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# **@REPORT ON UNITED NATIONS WORKING GROUP ON INDIGENOUS POPULATIONS, 11th SESSION**

**Geneva, 19-30 July 1993**

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## **I. ESTABLISHMENT, MANDATE, WORKING METHODS AND ELIGIBILITY FOR ATTENDANCE AT THE WORKING GROUP**

The establishment, mandate, working methods and eligibility for attendance at the Working Group have been explained in detail in previous reports on, for example, the 1991 and 1992 sessions of the Group, to which readers are referred. (IOR 41/12/91) and (IOR 4

## **II. ATTENDANCE AT THE 1993 11th SESSION OF THE WORKING GROUP**

Once again, more than 600 people representing organizations of indigenous peoples, non-governmental organizations in consultative status with the United Nations, other groups and organizations as well as individual scholars, experts on human rights and human rights activists attended the Group's session: An interesting development this year was the attendance of individuals representing peoples from what had been the Soviet Arctic regions.

Observers representing member states of the UN were slightly down from last year (from 42 to 35). Those present were: Argentina, Australia, Bangladesh, Bhutan, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cyprus, Denmark, Ecuador, El Salvador, Finland, Germany, Greece, Guatemala, Honduras, India, Indonesia, Japan,<sup>1</sup> Mexico, Myanmar, New Zealand, Nicaragua, Norway, Panama, Peru, Philippines, Russian Federation, Sweden, United Kingdom of Great Britain and Northern Ireland and the United States of America.

Observers also attended on behalf of the non-member States the Holy See and Switzerland and in representation of the following UN departments and specialised agencies: Department of Public Information, International Labour Organization (ILO), and the United Nations Educational, Scientific and Cultural Organization (UNESCO). The Nordic Council of Ministers and the Aboriginal and Torres Strait Islander Commission of Australia also sent observers.

## **III. AMNESTY INTERNATIONAL'S ATTENDANCE AT THE WORKING GROUP**

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<sup>1</sup>The position of Japan with respect to indigenous peoples has seen some interesting developments in recent years. Previously, official policy had been to maintain that Japan was a "racially harmonious" society, but in 1991, Japan acknowledged that the Ainu do retain their own language, and culture, while Japanese textbooks no longer maintain that minorities do not exist in the country. Though Japan was a speaker at the ceremonies opening the UN Year for Indigenous Peoples, at which time it acknowledged the Ainu as involved in UN activities, it has thus far declined to consider the Ainu as indigenous peoples. Statements by Ainu representatives during the deliberations of the Working Group were also of interest. They drew the attention of the Group to what they described as the "crossroads" Japan had reached regarding possible governmental controls over private companies whose policies may impact on indigenous peoples, as well as with respect to its policies regarding the effects of its development aid, both bilateral and through the Asian Development Bank, on indigenous peoples and others, in both Japan and elsewhere.

AI's delegation to the Working Group was composed of a member of the Americas Research Department, who had been responsible for preparing and coordinating AI's special 1992 program on human rights violations against indigenous peoples of the Americas, and a member of the Coordination Group established by AI Canada (English-speaking) to carry out that Section's work on indigenous peoples.

As in previous years, the delegation was to ensure coverage of the Group's deliberations and presentation of AI's statement to the Group.<sup>2</sup> AI's statement and its presence at the Working Group's session was intended to underline, in the context of 1993, the UN's International Year for the World's Indigenous People, AI's continued commitment to the protection of those indigenous peoples' rights on which the organization works. Again as in previous years, AI's statement appeared to be very much appreciated by those attending the session, as was AI's work generally as it relates to indigenous peoples. Demand for the written version of AI's statement was impressive, and a number of delegations arranged to be photographed receiving their copy of the statement from the delegation after it had been delivered. As before, several delegations made reference to recent AI materials in their own presentation. This year, in the wake of the publication in February of AI's document on aboriginal justice issues in Australia (Australia: A criminal justice system weighted against Aboriginal people, ASA 12/01/93), the delegation particularly noted that Australian Aboriginal delegates made repeated references to AI's findings. It was also noteworthy that, apparently for the first time, the Working Group's report specifically referred to and summarised AI's statement to the Group: "The representative of Amnesty International referred to its 1992 report, the first publication focusing solely on indigenous peoples. Attention was drawn to human rights violations which ranged from the discriminatory use of the death penalty against indigenous persons and discrimination in the criminal justice system of many States, deaths in custody and extrajudicial executions, to land and resource conflicts. Indigenous peoples were often caught between two sides when internal conflicts took place." [Paragraph 95, p 24 E/CN.4/Sub.2/1993/29]. As before, AI's delegation also sought to establish as many contacts as possible with the wide range of NGO and IGO representatives present, in order to keep abreast of issues of concern to indigenous peoples, with a view toward assisting the Secretariat in determining those on which AI might be able to make a contribution.

