jensen 2001: p. 4)

Although within the framework of this thesis, one cannot possibly touch upon all of the key articles of the Declaration, the fact that the issue of self-determination was the main area of contention between Indigenous peoples and UN member states, right up to the final adoption, warrants a special look at these relevant articles.

In brief, ‘self-determination’, according to the Webster’s New World College Dictionary is the *“the free choice of one’s own acts or states without external compulsion and 2) determination by the people of a territorial unit of their own future political status.”* (Neufeldt 1997: p. 1217)

*“All the covenants, you know, including the right to self-determination, all of these have been denied us, you know, the right to land, the right to territory, the right to our language, our culture, and stuff like that. That’s what’s been denied us, while its been protected for other people it has not been protected for us. So I look at the draft Declaration as really, I guess, taking the existing international standards and identifying that and applying them directly for the protection of indigenous peoples.”* (Interview Partner #5, personal interview)

This statement highlights the importance of self-determination as well as the entire Declaration for indigenous peoples.

*“Up to this point, the world’s 300 million indigenous peoples have been denied the right of self-determination, this document (the Declaration, M.A.F.) will address that and I think that it provides a strong basis for equalizing human rights, for addressing the colonial deprivations of human rights that we inherent as a legacy of imperialism and it also puts us in a good place to begin meaningful dialogue and negotiation to resolve conflict and even prevent wars of national liberation and armed struggle.”* (Interview Partner #9, personal interview)

This statement captures the sentiment of Indigenous peoples in regards to the importance of self-determination to this Declaration, which provision is most clearly anchored in Article 3 of the Declaration:

*“Indigenous 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.”* (UN Document 2007: p. 4)

Article 3 was designed to embed the concept of self-determination firmly within this Declaration. In fact, the right of self-determination is already enshrined for all peoples in Articles 1 of both the International Covenant on Economic, Social and Cultural Rights 1966, and the International Covenant on Civil and Political Rights, which both state: *“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”* (UN Documents 1966a and 1966b: p. 1)

The issue of self-determination has had a long history in the indigenous movement. This principle was enshrined early on in one of the key documents, the now infamous Martínez Cobo Study of the Problem of Discrimination against Indigenous Populations: *“Self-determination in its many forms, must be recognized as the basic precondition for the enjoyment by indigenous peoples of their fundamental rights and the determination of their own future.”* (UN Document 1986: para. 580, p. 42)

However, as history has shown, and as can still be observed today, the right to self-determination has been continually denied to Indigenous peoples. Therefore, enshrining it within this Declaration has been a point that Indigenous peoples have insisted upon on since the beginning of this process:

*“Self-determination is a right that is both an individual and collective right, at the same time. And self-determination is the right necessary for right to have democracy in any country, because when we can speak about self-determination it’s only for the nation/state because in the majority of state-nations or nation-states now there is no democracy for groups or for individuals. Self-determination for all is to have participation and all rights, but in this Declaration it means also the elimination of discrimination between peoples.”* (Interview Partner #2, personal interview)

Another interview partner highlights why so many states have issues with self-determination for Indigenous peoples:

*“...it (self-determination, M.A.F.) certainly presents a great threat to states, to transnational corporations and to their international financiers, the World Bank, the International Monetary Fund, the Asian Development Bank, because it threatens their monopoly over land and resources and it threatens their jurisdiction under things such as multilateral trade treaties and the proposed MAI, Multilateral Agreement on Investment, and this is why it is the most controversial.”* (Interview Partner #9, personal interview)

This was also commented upon by noted lawyer Mr. Patrick Thornberry: “...*the right of self-determination has been the subject of extensive polemics at many stages in the life of the present draft.*”(Thornberry 2002: p. 383)

One of the clearest statements by an Indigenous peoples’ representative show how most indigenous would view self-determination in today’s context:

*“I think its really the right of peoples to decide for themselves how they want to live and how they want to exist and how they, to have their own laws, to you know, how to govern themselves...self-determination, we can’t exercise that unilaterally or in isolation. It’s a relationship, you know. Self-determination is how, besides governing yourself, it’s also how you live together with the person next to you, the people next to you. Self-determination means that you are also able to determine that relationship.”* (Interview Partner #5, personal interview)

Perhaps the most applicable definition of self-determination, in the specific context of indigenous rights, comes from long-time indigenous expert and advocate Madame Erica Irene Daes:

*“The right to self-determination is best viewed as entitling a people to choose its political allegiance, to influence the political order under which it lives, and to preserve its cultural, ethnic, historical, or territorial identity.”* (Daes 1993: pp. 4-5)

## **6.2. Self-Determination and Secession**

The main issues that states have with self-determination is the assumption that any recognition of self-determination might legally sanction Indigenous peoples’ right to secession, that is their right to separate from the nation or state they currently inhabit.

This fear by states is clearly recognized by Indigenous peoples who continue to point out that this is an unnecessary emphasis due to this right’s enshrinement within other UN covenants, already long adopted, which already grants the unqualified right of self-determination for all peoples:

*“You know it’s clearly Article 3 which is the problematic one because the states think if they keep the Article 3 in the Declaration it will be like an authorization to secession, but, they are wrong. They are wrong, because there is the Article 1, in the 2 covenants (the 1966 International Covenant on Economic, Social and Cultural Rights and the 1966 International Covenant on Civil and Political Rights, M.A.F.)”* (Interview Partner #2, personal interview)

Going back to the Martínez Cobo study, this issue was already taken up early on by the UN in regard to Indigenous peoples:

*“It must also be recognized that the right to self-determination exists at various levels and includes economic, social, cultural and political, factors. In essence, it constitutes the exercise of free choice by indigenous peoples, who must, to a large extent, create the specific content of this principle, in both its internal and external expressions, which do not necessarily include the right to secede from the State in which they live and to set themselves up as sovereign entities. This right may in fact be expressed in various forms of autonomy within the State, including the individual and collective right to be different and to be considered different...”* (UN Document 1986: pp. 42-43)

Based on my research of witnessing years of individual, joint and also indigenous caucus statements delivered on this specific issue in the context of the Declaration, it is more than clear that overall, Indigenous peoples are not interested in secession as an expression of their self-determination:

*“We are clearly interested to have self-determination in the scope of unity of the state. We are not interested to have self-determination in terms of secession.”* (Interview Partner #2, personal interview)

Or as another indigenous interview partner stated, it is simply not a relevant option in their national context:

*“...I am trying to look (at) the issue of self-determination; it's not really a very serious, even the way of secession, that's not so really a very serious thing concern for XXX nation actually.... I think none of the XXX indigenous will want to secede from their own government.”* (Interview Partner #4, personal interview)

Considering that I interviewed many of the key Indigenous peoples' representatives involved in this process, it is further telling that not one of my interview partners expressed the view that secession was a viable way to execute their peoples' self-determination.

Further, the issue of granting the right of secession is not something that is even the task of this Declaration. At present even in international law, the issue of secession is not clearly defined at all: *“...International law does not prohibit secession, whether it is voluntary or violent, but it neither recognizes a right to secede nor has it defined even tentatively the conditions, which might give rise to such a right in the future.”* (Hannum 2002: pp. 263-264)

### 6.3. Self-Determination versus Territorial Integrity

This issue of territorial integrity was of utmost importance especially to the Western States, such as the United States, Canada, Australia and New Zealand; states who one must note have the most clear colonial history, one that clearly involves their taking over of Indigenous peoples' lands and territories.

National self-determination challenges the principle of territorial integrity (or sovereignty) of states because it is the will of the people that makes a state legitimate. This implies a people should be free to choose their own state and its territorial boundaries. However, there are far more self-identified nations than there are existing states and there is no legal process to redraw state boundaries according to the will of these peoples (see Pavkovic and Radan 2003).

To understand this concern in the context of the Declaration it is perhaps important to explain that this is the reason fearful governments are so concerned with having the term 'indigenous peoples' used in this texts as, as 'peoples', indigenous are thus granted acceptance as a collectivity, therefore able to collectively secede. Or in perhaps clearer legal terms: *"Peoples' ... implies a distinct identity and the existence of a social, political, or cultural body with a legal character or even a legal personality."* (Meijnknecht 2001: p. 73).

There are of course legal experts who, in the context of colonization, do view self-determination - exercised via secession as states fear - as a viable option.

*"...under international law, peoples' right to self-determination cannot form the foundation of a right to external self-determination, that is to say, a right to effect secession unilaterally, except in situations of colonization, military occupation or serious human rights violations. Apart from such extreme cases, the right to self-determination applies within the limits accorded to the territorial integrity of states."* (Dion 2003: p. 3)

As Richard Wilson, another notable expert on Indigenous peoples and human rights points out:

*"...human rights have long incorporated collective rights elements – from the 1958 Genocide Convention to the 1966 International Covenant on Economic, Social and Cultural Rights..."* (Wilson 2006: p. 79)

Although this interview partner definitely does not share the view that secession is the answer for their people, as I know directly, I think this statement gives a clear overview of this issue from a very clear, legal UN perspective:

*“What states are trying to misinterpret, what states are trying to twist in international law is their saying that granting the world’s 300 million indigenous peoples the right of self-determination, the unqualified right of self-determination, will threaten their territorial integrity, it will provoke secessionist movements, it will result in states’ boundaries being diminished...This is a misinterpretation of international legal principles on self-determination. I say this because there is a relationship in international law between the unqualified right of self-determination and the principle of the territorial integrity of states and the principle of family relations among states, where do we glean this from. We glean this from international instruments including the Declaration on the right for colonial peoples to have independence, the Declaration on friendly relations with states, what these declarations state, what these international standards say, is that states do not have an absolute right of territorial integrity, they have a right of territorial integrity only to the extent that they respect and provide for human rights and indeed if you read the Vienna Declaration and Programme of Action, it is very clear, that states that fail to respect and provide protections for human rights, including the right of self-determination, do not have a right of territorial integrity.” (Interview Partner #9, personal interview)*

As anthropologists Justin Kenrick and Jerome Lewis have noted: *“...indigenous peoples are being persistently and profoundly discriminate against, and the argument that they possess collective rights as indigenous peoples provides a last-ditch defense against a process (Author’s note – this can be termed globalization) that colonizes their land and resources.”* (Kenrick and Lewis 2004: p. 5)

#### **6.4. Conclusion**

It was precisely due to the fears of states regarding secession, and losses of state territorial integrity by Indigenous peoples’ potential decisions that, during the final negotiations on the Declaration, led Indigenous peoples to agree to an additional Article that would specifically address this concern.

Thus, in the final Declaration Article 46 was enshrined, which in specific, in its 1st paragraph, addresses the very issue of secession and territorial integrity:

*“Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.”*

(UN Document 2007: para. 1, p. 4)



Indigenous peoples viewed this addition as unnecessary, as no other UN document qualified the right of self-determination for other peoples. However, it came down to having to agree to a compromise on this addition, or risk losing the entire Declaration. In the end, this compromise allowed for Article 3 to stand as originally drafted. That article had continued to stand as a non-negotiable one for Indigenous peoples if they were to accept this Declaration.

In the following chapter, in which I will walk through the history of the Declaration's drafting and adoption process, I will go into more detail as to the final negotiations. However, I felt it important to provide the reader with a prime example of the complexity around the major articles of the Declaration. This chapter was therefore designed to facilitate a better understanding as to why this process took so long until completion.



## **7. History and Introduction to Indigenous peoples' involvement at the United Nations from 1923 to 1977**

This section will highlight the early beginnings of the international Indigenous peoples' movement up to the first UN NGO Conference dealing with Indigenous peoples.

### **7.1. Indigenous peoples' initial attempts at addressing their issues internationally**

The first attempt of Indigenous peoples to address the international community was in 1923 when Chief Deskaheh, the speaker of the Council of the Iroquois Confederacy came to Geneva in order to appeal to the League of Nations, so that they would help to address the Iroquois dispute with Canada (Tauli-Corpuz 2007: page 4). This was followed in 1925 by a visit from another indigenous leader, W.T. Ratana, a Maori from Aoeteraroa (New Zealand, M.A.F.), who wanted to bring forth the violations against their Waitangi Treaty by New Zealand to this international body (Tauli-Corpuz 2007: page 4). Despite the fact that neither Indigenous peoples' representative was granted an audience, their actions demonstrate that both of these indigenous leaders clearly saw themselves as subjects of international law as they sought out a representative international body to help resolve their conflicts.

After the horrors of World War II, in 1945 the United Nations were established and human rights became one of the key foundational elements of its original charter. However, as political science professor Ken Coates correctly assessed: *"Even after the establishment of the United Nations and the passage of conventions on international human rights, indigenous peoples found themselves excluded from the discussions. Their demands and aspirations went unanswered."* (Coates 2004: p. 251)

### **7.2. The International Labour Organization's Conventions and Indigenous peoples**

The International Labour Organization (ILO) can be credited with being the first multilateral body to specifically address Indigenous Peoples with an international legal instrument, namely its *Convention No. 107 Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Countries*, which was adopted on 26 June 1957 (ILO Convention No. 107 1957). As this document was formulated by an organization dealing with labor issues its focus was necessarily in this direction. The final convention covered issues in this regard in sections pertaining to land; recruitment and conditions of employment; vocational training, handicrafts and rural industries; social security and health; education and means of communication; administration, and a final section on general provisions. Although probably well-intentioned, it was very much a document representing the views held at that time, which took a very paternalistic approach, as also noted by indigenous activist Ms. Tauli-Corpuz who stated: *"Unfortunately, this (the ILO Convention,*

*M.A.F.) took a paternalistic and assimilationist approach. Its solution to the indigenous problematic was to integrate indigenous peoples into the dominant society and within the dominant development model.” (Tauli-Corpuz 2007: p. 5).*

It was due to this fact, and to indigenous’ lobbying for the reform of this original convention, that eventually led to revisions that could be achieved. This resulted in ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries. This new document, already in its preamble, addressed the prior assimilationist approach which now it was trying to correct:

*“Considering that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards...” (ILO Convention No. 169 1989: p. 1)*

The revised convention largely followed the same sections as the prior ILO Convention No. 107. However, it also had one notable new addition, which was a new section on contacts and co-operation across borders, hereby addressing the fact that many Indigenous peoples inhabit one or more countries and therefore need to be able to have cross border relations supported:

*“Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.” (ILO Convention No. 169 1989: pp. 11-12)*

To date ILO Convention No. 169 has been adopted by more than 20 countries. In fact, the NGO I was working for at the time, the Netherlands Centre for Indigenous Peoples (NCIV), was deeply involved in lobbying to get this convention adopted by the Netherlands Government. This then occurred on 2 February 1998 (ILOLEX 2008).

As Richard Ashby Wilson notes about the general usefulness of the ILO: *“...the International Labor Organization has been one of the more successful intergovernmental bodies and has promulgated a set of international labor standards that local actors can appeal to in an attempt to constrain the more exploitative activities of the multinational corporations.” (Wilson 2007: p. 355)*

This document continues to be useful, and has been used in several court cases, such as by the Inter-American Court of Human Rights. However, Indigenous peoples at this time were already

busy working on the more expansive and inclusive human rights document, the United Nations Declaration on the Rights of Indigenous Peoples.

### **7.3. The Martínez Cobo Report**

The UN has, ever since its establishment addressed some situations which affect Indigenous peoples. As part of its overall human rights work this was done via a number of instruments and studies, and in the activities of the human rights' organs dealing with such issues as minorities, slavery, servitude and forced labor (UN Document 1997a: p. 3). A turning point came in 1970 when the United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities (The Sub-Commission) recommended that a specific and comprehensive study be made of the problem of discrimination against indigenous populations (UN Document 1997a: p. 3). In 1971, Mr. José R. Martínez Cobo (an independent human rights expert from Ecuador) was appointed Special Rapporteur for the study which was to suggest national and international measures for eliminating discrimination against indigenous populations (UN Document 1997a: p. 3). His final report was submitted to the Sub-Commission during the years 1981-1984 (UN Document 1997a: p. 3). In 1986, Volume V of this report was released with 53 pages of conclusions (UN Document 1986). The Martínez Cobo study (as it is called) is still one of the most comprehensive studies on Indigenous peoples and has been the cornerstone document at the UN in this regard. Its usefulness continues, as can be seen in the prior chapter where Martínez Cobo's definition of Indigenous peoples' still is used as one of the main working definitions.

Already then, the final document covered many of the topics which also are today addressed by the Declaration - including chapters devoted to such issues as health; housing; education; language; culture; employment; land; political rights; religious rights and practices, and equality in the administration of justice and legal assistance.

### **7.4. The first UN Conference on Indigenous peoples**

On 20-23 September 1977, the United Nations NGO Subcommittee on Racism, Racial Discrimination, Apartheid, and Decolonization held the *International NGO Conference on Discrimination Against Indigenous Populations – 1977 - In The Americas* at the Palais de Nations, in Geneva, Switzerland in which over 400 persons participated; they included 100 indigenous delegates from 60 indigenous nations, as well as observers from 38 UN member states and UN agencies, including the ILO and the United Nations Educational, Scientific and Cultural Organization (UNESCO) (Tauli-Corpuz 2007: p. 5). This conference was broken up into

commissions which dealt specifically with the legal, economic, and social and cultural issues related to discrimination. In the report of the conference's economic commission it addressed such matters as multinational corporations and land issues. Its social and cultural commission addressed the destruction of indigenous cultures, environment, community, education and language; health and welfare programmes. The commission looking at legal issues addressed the legal status of Indigenous peoples, the land question; indigenous laws and courts, and legal discrimination.

The conference produced a final resolution and programme of actions in which it already proposed a precursor to the Declaration, albeit only for Indigenous peoples of the western countries, when it called for the following:

*"...to study and foster the discussion of the attached Draft Declaration of Principles for the Defense of the Indigenous National and Peoples of the Western Hemisphere, elaborated by indigenous peoples' representatives;"* (International Indian Treaty Council 1977: p. 22).

