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THE CONCEPT OF INDIGENOUS PEOPLES' SELF-DETERMINED DEVELOPMENT OR DEVELOPMENT WITH IDENTITY AND CULTURE: CHALLENGES AND TRAJECTORIES

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Introduction

“As far back as 1821, the original plan for the Guatemalan nation devised by the architects of independence suggested the necessity of eliminating racial and ethnic differences to make the country viable or feasible; later orthodox Marxism-Leninism demanded that ethnic dissent be minimized or ignored in order to make the revolution or class struggle viable or feasible; then the liberal philosophy taught that progress and material development could only be achieved through a *mestizo* or *ladino* culture (according to the liberals, in order to lift the indigenous people out of poverty, one first had to lift them out of the culture and language: “the Indian has to be killed to be saved”; or to put it another way, one had to take the Indian out of the Indian, i.e. to save the indigenous people from poverty their ethnic identity had to be wiped out.) “

Demetrio Cojti Cuxil¹
Maya Leader, 1996

Development, progress and modernity are issues tackled head-on by us, indigenous peoples, in our struggles for survival, for our basic human rights and fundamental freedoms and our identities. The quote above represents what our ancestors and us went through and continue to experience from the colonial era to the present. When colonizers invaded our territories they justified this on the grounds that we are a barbaric, primitive peoples who need to be

¹ Demetrio Cojti Cuxil, “The Theory and Practice of Indigenous Development”, *Indigenous Development: Poverty Democracy and Sustainability*, eds. D. Iturralde and E. Krotz, (Washington D.C.: IDB, 1996) 48.

“civilized” . In the post-colonial era when nation-building was the political and economic agenda of newly independent states, development and modernity provided the justification for the re-colonization of our territories and attempts to obliterate our identities and cultures. The homogenizing and centralizing powers of modern states has led to the destruction of some indigenous societies and cultures which is one of the great tragedies of humankind.

In spite of the fact that four development decades have already come and gone since 1960s, the impoverished and marginalized situations of most indigenous peoples still remains. Many indigenous peoples assert that it is the dominant development paradigm of modernization and industrialization which caused the destruction of their indigenous economic, social and cultural systems. The present phase of globalization which is underpinned by neo-liberal economics and liberal political theory has further increased the risks and vulnerabilities of indigenous peoples.²

To respond to the abject situations of poverty and discrimination, indigenous peoples from all parts of the world developed their movements which started locally and expanded to become global. Most of our struggles revolve around the protection of our lands, territories and resources against expropriation by the state, by corporations or by the dominant populations. Integral to this struggle is the assertion that our traditional political, economic, social, cultural and spiritual systems be respected and allowed to co-exist with the modern systems adopted by most nation-states.

One major victory of the global indigenous peoples’ movement is the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDECRIP) by the UN General Assembly in September 13, 2007. This is, undoubtedly, the fruit of more than 500 years of cumulative struggles which we and our ancestors waged in our own territories and beyond. Thus, it behooves, us and the future generations not to waste any opportunity to use this Declaration to help shape a more humane and sustainable world.

The UNDECRIP established the basic concepts and principles of self-determined development. It established that we have the right of self-determination,³ which is a foundational right. It did not only recognize our right to our lands, territories and resources but also our cultural rights and the right to development.⁴ Therefore, the

² These dominant economic and political theories give premium to the role of the market/ private sector to generate wealth which will achieve development. The state is consigned to be a legislator and guarantor of liberalized trade and financial markets which can operate unhindered on a global or transnational scale. This led to the creation of laws which liberalized the entry of foreign investments and corporations into indigenous peoples’ territories leading to further disenfranchisement of indigenous peoples of their lands. Thus, even if there are national laws put in place to recognize indigenous rights to lands, there are other conflicting laws and trade agreements made by governments which undermine the implementation of these.

³ Article 3 of the UNDECRIP which is contained in UN Doc. A/Res/6/295 (download from www.un.org/esa/socdev/unpfii) states: “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.”

⁴ The cultural rights cited in the Declaration are as follows; Art. 2. right to be free from any kind of discrimination; Art. 3 right of self-determination; Art. 5. right to maintain and strengthen distinct cultural institutions; Art. 7. collective right to live as distinct people. Art.8. right not to be subjected to forced assimilation; Art.9. right to belong to an indigenous community or nation; Art. 11. right to practice and revitalize cultural traditions and to receive redress for cultural, intellectual, religious and spiritual property taken with their free, prior and informed consent; Art. 12. right to manifest, practice, development and teach spiritual and religious traditions, customs and ceremonies; Art. 13. right to revitalize and transmit to future generations their histories, languages, oral traditions, philosophies; Art. 14. right to establish and control their education systems

Declaration is the main framework to be used to further en flesh, elaborate and operationalize the concept and practice of indigenous peoples' self-determined development.

The purpose of this paper is to trace the history and epistemology of indigenous peoples' self-determined development or development with identity and culture and to synthesize the basic elements of this concept. On this basis a briefing paper will be developed which can help guide UN Agencies and government officials on how to appropriately support or pursue the development with identity approach or self-determined development approach.

I will trace the history and epistemology of indigenous peoples' self-determined development or development with identity and culture, albeit in a partial manner. This concept has been developed by, us, in our assertion that their own ways of life, our values of solidarity, reciprocity amongst ourselves and with nature, manifested in our spiritual, cultural and cosmological relationship with our lands and waters, should not be destroyed by so-called development. Clearly, its epistemology cannot be delinked from the histories of indigenous peoples' struggles and movements. However, this paper cannot extensively cover the indigenous peoples' movements in various parts of the world.

I will focus more on our engagements with international processes which became an arena for us to assert that self-determined development is a key aspect of our human rights claims. I will look into how the various UN processes dealt with the problematique of development and analyse how these included or marginalized indigenous peoples' perspectives. Then I will take stock of how we advocated inside the UN for the establishment of processes, instruments, mechanisms and spaces that address our issues and highlight our major gains. I will also look into how we used existing soft and hard international instruments and norms on human rights, culture, development, gender and environment⁵ and the world conferences in the 90s, to reinforce or further elaborate our self-determined development.

This paper mainly comes from my perceptions and experiences as an indigenous activist, engaged with the indigenous peoples' movements from the local to the global in the past thirty five years. My recommendations on how to use existing instruments, including the newly adopted Declaration, comes from what I learned in my participation in the drafting and negotiations of the UN Declaration and the advocacy work in other UN processes.

The term "indigenous peoples' self-determined development" will be used more than "development with identity and culture" as this was what was agreed upon by indigenous leaders in the "Consultation and Dialogue on Indigenous Peoples' Self-Determined Development or Development with Identity" held in Tivoli, Italy from

and institutions; Art. 15. right to have the dignity and diversity of their cultures reflected in all forms of education and public information; Art. 16. equal access to all forms of non-indigenous media; Art. 24. right to traditional medicines and to maintain their health practices; Art. 31. right to maintain, control and protect their cultural heritage, traditional knowledge and traditional cultural expressions; Art. 33. right to determine their own identity or membership in accordance with their customs and traditions; Art. 34. right to their distinctive customs, spirituality, traditions, procedures and practices, judicial systems or customs; Art. 36. right to maintain and develop contact, relations and cooperation across borders.

⁵ These include various instruments which compose International Human Rights Law (e.g. UN Human Rights Declaration, International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, International Convention on the Elimination of all Forms of Racial Discrimination, Convention on the Rights of the Child, CEDAW, etc); the jurisprudence which emerged from the Treaty Bodies and other regional human rights bodies, etc.); Multilateral Environmental Agreements (CBD, UNFCCC, et.), instruments developed by other UN agencies like UNESCO and ILO, the decisions and recommendations of the Permanent Forum on Indigenous Issues, among others. The UN World Conferences include the UN Conference on Environment and Development (UNCED, 1992), World Conference on Human Rights (Vienna, 1993) Fourth World Conference on Women (Beijing, 1995), etc.

March 14-17, 2008.⁶ At times I will use both interchangeably. I am aware of the ideological trap one can fall into with the use of the term development even if it is qualified. However, a full debate on what is the politically correct term to use is beyond the scope of this paper.

Since UNESCO is the key UN agency mandated to deal with culture, education and science and it is a lead agency in the debate over culture and development, it is essential to look into how it has contributed to norm-setting on the rights to culture and development. Its Conventions and Declarations which are relevant to the subject matter at hand will be examined to see what opportunities these offer to support self-determined development. I will only include key UNESCO instruments for the protection and promotion of cultural diversity.⁷

Key Achievements in the Past 20 Years.

Self-determined development for indigenous peoples is not a grand paradigmatic generic alternative to mainstream development. It is simply part of our assertion of our right of self-determination and to remain as diverse and distinct cultures and communities. It captures the essence of our struggles since colonization to define our own development within the framework of our inherent rights and in consonance with the relationship we have with nature. It is our attempt to protect whatever remains of our indigenous cultural, economic and political systems and values which we would like to sustain.

The values we want to perpetuate include equity, reciprocity, solidarity, harmony between us and nature, collectivity and conservation of natural wealth for the seventh generation, among others. Our indigenous systems or parts of these and our traditional livelihoods still exist because of our active and passive resistance against development and modernity and against the violation of our human rights. We have adapted to the changes which came into our communities and we accommodated some aspects of modernity. But this does not mean that we totally abandoned our own systems, worldviews and values. Some of our perspectives and values resonate with the essence of the HRBA and the ecosystems approach, thus we are partial to the use of these frameworks to promote self-determined development.

There are significant events which took place in the past 20 years which helped articulate elaborate and advance our views of self-determined development or development with identity and culture. The most crucial among these are the establishment of the UN Permanent Forum on Indigenous Issues⁸ and the adoption of the UN Declaration on the Rights of Indigenous Peoples.⁹

The Forum is mandated to be the advisory body to the Economic and Social Council to discuss indigenous issues within the mandate of the Council which includes economic and social development, education, environment, culture, health and human rights. It provides advice to states and the UN programmes, agencies and funds, through the Council. Furthermore, it is mandated to raise awareness and promote the integration and

⁶ Tebtebba (Indigenous Peoples' International Centre for Policy Research and Education) organized this Consultation and dialogue on Indigenous Peoples' Self-Determined Development or Development with Identity. The participants were 20 key indigenous leaders from most regions of the world and 20 representatives of UN agencies, the World Bank, the CGIAR, NGOs who are supporters of indigenous peoples. This paper has been revised to include some of the discussions in this event.

⁷ These instruments are the UNESCO Universal Declaration on Cultural Diversity (2001), the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005), the Convention on the Safeguarding of the World's Intangible Heritage (2003) and the Convention on the Protection of the World's Cultural Heritage (1972).

⁸ The resolution which established the Forum is contained in UN Doc. E/Res/2000/22 which is downloadable from www.un.org/esa/socdev/unpfii.

⁹ This was adopted by the 61st Session of the UN General Assembly under Resolution 61/295 in Sept. 13, 2007. The full text is contained in Doc. A/Res/61/295. this can be downloaded from www.tebtebba.org

coordination of activities relating to indigenous issues within the United Nations system and to prepare and disseminate information on indigenous issues. To promote better integration and coordination, the various UN agencies, programmes and funds organized themselves in a body called the Inter-Agency Support Group for Indigenous Issues (IASG).

The historic adoption of the Declaration by the General Assembly in September 13, 2007, will have groundbreaking effects in the further elaboration, consolidation and implementation of the concept and practice of self-determined development. The Declaration sets the minimum international standards for the protection, respect and fulfillment of the rights of indigenous peoples. Its effective implementation will lead to the achievement of indigenous peoples' self-determined development.

The emergence of the human rights-based approach to development is another positive development. This approach needs to be tailor-fitted for indigenous peoples, especially after the adoption of the UNDRIP. The adoption of the Millennium Declaration by the World Summit in 2000 and the Millennium Development Goals provided more opportunities to talk about indigenous peoples perspectives. The fourth and fifth sessions of the Permanent Forum had MDGs as the special theme and at its 6th Session in May 2006, it recommended that a global report on the status of indigenous peoples in relation to their development with identity and dignity be generated. While such a report is not yet out, there are ongoing efforts to look into self-determined development is operationalized on the ground.

The Permanent Forum will be the main vehicle which will carry forward the ideals and values of self-determined development. It is the body which can take practical steps to pursue this within the UN system. But it will be able to do this if it is effectively undertaking its coordinating role. Its push to get the UN system and states to do disaggregated data collection to generate relevant statistics on indigenous peoples is crucial. The work around indicators on indigenous peoples well-being, poverty and sustainability is an attempt to give more visibility to indigenous peoples' situations but also to establish relevant benchmarks and standards.¹⁰ The Secretariat of the Forum has worked hard to influence the Common Country Assessment – UN Development Assistance Framework (CCA-UNDAF) so that indigenous peoples' issues will be looked at and considered at the country level. To support the goal of mainstreaming indigenous peoples' issues at the country level, the Secretariat and the IASG formulated and adopted the UNDG (UN Development Group) Guidelines on Indigenous Peoples' Issues in February 2008.¹¹

Even before the UNDRIP has been adopted there have been policies adopted by some bilateral donors and other intergovernmental bodies. These policies were influenced by the Draft Declaration on the Rights of Indigenous Peoples which started to be shaped in 1982. The challenges of indigenous peoples against mainstream development pushed some agencies to recast their discourse on development. The Inter-American Development Bank, for instance, is already using '*development with identity*' in its policy and strategy paper on indigenous peoples. This concept was first developed by the indigenous peoples of Latin America. The World Bank promoted ethno-development, although this is not specific for indigenous peoples. Its newest Operational Policy 4.10 on Indigenous Peoples states that it will provide financial assistance to a member country to "*make the development process more inclusive of Indigenous Peoples by incorporating their perspectives in the design of development programs and poverty reduction strategies.*"

¹⁰ For more information on the work on indicators please go to the website of the Forum which is www.un.org/esa/socdev/unpfii. The global composite report which consolidates what has been achieved in the various regional and thematic workshops can be found in the documents of the 7th Session. This is Document E/C.19/2008/9.

¹¹ This can be downloaded in the Forum's website.

Other intergovernmental bodies and bilateral donors adopted policies to guide their work and support for indigenous peoples.¹² Several of these policies were created during the International Decade of the World's Indigenous Peoples (1994-2005). These were the efforts of these bodies to implement the programme for the Decade. UNESCO adopted its Declaration and Conventions on cultural diversity and tangible and intangible heritage which, no doubt, will contribute in enriching the content of self-determined development.

The establishment of the Second International Decade of the World's Indigenous Peoples (2005-2015) by the General Assembly and its adoption of its Programme of Action is another crucial contribution which will help further consolidate the self-determined development framework. The theme of the Decade is "partnership in action and dignity". One of the objectives of its Programme of Action is "*redefining development policies that depart from a vision of equity and that are culturally appropriate including respect for cultural and linguistic diversity of indigenous peoples.*" In addition the Decade wants to put in place measures which will ensure that indigenous peoples are active participants in shaping, implementing, monitoring and evaluating development projects. The ability to meet these objectives will depend on several factors. Foremost among these is the quality of the partnership forged between indigenous peoples, States and the UN System to implement the Programme of Action and the UN Declaration on the Rights of Indigenous Peoples.

Another development which should not be missed is the appointment of a Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (2001). The first Rapporteur, Rodolfo Stavenhagen, is a well known expert on indigenous peoples. He came up with very good reports which dealt with the issue of how the rights of indigenous peoples are violated in the process of doing development. This phenomena is known as development aggression. He highlighted the serious implementation gap in countries which recognize indigenous peoples' rights in their constitutions and enacted enabling laws.