#### **IV. AGENDA OF THE WORKING GROUP'S 11th SESSION**

The agenda of the Working Group covered the following items:

##### General Debate

Evolution of Standards Concerning the Rights of Indigenous Peoples

Review of Developments Pertaining to the Promotion and Protection of Human Rights and Fundamental Freedoms of Indigenous Populations

Study of Treaties, Agreements and other Constructive Arrangements between States and Indigenous Peoples

Study on the Cultural and Intellectual Property of Indigenous Peoples

International Year of the World's Indigenous People

World Conference on Human Rights

Future Role of the Working Group

Other Matters

Conclusions and Recommendations

However, it is important to note right from the outset, that the bulk of the Working Group's deliberations at its 11th Session were devoted to standard setting, that is, consideration of the draft Declaration on the Rights of Indigenous Peoples. In all, the Group held 16 public meetings, of which 9 were concerned with

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<sup>2</sup>AI's statement to the Working Group was reproduced along with AI's statements to the 1993 Sub-Commission in IOR 41\33\93)

standard setting, five with review of developments,<sup>3</sup> only one to the (ongoing) and complex and detailed studies which the Group's Special Rapporteur has been conducting on treaties, agreements and constructive arrangements and which its Chairperson has been carrying out with respect to the cultural and intellectual property of indigenous peoples, and one to cover all remaining items on the agenda relating to the UN's International Year of the World's Indigenous People, the World Conference on Human Rights, the as yet unresolved future role of the Working Group and other matters. (In addition to its public session, the Working Group also held private sessions in order to finalise its report and adopt the recommendations contained in it. These private sessions were held both during the Working Group and during and following the session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which as normal, took place after the conclusion of the Working Group. Although such meetings are standard practice, indigenous peoples were this year particularly critical of their exclusion from these sessions for reasons explained below.)

## **1. Standard Setting: Debate on the Draft Declaration on the Rights of Indigenous Peoples**

The Working Group, which was established in 1982, has been working since 1985 to try and draft a declaration on the rights of indigenous peoples. There has been disappointment in some circles that the ILO was able in the meantime to finalise its own Convention 169 on Indigenous and Tribal Peoples Rights (1989)<sup>4</sup> and particularly, that the Group had not been able to finalise a draft in time for 1992, when the 500th anniversary of the arrival of Europeans in the region now called the Americas had focused world attention on the problems and concerns of indigenous peoples. Other indigenous representatives, however, have in recent years opposed finalisation of a draft by the Working Group for a number of reasons: In order to be adopted by the UN as a full instrument, the draft Declaration would need to be considered and approved by the full Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Commission on Human Rights, the Economic and Social Council (ECOSOC) and the General Assembly. As indigenous peoples would not, under current arrangements, be represented at any of these bodies, many indigenous representatives fear that any Declaration which emerged at the end of this process could not be expected to reflect their views and concerns. They believe that much more work has to be done educating both government representatives and the international public, through the Group and via other vehicles, about indigenous concerns before a reasonable reception can be expected for the draft Declaration from these bodies. They have also been adamant that any draft Declaration which came from the Group without having been taken back to and discussed by their communities -- particularly their elders -- should not be seen as in any way having the endorsement of indigenous peoples. Finally, many opposed to finalisation of the draft Declaration have been concerned that the completion of a draft by the Working Group could be seized upon by governments who do not favour the Group's existence to argue that its work had been completed, and to try and terminate it or further hamstring its work, which has already been seriously compromised by the chronic paucity of funds allocated to its operation. For all of its limitations, many indigenous groups appreciate the role that the Working Group has come to play as a forum for discussion of indigenous issues, and do not want to run any risk that its mandate be terminated.