These draft principles were put forward in a two-page document which included a preamble and 13 sections covering the following: 1) Recognition of Indigenous Nations, 2) Subjects of International Law, 3) Guarantee of Rights, 4) Accordance of Independence, 5) Treaties and Agreements, 6) Abrogation of Treaties and other Rights, 7) Jurisdiction, 8) Claims to Territory, 9) Settlement of Disputes, 10) National and Cultural Integrity, 11) Environment and Protection, 12) Indigenous Membership and a final section 13) Conclusion (International Indian Treaty Council. 1977: pp. 25-26).

It deserves to be highlighted here that already in this predecessor document to the Declaration the text states under section "4) Accordance of Independence" that *"Indigenous nations or groups shall be accorded such degree of independence as they may desire in accordance with international law."* (International Indian Treaty Council. 1977: p. 25). This statement shows quite clearly, like the previous visits by the Indigenous peoples' representatives in the 1920s to the League of Nations, the reason Indigenous peoples had chosen to address the international community was that they, as nations and peoples, saw and see themselves as subjects of international law. Returning back to the issue of self-determination, Indigenous peoples do see their right of self-determination as clearly framed within the context of international law, to which issue I shall return to in later chapters.

## **8. The United Nations Working Group on Indigenous Populations**

### **8.1. Introduction**

The growing interest generated at the UN for indigenous issues, along with the support of NGOs led in 1981 to the creation by the UN Economic and Social Council (ECOSOC) of the United Nations Working Group on Indigenous Populations (UNWGIP) (UN Document 1982). The UNWGIP was designed as a subsidiary organ of the Sub Commission on Prevention of Discrimination and Protection of Minorities (Sub-Commission) (UN Document 1982).

The UNWGIP held its first meeting in August 1982 and has as its task to follow developments with regards to the rights of Indigenous peoples and to identify standards relating to such rights. The UNWGIP consisted of five independent human rights experts, each of whom represented one of the five geo political regions the UN has the world divided into (UN Document 1997a: p. 3). Each Working Group member was also a member of the Sub-Commission (UN Document 1997a: p. 3). One important factor, in contrast to high level bodies at the UN currently handling indigenous issues is that although each of the five UNWGIP members were human rights experts, none of them were indigenous, nor did they have a mandate to act as Indigenous peoples' representatives.

Apart from facilitating and encouraging dialogue between governments and Indigenous Peoples, the Working Group had two formally mandated tasks:

- "1) to review national developments pertaining to the promotion and protection of human rights and fundamental freedoms of Indigenous Peoples and;*
- 2) to develop international standards concerning the rights of Indigenous Peoples, taking into account both the similarities and differences in their situations and aspirations throughout the world."*(UN Document 1997a: p. 4)

In addition to covering the two major aforementioned tasks and furthermore, in order to cover specific issues relevant to Indigenous peoples, each year a certain topic was highlighted as a separate agenda item at these UNWGIP sessions. Some of these past topics included 'Indigenous Peoples and Globalization' and 'Indigenous Peoples and Conflict Resolution'. This provided a platform so that areas of specific concern to Indigenous peoples could be directly addressed by them, as well as by others working in this field, such as NGOs or specific UN specialized agencies. For example, when the 2002 UNWGIP session focused on 'Indigenous Peoples and Education', Indigenous peoples' representatives working in this area came specifically to deliver statements to this agenda item. In addition, NGOs working in the field, such as Education

International and relevant UN bodies, such as UNESCO, also came in order to pay particular attention to the problems Indigenous peoples faced with regard to education. It is important to note, that most of the problems affecting Indigenous peoples are inter related. Therefore, even such issue-based discussions usually highlighted many other interconnected issues, such as culture (e.g. in relation to education) or environment (e.g. in relation to land rights).

Mrs. Erica Irene A. Daes was the UNWGIP's primary Chairperson and was, during her term, the most active and longest running Chairperson of this body. In connection with her efforts, she visited various indigenous communities and organisations at the invitation of Indigenous peoples in order to provide them with information on UN activities in the field of Indigenous peoples' rights and to identify issues which needed to be taken up in further standard setting activities of the UNWGIP (UN Document 1997a: p. 4)

## **8.2. The Annual Sessions of the UNWGIP**

Since 1982, every July at the UN in Geneva, Switzerland, Indigenous peoples from all over the world met to take part in the week long annual session of the UNWGIP, held just prior to the annual session of the Sub Commission. Eventually, under the United Nations restructuring, The Office of the High Commissioner of Human Rights developed a special Indigenous Peoples' Unit responsible for servicing the Indigenous peoples' rights activities of the United Nations which included providing the UNWGIP with an official Secretariat (Burger 1996 & 1997, personal interviews).

One of the factors that made the UNWGIP so unique to the UN was its openness to all representatives of Indigenous Peoples and their communities and organizations, as well as to all interested parties. Thus, the UNWGIP became one of the largest UN forums in the field of human rights, attracting over 1,000 participants during the 1998 session I attended.

## **8.3. The UNWGIP's Final Reports and its impact on other UN bodies**

Indigenous peoples came to the UNWGIP specifically to bring forth the concerns of their peoples, thus addressing the first of the UNWGIP's formal tasks: *"to review of national developments pertaining to the promotion and protection of human rights and fundamental freedoms of Indigenous Peoples."* (UN Document 1997a: p. 4). Under this specific agenda item, as with all other agenda items, the UNWGIP listened to a vast number of speakers from whose statements it would gather information for their final report. The UNWGIP also received and analyzed written information submitted by Indigenous peoples, governments, specialized agencies, other organs of the UN,



other international and regional inter-governmental organizations, as well as non governmental bodies and tried to incorporate these submissions into its final report. This, as one can imagine, was no easy task as this document should reflect as many of the concerns as possible, while being concise. I had the opportunity to partake in this daunting task as a contributor to the 1994 UNWGIP report writing team. At the same time, as it was to be a document written for - and therefore it had to officially reflect - what the attending UN member states wanted. Thus, it necessarily had to be kept as apolitical and non inflammatory as possible. This helps to explain why some statements made, often especially those by Indigenous peoples whose peoples faced severe human rights abuses, were so diluted in the final text that the speakers who made them were rightfully upset. However, this forum - as Chairperson/Rapporteur Mrs. Erica-Irene Daes continually pointed out – was not to serve as a ‘chamber of complaints’. Direct accusations by Indigenous peoples of human rights abuses by UN member states therefore were not addressed by the UNWGIP, nor were they reflected in its final report. As one can imagine, this was a continuous source of frustration to Indigenous peoples whose governments - while abusing Indigenous peoples’ rights at home – were sitting in the UNWGIP and making official statements on their many positive efforts for Indigenous peoples. However, at the end of the UNWGIP’s annual sessions, a diplomatic final report had to be created by the Secretariat that all the attending UN member states would be willing to adopt. Only then would it achieve the approval it needed in order to become an official and final UN report. If one attended the UNWGIP sessions and then read the final reports thereafter, one could clearly see that this ‘censored’ final report often only superficially reflected the many concerns Indigenous peoples’ had brought before the UNWGIP.

Despite my critique of the UNWGIP’s final reports, it is nevertheless important to note that any positive, pro-active measures reflected therein could and often were useful in influencing other UN bodies and activities. For one, this final meeting report was delivered as part of the UNWGIP’s annual report to the Sub Commission (UN Document 1997a: p. 4). The Sub-Commission then reviewed and acted upon its recommendations under their agenda item entitled ‘Discrimination against Indigenous Peoples’ (UN Document 1997a: p. 4). The United Nations Commission on Human Rights (Commission) then considered the UNWGIP’s reports together with the reports of the Sub Commission (UN Document 1997a: p. 4). At the time of the UNWGIP, in both of its parent bodies, its reports were in fact commanding more and more attention in the form of debates and resolutions. In fact, many of the indigenous rights initiatives undertaken later on by its parent bodies have grown directly out of recommendations contained in the reports of the UNWGIP. Most notably, this included the UN Declaration on the Rights of

Indigenous Peoples, as well as the proclamation of the International Year of Indigenous Peoples which was held in 1993. The first International Decade of Indigenous Peoples (1994 2004) was even called upon as a result of the UNWGIP's recommendations, as taken up in the Vienna Declaration and Programme of Action:

*"The World Conference on Human Rights recommends that the General Assembly proclaim an international decade of the world's indigenous people, to begin from January 1994, including action-orientated programmes, to be decided upon in partnership with indigenous people..."* (UN Document 1993a: p. 18)

#### **8.4. The UNWGIP and the UN Draft Declaration on the Rights of Indigenous Peoples**

As stated before, one of the UNWGIP's major tasks was to develop international standards concerning the rights of Indigenous peoples. With this understanding, Indigenous peoples came to the UNWGIP, together with other supporting NGOs, in order to assist with this second task. It was within this framework that the UNWGIP began to focus on producing a UN Draft Declaration on the Rights of Indigenous Peoples. As mentioned earlier, the need for such a Declaration was already stated as a goal by the Indigenous peoples of the western hemisphere during the 1977 UN NGO Conference. However, by now Indigenous peoples from around the world were interested in a more universal declaration for their rights and therefore achieving this goal became the primary reason for their attendance of the UNWGIP.

The actual process of developing this document began in 1995, at the UNWGIP's fourth session. The initial draft text, which served as the basis for the deliberations, was prepared by the UNWGIP Chairperson, Mrs. Erica Irene A. Daes (UN Document 1997a: p. 4). Already at this stage, the proposals by Indigenous peoples were very clear about the key element of self-determination:

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

(UN Document 1985: p. 2).

In July 1993, after many years of deliberations, involving Indigenous peoples, member states and NGOs, the UN Draft Declaration on the Rights of Indigenous Peoples was finally approved by the UNWGIP (UN Document 1993b). Subsequently it was submitted to its parent body, the

Sub-Commission, which considered and adopted this Declaration during its forty-sixth session in August of 1994 (UN Document 1994). It was at this stage that the Sub-Commission delivered this approved document to the next highest United Nations body, its parent body, the Human Rights Commission (The Commission) where it would spend the coming years in a very difficult process, which I will elaborate on in the coming chapters.



## 9. The Indigenous Peoples' Caucus

At this point it is important to highlight and briefly explain the Indigenous Peoples' Caucus. Actually, this informal body of those Indigenous peoples who happen to be gathered during UN meetings already began to function as an informal collective since the UNWGIP. In general, they worked with the World Council of Churches and support NGOs, such as my organization at the time NCIV, to organize themselves – usually prior, but increasingly also during - the UN meetings they had come to attend. All Indigenous peoples were invited to come to these meetings, generally held the weekend prior to the official UN meetings, in order to collectively strategize and organize for the days ahead. Increasingly persons such as the Secretariat and the Chairpersons of the UN meetings would also be invited in order to provide the caucus with relevant information on registration, but also to discuss the politics of the meetings, as well as to put forward potential strategies.

Often the goal would be for the caucus to come together in order to achieve consensus positions. These were positions of general agreement on principles or text, in order to be able to put these forward via collective indigenous caucus statements or lobbying positions. The hope was to remain a group of unified Indigenous peoples' representatives within these processes, thereby being able to more effectively face off with the governments. However, as one can imagine, just as governments do not always have agreement, neither do Indigenous peoples. As one long-time NGO noted: *"The process of consensus formation in the caucus was not always easy. Representatives from such a variety of peoples, each with their own history, figures of inspiration and cultural strategies for survival as well as specific relations with governments, inevitably means that any form of consensus will arise from flexibility and the capacity to shift tactics according to the situation."* (Dahl and Gray 1997: p. 289)

Having myself participated in years of caucus meetings I have observed everything from easy agreements to extremely difficult, day-long/week-long battles where Indigenous peoples would faction off. However, the Indigenous Peoples' Caucus remained the most important internal space which allowed for the kind of in-depth discussion and strategizing that became necessary whenever it was difficult to organize and meet prior to the UN meetings, as was usually the case. In contrast, governments of course had the resources to meet often well prior to the UN meetings, as well as secure means to assure their attendance. This of course gave them much more time and space for developing their positions. However, in working together with various NGOs, such as my own, Indigenous peoples' representatives did manage to put a system in place that not only provided them with the necessary meeting spaces, but also ensured translation and interpretation. Especially the language barrier was one of the most important elements issues in

regards to facilitating communication between the caucus members. Thus, these meetings were held with translation and interpretation available in the major languages of the Indigenous Peoples' Caucus: English, Spanish, French and Russian. In addition, they and NGOs would organize training sessions for newcomers in order to bring them up to date and brief them accordingly. Of course, most Indigenous peoples' representatives did not have the funding necessary to attend such expensive meetings and so many support NGOs, including my own NCIV, worked together to secure the funds necessary for their attendance. In addition, the UN also established a Voluntary Fund which also provided some attendance support.

Finally, I wish to cite the incredible role of DoCip, a Swiss NGO who throughout this process provided the attending Indigenous peoples' representatives with full secretarial services, including translation, interpretation, access to computers, internet and copying, without which the work at this level would hardly have been possible.

Especially during the process of the Working Group on the Declaration, the Indigenous Peoples' Caucus moved from just preparatory meetings towards daily debriefing and strategy meetings, held usually in the evenings after the UN sessions had ended. It was here that all major decisions, disagreements and the hammering out of text from the indigenous side took place during the Declaration process.

Having provided now a brief summary of the Indigenous Peoples' Caucus, I will of course come back to a more in-depth look and its further developments in my sections on globalization and the Indigenous peoples' movement.

## **10. The long road to the adoption of the UN Declaration on the Rights of Indigenous Peoples**

### **10.1 The United Nations Working Group on the Draft Declaration on the Rights of Indigenous Peoples**

#### **10.1.1. Introduction**

Once the Draft Declaration passed both the UNWGIP and the Sub-Commission, it was of course hoped by the Indigenous peoples' movement that this suddenly more rapid pace of approval would continue. However, the present draft was now at the level of the Commission on Human Rights (the Commission), which body consisted of 53 UN member states, each of whom could conceivably bring in their own concerns, national agendas and political biases during the review process and even amend the text before sending it up to the next higher UN level. However, when the document arrived at the Commission in 1995, with so many issues on this body's very full agenda, it quickly became clear that work at this level, with the full Commission, would be far too time consuming and unproductive.

Therefore the Commission decided in 1995:

*"....to establish, as a matter of priority and from within existing overall United Nations resources, an open-ended inter-sessional working group of the Commission on Human Rights with the sole purpose of elaborating a draft declaration, considering the draft contained in the annex to resolution 1994/45 of 26 August 1994 of the Sub-commission on Prevention of Discrimination and Protection of Minorities, entitled draft "United Nations declaration on the rights of indigenous peoples" for consideration and adoption by the General Assembly within the International Decade of the World's Indigenous People."*  
(UN Document 1995b: p. 1)

The time frame of this open-ended inter-sessional working group of the Commission was set for 2 weeks per year, which in the end phase was increased to allow the process to finish. Any interested UN member state could attend and participate, as could interested UN bodies and agencies as well as NGOs and Indigenous peoples, provided they had the right UN status to do so.

#### **10.1.2. Indigenous peoples' participation at the Working Group**

When the draft Declaration reached the higher levels of the UN the immediate concern at the establishment of this UN Working Group on the Draft Declaration on the Rights of Indigenous Peoples (Working Group) was the participation possibilities for Indigenous peoples, which in the UNWGIP process had been extremely open. At the Commission level however, only

organizations registered as NGOs, who had gone through and had received the consultative status with the UN's Economic and Social Council (ECOSOC) would be allowed to participate. At the time of the creation of this new Working Group, in fact only twelve indigenous NGOs had obtained this status, most of whom were from North America (IWGIA 1995: p. 207). However, a special process was then put into place that allowed for Indigenous peoples' representatives wishing to participate to make an application directly to the Coordinator of the International Decade for the World's Indigenous People, Mr. Abraham Fall.

Such an application had to contain the following:

- 1) The name, headquarters or seat, address and contact person for the organisation;
  - 2) The aims and purposes of the organisation (these should be in conformity with the spirit, purposes and principles of the Charter of the United Nations);
  - 3) Information on the programme and activities of the organisation and the country or countries in which they are carried out or to which they apply;
  - 4) A description of membership of the organisation, indicating the total number of members.
- (IWGIA 1995: page 207)

This process was highly bureaucratic in that the application's acceptance was not just the responsibility of the Decade's Coordinator. Once received, he was required to send it to the respective government of the country or the applicant for comments. After this process, it then had to go to the UN ECOSOC for review and acceptance. However, and this is what was of great concern to the indigenous, both the governments and the ECOSOC had the right to veto the participation if they so chose (IWGIA. 1995: page 209).

Of course Indigenous peoples felt an enormous resistance to a process that allowed governments – many of whom violate their human rights at home – to be responsible for deciding over their ability to participate in the elaboration of a Declaration being designed to promote and protect their rights.

One way many of them circumvented this was quite simply to allow friendly NGOs to accredit them, which my own NGO NCIV did many times. However, most Indigenous peoples' representatives did wish to participate under their own name and organization and increasingly this process, although reluctantly, was utilized and very few applicants had their applications rejected.



### 10.1.3. The Working Group begins

With the establishment of this Working Group, the newest battleground for the Declaration was in place. In November 2005 the first session of this Working Group was held, which immediately appointed its Chairperson, Mr. José Urrutia, a senior diplomat from Peru and then set forth to begin its work. In the first year the session was filled with many of the debates which had already occurred during the drafting process at the UNWGIP. However, as many of the now attending governments had not worked at the lower level UNWGIP this could not be avoided and Indigenous peoples braced themselves to restate their positions.

One of the primary debates was the question of having the 's' on 'peoples' in the phrasing 'indigenous peoples'. This debate relates to the fact that in United Nations Instruments, all peoples have the right of self-determination. Further, the use of the terminology 'peoples' refers to a collective whose rights are enjoyed by groups, as well as individuals. The use of the term 'indigenous peoples' therefore is of continuous concern for governments who fear that its use grants the collective right to self-determination, with a potential for secession.

