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REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION AND PROTECTION OF THE RIGHTS OF INDIGENOUS PEOPLES, INCLUDING THEIR HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

INDIGENOUS PEOPLES AND CONFLICT RESOLUTION

Working paper submitted by Mr. Miguel Alfonso Martínez, Member of the Working Group on Indigenous Populations, pursuant to Sub-Commission resolution 2003/29

Summary

The present paper surveys the character of conflict, conflict resolution and prevention within the specific context of indigenous peoples' rights. It aims at encouraging an exchange of ideas and information between, inter alia, indigenous peoples, States and United Nations bodies on the multiple sources of conflict and on possible resolution strategies and prevention mechanisms. A major conclusion of the paper is that appropriate approaches to conflict resolution and equitable solutions to conflict are best served by being based on the informed, freely expressed consent of all parties concerned. Recommendations for the consideration of the Working Group on Indigenous Populations include the proposal for the inclusion on its agenda of a sub-item entitled "Conflict prevention and resolution"; and requests for the organization of future thematic meetings, with a seminar focusing on the implementation of treaties and the adjudication of unresolved disputes and a workshop that would consider issues relating to the effectiveness of domestic and international mechanisms in respect of indigenous peoples and conflict resolution.

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Introduction

1. In its resolution 2003/29, the Sub-Commission on the Promotion and Protection of Human Rights decided that at its twenty-second session in 2004 the Working Group on Indigenous Populations (WGIP) "shall adopt as the principal theme 'Indigenous peoples and conflict resolution', as agreed upon by the Working Group (E/CN.4/Sub.2/2003/22, para. 120)". It invited Mr. Miguel Alfonso Martínez, a member of WGIP, to submit to the Working Group "a working paper … to provide a framework for the discussions to be held under the principal theme". This paper is submitted in compliance with that request.[1]

2. The purpose of the present paper is to survey the character of conflict, conflict resolution and prevention within the specific context of indigenous peoples' rights and to encourage a productive exchange of ideas and information between indigenous peoples, States, United Nations bodies and non-governmental organizations (NGOs) on the multiple sources of conflict as well as on possible resolution strategies and prevention mechanisms. The paper will pay particular attention to the main concerns of indigenous peoples with regard to the realization of their rights. It is hoped that the discussions in WGIP will increase international awareness of the issues involved, promote greater understanding of both the key actors in and the root causes of conflict, and generate effective approaches and long-term, equitable solutions to conflict based on the informed, freely expressed consent of all parties concerned.

3. In both United Nations documents and international law, the term "conflict" is generally employed to refer to violent and armed clashes between either inter-State or intra-State actors. However, in conflict resolution literature, as well as in practice, the term is often applied more broadly to include disputes and conflicts of interest between two or more actors, i.e. situations that may or may not lead to violence and/or armed confrontation but that quite frequently have an inherent potential to generate tangible social tension which often precedes the eruption of violence and the recourse to arms, and/or contain the seeds of a conflict that could erupt at any time because of issues that have been simmering without appropriate solution for a long period, perhaps even centuries. In regard to indigenous peoples, conflict shall be understood in the latter, broader, sense of the term. The developments in Oka (Québec) in 1991, Chiapas (Mexico) in 1994, in various communities in Australia in 1997 and in Ecuador (January 2001) are examples of this type of situation.

4. Indigenous peoples in multinational (or multi-ethnic) pluricultural societies often find themselves in conflict with a diversity of other entities and individuals, including States, other political entities (such as provinces or states in federal systems), non-indigenous nationals and alien individuals, national enterprises and transnational corporations. The world system has evolved based on the European conception of the nation-State and its claim to sovereignty over its present-day territories and natural resources, regardless of whether these territories and resources were ancestrally inherited in a historically continuous manner or acquired through conquest and colonization. Indigenous peoples, on the other hand, have ancestral claims to territory and resources of which they were gradually deprived by conquest or colonization and the subsequent establishment of modern political boundaries. This history of colonization, "nationalization" of indigenous ancestral lands and, more recently, of extensive privatization of State-sector property set the stage for conflict over land, natural resources and autonomy, self-government and other possible manifestations of their right to live according to their own traditions, culture and standards.

5. The multifaceted process of contemporary neo-liberal globalization has increased the long-standing importance of transnational corporations in conflicts involving indigenous peoples as a result of commercial activities related to “development” projects and extractive industries that negatively impact on the daily lives of indigenous peoples.

6. The first step to successfully preventing and/or resolving any conflict with an “indigenous component” is to understand its root causes. In an ongoing or potential conflict situation between the indigenous and non-indigenous components of the population in a given modern State, recognition of the fact that indigenous peoples have always had (and continue to have) a unique relationship with their ancestral lands is crucial to this understanding.

7. For indigenous peoples, their land (from whence they originally came, or even that on which they are forced to live today) holds singular spiritual and material values. For them, the land embodies the essential elements of their cosmogony. It is the ultimate source of life and wisdom. They believe in the collective enjoyment of what it provides; in the inalienability of something not “owned” but preserved for future generations. It plays an irreplaceable role in their religious practices and constitutes a basic component not only of their identity and cultural heritage, but also of their political and societal cohesion, as well as of their economic livelihood. This relationship with the land inherently differs from the real estate, market-oriented view of land tenure generally held by non-indigenous individuals and entities.

8. Not surprisingly, indigenous peoples most frequently find themselves in conflict situations when State authorities (or those representing other “public” entities) and/or transnational corporations - acting either in conformity with State (i.e. non-indigenous) laws and regulations or in their unregulated pursuit of profits - take actions that adversely impact on their lands, resources and/or their societal institutions and cultural patrimony, including their religious traditions. As stressed in the first conclusion of the final report (E/CN.4/Sub.2/1999/20, para. 252) of his study on treaties, agreements and other constructive arrangements between States and indigenous populations (hereinafter “the Treaty Study”), this is the paramount problem to be addressed in any effort to establish a more solid, equitable and durable relationship between the indigenous and non-indigenous sectors in multinational societies.

9. A second key element - closely linked to all of the above - for gaining a better understanding of present-day conflict situations involving indigenous peoples is their logical aspiration to fully exercise their right to self-determination, a political and juridical concept that has achieved ample recognition in both non-indigenous domestic and international law after a process spanning the last two centuries.

