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INDIGENOUS PEOPLES, INDIGENOUS FARMERS: NAFTA'S THREAT TO MEXICAN TEOSINTE FARMERS AND WHAT CAN BE DONE ABOUT IT

KEITH SEALING *

INTRODUCTION

U.S. farmers have the capability to grow corn at a much lower cost than their Mexican counterparts, even without the government support that American agribusiness enjoys. In Mexico, corn is grown to some extent by agribusiness, often with ties to corporate America,

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but corn is also the food crop of the people—the peasant and the indigenous population.[1] In many ways, the plight of the peasant and the indigenous person is quite similar, however, this article will focus only upon the plight of the indigenous for three primary reasons.

First, the indigenous people of Mexico essentially developed corn and "gave" it to the world.[2] These indigenous people have finally begun to receive some consideration, insufficient though it may be, for their contributions and their discoveries of useful plants that have become mainstays of modern agribusiness and medicine. Although these contributions are of significant economic value, primarily to the developed North, indigenous peoples have not seen any rewards for their centuries-long efforts. The intellectual property considerations in this area are compelling but, for the most part, outside the scope of this discussion.

Second, although there is something of a growing movement towards recognition among the indigenous peoples of the world, their story largely remains untold. As regional and global trade agreements change the face of international trade, as the debate over the effects of globalization on the fates of the developed North and the less developed countries rages, and as countries negotiate agreements which will shape world trade, indigenous peoples generally are not invited to "sit at the table."

And finally, this topic corresponds with my background. I formerly worked for the international trade division of Baker & McKenzie in Washington, D.C., and I now teach International Business Transactions at Syracuse University College of Law in Syracuse, New York. I also currently teach Federal Indian Law while engaging in research on the rights of indigenous peoples.

This focus on indigenous peoples is also highly appropriate for a panel on "Trade and Economic, Social and Cultural Rights" in a conference on "Communities and Commodities" because in the

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1. *See* Anthony DePalma, *Mexicans Fear Corn, Imperiled by Free Trade*, N.Y. TIMES, July 12, 1993, at A3 (describing the importance of corn in Mexican society, especially among the poor).

2. *See* ARTURO WARMAN, CORN & CAPITALISM: HOW A BOTANICAL BASTARD GREW TO GLOBAL DOMINANCE 1-2 (Nancy L. Westrate trans., Univ. of N.C.Press 2003) (1998) (discussing the history and origins of corn).

explosive growth of international trade and international trade agreements, such as the North American Free Trade Agreement ("NAFTA"), indigenous peoples are seldom (if ever) seen at the negotiating table. Accordingly, the international powers rarely consider their views, their needs, and their cultural survival.

This is not to suggest that I will be found with the protestors at the next World Trade Organization ("WTO") meeting, which, ironically is in Cancun, Mexico.[3] Rather, I am arguing that with additional efforts, NAFTA can continue to go forward and can do so without destroying the lifestyles of indigenous peoples within the North American free trade area. However, it should be noted that this analysis applies to indigenous peoples everywhere and to any and all multilateral trade agreements. I will illustrate why the implementation of NAFTA is both just and fair, but also, of pragmatic importance to us as well. As I will demonstrate, the practical argument hinges on the indigenous peoples' preservation of incredibly valuable biodiversity.[4]

This article begins with a brief history of corn. Part II includes a discussion on the role of corn in the United States. Part III examines indigenous peoples as well as their relationship to land and agriculture. Part IV examines the history and role of multilateral trade agreements and NAFTA in agricultural tariffs and subsidies. The final sections of this article present some preliminary thoughts on the solution to the problems NAFTA has imposed on Mexico's indigenous corn farmers.

In an oft-cited article from 1993, the New York Times noted that Mexican corn farmers feared the effects that NAFTA, and the potential flood of cheap corn it would bring to Mexico, would have

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3. *See* Supachai Panitchpakdi, *Negotiate, Don't Posture*, WALL ST. J., May 9, 2003, at A10 (reporting that the WTO's Cancun Ministerial Conference agenda in September 2003 will focus on trade in developing countries). The Conference aims to resolve critical unfinished business initially addressed in November 2001 by the Doha Development Agenda. *Id.*

4. *See* discussion *infra* Part VI (discussing the importance of genetic diversity for healthy crop growth and the indigenous peoples' preservation of diverse strains of corn).

on traditional indigenous corn farmers.[5] Although the article focused on peasant farmers as opposed to indigenous farmers, NAFTA's effects on indigenous farmers are very similar, if not worse. In any case, in Mexico, where there is a strong correlation between poverty and percentage of Indian blood, there is a significant overlap between the two cultures.