In addition, lots of time was spent on criticisms by governments relating the Declaration unfavorably to existing national and international law (Gray 1996: p. 254). In response, the Secretariat of the Working Group produced a technical paper which analyzed the whole Declaration in terms of already existing international legal instruments and showed it to be perfectly consistent (Gray 1996: p. 254). In watching the debates, one often realized that the Indigenous peoples' representatives and NGOs knew far more about national and international law in relation to the Declaration than governments. Therefore, a lot of time was spent at this first session with Indigenous peoples' representatives and other experts having to counter false or weak government positions.

This Declaration was to become a progressive human rights instrument and as such it would serve to strengthen human rights overall. As one international lawyer reminded the Working Group: *"...it may be well to recall the status of the Universal Declaration of Human Rights in 1948: not every state which voted for the Declaration (in this case the Universal Declaration of Human Rights, M.A.F.) met all of its standards, but this did not prevent its adoption as a set of principles to be achieved progressively."* (Hannum, Hurst as quoted in Gray 1996: p. 255)

At this early stage of negotiations, in order to maintain unity, Indigenous peoples decided to continue to block states' attempts at redrafting the document by restating that the Sub-

Commission version of the Declaration text was the only acceptable text. Thus, while governments continued to attempt to redraft, Indigenous peoples' representatives held fast to their "no-change" position.

#### **10.1.4. Indigenous peoples' representatives walk out of the Working Group**

After a tough first session, Indigenous peoples' representatives returned to the UN in 1996 to continue their work on the Declaration. However, they became increasingly upset with the lack of their ability to fully and effectively participate in this process, this despite the fact that the Declaration was being developed precisely to promote and protect their rights. As such, during the Indigenous Peoples' Caucus a three part proposal was developed to be submitted to the Working Group. This proposal called for: more priority to a general debate on the Declaration; the adoption of the Declaration after the discussion, and; for the rules of procedure for the meeting to be changed in order to allow for their equal and full participation as partners in the decision-making authority of the Working Group (Dahl and Gray 1997: p. 292). Once this proposal was presented to the Working Group, its Chairman did not respond nor did any government intervene. As this was considered an impasse, Indigenous peoples' representatives, as well as NGOs, such as my own, walked out of the process. However, after the walk-out occurred, some governments did then speak out in support of Indigenous peoples. Thereafter, a meeting was held with the Chairman in which he explained that he would be able to accommodate some of their wishes with regard to the process of the debate, but he could neither call for the adoption of the Declaration, nor change the rules and procedures of ECOSOC that applied to this Working Group (Dahl and Gray 1997: p. 294). This stalemate continued for several days. In order to not lose oversight, some Indigenous peoples' representatives chose to return to the room, although very clearly stating that they were only coming to observe and not returning to the process. Others adamantly continued to remain outside. The Chairman did continue to respond to the indigenous and finally made it clear, that although he could not change the rules of procedure, he would promise to be flexible in relation to statements from Indigenous peoples' representatives and to put anything they requested into the Working Group's report (Dahl and Gray 1997: p. 295). Although most of the Indigenous peoples' representatives then returned to the room, a handful of the participants now decided to leave this process altogether.

The issue of participation was ongoing as indigenous and NGO legal experts continued to examine the ECOSOC rules of procedure which, as it turned out, did actually allow for some leniency from the Chair, if he so chose.

In the second week, after another weekend caucus in between, Indigenous peoples' representatives returned with an identification of areas that they wanted to occur with their full and informed consent.

These included:

- 1) Formulation and adoption of the work agenda;
- 2) Drafting and adoption of the report;
- 3) Discussion and deliberation of the text of the Declaration;
- 4) Planning of intersessional activities;
- 5) Any other matters (Dahl and Gray 1997: p. 298).

The final conclusion of the discussions in this regard was that the Working Group agreed to aim towards achieving consensus between both Indigenous peoples' representatives and the attending governments in the future.

Thus, this Working Group session did serve the purpose of making it very clear that the indigenous would not lend legitimacy to a process regarding their rights unless they are as fully involved as possible. Thus the outcome of this extremely difficult session one could now rate as having been positive.

*"The Declaration is not a document made by indigenous peoples and it does not even 'belong' to indigenous peoples. However, for it to gain legitimacy at an international level it must have indigenous participation and consent."* (Dahl and Gray 1997: p. 312)

#### **10.1.5. The Working Group finally adopts two Declaration articles**

In 1997, in what some hoped would mark a trend, the first two articles of the Declaration were formally adopted: Article 5 states that: *"Every indigenous individual has the right to a nationality"* (UN Document 1997b: p. 8) and Article 43 states that: *"All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals."* (UN Document 1997b: p. 9)

However, both of these articles were already firmly enshrined for all peoples in the UN International Covenants (the 1966 International Covenant on Economic, Social and Cultural Rights and the 1966 International Covenant on Civil and Political Rights, M.A.F.) with the same wording, with the exception of the word 'indigenous' being inserted in front of the word 'individual' in Article 5, and in front of the word 'individuals' in Article 43. Further, as these articles deal exclusively with individuals, they add nothing to the international provisions

envisaged in the text for Indigenous peoples as a whole (Gray 1999: p. 357). Thus, although Indigenous peoples' representatives and their supporters had hoped by now for some adoption of articles, the fact that the ones adopted were - what can only be termed as the lowest common denominators - should have given us all a clear indication just how long and drawn out this process would become.

On another note, in this year, Indigenous peoples again found themselves having to respond to the concerns of governments in relation to secession and territorial integrity. In there discussions, Indigenous peoples clearly pointed out that the UN Declaration on Friendly Relations already establishes the conditions whereby states can secede and that those conditions provide the legal context for discussing concerns about peoples separating from states (Gray and Dahl 1998: p. 352 and UN Document 1970).

#### **10.1.6 The Working Group continues with little progress**

In the years following 1997, very little progress could be seen on the Declaration with year after year passing without any further articles being adopted. During this time, while the Indigenous peoples kept reiterating the importance of maintaining the integrity of the original Declaration text, governments began raising ever more issues, attempting to redraft key articles of the Declaration's text.

Within the framework of this thesis, going into the details of every year's discussion, mechanisms and results would be too expansive. Therefore, I will summarize the years where little progress was made but will, when in the later years movement began, return to providing more details of those key and important developments.

In 1998, the discussion moved to the underlying principles of various articles (Gray, Andrew 1999). Of particular note from the indigenous side was their introduction of the so-called "Mick Dodson criteria" (named after their author, a representative of the Aboriginal and Torres Strait Islander Commission, M.A.F.) for examining any new proposals coming from governments. In 1999 these criteria, which were to be applied when considering any new or redrafted text to the Declaration, were expanded upon by the Maori Legal Service. Key among these criteria was maintaining the term 'indigenous peoples'.

These criteria read as follows:

The Draft Declaration must be approached on the basis of a very high presumption of the integrity of the existing text. In order to rebut this presumption, any proposal must satisfy the following criteria:

- It must be reasonable.
- It must be necessary.
- It must improve and strengthen the existing text.
- In addition, any proposal must be consistent with the fundamental principles of:
  - Equality;
  - Non-discrimination; and
  - The prohibition of racial discrimination (Pritchard 2000: p. 399).

In 1999, the Working Group also saw its Chairman, Ambassador Urrutia depart, as he was called back to his capital. His former assistant, Mr. Luis-Enrique Chavez (also of Peru) was then appointed the new Chairman, which position he held until the Declaration's adoption. In his first year he focused the debate on general aspects of the Declaration, as well as held more formal consultations on some articles, including those related to education, information and labour rights.

In 2000, as in the previous session, there were regular and closed meetings between states in an effort to work on narrowing differences on the text. Of course the indigenous continued to find this practice unacceptable. On 20 November 2000 they therefore issued the following Indigenous Peoples' Caucus statement: *"The closed meetings which have resulted in alternative texts (Authors note – to the Declaration) are in violation of the principles established in the Commission on Human Rights resolution 1995/32 which provides for the full and equal participation of Indigenous Peoples"* (Indigenous Peoples' Caucus 2001: p. 417). Of particular issue was the fact that once the Indigenous peoples' representatives were presented with the resulting drafts from these closed meetings, without any information as to their origins, nor regarding the extent of support for these particular proposals, it became impossible to identify which States had particular problems with the text, and thus there was no opportunity to engage in direct dialogue with those States (IWGIA 2001: p. 419).

At this session there was another lengthy debate on self-determination, in which Indigenous peoples' representatives again pointed to other, existing UN international instruments which already firmly established this right in international law. Other areas discussed were land rights and natural resources. In addition, the on-going practice of grouping articles believed to be interrelated, in order to facilitate their discussion, continued.

Of special significance for this annual cycle was the inclusion of a section of 'proposals by indigenous representatives' into the final Working Group report, which included Indigenous peoples' representatives' own explanatory note on the term 'indigenous peoples'

At this time, the Working Group became aware that the Commission would not continue to support a process which did not seem to have the prospect of ending with an outcome and in fact, set a time limit of five more years for this Working Group (Tauli-Corpuz 2007: page 8). Thus, it was also the time when members of the Indigenous Peoples' Caucus and NGOs realized that a no-change position could no longer be held without risking the demise of this Working Group and the Declaration. In the ensuing years, the Indigenous peoples' representatives therefore did now more actively deliberate and basically began to take part in the re-negotiations of the text. However, when key issues such as self-determination continued to be attacked by states Indigenous peoples continued to hold fast to their position that they wished for an unaltered Article 3 in the final Declaration.

The 2001 session was postponed, and in 2002 the meetings continued by alternating between formal and informal sessions in which indigenous peoples' representatives and governments could openly debate, returning back to formal sessions when recording any consensus. Noteworthy is that at this session, the Chairperson identified the lack of political will on the part of the governments as being one of the main reasons for the slow progress of the Working Group, rather than any working methodology (IWGIA 2002: p. 427). The discussions at this session centered on collective rights; lands, territories and natural resources, as well as on specific other articles.

In 2003, many of the most contested articles were again on the agenda, including self-determination, as well as those on land and resource rights. However, what were also of great interest at this session were the results of a prior, informal governmental meeting. At this meeting Norway proposed amendments to the Declaration's text which, for the first time in the history of the Working Group, were considered as a possible basis for discussion by a sizeable group of governments as well as some indigenous delegations (IWGIA. 2003: p. 416). For example, during the discussions on self-determination, this included inserting a reference to the UN Declaration on Friendly Relations in order to address the concerns of states in regards to self-determination and secession. However, as per usual, conservative governments such as the US wanted clear references to 'internal self-determination'. Thus this discussion could again not move forward as without the consensus (which in this case meant complete unanimity, M.A.F.) of governments,

the Chairman would not be able to call for the adoption of these articles. With regard to Indigenous peoples' representatives' reactions to the Norwegian proposal, they did hold fast to their stance that they would not accept a dilution to the right to self-determination. However, they could not agree on whether the Norwegian proposal was such a dilution or not (IWGIA 2003: p. 419).

The mandate of the Working Group was to complete its work within the timeframe of the International Decade for the World's Indigenous People and 2003 marked the second to last session available for this. In spite of this fact, progress did not occur. Although in the first week some progress seemed to be made, during the second week again a few governments held the process hostage. At this stage, there was now a real risk that the Commission would decide to not renew the Working Group's mandate in 2005, meaning that it would have to terminate its work after the final 10th session, which was to be held in September 2004 (IWGIA 2004: p. 444). In this critical phase, a core group of Indigenous peoples' representatives with ECOSOC status decided to send an urgent message directly to the High Commissioner for Human Rights regarding the urgent need for the renewal of the mandate and for improving the processes for creating regulations governing the human rights of Indigenous peoples (IWGIA 2004: p. 445). What I think well sums up the situation is the paragraph of this document, under the section entitled "Impediments" to the adoption of a strong, uplifting Declaration:

*"Major "impediments" to the adoption by the United Nations of a strong and uplifting Declaration on the rights of Indigenous peoples may be described under two broad categories. The first relates to approaches or techniques by some States that serve to lower human rights standards pertaining to Indigenous peoples. The second describes those specific issues that are of critical importance to Indigenous peoples, but continue to be opposed by some States."* (IWGIA 2004: para. FF, p. 451).

In another articulate paragraph the indigenous representatives also addressed some government's continuous attempts to ignore the progressive nature of international law:

*"In regard to illegitimate approaches or techniques, there is a tendency of some States not to approve any Article in the draft U.N. Declaration that differs with their own domestic policies or laws. This approach runs counter to a key purpose of the international human rights standard-setting process, namely, to elaborate the human rights of Indigenous peoples in a manner consistent with international law and its progressive development."* (IWGIA 2004: para. GG, p. 451).

#### **10.1.7. The Chairperson of the Working Group asks for additional sessions of the Working Group**

In his report to the 60th Session of the Commission on Human Rights, the Chairperson of the Working Group cited progress but also his need to have an additional session before the end of 2004 to ensure that the goal of a consensus text for the 61st session of the Commission could be achieved (IWGIA 2005a: p. 533). Of course such talk was necessary in order to garner the necessary approval from the Commission in order to be granted another session, which result was indeed achieved.

However, the Indigenous peoples' representatives clearly had another stance and expressed their deep concern over the lack of progress thus far. Specific reference was again made regarding self-determination as governments were urged to recognize the unqualified right to self-determination of Indigenous peoples (IWGIA 2005a: p. 534).

#### **10.1.8. The Decade for the World's Indigenous Peoples ends without the Declaration's adoption**

The 10th and at this time, last authorized session of this Working Group was held from 14 to 24 September with an added session, as approved by the Commission, held from 29 November to 3 December 2004. At this last session, the Chairperson took a much more proactive approach. He decided to appoint the Norwegian delegation to act as a facilitator in order to seek consensus around the articles that could be adopted (IWGIA 2005b: p. 537). Having been present in all but the first of the Working Group sessions, I can attest to the enormous amount of efforts that were made by most of the governments and by the Indigenous peoples' representatives at these informal meetings which often met early and worked late into the night. Nonetheless, a few governments could not give their consent to articles that had achieved consensus between almost all of the other governments and the Indigenous peoples' representatives. Thus, although the Working Group was near to consensus on a considerable number of articles, there was no possibility for provisional adoption of those articles at this session. Therefore, at the end of this session, the Indigenous Peoples' Caucus issued a statement which clearly expressed their disappointment at the failure to adopt the Declaration by the end of the Decade for the World's Indigenous Peoples (IWGIA 2005b: page 537). They also called upon the governments to ask for and support a renewal of the Working Group's mandate at the next session of the Commission (IWGIA 2005b: page 537). Although, due to lack of time the statement itself could not be read out, it was submitted in writing as an annex to the final Working Group report. Thus the Decade would now come to a close without the adoption of the Declaration and it remained to be seen



how the Commission would react to this failure of the Working Group to fulfill its mandate within the granted timeframe.

#### **10.1.9. The Working Group approaches the Commission on Human Rights for an extension of its mandate**

When Luis Chavez came to the 61st Session of the Commission on Human Rights, he had to admit the failure of the Working Group to achieve passage of the Declaration within the mandated time allotted. However, in making his case for the continuance of the Working Group mandate, he cited that firstly, consensus was simply not possible in the short amount of time and that secondly; there was still a large group of contentious articles that needed far more discussion within the Working Group, including articles on self-determination (IWGIA 2006a: p. 524). He also highlighted his Chairman's text, which had consolidated proposals from both Indigenous peoples' representatives and governments, in an attempt to bridge the gap between the disparate issues with the goal to eventually facilitate getting articles adopted during future sessions (IWGIA 2006a: p. 525).

Although Indigenous peoples' representatives reiterated their disappointment about the failure of the Declaration's adoption within the Decade, they too recommended the continuance of the mandate, although a few of them – most notably the International Indian Treaty Council – called for the Commission to adjourn the process. However, their position was counter to a petition signed by over 200 indigenous organizations fully supporting the mandate's extension.

The Commission did agree to extend the mandate of this Working Group, but only by one year. However, it merely granted three additional weeks in total - with one two-week session in September and the second and final one-week session to be held in December (UN Document 2005a)

In addition, another important resolution was also approved. This resolution was put forward by Mexico and called for the establishment of an inter-sessional workshop to foster dialogue between governments and indigenous peoples on issues pertaining to the Declaration, including self-determination; lands and territories, and collective rights:

*“The Commission on Human Rights, M.A.F.) Also takes note of the proposal raised during the resumed meeting of the tenth session of the working group on a draft United Nations declaration on the rights of indigenous peoples, to hold a workshop with the participation of representatives of States, indigenous experts, internationally recognized academics, independent experts and civil society*

*organizations, to be hosted and co-sponsored by the Government of Mexico, on issues related to the draft declaration, with the purpose of promoting the rapprochement of positions of all partners involved, and invites the Special Rapporteur to participate in this workshop;” (UN Document 2005b, p. 4)*

Thus the stage was set for a very active year in which to get this Declaration finalized at the Commission.

#### **10.1.10. The Commission on Human Rights is replaced by the Human Rights Council**

In 2006, due to restructuring of the United Nations, the Commission was to be replaced by the newly formed Human Rights Council (UN Document 2006a). Therefore, the Commission on Human Rights formally put forward the work of the Working Group to the Human Rights Council (UN Document 2006a). Therefore this Declaration could now, due to the timeframe, potentially become one of the first human rights instruments to be adopted by this new UN human rights body.

#### **10.1.11. The proactive inter-sessional work by representatives of Indigenous peoples and governments**

Despite the fact that the Working Group had received a mandate extension, it was clear to both the Indigenous peoples’ representatives and to governments that there was a dire need to carry out inter-sessional work in order to get this Declaration text finalized.

##### **10.1.11.1. The indigenous expert’s strategy meeting**

The first indigenous expert’s strategy meeting on the UN Draft Declaration on the Rights of Indigenous Peoples took place in Montreal from 10-13 August 2006 in which I also participated and, via my NGO, also contributed funds for indigenous participation. The meeting’s goal was to prepare for the upcoming Mexico meeting and the next session of the Working Group. The over 30 attending participants included Indigenous peoples’ representatives and NGO supporters. The meeting had as its goal to address the crucial issues of self-determination; lands, territories and natural resources, as well as the general provisions of the Declaration. The outcomes of this meeting were then to be presented at the upcoming Mexican meeting. The key areas of agreement that could be achieved were on the principles around the issues of self-determination and the affirmation and importance of Indigenous peoples’ collective human rights, as well as their safeguarding against states’ undermining proposals within the Declaration process (IWGIA 2006b: p. 550).