10. The right to self-determination assures indigenous peoples of the political authority and legitimacy, as well as the enforcement power necessary to take effective, practical actions to fully materialize their rights to their lands, resources, cultural heritage and religious practices, and to secure and protect their autochthonous institutions. In their view, those rights include not only their ancestral rights (in particular, those emanating from so-called “historical” treaties), but also those recognized under non-indigenous domestic law and relevant “modern” international legally binding instruments, including the human rights enshrined in widely accepted international standards.

11. In the foreseeable future, the aspiration of indigenous peoples living in "multiple" societies to exercise their right to self-determination is bound to clash more frequently than ever, not only with the self-defined "national" security of States, but also with the economic interests of State and other non-indigenous authorities whose decisions (or those of private enterprises under their jurisdiction) to undertake "development" projects that may require either the use of indigenous peoples' territories or the exploitation of resources located within their ancestral lands.

12. At the beginning of this new millennium, one of the most visible challenges that puts to the test the creativity and ingenuity of the international community gathered within the United Nations and other multilateral forums is how to reconcile - in multinational (or multi-ethnic), pluricultural societies - the following three elements:

(a) The long-established international (i.e. non-indigenous) recognition of the right and duty of all States to preserve their sovereign powers within their respective present-day territories and the territorial integrity of said territories, as well as their need to exploit the natural resources within their jurisdiction that they may consider necessary to fulfil their obligations as far as the realization of the economic, social and cultural rights of their population is concerned;

(b) The full respect for the principle of equal rights and self-determination of all peoples including, of course, indigenous peoples; and - last but not least -

(c) The need to recognize justice, equity, good faith and the need for the freely expressed consent of all the parties concerned, as basic tenets for the peaceful solution to controversies and conflicts, following the inherent recognition of those important principles in the Charter of the United Nations and other key legally binding international instruments and/or in widely recognized human rights standards.

13. It is the purpose of the author to review in this paper what he understands to be the most visible and important root sources of present-day conflict situations affecting indigenous peoples and the multiple dimensions of those actual or potential conflicts in which they are (or may be) involved. Further, he will advance his updated assessment of the existent conflict resolution mechanisms, as well as his views on possible new ways and means for conflict resolution and prevention.

I. BASIC ROOT CAUSES OF ACTUAL OR POTENTIAL CONFLICT SITUATIONS INVOLVING INDIGENOUS PEOPLES

A. Recognized title to land and resources

14. The fundamental root source of conflict between indigenous peoples, on the one hand, and States and non-indigenous entities and individuals, on the other, is their differing views as to which actor possesses valid title to the land and resources located in territories traditionally occupied by indigenous groups.

15. The Special Rapporteurs of the Sub-Commission, José Martinez Cobo, in his pioneering "Study of the Problem of Discrimination against Indigenous Peoples", (hereinafter "the Cobo Study")[2] and Miguel Alfonso Martínez, in his final report on his Treaty Study, as well as

Erica-Irene Daes, in her final report on "Indigenous peoples and their relationship to land" (E/CN.4/Sub.2/2001/21), have recognized the deeply spiritual relationship between indigenous peoples and their ancestral lands and its central role in the development of indigenous peoples' culture, identity, and social and economic life.

16. All their reports provide relevant information on the plight of indigenous peoples vis-à-vis their land and resources, examples of conflict situations and careful analysis with a view to contributing to the resolution of these issues. Likewise, the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), and the draft United Nations declaration on the rights of indigenous peoples (hereinafter "the Draft Declaration") recognize the special relationship between indigenous peoples and their land and call for the protection of lands traditionally occupied by indigenous peoples.

17. The historical processes of colonization, "statization" and subsequent privatization of ancestral indigenous lands, and the juridical "domestication" of the indigenous problematic have severely undermined indigenous peoples' special relationship to their traditional societal structures and territorial bases, bringing them into continual conflict over land rights with other actors such as colonial powers, the authorities of the latter's successor modern States, national and/or transnational private entities and non-indigenous individuals. In innumerable cases, these three historical processes have worked successively to dispossess indigenous peoples of their ancestral lands, leading to the destruction or a traumatizing disruption of their cultural identity, mode of production and livelihood. To this end, the colonial powers established "legal" concepts such as the well-known (and today fully discredited) doctrines of "*terra nullius*" and "discovery".

18. The colonization of indigenous territories also negatively affected indigenous peoples in many other ways. Indigenous populations severely diminished in number during the colonial period as a result of forced labour, warfare, malnutrition due to the destruction of the natural environment, disease and even calculated extermination.

19. Since the early twentieth century, in the wake of the initial successful wars against the European colonial rulers, newly independent States advanced "nationalization" policies that disregard indigenous peoples' ancestral rights to their lands and, utilizing a wide variety of mechanisms, effectively appropriate indigenous territories. State authorities in many parts of the world ignore the fact that indigenous communities inhabit, often since time immemorial, what said authorities consider to be "public" (or "national") lands and depositories of natural resources.

20. A central element in conflicts between post-colonial States and indigenous peoples over lands rights is the concept of aboriginal title. A number of countries formally recognize aboriginal title to territories inhabited by indigenous groups since time immemorial. However, most State Governments reserve the power to "extinguish" aboriginal title, without the consent of the indigenous peoples in question, in the name of State sovereignty and "the national interest" that legally take precedence over aboriginal title (E/CN.4/Sub.2/2001/21, paras. 38 and 42).

21. In recent decades, a number of processes leading to the privatization of "public" lands have further served to dispossess indigenous peoples of their ancestral communal lands and negatively impact their cultural identity and collective ownership of land. In many countries, privatization policies - dating back to the last decades of the 1800s and the first ones of the nineteenth century - aimed at subdividing indigenous territories through the issuance of private titles of ownership have resulted in social fragmentation and stratification. In an attempt to overcome conditions of extreme poverty, many individual indigenous persons "formally" sell their land holdings, often in exchange for inadequate sums of money or credits. Finally, the rapid expansion of global market capitalism has forcibly placed indigenous peoples in situations of conflict over land and resources with large national and transnational corporations that try to gain access to indigenous lands and resources for their own benefit, not for indigenous peoples' development and well-being.

22. The process that took the indigenous peoples' lands from them left behind very limited and debilitating alternatives for survival: vassalage (or servitude in its diverse forms), segregation in reduced areas "reserved" for them, or assimilation into the non-indigenous sector of the new socio-political entity created without indigenous input. The last alternative meant the social marginalization and discrimination prevalent in these mixed societies.