There have also been favorable comments, decisions and judgements made by the Treaty Bodies of the United Nations, the Inter-American Court on Human Rights and the African Commission on Peoples and Human Rights, in response to complaints and submissions of indigenous peoples. These enrich further the jurisprudence related to indigenous peoples' rights. The Committee on the Elimination of Racial Discrimination, the Human Rights Committee, the Committee on the Rights of the Child, among others provided very important general comments which indigenous peoples have used in their arguments during the negotiations of the UNDRIP.

The adoption by UNESCO of its Declarations and Conventions on cultural diversity and intangible heritage; the establishment of the WIPO Intergovernmental Committee on Genetic Resources, Intellectual Property, Traditional Knowledge and Traditional Cultural Expressions; the Working Groups of the Convention on Biological Diversity on Article 8j and on Access and Benefit-Sharing of Genetic Resources; and the FAO International Treaty on Plant Genetic Resources for Food and Agriculture are all important for indigenous peoples. These provide additional spaces, processes and instruments for indigenous peoples to strengthen their development agenda. Some of these have yet to be tested, though, in terms of what they can do to support indigenous peoples self-determined development.

Debates on Development and Underdevelopment

¹² Other policies on indigenous peoples are the European Union, Council Resolution on Indigenous Peoples within the framework of the Development Cooperation of the Community and Member States, 1998; DANIDA Danish Strategy for Support to Indigenous Peoples, 1994; Germany, Federal Ministry of Economic Cooperation and Development with Indigenous Peoples of Latin America, 1996; Netherlands Ministry of Foreign Affairs, Indigenous Peoples in the Netherlands, Foreign Policy and Development Cooperation, 1993; Swiss Agency for Development and Cooperation, Swiss Action for Indigenous Peoples, 1998, Spanish Agency for Development Cooperation (AECI) Spanish Strategy for Cooperation with Indigenous Peoples 1997 and 2007; PAHO, Strategic orientations for the Implementation of the Health of the Indigenous Peoples of the Americas Initiative, 1997; World Commission on Dams, Dams and Development, 2000; Extractive Industries Review, 2001

To provide the broader context and to understand better what the challenges are in pursuing indigenous peoples' self-determined development it will be helpful to go back to history to see when development took centre stage and became the pre-occupation of nation-states.

In January 20, 1949 the world got divided between developed and underdeveloped countries by the President of the United States, Harry Truman, when he made his inaugural address. He rallied the US and the rest of the industrialized North to make the benefits of their scientific, technological and industrial progress available for "the growth and improvement of underdeveloped areas." (Escobar: 1995.3; Esteva:1995. 6) He put the United States and the North on top of the evolutionary social ladder which the rest of the world should aspire for. (Sachs:1995.3) The American dream of economic development and prosperity characterized by high levels of industrialization and urbanization, technicalization of agriculture, control of nature through science and technology, individualism and consumerism, free and unfettered markets, etc. was universalized to consolidate their dominance and to contain the expansion of the communist world.

The truth is that the free enterprise system was in a crisis after the Second World War and to salvage this situation, the United States had to find ways to invest its surplus capital which had accumulated during the war; find markets for American goods; secure control over sources of raw materials; and establish a global network of unchallenged military power as a way to secure access to raw materials, markets and consumers. (Escobar 1995: Amin 1976). It is in their interest, therefore, to universalize their economic system along with the cultural and ideological justifications of this.

Gustavo Esteva, a leading critique of development, said that when Truman made this speech, underdevelopment began.

*On that day two billion people became underdeveloped. In a real sense, from that time on, they ceased being what they were, in all their diversity, and were transmogrified into an inverted mirror of the others' reality: a mirror that belittles them and sends them off to the end of the queue, a mirror that defines their identity, which is really that of a heterogeneous and diverse majority, simply in the terms of a homogenizing and narrow minority.*¹³

The United Nations which was born in 1945 was used as a machinery to further conceptualize and implement development. It created policies and programmes which will bring development to the so-called underdeveloped countries. The report of the expert group set up to do this stated;

There is a sense in which rapid economic progress is impossible without painful adjustments. Ancient philosophies have to be scrapped; old social institutions have to disintegrate; bonds of cast, creed and race have to burst; and large numbers of persons who cannot keep up with progress have to have their expectations of a comfortable life frustrated. Very few communities are willing to pay the full price of economic progress. (United Nations, Department of Social and Economic Affairs, 1951.15)¹⁴

Indigenous Peoples' Resistance and Responses from the UN System

Among those who were not willing to pay the full price of economic progress and surrender their ancient philosophies and who refused to be 'transmogrified into an inverted mirror of others' reality' were indigenous

¹³ Gustavo Esteva, "Development", *The Development Dictionary*, Wolfgang Sachs, ed. (London: Zed Books: 1995)7.

¹⁴ Quoted from Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World*. (New Jersey. Princeton University Press; 1995) 4.

peoples both in the North and the South. While the UN was more focused in bringing development to the so-called underdeveloped countries, the USA, Canada, Australia, New Zealand and the Nordic countries were also doing the same to their indigenous peoples. Development is essentially a dominating process where destinies of peoples are shaped according to a Eurocentric perception of the world. This became the bane of indigenous peoples whether they are from the north or the south. Our indigenous world views and philosophies, value systems, cultural, social, political and economic systems, which include our traditional livelihoods, were seen as obstacles to development and modernization. Thus, these were either denigrated, destroyed or obliterated. Development, which was adopted as one of the pillars of nation-state building, became one of the root causes of the conflicts between nation-states and indigenous peoples.

The experiences of indigenous peoples from the North were similar to what those from the South went through. The big difference is that the governments in the Northern countries sometimes enter into treaties and negotiated agreements with indigenous peoples, even if some of these only allowed for their minimal participation. However, these negotiations are still between highly unequal partners. In most cases, indigenous peoples' traditional livelihood and economic systems will have to give way to the development projects pushed by the state in collusion with the corporations. What is left to be negotiated are the benefits which indigenous peoples can get after they allow their own systems to be destroyed. One of the most cited case, both as a negative example and as a good practice depending on who is speaking, is the James Bay and Northern Quebec Agreement of 1975. This was spurred by the large-scale hydro-electric dam project of Hydro-Quebec. The Agreement says;

*“Development” or “Development Project” shall mean a project consisting of any work, undertaking, structure, operation, industrial process which might affect the environment or people of the Territory, exclusive of the operation and maintenance of such project after construction...; and For purposes of the Agreement, in respect to Category 11 lands, **development shall be defined as any act or deed which precludes hunting, fishing and trapping activities by Native people** (emphasis mine) except for pre-development; and pre-development shall be defined as any act or deed of any exploratory nature exercise during a limited time with a view to decide if development shall take place or not.¹⁵*

Significant numbers of indigenous peoples in the South took part in the national anti-colonialist struggles which led to the establishment of new nation-states. In fact, even before national civil wars for independence emerged, indigenous peoples have already waged resistance struggles in their territories. This happened among my own people. Our ancestors successfully thwarted the military expeditions of the Spanish colonizers who wanted to get hold of our gold and silver mineral resources. This is one reason why in the Philippines, we, the Igorot peoples are considered indigenous peoples. Our resistance to 350 years of Spanish colonization enabled us to maintain our pre-colonial cultures, economic and political systems, unlike the dominant population which became assimilated into the Spanish colonial regime.

Unfortunately, the assertion of the right of self-determination of indigenous peoples against the foreign colonizers had to be reasserted again even after independence. This was to be expected because in many countries even before the colonizers left they ensured that they trained a cadre of local people from the dominant population who would continue their development and modernization agenda. Through this, the colonizers were able to ensure that the newly constructed nation-states were shaped in their image.

The violation of our right of self-determination by these new nation-states which our ancestors helped bring into existence is very unfortunate. I quote a paragraph on this point which I wrote for a conference on “Indigenous Peoples, Sustainable Development and Conflict Resolution “ .

¹⁵ IWGIA,1991.173)

It is not surprising, therefore, that indigenous peoples felt betrayed by the nation-state as their basic right to self-determination which their ancestors fought and died for was, once again, violated by the new rulers. Legal, cultural, social and economic systems of European origin were put in place. These ignored or contradicted pre-existing social, political and cultural systems, which they developed to govern their communities and their relations with nature and their neighbors. The states enshrined doctrines and laws, which were legal fiction inherited from the colonizers, such as terra nullius, crown lands or the Regalian Doctrine...Ancestral territories were either claimed by the state as crown lands or public lands or were converted into private property to be owned by individuals, no longer collectively...Indigenous socio-cultural and political systems were seen as barriers..to the perpetuation of state hegemony were destroyed or made illegal. These spurred indigenous peoples to continue their ancestors' struggles to maintain their pre-colonial, self-determining status as peoples and nations¹⁶.

In the 1950s to the 70s most indigenous peoples in the South are still found in rural areas. In fact, others remain isolated and uncontacted. They continue to practice their traditional livelihoods and are still self-governing, self-sustaining communities. However, they were increasingly besieged by government development projects like hydroelectric dams, highways, oil and gas pipelines and by corporations involved in mining, oil and gas extraction, logging and agricultural plantations. Interventionism was justified by the promise of development.

Several infamous hydroelectric dam projects which displaced tens of thousands of indigenous persons were built in the 1950s and 60s. Examples of these are the Ambuklao and Binga Dams in Benguet Province in the Philippines and the Kaptai Dam in the Chittagong Hill Tracts in Bangladesh. Up to the present, justice for Igorot and Jumma who were displaced and whose lands were illegally taken away remains illusive. Another dam, called the Chico Hydroelectric Dam Project was going to be built in the Cordillera region in the mid 1970s. This time, we, the Igorot, resisted and won the battle to have this stopped even if the Philippines was under martial law then. This was where many of us, indigenous students who became activists, cut our teeth in our indigenous peoples' rights activism and started to build up our own indigenous peoples' movement in the Cordillera region. We challenged the development model imposed on us especially when President Marcos stated that being the minority we have to 'sacrifice for sake of development of the majority'.

Clearly, development was aimed at making self-governing and self-sufficient communities of indigenous peoples into dependent entities subsumed under the global market economy and the nation-state. In addition to the trauma related to infrastructure development they also suffered from the conversion of their territories. Their lands became agricultural monocrop plantations of rubber, coffee, cocoa, bananas, pineapple, sugar cane and eucalyptus or into mining enclaves and ranches. From being subsistence farmers, hunters and gatherers, fishers or pastoralists, indigenous peoples were reduced into seasonal farmworkers or laborers, at best, or slaves, at worst. The most egregious forms of human rights and labor rights violations, which include slavery and slavlike practices among indigenous peoples in many Latin American states were documented and reported.

Indigenismo was the strategy adopted by many states in Latin America to structure the way they relate with indigenous peoples. Diego Iturralde, the first Technical Secretary of the Indigenous Fund, described *indigenismo* in this terms;

It was unilateral (by the State), unidirectional (targeted at indigenous peoples) and for one purpose (to incorporate them into the nation). Its goal was to replace the indigenous communities' cultural characteristics with what was regarded as the shared characteristics that constitute nationality. That

¹⁶ (Tauli-Corpuz and Carino 2004.8)

*goal was to be achieved by replacing the indigenous languages with Spanish and through schooling, the spread of intensive agriculture and commercial manufacturing, the provision of services and involvement in the domestic market.*¹⁷

An essential part of *indigenismo* was the establishment of indigenous institutes which were mandated to formulate and implement indigenous development strategies and programs. The Inter-American Indian Institute (Instituto Indigenista Interamericano) was founded in 1940. Subsequently, national indigenous institutes were established in many countries in the region. A review of these institutes revealed that the strategies made were top-down, paternalistic, fostered the assimilation of indigenous cultures into the dominant western culture and regarded traditional culture and small-scale subsistence economy as obstacles to modern development.¹⁸

The negative experiences of indigenous peoples first with colonization and later with nation-building and development gave birth to indigenous peoples' movements at the local levels. These got consolidated at the national and regional levels and became internationalized. The spaces created within the United Nations which allowed indigenous peoples' participation played a key role in internationalizing the indigenous peoples' movement.

Early Engagements of Indigenous Peoples With the International Community

The first attempt of indigenous peoples to reach out to the international community started as early as 1923 with the attempt of Chief Deskaheh, the speaker of the Council of the Iroquois Confederacy, to get the League of Nations to address the Iroquois' dispute with Canada. This was followed in 1925 by W.T. Ratana, a Maori leader, who wanted to bring the violations against the Waitangi Treaty by New Zealand. They were not given an audience by the League but their visits were assertions that indigenous peoples are subjects of international law. With the UN's establishment in 1945 and human rights being the key foundational element of its Charter, the justification for indigenous peoples' engagement with the UN was strengthened.

The International Labor Organization (ILO), which predated the UN, was the first multilateral body which looked at the situation of indigenous peoples. In 1921 it carried out studies on the situation of indigenous workers. These studies showed how indigenous peoples were victims of forced recruitment and forced labour, not to speak of slave-like labour practices. This led to an establishment of its Committee of Experts on Native Labour in 1926 which came up with conventions and recommendations on forced labour. A Second Committee of Experts on Indigenous Labour was composed again in 1951.

Decolonization was one of the objectives of the UN. However, because of the "blue water thesis" which says that only colonies overseas can be subjected to decolonization procedures, the indigenous peoples in independent countries were considered outside of the decolonization process in spite of the fact that they remained victims of colonization. The General Assembly did not totally ignore this reality and in 1949 it came up with a resolution asking the Economic and Social Council to study the "social problem of the aboriginal populations and other under-developed social groups of the American Continent." Unfortunately, this never materialized as no affected state was interested to implement the recommendation.¹⁹

The Organization of American States General Assembly in 1948 also took initial steps to recognize that indigenous peoples are special subjects of international concern. Article 39 of the Inter-American Charter of Social Guarantees provided that states in the Inter-American System should take "necessary measures" to protect indigenous peoples' lives and property, 'defending them from extermination, sheltering them from oppression and exploitation.'" (Anaya and Williams, 2001.33)

¹⁷ Diego Iturralde and Krotz:1996:14.

¹⁸ (Pirttijärvi 1999.13).

¹⁹ Anaya.2004.54

ILO Convention No. 107 and Convention No. 169

The International Labor Organization was the first multilateral body which managed to adopt a Convention addressing indigenous peoples. This was Convention No. 107 Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries adopted in June 26, 1957. Unfortunately, the approach it took was paternalistic and assimilationist. Its solution to the indigenous problematique was to integrate indigenous peoples into the dominant society and within the dominant development model. The Convention states;

Considering that there exist in various independent countries indigenous and other tribal and semi-tribal populations which are not yet integrated into the national community and whose social, economic or cultural situation hinders them from benefiting fully from the rights and advantages enjoyed by other elements of the population...[g]overnments shall have the primary responsibility for developing coordinated and systematic action for the protection of the population concerned and their progressive integration into the life of their respective countries...(ILO 1957)²⁰

Indigenous experts who were brought together by the ILO at a Meeting of Experts in 1986 strongly criticized the Convention. This meeting recommended its revision as its assimilationist framework “meant the extinction of ways of life which are different from that of the dominant society”. Assimilation or integration is the logical consequence of a development paradigm which does not respect cultural diversity. The experts invoked the report of Martinez Cobo (Special Rapporteur on situation of discrimination against indigenous populations) which says that “the policies of pluralism, self-sufficiency, self-management and ethnodevelopment appeared to be those which would give indigenous populations the best possibilities and means of participating directly in the formulation and implementation of official policies.” (Anaya.2004.58).

The International Labour Conference, the highest decision making body of the ILO, initiated the process of revising the Convention No. 107 in 1988 and 1989. This was done with almost no participation of indigenous peoples as they are not part of the tripartite system of the ILO which consists of states, labour unions and employers. Before the year ended in 1989, the Conference adopted Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries. As this was meant to remove the assimilationist aspects of the previous Convention it had to reiterate in several preambular and operative paragraphs that it recognizes the aspirations and rights of indigenous peoples to exercise control over their own ways of life and economic development. 19 countries ratified this Convention as of 2007.