#### **10.1.11.2. The International Workshop on the draft United Nations Declaration on the Rights of Indigenous Peoples**

Arising around discussions between Mexico, Indigenous peoples' representatives and NGOs, Mexico decided to take the governmental lead on an inter-sessional initiative it had launched, designed to facilitate the process of the Declaration. It therefore organized the International workshop on the draft United Nations Declaration on the Rights of Indigenous Peoples which was an "invitation only" event comprised of indigenous representatives, NGOs including my own, governments and notable UN representatives such as the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. As stated in the final report of this meeting:

*"The workshop had the objective of providing a space of deliberation on possible avenues to solve pending issues of discussion and to generate an open and frank environment for the exchange of ideas, in support and as a contribution to the Working Group in charged of the negotiation of the draft Declaration. Its aim was to provide an opportunity for informal discussions among the participants with the purpose that some of the obstacles to the adoption of the draft Declaration could be reduced and that this would contribute to progress at the next session of the Working Group in charged of the negotiation of the draft Declaration in December 2005 and January-February 2006."* (UN Document 2006a: p. 1)

The workshop itself was organized, as had been the previously held indigenous expert strategy meeting, around the main themes of self-determination; lands, territories and natural resources; and the general provisions of the Declaration. Attending as one of the few invited NGO representatives, I can attest to the usefulness of this workshop. Due to its location outside the UN it seemed to promote a higher level casualness and the willingness by governments to listen and respond to Indigenous peoples' representatives – compared to what could be normally seen in the more formal official UN meetings. The resulting report then travelled back to the UN to the following session of the Working Group.

#### **10.1.12. The 11th Session of the Working Group**

The 11th session of this Working Group was marked by improved communication between all parties. Even long-time activists, including myself, felt that there was now hope in getting the Declaration closer to passage. Of course at this late stage, this session was necessarily devoted to discussions on the exact, final text of the Declaration. Despite the late hour, governments such as the United States, New Zealand and Australia continued to introduce language that basically maintained Indigenous peoples as wards of the governments and thus colonized peoples, whereas a clear shift had occurred over the years, with most other countries supporting

Indigenous peoples' unwavering right of self-determination (IWGIA 2006b: pp. 552-553). At this session it was remarkable that when the United States, Australia and New Zealand introduced their very discriminatory language on self-determination, the Chairman actually questioned their motives (IWGIA 2006b: p.553). It was even more encouraging that not one government took the floor in support of these proposed changes (IWGIA 2006: p.553).

The methodology used at this final session was again to have Norway broker the text between governments and Indigenous peoples' representatives. On the final morning, Norway then presented its outcomes to the plenary. The results were that ten preambular and thirteen operative paragraphs were ready for provisional adoption, as well as 15 paragraphs which were considered very close, thus representing more than half of the total number of Declaration paragraphs (IWGIA 2006: p.554). However, the difficult articles on self-determination, for instance, still remained open. Nevertheless, at the end of this session all felt that substantial progress had been made.

The meeting then continued for its final one-week session in February 2006 in which it had to tackle the still remaining articles. Despite continued efforts by most governments and Indigenous peoples' representatives, in the end consensus could not be reached. Therefore it would now not be possible to submit a complete Declaration text.

Thus, in a final move to save the Declaration, the Chairman announced that he would now put together his own Chairman's text to submit to the Human Rights Council, which would be handling the Declaration at its upcoming first session. This seemed to be the only solution left as no overall consensus on a final document had been reached, and the time for working this out was clearly up. The Chairman's text, as he made clear to all parties, would be a compromise text, but would reflect the support of the majority of the governments and the Indigenous peoples' representatives alike (IWGIA 2007: p.556-557). As such it contained language provided by the facilitators of the group discussions, as well as his proposals regarding articles that were then still pending, based on the discussions held during the sessions (IWGIA 2007: page 557).

The Declaration had now completed its journey through the Working Group and was finally headed for the highest UN human rights body, its Human Rights Council.

## **10.2. The United Nations Human Rights Council and the adoption of the Declaration**

Along with the regular report of the final session of the United Nations Working Group on the Draft Declaration on the Rights of Indigenous Peoples, the Chairman's text was also presented for consideration to the Human Rights Council (the Council) (UN Document 2006c). This was the compromise text between what the Chairman saw as possible for being accepted by both the governments and Indigenous peoples' representatives, despite some resistance from both sides. In retrospect, it was now clearly the only option he had in order to achieve a Declaration at all, considering that no consensus had been reached on the Declaration despite its many years within this Working Group.

It soon as it became clear to the Indigenous peoples' representatives that this was indeed the final version of the Declaration to be submitted to the Council. It was therefore understood that active lobbying now had to be done, as this Declaration would unlikely be adopted by consensus and thus would be heading for a vote. Therefore, all 47 Council member states had to be actively lobbied. This task was undertaken with great vigor by both Indigenous peoples' representatives and supporting NGOs, including my own organization, NCIV.

One of the primary lobbying sites was the Permanent Forum on Indigenous Issues which was held from 15 to 26 May 2006. In this regard, the PFII even made a specific recommendation:

*"The Permanent Forum is convinced that a declaration on the rights of indigenous peoples will be an instrument of great value through which to advance the rights and aspirations of the world's indigenous peoples. The Permanent Forum therefore recommends the adoption without amendments of the draft declaration on the rights of indigenous peoples as contained in the proposals of the Chairperson of the working group of the Commission on Human Rights on the draft United Nations declaration on the rights of indigenous peoples (see E/CN.4/2006/79, annex I) by the General Assembly during its sixty-first session in 2006. This would represent a major achievement for the Second International Decade of the World's Indigenous People."* (UN Document 2006d)

On 29 June 2006 the Declaration finally came up to the Council and in what was a long awaited victory – although not by consensus – the Declaration was adopted by a large majority vote. 30 UN member states voted yes and only 2 countries, Russia and Canada, voted no, while 12 abstained. In the presentation of his report, just prior to the vote, the Chairman emphasized that the Declaration is a human rights instrument that will set the standard for the relationship that should exist between Indigenous peoples and states (IWGIA 2007: p. 557). At this time, each of

the regional indigenous caucuses also presented their own statements in support of the Declaration (IWGIA 2007: p. 558).

The final decision to adopt the Declaration read as follows:

*“Adopts the United Nations Declaration on the Rights of Indigenous Peoples, as contained in the annex to the present resolution, which was proposed by the Chairperson Rapporteur of the Working group of the Commission on Human Rights to elaborate a draft declaration in accordance with paragraph 5 of General Assembly resolution 49/214 of 23 December 1994 in annex I to the report of the working group on its eleventh session (E/CN.4/2006/79).”* (UN Document 2006e, p. 2)

After the vote the Global Indigenous Peoples’ Caucus issued their own statement, read by Adele Wildschut, a representative of the Indigenous Peoples of Africa Coordinating Committee (IPACC). In the first part of their statement they clearly referenced the historical nature of the Declaration, which connection I presented in my introductory section to this process:

*“The League of Nations did not act on the demands of the diplomatic envoys of the Maori and the Iroquois Confederacy, so the roots of the present Declaration go back to 1974 and the voluminous Cobo report.”* (Global Indigenous Peoples’ Caucus 2006a)

This caucus statement also made clear reference to the extraordinary work of the Indigenous peoples in regards to their own ability to promote their rights during this process:

*“One of the most important outcomes has been that throughout all of our expressions, sometimes in our own languages, we have succeeded in educating the international community about the status, rights and lives of Indigenous peoples in every corner of world.”* (Global Indigenous Peoples’ Caucus 2006a)

After years of work this was a truly uplifting moment for both the Indigenous peoples and their supporters. The Declaration was now on its way to the last hurdle in this process, to seek final adoption by the UN’s highest body, its General Assembly.

### **10.3. The Declaration reaches the UN General Assembly and is delayed**

#### **10.3.1. Initial roadblocks on the Declaration’s path to the UN General Assembly**

The end phase had now been reached for the Declaration as it was now to come before the UN General Assembly for final adoption, thereby enshrining it as an official UN international instrument.

As the General Assembly is of course composed of all UN member states it was clearly understood by the Indigenous peoples' representatives and their supporters that the lobbying must continue if this document was to pass this last and final hurdle. However, many states believed that the Social, Humanitarian and Cultural Affairs Committee (commonly referred to as the "Third Committee", M.A.F) of the UN General Assembly should first be able to preview and consider all matters coming from the Human Rights Council (IWGIA 2007: 559). In brief, while not going into too much detail, the reason for this side tracking actually had more to do with how UN member states saw the new Human Rights Council and its powers. Thus while many had assumed that, as with the former Commission on Human Rights, the documents approved by the Council would also simply go to the General Assembly for rubberstamped approval, many UN member states wished to first see it pass through its Third Committee. When the Declaration's route to the General Assembly via the Third Committee was agreed upon it became an issue of great concern to Indigenous peoples as this Committee could actually reopen the entire Declaration text if it so chose (Tauli-Corpuz 2007: page 11).

Thus Indigenous peoples' representatives and their supporters once again began their active lobbying efforts and released another indigenous caucus statement on 18 October 2008, once again expressing the urgent need to have the General Assembly adopt this Declaration:

*"The Declaration on the Rights of Indigenous Peoples will be adopted by the General Assembly during this session. Consistent with the promotion and protection of human rights for all, it is in best interest of all States to support the adoption of this historic Declaration."* (Global Indigenous Peoples' Caucus 2006b).

### **10.3.2. The Declaration becomes circumvented to the UN General Assembly's Third Committee**

At this point, the focus now was to address the UN General Assembly's Third Committee regarding the Declaration. It was soon learned that the African group of states were beginning to hold closed-door meetings and were now initiating direct requests to the Third Committee to delay consideration until their issues were resolved (IWGIA 2007: p. 559).

Nonetheless, the government of Peru proceeded to send a draft resolution to the Third Committee' 37<sup>th</sup> meeting calling for the General Assembly to adopt the Declaration (UN Document 2006f). A few weeks later, after some more dialogue with the African states, Peru submitted another resolution, which accommodated some of the African states' concerns, while at the same time still calling for the Declaration's adoption (UN Document 2006g).

A day later, Namibia led an ambush that put forth another resolution, an amendment to Peru's resolution, which suddenly called for the following:

*"Decides to defer consideration and action on the United Nations Declaration on the Rights of Indigenous Peoples to allow time for further consultations thereon."* (UN Document 2006h)

It seemed that both Namibia and Botswana were now launching serious concerns at this late stage. This included Botswana's request for a definition of 'indigenous peoples'. However, that issue was long considered to have been resolved in the sense that there was no provision for a definition within this Declaration. Similar to many other governments in the past, this had to do with Botswana's belief that Indigenous peoples as a collective would be able to exercise their right of self-determination by means of secession.

Unfortunately, the African group of states decided to support Botswana and Namibia and agreed to delay any voting on the Declaration until they had an opportunity to resolve these issues (IWGIA 2007: p. 560). It was of course clear to most governments, Indigenous peoples' representatives and their supporters that many of the 54 African states taking this position were not well informed regarding the Declaration. At this point we also were hearing, from some leaks within the Canadian government, that Canada had in fact begun to actively lobby the African states to vote against the Declaration.

In what was a most disappointing day, the resolution of Namibia was presented to the Third Committee and on 28 November 2006 and with 82 votes in favour and 67 votes against, this last minute delay was accepted (IWGIA 2007: p.560). As a formality, this vote was then repeated in the General Assembly on 23 December 2006 with 85 votes in favour of the delay and with 89 abstentions (IWGIA 2007: p.560).

However, the one positive part of this resolution was that it did set a final timeframe for adoption:

*"Also decides to conclude its consideration of the Declaration before the end of its sixty-first session."*  
(UN Document 2006h)

This meant that by 18 September 2007 at the latest, the Declaration should be adopted, as this would be the last day of the General Assembly's 61<sup>st</sup> session.



Thus, while the indigenous had hoped for a quick victory after the Human Rights Council adoption in 2006, this was not forthcoming at the UN General Assembly. They now realized that another tough year would lie ahead and it was clear that their lobbying work was far from over.

#### **10.4. The Final Rites of Passage for the Declaration**

##### **10.4.1. Fear of potential amendments to the Declaration**

Although Namibia's resolution did not specifically talk of making amendments to the Declaration, it was well known that besides the African states there were others, such as the well-known CANZUS block (Canada, Australia, New Zealand and the United States, M.A.F.) that would gladly use this last opportunity to water down the Declaration. One could already see some dangerous activity in this regard when New Zealand made a joint statement on behalf of Australia, the USA and themselves, which attacked the Declaration, again because of the self-determination principle, stating that it could be misconstrued as conferring a unilateral right to secession (IWGIA 2007: p. 561).

Fortunately, many other states made it clear that they would not support any changes to the Declaration: Accepting the final text of the Declaration presented to the General Assembly already would be a compromise for both states and Indigenous peoples alike, and that this agreed upon text was the only text capable of being adopted and supported in the long run (IWGIA 2007: p.560).

##### **10.4.2. The President of the General Assembly steps in**

As is the usual case, the President of the General Assembly has the responsibility to see that requirements of resolutions that are adopted by this body are met. This necessarily meant that she was responsible for seeing that the adoption of the Declaration would occur within the now set time-frame, but very little occurred in this regard.

The supporting states decided to stay proactive and presented a proposal to the President on 10 May 2007 that was designed to placate the major concerns of the Africa Group (IWGIA 2008: p. 529). A few days later, on 17 May 2007 the African Group submitted a revised text of the Declaration which included over thirty amendments to the adopted Human Rights Council text that were not only unacceptable to Indigenous peoples, but also were seriously flawed in human rights law (IWGIA 2008: p. 529). Thus, with no progress made, on 6 June 2007 the President announced the appointment of Ambassador Davide, the Permanent Representative of the Philippines to the United Nations, to act as a 'Facilitator' to undertake consultations with all

parties and work towards achieving consensus on the Declaration by the deadline of 15 July 2008 (IWGIA 2008: p.530).

#### **10.4.3. The results achieved by the Declaration's Facilitator**

Despite the fact that the Facilitator had a very limited amount of time in which to complete his work, he was able to meet with all concerned parties, including with Indigenous peoples' representatives and NGOs, which meeting as NCIV's representative I also attended. A Facilitator's Report to the General Assembly President nevertheless was completed and submitted. It was noteworthy for the Indigenous peoples' representatives that he seemed to be employing the previously introduced "Mick Dodson criteria" in his own proposal with an aim towards achieving middle ground on any new proposals made to the Declaration:

*"The Facilitator hopes that this report provides some guidance to the President on the elements necessary for a middle-ground approach that can win the broadest support for the Declaration. In summary, the Facilitator is of the view that than effective middle-ground approach should, as much as possible, meet the following test:*

- *Does it represent a genuine effort to address the various concerns?*
  - *Does it build on, and not undermine, the efforts and achievements of the process at the Commission on Human Rights and Human Rights Council?*
  - *Does it preserve the purpose of the Declaration for indigenous peoples?*
  - *Is it tangible and specific enough to enable the General Assembly to determine the particular adjustments to be made to the current text within the remaining period before the end of the 61st session?*
  - *Will it ensure that the Declaration does not fall below existing human rights standards?"*
- (Davide 2007a: pp. 6-7)

However, immediately after his report was delivered, numerous states insisted on another meeting. As a result, the Facilitator submitted a supplementary report which highlighted the nine areas of concern that the governments of Australia, Canada, Columbia, Guyana, New Zealand, the Russian Federation and Suriname still wished to address, which included self-determination, self-government and indigenous institutions; lands, territories and resources; redress and restitution; free, prior and informed consent; lack of clarity as to who are 'indigenous peoples'; military defense issues; protections for the rights of others; intellectual property rights and education (Davide 2007a: p. 8). Thus it was clear that even at this late stage, some tenacious governments were determined to negatively influence the present text of the Declaration.

In reply to the reports delivered, the President issued a response letter to all participants in this process. It stated that she believed that these proposals constituted a way forward and that, to advance this issue, all parties should now reach a swift and common understanding in order to allow the General Assembly to adopt the Declaration (Al Khalifa 2007).

#### **10.4.4. The Global Indigenous Peoples' Caucus response to the Facilitator and President of the General Assembly**

After the delivery of the Facilitator's reports and the General Assembly's President's letter the Global Indigenous Peoples' Caucus then issued their own response in the form of a letter addressed to the President by the caucus' Chairperson, Les Malezer. Firstly, they noted and praised the work of the Facilitator and the President's reiteration that the Declaration be adopted at this session of the General Assembly. However, they also clearly stated their concern with the governments of Australia, Canada, Columbia, Guyana, New Zealand, the Russian Federation and Suriname who, as the supplementary report seemed to indicate, would seek further consultations in order to revise the text of the Declaration (Malezer 2007a: p. 2).

He noted their concern that *"It is also possible that this same group of seven States who are seeking to restart negotiations on the text of the Declaration will, if their efforts fail to delay the vote, propose amendments from the floor. As this process almost inevitably will lead to a complete breach of those aforementioned principles and criteria recommended by H.E. Hilario G. Davide, we urge that you encourage States as much as possible to decide the Declaration in the General Assembly without resorting to amendments from the floor."* (Malezer 2007a: p. 2)

Thus the formal process of facilitation had now come to a close and the battle lines were being drawn. However, behind the scenes much more work, from both the indigenous and the government side was being done.

### **10.5. The behind the scenes negotiations on the Declaration**

#### **10.5.1. Mexico and its proactive role**

Ever since the success of its Patzcuaro meeting, Mexico had begun to take on an unofficial role as facilitator between the Indigenous peoples representatives' and the governments - this increasingly so in the final stage of the negotiations.