23. In this respect, article 27 of the Draft Declaration recognizes the inherent right of indigenous peoples "to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used and which have been confiscated, occupied, used or damaged without their free and informed consent". The same article recognizes their right, where this is not possible, to a "just and fair compensation" which - unless otherwise freely agreed upon by the peoples concerned - "shall take the form of lands, territories and resources equal in quality, size and legal status".

24. For a number of practical reasons, chances are that this would prove practically impossible to realize, but that does not negate the ethical imperative to undo the wrongs done, both spiritually and materially, to indigenous peoples during this unrelenting process of dispossession. In the view of the Special Rapporteur of the Treaty Study, this is a must "… even at the expense, if need be, of the straitjacket imposed by the unbending observance of the 'rule of [non-indigenous] law'" (E/CN.4/Sub.2/1999/20, para. 255).

B. The exercise of the right to self-determination

25. The Charter of the United Nations recognizes the "equal rights and self-determination of peoples" (Art. 1, para. 2), a simple, direct and unqualified way of saying all peoples, bar none. The wording chosen in San Francisco offers no grounds whatsoever to construct it as limiting the recognition of the right to self-determination only to some peoples while forbidding others from exercising this basic right which, among other considerations, is to be taken as a prerequisite for the actual realization of all human rights: civil, political, economic, social and cultural.

26. This basic and inviolable right of all peoples is also recognized in article 1, paragraphs 1 and 2, common to the two 1966 International Covenants on Human Rights. The right to self-determination is also recognized in many other international and regional human rights instruments, including but not limited to Part VI of the Helsinki Final Act (1975),

article 20 of the African Charter of Human and Peoples' Rights, and paragraph 2 of the Declaration on the Granting of Independence to Colonial Territories and Peoples (General Assembly resolution 1514 (XV) of 14 December 1960).

27. Indigenous peoples identify themselves as "peoples", first and foremost on the basis of their particular history, societal organization, specific geographical presence, language spoken, relation to the land and other traits that make their respective institutions, customs, traditions, religious beliefs and culture, in general, distinct from those of other population segments in a "multiple" society.

28. Those traits informed, to a great extent, the working definitions of "indigenous peoples" articulated by both Mr. Martínez Cobo in his already mentioned Study and ILO Convention No. 169. Their distinctiveness as political entities explains the numerous treaties to which both States and indigenous Nations/Peoples are parties. It is within this framework that indigenous peoples demand the effective recognition and implementation of their ancestral and present-day rights, including the human rights recognized as pertaining to all human beings by non-indigenous domestic legislation and applicable international juridical instruments and standards.

29. The Draft Declaration, in article 8, recognizes that indigenous peoples have the collective and individual right to maintain and develop those distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such.

30. It is important to recall that the Draft Declaration expressly recognizes (in art. 3). Indigenous peoples' right to self-determination, utilizing to describe its general practical content the exact wording accepted by the approximately 150 States that are parties to the 1966 Covenants in common article 1, that is,

> "Indigenous 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."

Further, it must be noted that - in order to offer one (and only one) example of the varied forms of possible actual exercise by indigenous peoples of their right to self-determination - article 31 of the Draft Declaration expresses the following:

> "Indigenous peoples *as a specific form* of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions" (emphasis added).

In addition, article 45 of the Draft Declaration clearly establishes that

> "Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations."

31. On the other hand, it is obvious that, at present, a number of States contest recognizing for indigenous peoples living within their present-day boundaries the rights guaranteed to all peoples under non-indigenous international law, arguing that the explicit recognition of indigenous peoples' right to self-determination threatens, inter alia, the political unity of States, their national security and territorial integrity, internal stability, peace and democracy. The proceedings of the open-ended working group established in 1995 by the Commission on Human Rights to give its final wording to the Draft Declaration is perhaps the most visible proof of that position. In this connection, it is also worth noting that paragraph 3 of article 1 of the 1966 Covenants establishes that all States parties are legally bound to promote the realization of this paramount right and to respect it in conformity with the provisions of the Charter of the United Nations.

32. According to recent analysis, the right to self-determination should be regarded as a "process right" rather than as a right with a predetermined outcome.[3] Article 31 of the Draft Declaration, mentioned supra, follows this approach. The actual content and political/juridical expression of indigenous peoples' self-determination in a present-day "multiple" society should be defined on a case-by-case basis through a process of dialogue and negotiation involving, by definition, indigenous Nations/Peoples and State Governments on equal terms. If, on the one hand, the actual contextual possibilities of achieving any specific manifestation of the exercising of this right cannot be ignored, the free and informed consent of the indigenous people concerned is indispensable to securing a viable, equitable outcome of that process, that is to determine the degree of control that they will have over their own destiny and daily life.

33. In this connection, it is worth mentioning that in Part II, paragraph 31, the Vienna Declaration and Programme of Action of the 1993 World Conference on Human Rights expressly urges States "… to ensure the full and free participation of indigenous peoples in all aspects of society, in particular in matters of concern to them."

C. Recognition/implementation of treaty rights and contradictory construction of the object and contents of treaties

34. That hundreds of treaties entered into effect between nation-States and indigenous Nations is a matter of record. On the one hand, these treaties (or agreements) stand as evidence that a Nation/State and an indigenous Nation/People recognize each other, on equal legal footing, as sovereign entities exercising, inter alia, their respective collective right to self-determination. Moreover, treaties between indigenous peoples and States frequently define the parameters of indigenous peoples' land rights and access to resources as far as non-indigenous law is concerned.

35. In his conclusions, proposals and recommendations, Mr. Martínez Cobo stressed the paramount importance to indigenous peoples and nations in various countries and regions of the world of the treaties concluded with present nation-States or with the countries acting as colonial administering Powers at the time in question.

36. On the other hand, it is also a matter of record that in many cases, treaties, agreements and other arrangements between indigenous peoples and States have been either ignored or blatantly violated to the detriment of the indigenous party, which leads to conflict over identity, land title and resources, and other rights recognized in those legally binding instruments.

37. This situation was called to the attention of the Special Rapporteur for the treaty study and of the Working Group by practically all indigenous Nation/Peoples having treaty relations with their respective present-day nation-States. It has been recognized by the experts participating in the Seminar on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Peoples held in Geneva from 15 to 17 December 2003 (hereinafter "the Geneva Seminar"), that the non-implementation of treaties threatens indigenous peoples' survival as distinct peoples. In their conclusions (E/CN.4/2004/111) they called upon all States to fully respect them.

