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The EAFORD International Review of Racial Discrimination

Special Issue:

Indigenous Peoples and the Law

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The EAFORD International Review of Racial Discrimination

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All human beings are born free and equal in dignity and rights.
They are endowed with reason and conscience and
should act toward each other in a spirit of brotherhood.

Universal Declaration of Human Rights

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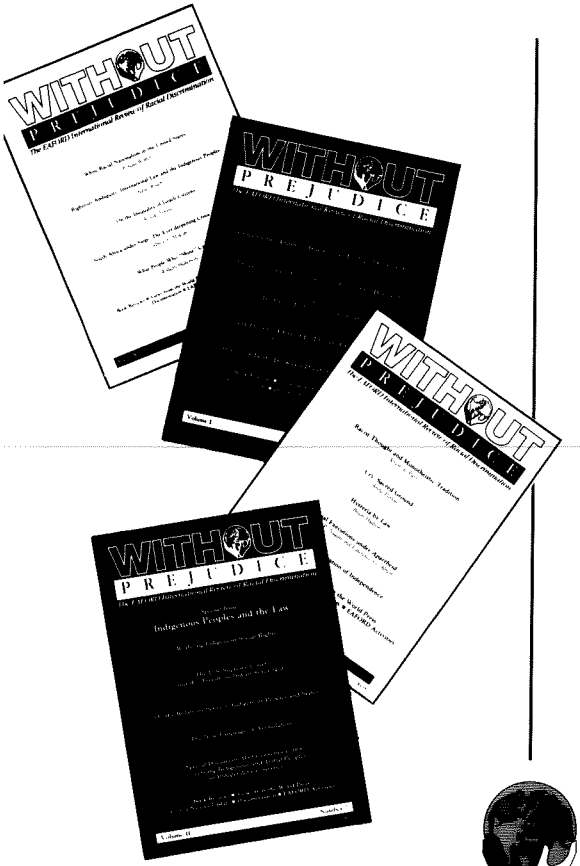

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Democracy: Form or Content?

Democracy, as a living concept expressing human rights values, is much more than just the mechanics often associated with representative government. Parliaments and elections as such, even under a system of proportional representation, may produce elected officials, but not necessarily a democratic government.* Both form and content are essential.

The birth of European democracy is this year celebrated with the bicentennial of the French Revolution. During the 1789 political crisis in France, a process of reform from above was overtaken by a revolution from below which challenged the new National Assembly to improvise new language to accomodate—or well to assimilate—the uprising from the popular base. The groundbreaking Declaration of the Rights of Man and Citizen of 26 August 1789 is one of the very few norm-setting texts to be regarded as having universal importance. This declaration was drafted to embrace newly articulated philosophical concepts which emerged in Europe—and in North America, where a slave-based settler society had declared itself independent and democratic at a time when the elimination of the continent's indigenous peoples was already well underway.

The rise of democratic institutions and thought growing out of eighteenth century Europe did not herald the end of European

* For a critical discussion of the phenomenon of elections in nondemocratic political systems see Thomas Ferguson, "Party Realignment and American Industrial Structure," *Research in Political Economy* Vol. 6 (1983), 1–82; also Edward Herman, *Demonstration Elections: U.S.-staged Elections in the Dominican Republic, Vietnam and El Salvador* (Boston: South End Press, 1989).

tyranny, nor did it produce any material change in the quality of life for colonized peoples, nor in the manner and methods of colonial government. Since colonial times, exploitation, subjugation, dispossession, suppression and elimination of internal minorities and colonial subjects have continued even under nominally socialist and liberal governments. Thus, democracy proclaimed at home in Europe was, in practice, devoid of any deep commitment to human values which consider that human societies and human beings—intrinsically and without distinction—are "born and remain free in equality and rights."* The expansion of Europe and its far-flung colonies was only possible through the deprivation of the human rights of the peoples colonized.

Interpreting the French Revolution's new language of human rights, Toussaint Louverture led the first nonracially segregated state to emerge from a European colony. In what is today Haïti, the uprising of black slaves and Louverture's military leadership succeeded in abolishing slavery and establishing a republic in which black, white and mulatto shared in the drafting of the 1801 constitution. But it was this type of revolution that General Napoleon Bonaparte set out to destroy, just as he had put an end to the French Revolution.

Thus, in the formulation of European policies to be pursued internationally, the growth of democracy was hardly noticeable. In most instances, the demise of colonialism resulted from the struggle of the colonial people for liberation, rather than from any genuine respect for human rights on the part of the colonizing powers. Only when a colonizers could not maintain their control did it surrender to the self-determination of its colonies. Even after the Second World War, despite their democratic institutions at home, these same powers attempted forcibly to maintain their rule over colonies and overseas possessions. Such was the case of the Netherlands in Indonesia; Belgium in the Congo; England in Rhodesia, Ireland and India; the United States in the Philippines; Portugal in its Asian and African territories; and France in Algeria.

Unfortunately, the failed colonial-settler effort continues to exact its human toll. Only from the perspective of the dynamics of settler-colonialism can we today appreciate the fate of the people of South Africa, Namibia and Palestine, as well as the indigenous peoples worldwide. Perceived state interest and minority rule continue to undermine fundamental concepts of human rights and the universal

* From article 1 of the Declaration on the Rights of Man and Citizen of 26 August 1789.

application of democratic principles.

More than this, a change in this historic course is urgently needed for our physical survival. From a human rights, development or environmental point of view, it is no exaggeration that the resistance to these destructive state policies, as exemplified by the movements among indigenous communities to restore and maintain their land under their guardianship, may just offer the last hope for the very survival of humankind on this planet.

One cannot expect every state to exercise its mandatory power to impose respect for human rights around the world. Nevertheless, one must expect that *democratic* states would not and should not nurture the very ideologies which constitute a violation of such rights. In this regard, the great powers shoulder special responsibility. Accordingly, United States legislation restricts or proscribes assistance to states which persistent in violating human rights.* The democratic form exists; however, the content is lacking. Such binding congressional legislation has been selectively disregarded, as in the case of aid to Israel, by which one of the most egregious practitioners of human rights violations in our time enjoys unflinching support from Washington.

The U.S. Department of State is fully aware of such violations, its reports to Congress confirm.** Nevertheless, U.S. financial, military and diplomatic support for Israel has never wavered, nor have the legally binding strictures ever applied to Israel. Consequently, the indigenous Palestinian people and its land become the victims of western duplicity, and a destructive state of war prevails.

The U.S. often justifies its backing of Israel as support for the "only democratic state in the region." While Israel's discriminatory fundamental laws and its state ideology carry out the steady dispossession and elimination of the indigenous people of that land,*** such reasoning also raises serious questions about the definition of democracy. One is left with the example of a localized concept of democracy for the few and an idiomatic, racist concept of human rights. But if human rights principles are to prevail, the United States, as the

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* U.S. Public Law 94–329 prohibits providing foreign aid to any country where "a consistent pattern of gross violations of international human rights" occurs.

** Note, for example, "Israel and the Occupied Territories," in Department of State, *Country Reports on Human Rights Practices for 1988* (Washington: Government Printing Office, 1989), 1366–87.

*** See Roselle Tekiner, "On the Inequality of Israeli Citizens, *Without Prejudice* Vol. I, No. 1, 48–53; also Joseph Schechla, "The Past as Prologue to the *Intifadah*, *Without Prejudice* Vol. I, No. 2, 68–99.

superpower leading the western "democracies," must take the lead in defending the universality of these principles.

Certainly, the U.S. Congress' adoption of the Comprehensive Anti-*Apartheid* Act of 1986* was a welcome step in the right direction; for South Africa, like Israel, has pretended to be a democratic state by virtue of parliamentary forms open only to the politically dominant European minority. This legislation alone will not eliminate the scourge of *apartheid*; nevertheless, until its passage, South Africa enjoyed the full, unfettered support of the United States and the West in general. Some western states still continue to oppose international law and consensus with regard to sanctions, while Great Britain now stands conspicuously alone among the Commonwealth countries in opposing punitive measures against the *apartheid* state.

States do not exist above the law. Their policies and practices are subject to critical judgement, if only on the basis of the principles which they espouse and the laws and standards which they promulgate. If these institutions are to be reconciled with the universal principles of human rights, what is needed first is to lift the curtain on the deception that formal democratic institutions equal democracy. Not only the forms, but the content of state ideology and practice must be scrutinized.

In looking back over the two hundred years of democratic tradition since the Declaration on the Rights of Man and Citizen, we are faced with contradictions. The indigenous inhabitants of the colonized world were—and continue to be—the first victims of an expanding, "enlightened" Europe. With a consciousness of this checkered past, and in an effort to lift the curtain on these contradictions, *Without Prejudice* dedicates this special issue to the subject of the indigenous peoples and the law. For, especially in this case of discrimination and conflict, reconciling democratic form and content depends upon our recognition that the past is contained in the present.

Anis al-Qasem
Secretary-General
EAFORD

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* U.S. Public Law 99–440 of 2 October 1986.

Realizing Indigenous Social Rights

Vitit Muntarbhorn[*]

Perusing the literature on indigenous rights, one is continually faced with political issues that seem to overshadow the realization of these rights.[1] The sensitive nature of the subject, coupled with undertones of guilt based on past colonialism or neocolonialism, tends to obscure the underlying social issues which have a broader dimension.

One is struck by the lack of clarity concerning the key components of indigenous rights, compounded by semantic difficulties which often turn into political polemics. What is meant by "indigenous"? Do we talk of indigenous "peoples" or "populations"? What does the term "social" entail and what are the constituent rights? These preliminary questions are rendered more elusive by the nature of the nation-state itself. How accountable is that entity for former ills which may have affected the livelihood, if not the existence, of indigenous groups? Who was here first, anyway? If we were here first, how to prove that you are accountable for past practices, if at all? Causation inevitably becomes enmeshed with accountability, and the willingness to accept the past and atone for it. Even if we could prove

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that "this actually happened," political dictates or expediency may militate against full-fledged exposure. Turning a blind eye to history may thus become the rule rather than the exception. Unless, of course, pressure may be brought to bear on the nation-state by the international community itself, so as to pre-empt the prediction of "*après moi, le déluge.*"

These comments may sound ominous. Yet one is confronted with the irrefutable fact that many states have been built on the destruction of indigenous groups. An additional difficulty is whether one believes in the state system as it is now. This is interlinked with the dilemma concerning self-determination as a right of indigenous groups and whether this implies the break-up of existing states. If not that extremity, then what forms of participation and autonomy, or decentralization, will ensure that indigenous groups have a genuine "say" in shaping their own destiny? One should thus not underestimate the struggle for power and the competition for resources, natural and human, material and nonmaterial.

Intrinsically, one has the impression that indigenous groups are in the position of underdogs who need to be helped. In many cases, this is true. Their plight sometimes overlaps with that of other groups, in particular minorities; in many countries, indigenous groups are also minorities in relation to the majority population. However, our vision should be more comprehensive. On scrutiny, there are certain situations where indigenous groups are in the position of government, even though numerically they are in the minority.[2] They may then become, perhaps, the abuser rather than the abused.

How to regulate the conduct *against* indigenous groups, on the one hand, and the conduct *of* indigenous groups, on the other hand? One's natural reaction is to look to legal precepts at the national and international levels to remedy the situation: the law as a panacea. In reality, one may note that the law is only one of the many elements at stake; one should not expect too much from it, particularly in the social field. The perspective of social rights calls for a much broader understanding of the context affecting the realization of these rights. Political discretion, national development planning, social policy, resource allocation and distribution of money and power are all part of the social web in which indigenous rights are entangled. If one needs to look to the law as part of the quest for social rights, one should also cast a glance beyond it.

On another front, it is of interest to observe that the empirical basis for advocacy of indigenous rights is often faced with a fundamental flaw. Much of the work undertaken on these rights was, until

recently, written by nonindigenous researchers.[3] The findings and proposals may, therefore, be lopsided, if not incomplete. Genuine realization of indigenous social rights correlates with the necessity of having more indigenous groups voicing their claims and providing the evidence (as analyzed) themselves.

In their pursuit of social rights, however, the indigenous groups face a number of thorny questions and complications.

Definition

The first key problem facing indigenous social rights is that of definition. What is meant by "indigenous"? As one commentator has noted,

> The term "indigenous" has emerged in practice over the years and (like the term "peoples") has no accepted definition. Its existence, in fact, is an accident of history.[4]

Attempts to define it include the proposition that it refer to a group of people who fulfill these criteria:

> They are descendants of a people which lived in the region prior to the arrival of settlers coming in from the outside, settlers who have since become the dominant population;
>
> They have maintained a culture which is different in significant respects from that of the dominant population;
>
> They are, as a group, in an inferior position in the country concerned, in political and economic aspects.[5]

While this definition holds true to some extent, it fails to pay attention to those systems where the indigenous group is tantamount to the dominant population when it is ensconced as the government, and is in the superior position *vis-à-vis* the rest of the population.

There are other dangers in defining "indigenous." In one country, one is not considered to be indigenous if one is an "integrated Indian," thereby forfeiting those rights ordinarily accruing to indigenous Indians.[6] Demarcating by means of definition may, therefore, lead to the anomalous situation whereby a group or person who was originally indigenous loses certain rights originally attached to such status.

The debate becomes more heated over the terms "indigenous populations" and "indigenous peoples." Both terms appear frequently, although maybe with different connotations. The former is prominently displayed in the name of the United Nations "Working Group on Indigenous Populations."[7] The latter is linked with the appearance of the word "peoples" in various international instruments, such as the

International Bill of Human Rights,[8] the African Charter on Human and Peoples' Rights,[9] and the nongovernmental Algiers Declaration of the Rights of Peoples.[10] The difference between the two terms seems to be the issue of self-determination: while the term "peoples" is clearly linked with the right of self-determination, the term "populations" is more detached from it.[11] The former is illustrated by two similar articles in the 1966 International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, which state that:

> All 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.[12]

Currently, there is a shift to favor use of the term "peoples" even in the United Nations Working Group on Indigenous Populations.[13]

The difficulty is further complicated by the rationale for these rights. Are they rights emanating from individual members of the group (*qua* individuals) or from the totality of the group (*qua* group)?[14] The former is more attuned to the traditional Eurocentric notion of human rights as accruing to individuals. The latter has been espoused more recently by Third World nations in the search for their own expression of human rights. The fear, on the part of some, is that the group rights may jeopardize individual rights in that they may be interpreted to override these individual rights.

There is also at times confusion between indigenous rights and minority rights, as seen in this comment:

> A first category consists of various indigenous groups which the European colonizers of the seventeenth and eighteenth centuries pushed back into the inhospitable regions of the American continent, Siberia and Australasia. Here one immediately comes up against a complication, that these indigenous populations dispute their inclusion in the minority concept.[15]

While there may be an overlap between indigenous rights and minority rights, the two should be distinguished.[16] Some issues particularly affecting indigenous groups, for example, land claims and citizenship, do not relate so directly to minorities. The evolution of law on these matters differs from one category to another, although it is important that these categories be complementary.

Time

Another factor conditioning indigenous social rights is the temporal dimension.[17] The problem is acute in the colonial context, where the original indigenous group is displaced by new settlers, the latter

then becoming the dominant group. This may be accentuated by the arrival of new immigrant groups as migrant laborers who may stay temporarily or permanently. Do the various phases of history give rise to different forms of accountability based on indigenous rights? At what point in time are these rights to be assessed, especially in relation to violations? The repercussions are enormous, especially if they are posited retroactively.

The debate may be fueled by the question: who was here first? In some countries, the answer is well known, for example, by the fact that the Aborigines existed thousands of years in Australia before the advent of settlers from Europe.[18] In other countries, however, the answer may be uncertain. The question is not likely to be taken up too publicly by the government if there are problems concerning ethnic conflicts and claims.[19]

There may also be incompatibility between modern perceptions of human rights and traditional, indigenous practices. While *sati* (bride-burning), stoning of adulterous couples, and limitations on women's rights may be acceptable as part of indigenous practices, they are unacceptable at the international level, especially if viewed from the norms evolved in recent years in forums such as the United Nations. Who should then decide what is acceptable and what is unacceptable? The modernist would opt more readily for international mechanisms, while the traditionalist would be protective of indigenous modes. Needless to say, the twain should meet, and compromises may be fostered through constructive dialogue in settings such as the Working Group on Indigenous Populations.

Interrelationship

The plight of indigenous groups is intertwined with a host of factors which condition social relations. The most poignant is the interrelationship between indigenous rights and state policy. How pluralistic is the state policy *de jure* and *de facto*?[20] In many societies, indigenous groups have been relegated to the "brink of survival"[21] because they are regarded as peripheral to the concerns of the state. Integration or assimilation of indigenous groups under the state apparatus and policy becomes the stricture, thereby endangering both the physical and spiritual autonomy of indigenous groups. Ethnocide is only a few steps away.

In the face of such paternalism, the tentacles of the state contribute to the disintegration of indigenous groups. The decline of social relations among indigenous members of the group, whether at

the individual, family or community level, manifests itself in higher proportions of family break-ups, alcoholism, crime, and juvenile delinquency when compared to nonindigenous groups who are embodied in the state.[22]

The sense of disintegration is compounded by destruction of the ecology and habitat upon which indigenous groups depend for their physical and cultural survival. Deforestation, particularly of rain forests, and pollution introduced by outsiders jeopardize the *modus vivendi* of indigenous groups.[23] The social nexus binding the members of the group to the environment surrounding them is thus annihilated.

Paradoxically, the capacity of indigenous groups to be self-reliant is destroyed, thereby rendering them more reliant upon the state. Intentionally or unintentionally, the cycle of assimilation is completed, and the leeway for action by indigenous groups is subsumed under state benevolence.

Social Rights

It is in the above setting that indigenous social rights are defined and defended in modern-day society. In the past, indigenous groups may have felt no urgent need to advocate social rights—precisely because their basic social needs were satisfied in the spirit of self-reliance. At present, however, the call for social rights is of immediate concern—precisely because their social set-up has been destroyed and their capacity to be self-reliant has diminished drastically.

A caveat should be lodged at this juncture: should we talk of indigenous rights or of state duties? And if we are to talk of rights, what *are* those "social" rights? Interestingly, the first question is being raised increasingly at the international level in the sense that it may be more effective to talk in terms of state duties toward indigenous groups, including the latter's social welfare and development, than to talk in terms of mere social rights on the part of indigenous groups. The term "duty" implies more responsibility and accountability. According to the views expressed recently by a member of the Working Group on Indigenous Populations,[24] such duties have three dimensions:

> The duty of states to respect the characteristics, traditions and languages of indigenous peoples;
>
> The duty of states to protect or to guarantee, for instance, the life and physical existence of indigenous peoples as groups;
>
> The duty of states to fulfill or provide, through appropriate legal frameworks of participation, social services, education and development of indigenous peoples.

In the current draft Universal Declaration on Indigenous Rights[25] which will be discussed in greater detail below, the term "duty" appears several times, although the term "rights" appears more frequently. This suggests that both terms are complementary and may reinforce each other.

As for the question of what constitutes "social" rights, again there is a problem of definition. There is no clear delineation between social, economic and cultural rights, as is shown by the lack of such delineation in the International Covenant on Economic, Social and Cultural Rights. Likewise, in the report by José R. Martínez Cobo, *The Study of the Problem of Discrimination against Indigenous Populations*,[26] no definition is offered. To the layman, however, certain elements are closely linked with the term "social" and common sense dictates the following concerns: social development, social welfare services, social security, adequate standard of living, employment, education, housing/health/food, legal services, religion, language, information, land and participation. This list is not exhaustive.

Social Development

Perhaps the first right to be advocated in this field is that of social development, in view of the past distorted process of development which tended to emphasize growth at the national level—exemplified by the Gross Domestic Product—rather than development of individuals and groups at the microscopic level.[27]

The call for the right to development has been heralded by the 1986 United Nations Declaration on the Right to Development[28] which defines it as a right pertaining to individuals and groups as follows:

> An inalienable human right by virtue of which every human person and all peoples are entitled to participate in...and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.[29]

Concretely this right entails more realistic and responsive development planning and action at both the national and international levels, and is interlinked with basic human needs as well as popular participation. It is epitomized by the following stipulation:

> States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, *inter alia*, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income...

> States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.[30]

This right should not be advocated in a vacuum; it is conditioned by realistic national development policies and plans, and implementation thereof. It should be noted that many developing countries have five-year national development plans which provide for the path to development.[31] Generally, they do not make express provisions for indigenous rights, partly through neglect and partly through fear of according too high priority to indigenous rights. There is thus more room to incorporate indigenous interests into these plans, allocate appropriate budgets, and ensure implementation and evaluation in cooperation with the indigenous groups.