In fact, the Government of Mexico was the first that undertook private discussions with such governments as Namibia and Botswana, to see if agreement could be negotiated (IWGIA 2008: p. 531). They then proceeded to expand their role to brokering between the African block of

states and the governments already in support of the passage of the present Declaration text. Mexico also worked to address the more difficult states who had indicated they still wanted major issues addressed before adoption, such as the aforementioned oppositional governments of Australia, Canada, Columbia, Guyana, New Zealand, the Russian Federation and Suriname.

At this stage of the negotiations I was also in New York off and on to assist with this final stage of lobbying work, working closely with the Global Indigenous Peoples' Caucus and the other NGOs active in this process. Thus I can attest to the enormous efforts of Mexico to bring this Declaration forward, as well as by the governments of Guatemala and Peru.

A week before the close of the General Assembly's 61<sup>st</sup> session, Mexico advised both the Global Indigenous Peoples' Caucus and the supporting states that the Africa Group had agreed to a text that might now be acceptable to the Declaration's supporters, involving nine changes to the present Declaration text (IWGIA 2008: p. 533). In the end, this final compromise text was acceptable to all sides and the Declaration could now finally go forward to the General Assembly.

#### **10.5.2. The work of the Global Indigenous Peoples' Caucus**

In the final chapters I will present a much more detailed analysis of the Global Indigenous Peoples' Caucus and its work on the Declaration, but here I just want to outline their work during the final weeks prior to the General Assembly vote.

First of all, it is important to mention that after the defeat of the Declaration by the Third Committee and the General Assembly in late 2006, Mr. Les Malezer, Chairperson of the Global Indigenous Peoples' Caucus, committed himself to staying in New York in order to monitor the progress of the negotiations for the entire caucus. He stationed himself at the office of the International Indian Treaty Council at the World Council of the Churches just across the road from the United Nations' Headquarters in New York. This was financed by many sources, including his own savings, the support of such organizations as the one I represented at the time, as well as some of the more affluent Indigenous peoples' organizations from the northern hemisphere. In addition Indigenous peoples committed themselves to coming into New York in waves in order to support Les in his work. There they spent their time lobbying, sending out informative e-mails to the larger Indigenous peoples' caucus, as well as meeting with states and UN representatives in order to further the promotion of the Declaration. I also spent many weeks during this last year working together with Les, the Global Indigenous Peoples' Caucus, and the other NGOs active in this process.

At this time, the Global Indigenous Peoples' Caucus had organized themselves into a body with a regional steering committee. This constellation was designed to ensure that, if needed, one could call upon at least one Indigenous peoples' representative from each region to come to New York for crucial face to face meetings. In addition, each Steering Committee Member was also responsible for ensuring that information flowed both ways, so that each region was able to effectively provide some input into this process.

Considering that the African states had caused such a stir, the most important and immediate focus was directed upon this group of governments. Therefore, especially the members of the Indigenous Peoples of Africa Coordinating Committee (IPACC), with great support from the Grand Council of the Crees from Canada, worked on lobbying this region. Key instruments used in this lobbying work were the African Charter on Human and Peoples' Rights, as well as relevant reports and statements coming from the African Commission on Human and Peoples' Rights in order to reveal the Africa Group's inconsistencies in opposing the Declaration (IWGIA 2008: p. 532).

In addition, the Global Indigenous Peoples' Caucus also worked on other blocks of governments, together with their NGO supporters. Thus there was a constant flurry of activity around the UN in New York. Towards the end this included almost daily briefing meetings with Mexico, and sometimes Peru and Guatemala, in which updates from both the government negotiations and the lobbying efforts of the Global Indigenous Peoples' Caucus were exchanged.

When Mexico thus approached the Global Indigenous Peoples' Caucus during the final week of the General Assembly with the aforementioned compromise text, the Chairperson of the Global Indigenous Peoples' Caucus took immediate action and asked all of the regional Steering Committee Members to immediately consult with their regions, as they needed to reach a decision within a few days. Thus, the developed an outreach document which, besides providing an overview of what was going on in New York, also included the following:

- a) the newest version of the Declaration with the proposed changes by the Co-Sponsor/Africa Group (this was the proposal that the Global Indigenous Peoples' Caucus was being asked to decide upon, M.A.F.)
- b) For comparison - The Canada/Columbia/New Zealand/Russian Federation proposal dated 13 August 2007 (this proposal was the one which had called for unreasonable major revisions of 13 Declaration articles, all of which had already been addressed by the Chairman's compromise text, M.A.F.)

- c) For comparison - the originally proposed Africa Group amendments from 8 May 2007 (which amendments had now been reduced to those few amendments contained in the latest proposal coming from the Co-Sponsor/Africa Group, M.A.F.)
- d) The list of regional coordinators and their contact information. (Global Indigenous Peoples' Caucus Steering Committee 2007).

The deadline for response was set for 12 noon, 3 September 2007 New York time.

In brief, the latest amendments proposed by the Co-sponsor/Africa Group did not have many major changes, other than the addition to the original wording of Article 46:

*"1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of United Nations..." now continued on with the following new additional text "...or construed as authorizing or encouraging any action which would dismember or impair totally or in part, the territorial integrity or political unity of sovereign and independent States."* (Co-Sponsor/Africa Group 2007: pp. 10-11).

Of course, this proposal was clearly designed to limit the right of self-determination of Indigenous peoples. However, as was argued in the Steering Committee's final meeting, this did not change Article 3 and therefore it would still preserve this key article of the Declaration in its entirety.

As most of the Steering Committee Members were physically present in New York at this time, a final meeting was held just after the e-mail consultation deadline, which NGO supporters, including myself, also attended. Despite the fact that the North American region – more specifically the International Indian Treaty Council - claimed that they still had issues with this latest proposal, including with the new additions to Article 46, the Chairperson in the end called the meeting as having reached consensus. He stated that without severe opposition by any region that he saw the Global Indigenous Peoples' Caucus as now being able to accept the negotiated text and support the Declaration with these amendments. To this effect a formal statement by the Global Indigenous Peoples' Caucus was issued. It especially emphasized - considering that they had now reached agreement - that as previously agreed upon, neither the African governments, nor any of the other states sponsoring this new resolution for the General Assembly, would be able to take on board any other last minute amendments:

*"The Steering Committee endorses that the United Nations Declaration on the Rights of Indigenous Peoples, as modified, be adopted. This endorsement is conditional upon the assurances that any further proposals to amend the Declaration will be opposed by the Africa Group of States and the Co-sponsoring States."* (Regional Steering Committee of the Global Indigenous Peoples' Caucus 2007)

Thus the stage was now set for the final vote on the Declaration to take place at the UN General Assembly 9 days later.





## **11. The UN General Assembly adopts the UN Declaration on the Rights of Indigenous Peoples**

### **11.1. The UN General Assembly Vote**

With the Co-sponsor/Africa Group proposal now accepted by both the states and the Global Indigenous Peoples' Caucus, for the first time in a long while, an atmosphere of hope now prevailed. Thus in the final days leading up to the vote, the members of the Global Indigenous Peoples' Caucus and NGOs present in New York were busy planning the celebration. I was put in charge of organizing the evening dinner where the celebration would begin.

As soon as the 13 September 2007 was set as the final date for the vote, the Global Indigenous Peoples' Caucus and the NGOs notified their networks of this auspicious date. Indeed indigenous delegations arrived en masse on this date to witness what was hoped to be a historic event. This included people who had just recently become involved, as well historically significant chiefs or Indigenous peoples' representatives who had been there since the drafting of the Declaration began. Many were also nervous at this final juncture since there still was no certainty as to the final outcome. Furthermore, there had been little time left to lobby the many other states who would be voting on this day. However, we also felt that at this point we had done everything possible to achieve a compromise and had to now also trust that those governments who had worked out this deal would hold fast to our agreement.

After what seemed a long time in the morning, with other items on the agenda being addressed, the vote was called on the resolution to adopt the Declaration (UN Document 2007). In his introduction to the presentation of the Resolution to adopt the Declaration the Chairperson of the Working Group, Mr. Luiz Chavez emphasized the special nature of the negotiations of this document:

*"I must say that for the first time in the history of the United Nations representatives of the indigenous peoples, those who were to enjoy the rights contained in the Draft, took part actively in the work on the text, attributing to it unquestionable legitimacy."* (Chavez, Luis as quoted in Oldham and Frank 2008: p. 5)

As the giant voting screen quickly recorded, the Declaration was adopted by a vote of 144 in favor, with only 4 votes against by the CANZUS group (Canada, Australia, New Zealand and the United States) and 11 abstentions.

Then, in what was an unprecedented move, the General Assembly meeting moved from formal to informal mode to allow for both Vicky Tauli-Corpuz, Chairperson of the Permanent Forum on Indigenous Issues and Les Malezer, Chairperson of the Global Indigenous Peoples Caucus, to address members of the General Assembly (IWGIA 2008: p. 2008).

In Ms. Tauli-Corpuz's speech, the historic nature of this day was addressed several times:

*"The 13th of September 2007 will be remembered as a day when the United Nations and its Member States, together with Indigenous Peoples, reconciled with past painful histories and decided to march into the future on the path of human rights."* (Tauli-Corpuz 2007b: p. 1)

*"I hail representatives of Indigenous Peoples who patiently exerted extraordinary efforts for more than two decades to draft and negotiate the Declaration. Indigenous Peoples attempts to get the ears of the international community started much earlier with the trip of Cayuga Chief Deskahbeh to the League of Nations in 1923 and of Maori leader W. T. Ratana in 1925. We can now say that this historical trip, even if he was turned away, has not been in vain."* (Tauli-Corpuz 2007b: p. 2)

Mr. Malezer's speech emphasized the position of the Declaration as a document that represents a combination of the UN and the Indigenous peoples' efforts:

*"The Declaration, as a deposition, represents a meeting of authorities, i.e. the United Nations and the indigenous peoples. Today's adoption of the Declaration occurs because the United Nations and the Indigenous Peoples have found the common will to achieve this outcome. The Declaration does not represent solely the viewpoint of the United Nations, nor does it represent solely the viewpoint of the Indigenous Peoples. It is a Declaration which combines our views and interests and which sets the framework for the future".* (Malezer, 2007b, p. 1)

He also addressed the key point - made so many times in this process - that this Declaration does not grant Indigenous peoples any new rights:

*"It is a tool for peace and justice, based upon mutual recognition and mutual respect. We emphasise once again that the Declaration on the Rights of Indigenous Peoples contains no new provisions of human rights. It affirms many rights already contained in international human rights treaties, but rights which have been denied to the Indigenous Peoples."* (Malezer 2007b: pp. 1-2)

## **11.2. Victory is duly celebrated**

In the evening, after years of work on this Declaration, those indigenous peoples and their supporters who had gathered in New York were ready to celebrate. I had organized our informal

dinner in a Brazilian Churrascaria and there Indigenous peoples' representatives, NGO members and invited governmental representatives, such as the one from Guatemala, joined to share one last meal as this constellation. The dinner wound up on a wonderful note, with emotional speeches and the sharing of stories from past work on the Declaration. References were made to having come into this process as young and unmarried and now returning to witness this event as a grandparent with grey hair. The final celebration then moved into a karaoke bar where Mattias Ahren of the Saami Council announced the adoption of the Declaration and a bewildered crowd nonetheless applauded. When I left at 1am many were still inside singing away at such classic tunes as *These Boots were made for Walking* by Nancy Sinatra.

The entire process leading to the adoption of the Declaration had in the end spanned a 23 year period. This corresponds with the emergence and expansion of the international Indigenous peoples' movement as a global movement focusing on the United Nations systems (see Barsh 1986, Alfredsson 1989, Sanders 1989, Stamatopoulou 1994, Brysk 2000, Muehlebach 2001, McIntosh 2001, Garcia-Alix 2003, Chernela 2005, Morgan 2007, Frank forthcoming in 2009). In the coming chapters I now wish to focus more concretely on the international Indigenous peoples' movement and its development during this process.



## **12. The Globalized Indigenous Peoples' Movement**

### **12.1. The Impact of Globalized Technology on the International Indigenous Peoples' Movement**

The increasing accessibility of information, via the internet, has had a tremendous impact, greatly enhancing the working mechanism of the Global Indigenous Peoples' Caucus.

For one, it has increased the speed and reach of how documents such as the UN Declaration can be made known from the UN in New York to indigenous communities around the world: *"legal documents and policy statements produced in transnational sites such as UN conferences circulate globally through the work of movement activists and states."* (Merry 2006: p. 38)

The use of the globalized technology in promoting Indigenous peoples' rights is a positive aspect of globalization that the international indigenous movement has clearly and effectively embraced – in line with Appadurai's view:

*"What is noteworthy about the new flows of money, weapons, information, people, and ideologies across national boundaries is that they have produced forms of solidarity that exist on the same political plane as those that were traditionally monopolized by the nation-state. Thus diasporic communities of many kinds command primary loyalties among populations that may also exist within various national boundaries. Debates on key issues of war, peace, identity, and progress rage among cyber communities that function across national lines and represent various kinds of solidarity, some cultural, some professional, some situational or opportunistic."* (Appadurai 2006: page 24)

When the internet revolutionized the world it also brought forth the ability of those previously on the fringe of information to form their own globalized bonds, and in essence gave birth to a new way of working.

As colleague of the NGO Human Rights Watch once stated, "Human rights would never have been globalized without the internet." This statement I consider to be right on the mark as I see how differently – and how much more effectively – the Indigenous peoples' movement has been able to address human rights issues – from urgent actions to dissemination of information. Of course, the increased use of internet has facilitated this, thereby also enhancing the human rights system: *"It is clear that the internet information flow is an important aspect of the way the human rights system is operating."* (Merry 2000, p. 131)

Within minutes indigenous can mobilize world-wide without having to first travel to the UN to make their issues known. As stated before, in the beginning this international Indigenous peoples' movement was very much tied to face to face meetings whereas, by the time the fast paced consultations around the Declaration were occurring, many of these took place almost primarily via the internet, especially in the end phase of the Declaration deliberations.

When I first became involved in this process around the Declaration, at the United Nations World Conference on Human Rights in 1993, the internet had not yet become the primary source of communication that it is today. At this time, the meetings around the Declaration process occurred directly at UN gatherings in the form of physical meetings with not much happening in between, other than the occasional phone calls or faxes.

In conducting my interviews, I therefore saw the need to address this very issue based on a comment made by Les Malezer, the Chairperson of the Global International Indigenous Peoples' Caucus, who observed that this Global International Indigenous Peoples' Caucus had gone from being one based on actual physical meetings, to a more virtually based caucus since 2006.

Overall all interview partners commented on how well this way of working functioned. As Les Malezer states:

*"I think that for the purposes of the Declaration it has been a positive experience, it has worked fairly well. It has been a real exercise to try and work in terms of virtual systems also trying to deal with such things as major outcomes and so on. So that's been successful. And I think, that is partially because the way we were working was particularly designed to use the email and internet networks in order to operate so it was all built around that system."* (Malezer 2007c: personal interview)

Adding to this, as I think Vicky Tauli Corpuz correctly noted, was of course the fact that this way of working was also necessary due to lack of resources for so many physical meetings (Tauli-Corpuz 2007c: personal interview)

As the representative of the Permanent Forum on Indigenous Issues, she also noted this Forum's positive contribution to providing another physical meeting space for Indigenous peoples as do the regional preparatory meetings for this Forum held in her region of Asia:

*"...I think also the establishment of the Permanent Forum has also helped a lot in bringing together Indigenous Peoples physically, you know, the Asian Caucus you know they come together also to prepare for the Permanent Forum so we also use that as a Forum to update people on events, taking place outside*

*the Permanent Forum and, it also physical meetings where we can agree on specific campaigns or activities.” (Tauli-Corpuz 2007c: personal interview)*

She also cited the obvious problems with this virtual way of working in that you cannot reach many of the smaller indigenous communities: *“...we have communicated by technology via email so of course that is good because its fast and people respond more quickly, but its also bad because not many Indigenous Peoples have access to internet and we are not sure that those who are getting the information are also sending it out physically to their own people.” (Tauli-Corpuz 2007c: personal interview)*

Mattias Ahren spoke to the simple reality of the need to be working in this way if one wished to function at this fast-paced level: *“...like it or not, that’s the way decisions are made these days... I mean if it was the Caucus operating in isolation, then you could do things differently, but now the UN international processes that we participate in operate in that way, and I mean you cannot say, you cannot take the position now, that we are going to convene in half a year in New York or Geneva, I think it’s (electronic communication, M.A.F.) absolutely critical... If you want to have a position you have to have it ready when the decision is made.” (Ahren 2007: personal interview)*

His statement I think perfectly underscores the necessity of this movement’s shift to the more virtual approach, especially when the negotiations stepped up, and during the inter-sessional periods when Indigenous peoples’ representatives could not always be present in New York. In contrast most governments had representatives directly there in New York, at the ready in their consulates or embassies, thus being able to hold meetings whenever they needed to.

Mililani Trask also commented positively on the development of a more virtually-based caucus: *“Part of the sophistication that the caucus has acquired has been technological capacity and this has greatly facilitated our work in that, it has encouraged and supported a global exchange of views, and has facilitated our ability to work together for common goals in the international arena, whether human rights or applying human rights in the Convention on Biological Diversity, but to pursue this in a way that is much more feasible and much more affordable.” (Trask 2007: personal interview)*

However, I think it is also important to cite Les again, as besides emphasizing the value in this way of this way of working, he also clearly sees the need for a physical presence: *“...it (the Global International Indigenous Peoples’ Caucus, M.A.F.) relies very much upon, in this case presence in New York and contact in New York on behalf of people who are located remotely.” (Malezer 2007c: personal interview)*

Of course there were communication issues between the regional representatives and the broader Indigenous Peoples' Caucus that were not only technical in nature. This included problems in trying to do consultations with persons either not so well acquainted with the process, or not clear of the limitations of the consultations (e.g. not realizing that when a government presents you options you have to pick one) In this regard, I think Mr. Ahren perhaps summarized the difficulty of the Steering Committee of the Global Indigenous Peoples' Caucus best: "...we (*the Steering Committee, M.A.F.*) got the authority to take decisions on behalf of everyone. I mean of course some of those decisions had to be approved later on by the others, by the regions and by the global caucus, but to a large extent you had a smaller group that somehow had the authority to speak to states and present the Indigenous position." (Ahren 2007: personal interview).