38. In paragraphs 192 et seq. of the final report on his Treaty Study, the Special Rapporteur analysed the powerful motivations that led the colonizing European Powers and their successors to follow, during the initial two centuries of their presence in other continents, a treaty-making policy with indigenous Nations/Peoples, thus recognizing them as sovereign entities in accordance with the non-indigenous international law of the time (Law of Nations). He addressed the overwhelming consequences of the process of juridical "domestication" endured by indigenous peoples in the course of the nineteenth and twentieth centuries, which are visible not only in the progressive erosion of their initial sovereign condition, but also in their overall international juridical status.

39. They also include the extinction (or substantial reduction) of their territorial base, and the undermining - or virtual destruction in some cases - of their political, economic, juridical, cultural and social order in general (more on this particular aspect in section F below), and even their survival as a distinct society.

40. The Special Rapporteur also highlights contradictions regarding the interpretation of treaties. He stresses the fact that a large number of indigenous groups from North America, who are, allegedly, parties to treaties of "land surrender", oppose the object of the treaties on the grounds that they had considered themselves rather to be parties to treaties of peace and friendship, and had never agreed to forfeit either their lands or their right to self-determination, something which would be in total contradiction to their condition as "keepers of the land" for future generations, a tenet of their cosmogony.

41. Notwithstanding, the Special Rapporteur also notes that indigenous peoples' interpretations of treaties are beginning to receive greater attention in some countries, such as Chile, New Zealand and Canada. He cites the 1996 final report of the Royal Commission on Aboriginal Peoples, established by the Government of Canada, which recommends that the indigenous oral history of treaties be incorporated as a supplement to the official written interpretation of treaties.

42. In this connection, the draft declaration, in article 36, establishes that "Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, according to their original spirit and intent, and to have States honour and respect such treaties, agreements and other constructive arrangements. Conflicts and disputes *which cannot otherwise be settled* should be submitted to competent international bodies agreed to by all parties concerned" (emphasis added).

43. The experts participating in the Geneva Seminar also concluded that "historic treaties, agreements and other constructive arrangements between States and indigenous peoples should be understood and implemented in accordance with the spirit in which they were agreed upon (E/CN.4/2004/111, para. 2)".

44. In 1999 the Special Rapporteur also recommended that a unit be established within the United Nations Treaty Section that would be responsible for locating, compiling, registering, numbering and publishing all treaties (including contemporary agreements) concluded between indigenous peoples and States which would be available as a database and provide, in certain cases, examples of good practice resulting in the effective promotion, materialization and protection of indigenous rights. This proposal was supported by the participants at the Geneva Seminar.

45. Finally, when analysing this principal theme, two comments advanced in 1999 by the Special Rapporteur in his study on treaties merit due consideration. In paragraph 138 of his final report, he expressed serious concern about the efficacy (and implicitly the validity) of "… treaty negotiations in a situation of economic, environmental and political duress resulting from one-sided government policies". Secondly, he soundly argues (paragraph 285 of his final report) that the non-existence of a treaty relationship between a nation-State and an indigenous people during a certain period of time is not, in and of itself, an element that may be validly invoked to refuse to recognize to the latter the same status accepted vis-à-vis other indigenous entities of the same intrinsic traits as a Nation with which that type of relation was established under international law during the same period.

D. Development projects undertaken by non-indigenous entities and individuals affecting traditional indigenous lands

46. Development projects can be understood as any of a large variety of activities undertaken by either the State (and other "public" authorities), or private, national or international agencies and entities for the alleged purpose of building or improving the municipal infrastructure of a specific region, and/or creating new settlements and employment opportunities for local communities. Many such projects (in particular, major ones) imply a radical transforming of regional modes of production and natural environments as a result of the projected large-scale exploitation of natural resources (including a number of activities related to mining, manufacturing and the refining of energy products), the need to install waste disposal sites and the constructing of urban centres requiring large transportation and communication infrastructures.

47. In most cases, the planning and execution of these kinds of projects on or near indigenous territories have adverse effects on indigenous peoples, including serious human and other rights violations, inter alia, forced eviction from their ancestral lands, degradation of their territories due to construction and overexploitation of resources, physical abuse and detention by government officials or the private security agents of development companies, health problems and illness due to industrial pollution, toxic waste and exposure to contagious diseases and - last but not least - general exclusion of indigenous peoples from the decision-making process regarding projects adversely affecting them.

48. Article 10 of the draft declaration recognizes that indigenous peoples have the right not to be forcibly removed from their lands or territories. It also states that "no relocation shall take place without the free and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return". Previously, in article 7, the draft declaration typifies as "ethnocide" and "cultural genocide" any action which has the aim or effect of dispossessing them of their lands, territories or resources, and any form of population transfer which has the aim or effect of violating or undermining any of their rights.

49. In a recent report to the Commission on Human Rights (E/CN.4/2003/90), the Special Rapporteur on the situation on human rights and fundamental freedoms of indigenous peoples, Rodolfo Stavenhagen, examines the impact of large-scale or major development projects on the human rights and fundamental freedoms of indigenous communities. The report provides relevant information on the plight of indigenous peoples vis-à-vis major development projects and selected case studies of conflict situations.

50. He concludes that respect for the principle of free, prior and informed consent in relation to major development projects is essential for the protection of indigenous peoples' human rights since it involves ensuring a mutually acceptable independent mechanism for resolving disputes between the parties involved. He also calls on Governments to work closely with indigenous peoples and organizations to seek development projects and to set adequate institutional mechanisms to handle these issues. He recommends that contentious issues between indigenous peoples, States and business enterprises during the implementation of major development projects be dealt with at all times through open dialogue and negotiations. Disputes should never be approached from a "law and order" perspective or as problems of national security.

E. Militarization of traditional indigenous lands

51. This is a major source of conflict, which often results in either the forced eviction of indigenous peoples, or life-threatening circumstances connected with nearby warfare. The State's power to "extinguish" aboriginal titles to land on the basis of national security needs is often used to give licence to armed forces to launch national defence projects on indigenous lands, including the construction of military bases, testing grounds and territory for war games.

52. In this connection, mention should be made of the tenth preambular paragraph of the Draft Declaration, which reads as follows:

> "*Emphasizing* the need for demilitarization of the lands and territories of indigenous peoples, which will contribute to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,"

Further, article 11 explicitly demands that States not "force indigenous individuals to abandon their lands, territories or means of subsistence or relocate them in special centres for military purposes".