Many, (but not all), of those who opposed completion of the draft Declaration at the Group's 11th Session tended to be from the "North", particularly North America, whereas many groups from the South, particularly from Central and South America considered that even an imperfect draft could play a role in protecting indigenous human rights in their part of the world. The tension between the two different perspectives was thrust into greater relief at this session of the Working Group, since the Working Group

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<sup>3</sup>It is during this agenda item, on review of developments, that expositions of human rights concerns are given by delegates, and during which AI gives its own statement. It is also at this point that Governments may rebut accusations against them, or present their own perspectives on government initiatives with respect to indigenous peoples.

<sup>4</sup>The ILO Convention has thus been ratified by Bolivia, Colombia, Costa Rica, Norway and Mexico. According to the ILO's representative at the Working Group, the governments of Argentina, Fiji and Paraguay have indicated that they are considering ratifying it as well.

had been requested both by the Commission on Human Rights, in resolution 1993/31 and by the UN's World Conference on Human Rights, which met in Vienna in June, to complete its draft Declaration. Thus, both members of the Working Group, particularly its Chairperson, Erica-Irene Daes of Greece, as well as a number of governments, were clearly determined to ensure that a final text went forward from the Working Group this year.<sup>5</sup> The question then became, to what extent would such a draft reflect the perspectives which indigenous peoples have tirelessly re-injected into the versions which the Working Group has repeatedly put forward after private re-drafting sessions, versions which attempt to reflect to a greater extent government perspectives, and thus to which governments might more readily adhere.

As throughout its deliberations over the years, the 1993 session of the Working Group faced differences of opinion on a range of important issues. These revolved around questions as to whether the Declaration should aim to set out rights versus goals and objectives or "aspirations"; whether indigenous rights are inherent or "granted" or recognised; whether the rights covered should be of universal application or whether specific rights or practices and customs of indigenous peoples should be defined and protected even when they may conflict with the rights of others, including persons from indigenous communities, such as women and children; how broadly the range of rights covered should be defined, and whether they should cover collective and/or individual rights; whether general rights and protections should be set out or whether all those rights to be protected should be individually enumerated in detail; whether the different historical and social contexts of different indigenous peoples needed to be reflected in it, and their rights protected accordingly; whether the Declaration should include a definition of indigenous peoples; whether it could and should contain an implementation mechanism; whether the rights of indigenous workers and indigenous prisoners should be included; whether and how land rights/claims and rights/claims to other resources of indigenous peoples might be protected in the Declaration; how broadly intellectual and cultural property rights can or should be protected; whether the Declaration should cover protection against other than state agents; to what extent and how indigenous peoples can and should be compensated/indemnified for loss of lands and other resources or for abuses against them; and whether topics such as genocide, ethnocide, development, conscription, armed conflict, adoption, foster and health care can, in the face of general government opposition, be included.

However, in 1993, as before, the key "sticking" issues were those of self-determination, and whether those rights protected can be "universal" as sanctioned by the UN's World Conference on Human Rights, and "in accordance with internationally recognized human rights standards," or whether such a formulation would render the right(s) recognised in the Declaration meaningless in many cases, since the recognition of indigenous peoples' institutional structures and distinct juridical customs, traditions, procedures and practices would only be possible if they were "in accordance" with non-indigenous standards.

The debate over these issues was not rendered any easier by the evidently different personal and professional objectives being pursued by different members of the Working Group. Pressure of time was also a problem as the Working Group struggled to deal with its overloaded agenda with minimal resources -- grossly inadequate in certain instances, leading for example to lack of interpretation facilities and failures to make available essential documents in the UN core languages -- or indeed at all.