NAFTA originally protected corn for fifteen years, longer than any other product except for dried beans, however, this protection still has not sufficiently insulated Mexico's indigenous farmers. Nearly three million farmers, mostly peasants working small fields without irrigation and producing one-third the yield of American farms, will feel the effects of NAFTA. Currently, corn subsidies cost the Mexican government almost $2 billion a year. The government buys all the corn Mexico produces at twice the world price and then subsidizes corn tortillas so that the poor can afford their most important staple.

Finally, it should also be noted that the U.S. corn which is flooding Mexican markets contains the seed of the diversity corn's destruction in the form of genetically modified corn.[6] While further development of the issue of genetically modified organisms ("GMOs") is outside the scope of this article, it should be noted that United States regulatory failures have already resulted in the appearance of GMO corn in traditional Mexican farmer's fields.[7]

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5. *See* DePalma, *supra* note 1 (supplying detailed accounts of Mexican farmers and the concerns they share regarding what a loss of corn could mean for farmers and for the Mexican people). The article focuses on the critical role corn plays in Mexican society, connecting "the Mexicans of today with the Mexicans from before the conquest." *Id.*

6. *See* Rebecca Bratspies, *The Myth of Voluntary Compliance: Lessons From the Starlink Corn Fiasco*, 27 WM. & MARY ENVTL. L. & POL'Y REV. 593, 603 n.52 (2003) (noting that a recent report of contamination involved U.S. genetically modified corn in Mexico).

7. *See* John Vidal, *Mexico's Corn U.S. GMO: Researchers Baffled As Ancient Variety of Maize Tests Positive for Modified Organisms in Area Where No Engineered Crops Are Grown*, THE GUARDIAN (November 30, 2001), *available at* http://forums.transnationale.org/viewtopic.php?p=4059.

Mexico, along with many other countries, requires that GMOs be labeled as such, whereas the United States does not.[8]

I. A BRIEF HISTORY OF CORN

Many of Mexico's indigenous peoples are currently planting an older type of corn called teosinte, derived from the corn planted by the Aztecs 500 years ago.[9] Ancestral wild corn, which Indians started cultivating and improving much earlier, is believed to be extinct,[10] however teosinte is its closest indigenous relative. Scientists generally agree that corn is of American origin, with evidence pointing toward south central Mexico, the Valley of Tehuacan in Puebla.[11] Some scholars believe that Columbus brought corn back with him after his voyage of 1492.[12] Corn became the mainstay of the slave trade, because of its caloric density and portability, and was a key element in European colonialism.[13]

Corn is one of just seven food crops – along with wheat, rice, potatoes, barley, sweet potatoes, and cassava – that supply more than half of all human nutrition worldwide.[14] Of these, corn is the third largest crop behind wheat and rice.[15] The four from America (all developed by indigenous peoples) are corn, potatoes, sweet potatoes,

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8. *See* Bratspies, *supra* note 6, at 608, n.83 (identifying the European Union, South Korea, Japan, Australia, China, and New Zealand as countries which hold similar standards as Mexico with regard to GMOs).

9. *See* WARMAN, *supra* note 2, at 29 (explaining that teosinte is grown exclusively in Mexico).

10. *See id.* (discussing the scientific research surrounding the debate of the origin and domestication of corn).

11. *See id.* at 32 (arguing that despite the disparate and geographically fragmented process of the domestication of corn, the crop still yielded many specific varieties).

12. *See id.* at 28-30 (discussing the lack of evidence for the existence of corn in Europe prior to Columbian contact with the New World).

13. *See id.* at 60 (providing a brief outline of the development of the slave trade and the role that corn played in sustaining the "human mobilization").

14. *See id.* at 1 (recognizing that although American plants have many positive contributions, they also serve as a source of poverty and exploitation).