F. Non-recognition of indigenous peoples' traditional sources of authority and practical exclusion from, or discriminatory nature of, the non-indigenous political and juridical structures

53. It is of utmost importance to highlight the role played by "juridical tools" - always arm in arm with the military component of the various schemes of domination used against indigenous peoples - so as to fully understand the process that the Special Rapporteur of the treaty study preferred to call (without any claim to originality) the "domestication" of the "indigenous question"; that is, the process of gradual but incessant erosion of the indigenous peoples' original sovereignty by which the entire indigenous problematic was removed from the sphere of international law and placed squarely under the exclusive competence of the internal jurisdiction of the States in which they now live.

54. In practically all cases - in Latin America and in other regions as well - the legal establishment has served as a most effective tool in this process of colonial and neo-colonial domination. As noted five years ago in the treaty study, jurists (with their conceptual "academic" elaborations), domestic laws (with their imperativeness both in the metropolis and in the colonies), the judiciary (with their decisions subject to the "rule of [non-indigenous] law"), the executive (with the myriad of lawyers staffing their "Bureaus of Indian Affairs"), one-sided, non-indigenous international law (its enforcement assured by military means if necessary) and international tribunals (on the basis of existing international law) were all present to "validate" juridically the organized plunder at the various stages of the colonial/imperial enterprise which continues into this new millennium.

55. There are important reasons to conclude that the political exclusion of indigenous peoples is a source of conflict closely linked to the issue of self-determination. Indigenous peoples in many countries are not at all, or very little, represented in the political affairs of larger society, which is usually associated with their general political disenfranchisement and the marginalization of their interests and rights in political platforms. This political exclusion further debilitates indigenous peoples in protecting their collective social, economic and cultural rights on the political front.

56. It is useful to recall, in this connection, several key provisions of the draft declaration that are relevant to all the above. Articles 19 and 20 recognize the right of all indigenous peoples to participate fully, if they so choose, "at all levels of decision-making in matters which may affect their rights, lives and destinies through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions", and "in devising [through procedures determined by them] legislative or administrative measures that may affect them". Further, article 32 expressly states that they are collectively entitled "to determine their own citizenship in accordance with their customs and traditions" without impairing the individual right of each member of their Nation to obtain the citizenship of the State in which they live.

57. Article 33 of the draft declaration merits a separate commentary in this working paper. It contains the only wording in its text which was not approved by consensus in the Working Group before its formal submission, in 1993, to the Sub-Commission, its parent body. A formal vote was requested by the author of the present working paper, who voted against the present

formulation and found himself - not unexpectedly - in a minority of one, since his Greek, Japanese, Nigerian and Ukrainian colleagues voted in favour, a position fully consistent with their previously announced views on this matter.

58. He considered it absolutely unacceptable to recognize the right of indigenous peoples to "promote, develop and maintain their institutional structures and their distinctive juridical customs, traditions, procedures and practices" while specifying - even in that very same article - that the recognition of that right depends on whether or not said structures and distinctive customs, traditions, procedures and practices are "in accordance with internationally [non-indigenous] recognized human rights standards". This, after having proclaimed in the preamble that indigenous peoples are equal in dignity and rights to all other peoples and the urgent need to respect and promote their inherent characteristics.

59. In addition, their rights to maintain and strengthen their intrinsic societal characteristics and their legal systems (art. 4); not to be subjected "to any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures (art. 7 (d)), to obtain redress for any action having as aim or effect to deprive them of their integrity as distinct peoples (art. 7 (a)), and - of course - their right to self-determination (art. 3) had been previously recognized by the draft declaration.

60. The "internationally recognized standards" referred to in article 33 were adopted - without a single contribution from indigenous people - by international bodies to which they did not have access at all. Further, in a visible contradiction with their cosmogony, some of those standards - inter alia, the Universal Declaration of Human Rights and the 1966 International Covenants on Human Rights - offer a totally individualist approach to human rights and no recognition of collective rights - for example to development and self-determination - is to be found in their texts.

61. As far as this part of this working paper is concerned, article 4 is a key element of the draft declaration. It recognizes indigenous peoples' right to participate fully - if they so choose - "in the political, economic, social and cultural life of the State [in which they presently live]" as well as their right not only to maintain, but also to strengthen their legal systems.

62. Some researchers often seem to forget (or just ignore) that most indigenous peoples have well-developed institutions and traditions to administer justice, as well as efficient mechanisms to resolve communal conflicts of their own. All of them have successfully passed the test of time. The body of institutions and practical mechanisms that govern indigenous communities are generally referred to by State Governments as "customary law". The author of this paper prefers to refer to them as "the traditional juridical practices of indigenous peoples", to avoid eventual confusion with the well-known non-indigenous customary law so often invoked in the decisions of courts at all levels in many multinational States, and regularly quoted in scholarly essays.

63. This issue was debated at the Expert Seminar on Indigenous Peoples and the Administration of Justice held in Madrid in November 2003 (hereinafter "the Madrid Seminar"). The participating experts concluded that the lack of official recognition of indigenous "law" and legal jurisdiction was one factor contributing to discrimination and racism against indigenous peoples in the administration of justice.

64. They urged States to facilitate the recognition of indigenous legal practices as complementary to national systems of justice and to facilitate cooperation between indigenous justice systems and national or federal legal systems.

G. Indigenous religious customs and practices and the proselytizing activities of groups advocating predominantly monotheistic faiths

65. Indigenous peoples frequently find themselves in situations of conflict with proselytizing groups from predominantly monotheistic faiths who, in attempting to share their religious world view with indigenous communities, are often simultaneously serving - wittingly or unwittingly - to suppress indigenous religious beliefs and traditional practices. Conflicts involving the repression of those beliefs and practices often lead to conflicts within communities and sometimes divide indigenous peoples. Given these experiences, indigenous peoples often demand more effective political and legal mechanisms designed to protect and promote their religion, language and culture, in general.

66. The draft declaration, in articles 12 and 13, recognizes the rights of indigenous peoples (i) to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; (ii) to maintain, protect, and have access in privacy to their religious and cultural sites; (iii) to the use and control of ceremonial objects; (iv) to the repatriation of human remains; as well as (v) the right to the restitution of spiritual property taken without their free and informed consent in violation of their “laws”, traditions and customs. It also prescribes that States shall take effective measures, in conjunction with the indigenous peoples concerned, to ensure that indigenous sacred places, including burial sites, be preserved, respected and protected.

