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Recognizing Indigenous Peoples' Rights in the Americas

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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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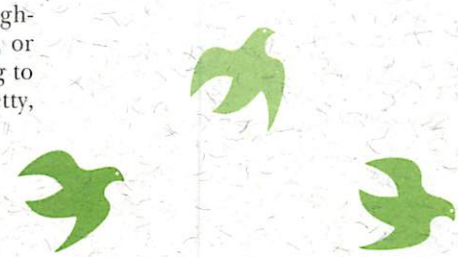
be, the imposition of peace and stability from outside the zone of conflict itself. Ultimately, within states, so long as the nation-state system survives, people have to learn to live in peace with their fellow countrymen. They cannot be taught, and ethnic tranquillity cannot be imposed from the outside, no matter how high-minded the motives of the outsiders, or how tragic the situation they are trying to alleviate. This reality may not be pretty, but it is accurate.



WCL Professor Participates in Election Monitoring in Nepal

by Angela Collier

Andrew Popper, Associate Dean of Administration and WCL Law Professor, travelled to Nepal in November 1994 to monitor the country's mid-term elections. The monitoring program was conducted under the direction of the National Election Observation Commission (NEOC), an indigenous Nepalese organization, and involved observers from every continent.

The observers were divided into teams of three or four and dispatched throughout the country. Popper, who acted as spokesperson for his team, was assigned to monitor the election process in various polling stations in the province of Dhading. Following the election, a coordinating committee assessed the teams' reports and made recommendations to the Nepalese Congress regarding election certification.

> The election was "moving, irregular, exciting, full of hope and democracy, but at the same time full of problems."

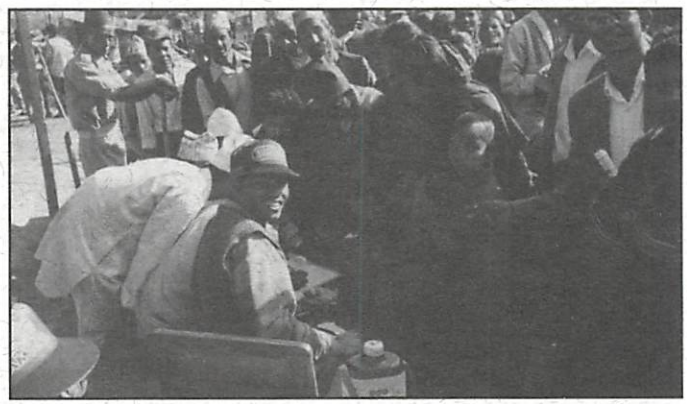
Popper recalls that the election was "moving, irregular, exciting, full of hope and democracy, but at the same time full of problems." He believes that voters were intelligent and highly interested in the election process, but lacked good sources of information on the issues and ideologies of the parties. Popper notes that some of the election practices were questionable, including underage voting, rough treatment by riot police, and the breaking of some ballot-box seals. "The very form of government may hang in the balance when such forces are in conflict," states Popper. "Thus, the election becomes a civil form of decision-making, in sharp contrast to violent revolution."

> "In a three-year-old democracy, even twenty percent voter fraud may have to be tolerable.

Despite the problems, the NEOC Coordinating Committee ultimately recommended certification of the election in which the Marxist-Leninist party received a majority of votes. Concurring with the NEOC's decision, Popper states, "Besides the fraud, I was taken by how strongly everyone felt they were affecting an outcome." He adds, "In a three-year-old democracy, even twenty percent voter fraud may have to be tolerable. There were improprieties, but they did not reach the level to de-certify." Overall, Popper recalls his experience in Nepal as rewarding. "It is humbling and a privilege to be part of a process that goes to the heart of public governance."

Dean Andrew Popper

Dean Popper with voters at the Gajuri polling station in Dhading province, Nepal



Dean Andrew Popper

Local officials at the Negalpanini polling station in Dhading province, Nepal review the registration qualifications of voters. Nonetheless, some individuals below the legal voting age were permitted to vote.

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Assembly Resolution. That is, the declaration, once approved, can be used by adjudicative and administrative bodies for its interpretive value of indigenous peoples' rights as a reflection of the collective "state of mind" of the Member-States of the OAS.