15. *See* WARMAN, *supra* note 2, at 12 (identifying corn as the most "important crop in the new millennium").

and cassava.[16] Indigenous plants are of tremendous commercial and medicinal value. Corn is one of many plants holding value beyond the knowledge of the average individual.[17]

At present, fifty countries contribute to the global production of corn on a quarter of a million acres of total farmland.[18] Thus, any special accommodations given to indigenous peoples in order to allow them to continue their corn-based lifestyles will have inconsequential effects on the international marketplace.

Although all corn is of one species, there are more than 250 races of corn. In Mexico there are some twenty-five antique races, each with hundreds of varieties. [19] In some ways corn is the ideal peasant food, or, perhaps, anti-agribusiness food, in that it does not require complex processing plants and equipment, and it stores easily. Everything required to sustain a corn-based diet can be done by a family at home. [20]

The United States is the world's largest corn producer with thirty percent of the world's harvest, approximately sixty-six million tons for export, which represents two-thirds of the corn traded internationally.[21] Other United States corn is used in the heavily subsidized program to produce ethyl alcohol from corn. Less than half of corn is eaten directly, much of it goes to producing food for

16. *See id.* at 1-2 (adding that these four crops combine to constitute half of the total volume of the top seven crops worldwide).

17. *See id.* at 2-3 (highlighting some of the important life-altering contributions of plants).

18. *See id.* at 14 (summarizing the physical characteristics and nature of corn).

19. *See id.* at 15 (explaining the various races and varieties of corn particularly noting the large number of races in Mexico).

20. *See id.* at 20 (asserting that the simplistic methods for growing, preparing and storing corn allow peasant families to raise it without dependence on public or private services).

21. *See* WARMAN, *supra* note 2, at 23 (examining the role of the United States in the international market for corn and noting that food power is a strategic power as many countries, including Mexico, depend on corn as a major food source).

animals. This is an inefficient process in a hungry world where it takes five pounds of corn to make one pound of pig.[22]

For the darker side of American corn export I recommend Rebecca Bratspies' *The Myth of Voluntary Compliance: Lessons From the Starlink Corn Fiasco*, which the William & Mary Environmental Law Review recently published.[23] Bratspies' article touches in part on the September 2000 discovery of StarLink GMO corn found in Taco Bell taco shells even though the government only approved the GMO corn for animal consumption.[24] This created an economic nightmare that resulted in a class action settlement of up to one billion dollars and had devastating effects on United States corn exports. Bratspies argues that an inadequate regulatory structure caused the disaster.[25]

The StarLink crisis, however, differs from the currently discussed issue. In StarLink, corn intended for animal consumption ended up in human food products. In contrast, this article focuses on corn intended for consumption in Mexico but used instead as seed corn, permanently contaminating the distinct and valuable Mexican gene pool. This process caused GMO corn to appear in traditional Mexican farmers' fields despite the fact that Mexico requires the labeling of GMO corn.[26] This cross-contamination also occurred in the United States: a country not requiring the labeling of GMO corn as such.

II. INDIGENOUS PEOPLES, LAND AND FARMING

Indians first began to cultivate and improve on corn 7,000 years ago. In the United States, we continue to see the sacred relationship between indigenous peoples and the land, which involves hunting, fishing, and farming rights – rights the United States Indians always

22. *See id.* at 24 (commenting that despite the fact that one-fourth of the world's population consumes corn as its principal foodstuff (direct consumption) much of the harvested corn goes to feeding animals (indirect consumption)).

23. Bratspies, *supra* note 6.

24. *See generally id.*

25. *Id.*

26. *Id.*

attempted to retain by treaty. The indigenous peoples of Mexico also have a sacred relationship to corn evidenced by the fact that teosinte, ancestral corn, translates as "corn of the gods."

Tragically, in many places in Mexico, such as Chiapas and elsewhere, slash and burn agriculture results in corn destroying the thin soil. Once the soil can no longer grow corn it is used for cattle grazing until it is completely washed away. However, it is crucial to note that the stresses upon the ecosystem are caused by global ecological problems the indigenous farmers did not create and by a dramatically shrunken land base that brings into question the efficacy of slash and burn.[27]

Meanwhile, international ecologists are trying to interest indigenous people in other crops or other forms of agriculture. Efforts have been made to convert some agriculturalists to growers of gourmet coffee, but while the retail price of coffee remains high, the growers have not achieved economic success.[28] An example of this practice is the state of Chiapas, Mexico's last remaining rain forest.[29] In 1972, the government deeded the forest, the size of Connecticut, to the Lacandon tribe. As a result of the harsh effects of the tribe's slash and burn agriculture the land in and around this reserve grows smaller every year and will not last much longer.[30]

The Zapatista rebels residing in the area see the ecologists' efforts as something other than a helping hand. They perceive the environmentalist outsiders as tools of multinational corporations using the concept of environmentalism to mask their real goal: to obtain and exploit the potential of the biodiversity in the forest. The

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27. *See* Peter Singer, *One World, The Ethics Of Globalization*, at 28 (2002) (discussing the broader implications of this argument and also linking the problem to the familiar "tragedy of the commons" concept).