II. THE NEED FOR CONFIDENCE-BUILDING AND CONFLICT-PREVENTION STEPS

67. It would seem obvious that very little or no progress can be made in situations of real or potential conflict involving indigenous peoples without tackling and solving - in a way acceptable to the indigenous peoples concerned - the question of the uninterrupted process of dispossession of their lands and land-related resources, vital to their lives and survival.

68. Given the general historical and present-day context of confrontation, acrimonious debates, claims and counter-claims surrounding the relations between indigenous and non-indigenous population segments in a large number of “multiple” societies, it is of paramount importance to foster new relationships based on mutual recognition, harmony and cooperation, instead of continuing to ignore, confront and reject the other party. Therefore, the need to encourage and nurture a process of confidence-building is even more important today than when the Special Rapporteur highlighted it in the first recommendation of the final report of his treaty study. He considers it as a process that requires the taking of positive steps, as well as the avoidance of actions that could either provoke conflictive situations or exacerbate those already existing.

69. Steps such as the one taken years ago by the then Prime Minister of Australia, Robert Hawke, recognizing the misdeeds committed by the first settlers against the Aborigines; the recent admission by the Vatican concerning certain aspects of the role played by the Catholic

Church at various stages of the colonization of Latin America; and the 1993 Apology Bill passed by the United States Congress (P.L. 103-150, of 1993), recognizing that the overthrow of the Hawaiian monarchy in 1898 was unlawful, are positive developments in this direction. The Governments of those States should be encouraged to undertake effective follow-up to those initial steps. Other Governments in similar circumstances are called upon to be bold enough to undertake like steps in their specific societal context.

70. By the same token, one cannot but concur with the treaty study's recommendation that actions which predictably will aggravate existing confrontational situations, or create new conflicts, should be avoided, or should be the subject of an immediate sine die moratorium. Examples of what should NOT be done, in the view of the Special Rapporteur, continue to exist today: new forced evictions from traditional lands, the creation of conditions of duress for indigenous peoples to induce them to accept conditions for negotiating and surrender of their ancestral original land rights, the fragmentation of indigenous nations to pit them against each other, the ignoring and bypassing of the traditional authorities by promoting new authorities under non-indigenous regulations, the taking up or continuation of "development projects" to the detriment of the indigenous habitat, attempts to launch major diversions to redirect focus to individual rights as opposed to collective-communal rights, and many others.

71. If treaties (either "historical" or "modern"), agreements and/or "other constructive arrangements" between indigenous Peoples/Nations and nation-States exist, the fullest implementation in good faith of their provisions continues to be, of course, the best possible contribution to a confidence-building process. In the event that the very existence (or present-day validity) of a treaty becomes a matter of dispute, a formal recognition of that instrument as a legal point of reference in the State's relations with the peoples concerned would also contribute greatly to such a process, as would also be the completion of the ratification process of draft treaties/agreements already fully negotiated with indigenous people, as strongly recommended in the treaty study.

72. Similarly, States parties to treaties to which indigenous peoples are third parties must seek the free and informed consent of the indigenous peoples concerned before accepting or attempting to enforce their provisions

III. EXISTING AND PROPOSED MECHANISMS FOR CONFLICT PREVENTION AND RESOLUTION

73. The Special Rapporteur of the treaty study concluded that the process of negotiation with the full, equal and free participation of the indigenous People/Nation concerned is the most appropriate way to approach conflict resolution of indigenous issues at all levels with indigenous free and educated consent. In his view, it is also the most suitable way for Governments to implement effectively the appeal addressed to them by the 1993 World Conference on Human Rights to ensure the participation of indigenous peoples in all aspects of society, particularly in matters of concern to them.

74. The importance of fair and voluntary negotiations between the State and the indigenous peoples concerned - either at the national level or with the assistance of an international body - for resolving indigenous land issues is also stressed in Mrs. Daes' 2001 final report.

75. The generalized view among the indigenous peoples consulted by the author of this working paper is that normal, non-antagonistic relations with the non-indigenous sectors of their common society can only be achieved either by the full implementation of the existing mutually agreed-upon legal documents governing that relationship (and a common construction of their provisions), or by new instruments negotiated with their full participation. In 1999, the Special Rapporteur for the treaty study noted that this perception was shared by the appropriate government officials in a number of countries, including Canada, New Zealand and Guatemala.

76. In the conclusions and recommendations of the final report on his treaty study, the Special Rapporteur addressed (paras. 312-317) the issue of which of the two possible jurisdictions (domestic or international) would be more suitable for conflict resolution and prevention in situations affecting indigenous peoples.

77. In his working paper (E/2003/92) on a possible follow-up United Nations seminar to his study, he recalled that he had recommended in his final report that "… a United Nations workshop be convened to open an educated discussion on the possible merits and demerits of the establishment of an international body to adjudicate or advise on disputes between indigenous peoples living within the borders of a modern State and non-indigenous institutions, including State institutions". In addition, he underscored "the importance of States establishing effective national mechanisms for conflict resolution on indigenous issues", noting that, should this be the case, "the need for any such international mechanism would be diminished or non-existent".

78. He also stressed that he had also recommended that "discussion be promoted around the idea of an advisory body that could serve as an impartial facilitator in cases of disputes on treaty-related matters involving indigenous peoples and States" (E/2003/92, para. 4). It would provide advice in situations where no suitable national mechanisms exists.

79. Two articles of the draft declaration are relevant to the consideration of this particular matter of the two possible jurisdictions. Article 39 establishes that "Indigenous peoples have the right to have access to and prompt decision through mutually acceptable and fair procedures for the resolution of conflicts and disputes with States, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall take into consideration the customs, traditions, rules and legal systems of the indigenous peoples concerned".

80. The wording chosen for said article 39 is totally open-ended, leaving to the concerned parties' free and willing decision whether to recur either exclusively, primarily, or subsequently to a domestic or/and an international adjudicating body - existing or to be created on an ad hoc basis - to find a solution to a specific conflict or dispute, and/or to establish possible ways and means of redressing violations of their collective and/or collective rights.

81. On the other hand, pursuant to article 41, the United Nations shall take the necessary steps to ensure the implementation of this Declaration including "the creation of a body at the highest level with special competence in this field and with the direct participation of indigenous peoples. All United Nations bodies shall promote respect for and full application of the provisions of this Declaration".