Social Welfare Services

The right to social welfare services is especially important in view of the disintegration of indigenous life-styles as already noted. Family welfare, childcare, medical facilities and other needs should be satisfied by effective state allocation of resources without assimilationist or paternalistic superimposition. This is mirrored by one of the provisions in the current draft Universal Declaration on the Rights of Indigenous Peoples:

> 19. The right to special state measures for the immediate, effective and continuing improvement of their social and economic conditions, with their consent, that reflect their own priorities.

Autonomy is also emphasized by another article in the draft declaration:

> 23. The collective right to autonomy in matters relating to their own internal and local affairs, including...social welfare...

Social Security

Interlinked with the right to social welfare services is the right to social security. Particularly pertinent to this is the work of the International Labour Organisation (ILO) and its numerous conventions. For example, the right to social security is mentioned in the much-criticized—and now revised—Convention 107 on Indigenous and Tribal Populations.[32] It is also implied by draft articles 19 and 23 above, even though it is not singled out as a specific right.

Adequate Standard of Living/Traditional Means of Subsistence

The right to an adequate standard of living is stated explicitly in the International Bill of Human Rights.[33] It is again implied by draft articles 19 and 23 just mentioned, even though the words "adequate standard of living" are not used.

Complementary to this, there is the issue of traditional means of subsistence which is pertinent to the *modus vivendi* of indigenous groups. In this respect, the draft declaration provides the following elaboration:

> 18. The right to maintain within their areas of settlement their traditional economic structures and ways of life, to be secure in the enjoyment of their own traditional means of subsistence, and to engage freely in their traditional and other economic activities, including hunting, fresh-[water] and salt-water fishing, herding, gathering, lumbering and cultivation, without adverse discrimination. In no case may an indigenous people be deprived of its means of subsistence. The right to just and fair compensation if they have been so deprived.

Employment

The right to employment is stipulated in the International Bill of Human Rights and various instruments of the International Labour Organisation.[34] Although it does not expressly appear in the draft declaration, it is implied by its articles, including draft article 18 above. A key issue is retention of traditional occupations which some see as primitive, but which indigenous groups hold dear.

Stipulation of this right alone will not have much impact on the current state of unemployment affecting many indigenous groups. There is thus a need for an effective employment policy on the part of the state with more vocational training and job-creation schemes, again avoiding a paternalistic attitude and enabling indigenous groups to have free choice in these matters.

Education

The right to education is stated in the International Bill of Human Rights and many other instruments. It is explicitly stated and expanded in the draft declaration in the following articles:

> 10. The right to all forms of education, including in particular the right of children to have access to education in their own languages, and to establish, structure, conduct and control their own educational systems and institutions.

> 23. The collective right to autonomy in matters relating to their own internal and local affairs, including education...

Many of the weaknesses concerning this right were reported in the Martínez Cobo study.[35] Problems include the fact that it is not enforced or observed in relation to indigenous groups. There are not enough schools or teachers in indigenous communities. Illiteracy is high, in addition to a lack of education facilities and materials in indigenous languages. The oral traditions of indigenous groups are often neglected in the formal educational system which veers towards written forms of education. The number of those who are out of school is also worrying and this suggests that the formal system of education is insufficient. Hence the need to expand nonformal education to respond to the needs of indigenous groups.

Housing/Health/Food

The right to these basic needs is stated in the International Bill of Human Rights and has been expanded by more recent initiatives on the part of the Third World. The right to shelter as a human right has been enhanced by the UN Commission on Human Settlements through its "Global Strategy to the Year 2000" in relation to shelter, while the right to food has been elaborated by recent developments to overcome famine and malnutrition with the help of the Food and Agriculture Organization. "Health for All and All for Health," with its target of the year 2000 is currently the catch-phrase for the realization of the right to health as espoused by the World Health Organization.

The draft Universal Declaration on the Rights of Indigenous Peoples accords high priority to these needs, but eschews paternalism on the part of the state by specifying the following indigenous rights:

> 20. The right to determine, plan and implement all health, housing and other social and economic programs affecting them, as far as possible through their own institutions.
>
> 23. The collective right to autonomy in matters relating to their own internal and local affairs, including...health, housing...

In reality, however, the right to these needs is faced with a host of obstacles. In many societies where the indigenous communities do not enjoy a dominant position, they are confronted with critical problems concerning housing, health and food, especially as they tend to live in rural areas where access to services providing for these needs is poor.

Legal Services

The right to legal services is implied in the International Bill of Human Rights, particularly in the provisions touching upon equality before the law and remedies before competent tribunals. However, the traditional view of legal services depending upon the formal system of courts and lawyers may be said to be incomplete, especially as the majority of the world's population, including indigenous groups, does not have genuine access to the formal system: they are too distant physically and mentally from such systems. One has thus to bear in mind traditional systems of dispute resolution which do not necessarily have to bank on the presence of qualified judges and lawyers: for example, village chiefs and monks who may act as mediators at the local level.[36]

The draft declaration takes into account this parallel system and provides for a broad range of mechanisms as follows:

> 28. The individual and collective right to access to and prompt decision by mutually acceptable and fair procedures for resolving conflicts or disputes between states and indigenous peoples, groups or individuals. These procedures should include, as appropriate, negotiations, mediation, national courts and international human rights review and complaints mechanisms.

Religion

Religion as a social right is inevitably intertwined with religion as a cultural right. It is a right frequently expressed in many international instruments, notably the International Bill of Human Rights. In the context of indigenous practices and beliefs, however, the meaning of religion may have to be broader than that based upon the world's great religions. As the Martínez Cobo study has noted, traditional religions tend to be more spatial in approach (rather than temporal or historical).[37] They are closely allied to the physical presence of the land and environmental surroundings.

For this reason, the draft declaration elaborates upon the right to practice one's religion in a broad manner as follows:

> 8. The right to manifest, teach, practice and observe their own religious traditions and ceremonies, and to maintain, protect and have access to sacred sites and burial grounds for these purposes.

Autonomy is voiced again by this article:

> 23. The collective right to autonomy in matters relating to their own internal and local affairs, including...religion...

Language

The right to use one's language is connected to a sense of self-identity on the part of indigenous groups. The threat from national educational systems in many societies is that they opt for one national language, rather than multilingualism, including teaching of indigenous languages. The language issue is thus instrumental in fostering state policies of assimilation on the one hand, and in destroying ethnic cultures on the other hand.

Multilingualism is a key to facilitating preservation of indigenous cultures and their social cohesion. Priority is accorded to this dimension in the draft declaration in its recognition of this right:

> 9. The right to maintain and use their own languages, including for administrative, judicial and other relevant purposes.

The predicament is whether the nation-state will permit it.

Information

The right to information was not explicitly specified in the International Bill of Human Rights, but it has gained momentum in recent years. With regard to indigenous interests, it is particularly important in the sense of channeling information to and from indigenous groups. The main obstacle in this area is state control over the mass media itself and its unwillingness to cater to indigenous groups, such as by allowing indigenous television programs.

The right to information appears in the draft declaration in the following manner:

> 11. The right to promote intercultural information and education, recognizing the dignity and diversity of their cultures, and the duty of states to take necessary measures, among other sections of the national community, with the object of eliminating prejudices and of fostering understanding and good relations.

Autonomy on the part of indigenous groups is also claimed:

> 23. The collective right to autonomy in matters relating to their own internal and local affairs, including...information...

Land

One of the greatest problems concerning indigenous rights is that of land, both in relation to what indigenous groups have lost and wish

to claim back (or compensation) and in relation to what they retain and wish to preserve from exploitation by others. It is all the more complicated because indigenous groups are frequently spiritually attached to the land; their *raison d'être* is the land itself. As the Martínez Cobo study has observed:

> For such peoples, the land is not merely a possession and a means of production. The entire relationship between the spiritual life of indigenous peoples and Mother Earth, and their land has many deep-seated implications. Their land is not a commodity which can be acquired, but a material element to be enjoyed freely.[38]

To some extent, the right to land on the part of indigenous groups was recognized some time ago by Convention 107 of the International Labour Organisation (referred to above), but that convention has been criticized as being paternalistic and assimilative in approach. The current draft declaration has more detailed provisions acknowledging the close social relationship between indigenous rights and their land. The right of indigenous groups in this respect is complemented by a corresponding duty on the part of states as follows:

> 12. The right of ownership and possession of the lands which they have traditionally occupied. The lands may only be taken away from them with their free and informed consent as witnessed by a treaty or agreement.
>
> 17. The duty of states to seek and obtain their consent, through appropriate mechanisms, before undertaking or permitting any programs for the exploration or exploitation of mineral and other subsoil resources pertaining to their traditional territories.

The struggle over land rights should not be underestimated. It calls into play age-old notions concerning acquisition of territory, for example, the *terra nullius* concept,[39] which although accepted in the past, is now increasingly impugned by indigenous groups.

Participation

Earlier on, the right to participated in the development process was referred to under the rubric of the right to development. The current draft declaration reinforces this right in relation to indigenous concerns, particularly in these provisions:

> 21. The right to participate fully in the political, economic and social life of their state and to have their specific character duly reflected in the legal system and political institutions, including proper regard to and recognition of indigenous laws and customs.
>
> 22. The right to participate fully at the state level, through representatives

> chosen by themselves, in decision-making about and implementation of all national and international matters which may affect their life and destiny.

Although few states would deny the right to participate accorded to indigenous groups, its implementation is shaped by a tug-of-war in regard to powersharing and resource distribution. Many governments enjoy a system of centralization and they do not wish to relinquish it to indigenous or other groups which are under their administration. They also fear (or seem to fear) the process of self-determination leading to secession.

The tone of the current draft declaration, which favors indigenous rights to participation based on "autonomy," rejects the past tendency to be assimilative and paternalistic. But it will not be easy to convince those states where the power and resources are monopolized, particularly in authoritarian or totalitarian systems, to yield a little more.

Realization

The rights discussed above exemplify some of the social rights now espoused directly or indirectly in relation to indigenous groups. In a sense it may be said that they are optimistic in approach—genuine realization of these rights is far more difficult and may be a cause for pessimism. The concerns relate to both the national and international levels.

National Level

At the national levels, genuine implementation of these rights depends, first and foremost, on political will. Such will is more often than not intractable. Nevertheless, international pressure may cause it to bend a little more.

In terms of law, it is interesting to note that many legal systems do not provide expressly for indigenous rights. National constitutions are accustomed to providing for "everyone" or "every citizen" on an individual basis, rather than for groups, including indigenous groups, on a collective basis.[40] In order to reinforce indigenous rights *qua* groups, it may be necessary to propel more law reform to recognize these rights either in the constitution itself or via other laws.

Mere stipulation in law is insufficient. Social rights depend, to a large extent, on an active role adopted by the state, at least in channeling the financial resources to the beneficiaries. This is intertwined with national development plans and correlative budgetary allocation to help indigenous groups. Conversely, it entails statal policy in allowing the indigenous groups to preserve and retain what resources and

power they have. By not meddling, the state contributes to preserving whatever "self-reliance" is left to the indigenous groups, and, as a corollary, the social web based upon it.

On another front, there is the question of redress where social rights are violated. In some cases, there may be resort to courts, but as already noted, access to the formal system of administration of justice is poor, particularly in developing countries. Alternative mechanisms may thus have to be explored and promoted, bearing in mind the fact that it is often executive discretion and practices which impinge upon indigenous rights. This calls into play the existence of national and local mechanisms to provide redress beyond the courts system itself. Administrative tribunals are part and parcel of these mechanisms, aiming at quick and cost-effective resolution of disputes between the executive and the populace. Ombudsmen or special committees accountable to parliament may also be means of redress for indigenous groups seeking to question executive actions. At the local level, the role of village leaders and committees is also a key to conflict resolution which may be instrumental in checking alleged violation of indigenous rights.

A related legal issue is whether there should be a treaty between indigenous groups and the government representing a broader category of people to guarantee indigenous rights.[41] In some countries, such treaties exist (e.g., New Zealand),[42] and organs exist to supervise adherence to the treaties.[43] In other countries, no such treaties exist (e.g., Australia),[44] or if they exist, their status and binding force are uncertain (e.g., the United States).[45] Alternatively, treaties may exist with some indigenous groups but not with other indigenous groups (e.g., Canada, where although there are treaties with some groups, there has been no treaty with the Cree, the largest linguistic group of indigenous people in the country).[46] Although the legal impact of these treaties may differ depending upon whether one regards them as national pacts or international agreements, they may provide a greater sense of certainty for indigenous groups. Where they do not yet exist, the possibility of effecting such treaties should thus be canvassed, with appropriate supervisory mechanisms. If treaties are deemed undesirable or impracticable for the present, the alternative may be for the dominant group unilaterally to enact statutes guaranteeing indigenous rights. Needless to say, whichever form the documents take (as bilateral agreements or unilateral instruments), social rights should be expressly stipulated even more concretely than those already found in the existing documents, bearing in mind the list of rights enumerated above.

One should also not underestimate the contribution of nongovernmental organizations in preventing as well as remedying violations of indigenous rights. Often governmental channels are insufficient or ineffective, and indigenous groups are left to depend on nongovernmental initiatives. The presence of many of these organizations at the Working Group on Indigenous Populations' sessions in Geneva attests to the importance of these organizations. International exposure of their work and views helps to strengthen their role at the national level.[47]

Finally, thought may be given to the idea of a committee on indigenous rights with representation from indigenous groups, governmental entities, representatives of the other sectors of the populace, and nongovernmental organizations. This may prove to be a national forum where compromises may be worked out between the diversity of interests, governmental and nongovernmental, indigenous and nonindigenous. This forum should aim at multiculturalism and accommodation of interests where uniformity is not desired.

International Level

One of the basic underlying indigenous rights at the international level is whether to opt for binding instruments such as treaties (hard law), or other instruments which are nonbinding or semibinding, such as declarations (soft law).

Binding instruments already exist pertaining to indigenous rights either directly or indirectly. Examples include the International Covenant on Economic, Social and Cultural Rights, and ILO Convention 107 and its successor, Convention 169. The weakness of these instruments is the paucity of accessions to them, particularly in relation to Asian countries, and insufficient enforcement where countries have acceded. Convention 107 also has been criticized for being paternalistic and assimilative in approach, and it has been revised so as to introduce a more accommodating approach and to replace the term "populations" with the term "peoples."[48] Criticism of Convention 169 has concentrated on its explicit rejection of the rights of "peoples" (self-determination) under international law as applied to indigenous and tribal peoples.[49] There may also be an undercurrent of self-determination as an accepted indigenous right,[50] although its parameters may be open to debate (that is, whether it is extensive enough to mean secession).

Recent developments have pointed to the viability of a less binding instrument, that is, the draft Universal Declaration of the

Rights of Indigenous Peoples, cited above.[51] If accepted by the United Nations, it will have persuasive force; its flexibility should induce states to vote for it, as the level of commitment is lower than that required by binding instruments, such as conventions. The range of social rights invoked by this draft declaration directly or indirectly has already been discussed at length, and they include the right to social development, social welfare services, social security, adequate standard of living, employment, education, housing/health/food, legal services, religion, language, information, land and participation. The list may be seen as tentative rather than exhaustive. These rights are reinforced by the umbrella of duties imposed on the state, in particular the following:

> 7. The duty of states to grant—within the resources available—the necessary assistance for the maintenance of their identity and their development.
>
> 27. The duty of states to honor treaties and other agreements concluded with indigenous peoples.

One serious lacuna is the question of monitoring and supervision in relation to the realization of indigenous social rights. Most of the international mechanisms that exist at the international level deal with civil and political rights, rather than economic, social and cultural rights. For example, the Human Rights Committee established under article 28 of the International Covenant on Civil and Political Rights deals exclusively with civil and political rights,[52] while the Commission on Human Rights' procedure 1503 for complaints against human rights violations has been used principally for civil and political cases.[53] Other mechanisms dealing expressly with social issues—for example, the recently established International Committee on Economic, Social and Cultural Rights[54]—suffer from lack of binding force and are also subject to accession by states to the relevant treaties, such as the international covenant on Economic, Social and Cultural Rights.

For this reason, there has been a recommendation to establish an international ombudsman for indigenous rights to whom indigenous claims may be sent.[55] Even if he/she has merely recommendatory powers, the international pressure that may ensue from his/her findings may act as a disincentive against state encroachments on indigenous rights. The recommendation is worth advancing further.

Should this recommendation fail to attract support at the international level, one may capitalize on existing international mechanisms so as to make them respond more concretely to indigenous rights. A key organ is the Commission on Human Rights itself. Arguably its

procedure 1503 is broad enough to promote indigenous rights if one takes an evolutionary and purposive approach to human rights. Its omission to deal with social rights in the past should not hamper future attempts to utilize its mandate in this regard.

On another front, one should not forget the role of international and national nongovernmental organizations in providing checks and balances against abuses of state power. Their access to mechanisms such as the procedures 1503 should be facilitated as a counterbalance against state discretion and as a means of redress, even in a diluted form.

The expansion of social rights also calls for greater cooperation among the various agencies dealing with basic human needs, ranging from UNESCO to the World Health Organization, the Food and Agriculture Organization and the United Nations General Assembly itself. Entities which do not see themselves as initially involved in human rights—because they are service-oriented—may well be key catalysts in promoting social rights. Conversely, entities which see themselves as innately involved with human rights—because they are advocacy-oriented—may prove to be ineffective in tackling social rights which need a broad range of services and experience (long term in demand and approach), unless they are able to team up with those entities having the necessary know-how. Hence the call for more cooperation.

Ultimately these initiatives may help to promote a genuine realization of indigenous rights, not so much as a matter of conflict, but more as a matter of confluence. One's guarded optimism in this respect is shaped by the seminal realization that "diversity is not, in itself, contrary to unity, any more than uniformity itself necessarily produces the desired unity."[56]

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1. For a recent cross-cultural study, see proceedings of session A.1: "The Aborigine and Comparative Law," at the Twelfth Congress of the International Academy of Comparative Law, published by the Association of Scientific Societies of Austria (der Verband der wissenschaftlichen Gesellschaften Österreichs), Vienna, in *Law and Anthropology* (*Internationales Jahrbuch für Rechtsanthropologie*) Vol. 2 (1987) [hereinafter *Law and Anthropology*].
2. Notably in Fiji.
3. As noted, for example, in *Law and Anthropology*, op. cit.
4. Russel Lawrence Barsh, "Indigenous Peoples: An Emerging Object of International Law," *American Journal of International Law* Vol. 80, No. 2 (April 1986), 369–85, 373.
5. Abjørn Eide, "Internal Conflicts under International Law," in Kumar Rupesinghe, ed., *Ethnic Conflict and Human Rights* (Oslo: United Nations University and Norwegian University Press, 1988), 28.
6. Manuela Carneiro da Cunha, "Aboriginal Rights in Brazil," *Law and Anthropology*, op. cit., 55–71, 55.
7. See further David Weissbrodt, "Report of the Fifth Session of the Working Group on Indigenous Populations," *Human Rights Internet Reporter* Vol. 12, No. 1 (Fall

1987), 65–67.