28. Gawain Kripke, Failure of the Coffee Trade in Latin America to Bring About Human and Economic Development, Remarks at the American University Washington College of Law "Communities & Commodities: Linking International Trade and Sustainable Development" (March 28, 2003).

29. *See* Tim Weiner, *Growing Poverty is Shrinking Mexico's Rain Forest*, N.Y. TIMES, Dec. 8, 2002, at 16 (examining the damage and poverty caused by slash and burn practices through the example of Mexico's rainforest).

30. *See id.* (describing the effects of slash and burn agriculture on the Montes Azules Biosphere Reserve).

Zapatistas see the efforts to change their farming lifestyles as a "war of extermination against our indigenous communities"[31] and the ecologists as "fools trying to save our lives so that we will cease being what we are: indigenous peasants with our own ideas and culture." [32]

III. NAFTA, FREE TRADE AND CORN

Historically, agriculture has always been a contentious issue in the negotiation of international trade agreements. This was true of the General Agreement on Tariffs and Trade ("GATT"), the WTO, the creation of the European Union ("EU"), and NAFTA. In addition to the specific issues indigenous peoples face, agriculture touches upon national security issues (such as the need for food independence in the face of blockade), health and safety issues (such as the European Union's concern over American beef fattened with hormones or the above mentioned GMOs), and cultural issues (such as Japan's reluctance to import rice that can be grown much cheaper in California). Further exacerbating the problem, agricultural interests are often powerful voices in national legislatures.

During the Bretton Woods Conference[33] in 1944, the Allies began to plan a new world while World War II was still underway. The International Monetary Fund ("IMF") and the World Bank were created at this time. The GATT was started in 1947 in Geneva and the United States. The GATT promoted two key concepts, namely, to avoid the disastrous protectionism of the 1930s and to stress a more international view of world economy. Twenty-three nations, including the United States, signed the GATT in 1947. At that time it covered only trade in goods, however, at that time trade in goods accounted for and directly affected approximately eighty percent of the world's trade. The GATT excluded trade in services, such as the vital banking and insurance industries, textiles and clothing, intellectual property rights, and most importantly for our purposes,

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31. *Id.*

32. *Id.*

33. *See* Singer, *supra* note 26, at 55 (commenting on the background of the WTO and explaining that the WTO is the successor organization to the GATT).

agriculture. The Uruguay Round of negotiations began in 1986 and culminated in the creation of the WTO and in the broadening of the GATT's regulation of trade in goods and services in 1994. 125 nations, including the United States, signed the WTO Agreement, creating a powerful mechanism for trade liberalization.

Turning now briefly to NAFTA,[34] it began with the Canada-United States Free Trade Agreement ("CFTA"), which planned a ten-year phase-in from 1988 to 1998 and included the eventual elimination of all agricultural tariffs and subsidies. Mexico sought to join in and NAFTA entered into force on January 1, 1994.[35] Like the CFTA, NAFTA had a variety of phase-in provisions, and it is impossible to overestimate the final significance of the Agreement to the three countries.[36]

Canada is the largest buyer of U.S. goods and in the first year of operation Mexico passed Japan, becoming the second largest buyer.[37] Under the Agreement the United States will lift many tariff barriers currently imposed against Mexico in 2004 (as are certain emergency protective measures). The most sensitive barriers, those involving corn and dry beans, are scheduled for removal by 2009. As noted, Mexicans fear that the NAFTA will result in a flood of cheap corn even though the agreement protected corn (along with dried beans) for fifteen years longer than other products.[38]

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34. *See* North American Free Trade Agreement, Dec. 8-17, 1992, 107 Stat. 2057, 32 I.L.M. 289.