I would clearly state that the functioning of this virtual caucus was in large part a success due to the fact that Mr. Malezer was also physically present in New York and thus able to put a human face on the views of the Global Indigenous Peoples' Caucus. During the final phase, during a time in which I also assisted him in NYC, often the negotiating governments would come to him with ideas in order to see what possibility they might have with the caucus. Of course on larger issues, Mr. Malezer would first send out an e-mail in order to virtually consult with the Steering Committee Members, as well as to have them gather input from their respective regions.

In conclusion, it is quite clear that the very effective lobbying work around the Declaration by the Global International Indigenous Peoples' Caucus would not have been possible without the use of the highly globalized technology of the internet. If one compares the process from the beginnings of the Declaration in the 1980s, this movement as already stated prior had evolved into a very sophisticated one, which has learned to well utilize globalized communication methods. Today this movement can work quickly between all levels – local, national, regional, global – and effectively tackle major issues of concern across the globe at a pace previously unavailable to them.

## **12.2. The Global Indigenous Peoples' Caucus**

### **12.2.1. Introduction of the Focus of the selected Thesis Topic**

I wish to introduce this section with a quote by anthropologist and Director of the NGO Forest Peoples Programme, Marcus Colchester, who I think captures the movement and the work it has done at the UN level with exceptional insight:

*"The indigenous peoples' movement is a political movement of self-defined peoples, seeking recognition of their collective rights to self-determination and access to land and natural resources, in the context of*



*nation-state systems that do not readily accommodate them. Their appeal to international law is not made in the naïve expectation that there is a one-shot solution whereby the UN can deliver global justice by fiat. Rather, the intent is to establish international principles that create the basis for them to renegotiate their futures with national governments.” (Colchester 2002: p. 24)*

Coming from a political science perspective, Ken Coates notes that: *“The creation of a global movement of indigenous peoples has had profound effects on long ignored and marginalized peoples, who have found a common cause and political voice with comparable societies around the world.”* (Coates 2004: p. 2). This statement fully supports the observations I have myself made at the UN. This especially in regard to how empowering it is for new attendees to learn that there are Indigenous peoples around the world in similar situations and, that at this global level, they can now work together to improve their situations back home.

I would also describe this movement - similar to anthropologists Margaret Keck and Kathryn Sikkink - as form of a transnational activist network which share certain characteristics such as the centrality of values or principled ideas, the belief that individuals can make a difference, the creative use of information, and the employment of non-governmental actors of sophisticated political strategies (Keck and Sikkink, 1998: pp. 1-2). As Appadurai further points out: *“Such networks now are active in virtually every area of human equity and welfare ranging from health and environment to human rights, housing, gender, and indigenous peoples’ rights.”* (Appadurai 2006: p. 132)

Considering that I am examining a process which I tie to the term globalization, I wish to briefly describe this term via the succinct definition given by anthropologists Jonathan Xavier Inda and Renato Rosaldo: *“This term refers simply...to the intensification of global interconnectedness, suggesting a world full of movement and mixture, contact and linkages, and persistent cultural interaction and exchange. It speaks, in other words, to the complex mobilities and interconnectedness that characterize the globe today”.* (Inda and Rosaldo 2002: p. 2). This definition I think is also quite applicable to the international Indigenous peoples’ movement, especially with regard to the Global Indigenous Peoples’ Caucus.

What this thesis has examined is a double movement within the international Indigenous peoples’ movement. Within the process around the UN Declaration on the Rights of Indigenous Peoples the international Indigenous peoples’ movement had moved into the globalized arena of the United Nations. Simultaneously, those working at this level still carried forward regionally driven perspectives. The Indigenous peoples’ representatives continued to maintain close ties with their local, national and regional constituents and were definitely not working in a global vacuum.

I would agree with anthropologist Eva Mackey's observation that: *"The emergence of the indigenous rights movements throughout the world reflects, in part, the increasing legitimacy of human rights regimes and ideologies."* (Mackey 2005: p. 14). The movement I think does positively reflect the increased attention the human rights of Indigenous peoples is garnering, especially within international human rights arenas such as the UN.

At the beginning of my involvement of this Declaration process, I had focused my research on Indigenous peoples' varied perspectives on the actual text of the Declaration, such as on the key Article 3 on self-determination and its varied meaning for the diverse Indigenous peoples' representatives. This initial research, including participant observation and interviews, is now incorporated into Chapter 6 on Self-Determination. At this same stage of my research, I was also interested in the relevance that Indigenous peoples saw in this Declaration's application for their people, as well as how they saw its application in the national, regional and global contexts. However, after years of attendance of the indigenous and UN meetings around the Declaration, it became clear that this Declaration necessarily represents different things to Indigenous peoples, depending on their unique situations. For example, if an Indigenous people already enjoyed a significant measure of human rights protection in their home country they tended to be focused on rights related to such issues as the preservation of cultural expressions and language. In sharp contrast to that were those persons coming from Indigenous communities who, often at great personal risk, had sought out the UN due to the fact that their home countries continued to gravely violate their rights. Indigenous peoples' representatives coming from such situations thus approached this Declaration as far more than just a supplement, but as a key international instrument that would be able to provide them with the necessary protection against further human rights abuses. Thus the Declaration clearly has a broad spectrum of meanings for Indigenous peoples and I feel that this has not changed.

As I became increasingly involved by representing one of the main NGOs working directly with the international Indigenous peoples' movement, my interest shifted into exploring the dynamics of this movement, which I had followed as a participant/observer from the early 1990s on. At this time the international Indigenous peoples' caucus was more of an ad-hoc gathering of indigenous representatives who would assemble around the actual UN meetings they were attending. This stands in marked contrast to the later Global Indigenous Peoples' Caucus working on the Declaration. This caucus had grown out of an ad-hoc gathering into a highly organized political body of Indigenous peoples.

Despite the fact that this small body could have acted on its own – in the manner of UN diplomats - they chose to adopt a method that clearly sought out and incorporated consultations and feedback, not only from their local/national organizations, but within the regions they represented. Although the process of consultation had reached an international level, it did not override the actions of Steering Committee Members as they maintained collaborative communications as a way to effectively represent their peoples and regions.

The following individuals constituted the Steering Committee Members of the Global Indigenous Peoples' Caucus who worked on the UN Declaration on the Rights of Indigenous Peoples:

Africa: Adele Wildschut (South Africa) and Joseph Ole Simel (Kenya)

Asia: Vicky Tauli-Corpuz (Philippines) and Devasish Roy (Bangladesh)

Arctic: Mattias Ahren (Sweden) and Dalee Sambo (Alaska) and Hjalmar Dahl (Greenland)

Latin America: Hector Huertas (Panama); Jose Carlos Morales (Costa Rica); Azalene Kaingang (Brazil) and Adelfo Regino (Mexico)

North America: Andrea Carmen (USA) and Chief Ed John (Canada)

Pacific: Miliani Trask (Hawai'i) and Les Malezer (Australia) (As Les Malezer became Chairperson of this Steering Committee; Mililani Trask thus took on the main role of Pacific Regional Coordinator, M.A.F.)

### **12.2.2. Grassroots Globalization/Globalization from Below**

In exploring many aspects of globalization theory, I would clearly define the international Indigenous peoples' movement, and specifically that which was formed around the Declaration, as a globalized movement in the manner described by anthropologist Arjun Appadurai "...a series of social forms has emerged to contest, interrogate, and reverse these (globalization) developments and to create knowledge transfer and social mobilization that proceed independently of the actions of corporate capital and nation-state system (and its international affiliates and guarantors). These social forms rely on strategies, visions, and horizons for globalization on behalf of the poor that can be characterized as "grassroots globalization" or, put in a slightly different way, as "globalization from below." (Appadurai 2001: p. 3). This I believe clearly applies to the international Indigenous peoples' movement. As I have shown, this movement has been born out of Indigenous peoples coming from completely local/national, or at best regional contexts, to the international arena of the UN in order to collectively work at this level. However, their aim to be there is to work on precisely those matters that can most effectively achieve improvements for their peoples, nations and regions.

In this thesis I also wish to underscore – in the manner of Appadurai – “...*the significance of this kind of globalization, which strives for a democratic and autonomous standing in respect to the various forms by which global power seeks to further extend its dominion*” (Appadurai 2001: p. 3). The international Indigenous peoples’ movement definitely can be seen as an active counter element to the globalized body of the UN and its member states. Despite the clear power relations this indigenous movement was able to maintain its strength as a working unit, which despite its regional/national and local allegiances managed to project a solid global political force.

The pressures of globalization have greatly affected Indigenous peoples, especially in regard to the increasingly rapid, widespread infringement on their lands, territories and natural resources. This has been coupled with a marked increase in human rights violations against them, since governments and corporations seek to expand into previous indigenous regions in order to be able to conduct, among others, extractive industries and large scale damming in unhindered ways. Perhaps the best known example is one that has been greatly documented by the media, namely the extreme destruction of the Amazon rainforest which, along with its daily destruction of animal and plant life and their habitats, necessarily also impacts the Indigenous peoples living there.

As anthropologist Jeremy MacClancy correctly notes: “...*just because peoples throughout the world are subject to similar globalizing tendencies does not mean that they experience or interpret these forces in the same way.*” (MacClancy. 2002: p. 10). In this vein, we must remember that those on the margins of society, which Indigenous peoples in general are, are the first to experience the negative impacts of globalization. It is for this reason that Indigenous peoples have increasingly chosen to seek out the international human rights arena that the UN represents. Seeking redress in the national context is usually futile given the close involvement most governments have in either directly causing, or indirectly allowing for, violations to occur. This is why the globally focused Declaration has become the uniting focal point for achieving the promotion and protection of Indigenous peoples’ rights, as achieving national protection is increasingly failing for most Indigenous peoples.

As one long-time legal activist and indigenous rights lawyer Sarah Pritchard pointed out in terms of the positive nature of globalization vis a vis international law: “...*it is clear that globalisation has become a major factor for change in international relations and will continue to generate new issues for the international agenda and a greater capacity to solve them.*” (Pritchard 1998: p. 2)

### **12.2.3. Interviews with Steering Committee Members of the Global Indigenous Peoples' Caucus**

When my interest shifted to the dynamics of this movement I realized that I needed to re-interview members of the indigenous caucus. At this point I specifically chose to focus on the most active key members of the Steering Committee of the Global Indigenous Peoples' Caucus who were focusing on the Declaration. I necessarily reformulated my questions in order focus more on my main area of interest, which was on the Steering Committee's own perceptions of the development and functioning of this movement.

First of all, I asked them to reflect upon the changes they perceived in the international Indigenous peoples' movement, from when they first began attending the UN Working Group on the Draft Declaration on the Rights of Indigenous Peoples' meetings to the present.

Adele Wildschut, of the Indigenous Peoples of Africa Coordinating Committee (IPACC) noted the increasing participation by the African region as something she could observe since her first attending to these meetings. She also pointed out the increased coherence of the caucus that had evolved from when the process began up to the years 2004-2006. This especially due to the fact that it then became very clear that they needed to work in a more rapid manner on the Declaration if they wished to see it completed (Wildschut 2007: personal interview).

Les Malezer, the Chairperson of the Global Indigenous Peoples' Caucus noted the increasing amount of inter-sessional caucus activity:

*"Perhaps the most significant change and one which I have been centrally involved in has been the formation of the presence of the Indigenous Peoples Caucus in between the United Nations meetings. Previously the Caucus has always been convened at the time of the United Nations meetings to brief and assist people from Indigenous delegations who were attending those meetings, but because the declaration is an important document and needed to be followed through until it was adopted by the General Assembly the caucus has continued an existence in between meetings and I have been maintaining a position of Chairperson of the Caucus basically on a full-time basis based in New York. So I think that is the most significant change for the last, in fact more than 12 months, that there has been a constant presence of the Caucus and a constant voice of the Caucus."* (Malezer 2007c: personal interview)

Vicky Tauli-Corpuz, representing the Asia region in the Steering Committee cited the consistency of this group as a key factor she could observe:

*“... I think its that a core of Indigenous Peoples have really been consistently following up the Declaration and that is a good thing, because you know there are people who have the institutional memory of how it started and how its ending and living all that.”*(Tauli-Corpuz 2007c: personal interview)

Mattias Ahren, who represented the Arctic/Europe region in the Steering Committee gave another insight through his answer to this question, namely the increased savvy of those participating in this process: *“I think the biggest difference is that say the Indigenous People have become less Indigenous and more technical in the meetings. What I am meaning is that in the beginning it was more like activists, and large words, less strategies maybe less technical words, later it changed to become more technical, more skilled in the sense of the UN system, more lawyerish perhaps. I think that is the biggest difference for me.”* (Ahren 2007: personal interview)

Mililani Trask, representing the Pacific region of the Steering Committee, commented on the increased knowledge gained by the indigenous participants: *“I think that there has been a great deal of education of Indigenous Peoples in terms their understanding of international law and especially the law pertaining to human rights and fundamental freedoms. I think that there has been an incredible change for the better in the ability of Indigenous Peoples to represent themselves in the international fora and also to engage in negotiations and discussions with states.”* (Trask 2007: personal interview)

In my further questioning, I wished to understand how this international Indigenous peoples’ caucus differed from the political processes each of my interview partners was engaged in at home. In general, all of them cited the fact that at home the cultural and political contexts were of course clearer and more familiar.

Adele Wildschut indicated that as she worked for an organization (in her case the Indigenous Peoples of Africa Coordinating Committee, M.A.F.) she saw as the biggest difference the contrasting fact that the caucus is not an organization. To her mind, it rather resembled an organism. She also noted that in the past the caucus had been undergoing more of a change year after year but that: *“...the distinction around the Declaration is that in the long last 2 years it was very much the same people in the Caucus that populated the Caucus around those issues.”* (Wildschut 2007: personal interview)

Les Malezer noted the difference in being able to see the tangible results, which are easier to observe when working locally:

*“Well there is a big difference in that the work we do at home is in relation looking more to get particular outcomes for our communities or our organizations and there it is very much an interactive process in which you are involved in discussion and dialogue with government and communities and where we are able to constantly monitor what we are achieving and what we are not achieving. Working at this level, at the global level, I think that the biggest issue has been to see, to know to know at all whether there is any tangible results in what we are doing, putting aside of course the adoption of the Declaration itself... (Working at the international level, M.A.F.) is more diplomacy work, it is more influencing governments, influencing people, influencing policies and directions which themselves can have a direct or indirect effect on communities.” (Malezer, Les 2007c: personal interview)*

Vicky Tauli-Corpuz explained how extremely different she viewed these various levels of work: *“...in the global Caucus you have to contend with various cultures and ways of you know, thinking and working ... I think it requires a little more patience on the part of Indigenous Peoples participating in the Caucus. Unlike in the local arena where you have, you have more or less, a common context. It’s not that difficult to unite on a specific issues and themes, but I think in the Global Caucus you really have to be, you have to do more work, in terms of getting peoples to understand and to agree with each other .” (Tauli-Corpuz 2007c: personal interview)*

Mattias Ahren cited the difference in culture: *“Ah it’s obviously more complicated. I mean at home you work in a Saami context, everyone knows the culture, and there is very much a society of patterns and customary norms to follow in and how you are dealing and driving the meetings and so on an so forth...Then the global Caucus even if there are many things that unite also very big different, cultural differences how we behave.” (Ahren 2007: personal interview)*

Especially interesting I found his statement that *“...the Caucus I think has kind of developed its own culture.” (Ahren, Mattias 2007: personal interview)*. This view I can confirm in having been able to closely observe, what had become a very tight knit caucus working on the Declaration, which clearly had its own distinct forms of communication and ways of working.

Mililani Trask also noted how working at the UN is very different from working out of one’s own cultural context: *“Well at home we are all one peoples so we are operating under the same protocols and we have the same understanding of customary law. In the global caucus we have a great diversity of cultures represented and we have, as a result of that diversity, many different perspectives on issues, so it’s very difficult sometimes to have the cohesion here that you have at home.” (Trask 2007: personal interview)*

Regarding the question on how the work with the global caucus differs from the work in their regional caucuses the answers varied. Adele Wildschut did not note that much difference between this global level compared to when she was working at the regional level (Wildschut 2007: personal interview). Mattias Ahren, who works with the very small Arctic/Europe Caucus, cited the difference in the closeness of culture of the Arctic region vs. the larger caucus. He also stated that by comparison, the Arctic/Europe region could agree in 15 minutes whereas sometimes in 15 years the global caucus still could not agree on certain issues... (Ahren 2007: personal interview).

Les Malezer, although representing the Global Indigenous Peoples' Caucus as its Chairperson, nonetheless contributed to this question by providing his insight in regards to the Pacific region:

*"The regional caucus, in our experience with the Pacific region, it has been a much easier caucus to work with, the people know each other much better, people are much more affiliated with each other and see a common connection between ourselves as peoples. The issues that we deal with are much more able to be readily resolved or worked through and we share the workload in their in that it is an effort made where we are all equal contributors to the effort. At the global caucus level its much more difficult because there is not that closeness between all the delegations. The focus on the global level has been much more on the central level, not so much sharing the work between the different regions. And of course it's a lot harder to see benefits and tangible outcomes so there is no doubt that the regional caucuses are easier to do, much more effective, much more closely associated with the outcomes of the community."* (Malezer 2007c: personal interview)

In a slightly different take, Mililani Trask saw more similarities on the two levels, while at the same time still noting the differences:

*"I think that the, our regional Caucus, when, the rare times that it gets together, functions very much like the Global Caucus in that, the Pacific region has great diversity of Polynesian, Melanesian and Micronesian, but we do have certain common issues in terms of the political arena, for the South Pacific, we are all, for instance, coming from Island nations, so we have very much the same mind and concerns when it comes to some environmental issues. We don't, we do not have the problems, the diversity of problems, that the continents have."* (Trask 2007: personal interview).