However, while noting the special pressures and particular obstacles to completion of the draft

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<sup>5</sup>Indeed, some indigenous representatives let it be known that they felt the Declaration was being "rail-roaded" through, evoking many bitter memories of the final stages of the finalisation of ILO Convention 169, when many indigenous representatives said they were excluded to all intents and purposes from the drafting process. The ill-feeling obviously felt by many at the process followed by the ILO re-surfaced strongly when the Working Group appeared to be moving toward pursuing similar tactics, and was manifested by what appeared to be concerted and pre-arranged moves by a number of indigenous representatives to block any effort by the ILO to introduce mention of its own Convention or activities into the deliberations of the Group. Further, because they had felt so excluded by the final stages of drafting of the ILO Convention, many indigenous representatives made it clear that they did not consider themselves bound by the ILO Convention, nor would they feel bound by any draft put forward by the Working Group to which they had not agreed.

Declaration at the 1993 session, it is difficult to conceive of a formula --whether couched in terms of self-determination as currently defined by international law, or the often suggested alternatives of self-government or autonomy-- that could be both acceptable to indigenous peoples, pressing in some cases for complete independence, and Governments concerned at maintaining the existence of the Nation-State. It is also difficult to believe that a UN body could happily approve wording for a new international instrument which did not make reference to compatibility with other "universally agreed standards for the protection of human rights," or indeed that the more than 600 very varied people present at the Working Group (some of them there for the first time), could have eventually agreed a draft Declaration that an intergovernmental body like the UN could sanction.

In the event, after much drafting and re-drafting, the Working Group ended with a total lack of clarity as to where the Declaration stood, and whether it would go forward to the Sub-Commission. In the end, following private sessions held by Working Group members after the Working Group's 11th session had officially ended, a draft Declaration did go to the Sub-Commission, which pleased no one. Indigenous representatives felt their real concerns had been irremediably watered down, and that many "rights" included simply repeated those that were already acknowledged or protected elsewhere, while many governments and intergovernmental organization representatives felt that the draft as it now stands is unrealistically short of wording that any but a very few governments could support. Indeed, even the Working Group did not stand united behind the draft that went to the Sub-Commission. An appendix to its report includes not only the draft that was put forward, but notes by a prominent member of the Group, in which he expresses his disagreement with key elements of it (see Appendix A).

In the end, the draft was not even discussed at the Sub-Commission. Lack of funds to provide translators for the evening sessions which would have been necessary for the Sub-Commission to cover its full agenda was one of the reasons cited for omitting discussion of this topic at the 1993 Sub-Commission, despite the fact that it was the UN Year for the World's Indigenous Peoples. In the resolution, entitled "Draft UN Declaration on the rights of indigenous peoples", the Sub-Commission decided to postpone consideration of the draft until its 1994 session, and to transmit it to indigenous peoples organizations, governments and NGOs as soon as the "technical revision" of the draft is completed.<sup>6</sup> The Sub-Commission also decided to submit the draft "if possible" to the Commission on Human Rights at its 1995 session.

The adoption of this resolution by the Sub-Commission was only possible after a long debate since two drafts had been tabled on the same subject: one by Miguel Alfonso Martínez, the Special Rapporteur of the Sub-Commission, in which the Sub-Commission requested the Working Group to adopt formally the text at its next session in 1994 and to submit it later to the Sub-Commission for consideration, and another one submitted by Erica-Irene A. Daes, Chairperson-Rapporteur of the Working Group, who wanted the Sub-Commission to adopt the draft declaration at its 1994 session. The antagonism in the approaches between Mr. Martínez and Ms. Daes could only be smoothed after behind-the-door consultations at the last minute.

The observer of Brazil took the floor to express concern with regard, for instance, to the provisions of the draft declaration concerning the right to self-determination, to the implicit approach in the draft that indigenous communities are subjects of international law and to the definition of "land, territories and resources" used in the draft. These concerns were echoed by the observer of Canada, who hoped for a better explanation of the relationship between self-determination, self-government and autonomy with regard to existing states.