35. *See id.* (identifying the parties to the North American Free Trade Agreement, including Mexico).North American Free Trade Agreement Series, NAFTA Facts Doc. #3001 – NAFTA Key Provisions (outlining key provisions of NAFTA), *at* http://www.mac.doc.gov/nafta/3001.htm (last visited Aug. 1, 2003).

36. North American Free Trade Agreement Series, NAFTA Facts Doc. #3001 – NAFTA Key Provisions (outlining key provisions of NAFTA), *at* http://www.mac.doc.gov/nafta/3001.htm (last visited Aug. 1, 2003).

37. Mexican Embassy to the U.K., Update Mexico April 1998, NAFTA News (noting that, while Canada remains the number one destination for U.S. exports, Mexico surpassed Japan as the second largest destination), *at* http://www.embamex.co.uk/update/april98/naftanew.html (last visited Aug. 1, 2003).

38. *See* DePalma, *supra* note 1 (emphasizing corn's importance to Mexico's poor population).

IV. CLASH OF CULTURES: NAFTA VERSUS INDIGENOUS PEOPLES

From a purely economic perspective, it is as illogical to grow corn in Mexico at twice the world price and one-third the yield per acre of the United States, as it is to try to grow bananas in Canada. The indigenous peoples, however, do not focus on the macroeconomics of issues pertaining to the perpetuation or destruction of a particular lifestyle; they instead focus on maintaining their centuries-old, time-honored, traditions passed from generation to generation. However, the question remains: how does one bring money to the impoverished villages without "trampling a rural culture built on the ruins of the ancient Mayan civilization?"[39]

Previous attempts have led to conflicts with traditional cultural practices. As discussed above, U.S.-backed efforts to shift agriculturalists to alternative crops can backfire,[40] and ignore indigenous peoples' traditions and self-sufficiency. Tourism is also a potentially money-generating proposition, however, it too moves peasants away from tradition. In a very real sense, turning an indigenous Mexican into a tourist attraction is like giving an indigenous United States tribe a casino instead of returning taken land.

By analogy then, the path of tourism, or "eco-tourism," as a means of salvation for indigenous culture leads to what Professor Robert Porter, a Seneca, calls "auto-colonization."[41] Porter argues first that while it is not possible, or even desirable, to maintain indigenous identity exactly as it was at the time of first contact, there is something unique about indigenous culture that we must all strive to sustain into the future.[42]

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39. Weiner, *supra* note 28.

40. Kripke, *supra* note 27 and accompanying text.

41. *See* Robert B. Porter, *Pursuing the Path of Indigenization in the Era of Emergent International Law Governing the Rights of Indigenous Peoples*, 5 YALE HUM. RTS. & DEV. L.J. 123, 133 (2002) (describing the theory of "auto-colonization" as the blending and interaction of the psychological and physical barriers to indigenization).

42. *See id.* at 131 (stating that "there is something intrinsically unique about being 'Indigenous' that must be sustained into the future").

Porter defines "auto-colonization" as "the process by which Indigenous peoples, because of their inability to possess, retain, or maintain memories of the colonization process, actually seek resolutions of their colonization-induced problems in a way that promotes the colonizing nation's agenda rather than remedies its aftereffects."[43] To overcome the tendency toward auto-colonization, Porter argues that indigenous peoples must overcome two psychological barriers: psychological dependency on the colonist power and amnesia regarding the colonization process.[44]

In the United States, the former flows from Chief Justice Marshall's holding in *Cherokee Nation v. Georgia,* which found that the Indians are "domestic dependent nations."[45] This leads to unilateral actions, even if with good intentions, which are the equivalent of colonial edicts. Applied to Mexico's unilateral actions, bilateral actions under NAFTA, or multinational actions under the United Nations, Porter's thesis suggests that any solutions *imposed upon* rather than *negotiated with* indigenous peoples may indeed "kill the Indian [in him, but] save the man."[46] For example, NAFTA's key provisions appear to be drafted in favor of U.S. business while failing to thoroughly consider the needs of the indigenous people.[47] U.S. exporters can ship more products into Mexico at a lower cost due to NAFTA's removal of many previously existing trade barriers.[48] In addition, NAFTA contains safeguards that allow U.S. companies to adjust to injurious imports from Mexico, yet, as discussed above, the provisions that exist to protect

43. *Id.* at 133.