Many of the provisions of this Convention elaborated the contents of indigenous peoples’ right to development and how this should be promoted by States. It instructs governments to establish means and provide resources for the full development of indigenous peoples’ institutions and initiatives (Article 6). The recognition of the right of indigenous peoples to control their social, economic and cultural development was reiterated in Article 7.

1. *The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, and institutions and spiritual well-being and the lands they occupy or otherwise use and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition they shall participate in the formulation, implementation and evaluation of plans and programs for national and regional development which may affect them directly.*

²⁰ Mario Blaser, Harvey Feit and Glenn McRae, eds. In the Way of Development; Indigenous Peoples, Life Projects and Globalization. (London. Zed Books.2004:

2. *The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be designed as to promote such improvement.*
3. *Governments shall ensure that, whenever appropriate, studies are carried out in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.*

The Convention also recognizes that indigenous peoples have rights to own lands they traditionally occupy and to use those which they do not exclusively occupy but still use for their subsistence and other traditional activities (Article 14). The value and continued practice of indigenous livelihoods like pastoralism, hunting and gathering, shifting cultivation and handicraft development, especially, as these are form part of their cultures and as these link with their right to their natural resources , should be recognized and ensured (Art. 14, 15,23)²¹.

UN Development Decades

The First UN Development Decade (1960-70) was declared and despite the growing evidence that rapid economic growth is accompanied by increasing inequalities, it still pursued the same model of development . 5% minimum economic growth was the target set for the underdeveloped world. When the Decade ended the growth rate of the developed countries accelerated but the gap between the per capita incomes of the underdeveloped countries and those of the developed countries widened. Two-thirds of the world's population living in the underdeveloped countries still had less than one-sixth of the world's income. The need to ensure that a balance between economic and social development was recognized by the Decade Programme. This Programme also proposed that 1% of the income of the developed countries should go into the underdeveloped countries in the form of international aid and financial assistance. This was lowered to 0.7 percent in the subsequent Decades but, sadly, these targets were not met except by very few countries.

During this period massive infrastructure building of highways and mega hydroelectric dams took place in indigenous territories in Latin America, Asia and Africa. The entry of mining, logging and oil and gas corporations into indigenous territories led to militarization and forcible displacement of indigenous peoples.

The merging of economic and social development was only proposed under the Second Development Decade (1970-1980). This merging was affirmed by the International Development Strategy which was proclaimed in October 24, 1970. The integration of economic and social development favors indigenous peoples as most development programs stressed on the quantitative, material and economic aspects of development and ignored its social and cultural aspects.

In response to the call for a unified approach to development and planning which integrates economic and social components various UN agencies developed their own proposals on how to pursue this. A UNEP-UNCTAD Symposium held in October 1974 came up with the Declaration of Cocoyoc which states that the aim of development is not to develop things but to develop man. Subsequently the ILO developed its *Basic Needs Approach* which had the goal of establishing a minimum standard of living. At the 3rd meeting of UNCTAD in 1972 the issue of rights was brought into the development discourse with the assertion of the governments of the South or the underdeveloped world that they have the right to development. (Gready and Ensor 2005.18)

The UNESCO in turn formulated the concept of *endogenous development* which Esteva described ;

²¹ For a full appreciation of what is contained in Convention No. 169 and also a guide on how to use this please visit www.ilo.org/public/english/standards/norm/egalite/itpp/convention/index.htm.

For some time, this conception won more acceptance than all the others. It seemed clearly heretical, openly contradicting the conventional wisdom. Emerging from a rigorous critique of the hypothesis of development ‘in stages’ (Rostow), the thesis of endogenous development, rejected the necessity or possibility – let alone suitability – of mechanically imitating industrial societies. Instead, it proposed taking due account of the particularities of each nation.²²

This radical but sensible idea, however, did not prosper because it posed a serious challenge to the dominant development paradigm which is pushed as the single economic and cultural model for the world. A truly endogenous development allows for diverse cultures to exist and for indigenous economic and social systems to thrive. The architects and beneficiaries of the dominant development model will find it hard to support something which goes against their own model and interests.

The other debate which was taking place at the same time was around development economics. The notion of underdevelopment and the standards of modernity, progress and development which were measured only through the yardstick of Western progress were questioned. Underdevelopment which was described in terms of low productivity, lack of capital and inadequate industrialization was critiqued²³ especially because this was generally applied to the South or the Third World. Within the South the indigenous peoples were the ones who were considered the backward and underdeveloped sectors. Tragically, modernity and development as conceptualized by the North was eventually accepted by the newly independent nation-states as their own agenda.

UN Declaration on the Right to Development

Within the Second Development Decade, the right to development was “..raised by developing countries as their claim for distributional equity in the international political economy of development”²⁴The UN Declaration on the Right to Development (RTD) which finally got adopted in 1986 was the result of the assertion of the South or underdeveloped countries that their right to develop has to be acknowledged and supported by the international community. Stephen Marks, an expert on this issue, explained further the agenda of the developing countries, particularly the most active members of the Non-Aligned Movement who call themselves the “Like-Minded Group”.²⁵

Their interests are to use the RTD to reduce inequities of international trade, the negative impacts of globalization, differential access to technology, the crushing debt burden, and similar factors they see as detrimental to the enjoyment of human rights and development.²⁶

At the first UN Conference on Trade and Development (UNCTAD) in 1964 these countries strongly stated that sovereignty is nothing if the world’s economic resources remain concentrated in the hands of the former colonizers. Gaining their independence was important but the next step should be the restructuring of the global economic system to redistribute control over economic resources through a New International Economic Order

²² Sachs:1995.15

²³ Escobar:1995.83

²⁴ Iqbal.2007.15.

²⁵ The Like-Minded Group (LMG) members are Algeria, Bangladesh, Bhutan, China, Cuba, Egypt, India, Indonesia, Iran, Malaysia, Myanmar, Nepal, Pakistan, Philippines, Sri Lanka, Sudan and Vietnam.

²⁶ Marks.2004. 141

(NIEO).²⁷ To strengthen the NIEO agenda the developing countries got the Commission on Human Rights to deal with the issue of the right to development. The Commission passed two resolutions (Res. 4/1977 and 5/1979) which affirmed that the right to development is a human right. In 1979 the General Assembly passed Resolution 34/46 which stated that the right to development is “a human right and that equality of opportunity is as much a prerogative of nations and of individuals within nations.”

To further address the raging debates on this issue, the Commission on Human Rights asked the Secretary-General to do a study on the international aspects of the right to development. This report came out in 1979 and it stated that

*the central purpose of development is the realization of the potentialities of the human person in harmony with the community; the human person is the subject not the object of development; both material and non-material needs must be satisfied; respect for human rights is fundamental; the opportunity for full participation must be accorded; the principles of equality and non-discrimination must be respected; and a degree of individual and collective self-reliance must be achieved*²⁸

There was strong opposition from some developed countries, led by the United States, to the idea of a declaration on the right to development.²⁹ The politics of the Cold War which resulted into the split over the unity of civil and political rights and economic, social and cultural rights is still the major influence in these arguments. In fact up to now there is still a divide between those who do not accept that economic, social and cultural rights are human rights and those who regard these as essential human rights.

As there has been no agreement reached on a draft, the Chair of the Working Group drafting this Declaration brought his own version before the General Assembly in 1986. This was passed through a vote of 146 in favor, 1 against (US) and 8 abstentions. The developed countries were not all united against it. Australia, Canada, France, the Netherlands and New Zealand voted in favor of the Declaration.

Article 1 of the Declaration explicitly states that the right to development is an inalienable human right and this right implies the full realization of the right of peoples to self-determination which includes the inalienable right to full sovereignty over their natural wealth and resources.

After its adoption, a Working Group of Governmental Experts was established to discuss concrete recommendations on how it should be implemented. After three sessions agreements could not be reached on concrete recommendations. This led the UN Commission on Human Rights to request the UN Secretary General Boutros Boutros- Ghali to organize a global consultation on the realization of the right to development. This took place in Geneva in January 1990 with the participation of experts, UN programs and agencies, 50 representatives of States, NGOs and a handful of indigenous representatives. This was the first time indigenous peoples have been invited to a process related to the Declaration on the Rights to Development. A report which

²⁷ A resolution on the NIEO (Res. 3201 – (S-V1) together with the Charter of Economic Rights and Duties of States (3281 (XXIX)).

²⁸ Gready and Ensor 2005:18

²⁹ The US has consistently objected to the concept of right to development right from the start. Upon the establishment of the Drafting Group in 1981 the US already stated the reasons why it objects to the Right to Development Declaration. This should not be used to revive the NIEO; should not create any obligation for transfer of resources (aid is a sovereign decision of countries); and it should not establish any legally binding obligations.

identified the obstacles to the realization of human rights³⁰ and refined the concept of participation in human rights law³¹ was the result of this.

After more than 10 years of existence there is not much to see in terms of the implementation of the Declaration. So the Commission on Human Rights decided to establish a follow-up mechanism which included the establishment of an open-ended working group (OEWG) and the appointment of an independent expert. The mandate for the expert is to present, to the open-ended working group (OEWG) on the RTD a study on the current state of progress in the implementation of the right of development as elaborated in the Declaration. (CHR resolution 1998/72). Subsequently General Assembly resolution 54/175 of 17 December 1999 called on the independent expert to submit comprehensive reports at its 51st Session on effects of poverty, structural adjustment, globalization, financial and trade liberalization and deregulation on the prospects of the enjoyment of the right of development in developing countries.³²

Arjun Sengupta, the Independent Expert on the Right To Development, came up with a series of reports which elaborated in more detail the concept of the right to development, recommendations on how to operationalize this and substantial papers on the impact of poverty on the right to development, impact of globalization, among others.

In his first report he explained that the Declaration on the Right to Development succeeded in bringing back the concept of integrated and indivisible human rights. He said “in effect the right to development emerged as a human right which integrated economic, social, and cultural rights with civil and political rights in the manner that was envisaged at the beginning of the post-World War II human rights movement”³³

The right to development, as established in the Declaration on the Right to Development, “as a universal and inalienable right and an integral part of fundamental human rights,” was affirmed at the Vienna World Conference on Human Rights (1993) in the Vienna Declaration.³⁴ Sengupta summarized the main propositions of the Declaration

- (a) The right to development is a human right.
- (b) The human right to development is a right to a particular process of development in which all human rights and fundamental freedoms can be fully realized – which means that it combines all the rights enshrined in both the covenants and each of the rights has to be exercised with freedom.
- (c) The meaning of exercising these right consistently with freedom implies *free, effective and full participation* of all the individuals concerned in the decision-making and the

³⁰ What this report identified as obstacles to human rights are ‘the concentration of economic and political power in most industrialized countries; non democratic decision making processes of international economic, financial and trade institutions; structural inequalities in international relations between countries; existing trade and financial arrangements dictated by a small number of countries for their own benefit; international development strategies which have been oriented merely towards economic growth and financial considerations at the expense of human rights violations.’

³¹ See Barsh.1990.4-6. The report says that fundamental to democratic participation is the right of individuals, groups and peoples to make decisions collectively and to choose their representative organizations, and freedom of democratic actions without interference; a fair distribution of economic and political power among all sectors of society; genuine ownership or control of productive resources such as land, financial capital and technology; representativity and accountability of decision-making bodies, mobilization of human and natural resources and combating inequalities, discrimination, poverty and exclusion.

³² See Doc. A/55/306, 17 August 2000, Right to Development, Note by the Secretary General.p.3

³³ Sengupta.2000.1-2

³⁴ Paragraph 10; Vienna Declaration and Programme of Action, adopted by the UN World Conference on Human Rights, June 25, 1993.

- implementation of the process. Therefore the process must be transparent and accountable, individuals must have the *equal opportunity* of access to the resources for development and receive *fair distribution* of the benefits of development (and income).
- (d) Finally, the right confers unequivocal obligation on duty-holders: individuals in the community, states at the national level, and states at the international level. National states have the responsibility to help realize the process of development through appropriate development policies. Other states and international agencies have the obligation to cooperate with the national states to facilitate the process of development.

While this Declaration framework is dominantly statist, it can still be used as a building block to strengthen and operationalize indigenous peoples' self-determined development. Indigenous peoples are hardly mentioned in the reports of the Working Group and the Independent Expert. However, the Declaration affirms that the right to development is an integral and indivisible part of civil, political, social, cultural and economic rights. It stresses that the right is both a collective and individual right. The analysis of obstacles, such as globalization, the debt burden, unequal trade agreements, financial and trade liberalization, among others, are crucial in further understanding why development remains illusive for most peoples, including indigenous peoples. Furthermore, the stress on the primacy of participation and the creation of appropriate development policies resonates with our assertion of our right to freely determine their economic, social and cultural development. Equity and social justice are identified as key objectives of development, not just economic growth.

Through the years, reports of the Open-ended Working Group and the Independent Expert elaborated in more detail what the right to development is and how this relates to human development and the human-rights based approach to development. Legal scholars have come up with their own independent analysis on the consistency of the right to development with existing international human rights law.

A glaring gap in the reports and some legal commentaries, again, is the invisibility of indigenous peoples. The OEWG Chairman's conclusions of the 2001 session is one of rare ones which mentioned indigenous peoples. Under the section on national actions it affirmed the "...need for special attention to persons belonging to minorities, whether national, ethnic, religious or linguistic, as well as to vulnerable groups, such as indigenous people, Roma, migrants.."

The story of the Declaration on the Right to Development shows how indigenous peoples are invisible in the radar screens of most countries, developed or developing. We are referred to only in terms of our vulnerabilities but not in terms of the positive contributions we can offer to make development more socially just and culturally appropriate. While those of us from developing countries can sympathize with the efforts of the developing country governments to assert their right to develop, we regret the strong statist underpinnings of this process and its end product. Another problem is their pursuit of the same dominant development model, which is one of the root causes of our further marginalization. This is what pushed us to assert our right to self-determination and to elaborate our own concept of self-determined development using whatever we find useful from the results of the work and processes within the UN system. This paper treated this Declaration with great length, in spite of the fact that it barely referred to indigenous peoples, just to illustrate the challenges which indigenous peoples face in this debate.

Indigenous peoples struggles for their basic human rights and development and further engagements with the UN

To address the hegemonic developmentalist wave or the dominant development paradigm indigenous peoples responded in diverse ways. In Latin America the indigenous peoples took two tracks. One was to fight against it and another was to use some of the policies and programs to promote their interests. The second track adopted agrarian reform which was the political agenda of the peoples' movements. Indigenous peoples in the Andean regions of Bolivia, Ecuador and Peru and also those from Mexico, Guatemala created or joined peasant

cooperatives, unions, Basic Christian Communities and political parties. Many self-identified as *campesino* or peasants and not as indigenous peoples.

Those who opted to fight, participated in armed revolutionary movements like the URNG in Guatemala, the Shining Path in Peru and at the turn of the Millennium the Zapatista uprising in Chiapas in Mexico. The participation of indigenous peoples in armed movements is an expression of resistance against their marginalization. Unfortunately, in most instances their cause had been subsumed under the class struggle which made their identity and issues invisible. Nevertheless, because these revolutionary movements needed to generate support not only within the country but internationally, indigenous peoples, who are part of these, linked with other indigenous formations.