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<sup>6</sup>In a sense, this could be seen as a positive development, in that indigenous representatives at the Working Group did want to consult their communities about the draft Declaration. However, as the Sub-Commission's resolution also specifies that "no further amendments to the technically revised text will be accepted during the future standard-setting proceedings of the Working Group," it is difficult to see exactly what submission of the draft Declaration to indigenous communities can now be expected to achieve, unless some formula is achieved for permitting indigenous peoples to participate in or be adequately represented at the Sub-Commission's planned consideration, in 1994, of the draft Declaration.

In her address to the Sub-Commission, Ms. Rigoberta Menchú, Nobel Peace Prize Laureate, said that the draft declaration would lose much of its validity if it did not include the concepts of self-determination as a condition for the physical and cultural existence of the indigenous peoples, and the right to their ancestral lands. She emphasized also the crucial importance of involving representatives of indigenous peoples in the future discussions on the draft at the levels of the Commission on Human Rights and the General Assembly. She called for an international decade for indigenous peoples, which would be a continuation of the International Year.

## **2. Review of Developments**

As already explained above, it is under this agenda item that indigenous representatives make statements about specific issues of concern to their communities, which in many cases can include human rights abuses of concern to AI, such as extrajudicial executions, "disappearances" and torture, including rape and sexual harassment directed against indigenous peoples, as well as discrimination in judicial systems resulting in a high proportion of indigenous peoples amongst a country's prison population. AI and other non-governmental organizations also make their statements under this item, and some governments use the opportunity to rebut accusations levelled at them or to make public steps which they say they have taken since the Group last met to improve the situation of indigenous peoples living within their borders.

Canada, for example, made reference to two Acts that had been passed regarding the territory of Nunavut, which provided for residents of the area, indigenous (including both Inuit and Indian peoples) and non-indigenous, to have their own public government, cabinet, legislative assembly, public service and territorial court. Australia drew attention to the decision of the Australian High Court in the so-called Native Title case, in which the High Court rejected once and for all the "legal fiction" of *terra nullius*, the notion that Australia was land belonging to no one at the time of European settlement. Australia also reported that in response to last year's report of the Royal Commission into Aboriginal Deaths in Custody, the Government had committed additional funds over a five-year period to address the underlying causes which led to the high rate of aboriginal incarceration and, so it was implied, to the high rate of deaths in custody. (The Australian statement did not, however, directly address concerns as to official responsibility for the deaths themselves).<sup>7</sup>

In all, some 126 speakers addressed the group under this item at its 1993 session. Issues raised reflected those addressed in the draft Declaration, and fell into the following main categories: right of self-determination and political participation; right to life, to exist in peace and to protection against genocide; protection in armed conflict; right to practise cultural traditions, religion and language; right to education and to establish own media; right to maintain indigenous political, economic and social systems and to develop indigenous peoples' own strategies for development; right to lands and territories; to protection of the environment; to cultural and intellectual property; to natural resources and to the observance of treaties and other legal agreements. Special concerns were raised at the particular impact which militarisation of indigenous lands and development, tourism, drug control, mining, and nuclear waste disposal projects on or near indigenous lands could have on indigenous women and children and old

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<sup>7</sup>Those who question the value of the Working Group as a mere forum for exchange of views between indigenous and government representatives with no real decision-making, mediation, conflict-resolution or enforcement powers, would find it instructive to note the evident embarrassment of governments (such as the Scandinavians for example) when criticised by indigenous peoples during this agenda item. Partly because some governments see themselves and wish to be seen as "liberal" on most issues -- and certainly on this one -- but undoubtedly also because the injustice of so much that has happened to indigenous peoples is quite clear to the individual diplomats present, many wish to be seen to be receptive to indigenous demands. However, they find that there are certain issues -- like self-determination as explained above or complete demilitarisation of indigenous lands particularly when these lie along and across national borders -- on which governments simply cannot accept positions espoused by the more "radical" indigenous representatives.

people.<sup>8</sup>

One of the statements to attract most attention was that given by a representative of the Mohawk nation who spoke of continuing court cases against Mohawks who had been involved in the confrontation with the Canadian security forces at Oka in 1990; his intervention was the only one for example which was filmed by Swiss television. The particular interest shown by the media in the Mohawks' statement is no doubt related to the pivotal role that indigenous issues have come to play in the negotiations about Canada's future.