A. Domestic

82. On the basis of a vast amount of documentation, the work of the Working Group and oral testimony, the treaty study's Special Rapporteur reached the conclusion (paragraph 261 of his final report) that there is an almost unanimous opinion among geographically dispersed indigenous peoples that existing State mechanisms, either administrative or judicial, are unable to satisfy their aspirations and hopes for redress.[4]

83. In what a considerable number of indigenous and non-indigenous representatives consider to be one of the most important aspects of his treaty study, the Special Rapporteur makes a specific proposal in connection with the establishment of the key traits of what, in his view, could be an efficient domestic mechanism to prevent and equitably resolve conflicts between the indigenous and non-indigenous segments of populations in a "multiple" society. In his dual capacity now, as author of the present working paper, he is of the opinion that his 1999 proposal is as pertinent today as it was considered to be when initially advanced five years ago. His ideas in this matter are contained in paragraphs 307-310 of his final report. In advancing his 1999 recommendation on this matter, he made it clear that he had benefited from "the highly interesting ideas on the same subject formulated in the final report (1996) of the Royal Commission on Aboriginal Peoples established by the Government of Canada".

84. The experts participating in the Geneva Seminar recommended that in cases where disputes arise, effective conflict-resolution procedures should be established, including the following elements: they should recognize *the collective nature of rights of indigenous peoples* and they should incorporate, as *an integral part* of the process, indigenous laws and legal norm (emphasis added).

85. During the Madrid Seminar other specific proposals related to the creation of effective domestic mechanisms to prevent and resolve conflicts between indigenous peoples and States were discussed, for example, the recognition of indigenous traditions, practices and mechanisms and their full incorporation into national justice systems. The experiences on this subject in the Philippines, Australia and South Africa were brought to the attention of the Seminar: the enacting in 1997 by the Philippine Congress of legislation which, inter alia, aims to incorporate indigenous practices in the government justice system;[5] the Community Justice Group project, a pilot plan launched by the Corrective Services Commission in Queensland, Australia;[6] and the decision taken by the South African Supreme Court in the *Richterveld* case, by which the Khosean people not only achieved the restitution of historically expropriated land but also the full recognition of their indigenous customary juridical institutions, practices and mechanisms by the Government of South Africa.[7]

B. International

86. Although, as noted supra, existing treaties/agreements and/or other constructive arrangements between indigenous Nations/Peoples and States may constitute one of the root causes of conflict, they also have the potential to become a most important tool (because of their consensual basis) for formally establishing and implementing not only the rights and freedoms alluded to in the preceding paragraph, but also inalienable ancestral rights, in particular land

rights. It is obvious that the process of treaty-making implies engaging in negotiations between parties that mutually recognize each other as equal partners, an element of crucial importance for achieving the equitable resolution of conflicts.

87. In this connection, it is important to recall that article 36 (final sentence) of the draft declaration (related to treaty situations) reads as follows: "Conflicts and disputes which cannot otherwise be settled should be submitted to *competent international bodies* agreed to by all parties concerned" (emphasis added).

88. As far as the international jurisdiction is concerned, the establishment of a "fact-finding" body and the appointment of a special rapporteur with a mandate to make site visits and to prepare reports concerning indigenous land and resource issues is recommended in Mrs. Daes' 2001 final report. She considers that this Special Rapporteur should be trusted with a "peace-seeking" mandate to freely investigate problem cases, recommend solutions, mediate and assist in preventing or ending situations of violence and conflict regarding indigenous land rights.

89. In the final report on his treaty study (paras. 312-314) the Special Rapporteur stated that the international dimension of this type of conflict between indigenous and non-indigenous entities and individuals warrants proper consideration. He stressed that "a crucial question relates to the desirability of an international adjudication mechanism to handle claims or complaints from indigenous peoples, in particular those arising from treaties and constructive arrangements with an international status".

90. He advanced the opinion (para. 315) that "… one should not dismiss outright the notion of possible benefits to be reaped from the establishment of an international body … that, under certain circumstances, might be empowered … to take charge of final decision in a dispute between the indigenous peoples living within the borders of a modern State and non-indigenous institutions, including State institutions". This, of course, provided that all the parties concerned freely agree to follow such a procedure, be this by means of a previous blanket acquiescence, or acquiescence on an ad hoc basis. As mentioned above, he recommended opening "an educated discussion" on the possible merits and demerits of the establishment of such an international body.

91. It is to be noted also that he points out (para. 317) that "the non-existence, malfunctioning, anti-indigenous discriminatory approach or ineffectiveness of national [conflict-resolution/prevention] institutions will provide more valid arguments for international options. This may be one of the strongest arguments possible for the establishment (or strengthening) of proper, effective internal channels for the implementation/observance of indigenous rights and conflict resolution of indigenous-related issues".

92. The experts participating in the Geneva Seminar also recommend that the Commission on Human Rights explore ways and means of developing a mechanism for resolving conflicts arising from treaties, agreements and other constructive arrangements.

93. Several United Nations mechanisms on indigenous issues contribute to the prevention and resolution of conflicts by providing a discussion forum for indigenous peoples, Governments and other actors or by investigating violations of the human rights of indigenous peoples. The

Working Group on Indigenous Populations reviews the overall human rights situation of indigenous peoples worldwide, undertakes studies on issues relevant to the present-day situation of indigenous peoples' rights and drafts new standards for the promotion and protection of indigenous peoples' rights. The studies often include policy recommendations for the resolution and prevention of conflict.

94. The Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people receives information and communications from all relevant sources, including Governments and indigenous peoples themselves on violations of the human rights and fundamental freedoms of indigenous peoples and formulates recommendations and proposals on appropriate measures and activities to prevent and remedy these violations.

95. The Permanent Forum on Indigenous Issues provides policy advice to the United Nations system on appropriate actions and programmes for indigenous peoples, thus raising worldwide awareness of indigenous peoples' rights and needs. Information-sharing and participation by indigenous peoples in United Nations bodies and workshops are important opportunities for understanding the root causes of conflicts and for airing indigenous peoples' views and inputs on how to resolve them.