In Asia there were indigenous peoples who armed themselves to fight against destructive development projects. The Igorot in the Cordillera, the Jumma peoples of the Chittagong Hill Tracts, Naga and Mizo peoples of Northeast India, the Karen, Shan, Chin in Burma, are just a few examples. Usually, formations were built along tribal lines. But we can see that when indigenous peoples are confronted with projects whose impacts cut across physical and tribal boundaries, the logical recourse is the establishment of pan-tribal formations. This happened in the Philippines where a pan Cordillera-wide indigenous peoples' movement was established. National and regional formations³⁵ were also developed and these were the ones who engaged with the United Nations.

The indigenous peoples in the developed countries either negotiated treaties with the State or filed legal suits against the State, especially if what it did breached earlier treaty agreements. They filed complaints before the various Treaty Bodies of the UN. The most used bodies are the Committee on the Elimination of Racial Discrimination (CERD) and the Human Rights Committee (HRC). At the regional level they also used the Organization of American States and the Inter-American Court of Human Rights.

Spaces provided by the United Nations which allowed for the participation of indigenous representatives helped to strengthen the global indigenous peoples' movement. The first of these is the UN Working Group on Indigenous Populations which saw an increasing participation of indigenous representatives in the since its establishment in 1982. This came about because of various UN and UN-related processes which were initiated by sympathetic UN staff, and representatives of indigenous peoples, NGOs and states.

In 1971 the UN Economic and Social Council authorized the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities to undertake a study on the "Problem of Discrimination Against Indigenous Populations".³⁶ The Special Rapporteur who was appointed to this, Martinez Cobo, came up with a series of partial reports between 1981-83 and the final paper which contains the Conclusions and Recommendations was released in 1986. This report, popularly known as the Martinez Cobo Study, became the major UN reference document on indigenous peoples. The process set a precedent for other UN agencies or bodies to also support further studies or organize processes on indigenous peoples within the purview of their specific mandates.

Even before the Martinez-Cobo report was finished, on 20-23 September 1977 the NGO Subcommittee on Racism, Racial Discrimination, Apartheid, and Decolonization held the "International NGO Conference on Discrimination Against Indigenous Populations in the Americas" at the Palais des Nations in Geneva. Around 400 persons participated of which 100 of these are delegates of 60 indigenous nations and peoples coming from 15 countries in the Americas. Observers from 38 member states of the UN took part as well as UN agencies like the UNESCO and the ILO.

³⁵ In the Amazon part of the South America the COICA was established as a regional body, in the United States the American Indian Movement, in Asia the Asia Indigenous Peoples' Pact was formed and also was the Asia Indigenous Women's Network.

³⁶ U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Study of the Problem of Discrimination against Indigenous Populations*, U.N. Doc. E/CN.4/Sub.2/1986/7 & Add. 1-4 (1986).

This historic conference came up with the “*Declaration of Principles for the Defense of Indigenous Nations and Peoples of the Western Hemisphere*” and several resolutions which included the call on the UN to set up a Working Group on Indigenous Populations. This conference, through its Economic Commission, presented a scathing critique of development and the role of multinational corporations.

*To accommodate the increasing demand for materials and resources and the inherent profit quest, the multinational corporations have accelerated development and exploitation of native peoples and resources. A key force in this process in Latin America is the U.S. economic development and military aid. This exploitation is imminent due to the significance of native resources. In the U.S. along, native lands include approximately 30 % of all coal reserves, 90% of all uranium reserves and 50% of overall energy reserves. Indian lands in the U.S. have produced over 2.7. billion dollars.*³⁷

Its Social and Cultural Commission elaborated the links between economic exploitation and indigenous culture.

The destruction of indigenous cultures in the Americas is historically inseparable from the considerations which motivated and which still motivate the criminal acts of the European colonizers, the primary consideration being human exploitation and the greed for land and cheap labour. To destroy a culture is to destroy the basis for an autonomous society able to defend the interests of its members. It is noteworthy that this Commission has had great difficulty in isolating the destruction of culture from other acts of genocide, and it is necessary to constantly bear in mind the links existing between these phenomena. The pattern of cultural aggression and destructive cultural penetration may be said to begin at the point of departure for the culture of the Indians, i.e. Their natural environment. The removal of Indians from their traditional homes, the physical corruption of their ceremonial grounds, the industrial pollution of their natural habitat, all render impossible the continuation of culture, not only because its physical basis is destroyed but because such acts do violence to the system of values possessed by the Indians.

Another important conference was the “*Conference of Specialists on Ethnocide and Ethnodevelopment in Latin America*” which UNESCO organized in 1981. A Declaration came out of this which affirmed the “inalienable right of Indian groups” to consolidate their cultural identity and to “exercise...self-determination”.³⁸ This Declaration also affirmed that “ethno-development is an alienable right of Indian groups.” Ethno-development, as described in this Declaration, is the extension and consolidation of the elements of culture, “*through strengthening the independent decision making capacity of a culturally distinct society to direct its own development and exercise self-determination, at whatever level, which implies an equitable and independent share of power. This means that the ethnic group is a political and administrative unit, with authority over its own territory and decision-making powers within the confines of its development project, in a process of increasing autonomy and self-management...*”³⁹

Due to the indigenous peoples’ demands contained in the Declaration of the 1977 conference and the recommendation of the Martinez Cobo Study, the UN Working Group on Indigenous Populations was established in 1982 by the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities of the UN Commission on Human Rights. This body was mandated to review developments

³⁷ Treaty Council News.1977.13-14

³⁸ Anaya. 2004.63.

³⁹ Declaration of San Jose, UNESCO Latin American Conference, Dec. 11, 1981, paras 2, 3, UNESCO Doc. FS 82/WF.32 (1982)

concerning indigenous peoples and to work towards the development of international standards on indigenous peoples' rights. Since its establishment indigenous representatives actively engaged with it and fully participated in drafting the UN Declaration on the Rights of Indigenous Peoples. This space provided the opportunity for us, indigenous peoples, to come together not just to make statements but to consolidate our own movement at the global level. We discovered an arena of struggle which we used to pursue further our objectives as movements. It is clear to us that the respect and fulfillment of our rights will still depend on the strength of our movements at the local and national levels. However, we also know that linking our struggles at the regional and global levels and getting the international community to adopt an international instrument on our rights will be a big boost for our local work.

The World Conferences of the UN⁴⁰ in the 1990s also saw our dynamic engagement. Our participation in the 1992 Earth Summit (UNCED), for instance, resulted into Chapter 26 of Agenda 21 which is on "*Recognizing and Strengthening the Role of Indigenous Peoples and their Communities*.". Indigenous peoples became recognized as a major group which will help bring about sustainable development. The World Conference on Human Rights held in Vienna in 1993 was used as an opportunity by us to have a recommendation for the establishment of the UN Permanent Forum on Indigenous Peoples passed. Indigenous women took part in the Fourth World Conference on Women and we ensured that the final Declaration and Programme of Action contained references on indigenous women. The Asian Indigenous Women's Network which I convene, organized the Indigenous Women's Tent. This became the nerve center of activities for indigenous women and it is here where we agreed on our own "*Beijing Declaration of Indigenous Women*."

Aside from these, some of us started using the existing Treaty bodies of the UN to bring our complaints and issues and to put pressure on the member-states to comply with their obligations to International Human Rights Law. Our engagement with the Treaty Bodies, in a way, is to assert that we are equally entitled to enjoy the full protection of international human rights law. To gather more support and to get other actors to reinforce our views we established alliances with various NGOs focusing on the violation of the rights of indigenous peoples.⁴¹

Cultural Rights and International Human Rights Law

While vibrant debates on economic and social rights and development are taking place, there was not much around the issue of cultural rights. In fact, culture has been regarded not only as an obstacle to development and modernity. In the human rights discourse it has also been regarded as an obstacle to human rights. However, these views are changing because of the developments in International Human Rights Law. The adoption of the various human rights conventions which now form part of what is now known as International Human Rights Law⁴² has led to substantial debates and jurisprudence on cultural rights especially as these relate to traditional livelihoods and development of indigenous peoples.

Many of the complaints brought by indigenous persons before the Treaty Bodies of these Conventions are around the violation of cultural rights. Thus, it is not any wonder that there are many general recommendations

⁴⁰ Some of these were the UN Conference on Environment and Development (UNCED, 1992), UN Conference on Population and Development (Cairo Conference, 1993), World Conference on Human Rights (1993, Vienna Conference), Fourth World Conference on Women (1995, Beijing Conference)

⁴¹ These include the Anti-Slavery Society, the International Workgroup for Indigenous Affairs (IWGIA), Survival International, Cultural Survival,

⁴² What are included as part of International Human Rights Law are the Universal Declaration on Human Rights, International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966), International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women, Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of the Child.

or comments relevant to this concern. The articles specifically dealing with cultural rights are found in both Articles 27 of the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights and Article 15 of the International Covenant on Economic, Social and Cultural Rights.⁴³

Indigenous peoples are among those who contributed in enriching the jurisprudence on cultural rights within the Treaty Bodies because of the complaints they brought before these. Fergus MacKay, a legal expert on indigenous peoples rights analysed these and he saw that from the cases of indigenous peoples handled by the Human Rights Committee (HRC), emerged jurisprudence on the following rights of indigenous peoples.⁴⁴

- § To lands, territories and resources traditionally occupied and used and to a healthy environment;
- § To protection of sites of cultural and religious significance;
- § To cultural and physical integrity;
- § To meaningful participation in decisions that affect them;
- § To maintain and use their own cultural, social and political institutions;
- § To be free from discrimination and to equal protection of the law.

MacKay also cited what is covered in Article 27

*The HRC has interpreted article 27 to include the “rights of persons, in community with others, to engage in economic and social activities which are part of the culture of the community to which they belong.” In reaching this conclusion, the HRC recognized that Indigenous peoples’ subsistence and other traditional economic activities are an integral part of their culture, and substantial interference with those activities can be detrimental to their cultural integrity and survival. By necessity, the land, resource base and the environment thereof also require protection if subsistence activities are to be safeguarded. Many of the cases brought by Indigenous peoples under Article 27 challenge state- or corporate-directed resource exploitation. In this context, the HRC has observed that a state’s freedom to encourage economic development is limited by the obligations it has assumed under Article 27.*⁴⁵

⁴³ Article 27 of the Universal Declaration on Human Rights (UDHR)

1. Everyone has the right freely to participate in the cultural life of the community, and to enjoy the arts and share in scientific advancements and its benefits
2. Everyone has the right in the promotion of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 27 of the International Covenant on Civil and Political Rights (ICCPR)

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)

1. The States Parties to the present Covenant recognize the rights of every one;
 - (a) to take part in cultural life
 - (b) To enjoy the benefits of scientific progress and its applications;
 - (c) To benefit from the protection of moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

⁴⁴ MacKay 2000:3

⁴⁵ MacKay 2000:15

The Human Rights Committee came up with several General Comments after it made decisions on cases brought before its attention. One of these is General Comment No. 23 (Ibid;53) which recognized that as far as indigenous peoples are concerned “..culture manifests itself in many forms, including a particular way of life associated with the use of land resources.” Cultural right therefore includes ability to practice traditional livelihoods such as hunting and gathering and fishing and the right to live in reserves created by law. Thus, the protection of cultural rights ensures the survival of indigenous peoples and the development of their cultural, linguistic and religious identity.⁴⁶

Aside from the landmark decisions of the Human Rights Committee, the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS) also invoked Article 27 of the ICCPR to decide in favor of indigenous peoples.⁴⁷ The IACHR declared that “the special legal protections” accorded to Indians for the preservation of the cultural identity should extend to “the aspects linked to productive organization, which includes, among other things, the issues of ancestral and communal lands.”⁴⁸

Because of the numerous cases brought by indigenous peoples to the Committee on the Elimination of Racial Discrimination (CERD), it came up with General Recommendation XX111 in 1997, which dealt specifically with indigenous peoples; culture and identity. This called upon states to

- (e) *Recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State’s cultural identity and to promote its preservation;*
- (f) *Ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin and identity;*
- (g) *Provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;*
- (h) *Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly in public life and that no decisions directly relating to their rights and interests are taken without their informed consent.*
- (i) *Ensure that indigenous communities can exercise their rights to practice and revitalize their cultural traditions and customs and to preserve and practice their languages.*⁴⁹

⁴⁶See *General Recommendation XX111 Concerning the Rights of Minorities*, 50th Session, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (1994), para 7.

⁴⁷ Among these are the 1983 Decision of the Inter-American Commission on Human Rights on Nicaragua on the situation of a segment of the Nicaraguan Population of Miskito Origin (O.A.S. Doc. OEA/Ser L/V/11.62 , doc. 10. rev.3 (1983); IACHR decision on the Yanomami of Brazil which viewed the incursions into their ancestral lands as threats not only to the Yanomami’s well-being but also to their culture and traditions. The *Ominayak v. Canada* case handled by the Human Rights Committee which stated that the cultural rights guaranteed in Art. 27 included economic and social activities which sustained the Lubicon Lake Band of the Cree Indians. The ruling here is that Canada violated its obligation to the Covenant and Optional Protocol by allowing the provincial government of Alberta to grant leases for oil and gas exploration and for timber development in the ancestral territory of said peoples. (*Ominayak, Chief of the Lubicon Lake Band v. Canada*. Communication No. 267/1984, Report of the Human Rights Committee, U.N. GOAR, 45th Sess., Supp No. 40, Vol. 2 at 1, U.N. Doc. A/45/40 Annex 9 (A) 1990)

⁴⁸ Anaya.2004.135

⁴⁹ CERD, *General Recommendation XX111: Indigenous Peoples*, U.N. Doc CERD/C.51/misc 13/Rev 4 (1997) para. 4. [*CERD General Recommendation on Indigenous Peoples*]

These general comments and recommendations from the Treaty Bodies were used extensively by indigenous peoples to bolster their arguments for the articles under negotiation in the Draft Declaration on the Rights of Indigenous Peoples. During the revision process of the World Bank Operational Manual/Operational Directive 4.20 on Indigenous Peoples (1991) to the newly adopted Operational Policy 4.10 on Indigenous Peoples (2006) indigenous peoples argued that the Bank cannot go below these standards set by International Human Rights Law.

The increasing demands not only from indigenous peoples, but also from minorities, to have their cultural rights recognized and respected has not been ignored within the Commission on Human Rights. For the first time the CHR, passed resolution 2002/26 on April 22, 2002 on “*Promotion of the enjoyment of cultural rights of everyone and respect for different cultural identities.*” This affirmed that each culture has a dignity and value that must be respected and preserved; that every people has the right and duty to develop its culture; that states have the primary responsibility to promote the fully enjoyment of cultural rights by everyone and the respect for different cultural identities is vital for the protection of cultural diversity in the context of globalization and that all peoples have the right of self-determination. (Stamatopoulou.2007. 57) This interpretation further clarifies that the promotion and protection of cultural diversity advances the human rights and fundamental freedoms for all which is guaranteed by international human rights law. The link between the promotion of human rights and cultural diversity has been reinforced.

UNESCO Universal Declaration on Cultural Diversity

UNESCO (United Nations Educational, Scientific and Cultural Organisation) is the UN Agency mainly in charge of matters related to culture. It defines cultural rights in “terms of the rights of creators and transmitters of culture, the rights of the people at large to contribute and participate in cultural life and the rights of peoples to cultural integrity” (Stamatopoulou 2007:1) Many of the substantial discussions around cultural diversity, relationship between culture and development, and the protection and safeguarding of tangible and intangible cultural heritage are handled by it. In fact, it has played an important role in the formulation of Article 27 of the UDHR.