8. The International Bill of Rights is comprises of the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966) and the Optional Protocol to the International Covenant on Civil and Political Rights (1966). For the text of these instruments, see Centre for Human Rights, *Human Rights: A Compilation of International Instruments* (New York: United Nations, 1988).
9. *International Legal Materials* Vol. 21, No. 1 (January 1982), 59–68.
10. The Universal Declaration of the Rights of Peoples, known as the Algiers Declaration, was drafted on 4 July 1976 in Algiers, following a seminar convened by Italian jurist Lelio Basso. For text of this declaration, see *Universal Declaration of the Rights of Peoples* [title and text in Spanish, French and English] (Paris: François Maspero, 1977).
11. Russel L. Barsh, "Revision of ILO Convention No. 107," *American Journal of International Law* Vol. 81, No. 3 (July 1987) 756–62, 760.
12. Article 1 of both covenants.
13. Weissbrodt, op. cit., 66.
14. I. Brownlie, "The Rights of Peoples in Modern International Law," *Bulletin of the Australian Society of Legal Philosophy* Vol. 9 (1985), 104.
15. Report of M. Jules Deschênes to the Subcommission on Prevention of Discrimination and Protection of Minorities, May 1985. E/CN.4/Sub.2/1985/31, at 6.
16. James Crawford, "The Aborigine in Comparative Law: General Report," *Law and Anthropology*, op. cit., 5–28, 9.
17. Ibid., 7.
18. Peter Hanks, "Aborigines and Government: The Developing Framework," in Peter Hanks and Bryan Keon-Cohen, eds., *Aborigines and the Law* (Sydney: Allen and Unwin, 1984) 19–49, 19.
19. Vitit Muntarborn, "The Aborigines in Thai Law," *Law and Anthropology*, op. cit., 267–276, 266.
20. See further Anthony D. Smith. *The Ethnic Revival* (Cambridge: Cambridge University Press, 1981); and Joseph Rothschild, *Ethnopolitics: A Conceptual Framework* (New York: Columbia University Press), 1981).
21. As coined by Theo Van Boven in a speech to the Subcommission on Prevention of Discrimination and Protection of Minorities, 17 September 1981. See *Report of the UN Subcommission on Prevention of Discrimination and Protection of Minorities*, Doc. E/CN.4/Sub.2/495.
22. For example, in Canada: John Bayly, "Aboriginal Rights in Canada: The Northwest Territories," *Law and Anthropology* op. cit., 43–54, 50–51; in the United States: James W. Zion, "Aboriginal Rights: The Western United States of America," ibid., 195–211, 205; in Australia: Garth Nettheim, "Australian Aborigines and the Law," ibid., 371–403, 372 (re: social conditions as contributing to high incidence of violent crime), 387–91.
23. For example, in Sri Lanka: Patricia Hyndman, "The Law and the Veddas of Sri Lanka: Vanishing Aborigines?" ibid., 215–37, 219 and 221–22.
24. E/CN.4/Sub.2/1988/24 (1988), para. 73.
25. Ibid., Annex II.
26. José Martínez Cobo, *Study of the Problem of Discrimination against Indigenous Peoples*, E/CN.4/Sub.2/1986/7/Add.4 (1987).
27. Debesh Bhattacharya, "Development: The State of the World at the Beginning of the Third Development Decade," *The Developing Economics* [the journal of the Institute of Developing Economies, Tokyo] Vol. XX, No. 1 (March 1982), 21–36.
28. United Nations General Assembly resolution 41/128 (1986).
29. Article 1 (1).
30. Article 8.
31. For example, Thailand is now in the middle of its sixth National Economy and Social Development Plan (1987–91).
32. For text, see *International Labour Conventions and Recommendations, 1919–1981* (Geneva: International Labour Office, 1982).
33. Particularly article 25 of the Universal Declaration of Human Rights and article 11 of the International Covenant on Economic, Social and Cultural Rights.
34. For example, article 23 of the Universal Declaration of Human Rights, article 6 of the International Covenant on Economic, Social and Cultural Rights, and International Labour Organisation conventions, such as No. 122 (Employment Policy Convention, 1964).
35. Martínez Cobo, op. cit., paras. 89–119.
36. For the Asia-Pacific region, see further

Transcultural Mediation in the Asia-Pacific (Manila: Asia-Pacific Organization for Mediation, 1988).

37. Martínez Cobo, op. cit., paras. 585–608.
38. Ibid., para 197.
39. Orientation toward restricting use of this concept was seen in the Western Sahara Advisory Opinion of the International Court of Justice, 16 October 1975, in response to the request of the General Assembly, as contained in resolution 32-92 (XXIX) of 13 December 1974, Doc. A/10300 of 17 October 1975.
40. For example, the Thai Constitution of 1978 uses the term "every person," and there is no reference to group rights.
41. A special rapporteur was appointed in 1988 to study the treaties, agreements and other constructive arrangements between states and indigenous populations. E/CN.4/Sub.2/1988/24/Add.1 (1988).
42. The Treaty of Waitangi of 1840. See further David Williams, "Aboriginal Rights in Aoteoroa," *Law and Anthropology* op. cit., 423–40.
43. In the case of New Zealand, the Waitangi Tribunal.
44. Nettheim, op. cit.
45. W. Cole Durham, "Indian Law in the Continental United States: An Overview," *Law and Anthropology*, op. cit., 93–112; also Zion, op. cit.
46. This was the position with regard to the Cree before 1975, but there is now legislation recognizing the rights of the Cree: the Cree Nascapi Act. See further, "Cree Council at the UN," *Human Rights Internet Reporter* Vol. 12, No. 2 (Winter 1988), 101.
47. E/CN.4/Sub.2/1988/24 (1988), paras. 7–8.
48. Barsh (1987), op. cit.
49. Article 1, subsection 3 of the ILO Convention 169.
50. E/CN.4/Sub.2/1988/24 (1988), para. 80 and its link with article 24 of the draft Universal Declaration of the Rights of Indigenous Peoples, which states: "The right to decide upon the structures of their autonomous institutions, to select the membership of such institutions, and to determine the membership of the indigenous people concerned for these purposes.
51. E/CN.4/Sub.2/1988/24, Annex II. The steps leading to the draft declaration should be noted, in particular the fact that the 1987 Declaration of Principles was adopted by the Indigenous Peoples Preparatory Meeting. Examples of the principles bearing upon social rights include the following:

    2. All indigenous nations and peoples have the right to self-determination, by virtue of which they have the right to whatever degree of autonomy or self-government they choose. This includes the right [freely to] determine their political status, freely [to] pursue their own economic, social, religious and cultural development...

    12. Indigenous nations and peoples have the right to education, and the control of education, and to conduct business with states in their own languages, and to establish their own educational institutions.

    13. No technical, scientific or social investigations, including archaeological excavations, shall take place in relation to indigenous nations or peoples, or their lands, without their prior authorization...

    14. The religious practices of indigenous nations and peoples shall be fully respected and protected by the laws of the states and by international law. Indigenous nations and peoples shall always enjoy unrestricted access to, and enjoyment of sacred sites in accordance with their own laws and customs, including the right to privacy.

    15. Indigenous nations and peoples are subjects of international law.

    21. ...All indigenous nations and peoples have the right to determine, plan, implement, and control the resources respecting health, housing, and other social services affecting them.
52. The literature on this subject is vast. For a simplified explanation, see *Human Rights Machinery: Fact Sheet No. 1* (Geneva: United Nations, 1987), 12–14.
53. Ibid., 6–8.
54. Ibid., 14–15; see also P. Alston and B. Simma, "First Session of the United Nations Committee on Economic, Social and Cultural Rights," *American Journal ofInternational Law* Vol. 81 No. 3 (1987), 747.
55. This is one of the recommendation of the report of the Independent Commission on International Humanitarian Issues, a part of which is reproduced in E/CN.4/Sub.2/1987/22 (1987), Annex IV.
56. Martínez Cobo, op. cit., para. 402.

The U.S. Supreme Court and the Assault on Indian Sovereignty

Curtis G. Berkey[*]

During the last ten years, the sovereign authority of American Indian governments frequently has come under legal attack. With the intervention of the U.S. justice system, non-Indians have largely succeeded to erode further the historical and juridical principle of native American self-government, on that portion of their lands that remain to them. On many Indian reservations in the United States, non-Indians comprise a large part of the population, and Indian governments naturally assert authority over them as part of the inherent and historic power of territorial self-government. However, non-Indians who object to the regulatory actions of Indian governments are increasingly resorting to the federal courts to challenge those actions as beyond the scope of Indian self-government under federal law.

With the U.S. Supreme Court leading the way, the federal courts have produced in the past ten years a confusing array of contradictory

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rules and principles which have been interpreted by some to undermine the jurisdictional authority, or sovereignty, of Indian governments.

For the purpose of this investigation, "sovereignty" is here defined as the inherent right of a people freely to determine its own political status and form of government. In contemporary international legal terms, sovereignty is akin to the right of self-determination, although complete sovereignty is only one expression of the right of self-determination.*

The United States has recognized that Indian nations have inherent rights to self-government as an attribute of their sovereignty. The doctrine of Indian sovereignty,[1] which once provided modest protection for Indian self-government, is now so eviscerated that the powers of Indian governments are sometimes said to exist completely at the whim of the federal government. Cherished rights of self-government are in danger of being trammeled as federal supremacy over Indian governments becomes more firmly entrenched in the law.

The transmutation of the Indian sovereignty doctrine can be traced to the Supreme Court's infamous decision in *Oliphant v. Suquamish Indian Tribe* (1978) to strip the Suquamish Indian Tribe of the power to exercise criminal jurisdiction over non-Indians who violate tribal laws.[2] Mark David Oliphant, a non-Indian, was charged under the tribal law and order code with assaulting a police officer of the Suquamish Indian Tribe on the Port Madison Reservation during the tribe's annual Chief Seattle Days celebration. Oliphant challenged the right of the tribe to exercise criminal jurisdiction over him. Carelessly rewriting law and history, Chief Justice William H. Rehnquist denied the tribe's jurisdiction. He reasoned that the exercise of criminal jurisdiction by an Indian nation over a non-Indian would be inconsistent with the nation's inferior legal status under United States law. In its opinion, the Court announced an unprecedented restriction on the powers of Indian governments.

> Upon incorporation into the territory of the United States, the Indian tribes thereby come under the territorial sovereignty of the United States and their exercise of separate power is constrained so as not to conflict with the interests of this overriding sovereignty.[3]

The court's decision in *Oliphant* seriously undermined the legal protection Indian nations had previously enjoyed as their right of self-

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* See discussion of the various expressions of sovereignty in Erica-Irene A. Daes, "On the Relations between Indigenous Peoples and States," in this issue of *Without Prejudice—Ed.*

government under federal law. It has been understood to have fundamentally changed the conception of Indian nations as sovereign governments within the United States legal system. Before *Oliphant*, federal law recognized that Indian nations retain all the powers of sovereign nations except where they had unequivocally given up elements of their sovereignty in treaties, or where Congress had expressly abrogated their powers by federal statute. *Oliphant* supplanted the conceptual clarity of this doctrine with the enigmatic concept that Indian nations have been divested by operation of law of all powers "inconsistent with their status."[4] This rule has come to be known as the "implicit divestiture rule." The *Oliphant* decision has been justly criticized by commentators as lacking a sound legal and historical basis and as establishing a precedent which further threatens the rights of indigenous people in the United States.[5]

With this decision, the Supreme Court and the lower federal courts became the chief threats to Indian sovereignty. By applying the amorphous concepts in *Oliphant*, the federal courts have imposed new and far-reaching limitations on Indian self-government. Although it is doubtful that the Supreme Court intended such a harsh result, judicial abrogation of Indian sovereignty has replaced congressional abrogation as the principal danger.

The Aftermath of Oliphant v. Suquamish Indian Tribe

Many Indian leaders feared that *Oliphant* heralded a new era of judicial activism in curtailing the powers of Indian governments, particularly as regards non-Indians. In the eleven years since the decision, the record of the federal courts shows that this concern was mostly justified. Measured solely by results in particular cases, the impact of *Oliphant* may not have been the total disaster that was predicted. In fact, since 1978 the Indian parties have won about as many sovereignty cases as they have lost.

The effect of *Oliphant* however, cannot be accurately measured simply by tallying up wins and losses. The decision may have paved the way for an unprecedented erosion of Indian rights to self-government, and further assaults on their sovereignty. The so-called implicit divestiture rule could be interpreted as giving federal judges broad discretion to abolish sovereign powers by simply finding that a particular power is inconsistent with the status of Indian nations. The new rule is exceedingly difficult to apply fairly because of the elasticity of the concept that the status of Indian nations, as subjugated under the sovereignty of the United States, necessarily restricts Indian powers

of self-government. Despite these problems, the Supreme Court has not sufficiently clarified the meaning and scope of the *Oliphant* doctrine.

Although it is uncertain that the Supreme Court intended to cripple Indian sovereignty, the Supreme Court cases following *Oliphant*, by careless and sometimes contradictory analysis, have further empowered the lower federal courts to impose severe restrictions on Indian self-government. The Court can be faulted for its indifference to the doctrinal confusion its opinions have created, and for its striking lack of concern for the adverse effect this confusion may have on treasured Indian rights to self-government. Although the Court often pays lip service to venerable doctrines of Indian sovereignty, its uncertainty about the manner in which Indian sovereignty questions are to be decided has created a vacuum that the lower federal courts by necessity must fill. Thus, Indian sovereignty is endangered by the proclivity of some lower federal courts to treat selected Supreme Court dicta as rules for decision, despite the absence of clear evidence that the Court intended its statements to establish new doctrine.

To be sure, the Supreme Court has sent very confusing signals to the lower federal courts. Shortly after *Oliphant*, it issued a warning about the potential impact of the implicit divestiture rule in *United States v. Wheeler*.[6] The question in that case was whether the United States and the Navajo Nation are separate sovereigns for purposes of the Double Jeopardy Clause of the U.S. Constitution, which prohibits criminal prosecution of a defendant who has been convicted in the courts of the United States. The Court ruled that prosecution in U.S. courts of a defendant convicted in tribal court was not banned because the Navajo Nation is a separate sovereign. Thus, the Court upheld the sovereign authority of the Navajo Nation to try and punish its own members, but it suggested that virtually all powers touching "the relations between an Indian tribe and nonmembers of the tribe" had already been lost through the mysterious process of implicit divestiture.

After *Wheeler*, the court issued a string of inconsistent statements about the scope of Indian sovereignty. For example, the Court's comment in the *Wheeler* decision about the broad reach of the implicit divestiture rule was contradicted two years later in *Washington v. Confederated Tribes of the Colville Indian Reservation*.[7] In that case, the court upheld the power of Indian nations to tax the business activities of non-Indians on Indian land, noting that the federal government has "consistently recognized that Indian tribes possess a broad measure of civil jurisdiction over the activities of non-Indians on Indian reservation lands in which the tribes have a significant interest."[8] The

Colville case involved a tribal tax on cigarette purchases by nonmembers of the tribes.

Colville, moreover, raised additional questions about the meaning of implicit divestiture because of internal inconsistencies in the opinion. On the one hand, the Court appeared to repudiate the implicit divestiture rule altogether, announcing that "tribal powers are not implicitly divested by virtue of the tribes' dependent status."[9] On the other hand, the court seemed to affirm *Oliphant*'s holding that divestiture can occur "where the exercise of tribal sovereignty would be inconsistent with the overriding interests of the national Government."[10] The Court has neither acknowledged nor resolved the contradiction between these statements in any reasonably clear explanation of the appropriate governing principle.

Doctrinal Inconsistencies

Apart from the confusion about what the law is, *Oliphant* and *Colville* left unanswered a number of important questions about the application of the implicit divestiture rule. If, for example, the governing principle is that tribes are constrained from exercising any power inconsistent with the national interest of the United States, how is that interest to be defined? How does a court decide what the national interest is, and what sources can it properly examine? Can it rely on policy statements of executive agencies that do not have the force of law, for example? Are certain national interests more important than others, and how should they be weighted in importance? These difficult questions, which no court has sought to address, suggest that the implicit divestiture rule may be incapable of precise and evenhanded application, if it is to be regarded as a test at all.

The Supreme Court's indifference to doctrinal inconsistency was again illustrated in *Montana v. United States*.[11] In that 1981 case, the Court ruled, among other things, that the Crow Tribe had no authority to regulate hunting and fishing by nonmembers on lands within the reservation but no longer owned by the tribe. Ignoring completely the general principle affirmed in the *Colville* decision that tribes retain civil jurisdiction over non-Indians, the Court resurrected *Wheeler*'s broad declaration that divestiture has occurred in areas "involving the relations between an Indian tribe and nonmembers of the tribe." In its formulation in the *Montana* decision, the Court also said that Indian nations have been divested of all powers "beyond what is necessary to protect tribal self-government or to control internal relations."[12] Thus, the Court purported to find support for the

"general proposition that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe."[13]

The fact that this formulation is so impractical to apply suggests that the Supreme Court may not have intended to lay down a stringent test for deciding Indian sovereignty questions. The first part is largely a meaningless *non sequitur*, because arguably all tribal powers are necessary to tribal self-government, considering that the sovereign exercise of governmental power is the *sine qua non* of self-government. Moreover, the distinction between internal and external relations is exceedingly difficult to draw precisely in today's world, where non-Indians comprise major parts of many reservation communities and where the conduct of non-Indians often has a direct effect on the internal workings of tribal governments, particularly on their ability to govern the reservation.

Additional support for the view that *Montana* did not establish new tests for Indian sovereignty questions is found in the Court's explanation of those areas where a tribe may have retained civil authority over non-Indians. The Court devised, without sound legal or historical authority, two categories that it said may be exceptions to the general principle that tribal powers do not apply to the activities of nonmembers: First, tribes may have the power to tax or otherwise regulate the activities of nonmembers who enter into "consensual relationships," such as commercial dealings, with Indian tribes. Secondly, tribes may have authority over nonmembers when their conduct "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."[14] The Court left no clues as to whether these statements are intended to be rules that supplant the principles "necessary to self-government and to control internal relations" set forth earlier in the same opinion. In any event, if lower federal courts were to treat these statements as rules, they would impose a discriminatory burden on Indian tribes to justify exercises of power over non-Indians. No other government is required to validate the exercise of its sovereign powers by demonstrating the effect of the conduct it seeks to regulate.

The *Montana* case failed to resolve the contradictions and inconsistencies in the Supreme Court's Indian sovereignty jurisprudence. Instead, it added to the growing number of bewildering statements and principles in this area. In particular, the Court did not say whether divestiture of tribal powers was to be determined according to a perceived conflict with the paramount (U.S.) national interest, as in *Oliphant* and *Colville*, or according to one or another of *Montana*'s so-called rules.

One year later, in 1982, the Court raised additional doubts about whether *Montana* should be read as establishing rules for decision in Indian sovereignty cases. In the case of *Merrion v. Jicarilla Apache Tribe*,[15] deciding that Indian tribes had inherent authority to impose a severance tax on non-Indian producers of oil and gas on reservation lands, the Court did not even cite *Montana*, much less apply any "rules" from that decision. Nor did the Court analyze whether this power had been divested by reason of some overriding interest of the United States, as *Colville* seemed to invite the Court to do. The Court acknowledged that tribal powers can be limited in that way, but it summarily dismissed that issue as "not presented here."[16] Instead, the Court relied on the principle that tribes retain inherent powers over their territories, and on the assumption of all three branches of the federal government that the taxing power over non-Indians is retained by tribes.

The Role of Lower Courts

Because of the failure of the Supreme Court to provide clear guidance, the lower federal courts have exercised very broad discretion in deciding these issues. Despite the absence of compelling evidence that the Court intended its statements on Indian sovereignty to be iron-clad rules, the lower federal courts have tended to seize on specific language in one case or another, elevate it to the status of a rule of law and mechanically apply it to the facts in the case being decided. As a result, the Supreme Court's confused pronouncements have perhaps unwittingly contributed to the development of a new set of rules on Indian sovereignty questions.

By treating selected Supreme Court statements as rules, the lower federal courts have transformed the analytical framework of Indian sovereignty issues. The traditional presumption that Indian nations retain all those powers not expressly given up in treaties or taken away by Congress has been eliminated. In its place, some courts have applied a new presumption: that Indian tribes do not have governmental authority unless they can prove it is necessary to control "internal relations," or to protect the political integrity, economic security or welfare of the tribe and its government. The Supreme Court's jurisprudence also permits—if it does not absolutely require—judges to balance the interest of Indian tribes in maintaining strong governments against the "national interest" or "overriding sovereignty" of the United States, with very little Court guidance as to the meaning of those terms.

This trend can be seen in the increasing frequency with which lower federal courts seized on *Montana*'s explanation of the implicit divestiture phenomenon as the dispositive test for determining the scope of Indian sovereignty over non-Indians. This means the court will assume that Indian nations have been divested of authority over non-Indians unless the exercise of sovereign power falls within two exceptions: where a consensual relationship exists between the tribe and the non-Indian, and where the non-Indian conduct threatens the welfare of the tribe in a concrete way. The *Montana* formulation has come to be the settled rule of decision.

Nevertheless, until very recently, tribal litigants generally fared better under that analysis than under the "overriding national interest" test of *Colville* and *Oliphant*. For example, in 1982, the Court of Appeals for the Ninth Circuit upheld the authority of the Quinault Indian Nation to enforce its building, health and safety regulations against a non-Indian operating a store on non-Indian land within the reservation.[17] The court ruled that the exercise of such authority was permissible because it fit within both of the *Montana* exceptions to Indian authority over non-Indians. Similarly, also in 1982, the Court of Appeals for the Tenth Circuit upheld the authority of the Shoshone and Arapahoe Indian tribes to enforce a zoning ordinance on lands owned by non-Indians within the reservation.[18] The court found that the "interest of the tribes in preserving and protecting their homeland from exploitation justifies the zoning code."[19]

Although the results are laudable, these decisions, by purporting to identify and apply a new Supreme Court test for the exercise of tribal powers, further entrench the supposed rules or tests. By doing so, they enhance the power of the federal courts to place limits on tribal authority. As a practical matter, moreover, these legal victories may be illusory, because the Supreme Court still permits Congress to eradicate the powers of Indian governments without legal limitation. As Justice Marshall observed in *Santa Clara Pueblo v. Martinez* (1978), Congress has "plenary authority to limit, modify or eliminate powers of local self-government" of Indian nations.[20] None of these decisions sought to balance the interests of the Indian government against the "national interest" or "overriding sovereignty" of the United States Government, as the Supreme Court has permitted. Indian sovereignty will have little real, legal protection as long as the law permits courts to engage in such balancing, or requires Indian governments to prove that the exercise of a particular power is necessary for their survival.