### **3. Study of Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Peoples**

Miguel Alfonso Martínez, the Special Rapporteur of the Sub-Commission on this subject, gave the Working Group an introduction to the first progress report on his study. (E/CN.4/Sub.2/1992/32). One of his major findings thus far had been that in the first encounters which had taken place between indigenous peoples and other civilisations, there had been a tendency to treat indigenous peoples as subjects of international law. The perception of relations of nation States with indigenous peoples as matters of purely internal jurisdiction had been a later development.

In the ensuing discussion of the Rapporteur's work thus far, indigenous representatives asked him to focus to a greater extent on Latin America, to look more closely into the role of the Holy See had played in treaty-making in the Americas, to organize a UN Seminar on the use of modern-day treaties for the furtherance of indigenous peoples' rights and to establish a register of treaties concerning indigenous peoples. The Rapporteur promised to submit his second progress report to the Working Group at its twelfth session in 1994.

### **4. Study on the Cultural and Intellectual Property of Indigenous Peoples**

This study (E/CN.4/Sub.2/1993/28) had been carried out by Madame Daes, the Chairperson of the Working Group. The first recognition by the UN system of ethnocide or cultural genocide was the UNESCO Conference of experts on ethnocide and ethno-development held in Costa Rica in 1981, which had affirmed the right of indigenous peoples to preserve and develop their cultural heritage. Since 1982, the Working Group had been a unique forum at which indigenous peoples could express their own views on these issues, which were closely linked to the preservation of indigenous peoples most basic rights. Issues of concern to them included individual acknowledgement for every musical composition, proverb, carving, artwork, medicinal discovery, improved fishing or hunting technology, and the development of mechanisms for the international protection of indigenous peoples' cultural and intellectual rights, including the patenting of indigenous plant varieties. Madame Daes hoped her own study would provide a basis for standard setting and for the adoption of institutional measures to stop violations of the cultural and intellectual rights of indigenous peoples.

### **5. International Year of the World's Indigenous People**

1993 had been declared by the UN as its International Year for the World's Indigenous Peoples, but from the beginning, it had been clear that little priority and few resources were to be devoted to it by the UN and its member states, and such has proved to be the case.<sup>9</sup> Indeed, in her opening address, the Group's

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<sup>8</sup>Though not an issue on which AI would take a position, a new issue of concern addressed by a number of indigenous speakers was the Human Genome Diversity Project (HUGO), which aims to take blood, hair and tissue samples of indigenous peoples in order to record and examine the gene structures. Fears were raised that the project might have some aims related to bio-engineering, that its findings could be used to prejudice indigenous land and other claims, and that the samples had been taken without any information having been given to indigenous peoples or any consultation with them.

<sup>9</sup>The lack of serious UN commitment to the Year was reportedly a principal reason that the UN's specially appointed Goodwill Ambassador for the Year, Nobel Peace Prize recipient Rigoberta Menchú, was said to have considered resigning from her post shortly before the opening of the Group's 11th session. In the

Chairperson expressed her regret that the Year had thus far attracted the least amount of financial support of any major UN year or celebration. She had been particularly disappointed that the stated interest of many international agencies in developing programs to support indigenous peoples' self-development, especially in the environmental field, had not borne any visible results as yet. The Technical Meeting which had met on a number of occasions in the past to plan the Year had held a further (poorly attended) session in Geneva in July prior to the meeting of the Working Group at which it adopted a series of recommendations aiming at practical action to be taken during what remained of the Year. The meeting particularly called for adequate resources and planning with the full participation of indigenous peoples, but the continuing low level of contributions to the Voluntary Fund established to finance the Year, and the lack of support from Governments for activities planned by indigenous peoples, did not augur well for the success of the remainder of the Year.

