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Indigenous Rights and Responsibilities for the Natural World

by Dean B. Suagee

Mother Earth is suffering, and American Indian tribes and other indigenous peoples have important work to do, defending her against destruction and helping her to heal. In many parts of the world, indigenous peoples are fighting to protect their homelands from the kinds of environmental destruction that some people call "development." In addition to opposing destruction, indigenous peoples have become involved in the global movement to fashion approaches to development that are environmentally sustainable. Many indigenous cultures provide living examples of sustainability over centuries or millennia, and some people in the industrialized world, myself included, have suggested that a great deal could be learned from the ways in which indigenous cultures provide for the material

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needs of human communities and the value systems that underlie and reinforce material cultures. One basic value shared by many indigenous cultures holds that human communities have responsibilities to future generations and to the natural world.

Some might suggest that the most compelling reasons for promoting the survival of indigenous peoples are the potential benefits for the world. For example, many indigenous peoples live in environments rich in biodiversity, and their cultural knowledge of medicinal uses of plants can be transformed into medicines that save lives or help people regain their health, and yield huge profits for multinational pharmaceutical companies. Some environmental activists might suggest that the chances of stopping ecologically catastrophic megaproject boondoggles are significantly enhanced when indigenous peoples are prominently featured on the front lines (as was the case in shelving phase II of the James Bay project in Quebec), and that the world at large benefits when such boondoggles are stopped.

I think that there is a more compelling and more basic reason for people in the world at large, and especially for lawyers who practice international law, to be concerned with the survival of indigenous peoples—they are human societies, and by virtue of this they are entitled to fundamental human rights.

Over the last two decades, an international movement has emerged that seeks



Artwork by Gary C. White Deer, a Choctaw Indian artist.

recognition under international law for the human rights of indigenous peoples. Much of the action has occurred in Geneva at the annual meetings of the United Nations Working Group on

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Indigenous Populations, which was established in 1982 under the auspices of the UN Human Rights Commissions and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. For much of its existence, the Working Group has focused most of its attention on one part of its mandate—the develop-

ment of standards to protect the human rights of indigenous peoples.

The simple fact that the Working Group was given this mandate constitutes recognition by the international community that existing human rights instruments are inadequate to protect the

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rights of indigenous peoples. From the perspective of indigenous peoples, the most fundamental of human rights are collective, rather than individual, such as the right to exist as distinct peoples, to be protected against physical and cultural genocide, to exercise self-government and freely determine for themselves their relationships with the states of the world, and to control the habitats and resources of their traditional homelands.

In its eleventh annual session in 1993, the Working Group approved the text of the draft Declaration on the Rights of Indigenous Peoples and forwarded the draft for eventual action by the UN General Assembly. The draft Declaration sets forth rights that, according to Article 42, constitute the "minimum standards for the survival, dignity and well-being of the indigenous peoples of the world." Throughout the forty-five articles that make up the draft Declaration, numerous provisions demonstrate the Working Group's acceptance of the importance of collective rights for indigenous peoples to carry out their distinct ways of life. Similarly, numerous provisions recognize the importance of the spiritual and cultural ties that indigenous peoples have to their homelands.

Two articles in particular, Articles 25 and 26, express some of the basic concerns of indigenous peoples for the protection of the natural world. Article 25 provides that indigenous peoples "have

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the right to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal seas" as well as the right "to uphold their responsibilities to future generations in this regard." Article 26 provides, in part, that "indigenous peoples have the right ... to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources." These articles taken together reflect the concerns of indigenous peoples for environmental protection, but not in the mold of a regulatory regime imposed from outside by a national or sub-national government that claims authority over an indigenous people and its homeland. Rather, for indigenous peoples, environmental protection is a human right that includes recognition of indigenous peoples' own governmental authority over their territories.

In my work with American Indian tribes, I have come to appreciate the diversity that exists among tribes, diversity that grows from many kinds of roots, including the diversity of the natural environment in which tribal cultures have developed and the different historical patterns of their dealings with the United States. In light of this diversity among tribes, I feel compelled to counsel caution against sweeping generalizations. But, I believe that the cultural value reflected in Article 25—that in their spiritual and material relationships with the natural world, indigenous peoples have responsibilities to future generations—is a very widely held value. Indigenous peoples regard the natural world as sacred, and they regard themselves as part of the natural world.

There is one other generalized lesson from the experience of American Indian tribes that I think rings true on a widespread basis. Indian communities do better, live better, when they govern themselves, and when the larger society

respects their right of self-government and conveys some sense of appreciation for the fact that Indian cultures are part of the fabric of American society. I think that there is no better way to show one's belief in the value of the cultures of indigenous peoples than by recognizing the fundamental right of these peoples to govern themselves and their territories. This is what the struggle for the human rights of indigenous peoples is all about. ☉

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Recognizing Indigenous Peoples' Rights in the Americas

by Robert Guitteau & Nadia Ezzelarab

The Inter-American Commission on Human Rights (IACHR) is currently revising a future draft declaration on the rights of indigenous populations in the Americas. The draft is being prepared at the request of the General Assembly of the Organization of American States (OAS), and is part of an on-going trend in the development of international human rights to address the inadequacies of existing human rights mechanisms vis a vis the complex survival needs of indigenous peoples.

International instruments, such as the Charter of the United Nations and the two international covenants addressing civil and political rights and economic, social and cultural rights, advance the right of self-determination of all peoples. These documents, however, do not address indigenous populations directly. Nonetheless, they lay the groundwork for the more recent development of legal protections for indigenous peoples. As noted by University of Iowa College of Law Professor, Jim Anaya, there is a "trend among states toward the express recognition that the principle of, or the right of, self-determination implies obligations on the part of states for indigenous peoples." Recently, the International

Labor Organization adopted the Convention Concerning Indigenous and Tribal Peoples in Independent Countries



(ILO 169), and the UN is currently developing a draft declaration on the rights of indigenous populations.

In formulating the draft instrument, the IACHR has taken into account ILO 169 (five of the six countries that ratified ILO 169 are members of the OAS - Bolivia, Colombia, Costa Rica, Mexico, and Paraguay) and the UN's draft declaration, while at the same time has tried to address conditions specific to the Americas.

Governments and indigenous organizations answered the first round of IACHR consultations by saying that indigenous peoples' rights are an implicit prerequisite to a functioning democratic society. Indigenous organizations demanded in their responses that the draft regard indigenous peoples' laws as an integral part of states' legal systems.

In addressing the legal effect of a declaration, Professor Anaya suggests that, "a declaration would be beneficial to the rights of indigenous peoples in that the Inter-American Commission and the Court and the OAS Member States would likely be held, as a practical matter, to the standards in the declaration." While the declaration will not have the same legal standing as a treaty, its applicability will compare to that of a UN General

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