UNESCO organized various intergovernmental conferences on cultural policies. One of the first ones was the 1975 Accra Intergovernmental Conference on Cultural Policies in Africa.⁵⁰ This was the first intergovernmental process which affirmed the principle of incorporating a cultural dimension in development. Another was the 1982 World Conference on Cultural Policies (MONDIACULT) held in Mexico City. The issues debated were the definitions of culture, development and the cultural dimension of development. The final report of this conference defined development as “*..a complex, comprehensive and multidimensional process which extends beyond mere economic growth to incorporate all dimensions of life and all the energies of a community, all of which whose members are called upon to make a contribution and can expect to share in the benefits.*”

Among the UN specialized agencies it was UNESCO which played the lead role in promoting the cultural dimension of development. It declared and implemented the World Decade for Cultural Development (1988-1997) and established the World Commission on Culture and Development (1992). These further elaborated on the cultural dimensions of development. Unfortunately, indigenous peoples were virtually absent in many of these processes.

At its Fourteenth General Conference it adopted the **Declaration of the Principles of International Cultural Cooperation** (1996). The first article of this Declaration affirmed that each culture has a dignity and value which must be respected and protected, every people has the right and duty to develop its culture and that all cultures are part of the common heritage of humankind.

⁵⁰ This was organized by UNESCO and the Organization of African Union (OAU)

Then in 2001 it adopted the **Universal Declaration on Cultural Diversity**.⁵¹ This Declaration finally mentioned indigenous peoples. It highlighted the link of culture and development and established that the guarantee for cultural diversity to flourish is the respect of human rights. This is a landmark Declaration but has not gained much attention that it should merit. It further elaborated how the right to culture establishes an enabling environment for cultural diversity (Article 5) and it clarified that cultural diversity is one of the roots and a factor of development (Article 3) and a means to achieve intellectual, moral, emotional and spiritual existence. Furthermore, it stressed that “*the defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity*”. Therefore, a commitment should be made to respect the rights of minorities and indigenous peoples (Article 4). Its Plan of Action includes the need to “*..clarify the content of cultural rights as an integral part of human rights.*”⁵² The Declaration also reified “cultural pluralism” which should be promoted through intercultural exchange and dialogue.

This Declaration clearly views cultural rights as an integral part of human rights which is consistent with Article 27 of the Universal Declaration on Human Rights and Articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights.

Unfortunately, Article 27 of the International Covenant on Civil and Political Rights was not mentioned in the Declaration. As shown in the earlier section, Article 27 has been heavily invoked in several comments and decisions addressing indigenous peoples’ complaints and submissions filed before the HRC, the CERD and the Inter-American Court on Human Rights. Such an omission from the Declaration shows the lack of coherence and synergy amongst the various UN agencies and bodies.

The Declaration is still a positive development as it signals a shift of UNESCO’s views and priorities in its work on culture. The public image of UNESCO is that it is a body concerned only with protecting and promoting a concept of culture referred to as “high culture”. This refers to culture as masterpieces of art or literature or historical monuments such as the Greek Parthenon or the Egyptian pyramids. Now it has defined culture in a more holistic manner as seen in Preambular Paragraph 5.

Reaffirming that culture should be regarded as the set of distinctive spiritual, material, intellectual, emotional features of society or a social group, and that it encompasses in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs.

Annex 11 which contains the main lines of an action plan for its implementation, has among its objectives

1. *Deepening the international debate on questions relating to cultural diversity, particularly in respect of its links with development and its impact on policy-making at both national and international level: taking forward notably consideration of the advisability of an international legal instrument on cultural diversity.*

14. *Respecting and protecting traditional knowledge, in particular that of indigenous peoples; recognizing the contribution of traditional knowledge, particularly with regard to environmental protection and the management of natural resources, and fostering synergies between modern science and local knowledge.*

⁵¹ The full Declaration and its Action Plan can be downloaded from unesdoc.unesco.org/images/0012/001271/127160m.pdf.

⁵² Ibid. p. 15. Main lines of an Action Plan for the Implementation of the UNESCO Universal Declaration on Cultural Diversity.

According to Stamatopoulou, with this Declaration, “UNESCO came closer to a human rights understanding of cultural rights, as compared to an understanding focusing mainly on inter-state relations.” However, she also concluded that “UNESCO approaches human rights and cultural rights with political caution”⁵³. She justifies this conclusion with the fact that the main body of the Declaration failed to incorporate all the relevant human rights elements. The respect and protection of traditional knowledge of indigenous peoples was left out and included only in the Action Plan.

While we laud the positive aspects of this Declaration, we should not miss out in pointing out the problems with it. One of the issues is the commercialization of culture. This is spurred by the construction of the concept of “cultural industry”. Article 10 talks about the need to reinforce international cooperation to enable countries, especially developing countries and countries in transition, to establish cultural industries that are viable and competitive at the national and international level. I surmise that what is being referred to here are the movie industry and the music and art industry. For indigenous peoples, however, cultural diversity is their life, worldviews, knowledge, relationships with nature and with other people and not just their dances, music and dresses.

With the promotion of this concept, the industrialization of culture is almost considered as a given. Now the concept of cultural goods and services is accepted without much critique, as if these are equivalent to manufactured goods and services. Culture is also referred to as a resource so the concept of cultural resource management emerged which is the equivalent to natural resource management of biological diversity. Taken generically, these terms seem to be harmless. A more in depth analysis, though, would show that if the mindset regarding culture is to regard these as goods and services, then it is easy to justify why the focus of activities revolve around negotiating how to access and share benefits over these.

The Declaration did provide the needed balance and caution on how cultural goods and services should be regarded. Article 8 says

In the face of present-day economic and technological change, opening up vast prospects for creation and innovation, particular attention must be paid to the diversity of the supply of creative work, to due recognition of rights of authors and artists and to specificity of cultural goods and services which, as vectors of identity, values and meaning, must not be treated as mere commodities or consumer goods.

It also clarified that “market forces alone cannot guarantee the preservation and promotion of cultural diversity, which is the key to sustainable human development “ (Article 11). It stressed the pre-eminence of public policy.

Convention on the Protection and Promotion of the Diversity of Cultural Expressions

In accordance with the objective set by the Declaration on Cultural Diversity to consider an international legal instrument on cultural diversity, the UNESCO adopted, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions⁵⁴ at its 33rd Session in 20 October 2005. It entered into force in 18 March 2007. This Convention affirmed “that cultural diversity is a defining characteristic of humanity” (Preambular Paragraph 1). The Preamble also stressed the “need to incorporate culture as a strategic element in national and international development policies , as well as in international development cooperation, taking into account also the United Nations Millenium Declaration (2000) with its special emphasis on poverty eradication.” The specific references to indigenous peoples in this Convention are mainly found in the Preamble. The relevant paragraphs are as follows;

⁵³ Stamatopoulou.2007.78

⁵⁴ This Convention is downloadable at unesdoc.unesco.org/images/0014/001429/142919e.pdf.

Taking into account that culture takes diverse forms across time and space and that this diversity is embodied in the uniqueness and plurality of the identities and cultural expressions of the peoples and societies making up humanity.

Recognizing the importance of traditional knowledge as a source of intangible and material wealth, and in particular the knowledge systems of indigenous peoples, and its positive contribution to sustainable development , as well as the need for its adequate protection and promotion.

Taking into account the importance of the vitality of cultures, including for persons belonging to minorities and indigenous peoples, as manifested in their freedom to create, disseminate and distribute their own traditional cultural expressions and to have access thereto, so as to benefit them for their own development,

Some of the objectives set in Article 1 include the following;

- § (a) *the protection and promotion of diversity of cultural expressions;*
- § (d) *foster interculturality in order to develop cultural interaction in the spirit of building bridges among peoples; and*
- § (f) *to reaffirm the importance of the link between culture and development for all countries, particularly for developing countries,...*

Its guiding principles which are contained in Article 2 affirm the following principles; respect for human rights and fundamental freedoms (2.1); equal dignity and respect for all cultures (2.3); complementarity of economic and cultural aspects of development (2.5); sustainable development (2.6). The imperative to integrate culture in sustainable development (Article 13) was affirmed. *“Parties shall endeavour to integrate culture in their development policies at all levels for the creation of conditions conducive to sustainable development and, within this framework, foster aspects relating to the protection and promotion of the diversity of cultural expression.”*

In terms of specific measures to promote cultural expressions it says that Parties should encourage specific groups, such as indigenous peoples, to create, produce, disseminate, distribute and have access to their own cultural expressions. (Article 7). This is an important provision because what is increasingly being witnessed are non-indigenous individuals taking the lead in producing cultural expressions of indigenous peoples and passing these off as their intellectual property. There are already many reported cases of traditional songs, designs, artistic works of indigenous peoples misappropriated by state agencies, corporations, or non-indigenous artists.

While the Convention contains objectives and principles which are important for indigenous peoples, there are provisions which may create problems for them. One is the overemphasis on the sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory” (Art.1. h and Art. 2.2) This is understandable because this is an instrument agreed upon by member-states who are also the members of the Conference of Parties. However, there is still a gap in terms of recognizing and protecting indigenous peoples’ rights to their own tangible and intangible cultural expressions.

For indigenous peoples who have been subjected to cultural genocide or ethnocide by some of these same states, it would not be easy to entrust to the state the sole decision-making power to decide on policies and measures to promote and protect cultural diversity. There is even no provision which explicitly spells out how indigenous peoples will be able to participate effectively in designing and implementing these policies. Article

11 on Participation of Civil Society is the only one which talks of participation. It states “..parties acknowledge the fundamental role of civil society in protecting and promoting the diversity of cultural expressions. Parties shall encourage the active participation of civil society in their efforts to achieve the objectives of this Convention.”

Indigenous peoples have an issue against their being lumped together with a nebulous entity called “civil society”. It denigrates their identity as distinct peoples and nations who have the right to self-determination. The references to indigenous peoples in the preamble and also in the principles are not reiterated in the main body of the Convention. There is no provision which ensures that the free, prior and informed consent of indigenous peoples be obtained if their tangible and intangible cultural expressions are accessed and commercialized or traded in the global market. There is also no provision which defines access and benefit-sharing schemes between the State and the bearers and creators of cultural expressions.

This Convention is criticized by some human rights experts because it failed to clarify and amplify cultural rights as human rights. It is essentially a trade agreement on how to ensure that cultural goods and services (particularly the movie industry, music and other arts) are traded on a more equitable basis in the global market.⁵⁵

UNESCO clarified that the Convention “..stands out among the heritage-related conventions in that it focuses primarily on the diversity of cultural expressions, as circulated and shared through cultural activities, , goods and services, the most contemporary transmitters of culture.”⁵⁶ It thus recognized this limitation;

The Convention..does not cover all the aspects of cultural diversity as addressed in the UNESCO Universal Declaration on Cultural Diversity. It deals with specific thematic fields of the Declaration, such as those set out in Articles 8 to 11: On the one hand, the need to recognize that cultural goods and services convey identity, values and meaning and consequently cannot be considered as mere commodities and consumer goods like any others; and on the other hand, the need for States to take all appropriate measures to protect and promote diversity of cultural expressions while ensuring the free flow of ideas and works; and lastly the need to redefine international cooperation, the keystone of the Convention, as each form of creation bears the seed of a continuing dialogue.

While the debate over cultural goods and services continues, it is equally important to look into what the Convention can do to promote development with identity or self-determined development. UNESCO has established that the defence of cultural diversity is an ethical imperative , inseparable from respect of human dignity. (Art. 4, Universal Declaration on Cultural Diversity). Indigenous peoples’ cultures and identities are intricately linked with their ancestral lands. If we are forcibly displaced from our lands, then our cultural expressions are at risk as many of our rituals, sacred sites, raw materials for our handicrafts and artifacts, among others, are found in our lands. Such a situation may find a solution in Article 8 which says

1. ...a Party may determine the existence of special situations where cultural expressions on its territory are at risk of extinction, under serious threat, or otherwise in need of urgent safeguarding.
2. Parties may take all appropriate measures to protect and preserve cultural expressions in situations referred to in paragraph 1 in a manner consistent with the provisions of this Convention.

⁵⁵ Stamatopoulou.2007.80.

⁵⁶ *Ten Keys to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. Doc. CLT/CEI/DCE/2007/P1/32.

3. *Parties shall report to the Intergovernmental Committee referred to in Article 23 all measures taken to meet the exigencies of the situation, and the Committee may make appropriate recommendations.*

Cultural expressions in indigenous territories have not been allowed to flourish or were systematically denigrated or obliterated through various means and by actors like the state, religious formations, corporations and even other communities who present competing claims. Indigenous peoples filed many complaints before the Treaty Bodies alleging that their cultural expressions are at risk of extinction and were misappropriated. One recent example is the experience of the Subanon of Mindanao in the Philippines where a Canadian mining company (Toronto Ventures Incorporated) is destroying their ancestral lands including their sacred mountain (Mt. Canatuan). A submission⁵⁷ by the Subanon to CERD was presented this year to alert the Committee to act expeditiously because of the exigency of the situation. In response to this, the CERD instructed the Philippine Government to respond to the questions it raised and to have the response by 31 December 2007.

It is worthwhile exploring what the Convention on the Protection and Promotion on the Diversity of Cultural Expressions can concretely do for indigenous peoples who find themselves in similar situations. These instruments should effectively complement the actions taken by the Treaty Bodies to protect indigenous peoples' cultures.

Convention on the Safeguarding of the Intangible Cultural Heritage

The Convention on the Safeguarding of the Intangible Cultural Heritage adopted by UNESCO in 17 October 2003 is another instrument which needs to be analysed. It entered into force on 20 April 2006. This was formulated as it was determined by UNESCO that there is yet no binding multilateral instrument which safeguards the intangible cultural heritage of humanity and yet processes of globalization and social transformation "...give rise to grave threats of deterioration, disappearance and destruction of intangible cultural heritage." The Preamble also recognizes "... that communities, in particular indigenous communities, groups and, in some cases, individuals play an important role in producing, safeguarding, maintenance and recreation of the intangible cultural heritage, thus helping to enrich cultural diversity and human creativity."

This Convention aims to safeguard and ensure respect for intangible cultural heritage and to raise awareness of the importance of this. "Intangible cultural heritage"

Means the practices, representations, expressions, knowledge, skills – as well as instruments, objects, artifacts and cultural spaces associated therewith – that communities, groups and in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity... (Article 2.1 –Definitions)

This include oral traditions and expressions, including language, performing arts, social practices, rituals and festive events, knowledge and practices concerning nature and the universe, traditional craftsmanship (Article 2.2)

"Safeguarding" means measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection,

⁵⁷ This is Submission to CERD regarding the "Discrimination against the Subanon of Mt. Canatuan, Siocon, Zamboanga del Norte, Philippines in the context of large-scale gold mining in their ancestral domain." The CERD heard this at their 71st Session, from 30th July – 17th August 2007.

promotion, enhancement, transmission, particularly through formal and informal education, as well as the revitalization of the various aspects of such heritage. (Article 2.3)

The Convention established the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage which is mandated to promote the objectives of the Convention, monitor its implementation and provide guidance for safeguarding of intangible cultural heritage, among others. In order to safeguard this at the international level, there will be Representative List of the Intangible Cultural Heritage of Humanity (Article 16) and a list of Intangible Cultural Heritage in Need of Urgent Safeguarding (Article 17). The Committee shall incorporate in the Representative List the items proclaimed “Masterpieces of the Oral and Intangible Heritage of Humanity”.⁵⁸ A “fund for the safeguarding of the Intangible Cultural Heritage” will be established. To ensure broader participation in this work the State Parties are asked to “..endeavour to ensure the widest possible participation of communities, groups and where appropriate, individuals, that create, maintain and transmit such heritage, and to involve them in its management”(Article 15).