44. See *id.* (explaining the two psychological barriers must be addressed and redressed in order to properly remedy the aftereffects of colonization).

45. *See* Cherokee Nation v. Georgia, 30 U.S. 1, 17 (1831) (holding that the Indians had an unquestionable right to the land they occupied).

46. Porter, *supra* note 41, at 129.

47. *See* NAFTA Facts Document #3001, *supra* note 36, at 1 (examining key provisions that give U.S. business a competitive advantage by rigorously protecting technological intellectual property rights, and those that remove many trade barriers that will allow more U.S. products to enter Mexico).

48. *See id.* at 1-2 (discussing key NAFTA provisions).

Mexico's indigenous corn farmers from injurious U.S. imports will likely prove ineffective.[49]

Thus, if Indians' participation in the casino gaming industry is auto-colonizing behavior in the United States, so, too, would be turning Zapotec farms into eco-tourist destinations, at least without Zapotec input. We should heed Professor Porter's concluding argument that "adherents of international law protections for Indigenous peoples should instead be focused exclusively on the challenge of creating sufficient space for Indigenous societies to pursue self-determination."[50]

V. ARGUMENTS FOR PROTECTING INDIGENOUS FARMERS: THE MORAL AND THE PRACTICAL

Although it is compelling, I will devote little time to the moral argument. The treatment of indigenous peoples world wide by the colonial powers – by the Spanish in Mexico and by the British and then the Americans in what is now the United States – has been amply documented. There should be no debate on whether or not all cultures and governments should accord indigenous peoples the right to self-determination.

Instead, I will focus on just one or two aspects of indigenous corn farming that are of practical significance. The first is the preservation of genetic diversity. The lack of genetic diversity in Irish potatoes largely contributed to the Irish potato famine.[51] Ironically, the colonial powers took a very small genome from the diverse variety of potatoes available in the New World when they brought potatoes back to the Old World. Corn, despite the many patented hybrid varieties available, is increasingly less diverse coming out of the United States agribusiness laboratories. American miracle production

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49. *See id.* at 3-4 (outlining NAFTA safeguards in place to protect U.S. business); *see also* discussion *supra* Part IV (explaining the likely ineffectiveness of NAFTA's protective measures on Mexican corn).

50. Porter, *supra* note 39, at 173.

51. *See generally* Wikipedia: The Free Encyclopedia *Irish Potato Famine* (providing a detailed analysis of the Irish potato famine), *at* http://www.wikipedia.org/w/wiki.phtml?title=Irish_potato_famine (last visited June 21, 2003).

rates depend on corn varieties that in turn depend on massive inputs of chemical fertilizers, chemical pesticides, and water.[52] This may be economically sound, but for the long-term, it is a plan for environmental disaster.

Tucked away in remote corners of Mexico are corn varieties that are naturally pest-resistant and can grow in poor soil or without irrigation. Although the indigenous people do not strive to protect us from our ecological folly, they are preserving gene stocks that may be of immense importance one day. And one can speculate that if we ever need to turn to these gene banks, the holders of these property rights will be less than fully compensated. As Arturo Warman points out, "the cultural achievement of people worldwide who domesticated and developed the cultivated plants and endowed us with a genetic fortune is being converted into a private patrimony."[53] Due to time and space constraints, this article will not address the possibility that securing intellectual property rights ("IPRs") in plant genetic resources can be of aid to indigenous peoples. NAFTA embraced this possibility, which further evidences that this topic demands consideration.[54]

There are, however, some multilateral efforts on behalf of indigenous peoples. Specifically, the United Nations created and ratified a multilateral treaty, which defines indigenous peoples' rights;[55] created a working group on the rights of indigenous

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52. *See* WARMAN, *supra* note 2, at 187 (stressing that U.S. corn has lost its diversity and in order to meet production demands relies on more chemicals than other genetic breeds).

53. *Id.* at 19.

54. *See* Mark Hannig, *An Examination of the Possibility to Secure Intellectual Property Rights for Plant Genetic Resources Developed by Indigenous Peoples of the NAFTA States: Domestic Legislation Under the International Convention for Protection of New Plant Varieties*, 13 ARIZ. J. INT'L & COMP. L. 175, 176 (1996) (examining the intellectual property rights of plant DNA as defined within the International Convention for the Protection of New Varieties of Plants, which NAFTA integrated).