## **6. The World Conference on Human Rights**

Besides calling on the Working Group to complete the drafting of the Declaration on indigenous rights, the recommendations made to the General Assembly in the Programme of Action contained in the Final Document of the World Conference on Human Rights (the "Vienna Declaration", see Appendix B) had inter alia supported providing UN technical assistance to indigenous peoples in the field of human rights through the UN Advisory Services Program; requested that Commission on Human Rights consider how the Working Group's mandate could be renewed and updated; supported indigenous peoples' call for an international decade of the world's indigenous people to be proclaimed to begin in January 1994; and, in the first official acknowledgement by any UN body of indigenous peoples' aspirations for a formal place in UN decision-making, recommended that in the framework of such a decade, a permanent forum for indigenous peoples be established with the UN system.

The Working Group generally welcomed the Vienna Declaration's exhortations as regards indigenous peoples, and, in order to fulfil indigenous peoples' aspirations for a formal place in the UN system, Chairperson Daes appealed to the UN Assistant Secretary-General for Human Rights to establish as soon as possible the apparently already envisaged special unit for indigenous peoples within the UN Centre for Human Rights. Meanwhile, an indigenous representative expressed his regret that, despite all the efforts of the Chairperson of the Working Group, the Vienna Declaration had failed to refer to indigenous peoples, using instead the term indigenous people.<sup>10</sup>

## **7. Future Role of the Working Group**

This was the first time that this item had specifically appeared on the agenda of the Working Group, but members of the Working Group pointed out that this should not be interpreted as indicating that there was a threat that the Group would be dissolved. It had been established by ECOSOC in 1982 with no time-limit set for its work, so that the World Conference's call for the need for the Group's mandate to be renewed and updated should be interpreted not as suggesting that the group required a renewed

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end, she agreed to stay in her post, on the condition that her mandate be better defined and that she be given a more substantive role during the UN missions she is asked to undertake.

<sup>10</sup>Various UN instruments declare that "peoples" have the right to self-determination. Indigenous peoples therefore favour use of "peoples" as they believe it implies that they too have such a right. Governments tend to oppose the use of "peoples" for the same reason. ILO Convention 169 attempted to "solve" this controversy by using the term "peoples" but including a disclaimer, whereby it specified that use of the controversial "s" was not to be "construed as having any implications as regards the rights which may attach to the term under international law." Many indigenous peoples are not happy with this formula, considering that the disclaimer negates one of their central demands as regards their rights. Other debates related to terminology stem from the fact that some governments refuse to use the term "indigenous peoples" or "people," preferring instead such terms as "minorities" or "isolated groups." In some cases, representatives attending the Working Group themselves prefer other terms, such as for example "tribal peoples" or scheduled castes. (In turn, governments then argue that representatives of such groups are improperly bringing concerns regarding other quite different issues to the attention of the Working Group on Indigenous Populations.)

mandate, but in terms of an endorsement for maintaining and expanding its role vis a vis standard setting in the field and with regard to reviewing developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous peoples.

In the ensuing discussion, there was much support for a permanent forum for indigenous issues within the UN, but it was not clear whether this should be in addition to the Working Group or whether the Group should serve as this forum, nor whether the forum should be made up of representatives of indigenous peoples and governments or of indigenous peoples only.<sup>11</sup>

## **8. Other meetings**

Since the Working Group had last met, two meetings had been held as a follow-up to the 1992 UN Conference on Environment and Development (UNCED). The Preparatory Committee for the International Conference on Population and Development agreed to include some specific sections on indigenous peoples in its outline for the final act of the conference, to be held in Cairo in September 1994. The UN Commission on Sustainable Development had endorsed inter alia the recommendation of UNCED that the UN should organise formal annual consultations with indigenous peoples to ensure that UN operational activities took account of their rights and perspectives at a global level.

Also since the Working Group last met, Alfonso Martínez, the Working Group's Special Rapporteur on treaties, agreements and other constructive arrangements, had been unable to attend a meeting with representatives of indigenous peoples in Alaska because of delays in processing his visa, while Madame Daes, Chairperson of the Group had visited Australia in June 1993, in connection with issues affecting aboriginals there.