There is hardly any mention of indigenous peoples in this Convention. However, considering that indigenous peoples are the ones who still maintain oral traditions and expressions and knowledge and practices concerning nature, these should be covered by Article 15. Indigenous peoples need to be included in the processes which identify these masterpieces. Those whose oral traditions were recognized need to know what this means for them. Some States who made it possible to include masterpieces from their indigenous peoples have not even informed the indigenous peoples who are the bearers of the oral traditions. The bearers of the Hudhud Chants of the Ifugao in the Philippines, for example, did not even know that their Hudhud has been included in the UNESCO Masterpieces and were not told what this means for them.⁵⁹

A key weakness of the UNESCO processes is the exclusion of indigenous peoples’ representatives from the norm-setting processes and also in the activities of projects around tangible and intangible heritage. There are a few indigenous persons, like Otilia Lux de Cojti⁶⁰, who came in as government delegates and thus played positive roles in bringing in indigenous perspectives. Notwithstanding this weakness and the limitations which were discussed earlier, it is my conclusion that the provisions of these Declarations and Conventions can still be used to reinforce self-determined development. As will be seen in the next sections, the rights and principles of these also resonate with the key principles and rights underpinning self-determined development. There are gaps which need to be addressed and one of these is the right to free, prior and informed consent. In the face of continuing misappropriation and misuse of indigenous cultural heritage this right has to be protected.

Globalization, with its thrust of liberalizing the laws of the South to allow for easier entry of goods and services (including cultural goods) from the North, also made more visible the threats to cultural diversity and cultural rights. UNESCO took this issue to heart and asserted that culture is the context of development as well as the

⁵⁸ UNESCO created in 1998 an international distinction entitled the Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity. The current list of 90 masterpieces includes several expressions of indigenous peoples. Some of these are the Oral Heritage and Cultural Manifestations of the Zápara People (Ecuador/Peru), Graphic and Oral Traditions of the Wajapi (Brazil). Oral Tradition of the Aka Pygmies (Central African Republic), Hudhud Chants of the Ifugao (Philippines).

⁵⁹ There was a consultation held in Banaue, Ifugao in 2004 under the FAO GIAHS project which one of my colleagues, an Ifugao herself, attended. She reported that first the Ifugao farmers attending were complaining because this might be the same experience which they went through with the Declaration of the Banaue Rice Terraces as a UNESCO World Heritage Site. Millions of pesos were allotted for this project but the farmers who wanted to have their ricefields stone-terraced with these funds did not get what they want, as what was prioritized by the government are viewing decks. They also mentioned that they have not been informed of the declaration of the Hudhud as a masterpiece.

⁶⁰ Otilia Lux de Cojti was an expert of the Permanent Forum (2002-2007) and she is the representative of the Government of Guatemala to UNESCO

missing factor in policies for development. The adoption of its latest instruments on cultural diversity and intangible cultural heritage can help stop creeping cultural homogenization because of globalization.

The UN Declaration on the Rights of Indigenous Peoples

Brief History

The UN Working Group on Indigenous Populations started to draft the Declaration on the Rights of Indigenous Peoples in 1985. The drafting finished in 1993 and the Sub-Commission adopted the Draft in 1994 and submitted it to the Commission on Human Rights. Our participation in the drafting of the Declaration text allowed for substantial dialogues between us, the experts and the states. This became the global forum where we discussed extensively our worldviews, our concepts of rights and development which includes the controversial right of self-determination.

The Commission on Human Rights set up the “Working Group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995” to further elaborate and negotiate the Draft.⁶¹ This Open-ended Intersessional Working Group had its first session from 20 November to 1 December 1995 and it completed its work at its 12th Session in February 3, 2006. The adoption of the Chairman’s Text of the Draft Declaration on the Rights of Indigenous Peoples became one of the agenda items of 1st Session of the newly established Human Rights Council (the successor of the defunct Commission on Human Rights). On 29 June 2006 the Declaration was adopted through a vote; 30 voted yes, 2 voted against (Canada and Russia) and 12 abstained.

It was then sent to the 61st Session of the General Assembly for adoption. At its session in November 2006 the decision was to defer the adoption on the basis of a resolution passed by the African States who wanted to study further the Declaration. The African States presented a paper which contained their proposed amendments to the Declaration. These were flatly rejected by indigenous peoples as these reinforced discrimination. The African Commission on Human and Peoples’ Rights Working Group on Indigenous Populations and Communities developed a legal response to the Aide-Memoire made by the African States. This was vital in leading towards the change in the position of the States. Indigenous peoples both from Africa and other regions waged a sustained campaign to make the African Group of States understand that this Declaration will not be a problem but a solution to some of the issues they face.

The lobbying and arguments put forth by indigenous peoples of Africa made the issues of African indigenous peoples more visible. A very positive development was the establishment of the Working Group on Indigenous Populations and Communities in 2000 and its first task was the preparation of a Report on Indigenous Populations and Communities in Africa. This came out in 2003. It is extensively used to convince the African States and multilateral bodies that there are indigenous peoples in Africa who are different from the dominant

⁶¹ The introductory sentence in every report made by the Working Group states; “By resolution 1995/32 of 3 March 1995, the Commission on Human Rights decided to establish an open-ended intersessional working group of the Commission on Human Rights with the sole purpose of elaborating a draft declaration, considering the draft contained in the annex to resolution 1994/45 of 26 August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (now the Sub-Commission on the Promotion and Protection of Human Rights) entitled “Draft United Nations declaration on the rights of indigenous peoples” for consideration and adoption by the General Assembly within the International Decade of the World’s Indigenous People. This decision was endorsed by the Economic and Social Council in its resolution 1995/32 of 25 July 1995.’

populations. The common argument used by the African States not to deal with this issue is that all of the Africans are indigenous. The Report explained why this is not right.

We impressed upon them that it is not to their advantage to be seen as the ones who blocked the adoption of a major human rights instrument. As the days went by there was a noticeable move on their part to distance themselves away from Canada and the other opposing States. Eventually the African States led by Namibia and Botswana came together with the delegations of Mexico, Peru and Guatemala to discuss and agree on amendments on the Declaration. When an agreement was finally reached in the first week of September 2007 the delegation of Mexico, Peru and Guatemala met with the indigenous peoples' caucus steering committee to see if the amended text will be acceptable.

The coordinators of the regional indigenous caucuses then had to reach out to their members to get their views. All the regional caucuses agreed to support the amended text. After more than two decades of work, the UN Declaration on the Rights of Indigenous Peoples⁶² was finally adopted by the 61st session of the General Assembly on 13 September 2007. This was adopted through a vote of 143 in favor, 4 against and 11 abstentions. For more than two decades we were able to sharpen our arguments on why we insist that specific articles are formulated the way they are. At some point we knew that we will not win this battle just by perfecting our arguments, alone. We will win by being flexible enough to accept that there can be amendments which will not alter the substance and basic principles we fought for but which will allay some of the fears of States who are the main duty bearers for the implementation of these rights.

The UNDRIP and the Permanent Forum on Indigenous Issues

As the Chair of the Forum, I was given the privilege to address the 61st Session of the General Assembly.⁶³ I hailed this day as a historic moment which “*will be forever be etched in our history and memories as a significant gain in our long struggle for our rights as distinct peoples and cultures... This will be remembered as a day when the United Nations and its Member States, together with Indigenous Peoples, reconciled with past painful histories and decided to march into the future on the path of human rights.*” I further stated that;

This Declaration has the distinction of being the only Declaration in the UN which was drafted with the rights-holders, themselves, the Indigenous Peoples. We see this is as a strong Declaration which embodies the most important rights we and our ancestors have long fought for; our right of self-determination, our right to own and control our lands, territories and resources, our right to free, prior and informed consent, among others. Each and every article of this Declaration is a response to the cries and complaints brought by indigenous peoples before the UN-WGIP. This is a Declaration which makes the opening phrase of the UN Charter, “We the Peoples...” meaningful for 370 million indigenous persons all over the world.

Our tenacity and determination to continue to survive as distinct peoples and cultures has been demonstrated again in the work around the Declaration. We succeeded in making the international community accept that we, as distinct collectivities, are rightful subjects of international human rights law.

In terms of what the Declaration will mean for the Permanent Forum I pointed out that;

⁶² This Declaration contains 24 preambular paragraphs and 46 operational articles. To see the final text adopted and the record of who voted yes, no, abstained and who were absent one can go to these websites: www.un.org/esa/socdev/unpfii or www.tebtebba.org.

⁶³ The full text of my Statement is found in www.tebtebba.org and www.un.org/esa/socdev/unpfii.

- It will serve as the major framework for the Forum in providing advice to the members-states of the ECOSOC and the UN agencies, programmes and funds.
- It is a key instrument and tool for raising awareness on indigenous peoples and for monitoring progress on how their rights are protected, respected and fulfilled and how self-determined development is being achieved.
- It enflashes and facilitates the operationalization of the human rights-based approach to development as it applies to Indigenous Peoples.
- It will be the guide for States, the UN System, Indigenous Peoples and civil society in making the theme of the Second Decade of the World's Indigenous Peoples "Partnership for Action and Dignity" a reality...
- As this sets the minimum international standards for the protection and promotion of the rights of Indigenous Peoples it will be the framework for redesigning existing and future laws, policies, and programs on indigenous peoples.

The Forum was specifically mentioned in Article 42 as one of the UN bodies and agencies which shall "promote respect for the full application of the provisions of this Declaration.." and it also tasked to follow up its effectiveness. In the 2008 pre-sessional meeting of the Forum which was held in Spain in February 2008, the Forum recommended that a chamber to hear the reports on the implementation of the Declaration be set up during the Forum sessions. We are asking for an additional 3 days for this process.

Self-determined development and the UNDRIP

As was stated earlier, the key elements of indigenous peoples' self-determined development are already found in the ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples. Each and every article of the Declaration was carefully crafted to respond to the complaints brought by indigenous representatives before the UN-Working Group on Indigenous Populations (WGIP). The drafting process starts with the experts listening to reports on the situation of indigenous peoples. On the basis of these reports, the experts determine which rights were violated. Then they crafted specific articles to respond to a cluster of issues.

The main principles which underpin this Declaration are non-discrimination and equality. The foundational right is the right of self-determination. I will highlight what has been said in the preamble which further elaborates self-determined development.

The Preamble recognizes that the historic injustices we suffered, through colonization and dispossession of our lands, territories and resources, have prevented us from exercising our right to development. It acknowledged the urgent need to respect and promote our inherent rights which derive from our cultures, economic, social and political structures, our histories and worldviews and our rights to our lands, territories and resources. Furthermore, it affirmed that our control over our lands, territories and resources and over developments which affect us, will enable us to maintain and strengthen our institutions, cultures and traditions as well as pursue our development according to our needs and aspirations.

It stressed that the imperative to respect our indigenous knowledge, cultures and traditional practices is crucial as these can contribute to the goals of sustainable and equitable development. It, unequivocally, states that we possess collective rights which are indispensable for our existence, well-being and integral development as peoples. Harmonious and cooperative relations between States and indigenous peoples will be strengthened if

the rights contained in this Declaration will be recognized. Justice, democracy, respect for human rights, non-discrimination and good faith are the key principles which underpin these relationship.

This Declaration is an acknowledgement that indigenous peoples have not and still do not enjoy the rights afforded to them by International Human Rights Law on an equal and non-discriminatory basis. This Declaration does not establish special rights for us. It is an instrument which interprets how International Human Rights Law applies to us, as distinct collectivities and as individuals. The arguments we used to convince States that these should be the articles contained in the Declaration come from natural law, our histories, our customary laws, existing International Human Rights Law and the jurisprudence of the various Treaty Bodies. Some states who voted against it, however still cannot accept that this Declaration does respect customary law.⁶⁴

The main basis of our claim to our right to development is our right of self-determination (Article 3). From this follows our right to maintain and strengthen our distinct political, legal, economic, social and cultural institutions (Art. 5) and to be secure in our enjoyment of our own means of subsistence and development as well as to engage freely in our traditional and other economic activities (Article 20.1) Should we be deprived of our means of subsistence and development, we are entitled to just and fair redress (Art. 20.2). We have the right to determine and develop priorities and strategies for exercising our right to development. This includes our right to develop and determine health, housing and other economic and social programmes affecting us, to be involved in shaping these and, as far as possible, to administer such programmes through our own institutions.(Art. 23)

The Declaration states that we cannot be subjected to forced assimilation. Any action in the past, at present or in the future, which deprive us of our integrity as distinct peoples, which dispossess us of our lands, territories and resources, which forcibly assimilate or integrate us and which denigrate our cultural values and integrity, the State is obliged to provide redress for such injustices (Art. 8).

Integral to the right to development is the right of participation. This is why we fought very hard to ensure that our right to free, prior and informed consent is recognized in the Declaration. There are several articles affirming this. We cannot be forcibly removed from our lands and territories and relocated without our free, prior and informed consent (Art. 10).

We have the right to practice and revitalize our traditions and customs which includes our right to maintain and protect the past, present and future manifestations and expressions of our culture. These include our archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature. These are considered as our cultural, religious, intellectual and spiritual property. If these are taken without our free, prior and informed consent and in violation of our laws, traditions and customs, States should provide redress, which includes restitution, which are jointly developed with us. (Art. 11).

The Declaration affirms that we have the right to maintain, control, protect and develop our cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of our sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. We also have the right to maintain, control, protect and develop our intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions. (Art. 31). This particular article was changed from the original article in the Sub-Commission Draft. The key organizations which negotiated this article were the Saami Council and Tebtebba. The term “traditional cultural expressions” was

⁶⁴ Australia’ statement before the adoption of the Declaration states that it was concerned that the Declaration placed indigenous customary law in a superior position to national law. Customary law was not “law” in the sense that modern democracies used the term, but was based on culture and tradition.

not in the original draft, but as these were already used by UNESCO and WIPO (World Intellectual Property Organization) we proposed its inclusion. The term “intellectual property” was also not in the original draft. Initially, Tebtebba was adamantly against the use of this term because it refers to western intellectual property rights. However, in the end, we agreed to have it in as this was the consensus reached by the indigenous peoples’ caucus.

Articles 10, 11 and 31 resemble some provisions of the UNESCO Universal Declaration on Cultural Diversity and the related Conventions. However, UNESCO does not go far enough in terms of recognizing our right to free, prior and informed consent and the provision of redress. There has to be some dialogue between the Permanent Forum and UNESCO on these articles so that convergence and mutual strengthening can happen. There are many indigenous peoples from all over the world who are victims of acts of misappropriation of their cultural, intellectual, religious and spiritual property.

The Declaration recognizes that the dignity and diversity of our cultures, traditions, histories and aspirations should be appropriately reflected in education and public information. Effective measures should be taken by States to combat discrimination and prejudice against us and promote tolerance, understanding and good relations between us and the broader society (Art. 15). Since UNESCO is the main body looking at the development of education and multi-media it will play a role in monitoring how this particular article will be implemented.

As far as our rights to our lands, territories and resources are concerned the Declaration contains several articles on this. These are all closely interlinked with our right to development. Article 26 is particularly special and significant for me because I was one of the indigenous representatives who sat with the delegation of Canada to elaborate on this during the last years of the Working Group on the Draft Declaration. We finally agreed on this text which was carried in the final text.⁶⁵

We have the right to determine and develop priorities and strategies for the development or use of our lands, territories and resources. Our free, prior and informed consent should be obtained by States before the approval of any project that will affect our lands, territories and resources, especially as this relates to the development, use and exploitation of mineral, water and other resources. Just and fair redress for activities undertaken without our participation and consent should be provided by States and effective measures should be taken to mitigate adverse environmental, economic, social, cultural and spiritual impacts. (Art. 32). States should respect our right to conserve and protect our environment and the productive capacity of our lands, territories and resources and assistance programs for these should be provided without discrimination. (Art. 29).