The danger to Indian sovereignty posed by the *Montana* rules is illustrated by the 1983 decision in *Swift Transportation, Inc. v. John*.[21]

In that case, a non-Indian sued in federal court to enjoin the Navajo Nation District Court from exercising jurisdiction over a lawsuit brought by members of the Navajo Nation against non-Indians for injuries arising out of an automobile accident within the Navajo Reservation. The federal court granted the injunction, ruling that the Navajo Nation had been divested of its jurisdiction over the case by virtue of its "dependent status." The court refused to find that the Navajo Nation's authority came within either of the *Montana* categories for validly exercising power over non-Indians. Instead, the court concluded that the primary effect of the accident fell on the Indian individuals, and the Navajo Nation, therefore, could not claim any adverse effect on itself, as *Montana* requires. This strained, narrow interpretation of *Montana* completely ignores the adverse political and economic impact on the Navajo Nation, if it were disabled from compelling non-Indians to compensate nation members for civil wrongs. This ruling graphically shows the broad discretion federal judges have exercised under the new "rules."

The Supreme Court's bewildering assortment of declarations and principles in sovereignty cases has permitted the lower courts to choose arbitrarily the rules they intend to apply. For example, the district court in Arizona ruled in 1981 that the Navajo Nation courts do not have jurisdiction to hear suits by Navajos against a non-Indian corporation for injuries resulting from a uranium waste spill.[22] For support, the court cited the *Montana* proposition that Indian governments generally do not have authority over the activities of nonmembers, but it neglected to determine whether this case fell within either of the two categories in which the exercise of Indian governmental authority over non-Indians may be valid.

Another danger of *Montana* is exposed by a second case brought by UNC Resources against members of the Navajo Nation. In that case, the federal district court in New Mexico agreed with the Arizona court that the nation had no civil jurisdiction over suits by nation members against UNC Resources for injuries from the uranium spill.[23] Here, the court applied virtually all the permutations of *Montana*, concluding that the Navajo Nation's power to impose civil penalties on non-Indian corporations is not necessary to protect tribal self-government, "because the tribal government has always been able to function without it."[24] This is the *Montana* rationale carried to its logical extreme: the validity of an exercise of Indian governmental power may come to depend on whether that power has been exercised historically and, if so, how effective such power has been in regulating conduct. This novel concept ignores the fundamental fact that Indian

governmental powers are exercised in response to changing conditions on the reservations. In many cases, Indian governments have been prevented from exercising the full measure of their sovereignty by the policies and practices of the United States and its agents. Thus, the legal validity of Indian sovereignty may come to depend on forces beyond the control of the Indian government.

Compelling U.S. National Interests

Several decisions in Indian sovereignty cases in the past few years have relied at least in part on a finding that the exercise of tribal power is inconsistent with the national interest of the United States. In both UNC Resources cases, the courts held that the exercise of tribal jurisdiction would conflict with the overriding sovereignty of the United States. In the New Mexico case, the court reasoned that a civil judgment in the Navajo court against UNC Resources would be an "unwarranted intrusion" on the property interests of the corporation, which presumably also conflicted with the interest of the United States in protecting UNC Resources' property. The Arizona district court went even further, holding that the assertion of Navajo jurisdiction "also conflicts with the superior federal interest in regulating the production of nuclear power."[25] The range of "superior federal interests" which could conceivably void Indian governmental authority appears to be very broad indeed. What is particularly disturbing about these cases is their conclusion that the exercise of Navajo jurisdiction *per se* conflicted with the interests of the United States. There was no finding that the Navajo courts are incapable of administering justice fairly and equitably.

The courts' solicitude for non-Indians subjected to "unwarranted intrusions" by Indian governments is premised on the racist notion that Indian governments are incapable of administering justice to non-Indians fairly and evenhandedly. Conspicuously missing from these decisions is a similar concern for the "unwarranted intrusions" of Congress' plenary power over Indian governments. Who, after all, is intruding in whose affairs?

Further Loss of Inherent Authority

Despite erratic lower court decisions, the Supreme Court appears to be unwilling to rectify the deficiencies of its Indian sovereignty opinions. The Court's decision of this year, concerning tribal power to zone non-Indian land within reservation boundaries,

shows that the members of the Supreme Court continue to be sharply divided about the governing principles in these cases.[26] In *Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation*, the Court ruled that the Yakima Nation retains sovereign authority to zone non-Indian land within that part of the reservation that has a relatively small percentage of non-Indian land and that has almost no residential or commercial development. The Court further ruled, however, that the Yakima Nation does not have inherent authority to zone non-Indian land in the so-called open area of the reservation, where the majority of the land is owned or farmed by non-Indians, and where large numbers of non-Indians live and work. Three different views were expressed about the scope of Indian powers over non-Indians, none of which commanded a majority of the Court's members.

Only Justices John Paul Stevens and Sandra Day O'Connor agreed with both of these rulings. In Justice Steven's opinion, the power to zone is derived exclusively from the Yakima Nation's inherent power to exclude nonmembers from the reservation. He reasoned that this power necessarily includes the lesser power to "define the essential character of that area" through zoning regulation.[27] He concluded that, because most of the land located in the open area is owned by non-Indians and the nation no longer has the power to exclude non-members, the power to define the character of the area has been lost as well.

If applied beyond the zoning context, Justice Steven's theory would add a new element to the implicit divestiture concept first announced in 1978, in *Oliphant v. Suquamish Indian Tribe*. It raises the specter that tribal powers could be implicitly lost due to change in the composition and character of the reservation community, changes caused primarily by larcenous congressional enactments and anachronistic federal policies. There is no indication, however, that this new theory (if indeed it can be called that) is intended to replace the long-standing rule that tribal powers derive from the status of Indian nations as inherently sovereign bodies.

Justice Byron White, in an opinion joined by Justices Antonin Scalia, Anthony M. Kennedy and Chief Justice Rehnquist, took the position that the Yakima Nation lacked inherent authority to zone non-Indian land anywhere on the reservation. Nimbly manipulating selective language from *Montana* and *Wheeler*, Justice White concluded that the "governing principle is that the tribe has no authority itself, by way of tribal ordinance or actions in tribal courts, to regulate the use of fee land."[28] Justice White would hold that Indian tribes have been implicitly divested of *all* powers over non-Indians, by virtue of

their "dependent" status under federal law. In so doing, the plurality of four justices would, for all practical purposes, discard the principle recognized in *Montana* that tribes have inherent authority to regulate the conduct of non-Indians when it "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."[29]

The plurality is willing to recognize that tribes have an interest in the activities of non-Indians within the reservation. But that interest is not sufficient to support the exercise of tribal sovereignty over those activities. Rather, the plurality would limit the tribes to a federal suit for injunctive relief whenever the activities of non-Indians have a "demonstrably serious" impact on the political integrity, economic security or health welfare of the tribe.[30] This right, of course, is no greater than the right of any landowner to sue in nuisance to enjoin threatening conduct of a neighboring landowner. The plurality opinion illustrates the ease with which the Court's precedents can be used to weaken Indian sovereignty.

Justice Harry A. Blackmun, joined by Justices William J. Brennan, Jr. and Thurgood Marshall, would have upheld the Yakima Nation's inherent authority to reregulate non-Indian land anywhere on the reservation. Justice Blackmun acknowledged the inconsistencies of the Court's prior statements on the applicable principle, especially the contradictions between the *Montana* and *Colville* approaches. For Blackmun, tribes have power to zone non-Indian land because such authority is central to the "economic security, or the health or welfare of the tribe." The power to zone thus falls within the category of powers expressly recognized by the Supreme Court in *Montana*. As a result, even if *Montana* is viewed as an aberration, Blackmun reasoned, the Indian power to zone non-Indian land is sustained.

The lack of consensus in *Yakima* about the proper approach to Indian sovereignty questions raises doubts about the decision's precedential value. The result in the case, that tribes have authority only in areas with a small percentage of non-Indian land, cannot be mechanically applied with precision to other circumstances. Neither Justice Stevens, nor Justice Blackmun, who upheld tribal authority in this area, offered any guidance for determining where the line should be drawn on the threshold percentage of non-Indian land. *Yakima* may have meaning only with regard to the unique facts of the case.

Conclusion

The assault on Indian sovereignty in the United States may now

come from two sources. The Supreme Court still holds that Congress has plenary power to terminate Indian governments at will.[31] And now, as a result of confusing Supreme Court decisions, the federal courts could exercise a plenary power of their own. The increased power of the courts may be a greater threat to Indian sovereignty in the long run than the plenary power of Congress. At least when Congress intends to act, there is an opportunity through political advocacy to prevent the erosion of Indian self-government. But there is no effective check on the power of the courts. Moreover, when courts take away Indian governmental powers, their action has an appearance of legitimacy that is scarcely deserved.

What can Indian governments, lawyers and Indian people do to achieve better legal protection for Indian sovereignty? Most important, the notion that Congress has plenary power over Indian governments must be challenged at every opportunity. Acquiescence in the idea of federal supremacy over Indian nations historically has helped create a legal climate in which concepts of inherent limitations on Indian sovereignty seem acceptable to the Supreme Court. Perhaps the Supreme Court might not have created the implicit divestiture doctrine if lawyers and tribes had consistently and aggressively challenged the idea that Indian governments are subjugated under the sovereignty of the United States. Reform of the law of Indian sovereignty must necessarily be based on a consensus about appropriate limitations on the power of the United States to abolish Indian governmental authority.

As a practical matter, lawyers and Indian rights advocates may need to change their approach to understanding and applying Supreme Court opinions on Indian sovereignty. It is time to discard the old analysis which seeks uncritically to distill every court decision into a test or rule that can be routinely applied in other circumstances. To be sure, the Supreme Court should be looked to for guidance and its rules for decision should be applied, of course, where appropriate. The requirement of fidelity to Supreme Court precedent, however, does not mean that lawyers and others should strain to find a new test or rule where there are indications that none is intended. Until the Supreme Court speaks with a clearer voice in the area of Indian sovereignty, its opinions should not automatically be elevated to the status of a test or rule. Perhaps its opinions should first be regarded as primarily explanations or justifications of particular results. We should also be alert to the possibility that considerations other than legal principles and rules may be moving the Supreme Court to a particular result.

Ultimately, a coherent and sensible legal theory must be

developed, which recognizes the historic status of Indian tribes as independent sovereign nations and their legitimate aspirations for greater powers of self-government. Although the development of a new theory is beyond the scope of this article, this work might proceed along two lines: First, it should include a critical re-examination of the assumption that the federal government has supreme and practically unlimited powers over Indian nations. Secondly, a way should be found to reestablish the concept of consent* as the governing principle for the legal and political relationship between the United States and Indian nations. This restructuring would lay a strong foundation for the restoration of much of the autonomy Indian nations have lost at the hands of the United States.

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1. See, for example, *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831).
2. 435 U.S. 191 (1978).
3. 435 U.S. at 209.
4. 435 U.S. at 208.
5. See, e.g., R. Barsh and J. Henderson, "The Betrayal: Oliphant v. Suquamish Indian Tribe and the Hunting of the Shark," 63 *Minn. L. Rev.* 609 (1979); C. Berkey, "Casenole-Indian Tribes Have No Inherent Authority to Exercise Criminal Jurisdiction Over Non-Indians Violating Tribal Criminal Laws Within Reservation Boundaries," 28 *Catholic University Law Review* 663–87 (1979).
6. 435 U.S. 313 (1978).
7. 447 U.S. 134 (1980).
8. 447 U.S. at 152.
9. 447 U.S. at 153.
10. Ibid.
11. 450 U.S. 544 (1981).
12. 450 U.S. at 564.
13. Ibid at 565.
14. 455 U.S. at 565–66.
15. 455 U.S. 133 (1982).
16. 455 U.S. at 148, n. 13.
17. *Cardin v. De La Cruz*, 671 F.2d 363 (9th Cir. 1982), *cert. denied*, 103 S.Ct. 293 (1982).
18. *Knight v. Shoshone and Arapahoe Indian Tribes*, 670 F.2d 900 (10th Cir. (1982).
19. 670 F.2d at 903. The Ninth Circuit Court of Appeals made a similar ruling in *Babbit Ford, Inc. v. Navajo Indian Tribe*, 710 F.2d 587 (9th Cir. 1983). cert. denied 466 U.S. 926 (1984). In that case, the court ruled that the tribe may enforce its vehicle repossession regulations against non-Indian car dealers because the regulation is designed to keep reservation peace and protect the health and safety of tribal members.
20. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), at 56.
21. 546 F. Supp. 1185 (D. Ariz. 1982), *vacated as moot*, 574 F. Supp. 710 (D. Ariz. 1983).
22. *UNC Resources v. Benally*, 518 F. Supp. 1046 (D. Ariz. 1981).
23. *UNC Resources v. Benally*, 514 F. Supp. 358 (D. N. Mex. 1981).
24. 514 F. Supp. at 362.
25. 518 F. Supp. at 1052.
26. *Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation*, 29 June 1989, 57 U.S.L.W. 4999.
27. 47 U.S.L.W. at 5008.
28. 57 U.S.L.W. at 5005.
29. 450 U.S. at 566.
30. 57 U.S.L.W. at 5005.
31. See note 20 above.

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* For a discussion of the concept of consent in matters of state behavior affecting indigenous peoples, see Sharon Venne, "The New Language of Assimilation: A Brief Analysis of ILO Convention 169," in this issue of *Without Prejudice*—*Ed.*

On the Relations between Indigenous Peoples and States

Erica-Irene A. Daes[*]

On 16–20 January 1989, a milestone was reached in the protection of the rights of indigenous peoples. The Economic and Social Council (ECOSOC)[1] requested the UN secretary-general to organize a seminar at the United Nations, in Geneva, on "the effects of racism and racial discrimination on the social and economic relations between indigenous peoples and states" as part of the program of advisory services on human rights.[2] This gathering was to grapple with an important, complex and topical theme for the indigenous peoples, concerned governments and the international community as a whole.

The seminar, chaired by the internationally respected Justice of the Supreme Court of Senegal Ndary Touré, was convened at a time in which far-reaching decisions concerning indigenous peoples were being made at the international level,[3] both in standard-setting activities of the United Nations Working Group on Indigenous Populations

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through the drafting of a Universal Declaration on the Rights of Indigenous Peoples,[4] and in the revision of the International Labour Organisation (ILO) Convention No. 107 (1957) concerning indigenous and tribal populations.[5]

The seminar also coincided with an epoch in which certain governments of states where indigenous peoples live were revising their constitutions and other national legislation, with the main purpose of further recognizing, protecting and restoring the rights of indigenous peoples.

Indeed, the seminar itself constituted a turning point in the contemporary history of indigenous peoples. For the first time in their history, the representatives of their organizations, in consultative status with ECOSOC, were invited to participate in the seminar on an *equal footing* with the representatives of governments. By this fact, a forty-year policy and practice of the United Nations Organisation to accept only seminar participants who had been designated by governments was substantially abandoned. This established a precedent of cardinal importance in favor of the indigenous peoples.

Also, for the first time in the contemporary history of the indigenous peoples, an officer of the seminar was elected from among the experts nominated by the indigenous peoples' nongovernmental organizations. Ted Moses, a chief of the Grand Council of the Crees (of Québéc), was elected rapporteur of the seminar by acclamation.[6] Ted Moses is widely recognized as already having made a valuable contribution to the protection of indigenous peoples' rights in the United Nations system. His election signals a development that will affect the evolution of the status of the indigenous peoples in contemporary international law.

Another significant feature of the seminar was the adoption of its report without a vote.[7] This implies, *inter alia*, that the conclusions and constructive recommendations adopted "without a vote" by all participants—governments, indigenous peoples or community representatives—should be respected and implemented by all parties concerned. As is well known, this is a moral edict which should prevail in such cases.

Discussion by the participants focused on two main sub-items: (1) racism and racial discrimination and their effect in impeding the application of international standards; and (2) international standards and standard-setting activities with relevance to the economic and social rights of indigenous peoples. These discussions then resulted in agreement on a set of conclusions and recommendations, which may serve as guidelines for future juridical progress toward protecting indigenous

rights.

The agenda adopted by the seminar included background papers delivered by experts and observers: a presentation by Vitit Muntarbhorn, on "the realization of indigenous social rights";* by Douglas Sanders, on "indigenous participation in national economic life and the role of traditional economies"; and a paper by Rodolfo Stavenhagen, on "effective protection and comprehensive development of the social and economic sectors in indigenous communities through international standard setting activities."[8] In addition, three comprehensive working papers were submitted during the session: two by Russell L. Barsh of the Four Directions Council (Seattle);[9] and one by Ted Moses.[10]

On the basis of this documentation, other United Nations instruments[11] and key documents,[12] as well as on the relevant statements, delivered by Undersecretary-General Jan Martenson[13] and the present author,[14] a general discussion and a constructive dialogue emerged, culminating in six important questions. The following are some of the fundamental and important questions, which were debated and considered.

Terminology

Many participants observed that there is still no international consensus concerning satisfactory definitions of the terms and concepts of "indigenous," "indigenous populations" and "indigenous peoples." Notably, the present author[15] and all the participants/representatives of the indigenous organizations favored the term "indigenous peoples" over "indigenous populations," especially as it relates to the right to self-determination. Also, as pointed out by Prof. Muntarbhorn, while the term "peoples" is clearly linked with the right of self-determination, the term "populations" is more detached from this right.[16] The former is specified in common article 1 of the international covenants on human rights, which states that:

> All *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 [emphasis added].[17]

Although the concept of "people" had not been defined by the United Nations, numerous General Assembly resolutions, state practice

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* A version of Professor Muntarbhorn's paper is published in this issue of *Without Prejudice* under the title "Realizing Indigenous Social Rights"—*Ed.*

and other indications in national legislation have shown that this term is applicable in the case of indigenous peoples.

Indigenous Rights v. Minority Rights

It should be stressed that "indigenous rights" and "minority rights" are to be strictly distinguished. Indigenous "people" are the descendants of a people which has lived in the region prior to the invasion of colonizers or foreign settlers who, in many cases, have since become the dominant population. In this respect, the number of the indigenous peoples does not constitute a substantive criterion. Indigenous peoples are indeed peoples, and not minorities or ethnic groups.

The provisions of article 27 of the International Covenant on Civil and Political Rights relates to minority rights, whereas the principles contained in the above-mentioned draft Universal Declaration on the Rights of Indigenous Peoples clearly deals with a distinctly different reality. Article 27 of the covenant expresses an international, minimum standard, explicitly referring to "persons belonging to ethnic, religious or linguistic minorities" and is only indirectly relevant to the indigenous groups or their situation. Concerning the relationship between individual and collective rights, reference to article 27 could be useful; however, the aforementioned draft universal declaration establishes a balance between individual and collective rights, with an inevitable accent on the latter.

Racial Discrimination

The abhorrent practice of racial discrimination against indigenous peoples was recognized as the outcome of a long, historical process of conquest, penetration and marginalization of indigenous societies. This has been accompanied by attitudes of superiority among the settler society and by a projection of the indigenous peoples as "primitive" and "inferior." Hence, the discrimination is of a dual nature. On the one hand, it has brought about a gradual destruction of the material and spiritual conditions for the maintenance of the indigenous peoples' *modus vivendi* and, on the other hand, it has formalized attitudes and behavior of exclusion or negative distinction, which have had a detrimental effect on indigenous peoples seeking to participate in the dominant society.[18] As observed by the present author at the UN session, racial discrimination *de jure* or *de facto* against indigenous peoples exists in almost every one of the social institutions of many

countries in which indigenous peoples live. It is imperative, therefore, that the supposition of superiority of one culture over another culture should be eradicated on an urgent basis.

When the indigenous peoples, because of racism and racial discrimination, are prevented from maintaining their links with their land and from fulfilling their spiritual and ritual obligations to it, they become demoralized, detribalized and degraded. Policies and practices of unilateral assimilation, forced integration or removal aim at the total destruction of their culture. The land-based culture and the spiritual life of the indigenous peoples are bound with them; they are a part of their very being. If these elements of life are destroyed, so, too, are the indigenous peoples themselves.