Overall, each member of this Steering Committee interviewed is clearly well in touch with its local, national and regional constituents and can well articulate the differences in the cultures of the various levels they are working in. All of those interviewed have been the most active members in the Global Indigenous Peoples' Caucus. They have tirelessly worked as a collective in



order to be able to achieve the goal of maintaining consensus in order to achieve the strongest Declaration possible.

#### **12.2.4. Comparison between the working methods of the UN member states and the Global Indigenous Peoples' Caucus**

One of my early observations was that no matter how far the opinions differed within the Indigenous Peoples' Caucus they would spend whatever time was required in order to try and achieve consensus positions when needed. The attempt was always to achieve positions that would be able to be based on the highest common denominator.

In marked contrast, the governments would often have much more disparate opinions. They function more along the lines of their national interests than on what would be best globally. When they did try to achieve consensus those that were oppositional, such as the CANZUS states, tried to bring the government consensus down to its absolute lowest common denominator.

In light of this observation, one of my other key questions to the members of the Steering Committee was how they viewed their consultation process vis a vis those of the governments. Many interview partners took this opportunity to also comment on how/if governments consulted with the indigenous. Several interview partners indicated that despite years of being at the UN, they still did not particularly know how governments did their consultations. This of course stands in very marked contrast to the organized system that was put in place by the Global Indigenous Peoples' Caucus where each Steering Committee Member had the responsibility to conduct consultations in their regions and then comes back to the global group to present these results. On this basis, they then try to develop an overall global position or decision.

Most of the respondents noted the much greater resources available to the governments in terms of being able to effectively consult. Thus, as Adele Wildschut pointed out, she saw it as key that in order for the caucus to improve their actions they necessarily needed to become more skilled than the professional diplomats (Wildschut 2007: personal interview). In my years of observing especially the Steering Committee members' work on lobbying I can definitely attest to the high level of skills each of these members already possessed regarding this area of work.

Of particular note was Mililani Trask's comment on the different areas of focus that Indigenous peoples have, as compared to governments, when working on the Declaration:

*“I think that Indigenous Peoples are really focusing on human rights standards, the protection of them and the advocacy of human rights standards. Governments really don’t have the same focus. Governments are trying to figure out how they are going to minimally apply or skirt their obligations, but when governments come here, rarely are they motivated by the concern or the advocating human rights. Usually they are here because human rights are being impacted and primarily negatively by their business policies, trade, development, and so we really come here for different purposes.”* (Trask 2007: personal interview)

Les Malezer commented on the probable lack of consultation outside the UN by governments on indigenous issues. He also cited the lack of consultations with Indigenous peoples in regards to his own region, as well as in the national context of his home country of Australia: *“I am not aware that there has been any effort made at all by the governments to consult.”* (Malezer, Les 2007c: personal interview).

By contrast, he had a lot more to state about the necessity of doing proper consultations within the indigenous context:

*“For the Indigenous Peoples, I think it is absolutely essential that we have good communications and networks because if we don’t operate close to communities, the people that we are representing, then of course it becomes a jeopardy that if they are not getting the feedback they want they are then getting suspicious that things are happening without their knowledge and involvement. Then of course it is not possible to operate at the national or international level... So from my point of view, in terms of what I am operating (Author’s note: As the Chairperson he was the primary person responsible for the caucus communications) there has been a lot of communication maintained on this and I think that that is reflected with the ease in which the Pacific we are able to get through and make decisions...because the people in our communities have a lot of faith in us and our judgment and they know the work that is being done because we have maintained good communications.”* (Malezer 2007c: personal interview).

In particular, he also commented on how he handled local and national communications:

*“Every time I am back in Australia I always spend most of my time having community meetings and having national coordinating meetings on issues...also I do a lot of communications via email and websites by which I am sending out information regularly.”* (Malezer 2007c: personal interview).

Vicky Tauli-Corpuz commented on the contrast between the global workings of the indigenous caucus vs. the governments, whom she felt tended to not work as globally, but often just did so bilaterally (Tauli-Corpuz 2007c: personal interview).

### 12.2.6. The strengths of the Global Indigenous Peoples' Caucus

Having been a participant/observer in the Global Indigenous Peoples' Caucus I was especially interested in the perception the members themselves had of this body. In this regard I asked them for their observations as to the main strengths of the caucus.

Overall, considering the success this group had just achieved in getting the Declaration adopted, of course they all felt very proud of the caucus' achievements. Of course, being ever the pragmatic, Mattias Ahren stated that the caucus simply had to be there (Ahren 2007: personal interview). In this process around the Declaration, the Global Indigenous Peoples' Caucus was definitely the body with which the UN and the governments consulted when seeking out Indigenous peoples' opinions.

In regard to more specific comments, Adele Wildschut cited the following in describing the learning curve of the caucus, especially noting the impact it has had on her own organization: *"I mean we went from subzero to win. We knew nothing about the general assembly, how it works, and I mean certainly from IPACC's side you know before we were not really confident. We have increased our action now because of this and they (IPACC, M.A.F) don't feel like there is anything that is not possible to do."* (Wildschut 2007: personal interview)

Les Malezer cited the incredible amount of skills and capabilities he found at the Steering Committee level: *"So at the Regional Steering Committee level I think we see a collection of highly qualified people all of whom are capable of matching their counterparts in government, in terms of level of skills and capacity."* (Malezer 2007c: personal interview)

He also gave me his opinion on the more general caucus which he saw at being at a very different level than the one that had formed around the Declaration:

*"At the general caucus levels it's a different story, much different. Quite often you find in the caucus that there are a lot of people there who have no background, who have no experience and do not quite understand what can be achieved internationally and what should be the goals internationally. People might come looking for immediate practical benefits which you can't get from certain UN meetings. So my own experience in caucus meetings is that sometimes I will attend them because there are things I want to contribute or things I want to learn, but other times I will avoid them because it's just going around in circles and there is no new information being circulated or generated. Now I don't say that as a criticism of the caucus, the caucuses must be held and they are important, but often they can be operating at quite a low level of knowledge and don't contribute a whole lot to agendas that might be running in the United Nations over a period of years, so it's a mixed bag."* (Malezer 2007c: personal interview)

Vicky Tauli-Corpuz took this question as an opportunity to express the strength of the caucus lying in both its guidance by, as well as by its representativeness of, the regional caucuses:

*“I think the main strengths is the fact that it will be guided by the decisions of the regional caucuses.”* (Tauli-Corpuz 2007c: personal interview)

She also noted that the fact that this global caucus was both representative as well as easily available, therefore making it much easier for the governments to reach out to the global Indigenous peoples’ movement: *“... of course because it’s a global caucus then it will have a bigger possibility to influence governments.... It (the global caucus, M.A.F) facilitates the communications with the governments. Because for them it is easier to communicate to talk to just one global caucus, to talk to just one Chair of the global caucus, rather than to just go to all those indigenous organizations all over the world.”* (Tauli-Corpuz 2007c: personal interview)

Mililani Trask most eloquently expressed the importance of having regional input into this global caucus and equated the many perspectives coming into the global caucus as greatly contributing to its broad scope:

*“I think the strength is that it (Author’s note – the global caucus) provides us with a diversity that requires that we protect human rights in the way that really creates a global standard, rather than a standard that would just be a regional one, because I think human rights standards have, as they are set forth, really have to be global in nature. And the caucus, with its great diversity, assisted us. Many indigenous peoples see perspectives differently. When you have 100 different perspectives, the language that you draft (Author’s note: here referring to the language in respect to the Declaration) to protect that right will be of a greater scope.”* (Trask 2007: personal interview)

#### **12.2.6. The weaknesses of the Global Indigenous Peoples’ Caucus**

The final question I directed at my interview partners was on their opinions as to the main weaknesses of the caucus.

One main comment was the comparison between the resources available to the caucus for their work vs. the resources available to the governments for consultations. Another important issue noted was the fact that representatives of the Steering Committee were already quite busy with their own local, national and regional work and that the work for the Global Indigenous Peoples’ Caucus was all done in addition to their already loaded schedules. However, I can confirm that for my interview partners, this Declaration process overshadowed these other obligations with the clear justification that this was key work they were doing precisely in order to improve the situations of their peoples.

Another issue, brought up by Les Malezer, who voluntarily moved to New York so that he could ensure a continued indigenous presence during the end negotiations on the Declaration, was the fact that there was no permanent global indigenous presence: *“Quite clearly the lack of having a permanent presence at the global level is a big disadvantage. There is a lot we could gain out of having a permanent office at the global level and established positions which would make a big difference... the lack of permanent capacity is a big disadvantage unfortunately.”* (Malezer 2007c: personal interview)

A definite and very specific criticism came from Adele Wildschut in regards to the Africa region, which as I can attest, was at first largely ignored. However, once the crisis delaying the Declaration’s adoption was brought about by the African group of states, this regional indigenous caucus was largely left to sort out how to handle this matter themselves. However, as she also stated that: *“...definitely it was the NGO support organizations that supported IPACC and made sure that we could work... The only indigenous organization that supported us was the Grand Council of the Crees”* (Wildschut 2007: personal interview). As she rightly noted, it was indeed various NGOs, including the Quakers and Rights and Democracy of Canada, working together with the Grand Council of the Crees who provided the financial resources necessary to assure that African regional caucus members were able to come to New York to lobby the African regional block. In addition, these supportive organizations also contributed much legal advice and often escorted them to key lobbying meetings. Therefore, I think it is important to note that despite the lack of global support from the caucus for various reasons – including most likely an unfamiliarity as to how to handle this block of previously inactive governments – they did receive the support they needed by some members of this body.

Vicky Tauli-Corpuz answered my question by expounding on the ongoing issue of the caucus always believing it needed to reach consensus:

*“I think it got extreme on always having to come to a consensus position. I think that created a lot of tension and resulted in ineffectiveness of the caucus. I think one has to accept that the caucus is first and foremost a forum for discussion where you try to coordinate and you brief each other and so on, so that everyone can make their best informed decisions and best participate in the meeting...but if it will come so that different indigenous peoples have different position that to me is not a problem. Of course it’s great if you have a joint position but if you have different opinions that’s fine too, that should be accepted and I don’t see that the caucus would be, or the indigenous peoples’ movement be less efficient because of that. I think it would be seriously hampered by trying to force everyone into the same positions, the same form, and when that happens, when that is the over ambition of the caucus or its members, thereof, that becomes*

*its weakness.... (the idea) that regional caucuses should meet first and present those positions in the global caucus certainly very much improved the caucus.” (Tauli-Corpuz 2007c: personal interview).*

During this process the caucus did eventually move from its early “no change” position to having the various regions come forward with disparate viewpoints. This was especially the case during the informal negotiations on the Declaration text during the final sessions of the Working Group. However, within the context of trying to decide whether to accept the final Co-Sponsor/Africa Group Proposal, which would thus decide whether the revised Declaration could come to an agreement between the indigenous and governments, the Global Indigenous Peoples’ Caucus did choose - despite their differences - to apply the consensus principle.

Mililani Trask addressed this question more along the lines of practical and cultural issues:

*“You know, it’s very difficult to assemble the Caucus. There are many, many different ways of communicating. There are all kinds of cultural protocols; processes that clash with one another, in some cultures, women are the leaders, in other cultures women are supposed to be silent and stand in the back of the room. In some cultures there is a great concern for the ocean, for the seas, and environmental issues are going to be addressed from that perspective. For others there primarily land based and also, we are all coming from different colonial backgrounds. There are some histories that we share in terms of the negative impact, but there is a big divide for instance in the Pacific, between the policies that are being addressed on the British colonial side of the map and that of the American side and sometimes its difficult to come to agreement because the political situation in the region or among the states are very very different. Also the situations of Indigenous Peoples, the violation of the human rights are very different. For some Indigenous Peoples in Africa and Asia, there is significant problem with genocide, torture, disappearances, much more grievous human rights violations, then you are going to find, say with the Sami people, who are with American Indians. Because of these differences there are different priorities and we are always struggling to try to set a global agenda for priorities.” (Trask 2007: personal interview)*

## **12.7. Conclusion**

Reviewing of the interviews conducted with these key members of the Steering Committee of the Global Indigenous Peoples’ Caucus, in combination with my own observations, what crystallizes most is the allegiance each Steering Committee Member so obviously felt to their regions, as well as in view of their work at the national and local levels. I personally had the opportunity to observe each of my interview partners at work with their regional caucuses. In addition, I was able to also directly witness Ms. Trask, Mr. Malezer and Ms. Tauli-Corpuz working in their local and national settings. Thus, to me it is very clear that despite these Steering Committee members’

strong involvement in the globalized human rights process around the UN Declaration, each of their ties still lie much closer to their regions, nations and local work. However, it is precisely their ability to communicate and function as trusted agents between the local to the global, as well as from the global to the local that I believe has directly resulted in their ability to act as highly respected, representative agents.

I think the proof of this is best exemplified in the final consultation round which was handled by Les Malezer and the Steering Committee members upon receipt of the last proposal from the Co-Sponsors/Africa Group on 31 August 2007. At this juncture, the caucus was given just a few days to respond which unfortunately included a weekend in between. Nonetheless a package for consultation was instantly put together, as previously described in Chapter 10. Each of the Steering Committee Members was asked to then proceed with their consultations immediately and did so via their established regional listservers. The deadline was extremely short, by noon New York time on 3 September 2007. Scheduled for immediately thereafter, a full Steering Committee was set in which all members would then come back with their results in order to come up with a response of the Global Indigenous Peoples' Caucus to relay back to the governments of Peru, Guatemala and Mexico, who were brokering this final deal.

Of course this process did not, and indeed could not, involve every single indigenous organization or person. However, at this point it was up to the Steering Committee to see if on overall balance, based on the responses they would be receiving from their consultations, the proposal for an amended Declaration could be accepted.

Being in attendance at this final meeting in which the results of the consultations were to be discussed, I can attest to the enormous responsibility the Steering Committee members all felt with regards to making this final choice on behalf of the world's Indigenous peoples regarding the Declaration. As most of the regional coordinators expected, overwhelming support had poured forth for accepting this last offer. To cite just one example I recall, Vicky-Tauli Corpuz stated that for her region of Asia, around 400 Indigenous peoples' organizations (IPOs) had lent their approval and not a single organization had come forward to oppose the amendments to the Declaration. On the other hand, despite the addition of even a conference call over the weekend between major groups of the North American region, this group came back with the message that they could not comfortably ascertain a complete consensus position. This as some organizations within this region did not feel that they had had enough time to properly conduct

consultations. However, they also agreed that they could accept taking a non-oppositional position so that the global consensus could move forward and be achieved.

I have now witnessed years of struggling by the caucus, moving from a position of maintaining complete unity on the original Sub-commission text on the Declaration, to then seeing the various regional and organizational positions shift. It was therefore quite astounding to witness all of the diverse regions now, in the final hour, managing to work out an acceptable consensus position.

In the end, what cannot be underestimated is the fact that this could have never been achieved without the Steering Committee Members' ability to maintain and build upon regional trust that in the end allowed them, despite only a few days of consultations, to be granted the trust in their opinion that allowed them to finally achieve the passage of the Declaration.



## 13. Personal Conclusion

### 13.1. Initial Conclusion

*“Unlike almost any other discipline, anthropology can humanize institutional process, the effects of politics, and the work of nations” (MacClancy 2002: p. 13)*

I feel incredibly privileged to have been part of such a historic process. Within this Declaration process I was able to move from a position of outside observer to one of becoming a trusted political ally/participant who was able to work closely and directly with an amazing group of Indigenous peoples. Most of the Indigenous peoples’ representatives working at this level have clearly dedicated their lives to the promotion and protection of human rights, which are now enshrined into the UN Declaration on the Rights of Indigenous Peoples thanks to their efforts. Of course none of them carry any illusions that this document will have instant results. As one anthropologist noted in his article, based on his attendance of the General Assembly on the day of the Declaration’s adoption: *“...once the party is over, there will be a long road to go down before the ideals in the declaration begin to correspond with the realities on the ground. The international human rights regime is well known for its ‘implementation gaps,’ and perhaps nowhere else are the gaps as big as they are in the area of indigenous rights.”* (Keating 2007: p. 23)

In terms of my own work in this regard, I feel like anthropologist Alícia Ramos of Brazil in her article on anthropologists as political actors. She cites that without needing ethical or moral arguments, her and her colleague’s involvement with Indigenous peoples has become a matter of course (Ramos 2000: p. 173). I cannot imagine a time for myself when I will no longer be following issues of concern to Indigenous peoples.

Within this thesis I have tried to capture, based on years of intimate research, both the process and the political issues surrounding the Declaration. Most importantly, I hope to have provided the reader with direct insight into the workings of the Global International Indigenous Peoples’ Caucus and especially the fact that no matter how globalized an environment these Indigenous peoples’ representatives find themselves working in, they are clearly tied to their locales. This fact is precisely the reason I believe that they were able to work with such incredible moral and political authority throughout this process.

While I am not too inclined to categorize the type of anthropology I conducted, in analyzing the type of document I have produced, I would state that this thesis has followed along the lines of what Clifford Geertz’ termed ‘thick description’. (Geertz 1973). This is based on the clear

premise, which I think was fully supported by my thesis that the international Indigenous peoples' movement also functions as part of a new global culture.

I consider it to be one of the overall achievements of this thesis to have provided an insider's perspective into what from an outside standpoint may at first seem a very dry topic, more of interest to legal and political scholars. Furthermore, I believe to have positively contributed to the anthropology of human rights and transnational processes, whereby I emphasized at the forefront of my research the social agency and global processes that cut across the many domains of law (see Wilson 2007).