All these articles cited describe indigenous peoples’ self-determined development. To carry this exercise further and just to see how cultural rights are addressed, Stamatopoulou did an assessment of the Declaration as adopted by the Human Rights Council in relation to what it says on this. She identified 17 out of the 46

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- ⁶⁵ 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Canada still voted against the Declaration and it even cited this specific article as one of its problems as it will affect ongoing land claims in Canada.

operational articles which are on cultural rights.⁶⁶ (Stamatopoulou.2007.67) There is an obvious overlap between cultural rights and right to development in the Declaration but this is to be expected because for indigenous peoples culture is development and development is culture.

The fact that the UN Declaration on the Rights of Indigenous Peoples contains many articles on cultural rights or cultural integrity is a reflection of the reality that the lot of most indigenous peoples is the undermining or obliteration of their diverse cultures by the state or non-state entities like religious bodies, private schools or corporations. In fact, it is almost a miracle that out of the 6,000 remaining cultures and languages in the world today, around 4,000 are those of indigenous peoples. Some of these are under threat of becoming extinct which all the more makes the Declaration a crucial tool to save the world's remaining cultural diversity.

Culture as development and development as culture

The Declaration contains the basic principles and rights which need to be implemented if self-determined development is to be achieved. I highlighted earlier the different articles which can be considered as the key elements of self-determined development. One cannot just pick one and disregard the others because these are indivisible and interrelated. The violation of the rights to lands, territories and resources is also a violation of the right to development and the right to culture. The culture of indigenous peoples cannot be understood outside of their physical environment and resources and from the traditional livelihoods.

We may not produce a lot of surplus from our agricultural production but our well-being as distinct peoples is not compromised. The risk of becoming atomized individuals is low because this will mean the death of the traditions and values which our ancestors bestowed to us, as our cultural heritage. From the perspective of the dominant development model, there is no development in our communities because our contribution to the gross national product (GNP) is insignificant.

The imperative to ensure that our cultures and traditions remain alive, our community unity and solidarity is strengthened, our subsistence is guaranteed and our indigenous governance systems are in place, requires us then to fight for our basic human rights which include civil, political, social, economic and cultural rights. The concepts of inalienability, indivisibility and interrelatedness of human rights is easily grasped by us because of this.

The earlier sections show that the processes towards elaborating the right to development and the right to culture or cultural rights did not necessarily coincide. The convergence came about mainly through indigenous peoples' engagements and interventions with the various mechanisms and processes in the UN. Thus, we can claim that we contributed significantly promoting the present trend which considers culture and development as two sides of the same coin. This perspective has been expounded in the jurisprudence of the Treaty Bodies which emerged from the complaints of indigenous peoples, the provisions of ILO Convention No.169 and the UN Declaration on the Rights of Indigenous Peoples. The concept of self-determined development precisely captures the indivisibility between these two sets of rights (right to culture and right to development).

As the issues of cultural diversity and development with culture became more visible, other UN programmes and multilateral bodies developed their own contributions to the discourse. The UNDP "Policy of Engagement with Indigenous Peoples" (2001) recognized the value of indigenous peoples cultures and knowledge for sustainable development.

"..Indigenous cultures comprise a heritage of diverse knowledge and ideas that is a resource for the whole world. As UNDP pursues sustainable human development, attention has been placed on indigenous peoples largely owing to their sustainable development practices. This

⁶⁶ Stamatopoulou identified the following articles; Articles 2, 3, 5, 7 – 9; 11-16; 24, 31, 33, 34, 36. The contents of these Articles are contained in footnote #3.

has led to an interest in indigenous peoples' ways of life, their cultures, sciences, land and resource management, governance, political and justice systems, knowledge and healing practices. Recognition of indigenous peoples' assets and traditional knowledge (such as terrestrial and marine ecosystems, naturally occurring medicines from plants and insects, cultivated plant varieties, and animal husbandry) can be helpful to national and international development. Furthermore, indigenous peoples' continued existence is a testimony to the sustainability and viability of indigenous economic production systems, and social and governance practices that should be supported and enhanced, and most importantly, incorporated into mainstream development practices."

The theme adopted by the UNDP for its Human Development Report in 2004 was "Cultural Liberty in Today's Diverse World". One of its objectives was to counter the Huntington view that the problems of the world today is rooted in the clash of civilizations or the clash of cultures.⁶⁷ Because this was done post-September 9/11 the HDR team found it timely to deal with this issue. This report elucidated why it is crucial that the issue of culture has to be integrated in mainstream development thinking and practice. It shows that it has already been proven that democracy and economic growth are not enough to bring about a more peaceful and prosperous world. Developing and implementing multicultural policies which recognize and respect differences in ethnicity, religion and cultures and promote diversity and cultural freedoms are the paths to take for a more peaceful and secure world.

The World Bank Operational Policy 4.10 on Indigenous Peoples (2005), the Inter-American Development Bank Operational Policy on Indigenous Peoples and Strategy for Indigenous Development (2006) and the Asian Development Bank Policy on Indigenous Peoples (1998) all contain provisions which acknowledge that indigenous peoples identities and cultures are link to their ancestral lands and territories and the natural resources they depend on. The risks and vulnerabilities they suffer when so-called development projects are brought to their communities, even without their consent, compelled these different bodies to make their safeguard policies on indigenous peoples. The IADB Strategy Paper went to the extent of defining development with identity;

..refers to a process that includes strengthening of indigenous peoples, harmony and sustained interaction with their environment, sound management of natural resources and territories, the creation and exercise of authority, and respect for the rights and values of indigenous peoples, including cultural, economic, social and institutional rights, in accordance with their worldview and governance. This is a concept based on the principles of equity, interconnectedness, reciprocity and solidarity. It seeks to consolidate the conditions in which indigenous peoples can thrive and grow in harmony with their surroundings by capitalizing on the potential of their cultural, natural, and social assets, according to their priorities.

Indigenous peoples have to made aware of the existence of these policies and be equipped to use these as these banks fund projects in indigenous territories.

UN Permanent Forum on Indigenous Issues and its role in promoting self-determined development

To further expand the spaces where indigenous peoples' rights and development can be addressed, the idea of a permanent forum for indigenous peoples was mulled by some indigenous leaders who met in Guatemala in 1992. Rigoberta Menchu Tum organized a summit which was held in Chimaltenango, Guatemala to discuss on the future of indigenous peoples. Here, we discussed that we should campaign for an International Decade of the World's Indigenous People (1994-2004) and for the establishment of a permanent forum. We strategized on

⁶⁷ I was a member of the Advisory Panel of this HDR issue and I participated in the discussions on the role of culture in development which is the running theme of this issue.

how to get this idea within the UN and the immediate prospect was the forthcoming Vienna World Conference on Human Rights. We succeeded in getting the Conference to adopt some of these ideas and these became an integral part of the Vienna Declaration and Programme of Action⁶⁸. States agreed

- To ensure the full and free participation of indigenous people in all aspects of society
- To recommend to the General Assembly that an International Decade of the World's Indigenous People be proclaimed.
- To consider the establishment of a permanent forum for indigenous peoples in the UN System.

The most significant achievement of the Decade (1994-2004) was the establishment of the Permanent Forum on Indigenous Issues. Again, indigenous peoples lobbied hard for its establishment until ECOSOC Resolution 2000/22 was adopted in 2000 which established this body. In its six years of existence, the Forum has raised the visibility of indigenous peoples and their issues within the UN system in an unprecedented manner. Its mandate is to provide expert advice and recommendations to the ECOSOC and to UN programmes, agencies and funds on indigenous issues on the areas culture and economic and social development, environment, education, health and human rights. Aside from providing advice it should promote coordination and integration of activities relating to indigenous peoples' issues within the UN system as well as raise awareness and disseminate information on these.

The first Session in 2002 strongly recommended the establishment of a Secretariat unit for the Forum. This was headed by the 54 member-states of the ECOSOC which made a consensus decision that a Secretariat, funded by the UN regular budget and placed under the Department of Social and Economic Affairs (DESA) of the Division for Social Policy and Development be set up.

As a subsidiary body of the ECOSOC it is well placed to address indigenous peoples' self-determined development. Its mandated areas include; education, economic and social development, environment, culture, health and human rights. Its regular sessions and expert workshops are serving as spaces where concrete proposals on how to strengthen indigenous peoples' self-determined development are debated and agreed upon. At its first session, in 2002, indigenous peoples already asserted that the human rights based-approach to development should be considered as the framework in addressing their issues. There was a strong recommendation for governments and the UN system to initiate disaggregated data collection so that the real picture of indigenous peoples can be better known. Another is for the same actors to ensure that the right to indigenous peoples to have their free, prior and informed consent respected was also made.

The 4th and 5th Sessions of the Forum had MDGs as the special theme. The the Inter-Agency Support Group on Indigenous Issues prepared reports on MDGs and Indigenous Peoples and a report on this meeting was submitted to the Forum. I was appointed to be a rapporteur to make a report on Indigenous Peoples and MDGs 1 and 2.⁶⁹ Both papers stated that the achievement of the MDGs can lead to further poverty or marginalization of indigenous peoples. This is especially so when the State undertakes poverty alleviation programs which are geared towards expanding lands meant for monocrop agricultural plantations. This happened in Africa, among the pastoralists of Kenya and Tanzania. Their pasture lands were fenced off by governments and given to farmers to plant agricultural crops for the market. It also happened in Vietnam where the highland indigenous peoples were displaced after the government subsidized lowlanders to go to the highlands to set up coffee plantations. While Vietnam reported that it achieved its goal of poverty alleviation, the impoverishment of the indigenous peoples, as a consequence of this was not even mentioned.

In 2006 an International Expert Group Meeting on MDGs, Indigenous Participation and Good Governance was held. This workshop specifically stressed on "*..the need to ensure effective participation of indigenous peoples in all stages of the development cycle, such as obtaining free, prior and informed consent; equitable benefit-*

⁶⁸ UN Doc A/CONF/157/24

⁶⁹ See E/C.19/2005/4/Add.13 www.un.org/esa/socdev/session_fourth

sharing schemes;; and dispute resolution mechanisms. Strong indigenous governance structures provide the basis for indigenous communities to deal with the changes imposed by modernization and globalization without further disempowerment and marginalization.”⁷⁰

Another important workshop which is very relevant to the subject of this paper is the International Technical Workshop on Indigenous Traditional Knowledge (2006). The experts defined indigenous traditional knowledge as the complex bodies and systems of knowledge, know-how, practices and cultural expressions that have been and are maintained, used and developed by peoples, which do not only sustain the daily life but is also a key element in maintaining their identities and building their self-determination. It was recognized that *“this issue raises a range of policy, procedural, conceptual, political and practical challenges in a wide variety of areas, such as conservation of biological diversity, intellectual property, trade negotiations, agricultural policies, education, environment, science, climate change, sustainable development, private sector activities, health, cultural policies, gender and human rights.”* These challenges are before governments, the UN system, other intergovernmental bodies and indigenous peoples, themselves.

Data Disaggregation on Indigenous Peoples

To respond to the recommendation for data disaggregation, the Forum organized its first expert-workshop on this which was held in 2004.⁷¹ The report of this important expert-workshop contains recommendations that agencies and states undertake projects on data-disaggregation on indigenous peoples. Data-disaggregation is a crucial pillar of self-determined development because if there is a lack of data or the existing data misrepresents indigenous peoples’ realities, then the basis for establishing priorities and programs is wrong. Thus, the first step is the establishment of a clearer picture of the situation of indigenous peoples at from the local to the national level. This includes, among others, statistics on how many are they, where are they found, what are their traditional sources of livelihood and how are these dealt with by the governments, what is their state of well-being or poverty, do they still speak their mother tongue and how are their cultural rights being respected. The Statistics Division of the UN stated in the workshop *“ that the collection of reliable data would allow judgements to be made about the effectiveness of development programmes that had a direct impact on the quality of life of world’s indigenous peoples.”⁷²*

Any process of data disaggregation should ensure the full, active and meaningful participation of indigenous peoples at all stages of data collection, but also the development and use of indicators that are of particular significance to them, such as access to territories (land and waters) and to resources, participation in decision-making, as well as issues of discrimination or exclusion in the areas of economic, social and cultural rights. Data gathered should help to detect and measure discrimination and exclusion of indigenous peoples, individually and collectively. Data collection should be culturally-specific and sensitive and relevant to problems identified by indigenous peoples.

This remains as a major challenge, as data collection is both a political and logistical exercise. In most cases, governments would not like to allot resources to do this as this is not considered a priority. Some governments are reluctant to confront the fact that the impoverishment of indigenous peoples is usually the result of discriminatory state laws and projects. Others, consciously do not collect disaggregated data on ethnic groups because they believe that differentiating between groups might lead to more conflicts. Richer countries, however, like Canada, Australia and New Zealand and other countries in Latin America (e.g. Mexico, Ecuador) have done data-disaggregation.

⁷⁰ See E/C.19/2006/7 www.un.org/esa/socdev/session_fifth

⁷¹ See the report of the Second Session of the UN Permanent Forum on Indigenous Issues E/2003/43. p.7

⁷² (E/C.19/2004/2:4)

The workshop reiterated that if the human rights-based approach to development is applied for indigenous peoples, rights-based indicators that are relevant for them should be developed. The effective participation of indigenous peoples in all stages of data-collection but also in the development of indicators. Such indicators will measure the extent of their access and control of lands, territories and resources, participation in decision making and the nature and forms of discrimination or exclusion in areas of economic, social and cultural rights. The Forum responded to this call for developing indigenous-sensitive indicators. Intergovernmental organizations, funds and programmes launch are asked to launch a coordinated data collection exercise in one or more countries to develop a common approach and to maximize the impact of development assistance for indigenous peoples.

Free, prior and informed consent

Free, prior and informed consent was another major challenge identified by indigenous representatives in all the first three sessions of the Permanent Forum. The first session recommended that a working group on free, prior, informed consent be established to look into existing policies of UN agencies, programmes and funds related to this and to map out ways to operationalize this. This working group was not established but an expert-workshop on free, prior and informed consent was recommended at the 2004 session⁷³ and this was held in 2005.

The Forum was quite cautious in addressing this issue, dealing with it as a question of methodology and not as an issue of rights. This is why the expert-workshop was entitled “International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples. “ There was a debate on whether this is a right or just an emerging principle. Indigenous experts did not agree to the dilution of FPIC as a right. Their view is that free, prior and informed consent is not only a procedure to be elaborated, but a right associated with indigenous peoples’ right to self-determination, treaties and right to lands, territories and resources. Some have conceded that it may not be a stand-alone right but a procedural right which advances the rights mentioned earlier. A representative of the Millennium Campaign office stressed that FPIC as a principle and a practice is essential in the work to achieve the Millennium Development Goals. As there was a tendency to regard the MDGs outside of the human rights framework, the workshop reminded participants that the MDGs be viewed within the context of the Millennium Declaration (Gen. Assembly Resolution 55/2), which clearly advocated respect for fundamental rights of which free, prior and informed consent is a key component.

Various UN agencies and programmes, which include UNDP, ILO, IFAD and UNICEF, stated that FPIC was embedded in their practice and strategic frameworks. Other multilateral bodies like the World Bank and the Inter-American Development Bank shared how they are dealing with this issue and mentioned that their approach is to use the phrase free, prior and informed consultation with broad community support. This to them is similar to free, prior and informed consent.

The workshop called on governments and UN agencies and programmes to replicate good practices which were shared on obtaining the free, prior and informed consent of indigenous peoples. One of this was the work of RAIPON (Russian Association of Indigenous Peoples of the North) which undertook ethnologic studies on the impact of Gazprom gas exploration on the Yamal-Nenets Autonomous District. This concluded that the project would have adverse impacts which led Gazprom to stop its exploration.