Integrated Culture

Participants in the seminar urged that the concept of culture should be widely interpreted to include religion and the social and economic structure. Culture is an expression of one's humanity; it is not a mere pleasure one takes in being different. In this respect, the present author recalled in her statement the words of indigenous Australian Kevin Gilbert:

> It is not so much my black aboriginality that you deny me as my right to human growth and human potential. While you deny me this, you can build me all the houses and all the mansions in the world, but my spirit will not inhabit any of them....[19]

This is the thinking of many thousands of indigenous peoples around the world, who struggle to save their cultural identity. In this connection, it should be noted that they are not opposing multiculturalism in the polygeneric nations or states in which they live. Accordingly, the principle of multiculturalism prevents discrimination against cultures and opposes unilateral assimilation.

The Land

The acute and multiform question of land rights was repeatedly raised in this year's seminar. The earth is at the seat of spirituality; it is the fountainhead from which the culture and languages of indigenous peoples flourish.

The indigenous peoples rightly reject, among others, the doctrine of *terra nullius*, the fictional legal concept of "the empty land." Historically, this concept served to legitimize the seizure of territory by colonial powers. In its advisory opinion concerning certain questions

relating to the self-determination of the Western Sahara, the International Court of Justice observed:

> The request specifically locates the question in the context of "the time of colonization by Spain," and it therefore seems clear that the words "was Western Sahara"...a territory belonging to no one (*terra nullius*) have to be interpreted by reference to the law in force at that period. The expression "*terra nullius*" was a legal term of art employed in connection with "occupation," as one of the accepted legal methods acquiring sovereignty over a territory. "Occupations" being legally an original means of peaceably acquiring sovereignty over territory, otherwise than by cession or succession, it was a cardinal condition of a valid "occupation" that the territory should be *terra nullius*—a territory belonging to no one at the time of the act alleged to constitute the "occupation"....[20]
>
> Whatever differences of opinion there may have been among jurists, the state practice of the relevant period indicates that territory inhabited by tribes or peoples having a social and political organization were not regarded as "*terra nullius*."[21]

Accordingly, the Court decided unanimously that Western Sahara, at the time of colonization by Spain, was not *terra nullius*.[22] Furthermore, it is clear that the Court's advisory opinion has an analogous application to the question of indigenous peoples' land everywhere, and constitutes a formal and substantive legal reply to the unacceptable doctrine of *terra nullius*.

The draft Universal Declaration on the Rights of Indigenous Peoples contains a number of principles acknowledging the close social relationship between the indigenous peoples and their land. The right of indigenous peoples in this respect is complemented by a corresponding duty on the part of the state to recognize and protect the integrity of indigenous peoples on their land.[23]

During the UN seminar, references were also made to the right of indigenous peoples to benefit from special measures to ensure their ownership and control over the land surface and the resources within the territories they have traditionally occupied or otherwise used, including the flora and fauna, waters and ice sea. In this respect, it should also be mentioned that, in many countries in which indigenous peoples live, serious confrontations between indigenous peoples and the state's competent authorities (including state development programs or private developers) have taken place.[24] Indeed, much damage has been done to indigenous peoples through economic development projects, particularly hydroelectric dams and other regional development schemes. In many cases, the destruction of and damage to sacred sites, cemeteries, historic monuments, archaeological sites and the environment of indigenous land and peoples is so serious that it

amounts to the crime of ethnocide or cultural genocide.[25]

Self-government, Autonomy and Self-determination

The right of indigenous peoples to self-government, autonomy and self-determination was one of the major issues covered in the discussions of the seminar. It was stated that, from time immemorial, indigenous and tribal peoples have sought to express their freedom, independence and sovereignty. A great number of them were integrated or assimilated in certain societies against their will, through military and political pressure.

In some states during the era of European colonization, treaties were concluded between sovereign indigenous nations and the colonial power or the independent, national successor governments. However, these treaties were very often violated and/or abrogated unilaterally by the state concerned, without respect to the indigenous peoples' sovereignty or rights.[26] Indigenous peoples' future social and economic relations with states should be based on their free and informed consent and cooperation, including "full participation in planning, implementation, benefit sharing, and evaluation of development policies and projects."[27] As mentioned by the UN seminar participants in conjunction with social rights,[28] the right to "development" should incorporate such concerns as social development, social welfare services, social security, an adequate standard of living, and protection of traditional means of subsistence. These must include, among others, the right to practice one's own religion and to the use of one's own language, and the right to information, employment, education, housing, food, medical care and access to legal resources. "Taken together all of this implies the implementation of the right to self-determination, which is crucial to the continued existence of indigenous peoples."[29]

The principle of self-determination is contained in the Charter of the United Nations and in a great number of other international and regional instruments. As cited above, article 1, paragraph 1 of both International Covenants on Human Rights, which entered into force already in 1976, expressly affirms this right.

The meaning of the principle and right of "self-determination" has long been a subject of controversy among recognized scholars. And in much of the ensuing debate, the implementation of the relevant United Nations resolutions have been completely disregarded. Self-determination has a variety of expressions, depending on the practical, economic, social and political conditions. The term "self-determina-

tion" can mean:

1. The right of an entity to determine its international status, sometimes referred to as "external self-determination";

2. The right of a state population to determine the form of government and to participate in the government, sometimes extended to include democratization or majority rule and often called "internal self-determination";

3. The right of a state to maintain its national unity and territorial integrity and to govern its affairs without external interference and without violation of its boundaries;

4. The right—especially claimed by the less developed countries—of a state and of a state population to cultural, social and economic development; and

5. The right of a minority or an indigenous group or nation mainly within state boundaries to special rights related not only to protection and nondiscrimination, but possibly to the right to cultural, educational, social and economic *autonomy* for the preservation of group identities.

Nevertheless, it should be expressly stated that, particularly in the cases of the indigenous peoples, the interpretation of the term "self-determination" specifically excludes the right of "secession." Accordingly, "internal self-determination" seems to be suited for application in states where indigenous peoples live.

Some government representatives—for example the representative of Canada—expressed the opinion at the United Nations Working Group that self-determination, in an external sovereignty sense, does not apply in international law to enclave populations within non-colonial states. However, they stated further that "practical forms of self-government within the framework of the state" are necessary and possible.[30]

Conclusions and Recommendations

At the UN seminar on the relations between indigenous peoples and states, discussion and debate on the above issues and questions yielded a consensus among indigenous participants/representatives and other experts. The following are some of the most important conclusions and substantive recommendations adopted by the seminar, which should give state representatives, policy makers and legislators much to think about.

Conclusions

A. The "indigenous peoples have been and still are the victims of racism and racial discrimination, and of the imposition of arbitrary and imposed administrations and regimes, which inevitably deny their human rights and fundamental freedoms";

B. "The effective protection of the individual human rights and fundamental freedoms of indigenous peoples cannot be realized without the recognition of their collective rights";

C. "The principle of self-determination, as set forth in the Charter of the United Nations and in article 1 of [both International Covenants on Human Rights], is essential to the enjoyment of all human rights by indigenous peoples. Self-determination includes, *inter alia*, the right and power of indigenous peoples to negotiate with states on an equal basis the standards and mechanisms that will govern relationships between them [and the state]";

D. "Indigenous peoples are not racial, ethnic, religious or linguistic minorities"; and

E. "States' respect for implementation of the collective rights of indigenous peoples would make a significant contribution to avoiding conflict, alleviating the adverse social and economic conditions in which indigenous peoples live and achieving indigenous peoples' self-sufficiency."[31]

Recommendations

In addition to the conclusions reached on matters of general principle, the seminar participants arrived at a number of specific suggestions for action by states, governments and UN bodies:

A. "That states implement the principle that their relations with indigenous peoples will be based upon free and informed consent and cooperation, rather than merely consultation and participation, and that this principle be respected as a right";

B. "That indigenous peoples be recognized as proper subjects of international law";[32]

C. That, although a limited monitoring capacity has been established at the international level, more efficient and comprehensive means of monitoring be established; for example, through the

appointment of a United Nations commissioner for indigenous peoples to prevent violations of indigenous rights;

D. "That a commissioner be appointed by the UN secretary-general and be attached to the United Nations Centre for Human Rights, in order to study the treatment, problems and developments concerning the recognition, protection, realization and restoration of indigenous rights; and to prepare, when necessary, reports with comments, observations and suggestions to the Commission on Human Rights and to the governments concerned";

E. That, in support of the decision by the Working Group on Indigenous Populations, the drafting of a Universal Declaration on Rights of Indigenous Peoples be completed with full, indigenous participation, at the earliest possible time; that the declaration should be the first step in standard-setting in the field of indigenous rights; and that the General Assembly's adoption and proclamation of the declaration be followed by the elaboration and adoption of an International Convention on the Rights of Indigenous Peoples;

F. "That governments recognize that the realization of indigenous rights in the economic, social and cultural field will result in breaking the cycle of poverty and misery [for the indigenous peoples]";

G. That "the secretary-general give the widest possible distribution to the report of [the] seminar and that the reports be issued as a United Nations publication."[33]

In conclusion, it should be underlined that the message and the conclusions of the seminar need to be strictly respected and its vitally important recommendations should be fully implemented by all parties concerned.

Faith in human rights and fundamental freedoms and in the dignity and worth of every human person, without any discrimination, should be the guiding spirit of our current movement for a more humane and peaceful world. And no peace will prevail in the world unless the human rights of the indigenous peoples are duly recognized and effectively protected at the national, regional and international level.

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1. The UN Subcommission on the Prevention of Discrimination and Protection of Minorities initially recommended the convening of the seminar. This recommendation was then adopted by ECOSOC in resolution 1988/35 of 27 May

1988, entitled "*Study of the Problem of Discrimination against Indigenous Populations.*"

2. See Commission on Human Rights resolution 1988/48 of 8 March 1988, in *Report on the Forty-fourth session, ECOSOC, Official Records, 1988*, Suppl. 2, Doc. E/1988/12 (New York: Commission on Human Rights, 1988), 4; and ECOSOC resolution 1988/35 of 27 May 1988, as reproduced in ECOSOC, Doc. E/1988/INF./5 of 27 May 1988, 70.
3. See the opening statement by Undersecretary-General Jan Martenson, in *Report on the United Nations Seminar on the Effects of Racism and Racial Discrimination on the Social and Economic Relations between Indigenous Peoples and States*, [hereinafter referred to as *Report*] Doc. E/CN.4/1989/22 of 8 February 1989, Annex II, 19–23.
4. See the draft *Universal Declaration on the Rights of Indigenous Peoples*, as contained in document E/CN.4/Sub.2/1988/25, elaborated by Erica-Irene A. Daes, Doc. E/CN.4/ Sub.2/1988/24, Annex II, 32–33. See also Appendix to "Documentation" section in *Without Prejudice* Vol. II, No. 1, 133–35.
5. The full title of ILO Convention 107 is "Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-tribal Populations in Independent Countries."

   See, among others, International Labour Office, "Meeting of Experts on the Revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), ILO Doc. APPL/MER/107/1986/D.7 (Geneva: International Labour Organisation, 1986).
6. See *Report*, op. cit., section E, 5, para. 12.
7. See *Report*, op. cit., 14, para 42.
8. The background papers are published in their entirety in *Report*, op. cit. Annex III, 24–71.
9. HR/Geneva/1989/SEM.l/WPl, and HR/Geneva/1989/SEM.l/WP2.
10. HR/Geneva/1989/SEM.l/WP3.
11. These include the Charter of the United Nations, the International Bill of Human Rights, the International Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, etc.
12. These include reports of the Working Group on Indigenous Populations, in particular those of the fifth and sixth sessions, Docs. E/CN.4/Sub.2/1987/22 and E/CN.4/Sub.2/1988/24; the Working Paper, containing a draft Universal Declaration on Indigenous Rights, Doc. E/CN.4/Sub.2/1988/25, op. cit.; and Miguel Alfonso Martínez, *Outline of the Study on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Populations*, Doc. E/CN.4/Sub.2/1988/24/Add.l.
13. Opening statement to the seminar, by Jan Martenson, op.cit., 19–23.
14. Statement by Erica-Irene A. Daes, 16 January 1989, ibid., Annex IV, 72–75.
15. Doc. E/CN.4/Sub.2/1988/24, 19–21. See also Erica-Irene A. Daes, "The Status of the Individual and Contemporary International Law," E/CN.41/Sub.2/1988/33, 57.
16. See Vitit Muntarbhorn, "Realization of Indigenous Social Rights," in Doc. E/CN.4/1989/22, op. cit., Annex III, 26, and the works cited therein.
17. The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights are published in *Human Rights: A Compilation of International Instruments*, (New York: United Nations, 1988), 7–38 [Sales No. E.83.XIV.l].
18. See *Report*, op. cit., 7.
19. Quoted from Kevin Gilbert's report submitted to the Department of Aboriginal Affairs, Canberra, Australia, 1977.
20. *Legal Status of Eastern Greenland*, P.C.I.J., Series A/B, No. 55, 44f and 63f.
21. Western Sahara Advisory Opinion of the International Court of Justice given on 16 October 1975 in response to the request of the General Assembly, contained in resolution 3292 (XXIX) of 13 December 1974, Doc. A/10300 of 17 October 1975, 31, 32, especially paras. 79 and 80.
22. Ibid., 64, para. 163.
23. See the first revised text of the draft Universal Declaration on the Rights of Indigenous Peoples, prepared by the Chairman-Rapporteur of the Working Group on Indigenous Populations Erica-Irene A. Daes, in particular Parts III and IV, principles 12–17, Doc. E/CN.5/Sub.2/1989/33 of 5 May 1989.
24. Some examples which illustrate the problems were brought out in the background paper by Douglas Sanders, "Indigenous Participation in National Economic Life," in *Report*, op. cit., Annex III, 44–45.

25. See the background paper by Rodolfo Stavenhagen, "Effective Protection and Comprehensive Development of the Social and Economic Sectors in Indigenous Communities through International Standard-Setting Activities," *Report*, op. cit., Annex III, 58.
26. Ibid., 65.
27. See the *Report*, op. cit., 7, para. 26.
28. See Declaration on Social Progress and Development, proclaimed by the General Assembly in resolution 2542 (XXIV) on 11 December 1969; see also Declaration on the Right to Development, adopted by the General Assembly in resolution 41/128 on 4 December 1986.
29. See *Report*, op. cit., 7, para. 27.
30. In accordance with its decision 1988/106, the Subcommission on the Prevention of Discrimination and Protection of Minorities decided to suggest to the secretary-general to organize a meeting of experts on indigenous self-government during the first half of 1991. It also suggested that he invite the Working Group on Indigenous Populations, at its seventh session, to discuss the possible program of such a meeting of experts, in light of ECOSOC resolution 1988/35 and the continuing standard-setting activities of the Working Group. See the *Report of the Subcommission on its Fortieth Session*, E/CN.4/1989/3 of 25 October 1988, 70.
31. For a full listing of the conclusions of the seminar, see *Report*, op. cit., 10–11.
32. See, in this connection, the study by Erica-Irene A. Daes, *The Status of the Individual and Contemporary International Law*, op. cit., 86, para. 515(b).
33. For a full listing of the recommendations adopted by the seminar, see *Report*, op. cit., 12–14.

The New Language of Assimilation: A Brief Analysis of ILO Convention 169

*Sharon Venne**

For nearly five hundred years, the Eurocentric legal systems have denied us our rights as indigenous peoples. The recent revision by the International Labour Organisation (ILO) of its Convention 107 of June 1957, concerning the Protection and Integration of Indigenous and Other Tribal and Semitribal Populations in Independent Countries (hereafter referred to as Convention 107), in effect continues the Eurocentric framework.

It is still an encumbrance upon us, the indigenous peoples, to prove our rights. The revised text of the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (hereafter referred to as Convention 169) represents the ILO's stated intention to remove the assimilationist language of the earlier Convention 107. However, in twenty-two years, only the language of assimilation has changed. Convention 169 is still assimilationist and far more destructive than its predecessor.

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The revision was begun with a meeting of experts in 1986. As a result of this meeting, a decision was taken by the ILO to initiate a revision process, and the conclusions of the experts' deliberations were tabled before the plenary of the ILO in June 1989. During the preceding two-year revision process, indigenous peoples were present at the meetings to provide input into the process, but they were not successful, due to the nature of the ILO. Consequently, there was no meaningful participation by the indigenous peoples at the ILO, a matter which will be discussed below.

Convention 169

We indigenous peoples have been subjected to an unprecedented assault upon our resources and lands by the invaders. This is especially true of the encroachment of Europeans in the Americas, New Zealand, Australia and the Pacific. Europeans viewed indigenous peoples not as human beings, but as savages without the benefit of a Christian soul. In the development of policies instituted to exploit our lands and resources, the European settlers did not recognize our governments, nor our legal right to our lands and resources. As a result, the Europeans in the Americas and elsewhere exploited our lands and resources without having ownership of them.

Indigenous peoples worldwide have a distinct relationship to the land. In our languages, we call ourselves by a name which associates us directly with the land. Our whole worldview centers on our relationship with the land, the animals, the fish, the plants, the lakes and rivers. Our ceremonies and our laws involve our total world. In our legal system, it is a responsibility to care for the earth which nourishes us. We do not view ourselves as being separate and distinct from the world around us. In discussions with other indigenous peoples, we find a similar worldview about mother earth. In contrast, the nonindigenous peoples tend not to view the earth as central to their existence, but only as something to exploit. These different worldviews are difficult to reconcile when drafting new standards. This reconciliation process requires a change in attitude on both sides, in order to come to some agreement. The nonindigenous peoples must recognize that indigenous peoples have a symbiotic relationship to the earth. "To destroy the earth is to destroy mankind" is not simply a saying, but the very basis of our worldview.

The whole of the ILO document is a failure to recognize our worldview. It demonstrates an underlying predisposition to write the convention from the nonindigenous point of view.

"Populations" and "Peoples"

Convention 169 refers to peoples; Convention 107 referred to populations. What is the distinction between peoples and populations? There is a tendency among the international community to refer to us as populations, but what is a population? A population has no juridical significance in international law. There are many ways to use the term "populations": it can refer to the number of persons living within a certain area, the number of animals in a park, and to a whole host of other things. However, the term "peoples" has a distinct meaning in international law.

Peoples have human rights. We have our own identity and characteristics, which define our existence. We have our own territory, which we inhabit. In many instances, our people have been dispossessed of our lands by the colonists, but nonetheless we still maintain our relationship to the territory. We have our own governments, legal systems, languages, religions, cultures and economic systems.

Within our territory, prior to the arrival of the nonindigenous people, we maintained our own government. We were sovereign in our territory. However, upon the arrival of the nonindigenous people, neither our legal systems nor our sovereign governments were recognized due to a racial bias against us. However, we still maintain our right to call ourselves peoples, under our own forms of government, using our own legal systems which we never relinquished.

In the process of revising Convention 107, debate in the ILO over the term "peoples" versus "populations" was extensive. Much opposition to the term "peoples" emanates from a fear among nonindigenous peoples that, if indigenous peoples were recognized as peoples, then we would assert our own right to self-determination. Self-determination is a universal right which is applicable to all peoples. This fundamental right is included in both United Nations Covenants on Human Rights which expressly state:

> All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

As a result of the fear of self-determination, the ILO in the revision process added a qualifier to the term "peoples." Article 1, subsection 3 of Convention 169 reads:

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* See discussion of self-determination and the right of peoples in Erica-Irene A. Daes, "On the Relations between Indigenous Peoples and States," in this issue of *Without Prejudice*—*Ed.*

> The use of the term "peoples" in this convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

Through ILO Convention 169, the nonindigenous world has informed us that our right to self-determination does not exist in the international law regime. As an indigenous person, I wonder: does an organization have the right to tell over three hundred million indigenous peoples that they do not have a right to self-determination? It seems to be very racially oriented to have nonindigenous peoples inform us of our rights. Is it not contrary to the spirit of the United Nations to deny whole peoples their right to existence as peoples?

It has been expressed to me by many "experts" in the international law community that our rights as peoples cannot be recognized, because we would assert a right to self-determination by ceding from the nation-state. This is presumption. Where would indigenous peoples move their territory, which was obviously in existence prior to the establishment of the new state? This argument is merely used as an excuse by the colonists to deny us our right to self-determination.

Then whose rights are being protected: those of the indigenous peoples or of the nonindigenous peoples? We did not invade the nonindigenous territories. We do not impose our values, laws, cultures, languages and educational systems upon the nonindigenous peoples. It appears to me, as an indigenous person, that the ILO revision is meant to protect the nonindigenous peoples from the indigenous peoples. Perhaps the revised convention should be called the Convention concerning Nonindigenous Peoples in Indigenous Peoples' Territories and Their Right to Exist in Those Territories.