Finally, in the vein of Richard Fox and Orin Starn I would emphasize the fact that *"Scholarly activism continues to remain one of desperate urgency."* (Fox and Starn 1999: p. 13)

### **13.2. The future role of Anthropologists in making the Declaration a living document**

Given my entrenchment in activist research I would in the end like to use this opportunity to address how anthropologists can contribute to the important call made by Vicky Tauli-Corpuz in her speech to the General Assembly, at the occasion of the Declaration's adoption, to now make this a living document:

*"I call on governments, the UN system, Indigenous Peoples and civil society at large to rise to the historic task before us and make the UN Declaration on the Rights of Indigenous Peoples a living document for the common future of humanity."* (Tauli-Corpuz 2007a: p. 4)

In an article jointly published with Paul Oldham entitled "We the peoples...The United Nations Declaration on the Rights of Indigenous Peoples", we already formulated three specific suggestions in this regard:

First, the Declaration and relevant literature should be incorporated into the basic curriculum for anthropology students.

Second, the Declaration merits considerations with respect to its implications for professional codes of ethics. Members of anthropological associations could usefully review the provisions of codes of ethics, most of which were last updated in the late 1990's, to check for consistency with the Declaration e.g. in regards to issues such as prior informed consent (Articles 10, 11, 28, 29, 32) and intellectual property (Article 31), and with respect to thematic areas of anthropological research (e.g. children, gender, health, development, etc.).

Third, anthropologists engaged in field research with indigenous peoples could periodically 'report in' to assess the status and application of the Declaration (Oldham and Frank 2008: p. 9).

In relation to my own contribution, Paul Oldham and I have already organized an American Anthropological Association (AAA) Presidential Invited Session for the 2008 AAA Conference entitled: "Implementing the United Nations Declaration on the Rights of Indigenous Peoples: The Role of Anthropology." To my understanding, this is the first time that a panel has been organized in the framework of the AAA where Indigenous peoples (usually the "subjects" of anthropology) are the active proponents in, what we hope is a very concrete discussion on how anthropologists can best contribute towards the Declaration's implementation.

I hope that such panels, and texts like the present thesis, can further contribute to the promotion and protection of Indigenous peoples' rights, both in academic settings such as the AAA or the University system, as well as in more direct work with the international Indigenous peoples' movement.



## **Annex A**

### **The United Nations Declaration on the Rights of Indigenous Peoples**

*Adopted by General Assembly Resolution 61/295 on 13 September 2007*

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

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

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

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

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

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

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

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

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

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

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

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

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

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights [\(2\)](#) and the International Covenant on Civil and Political Rights,<sup>2</sup> as well as the Vienna Declaration and Programme of Action,[\(3\)](#) affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

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

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

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

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

#### Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights[\(4\)](#) and international human rights law.

#### Article 2

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

#### Article 3

Indigenous 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.

#### Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

#### Article 5

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

#### Article 6

Every indigenous individual has the right to a nationality.

#### Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

#### Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
  - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
  - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
  - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
  - (d) Any form of forced assimilation or integration;
  - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

#### Article 9

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

#### Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples

concerned and after agreement on just and fair compensation and, where possible, with the option of return.

#### Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

#### Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

#### Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

#### Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

#### Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

#### Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to



have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

#### Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

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

#### Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

#### Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

#### Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

#### Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

#### Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

#### Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be

actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

#### Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

#### Article 25

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

#### Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

#### Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

#### Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

#### Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials

shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

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

#### Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

#### Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

#### Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

#### Article 33

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

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

#### Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

#### Article 35

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

#### Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

#### Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

#### Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

#### Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

#### Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

#### Article 41

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

#### Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

#### Article 43

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

#### Article 44

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

#### Article 45

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

#### Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

(2) See resolution 2200 A (XXI), annex.

(3) A/CONF.157/24 (Part I), chap. III.

(4) Resolution 217 A (III).



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In addition, I also indirectly utilized all of the other interviews I had conducted with the Interview Partners who are not directly cited: #1, #3, #6, #7, #8, #10, #11, #12, #13, #14, #15 and #16. These interviews were all conducted in the years 1996-2006 at the United Nations in Geneva, Switzerland.



## **Deutsche Zusammenfassung**

Diese Diplomarbeit wurde von Miriam Anne Frank verfasst und trägt den Titel „DER KAMPF UM DIE GLOBALEN RECHTE INDIGENER VÖLKER. Bericht einer Ethnologin über die Entstehung der Deklaration der Vereinten Nationen für die Rechte Indigener Völker.“ Sie besteht aus insgesamt 116 Seiten und wurde am 29. Oktober 2008 abgeschlossen und eingereicht.

Die Diplomarbeit untersucht den Entstehungsprozess der Deklaration der Vereinten Nationen für die Rechte Indigener Völker, mit dem die Internationale Bewegung Indigener Völker die globalisierte Arena der Vereinten Nationen betrat. Dabei wurde hervorgehoben, dass die indigenen Repräsentanten, die auf dieser Ebene arbeiteten, stets auch ihre regionale Perspektiven vertraten. Sie hielten engen Kontakt zu ihren lokalen, nationalen und regionalen Gruppen und Organisationen und agierten auf diese Weise nie in einem globalen Vakuum.

In meiner Arbeit habe ich versucht, auf Grund jahrelanger eingehender Forschungen und meiner Beteiligung als Aktivistin, sowohl die politischen Anliegen wie auch die Arbeitsprozesse, die dieser Deklaration zugrundeliegen, nachzuvollziehen. Dabei folgte ich der Vorgabe der „dichten Beschreibung“ (Clifford Geertz). Auch versuchte ich, dem Leser einen direkten Einblick in die Arbeitsweise des Global Indigenous Peoples' Caucus zu vermitteln, mit dem ich als NGO-Aktivistin eng zusammenarbeitete.

Die Diplomarbeit bestand aus folgenden Hauptkapiteln: 1) Danksagung und Widmungen, 2) Die Entwicklung meines persönlichen Engagements mit dem Diplomarbeitsthema, 3) Methodologie, 4) Schlüsselbegriff „Indigene Völker“, 5) Die Deklaration der Vereinten Nationen für die Rechte Indigener Völker, 6) Selbstbestimmung, 7) Beginn und Entwicklung des Engagements der Indigenen Völker bei der UN von 1923 zu 1977, 8) Die UN Arbeitsgruppe für Indigene Völker 9) Der Caucus der Indigenen Völker, 10) Der lange Weg von der Formulierung bis zur Annahme der Deklaration, 11) Die UN Generalversammlung verabschiedet die Deklaration, 12) Die globalisierte internationale Indigenenbewegung, und 13) Persönliches Fazit.

Die von mir angewandte Methode war die der teilnehmenden Beobachtung, einschließlich einer Feldforschung, die hauptsächlich auf verschiedenen Tagungen der Vereinten Nationen zum Gegenstand der Deklaration betrieben wurde. Um direkte Informationen zu sammeln, führte ich über Jahre eine Anzahl von Interviews, ursprünglich mit Mitgliedern der internationalen Indigenenbewegung und schliesslich mit Vorstandsmitgliedern des Global Indigenous Peoples'

Caucus unmittelbar nach der Annahme der Deklaration. Weiterhin benutzte ich Literatur, zunächst konzentrierte ich mich auf die begrenzte Literatur an Büchern und später auf die zunehmende Anzahl von Artikeln in anthropologischen Zeitschriften, die seither zu diesem Thema wie auch anderen, in engem Zusammenhang damit stehenden Themen erschienen sind.

Obwohl ich in meiner Annäherung an meinen Forschungsgegenstand zuerst einem eher formalen Ansatz folgte, erlaubte ich mir, je länger und intensiver ich in diesen Prozess und die internationale Indigenenbewegung verwickelt war, meine eigenen Erfahrungen und Beobachtungen einfließen zu lassen. Dies führte am Ende zu einem wesentlich deutlicheren Fokus, aus dem ich die Dynamik dieser Bewegung, die sich um die Erklärung gebildet hatte, genauer ins Auge fassen konnte, denn ich hatte miterlebt, wie sich die Bewegung von einer ad hoc Versammlung in ein hoch organisiertes politisches Gremium indigener Völker entwickelte.

Während dieses jahrelangen dynamischen und hochkomplizierten UN-Prozesses eignete ich mir allmählich die Sichtweise eines Insiders an, die ich als mein wichtigstes persönliches Forschungsergebnis betrachte. Ein weiteres Hauptergebnis war die Untersuchung der Global Indigenous Peoples' Caucus und die Feststellung, dass dieses Gremium ein definitives Beispiel für „Graswurzel-Globalisierung“ oder „Globalisierung von unten“ darstellt. (Begriffsprägungen des Anthropologen Arjun Appaduri). Mit meiner Arbeit hoffe ich einen positiven Beitrag zur Anthropologie der Menschenrechte und zu transnationalen Prozessen am Schnittpunkt zwischen Anthropologie, Rechtswissenschaft und Politikwissenschaft geleistet zu haben.

## **English Abstract**

This thesis was written by Miriam Anne Frank and is entitled “FIGHTING FOR GLOBAL INDIGENOUS PEOPLES’ RIGHTS. An anthropologist's account of how the United Nations Declaration on the Rights of Indigenous Peoples came into being”. It comprises a total of 116 pages and was completed and turned in for submission on 29 October 2008.

This thesis examines the fact that although the international Indigenous peoples’ movement has, within this process around the United Nations Declaration on the Rights of Indigenous Peoples (Declaration) entered into the globalized arena of the United Nations, Indigenous peoples’ representatives working at this level still carry forward very regionally-driven perspectives. They continue to maintain close ties with their local, national and regional constituents and as such are never working in a global vacuum.

Via this thesis, I hope to have captured, based on years of intimate, activist research, both the process and the political issues surrounding the Declaration. Here I follow along the lines of what Clifford Geertz has termed ‘thick description’. Most importantly, I hope to have provided the reader with a direct insight into the workings of the Global Indigenous Peoples’ Caucus, with whom I worked with directly via my position as an NGO activist.

Regarding the thesis’ structure, it begins by introducing the reader to my personal involvement with the thesis topic and the methodology I employed. It then presents some essential elements including the introduction to ,Indigenous peoples’, the ,United Nations Declaration on the Rights of Indigenous Peoples’, and the issue of ,Self-Determination’, which for Indigenous peoples is the cornerstone element of the Declaration.

I next cover the historical development of the international Indigenous peoples’ movement, from its very beginnings, to the development of the International Labour Organization’s conventions for Indigenous peoples, to the seminal United Nations study of Indigenous peoples - the Martínez Cobo Report, the first UN conference on Indigenous peoples, and finally the establishment of the first United Nation’s body for Indigenous peoples, the United Nations Working Group on Indigenous Populations.

The next sections cover the bodies and processes as the Declaration climbed up the UN ladder, including the UN Working Group on the Declaration on the Rights of Indigenous Peoples, the UN Commission on Human Rights, the UN Human Rights Council, the 3rd Committee of the UN General Assembly, and finally the Declaration’s arrival and adoption by the UN General Assembly. Within these sections I put forward the work of the Indigenous peoples, especially that of the Global International Indigenous Peoples’ Caucus and it’s Steering

Committee. In fact, this specific body became the main focus of my research interest, as a prime example of what Anthropologist Arjun Appadurai had coined 'grassroots globalization' or 'globalization from below' movements.

Next, I devote what I consider to be a main section of this thesis to the globalized Indigenous peoples' movement. I first briefly address the impact that globalized technology, such as the internet, had on this movement. In the following chapter I go into much more depth, using the rich source provided by the main interviews I conducted with members of the Global Indigenous Peoples' Caucus Steering Committee.

In the final chapter, I round out my thesis with a personal conclusion, including my assessment of having conducted activist research, and ends with a proposal on how, with the Declaration adopted, anthropologists can best contribute to making it into a living document.

The methodology I employed was a combination of participant/observation research, including multi-sited field research, conducted primarily at the United Nations meetings focusing on the Declaration. Regarding the collection of direct data, I held a series of interviews over the years, initially with members of the global Indigenous peoples' movement in general, and eventually with members of the Steering Committee of the Global International Indigenous Peoples' Caucus just after the Declaration's adoption. Further, I conducted literary research, at first concentrated on the limited literature available in books, to in the end working with many articles from anthropology journals, which by this time increasingly published articles on this topic, as well as on other closely related areas.

In terms of my approach to my research topic, although I initially had a more formal approach, with a clear set of questions and focus, in the course of my ever increasing involvement with this process and the international Indigenous peoples' movement, I allowed my experience and observations to shape my research. This in the end led to a much clearer focus, in which I chose to look more closely at the dynamics of this movement around the Declaration, having seen it evolve from an ad-hoc gathering into a highly organized political body of Indigenous peoples.

Finally, as regards the results of this research, I see this thesis as being able to provide a completely insider perspective to a very complicated UN process - what from an outsider standpoint may seem like a very dry topic, more of interest to legal and political scholars. As such, I believe to have positively contributed to the anthropology of human rights and transnational processes as I emphasized, at the forefront of my research, the social agency and global processes that cut across the fields of anthropology, law and political science.



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**Bildungsgang**

3/1993 – 11/2008 Studium der Kultur- und Sozialanthropologie und einer Fächerkombination aus Internationalem Recht, Politikwissenschaft und Soziologie an der Universität Wien, Österreich.

08/1998: Zertifikats-Kurs bei der Sommeruniversität für Menschenrechte und Bildungsrecht, Genf, Schweiz.

09/1983 – 06/1990: Bachelareatsstudium der Bildenden Künste und Geisteswissenschaften, Universität San Francisco und Kunstakademie San Francisco, Kalifornien, USA.

03/1988 – 06/1988: Austauschstudium am Institut für Europäische Studien, Wien, Österreich.

09/1979 – 06/1983: High School Diploma, Menlo-Atherton High School, Menlo Park, Kalifornien, USA.

**Forschungsschwerpunkte**

Indigene Völker und der Schutz ihrer Rechte, Internationales Recht, Menschenrechte. Geistige Eigentumsrechte, Rechtsethnologie, Biodiversität, Umweltschutz, Ökonomie, und Kunstethnologie.

**Sprachkenntnisse**

Bilingual in Deutsch und Englisch. Gute Kenntnisse in Niederländisch und Spanisch; Grundkenntnisse in Französisch.

**Berufsweg**

6/2008 – Koordinatorin für CBD Alliance, einer Allianz von NGOs aktiv in der UNO Konvention für Biodiversität im Bereich Biodiversität und Umweltschutz. Sitz der Allianz ist bei der NGO Kalpavriksh, Environment Action Group, Pune, Indien.

01/1997 – 10/2008: Referentin für Menschenrechte und Umweltschutz, NCIV-Netherlands Centre for Indigenous Peoples (Niederländisches Zentrum für Indigene Völker), eine Nichtregierungsorganisation in Kooperation mit dem Wirtschafts- und Sozialrat der UNO (ECOSOC), Amsterdam, Niederlande.

1/ 2001 – 12/2003: Sachreferentin für internationales Fundraising, Wittgenstein 2000 Projekt, Wien, Österreich

07/1998 – 05/2002: Koordinatorin für die Millennium Konferenz der Indigenen Völker des NCIV, Amsterdam, Niederlande / Konferenz in Panama City, Panama: Projektentwicklung, Fundraising, Ausführung und Follow-up.

1999 - 2001: Wissenschaftliche Mitarbeiterin im Projekt: "Interkulturelles Lernen in der Praxis", Institut für Ethnologie, Kultur- und Sozialanthropologie der Universität Wien, finanziert durch das Bundesministerium für Bildung, Wissenschaft und Kunst.

Teilnehmende Beobachtung an Österreichischen Schulen, Entwicklung, Ausführung und Analyse von Interviews und Fragebögen. Zuständig für das Kapitel „Kommunikation und Soziale Beziehungen“ im Endbericht (siehe Bibliographie).

08/1998 – 02/1999: Assistentin des Direktors, FONDAD - Forum on Debt and Development (Forum über Schulden und Entwicklung), Den Haag, Niederlande: Mitarbeit in Programmentwicklung; Lektorat und Korrekturlesen von englischsprachigen Publikationen.

09/1997 – 08/1998: Assistentin des Direktors, WUS-World University Service International in Amsterdam (Internationaler Universitätsdienst/Amsterdam), Niederlande: Mitentwicklung des Internationalen Menschenrechtsprogramms; Fundraising.

01/1997 – 04/1998: Koordinatorin im Organisationsteam für die Erste Konferenz Indigener Frauen Afrikas, NCIV, Konferenz in Agadir, Marokko.

03/1996 – 01/1997: Vorstandsmitglied und Mitgründerin der RFF-A, Rainforest Foundation Austria (Regenwaldfond Österreich), Wien. Eine internationale NGO für den Schutz der Indigenen Völker in Regenwäldern: Internationale Koordination und Lobbyarbeit.

09/1994 – 09/1995: Vorstandsmitglied, Gesellschaft für bedrohte Völker-Österreich, Wien: Internationale Koordination und Lobbyarbeit.

07/1993 – 08/1994: Verwaltungsassistentin, Gesellschaft für bedrohte Völker-Österreich, Wien.

07/1993 – 08/1993: Assistentin des Direktors und Medienreferentin im Rahmen des Internationalen Volkstribunals Hawaii (The Peoples' International Tribunal Hawai'i 1993), Hawaii, USA.

07/1992 – 11/1992: Assistentin des Direktors und Medienreferentin im Rahmen des Internationalen Tribunals Indigener Völker und unterdrückter Staaten (The International Tribunal of Indigenous Peoples and Oppressed Nations, 1992), San Francisco, Kalifornien, USA.

### **Stipendien**

04/2002 – 05/2002: Wissenschaftsstipendium für Kurzfristiges Arbeiten im Ausland, Universität Wien: Diplomarbeitenrecherche beim International Indian Treaty Council, San Francisco, Kalifornien, USA

01/1997 – 11/1997: Erasmus-Stipendium, Sozialanthropologisches Institut und Zentrum für Menschenrechte, Universität Utrecht, Niederlande.

### **Mitgliedschaft bei wissenschaftlichen Organisationen**

American Anthropological Association, Virginia, USA.

IWGIA – International Work Group for Indigenous Affairs (Internationale Arbeitsgruppe für Indigene Angelegenheiten), Copenhagen, Dänemark.

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