The workshop recommended that the Forum should encourage the contribution of all relevant UN bodies, mechanisms and intergovernmental organizations, Governments and indigenous peoples to contribute in further policy development and operationalization of FPIC as a rights-based approach to development. It also recommended that the Inter-Agency Support Group (IASG) on Indigenous Issues, develops a handbook on methodologies and elements of a common understanding on FPIC for UN country teams. This can help them in their work on the MDGs, Poverty Reduction Strategy Papers (PRSPs) and Common Country Assessment/UN Development Assistance Framework (CCA-UNDAF).

⁷³ See report of the Third Session, E/2004/43. p.6

Indicators of well-being, sustainability and poverty for indigenous peoples

To follow-up on the recommendation for indigenous –sensitive, rights-based indicators which emerged from the earlier sessions, especially the 4th and 5th Sessions which focused on the Millenium Development Goals, the Forum, with financial support from IFAD, undertook a series of activities on indicators. This was done between 2006 and 2007 and it was converged with a similar project done by the International Indigenous Peoples' Forum on Biodiversity (IIFB) Working Group on Indicators within the Convention on Biological Diversity.⁷⁴ A series of regional and workshop-seminars were held in Latin America, Africa, Asia and North America and thematic workshops on customary sustainable use of resources and cultural indicators of food sovereignty were held. The IIFB WG on Indicators organized a global workshop which consolidated the results of the regional and thematic workshops with focus on CBD related indicators.

The objectives of these workshops are the following;

- identify gaps in existing indicators at the global, regional and national levels that assess the situation of indigenous peoples and have an impact on policy making, governance, and program development, including a gender perspective;
- examine work being done to improve indicators so that they take into account indigenous peoples and their concerns, and assess them according to qualitative and quantitative criteria, including a gender perspective;
- examine linkages between quantitative and qualitative indicators, particularly indicators that look at processes affecting indigenous peoples;
- propose core global and regional indicators that address the specific concerns and situations of indigenous peoples, including indigenous women, and can also be used by international financial institutions, the UN system and global and regional intergovernmental organizations.

This project was successful especially because it was driven by the indigenous peoples from the very outset. All the regional workshops were led by various indigenous peoples' institutions and organizations. The role played by the Permanent Forum in coordinating the various bodies within the IASG, which are involved in indicators work, was important as complementation and synergy between the different agencies was enhanced.

What has been achieved so far is the identification of global core themes and issues and sub-core themes which should be the starting point for developing indicators. There were also indicators identified for the CBD and MDG targets which could be used to measure the progress of achieving this amongst indigenous peoples. The global core themes and issues which were agreed upon are the following;⁷⁵

- 1) security of rights to territories, lands and natural resources;
- 2) integrity of indigenous cultural heritage;
- 3) respect for identity and non-discrimination;
- 4) culturally-appropriate education;
- 5) fate control or self-determination;
- 6) full, informed and effective participation;

⁷⁴ The IIFB Working Group on Indicators main purpose is to respond to the immediate need to identify and test indicators relevant for the implementation of the CBD Strategic Plan and its framework for monitoring the implementation of the Convention and achievement of the 2010 Biodiversity target.

⁷⁵ See Doc. E/C.19/2008/9 which can be downloaded from www.un.org/esa/socdev/unpfi/session_seventh.html#documents

- 7) health;
- 8) access to infrastructure and basic services
- 9) extent of external threats;
- 10) material well-being;
- 11) gender; and
- 12) demographic pattern of indigenous peoples

Proposed indicators for the Convention on Biological Diversity emerged from these workshops and these are contained in a document which has now been produced as a conference room paper for COP 7. There is still a long way to go in the work on MDG indicators of indigenous peoples' well-being. There is still a need to test the indicators which were evolved and to reduce these to a manageable number which can be used by governments, UN bodies and indigenous peoples. The final global composite report of this process is one of the documents of the 7th Session and this contains the summary of the various regional and thematic workshops as well as the final result of the global workshop.⁷⁶

Aside from the work mentioned earlier, the Forum has also dealt with the issues of languages and education. Language is a key aspect of indigenous peoples' culture, identity and development. The Third Session of the Forum heard the results of the studies done on indigenous languages. Recommendations around education included the need to do bilingual education as well as inter-cultural education. The Forum recommended that programs should be undertaken with the aim of making both indigenous students to appreciate, understand and respect indigenous histories, identities and cultures. UNESCO succeeded to make 2008 the International Year of Languages. Since 4,000 of the remaining 6,000 languages are spoken by indigenous peoples our participation should be ensured in the various activities related to the year and beyond. The Forum to agreed in its 6th Session that the expert-workshop in 2008 will be on indigenous languages. This workshop will work towards concrete actions to eliminate discrimination against use of indigenous languages, support programs which will be focused on revitalization and rescue of indigenous languages and plan for a possible world conference on linguistic diversity, indigenous languages, identity and education. This was held in January 2008 and the final report is out.⁷⁷

The 6th Session of the Forum adopted as its special theme "Territories, lands and natural resources" which was high in the priorities of indigenous peoples since the Forum was established. At this session, the fundamental importance to indigenous peoples of lands, territories and resources was reiterated as these "...constitute the basis of their life, existence and economic livelihood, and are the sources of their spiritual, cultural and social identity."⁷⁸ This session also established firmly the linkage between lands, territories and resources and the protection of traditional knowledge and traditional cultural expressions against misappropriation and misuse. A strong recommendation is that these two clusters of issues should not be addressed in isolation from each other.

The theme which was agreed upon for the 7th Session is "Climate Change, bio-cultural diversity and livelihoods: the stewardship of indigenous peoples and new challenges." This theme provides the indigenous peoples, UN programmes, agencies and funds, States and NGOs and other multilateral bodies the opportunity to look in more depth the challenges posed by climate change especially in changing the dominant development model which is now proven to be very unsustainable, inequitable and the major cause of climate change.

Key elements of indigenous peoples self-determined development or development with identity and culture

From the various processes, mechanisms and instruments discussed earlier, we can capture the key elements of indigenous peoples' self-determined development. It has to be reiterated that the UN Declaration on the Rights

⁷⁶ ibid

⁷⁷ See Doc. E/C.19/2008/3: download from www.un.org/esa/socdev/unpfii/session_seventh.html #documents

⁷⁸ See Doc E/2007/43:2:

of Indigenous Peoples is the basic foundation upon which self-determined development is based. Therefore, the achievement of this is contingent upon the implementation of this Declaration.

The key elements of self-determined development can be summarized as follows:

- Ø Promote principles of equity, interconnectedness, reciprocity, collectivity and community solidarity,
- Ø Strengthen, protect and enhance distinct cultural institutions, indigenous philosophies and worldviews, customary laws and governance systems and protect traditional knowledge
- Ø Respect and promote right to self-determination (right to determine political status and pursue freely economic, social and cultural development)
- Ø Start from the indigenous concepts and indicators of well-being,
- Ø Strengthen indigenous practices which are in harmony with nature and which aim for conservation of resources for future generations
- Ø Respect and protect right to lands, territories and resources, ensure control, ownership and access to these.
- Ø Equality, non-discrimination and right to political participation in all decision-making bodies underpins all laws, policies, programmes and projects
- Ø Respect and promote cultural rights, right to identity and right to development
- Ø Promote indigenous peoples' political participation in governance structures and other decision-making processes.
- Ø Reinforce traditional livelihoods of IPs which are ecologically sustainable and more equitable.
- Ø Demand-driven: fully involve indigenous peoples in identifying, designing, implementing, monitoring and evaluating development programmes, policies or projects.
- Ø Enhance economic, social, political, cultural and spiritual well-being and diversity and develop indicators for monitoring progress.
- Ø Promote use of mother tongue, establish bilingual and intercultural education.
- Ø Revitalizes cultural traditions and customs consistent with international human rights.
- Ø Promote and support integrated local development projects that ensures the leadership role played by indigenous organizations and communities in project conceptualization, participatory planning, decentralized execution and local capacity building
- Ø Protect indigenous peoples intellectual, cultural, religious and spiritual property and provides redress for misappropriation.
- Ø Provide adequate social services adapted to the socio-cultural and linguistic characteristics of indigenous peoples
- Ø Respect and operationalize free, prior and informed consent
- Ø Ensure the balance between subsistence economies, market economy and the interface between these.
- Ø Culturally appropriate and environmentally sustainable technologies are developed and used.
- Ø Reinforce resilience and adaptation processes of indigenous peoples.

Conclusion

This paper traced the history of how the concept of development came about and looked at how the debates and policies denigrated or reinforced the indigenous peoples' economic, political, social, cultural and spiritual systems and their worldviews and values. It summarized how indigenous peoples asserted their right to self-determination from colonization up to the present and how they used the international system to pursue this struggle. The recent gains of the indigenous peoples' global movement were outlined. Then the problems of indigenous peoples with the post-colonial nation-states' agenda of modernization and development were discussed including their varied responses to this. The paper highlighted the responses to indigenous peoples demands of the various UN agencies, including the ILO, the UNESCO, UNCTAD the ECOSOC and the Commission on Human Rights, among others, to the institutionalized and systematic state discrimination and marginalization of indigenous peoples.

The history of the negotiations and the eventual adoption of the Declaration on the Right to Development in 1986 was looked into including the implementation problems met after its adoption. The paper critiqued the dominant statist nature of this Declaration especially how it has ignored the sovereign rights of indigenous peoples to their lands, territories and natural resources. Then it looked at how economic development, which was the main pre-occupation of nation-states, was challenged to integrate social development and culture. The way social development, culture, cultural dimensions of development and cultural rights were brought into the discourse of development was analysed to see whether these considered issues raised by indigenous peoples.

It looked at how International Human Rights Law regarded cultural rights and how the Treaty bodies of the various UN Conventions on human rights addressed the complaints and submissions of indigenous peoples. The paper argues that the general comments, conclusions and recommendations made by the Treaty Bodies in response to indigenous peoples' submissions enriched the jurisprudence on cultural rights, right to development and indigenous peoples' rights, in general. Such views were used as arguments by indigenous peoples in the shaping and negotiating the UN Declaration on the Rights of Indigenous Peoples.

The adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention No. 169; the establishment of the UN Permanent Forum on Indigenous Issues; the Declaration and Adoption of the Programme of Action of the Second International Decade of the World's Indigenous Peoples; the creation of the Special Rapporteur on the Situation on Human Rights and Fundamental Freedoms of Indigenous Peoples; the adoption by UNESCO of its recent Declarations and Conventions around culture; and the adoption of policies by the multilateral financial institutions and UN programmes are the major developments within the recent years. All these, if used well will promote significantly the framework and practice of self-determined development.

The Declaration provides the basic foundation and framework of indigenous peoples' self-determined development. The human rights-based approach to development and the ecosystem approach will add further value and strengthen the UNDRIP and the ILO Convention No. 169. .

The Special Rapporteur's watchdog role will be helpful in identifying the obstacles and barriers to the realization of self-determined development. The Special Rapporteur can also reinforce further the development of the concept as well as support the efforts of indigenous peoples to address the barriers. For countries which have adopted ILO Convention 169, indigenous peoples can use this to further reinforce their aspirations for such development.

UNESCO which is the main UN agency addressing culture and promoting cultural rights has adopted many Conventions which speak to indigenous peoples' right to culture, education and language. Much more work has to be done to educate indigenous peoples widely about these Conventions and to train them on how these can be used to protect their cultural rights, language rights and right to development. The mechanisms which are built into these Conventions to get the State-parties to comply with their obligations have to be understood and used by indigenous peoples. The mechanism of inter-cultural dialogue which the UNESCO has developed should be used more widely, not only by the UNESCO but all the other UN bodies and the States. There should be trainings done to popularize this so that it becomes a standard practice in schools and other institutions.

Aside from UNESCO are bodies like the World Bank, the IADB and the Asian Development Bank and programmes like the UNDP which do have policies on indigenous peoples or policies and programs which may not be on indigenous peoples but still have impacts on them. At the least, the implementation of their policies has to be ensured. Outside of their policies they also have to adhere to the rights contained in the UN Declaration on the Rights of Indigenous Peoples.

The UN Permanent Forum will play a key role in enriching the concept of indigenous peoples' self-determined development and facilitating its operationalization by States, the UN System, other intergovernmental

organizations and by indigenous peoples, themselves. Its role in ensuring the effective implementation of the UNDRIP will be very important for this. The paper discussed the various activities done by the Permanent Forum, so far, which are vital to the further elaboration of the concepts and elements of self-determined development. In its short existence it has played very well its mandate of advising and doing coordination between UN agencies, programmes and funds in relation to their policies and work on indigenous peoples. It is now the major player in the facilitating the further elaboration, projection and operationalization of self-determined development for indigenous peoples. The work it has done in critiquing the Millennium Development Goals, addressing head-on the issues of indigenous peoples' lands, territories, and resources, further clarifying what free, prior and informed consent means in substance and in practice, and spearheading the work on data-disaggregation and indicator-setting are important building blocks in making self-determined development a reality for indigenous peoples.

The Permanent Forum, has to play its coordinating role very well and bring the gains indigenous peoples achieved to influence the work of other bodies like the Convention on Biological Diversity, UNESCO, the ECOSOC, the UN Framework Convention on Climate Change, among others. UNESCO in close collaboration with the Permanent Forum, the Convention on Biological Diversity, FAO, UNEP, indigenous peoples' organizations and others, should develop more dynamic programmes and projects to stop the erosion of biological and cultural diversity and to enhance these.

The UN Declaration on the Rights of Indigenous Peoples has clearly spelled out all the rights which need to be protected, respected and fulfilled so that the future of self-determined development will be ensured. The Permanent Forum along with the UN bodies, agencies and funds at the global and state level, are expected to ensure the full and effective implementation of this Declaration. (Articles 41 and 42). The States are the main duty-bearers to implement this Declaration. So one of the roles of the UN System and the international community is to provide technical and financial assistance to governments so they can fulfill their duty. However, it must be made clear that indigenous peoples will be involved in the decisions made by the States on how to implement the Declaration.

The Permanent Forum, in its pre-sessional meeting for 2008, discussed possible mechanisms which it can create to ensure the implementation of the UNDRIP. It supported some of the recommendations from the Expert Paper prepared on how the Forum can implement its human rights mandate⁷⁹. The experts suggested, that under Article 42 of the Declaration, the Forum should ensure that the Declaration is integrated into the recommendations of the Forum on its six mandated areas and under the special themes and in its ongoing themes and priorities. They further added that the Forum “..promote a constructive dialogue with Governments on the challenges, achievements and priorities that indigenous issues require in each country. Such dialogue will take place periodically and enlist the participation of indigenous organizations and the United Nations system.” They proposed the creation of a Forum Committee on the UNDRIP.

The existence of the IASG for Indigenous Issues is one mechanism which can help systematize and coordinate the work in implementing the Declaration and the Second Decade Programme of Action. The IASG, together with indigenous peoples, should develop indicators to monitor the implementation of the Declaration. This can be an extension of the continuing activity of the indicators work done indigenous peoples with the Permanent Forum and the Convention on Biological Diversity.

The future is bright for the realization of self-determined development for indigenous peoples. In spite of the great threats and obstacles faced from modernization and globalization, there are still reasons to be optimistic. These reasons include the growing strength and relentlessness of the local, national, regional and global indigenous peoples' movements; the gains (e.g. laws, policies, UNDRIP, UNPFIL, etc.) achieved by the

⁷⁹ See Doc. E/C.19/2008/2, Structures, procedures and mechanisms that currently exist or that might be established to effectively address the human rights of indigenous peoples. 19 December 2007. download from www.un.org/esa/socdev/session_seventh

indigenous peoples from the local to the global; the links they established with other social and people's movement; the increased participation of indigenous leaders in political decision making bodies; the support provided by UN bodies, agencies and funds, other intergovernmental bodies and bilateral donors; and the show of good will by States who understand that respecting indigenous peoples' rights is the solution not the problem.