ILO Convention 169, in this regard, contravenes the work of the United Nations in the field of human rights as it applies to the term "peoples." In the Charter of the United Nations, the term "peoples" is used a number of times. It seems clear that the Charter and covenants of the United Nations use the term to include the right to self-determination. Consistent with the principal of self-determination, this would mean that a people possesses the inalienable right freely to determine its own political, economic and social system, and its own international status. It is not for someone else to predetermine our rights, or to consider what we are going to do with our status. The right of self-determination is ours, and how we exercise that right becomes a matter of discussion between the indigenous nations and the nonindigenous peoples. In Canada, for example, many of the indigenous nations have entered into treaties with the nonindigenous

peoples to regulate our relationship with the nation-state. Such political agreements have been the subject of many debates between indigenous peoples and nonindigenous peoples in an attempt to subvert the will of our people. Canada clearly does not want to recognize our right to enter into treaties, while we remain adamant.

In Convention 169, the term "peoples" has been qualified to have no significance in international law. We do not accept this decision of the ILO. We still maintain our right to call ourselves peoples. Furthermore, we have the right to self-determination to determine our own international status.

False Assumptions

In light of the above, article 3 of the Convention 169 is a mockery.

> Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the convention shall be applied without discrimination to male and female members of these peoples.

What human rights are being referred to here? What fundamental freedoms? If one cannot look to the other international instruments for guidance, then one is forced to look within the ILO document for guidance.

Article 3 then would have to be read in light of article 2, which states that our rights must be placed "on an equal footing" with the "national laws and regulations granted to other members of the population." The concluding part of article 2, subparagraph 2(c), suggests that the governments assist "the members of the peoples concerned to eliminate socioeconomic gaps that may exist between indigenous and other members of the national community." Here are a number of underlying assumptions.

First, it is assumed that we want to be on an equal footing with the nonindigenous peoples; secondly, that the national laws and regulations constitute the proper system to ensure our rights; and thirdly, that our status within the socioeconomic order is one which we find a need to correct. This last assumption carries with it the racial prejudice that our lifestyle is inferior and unacceptable by implying a need to abandon our lifestyle to adopt the nonindigenous socioeconomic system. We have been in this very situation since the arrival of the nonindigenous peoples in our territories. We have always felt a push to assimilate us into the nonindigenous socioeconomic order. True development cannot occur with one system trying to

override another peoples' way of life.

Consent v. Consultation

The conflict between indigenous and nonindigenous values is highlighted in article 6, which addresses the concept of consulting indigenous peoples through "appropriate procedures" when a government prepares to enact legislative and administrative measures on matters which directly affect us. What does the term "consult" mean?

In Canada, the federal government customarily will mail letters to the chiefs, notifying them of new administrative or legislative changes, often without allowing them enough time to conduct an appropriate and thorough analysis of these changes. If the chiefs do not answer these letters within a certain time limit, the government proceeds. When we complain about these changes, we are told that the letter itself was the only form of consultation. This is not consultation. Consultation involves discussion between the parties in an attempt to reach an understanding.

Another method of consultation involves the provision of funds to select groups of indigenous organizations which are not community based. These organizations are required to transmit options and data. Then the government attempts to implement the policy changes or legislative enactments based upon these contractual arrangements. This also is not consultation.

Another popular method of consultation in Canada is to mandate a committee of the House of Commons in the Canadian parliament to convene a hearing on a certain issue. Such hearings are held in Ottawa, Ontario. The majority of the indigenous peoples live in western Canada, which is a three-to-five-hour plane trip to Ottawa. Thus, indigenous peoples are invited to participate in this forum—if we can get to Ottawa. There is no specific exclusion; however, when our people come from the poorest of the poor in Canada, this method of consultation is an obstacle.

As is clearly demonstrated, the term "consult through appropriate measures," for the most part, is a concept predetermined by the governments. They determine the topic, the method, and the people to be consulted. In the final analysis, it is, therefore, also for the governments to determine what does and does not affect us directly.

"Consulting" results in the government having a built-in excuse not to heed our position on any matter. It is used as an alibi to say that they did ask us, but there is no requirement to implement our position. This is one subtle way in which the language of assimilation

has changed since the 1957 convention. What is needed, rather, is language to recognize our right to consent to changes in the legislative and administrative arrangements affecting us. Anyone can consult, but it is very different to reach a measure of consent, as consent implies mutual understanding and acceptance of the arrangement prior to the implementation of the changes.

Article 6, subsection 1(b) refers to the free participation of indigenous peoples in the decision-making process at the elective and administrative levels. This is a very interesting concept. We can freely join in their nonindigenous system; however, participation involves the acceptance of their system. We have experience with such participation in their system. In many instances, our people have become involved in the administrative framework of the government. The result has been that our own people become the tools of assimilation, and these assimilated indigenous persons promote the administrative and legislative changes among our people.

When an indigenous person is elected within the political framework of the nonindigenous system, an onus is placed on that person to follow "the rules of the game," a game which has historically involved our dispossession. It has been suggested to us on a number of occasions that the route out of our predicament is to have our own people within the system. This is not a solution for us. For to be included in their way is the ultimate goal of assimilation. To the indigenous peoples, this process means to be consumed and integrated totally in the foreign body.

Under article 6, subsection 2, the convention suggests that consultation take place "in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent...." What can be made of this subsection? It contains no reference to government obligations to engage in a form of consultation whereby the indigenous peoples would freely participate. If one does not help draft the rules of the game, one is hardly in a position to criticize—or approve—the game, once in progress. It is better for indigenous peoples, in the long run, to ignore the consultation game and leave one side unplayed. We indigenous peoples insist on consent as a prerequisite to any project that affects our life, livelihood or environment. Anything short of this minimum will be rejected.

In general, the language of Convention 169 is negative toward indigenous peoples. For example, article 7 deals presumptuously with the issue of development, implying that indigenous peoples are backward and underdeveloped. Therefore, development and acceptance of

the nonindigenous systems are the preferred way of "progress." In the rush towards development, indigenous peoples could have a right "to exercise control, to the extent possible," according to the language of article 7. Again, someone else—the multinationals and governments who are going to exploit our lands and resources—will determine when and if we are ready to participate in "development." We recognize this as a fundamental defect in the formulation of this subsection. Is it assumed that indigenous peoples want to destroy the land in order to fuel a foreign economic system? A historic, paternalistic attitude is conveyed in article 7, one which considers indigenous peoples incapable of taking care of ourselves and deciding our own future.

Conflicting Legal Systems

One of the most difficult tasks that an indigenous person undertakes in articulating our rights is the discussion concerning our legal system. The nonindigenous peoples immediately refer to custom, or the customary legal system. Our legal systems may be built upon custom, but so, too, are most other peoples' legal systems. For example, no one refers dismissively to the English parliamentary system as a customary system. The British have no written constitution. Likewise, our legal system is not written, and our laws are just as valid and principled as the nonindigenous laws.

As an indigenous person trained in the nonindigenous legal system, I have concluded that the nonindigenous society indeed has no laws. It maintains many rules and regulations, but no laws; and these rules and regulations change with the circumstances. In indigenous society, all our laws are based upon four fundamental principles which do not change. The immutable principles of sharing, respect, love and honor provide indigenous people with the moral grounding which defines relationships and guides action in all aspects of life. Knowing these four principles allows us to maintain a legal system by which people know their roles and behave accordingly.

Under article 8, lip service is given to our legal system. Convention 169 allows for customs and institutions "where...not incompatible with fundamental rights defined by the national legal system...." If the bases for legal systems are rooted in two different needs and concerns, there is very little compatibility. For example, the national (state) system may require a law which justifies the destruction of a whole river system in order to produce hydroelectric power. In contrast, indigenous law would require the maintenance of the river system for

the animals, fish, people and land. In this scenario, the indigenous legal system would be incompatible with the state's goals. The assumption underlying the language of article 8 is that the state legal system is intrinsically good, and any possible alternative or contradiction to it is evil. This language represents a Eurocentric view of the world, which is assimilationist and racist.

The remainder of subsection 2, dealing with "internationally recognized human rights," is a mystery. Considering the convention's first article denying that we are a people, what is the purpose of the wording in articles 7 through 9? It seems to be nothing more than shameless rhetoric.

The Land and Its Resources

The hypocrisy of Convention 169 is blatant in the articles dealing with land in Part II. Article 13, subsection 1, refers to our cultural and spiritual values in relationship to our land and territories. In the article immediately following, the convention only speaks about lands which we "occupy or otherwise use." That is in the present or in the future. This article does not refer to our lands which we traditionally occupied. In many instances, our peoples have been dispossessed of our lands. Thus, under Convention 169, we have no recourse to restore to us the lands of our ancestors. If we indigenous peoples want to regain our lands, we must appeal to the nation-state's legal system to make our case.

In Canada, the land-claims process has been set in place by the federal government. It is not sufficient to assert the claim; in this process, a prejudice is applied against the people making the claim. In order to claim our land, the indigenous peoples must prove to the satisfaction of the federal government that the claim is valid. The documentation must be based upon the requisites of Euro-Canadian law. Once the claim has been researched, the claims department sends the whole claim to the Department of Justice for evaluation. If the claim is deemed invalid, the indigenous peoples retain the option of filing a legal case against the federal government to enforce the claim. However, by complying with such procedures, the indigenous peoples have already presented the total package to the federal claims department which, in effect, hands over all the judicial arguments to the government prior to commencing any legal action. Even if the Department of Justice rules that there exists a valid legal claim, it remains within the province of the government to negotiate. In many instances, claims negotiations have been ongoing for fifty or more

years.

Moreover, without addressing such inequitable state practices, article 14, subsection 3 also fails to recognize the indigenous peoples' rights to claim their ancestral lands. This article is another example of the assimilationist language which has crept into the convention, and it has proved to be more cunning than the previous language of Convention 107.

The language of article 15 on the rights to natural resources is truly shameful. Enshrined in Convention 169 is the concept of *terra nullius*; that is, our lands were uninhabited and uncultivated, free for the taking. Article 15, subsection 2 states:

> In cases in which the state retains the ownership of mineral or subsurface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view of ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programs for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

This language contains no provision for the indigenous peoples' ownership of the resources of their lands. In addition, compensation to indigenous peoples is to be provided only "wherever possible" to share in the wealth of their resources. It is left entirely to the government's discretion to compensate our people for the loss of land or the destruction of the environment. In one instance in Canada, a multinational company involved with heavy oilsands extraction told a group of indigenous trappers and hunters that their lifestyle was not changed by the development. One of the indigenous hunters responded by asking how the animals could survive a leap over a man-made pit one mile wide? How do you compensate a people for the total destruction of their livelihood and environment? Such unconscientious development of resources, in many instances, involves not only the destruction of the environment, but of a whole way of life. The result is that indigenous peoples are thrown onto the ash heap, while their only recourse for daily survival remains to live off social assistance controlled by the state. All around us, development proceeds unchecked without any benefits to us.

More Relocation/Dislocation

The relocation provisions in article 16 are truly a work of art. There is an underlying presumption that allows continued dispossession of indigenous peoples from their land to make way for state-sponsored and state-approved development. Article 16, subsection 1 contains very nice language about not removing us from our lands which we occupy. However, in the next subsection, relocation under "exceptional circumstances" will be permitted. Of course, there is a right to consent, but if consent is not obtainable, then the national government can implement "appropriate procedures" to effect relocation.

Under article 16, subsection 4 deals with the need to relocate after exploitation has taken place. When the lands have been completely destroyed and no value can be obtained by having the peoples return, the convention makes available three options: return, transfer to alternative land, or compensation. Of these, transfer to lands of quality "at least equal to" the lands previously occupied can be provided to indigenous peoples for our present needs and future development. In spite of the general recognition in article 13 concerning our relationship to the land, there is no proscription against changing the location of the people. Does no one realize that our relationship to the land is to a particular place? There seems to be an assumption that any land will be adequate. In our worldview, the land which identifies us does not change like the wind. Removing us from our land base is, in fact, to take away our lifeforce.

In the instances where indigenous peoples have been relocated by development, there has been a destruction of the people's lifestyle, causing them to become disoriented and disquieted. If there is a legal need for the state to move a people from land, what is the purpose of then stating that land will be given in lieu of the land taken? Is it merely legal protection, a stalling tactic until the next time the state government needs the land for development and exploitation? It appears that the number of times a people could be relocated would be endless.

With regard to compensation, the government and the multinationals can salve their consciences by providing monetary compensation to the people. But again, we return to the essential question: how much compensation can be paid to a people for the loss of their way of life? Can a lifestyle be returned to a people once it is destroyed? The assimilationist mode would suggest that compensation, either in cash or kind, is sufficient to justify the removal of the peoples from

their lands. At present, there is a case before the UN Subcommission on the Prevention of Discrimination and Protection of Minorities concerning the Hopi-Navajo peoples in the southwestern United States.* In this case, the land is rich in natural resources which the federal government and corporate interests claim to need. Thus, the government has adopted legislation to remove the people from their lands without their consent. In spite of the numerous attempts to remove them, the traditional people maintain their right to stay on the land, citing reasons that removal would effectively destroy them as a people. Nonetheless, the United States Government insists upon their removal. The recommended solution which may come from the UN subcommission will indeed be of interest to all indigenous peoples.

ILO Revision Process

Indigenous peoples were present at the ILO revision process in June 1989. The ILO is composed of a tripartite group: workers, employers and governments. Within the drafting group, the vote on the revised convention was split three ways. However, the plenary allowed the governments to cast half of the votes. Where were the indigenous peoples in the process? For the most part, indigenous peoples were in the halls commenting upon the discussions which were occurring behind closed doors. On all the major provisions of Convention 169, the negotiations took place out of public view. Decisions were then merely reported to the meetings.

When the ILO reached a decision concerning the term "peoples," many indigenous peoples left Geneva, disillusioned. They felt that no justice could be achieved in an organization which did not even recognize us as "peoples."

When the debate over the use of the terms "consent" versus "consult" was decided in favor of "consult," the disillusionment grew. However, we already knew that the convention was aimed at total assimilation when we were informed about the provisions on the land and resources. As a result of the decisions made in the revision process, a speech was delivered to the plenary of the ILO on behalf of the representatives of the indigenous peoples.**

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* See Anita Parlow, "Cry, Sacred Ground: Big Mountain, U.S.A.," in *Without Prejudice* Vol. II, No. 1, 15–39—*Ed.*

** The transcript of the speech by Sharon Venne to the ILO plenary is published by the *International Labour Conference Provisional Record*, No. 31, Seventy-sixth Session (Geneva: ILO, 1989), [unbound edition] 6–7—*Ed.*

Indigenous Preparatory Meeting

During the week of 25 July 1989, indigenous peoples from around the world met in Geneva to review the latest developments in the area of human rights. As a result of the meeting following discussions on Convention 169, the representatives of indigenous peoples adopted a resolution to reject the convention. This resolution was tabled with the UN Working Group on Indigenous Populations (*sic*), meeting in Geneva the following week.*

Each year, the working group includes an agenda item on recent developments in the establishment of human rights standards. Indigenous peoples were aware that a representative of the ILO would be present at the working group to submit a report,** and the indigenous peoples were ready to demonstrate their disgust at Convention 169. During the presentation by the ILO representative, over three hundred indigenous people left their seats and walked out of the conference room in protest.

That demonstration served two purposes. First of all, indigenous peoples are not prepared to accept the decisions of other people as applying to us. Our right to self-determination is central to our ability to analyze and to make critical decisions on matters directly affecting our lives. We object to the wording of Convention 169, which portrays us as objects of assimilation. As indigenous peoples from around the world gathered in Geneva, sharing our collective experiences proved invaluable in the analysis of Convention 169. Secondly, the Working Group on Indigenous Populations (*sic*) is in the process of drafting a new declaration on the rights of indigenous peoples, and we do not want that declaration to resemble Convention 169.

Conclusion

Over three hundred million indigenous people worldwide continue to be on the frontline. At stake are the economic interests of the multinationals and states which view indigenous peoples as a hindrance to development as they perceive it. Historically, the most expedient method of dealing with the "indigenous problem" has been

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* A copy of the resolution is attached as an appendix to this essay—*Ed.*

** The transcript of ILO representative Lee Swepston's report to the UN Working Group on Indigenous Populations is excerpted in the introduction to the text of Convention 169, reprinted as a Special Document in this issue of *Without Prejudice*—*Ed.*

the elimination of the people. More recently, human rights activists have been looking at the destruction of our people, whereby whole nations have been extinguished by the colonists. These acts of violence and aggression occurred when the nonindigenous people wanted our lands and resources. These acts, of course, are continuing today. However, the colonists have become a little more sophisticated. In many of the so-called First World countries, the language of assimilation has changed, but the actions of assimilation and destruction continue unabated. The results are enshrined within Convention 169.

We indigenous peoples will not go away from our territories. We are the caretakers of mother earth. Once the indigenous peoples have been destroyed, who will care for mother earth? It is a question which haunts us all. I have concluded that greed has no conscience and the colonists will stop at nothing to hoard the resources and land for themselves, even to their own destruction, and the destruction of us all. It is a pity.

Appendix

Resolution of the Indigenous Peoples Preparatory Meeting Relating to the International Labour Organisation's Convention Concerning Indigenous and Tribal Peoples in Independent Countries, Geneva, 28 July 1989.

The Indigenous Peoples Preparatory Meeting, [convening] at the Palais des Nations from 24 through 28 July 1989, after analyzing the Revised International Labour Organisation (ILO) Convention on Indigenous and Tribal Peoples in Independent Countries, 1989;

Noting that the ILO has revised its Convention 107 and as a result has adopted the Indigenous and Tribal Peoples Convention, 1989;

Observing that the revision process was paternalistic and racially discriminatory;

Emphasizing that the revision process reduced indigenous peoples to indirect and demeaning levels of participation and that the ILO only wanted indigenous peoples present to lend credibility to the process;

Recalling that the ILO is a most inappropriate forum to determine the rights of indigenous peoples;

Knowing governments and employers cooperated to profit from our lands, territories and resources;

Bearing in mind that the ILO did little to promote understanding or provide information on indigenous rights to workers, employers and governments;

Knowing that we are peoples in international law and that pronouncements by the ILO does not change this status;

Determined that we shall retain our territories despite the ILO's attempts at limiting our territorial rights;

Denouncing the ILO's Eurocentric view of legal systems and knowing that indigenous legal systems which existed prior to any international laws shall continue;

Bearing in mind that indigenous peoples shall view governments ratifying the revised convention as exposing their intentions towards indigenous peoples;

Motivated by our desire to see international law reflect our real aspirations and rights, [hereby]:

1. *Calls upon* indigenous peoples all over the world to seize every opportunity to condemn the ILO and the revision process;
2. *Calls upon* states not to ratify the revised convention;
3. *Calls upon* indigenous peoples to monitor the ILO and governments in the implementation of the convention;
4. *Calls upon* support groups of indigenous peoples to urge states not to ratify the convention and to publish lists of governments who ratify the revised convention;
5. *Calls upon* members of the Working Group [on Indigenous Populations] and the Subcommission on Prevention of Discrimination and Protection of Minorities to condemn the racist revision.
6. *Calls upon* the working group to monitor the implementation of the revised convention.
7. *Calls upon* governments and human rights experts involved in the process of drafting the [Universal] Declaration on Rights of Indigenous Peoples not to repeat the mistake of the ILO.
8. *Calls upon* the working group, the subcommission and governments to disregard the terms of the revised convention in the process of achieving a meaningful development [of] the Declaration on [the] Rights of Indigenous Peoples.

ILO Convention 169

On 27 June this year, the International Labour Organisation (ILO) concluded its efforts in response to pressures from the nongovernmental and indigenous communities to ratify its assimilationist Convention 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semitribal Populations in Independent Countries. Two years of previous debate then culminated in the adoption of the new Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries with a vote of 328 to 1 (Netherlands), and forty-nine abstentions.

The present convention marks a significant development in international law pertaining to indigenous peoples. It formally embodies the points of agreement among states parties with regard to the historic and contemporary concerns of the indigenous peoples. Many indigenous peoples, however, believe that this convention fails to reconcile the positions of states with these concerns. They demonstrated their rejection of the convention by walking out on the presentation by Lee Swepston of the ILO's International Labour Standards Department, whose task it was to report on the ILO's work to the UN Working Group on Indigenous Populations on 31 July 1989.

In the interest of recording the developments in, and relevant debate on, international law relating to peoples subjected to racial discrimination, Without Prejudice *presents the full text of ILO Convention 169. The introduction which precedes it is an excerpt from Mr. Swepston's remarks before the UN Working Group on Indigenous Populations, which presents the ILO perspective on some of the practical merits and advantages of this new international legal standard.*

As has been indicated in the information submitted, the conference this year completed the revision of Convention No. 107, by adopting the Indigenous and Tribal Peoples Convention, 1989 (No. 169). Copies are available at the secretariat of this meeting. A word about the legal effect of this action may be helpful. Convention No. 169 will enter into force twelve months after it receives its second ratification. At that time, Convention No. 107 will no longer be open to further ratifications, but it will remain in force for the countries which have ratified it until and unless they ratify Convention No. 169. At this point, a ratification of the new convention will involve an automatic denunciation of the old one. I might mention also that, under the ILO Constitution, the new convention must be submitted within eighteen months to the national authorities of every member state who are responsible for the measures to be taken to implement it—in practice, usually national legislatures...