96. In this context, it is necessary to recall that at the initiative of the Commission on Human Rights, the Economic and Social Council has established a most important network of mechanisms to oversee the behaviour of States with respect to a large number of important human rights issues. Each of the individuals who make up this unique group of working group members, special rapporteurs, independent experts, representatives of the United Nations High Commissioner for Human Rights, etc. - known in United Nations parlance as "thematic special procedures" - reports annually to the Commission on the specific matter covered by his/her respective mandate. These include racism, racial discrimination and xenophobia, arbitrary detention, freedom of religion and belief, right to education, extreme poverty, torture and other cruel, inhuman or degrading treatment or punishment, and internally displaced persons.

97. Last April (2004), in resolution 2004/58, the Commission invited the thematic special procedures to duly take into account in their deliberations, within the framework of their respective mandate, "the particular situation of indigenous people" and to ensure that it is properly reflected in their periodic reports to their superior bodies.

98. Further, States parties to a number of international human rights instruments must submit periodic reports explaining to the monitoring bodies established by those instruments how they are fulfilling their treaty obligations. Among these treaty bodies, the Committee on the Elimination of Racial Discrimination, the Human Rights Committee, the Committee against Torture and the Committee on the Rights of the Child are relevant for reviewing conflict situations affecting indigenous peoples.

99. In addition, it is worth noting the confidential procedure established by the Economic and Social Council by its resolution 1503 (XLVIII). This procedure allows any individual or group, as well as national or international non-governmental organizations, to address complaints ("communications" in United Nations parlance) to the Office of the High Commissioner for

Human Rights in Geneva, should he/she/it consider that an individual or group is or has been a victim of a human rights violation on the basis of the provisions of the Universal Declaration of Human Rights.

100. Finally, mention should also be made of the United Nations Institute for Training and Research Programme in Peacemaking and Preventive Diplomacy, in particular its Training Programme to Enhance the Conflict Prevention and Peacebuilding Capacities of Minority and Indigenous People's Representatives, a project developed in 2000 at the request of indigenous peoples' representatives. It provides advanced training in conflict analysis and negotiation to representatives of indigenous peoples.

IV. RECOMMENDATIONS

101. **The Working Group on Indigenous Populations should give priority, at its twenty-second session (2004), to the issues identified in this paper.**

102. **A sub-item under the title "Conflict prevention and resolution" should be included on the agenda of the annual sessions of the Working Group under the traditional agenda item 4 ("Review of developments") to encourage the discussion of cases and situations of actual or potential conflicts involving indigenous peoples, as well as on possible (or ongoing) initiatives (and their eventual practical results) related to this key aspect of the relations between the indigenous and non-indigenous population segments in multinational (multi-ethnic) and pluricultural societies.**

103. **The Working Group should recommend to the Sub-Commission that it urge all States with indigenous peoples under their jurisdiction to fully recognize the rights of indigenous peoples and take the necessary measures to assure respect for said rights as the most efficient means of conflict prevention and resolution, stressing the importance of taking confidence-building initiatives and encouraging dialogue and negotiations in good faith among all parties concerned, so as to eliminate the obstacles that may hinder the effective recognition and realization of those rights and their proper protection.**

104. **The Working Group should recommend to the Sub-Commission that it request its superior bodies to authorize the Office of the High Commissioner for Human Rights to organize, not later than December 2005, a seminar on possible ways and means of ensuring the implementation of treaties, agreements and other constructive arrangements between States and indigenous peoples and the adjudication of disputes that remain hopelessly unresolved by existing conflict-resolution mechanisms.**

105. **The Working Group should recommend to the Sub-Commission that it request its superior bodies to authorize the Office of the High Commissioner for Human Rights to organize, not later than December 2006, a workshop on "Indigenous peoples and conflict resolution" with a view to analysing, inter alia, the elements that should be considered necessary for an effective domestic mechanism or process for conflict resolution and prevention, and the advantages and disadvantages of the possible establishment of an advisory international body to facilitate agreement in conflict situations involving indigenous peoples.**

106. **The Working Group should recommend to the Sub-Commission that it invite the human rights treaty bodies to pay specific attention to the obligations contained in treaties, agreements and other constructive arrangements between States and indigenous peoples, as non-compliance with these obligations have negative effects with regard to the rights protected under international human rights instruments.**

107. **The Working Group should recommend to the Sub-Commission that it request the Commission on Human Rights to invite the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to take duly into account in his annual report to the Commission, within the framework of his mandate, the situation of those indigenous peoples with treaty relations with the State in which they live, as well as when planning and carrying out future field missions during his present term of office.**

Notes

[1] The author wishes to acknowledge the valuable research work done on this subject by Mr. Chris Boland during his internship at the Office of the United Nations High Commissioner for Human Rights in 2004.

[2] E/CN.4/Sub.2/1986/7 and Add.1-4. Addendum 4, containing the conclusions, proposals and recommendations of the Special Rapporteur, was issued as a United Nations publication, Sales No. E.86.XIV.4.

[3] J.B. Henriksen, "Implementation of the Right of Self-Determination of Indigenous Peoples", *Indigenous Affairs*, (Copenhagen: International Work Group for Indigenous Affairs), March 2001, p. 14; M.C. van Walt van Praag, "Self-Determination in a World of Conflict: A source of Instability or Instrument of Peace?" *The Implementation of the Right to Self-Determination as a Contribution to Conflict Prevention*, (Barcelona: Centre UNESCO de Catalunya), 1999, pp. 27-28. Both Henriksen and van Walt van Praag argue that the right to self-determination should be understood in terms of an on-going process with flexible outcomes and choices.

[4] Some cases that explain the generalized, justified frustration of indigenous peoples with the existing domestic conflict-resolution mechanisms (in particular, the judiciary) are reviewed in the final report on the treaty study (E/CN.4/Sub.2/1999/20, para. 276 (case of the Lakota Nation); Isabell Kempf, "*El Pueblo Maasai en Kenia: de la Riqueza a la Marginalización*", *Papeles de Cuestiones Internacionales*, No. 80, invierno 2000, Madrid, Centro de Investigación para la Paz, pp. 117-126 (case of the Maasai people); and the report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples (E/CN.4/2003/90)) (case of the Mapuche-Pehuenche Nation).

[5] See the paper submitted to the Seminar by Francisca M. Claver (HR/MADRID/IP/SEM/2003/BP.12).

[6] See the paper submitted to the Seminar by Bill Jonas (HR/MADRID/IP/SEM/2003/BP.26).

[7] See the paper submitted to the Seminar by Maureen Tong (HR/MADRID/IP/SEM/2003/BP.2).