55. *See* Siegfried Wiessner, *Rights and Status of Indigenous Peoples: A Global Comparative and International Legal Analysis*, 12 HARV. HUM. RTS. J. 57, 98-104 (1999) (discussing the process for, and the impetus behind, the United Nations' creation of international agreements governing human rights, and specifically, indigenous peoples' rights).

peoples,[56] which produced the 1993 Draft Declaration on the Rights of Indigenous Peoples;[57] and established a permanent committee on indigenous peoples in 2000.[58] Professor Porter is critical of these actions, however, in that they equally facilitate not only protection of indigenous societies, but also protection through assimilation into the dominant culture, thus leading to cultural extinction.[59]

VI. INDIGENOUS SELF-HELP

This section examines an often overlooked part of the solution to the plight of indigenous farmers: solutions from the voices of the indigenous peoples themselves.[60]

This section again turns to Professor Porter for the argument that there is something unique about indigenous culture that must be sustained into the future and that indigenous peoples themselves must be in charge of their own futures.[61] We must avoid unilateral actions, even those with good intentions, which are the equivalent of

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56. *See id.* at 101 (stating that this "working group" was "charged with the task of drafting a universal declaration on the rights of indigenous 'populations'").

57. *See* Working Group on Indigenous Populations, *Report of the Working Group on Indigenous Populations on its Eleventh Session*, U.N. Commission on Human Rights, Sub-Commission on the Prevention of Discrimination and Protection of Minorities, 45th Sess., Agenda Item 14, at 50-52, U.N. Doc. E/CN.4/Sub.2/1993/29 (1993) (detailing specific rights of indigenous peoples).

58. *See Establishment of a Permanent Forum on Indigenous Issues*, E.S.C. Res. 22, U.N. ESCOR, Subst. Sess. 2000, pt. 1, Agenda Item 14(g), at 50, U.N. Doc. E/2000/INF/2/Add.2 (2000) (establishing a permanent forum to address the issues pertaining to indigenous peoples).

59. *See* Porter, *supra* note 42, at 158 (stating that for those who wish to assimilate into state society and thus pursue a Path of Extinction, the Draft Declaration apparently provides support for that agenda as well). For those who wish to pursue a compromised, hybrid path – i.e. to preserve both a degree of autonomy while obtaining some measure of incorporation – the structure of the Draft Declaration would seem to allow for the accomplishment of such an agenda perfectly. *Id.*

60. *See id.* at 131 (arguing first that while it is not possible or even desirable to maintain indigenous identity exactly as it was at the time of first contact, there is something unique about indigenous culture that must be sustained into the future).

61. *See id.* at 130 (arguing that there is something intrinsically different and maybe even superior about "traditional" Indigenous culture and identity, primarily because of its commutation with community-oriented values).

colonial edicts. Applied to Mexico's unilateral actions, bilateral actions under NAFTA, or the multinational actions of the United Nations, any solutions *imposed upon*, rather than *negotiated with*, indigenous peoples risk cultural genocide. Professor Porter's concluding argument, that "adherents of international law protections for Indigenous peoples should instead be focused exclusively on the challenge of creating sufficient space for Indigenous societies to pursue self-determination,"[62] holds even more significance in light of the self-determination principles governments claim to honor and protect.

CONCLUSION

Whether one is an unabashed globalist or an unabashed opponent thereof, it is clear that NAFTA and other trade regimes will affect indigenous peoples. This article has focused on the indigenous peoples of Mexico and the teosinte they grow as a matter of cultural survival. If they are ignored, globalization, as embodied by NAFTA, will destroy their culture and way of life. Yet accommodations can be made that will have little impact on North America's trade in agricultural products. If the United States, Canada, and Mexico can all subsidize their big business farmers and fiercely battle to protect their markets, surely we can protect the indigenous teosinte farmers of Mexico without challenging or threatening the framework of NAFTA. However, governments must develop such protections in consultation with the indigenous peoples, not impose those "protections" on those with no voice in the matter. Only then can these peoples avoid becoming eco-tourist destinations or the victims of "auto-colonization".

Finally, although the moral argument in support of this thesis is clear and overwhelming, for the sake of the pragmatists we can conclude by re-emphasizing that Mexico's indigenous peoples are providing a valuable service by maintaining a diverse gene pool that the West may one day understand has inestimable value.

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62. *Id.* at 173.