We have submitted detailed information about the process of revision, in which of course the United Nations played an active and valuable part. Let me concentrate here on the relationship of the ILO process to your own working group's task.

First... the ILO instrument is a convention, and the draft standards the working group is considering are intended to be a declaration. This difference must be kept in mind at every stage. A declaration may include goals, objectives and statements which a convention may not. A convention is an international legal instrument of another kind, as it is intended to create binding legal obligations for ratifying states.

An effort was made at every stage to ensure that there would be no conflict between either the procedures or the substance of the ILO Convention and the standards which the UN intends to adopt. Thus the ILO standards are designed to be *minimum* standards, in the sense that they are intended to establish a floor under the rights of indigenous and tribal peoples and, in particular, to establish a basis for government conduct in relation to them.

The word "minimum" has another implication as well. The conference was aware at every step of its proceedings of the difference between the role of the ILO and that of your working group. Thus, while the standards adopted by the ILO significantly raise the level of protection in international law offered to these peoples, there were no illusions that they met all the needs, satisfied all the demands, or responded to all the wishes of these vulnerable peoples. You will no doubt be told the same thing by many of the NGOs present at this

session. I refer in this connection to article 35 of the new convention, which states that:

> The application of the provisions of this convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other conventions and recommendations, international instruments, treaties, or national laws, awards, custom or agreements.

This also reflects a similar provision of the ILO Constitution.

But the ILO was conscious that some questions are exclusively within the purview of the United Nations. For instance, while the ILO was able to reach agreement to refer to these peoples as peoples, it explicitly left a decision on the implications to be attached to this usage in international law, to your procedures. Let me clarify that the ILO did not limit the meaning of the term, in any way whatsoever—it referred the decision on its meaning to the United Nations.

What we have, therefore, is what the conference intended to adopt: a working tool, essentially a procedural convention, the effect of which is to set up a framework within which decisions affecting these peoples can be taken at the national level. It is a much more complex instrument than Convention No. 107, and the [ILO] office will be glad to provide further information on its implications should you have questions. It also leaves to you the job of determining the fullest measure of rights these peoples have, and should have, in international law.

I will not attempt to present to you in detail every one of the forty-four articles of the new convention. If you allow, however, I would refer to some of the more important aspects.

First, and most important, the ILO was able to remove the paternalistic and integrationist approach of Convention No. 107 from the new convention. This instrument presumes, and states, the right to continued existence of these peoples in freedom and dignity.

Article 1 adopts the terms "peoples" to which I have already referred. It also provides for the vital concept of self-identification.

Article 6 contains the basic principle of consultation and participation, at every stage, in taking decisions affecting these peoples at the national level. I recommend to you a careful reading of paragraph 2 of this article.

Articles 7 to 12 cover various aspects of the relationship between indigenous and national legal systems.

Articles 13 to 19 contain the vital provisions on land rights. They are complex and interlinked, and must be read in close relation with other provisions of the new convention before their entire effect

will be understood. As compared to the earlier convention, the following merit particular attention:

- The recognition of collective land rights is included, along with the concept of "territories" used by some indigenous peoples;
- The rights of ownership and possession are assured, along with the rights of those concerned even where there is nonexclusive use, and the land rights of nomadic peoples. There is an obligation on ratifying states to identify these lands and make the rights over them effective, and to establish procedures to resolve land claims.
- The right to natural resources pertaining to the lands is provided for, along with provisions relating to cases in which states retain the ownership of these resources.
- There are rights in connection with the removal and relocation from lands, in cases where this is found to be necessary.

Other questions are covered in the other articles of the convention, many of them of great importance, and I will be glad to provide further information on them if you wish.

Before concluding, I should like to salute the nongovernmental organizations for the invaluable work they have done in this process. We all know that without them the international organizations would often be working blind.... Many of these organizations participated very directly in the ILO's discussions. Those who participated in the ILO Conference often did not agree with what was going on, but I am glad to report that the conference was informed at every stage of what they thought. They worked with us under difficult conditions, and they have to be congratulated on their devotion and their industry. Some of them—and I would single out the World Council of Indigenous Peoples, CISA [el Consejo Indio de Sudamérica] and the Indigenous Peoples' Working Group of Canada—made enormous efforts between the two sessions to inform their constituents and to assemble information with which to inform the conference of what was happening. I hope this will continue to provide a pattern for future action.

Convention concerning Indigenous and Tribal Peoples in Independent Countries

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the Internaational Labour Office, and having met in its 76th Session on 7 June 1989, and

Noting the international standards contained in the Indigenous and Tribal Populations Convention and Recommendation (1957), and

Recalling the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the many international instruments on the prevention of discrimination, and

Considering that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards, and

Recognizing the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the states in which they live, and

Noting that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the states within which they live, and that their laws, values, customs and perspectives have often been eroded, and

Calling attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international cooperation and understanding, and

Noting that the following provisions have been framed with the cooperation of the United Nations, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, as well as the Inter-American Indian Institute, at appropriate levels and in their respective fields, and that it is proposed to continue this

cooperation in promoting and securing the application of these provisions, and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international convention revising the Indigenous and Tribal Populations Convention, 1957:

Adopts this twenty-seventh day of June of the year one thousand nine hundred and eighty-nine the following convention, which may be cited as the Indigenous and Tribal Peoples Convention, 1989.

Part I. General Policy

Article 1

1. This convention applies to:

(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws and regulations;

(b) peoples in independent countries who are regarded as indigenous on account of their descent from populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this convention apply.

3. The use of the term "peoples" in this convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

Article 2

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

2. Such action shall include measures for:

(a) ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;

(b) promoting the full realization of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;

(c) assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.

Article 3

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the convention shall be applied without discrimination to male and female members of these peoples.

2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this convention.

Article 4

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labor, cultures and environment of the peoples concerned.

2. Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.

3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.

Article 5

In applying the provisions of this convention:

(a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognized and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;

(b) the integrity of the values, practices and institutions of these peoples shall be respected;

(c) policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.

Article 6

1. In applying the provisions of this convention, governments shall:

(a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

(b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programs which concern them;

(c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

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, 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.

2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and cooperation, 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 so 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.

4. Governments shall take measures, in cooperation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

Article 8

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.

3. The application of paragraphs 1 and 2 of this article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

Article 9

1. To the extent compatible with the national legal system and internationally recognized human rights, the methods customarily practiced by the peoples concerned for dealing with offenses committed by their members shall be respected.

2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

Article 10

1. In imposing penalties laid down by general law on members of these peoples, account shall be taken of their economic, social and cultural characteristics.

2. Preference shall be given to methods of punishment other than confinement in prison.

Article 11

The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be

prohibited and punishable by law, except in cases prescribed by law for all citizens.

Article 12

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

Part II: Land

Article 13

1. In applying the provisions of this part of the convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

2. The use of the term "lands" in articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights

include the right of these peoples to participate in the use, management and conservation of these resources.

2. In cases in which the state retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programs for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

Article 16

1. Subject to the following paragraphs of this article, the peoples concerned shall not be removed from the lands which they occupy.

2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

Article 17

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

Article 18

Adequate penalties shall be established by law for unauthorized intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offenses.

Article 19

National agrarian programs shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

(a) the provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;

(b) the provision of the means required to promote the development of the lands which these peoples already possess.

Part III. Recruitment and Conditions of Employment

Article 20

1. Governments shall, within the framework of national laws and regulations, and in cooperation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.

2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:

(a) admission to employment, including skilled employment, as well as measures for promotion and advancement;

(b) equal remuneration for work of equal value;

(c) medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;

(d) the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organizations.

3. The measures taken shall include measures to ensure:

(a) that workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labor contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labor legislation and of the means of redress available to them;
(b) that workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;
(c) that workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labor and other forms of debt servitude;
(d) that workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

4. Particular attention shall be paid to the establishment of adequate labor inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this part of this convention.

Part IV. Vocational Training, Handicrafts and Rural Industries

Article 21

Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

Article 22

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programs of general application.

2. Whenever existing programs of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programs and facilities.

3. Any special training programs shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in cooperation with these peoples, who shall be consulted on the organization and operation of such programs. Where feasible, these peoples shall progressively assume responsibility for the organization and operation of such special training programs, if they so decide.

Article 23

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognized as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted.

2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

Part V. Social Security and Health

Article 24

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.

Article 25

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in cooperation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.

3. The health care system shall give preference to the training and employment of local community health workers, and focus on

primary health care while maintaining strong links with other levels of health care services.

4. The provision of such health services shall be coordinated with other social, economic and cultural measures in the country.

Part VI. Education and Means of Communication

Article 26

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.

Article 27

1. Education programs and services for the peoples concerned shall be developed and implemented in cooperation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.

2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programs, with a view to the progressive transfer of responsibility for the conduct of these programs to these peoples as appropriate.

3. In addition, governments shall recognize the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

Article 28

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.

2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.

3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

Article 29

The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.

Article 30

1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labor, economic opportunities, education and health matters, social welfare and their rights deriving from this convention.

2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.

Article 31

Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbor in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

Part VII. Contacts and Cooperation Across Borders

Article 32

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

Part VIII. Administration

Article 33

1. The governmental authority responsible for the matters covered in this convention shall ensure that agencies or other appropriate mechanisms exist to administer the programs affecting the peoples

concerned, and shall ensure that they have the means necessary for the proper fulfillment of the functions assigned to them.

2. These programs shall include:

(a) the planning, coordination, execution and evaluation, in cooperation with the peoples concerned, of the measures provided for in this convention;

(b) the proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in cooperation with the peoples concerned.

Part IX. General Provisions

Article 34

The nature and scope of the measures to be taken to give effect to this convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

Article 35

The application of the provisions of this convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other conventions and recommendations, international instruments, treaties, or national laws, awards, custom or agreements.

Part X. Final Provisions

Article 36

This convention revises the Indigenous and Tribal Populations Convention, 1957.

Article 37

The formal ratifications of this convention shall be communicated to the director-general of the International Labour Office for registration.

Article 38

1. This convention shall be binding only upon those members of the International Labour Organisation whose ratifications have been registered with the director-general.

2. It shall come into force twelve months after the date on which ratifications of two members have been registered with the director-general.

3. Thereafter, this convention shall come into force for many members twelve months after the date on which its ratification has been registered.

Article 39

1. A member which has ratified this convention may denounce it after the expiration of ten years from the date on which the convention first comes into force, by an act communicated to the director-general of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each member which has ratified this convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this article, will be bound for another period of ten years and, thereafter, may denounce this convention at the expiration of each period of ten years under the terms provided for in this article.

Article 40

1. The director-general of the International Labour Office shall notify all members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the members of the organization.

2. When notifying the members of the organization of the registration of the second ratification communicated to him, the director-general shall draw the attention of the members of the organization to the date upon which the convention will come into force.

Article 41

The director-general of the International Labour Office shall communicate to the secretary-general of the United Nations for registration in accordance with article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 42

At such times as it may consider necessary the governing body of the International Labour Office shall present to the general conference a report on the working of this convention and shall examine the

desirability of placing on the agenda of the conference the question of its revision in whole or in part.

Article 43

1. Should the conference adopt a new convention revising this convention in whole or in part, then, unless the new convention otherwise provides

(a) the ratification by a member of the new revising convention shall *ipso jure* involve the immediate denunciation of this convention, notwithstanding the provisions of article 39 above, if and when the new revising convention shall have come into force;
(b) as from the date when the new revising convention comes into force this convention shall cease to be open to ratification by the members.

2. This convention shall in any case remain in force in its actual form and content for those members which have ratified it but have not ratified the revising convention.

Article 44

The English and French versions of the text of this convention are equally authoritative.

Book Reviews

The Lost Colony

Edward Lansdale: The Unquiet American, by Cecil B. Currey. Boston: Houghton Mifflin Company, 1988. Foreword by William E. Colby. xviii + 349 pages. Notes to 413. Bibliography to 421. Index to 430. $24.95, cloth.

A Bright Shining Lie: John Paul Vann and America in Vietnam, by Neil Sheehan. New York: Random House, 1988. 790 pages, including maps and sixteen black & white plates. Acknowledgments to 793. Interviews [list] to 802. Source notes to 820. Bibliography to 833. Index to 861. $24.95, cloth.

*Reviewed by Richard Drinnon**

If we had only thrown off our "self-imposed restraints," said president-elect Ronald Reagan in 1980, then our "noble cause" would have triumphed in Vietnam. To this day, the war managers and their epigoni insist that we might have been cured with vastly larger doses of what had made us deathly ill in the first place. Freed from the constraints of Washington politicians, they chorus, we could have handily bombed and shelled our way to decisive victory.

From early on, a handful of counterinsurgency specialists seemingly risked their careers to speak out against this conventional wisdom. *If we had only* understood that Vietnam was not a replay of World War II, said these mavericks, then we could have thrown over the foredoomed attempt to impose a conventional military solution on what was fundamentally a political problem. Freed from the constraints of the high command's attrition strategy, they still contend, we could have adopted the guerrillas' own tactics to crush them and win the war.

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* Richard Drinnon is the author of *Keeper of Concentration Camps: Dillon S. Myer and American Racism* (Berkeley: University of California Press, 1987) and of *Facing West: The Metaphysics of Indian Hating and Empire Building*, which was first published by the University of Minnesota Press and New American Library, 1980, and will be republished in spring 1990 by Pantheon/Schocken Books (New York).

Both sides of this controversy over strategy sing requiem for the "loss" of Vietnam. But the most mournful strains have come from frustrated counterinsurgents who believed all along that they knew what it would have taken to win. Prime cases in point are Edward Geary Lansdale (1908–87) and John Paul Vann (1924–72), both of whom lived and died so convinced. And their biographers, eager to oblige, pivot their narratives around that most doubtful supposition.

"If our national leadership had listened to Vann," said the journalist Neil Sheehan when his biography came out, "we might still be in Vietnam, for better or worse." Eight hundred pages of Sheehan's *A Bright Shining Lie* argue that the U.S. military presence in the place where Vann "had come to personify the American endeavor" was mainly for the better, just as Sheehan's admiration goes out to the man who godfathered Vann and the other procounsuls and made it all possible: "South Vietnam, it can truly be said, was the creation of Edward Lansdale" (138). That can truly be said to be a terrible thing to say about anybody, but the military historian Cecil B. Currey claims no less for his subject in *Edward Lansdale: The Unquiet American*. Lansdale put South Vietnamese President Ngo Dinh Diem in power and years later might have put his tottering regime on a stable political footing, keens Currey, had Lansdale not been ignored and undercut by the American mission at every turn: "This gray, unassuming man with the Mount Rushmore head may have held the keys to American success in his hands and yet no one listened" (317). If we had only listened to the secret agent, says this acolyte, we might still be out there building his "Third Force" on the farthest edge of our cravings for empire.

Edward Lansdale was one of "The Ten Greatest Spies of All Time," in the opinion of former CIA director William E. Colby. Lansdale's legend throve on such superlatives, and on his hardly disguised appearance in novels as the ineffable Edwin Barnum Hillandale, in William J. Lederer and Eugene Burdick's *The Ugly American* (1958); as the sinister Lionel Terryman, in Jean Larteguy's *Yellow Fever* (1965); and—Currey asserts in the face of the novelist's denial—as the deadly idealist Alden Pyle in Graham Greene's *The Quiet American* (1955). In the flesh, Lansdale was a former advertising man who served in military intelligence during World War II. As CIA chief of the Manila station's Office of Policy Coordination he helped crush the Huk peasant rebellion; and by making his man Friday, Ramon Magsasay, president in the election of 1953, he made the Philippines into the showcase of Company colonialism. By making Ngo Dinh Diem president of South Vietnam in 1954, he sought to repeat the exploit. The secret agent led efforts for the John F. Kennedy administration, this time as Major General Lansdale, DSAF (ret.), to revive the abortive "pacification program." In his combat memoir *In the Midst of Wars* (1972), Lansdale capped his career of lies by never mentioning his decades in the CIA as a senior clandestine operative.

Even in his twilight years, the master scene-shifter playfully bamboozled his Boswell (see esp. 24–26, 357). Currey grants that his subject was sometimes "less than forthright" (118, 157) and in a number of instances administers first aid to the long-suffering record. Yet his adoration leaves him with no protective critical distance—indeed in transcendent wonder, he finds Lansdale's letters to understudies in the field "reminiscent of the letters the Apostle Paul wrote to leaders of the young church in the first century" (374). As a consequence, he has written another "cover story" (cover-up), rather than the critical biography that the subtitle seems to promise—that is, one which undertakes to show how Graham Greene's splendid novel supposedly maligned his hero.

Instead, *Edward Lansdale: The Unquiet American* demonstrates how absolutely current are this secret agent's attitudes toward the natives he encountered on cold war

battlefields. He had come to believe, says Currey, that counterinsurgency was only "another word for brotherly love" (261). One of his CIA "psywar operations" that helped crush the peasant rebels in the Philippines gave the measure of his brotherly love for the victims. Drawing on his knowledge of the simple natives and their superstitious fear of vampires, Lansdale would send psywar squads out to ambush Huk patrols, snatch the last man, puncture his neck "vampire-fashion with two holes," hang his body upside down "until the blood drained out," and then put the emptied corpse back on the trail to scare off other insurgents. Only the good-old-boy racism that had made the rebels less than human made this a merry tale of vamping the natives. It appeared in Lansdale's memoir and reappears triumphantly here, accompanied by a vile note in which Currey makes unbrotherly fun of an outraged "Filipino reaction" (102–3, 367–68).

Unlike Currey, Neil Sheehan acknowledges the significance of such racism, "a racism so profound that Americans usually did not realize they were applying a racist double standard in Asia" (153). That observation surely applied to Lansdale and Vann, but also, alas, to Sheehan himself.

In 1962, Vann, then a gung-ho lieutenant colonel, arrived in Vietnam determined to "emulate his hero, Lansdale" by learning how to manipulate his native advisees (75–76). Sheehan, then a reporter in his mid-twenties, arrived a bit later and soon became Vann's protégé and unofficial press agent, as well as another Lansdale partisan—he still believes the secret agent and Magsaysay made "a superb team" and enthuses over their "brilliantly led counterrevolution" against the Huks (133). Sheehan writes that Vann gave him, David Halberstam and other young colleagues in the press "an expertise we lacked....He enabled us to attack the official optimism....He transformed us into a band of reporters propounding the John Vann view of the war" (317). With the help of this band of undercover auxiliaries, Vann challenged and opposed the chain of command's strategy of indiscriminate death and destruction. A political war called for "discrimination in killing," he maintained in a famous maxim, and "the best weapon for killing would be a knife, but I'm afraid we can't do it that way. The worst is an airplane...Barring a knife, the best is a rifle—you know who you're killing" (317). Following his tour of duty, Vann retired from the army in July 1963, an act that, at the time, seemed to confirm the dedicated band's assumption that he had deliberately sacrificed his career "in order to alert the nation to the danger of defeat in this war" (322). To them he was a moral hero in a conflict they regarded as their own; they, too, "wanted our country to win this war just as passionately as Vann and his captains did" (271).

In the spring of 1965, while back in Vietnam as a civilian "pacification officer" for the Agency for International Development, Vann summarized his current views for an army friend: "If it were not for the fact that Vietnam is but a pawn in the larger East-West confrontation, and our presence here is essential to deny the resources of this area to Communist China, then it would be damned hard to justify our support of the existing government. There is a revolution going on in this country—and the principles, goals, and desires of the *other* side are much closer to what Americans believe in than those of the GVN [the Saigon Government]" (524). His devotees have often quoted these sentences as illustrative of Vann's lack of illusions—Sheehan says they show his "extraordinary appreciation of the war"—without acknowledging the racism they very nearly make explicit. As cold warriors on both sides of the "East-West confrontation" know all too well from experience, eminently sacrificeable natives subsist in any in-between country that has become "but a pawn."

At the racist core of "the John Vann view of the war" was the Lansdalian goal

of manipulating the expendable Vietnamese into furthering U.S. interests, while thinking they were furthering their own. And if they would not swallow this swindle with gusto, they would have to be taken in hand in good colonialist manner. In August 1967, Vann wrote Daniel Ellsberg predicting doom unless some drastic changes were made soon: "What is desperately needed is a strong, dynamic, ruthless, colonialist-type ambassador with the authority to relieve generals, mission chiefs and every other bastard who does not follow a stated, clear-cut policy which, in itself, at a minimum, involves the U.S. in the hiring and firing of Vietnamese leaders" (668). As it happened, the friend and student of both Lansdale and Vann, Ellsberg later found the strength to repudiate their central concept: "*Good colonialists*," he wrote in *Papers on the War* (1972), "was what we were all trying to be....It was, and is, the wrong aspiration to have."