In September, 1992, the World Uranium Hearing held in Austria had considered the impact of the nuclear industry on indigenous peoples and their lands: vast quantities of the world's uranium resources are located on and extracted from the territories of indigenous peoples. These territories are also often exploited for weapons testing and storage of nuclear substances.

In June 1993, the First International Conference on Cultural and Intellectual Property Rights of Indigenous Peoples had been held in New Zealand where it produced the Maatatua Declaration on Cultural and Intellectual Rights of Indigenous Peoples, and in July, the Second World Indigenous Youth Conference had been held in Australia.

Forthcoming meetings announced at the Working Group included a consultation of indigenous arctic peoples sponsored jointly by the UN Centre for Human Rights and the ILO, and held in Siberia in September 1993, and the third World Indigenous Peoples Conference: Education, to be held in Australia in December 1993.

## **9. Conclusions and Recommendations**

The Working Group made a series of conclusions and recommendations, grouped into the following categories: standard-setting; review of developments; seminars and meetings; studies and reports; the International Year for the World's Indigenous People and other matters. Several have already been mentioned in the body of this report. Amongst others of potential significance for AI were the following:

With respect to the draft Declaration, the Working Group's report of its 11th session (E/CN.4/sub.2/1993/29) stated that it had determined upon a final text, to be submitted to the 1993

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<sup>11</sup>Indeed, some prominent indigenous representatives who attended the Working Group this year have so completely lost faith in the UN and the Working Group that they are talking about creating a solely indigenous peoples organisation as an alternative to the UN, where they can really work to attain their goals, and cooperate as indigenous nations, rather than trying to work through a body which recognises certain nations, but not their own.

session of the Sub-Commission, but with the recommendation that it not be considered by the Sub-Commission until its 46th session in 1994. The Working Group also asked, as indigenous people had insisted was necessary, that the draft text be circulated to indigenous peoples (as well as to governments, intergovernmental and non-governmental organizations), and that special measures be taken to enable indigenous peoples to be able to participate fully and effectively without regard to consultative status in the consideration of the draft Declaration by the Sub-Commission and other higher UN bodies. However, the effect of these provisions appeared to be at least potentially negated by the stipulation that the text to be circulated was described as a final text, and that no further discussion of the text was to take place at the Working Group. Finally, the fact that these decisions all apparently took place after the Working Group concluded, so that indigenous representatives and others left Geneva without knowing what were to be the next steps in consideration of the draft Declaration, and that the Sub-Commission devoted no time to discussion of the draft Declaration or other indigenous issues in 1993, the Year of the World's Indigenous People, further increased the bitter disappointment and sense of deception on the part of many indigenous groups in the Declaration and the whole process by which it had been "finalised."

As in previous years, the Group recommended to the Sub-Commission that its annual report be made more widely available by reprinting it as a UN publication, and that in collaboration with indigenous peoples and relevant UN bodies and specialised agencies, the UN prepare a yearly report on the state of the world's indigenous peoples.

The Group particularly welcomed the call by the Vienna Conference for the proclaiming of a UN decade of indigenous peoples, for the creation of a permanent UN forum for indigenous peoples and that the UN Advisory Services program, as well as relevant UN programs of technical assistance, should provide information and training directly to indigenous organizations and communities.

It recommended that the UN organize seminars on modern-day treaties and agreements with indigenous peoples and on indigenous lands rights and claims, as well as a workshop to promote a practical dialogue on implementation of the recommendations made in the Chairperson's report on the cultural and intellectual property of indigenous peoples.

Not surprisingly, the Group appealed once again for continued and increased contributions to the UN Voluntary Fund for Indigenous Populations as contributions by the fund have traditionally assisted indigenous representatives to attend the Working Group's sessions. It also called for an independent office or unit for indigenous peoples to be established, to provide continuous liaison between indigenous peoples and all relevant UN programs and agencies, and that the UN Goodwill Ambassador, Rigoberta Menchú be permanently attached to that office, as a Permanent Representative of the Secretary General, if she so wished.

## **V. APPENDICES**

A. Draft Declaration of the UN's Working Group on Indigenous Populations and Amendments

B. Programme of Action of the Final Document of the World Conference on Human Rights