In 1971, Vann was appointed senior adviser with a civilian rank equivalent to a major general's and with effective control over the war machine in the Central Highlands. From being a discriminating killer whose weapon of choice was a knife or a rifle, he had become a mass killer who called in bombing strikes with such frequency that Vietnamese officers nicknamed him "Mr. B-52." Larry Stern of *The Washington Post*, who had known Vann in the mid-1960s, went up to Pleiku to interview him and was astonished to find him so changed, with his whole person suffused with rage and exaltation: "You can tell from the battlefield stench that the strikes are effective," he bragged to Stern. "Outside Kontum, wherever you dropped bombs, you scattered bodies" (783). In June 1972 he died in a helicopter crash, but well before that, Sheehan laments, "the John Vann his old friends had known had disappeared into the war" (745).

Following Vann's state funeral, Sheehan plunged into the "16-year ordeal of investigation and soul-searching" from which he emerged with this monumental mourning for the lost colony. No doubt an early discovery proved semiparalyzing. "The John Vann his old friends had known" did not exist and never had: "He had deceived everyone in Vietnam" (385). Never a moral hero, he had not sacrificed his career to truth telling in 1963, but had voluntarily retired from the army once he became convinced that a 1959 charge of statutory rape—still uncleared in files he had been unable to steal and destroy—would permanently block his access to coveted general's stars. The barrier remained, even though Vann had escaped court-martial proceedings by persuading his wife Mary Jane to lie for him and by successfully training himself to fool the army's polygraph testers. In sordid truth, he had held carnal congress with an overweight, withdrawn, 15-year-old baby sitter while the Vanns were at Fort Leavenworth. And she was just one in a long line of ravished teenagers stretching around the world from Kansas to housemaids in Japan, to a sobbing young woman Mary Jane tried to comfort in Germany, and on to what appear to have been legions in Vietnam (474, 483–84).

In Saigon, Vann "often made love to two or three different young women a day" and in addition to these "innumerable casual romps," he had two semipermanent liaisons with "Lee" and "Annie," the latter a teenager who became the mother of one of his children, and the former a woman in her early twenties whom "he was gradually taming to accept second place as a permanent mistress. He continued to succeed in keeping Annie ignorant of Lee" (599, 753). On the day of his death, before that final helicopter ride, he indulged himself "by making love to Lee and then to two other Vietnamese women" (786).

The many references to Vann's "making love" underline Sheehan's moral insensitivity in presenting curtain-thin Vietnamese as a native backdrop against which he projects American desires, soul-searching, anger and feelings of betrayal. Vann did

not make love to the Vietnamese; he assaulted them. His sexual encounters were so manipulative, domineering, and mechanical that they became the after-hours counterparts of his bombing strikes. He was a classic instance of the logic of patriarchal domination ecofeminists find at the root of violence, violence not just against other soldiers but against whole peoples, violence against the land and violence against women. As native daughter Haunani-Kay Trask lays out the sequence in her poem "Colonialism" (1987): "ruling classes living off natives/first land/then women."

In conception, Sheehan's original plan for this undertaking was brilliant. And had John Vann been the authentic moral hero his devotees saw in him, then that original plan to tell the story of the war through him might have been readily put to the test of the evidence. Instead it became a protracted ordeal of hesitant soul-searching when the author made the disabling discovery that his hero was a "bright shining lie" who betrayed everybody. As a dramatic device, Vann said more about the perfidy of the war than Sheehan could ever bring himself to acknowledge. So, in the end, *Bright Shining Lie* became two flawed books: one about Vann and one about the war. Sheehan could not fully come to terms with either because he had never fully come to terms with himself, with that colonial "aspiration" he has never repudiated and with the related racism and sexism intrinsic to the "John Vann view of the war" he is still propounding.

Vietnam might have taught the invaders the great folly of trying to make the world over in their own white image. It proved to be no such lesson to Lansdale and Vann, Currey and Sheehan, and perhaps Americans generally. "The United States now faces the possibility of increased involvement in Central America," warns Currey. "Perhaps it is time, finally, to apply the lessons of Edward G. Lansdale" (282). Currey has been comforted to find "an identified cadre of 'Lansdalians'" who rushed to pick up the torch, including John Singlaub and "a young Marine lieutenant colonel named Oliver North [who] came also to view himself as a Lansdalian, thinking of himself as a Lansdale of the 1980s" (347).

Whether or not Graham Greene modeled the protagonist in *The Quiet American* on the then Colonel Edward Lansdale, as he has averred he did not, Alden Pyle was an astonishing likeness and the secret agent rightly saw himself carrying on Pyle's great dream of Americanizing the world. Pyle's deadly "innocence" also anticipated that of the next generation of Lansdalians. For to this day, they, too, go abroad "like a dumb leper who has lost his bell, wandering the world, meaning no harm."

The Big Wide River of American Racism

Keeper of Concentration Camps: Dillon S. Myer and American Racism, by Richard Drinnon. Berkeley/Los Angeles/London: University of California Press, 1987. xxviii + 269 pages, including Table of Abbreviations and photographs. Notes and Bibliographic Essay to 324. Index to 339. $30.00, cloth; $12.95, paper.

*Reviewed by Brian Hudson**

Reflecting upon his career, Dillon S. Myer is quoted as saying, "I do not want to go

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* Brian Hudson is an attorney on the defense team of the Los Angeles Eight and a long-time activist for Palestinian rights. For his discussion of the Los Angeles Eight case, see Brian Hudson, "Hysteria by Law: The Palestinian Deportation Case and the INS Contingency Plan," *Without Prejudice* Vol. II, No. 1, 40–60.

down in history as a director of concentration camps." However, Richard Drinnon has seen to it that Myer will do just that. In this impeccably documented work, Drinnon has rendered a scalding political biography of Dillon S. Myer, as "director and commissioner of twin calamities": the internment of Japanese Americans, 1942–46, and the termination drive of the Bureau of Indian Affairs (BIA), 1950–53. In both, Drinnon draws from a multitude of sources and, most damningly, from the mouth of Myer himself, to reveal the War Relocation Authority (WRA) and the BIA as vast empires of incarceration and dispersal of native and Japanese Americans, and Dillon S. Myer as the head keeper of these American concentration camps.

Nor, as Drinnon argues, can the concentration camps be considered as somehow anomalous to U.S. democracy, but rather rooted, as was Myer himself, in the institutions of American white racism. Indeed, *Keeper* presents Myer as "emphatically not a monster and not even an interesting villain," but as an unremarkable "midwestern farmboy," raised on the pieties and platitudes of "a typical corn belt farm," untroubled and without second thoughts about the natural supremacy of American white cultural values. Most fundamental to Myer's orthodoxy was an implacable will-to-ignorance about the history and culture of nonwhite Americans, an ignorance we have seen again made fashionable in the Reagan era. It is precisely this wilful obliviousness, this racism by malign neglect, that Drinnon seeks to undermine, and in so doing, serves not only the historical record, but provides important lessons for our current racial malaise.

Internment

But this is far less a story about Myer's inner workings—of which, in any event, there seems to have been precious little—or even his career than it is of the political players, including those who were subjected to and resisted Myer and his policies. It is also about those, both in and outside the government, that made the internment and the termination drive possible. With graceful, seamless prose and a novelist's gift for storytelling, Drinnon unfolds the sorry spectacle of the internment, continually correcting Myer's more recent self-serving observations about the internment with statements made by Myer at the time his policies were being implemented.

Thus, when Myer notes in 1971 that he did "not believe that a mass evacuation was ever justified," Drinnon quotes from a 1943 Myer statement: "The need for speed created the unfortunate necessity for evacuating the whole group instead of attempting to determine who was dangerous among them"(38). When Myer, again in hindsight, notes the "military necessity" of the internment, Drinnon easily refutes him, noting the lack of any espionage or sabotage convictions against any Japanese immigrants or Japanese Americans, as well as FBI precautions taken to "weed out" Japanese nationals deemed dangerous.

And, while Myer was fond of projecting himself as the can-do bureaucrat who took a thankless job and did it well, *Keeper* makes it irrefutably clear that the WRA director solved his administrative problems by suppression, repression, duplicity and resort to his midwestern platitudes.

There was, to begin with, a fundamental semantics problem which Myer was never able to resolve: what to call the internees. Myer referred to them variously as "evacuees," "relocatees," "persons of Japanese ancestry," most often as the "Japanese," even the strange misnomer, "American-born Japanese," occasionally "Japanese Americans," and, no doubt in despair of ever finding the right handle, usually settled for the serviceable "these people." The distinction was, of course, more than semantic, as the very question of U.S. citizenship was neatly resolved simply by referring to the

internees as "Japanese," and thereby amputating their U.S. nationality and any civil rights that might also be appended thereto.

But Myer's bureaucratic vision went far beyond the internment. Bolstered by his unassailable faith in the superiority of white cultural values, Myer sought no less than the complete dispersal of Japanese Americans throughout the United States. This was to be accomplished through a leave program from the camps devised by Myer and his staff that required the applicant to "submit references, preferably Caucasian," obtain employment, stay away from concentrations of "Japanese," and to become an informer against other Japanese Americans. At the leave clearance interview the applicant was required to sign "a Pledge of Allegiance to the United States," a precursor to a more extensive Myer-devised statement of "unqualified allegiance to the United States"—that is, a loyalty oath for internees, surely unique in the annals of incarceration. Ultimately, some 50,000 Japanese Americans resettled east of the Sierras and another 57,000 crossed back over, making this "great social-engineering experiment" less than successful from the keepers' point of view. "Yet," as Drinnon observes, "the enormity of the scattering that did take place had racist and totalitarian implications of a piece with the antecedent exclusion and incarceration" (60).

Resistance to the internment, particularly to the loyalty oath, was far wider, and conditions in the camps far worse, than is widely known. Summary punishment, solitary confinement, an utter lack of due process, beatings, at least one death, threats of long imprisonment, censorship, forced labor, all occurred under Myer's stewardship. This led to a massive refusal to sign Myer's loyalty oath and ultimately to lawsuits and public exposure, all of which Myer, characteristically implacable, dismissed as the workings of "problem boys."

Drinnon is careful throughout to present Myer not as an aberration in the Roosevelt government, but as a member of a racist administration, racist and colonial in its world views, from Roosevelt—who believed the Japanese were congenitally "nefarious"—to his attorney general, to the military, to the WRA. But nowhere is the depth of racist hysteria clearer than in Drinnon's meticulously detailed account of the "unholy trinity" of the National Executive Board of the American Civil Liberties Union—particularly ACLU founder, Roger Baldwin—the Japanese American Citizens League and the WRA. Here, the "cringing posture" of the ACLU and the JACL in legitimizing the internment and its abuses is contrasted with the tireless efforts of courageous internees such as Fred Korematsu who was arrested for refusal to evacuate a military zone, and civil-liberties attorneys Ernest Besig and Wayne M. Collins, who exposed and challenged the confinement and treatment of Japanese Americans under Myer's policies.

It is evident by the close of Drinnon's inquiry into this first of Myer's "calamities" that Besig and Collins were the aberrations in a system which wilfully ignored Korematsu's and all Japanese Americans' civil rights—a system that ultimately awarded Myer the Medal for Merit for his internment efforts and appointed him, after the war, commissioner of the Bureau of Indian Affairs—a post for which he was equally unqualified, and served with an equally vigorous ignorance and paternalism.

Termination

Myer's first task, when he assumed his post in the BIA, in May 1950, was to purge out any BIA officials, especially from the upper echelons, who might be knowledgeable of and sympathetic to Indian issues, and to replace them with his own men, a number of whom were veterans of his WRA tenure. His stated purpose from the beginning was termination, that is, to get the BIA "out of the business" of

administering Indian affairs. As Drinnon documents, this meant the scrapping of treaties, the legalization of civil disenfranchisement of native Americans, and the devouring of Indian land, two million acres of which were lost to white capital during his reign.

Again, Myer's self-imposed ignorance becomes the foundation of his policies, and Drinnon goes to some pains to capture Myer's views in Myer's own words—misrepresentations of Indian history, culture, his belief that Indians are essentially primitive and can only advance by submersion into white society—while showing that numerous texts and other sources, including of course the Indians themselves, were available to and ignored by Myer.

Drinnon personalizes this story by focusing on the Paiutes of Pyramid Lake, Nevada, tracing their history there, the struggle against rapacious white settlers in the nineteenth century and rapacious white politicians in the twentieth. This becomes the springboard for a further exposition of termination through Myer's support of white squatters on Paiute land, his hard-fought campaign to terminate Indians' right to select their own attorneys to represent them in the land disputes, and the introduction of various bills to divest them of their land.

In his battles with the Paiutes, Myer enlisted the help of Democratic senator Patrick McCarran of Nevada, an archreactionary Indian hater ("an Indian ain't *got* no goddamn rights"), who introduced various bills to support the white squatters and undermine Indian claims to the land. This, in fact, was Myer's greatest skill as an administrator—establishing his power base among lawmakers most hostile to Indian culture and most avidly covetous of Indian land, water, minerals and timber. These alliances bolstered Myer in numerous ways, by shaping public opinion, proposing legislation, and even in meting out retribution to Myer's enemies, such as the public hearings convened by Myer ally Clinton Anderson, senator from New Mexico, who took on tribal attorneys representing Indians' rights and, in Myer's words, "practically chased one of them out of business" (209).

This assault on Indian rights reached its fevered peak in a bill introduced in 1952 by Myer allies with the graphic title, "A Bill to Authorize the Indian Bureau to Make Arrests Without Warrant for Violation of Indian Bureau Regulations, etc." Drinnon points out that part of the reason for the bill's failure was the absence of any native American or civil liberties groups to run interference for him, as he had for his internment policies. But such losses for Myer were the exception. Through his termination program, the BIA commissioners that followed from 1954 to 1962 passed fourteen termination Acts by which the United States unilaterally withdrew its recognition of nearly a hundred tribes, bands and *rancherias*, cut off services to them, and sold off their reservations.

As with the resistive Japanese Americans, the native Americans who fought against Myer's policies were simply incomprehensible to him. They became, in his words, "wily Indians...[who were] capable of making the BIA appear as a group of paternalistic bureaucrats" (188). The termination drive, which went so far as to insist that native American orphan children be placed in non-Indian homes, was aptly characterized by one such "wily Indian," Earl Old Person: "In our Indian language, the only translation for termination is 'to wipe out' or 'kill off'...Why is it so important that Indians be brought into the 'mainstream of American life?' What is the 'mainstream of American life?'...The closest I would be able to come to [the term] 'mainstream' would be to say, in Indian, 'a big, wide river.' Am I to tell my people that they will be 'thrown into the Big, Wide River of the United States'?" (240).

Myer left the BIA in 1953, and served in various other public administrative positions in Latin America, Korea, and the Organization of American States, tirelessly

working to assimilate stubborn native populations into the "American way of life." He died in 1982, unrepentant, even in the face of renewed public debate on the wartime internment. His legacy is abundantly apparent still, and is, in fact, but another stream in the "Big, Wide River" of racism in America. Richard Drinnon has set the historical record straight and has insured that Myer will be remembered for what he was: a cog in a wheel of repression, a self-satisfied agent of white racism, a keeper of concentration camps.

Book Notes

Ansbach, Tatjana and Hans-Joachim Heintze. **Selbsbestimmung und Verbot der Rassendiskriminierung im Völkerrecht** (Self-determination and the Prevention of Racial Discrimination in International Law). Berlin: Staatsverlag der Deutschen Demokratischen Republik, 1987. 150 pages. Fundstellenverzeichnis to 152. Anlagen: Internationale Konvention über die Beseitigung aller Formen der Rassendiskriminierung vom März 1966 (Auszüge) to 173. Alle Mitglieder der CERD [Committee on the Elimination of Racial Discrimination] to 175. Summary (in English) to 178. *Resumé* (in Russian) to 182. Empfohlene Titel to 191. No price indicated, cloth.

This book analyzes the concept of self-determination and the prohibitions against racism as affirmed in international law since adoption of the United Nations Charter in 1945. The authors, drawing upon a wide range of published and documentary sources, submit these principles and the international instruments that made them law to a Marxist analysis.

By comparing the varying approaches to self-determination, Ansbach and Heintze shed light on how states implement the right of self-determination selectively and inconsistently. Introducing the legal concepts by way of their historical context, Ansbach and Heintze remind the reader that Austria-Hungary's internal crisis and the uprising of the Russian people, at the end of the nineteenth and the beginning of the twentieth centuries, greatly influenced the development of contemporary international law. Whereas the Wilsonian concept of self-determination is commonly understood in the West to be the definitive international framework, it is distinguished, in fact, from that held in the socialist world. Vladimir Ilyich Lenin is credited as the author of the socialist concept of self-determination and antiracism, citing his Declaration on the Rights of Working and Exploited Peoples (1918), which later became integrated into the Soviet constitution. The authors adopt a theoretical approach to the question of racism that is substantiated by social scientists such as W.E.B. DuBois, Edmund Morgan and Howard Zinn, as well as by Marxist scholars, who have identified the economic roots of racism as nurtured by ideologies which incite bitter competition among the working population. The authors refer to the Soviet system as the embodiment of rational antiracism by its institutional elimination of capitalist formations.

Through their analysis, the authors articulate the important distinction between state and nation/people. They argue that people, not states, have the right to self-determination; states merely serve as the party contracted to uphold this right for the people(s) within its jurisdiction.

Ansbach and Heintze make a strong case for collective or group rights as a concept in contemporary international law, while they envision a decline of the bourgeois and western preference for the individual as the exclusive subject of

international human rights law. They further argue that, in the event that a people achieves its own state, its right to self-determination is not, perforce, accomplished. They contend that a people possesses further rights, contained in the right to self-determination, including the right to peace, the right to development and the right to revolution. Each of these rights is analyzed and discussed as deriving from the right to self-determination. And in this connection, it is concluded that the duty of states to respect human rights derives from their contractual obligation fully to implement the right to self-determination.

The UN Declaration on Principles of International Law of 24 October 1970 is referred to here as the most comprehensive description of the right of self-determination, by which a people also retains the right to assistance from other states in order to resist the forcible repression of their historically necessary revolution.

The authors set out to establish the relationship between the right to self-determination and the legal prohibition against racism; however, these two concepts are dealt with separately. The second part of this work focuses on the development of the legal ban against racial discrimination. This section features discussion of racial classifications and terminology, including a useful discussion of the distinctions between "racism" and "racial discrimination."

In the discussion of the applicability of the International Convention on the Elimination of All Forms of Racial Discrimination, three states are considered specifically: Israel, South Africa and the United States. The authors conclude that states parties which maintain relations with racist South Africa fail to meet their obligations under the convention to "bring about the elimination of racism by all appropriate means."

The United States receives particular focus as a society notorious for its racism, and as an ambivalent contributor toward the development of international human rights standards which has thus far refused to sign the convention. The authors review the history and reasoning behind the U.S. position, officially explained by congressional concern that the convention would not be self-executing (in domestic law) and could conflict with the right to free expression in the United States—elements of the discussion in the U.S. which the authors consider to be "misdirected."

Israel is cited as the ratifying state party to the convention which maintains a system of institutionalized racism (Zionism). Ansbach and Heintze trace Israel's participation in the convention by its three reports to the convention's reviewing body, the Committee on the Elimination of Racial Discrimination (CERD). In each case, CERD has consistently denounced Israel for its belligerent occupation, attacks on neighboring states and violations of Palestinian human rights. However, as the authors reveal, to date, CERD has failed to give adequate attention to the fundamental racism of Israeli law and policies, a subject uniquely within its competence to consider.

Ansbach and Heintze conclude that international law can serve as an essential instrument in the advancement of human progress. Their book is rich in information and reasoned argumentation. It will serve to familiarize the reader with the development of socialist legal concepts which continue to challenge and influence contemporary international law.

Fleishman, Janet. **Destroying Ethnic Identity: The Hungarians of Romania.** New York and Washington: Helsinki Watch; Vienna: International Helsinki Federation, 1989. i + sixty-four pages, including one map. $5.00, paper.

This study, published by Helsinki Watch, investigates the situation of the ethnic

Hungarian community which constitutes some 8 percent of the Romanian national population. Janet Fleishman reports on state suppression of Hungarian language, culture, and education, as well as on economic discrimination against ethnic Hungarians.

Among the most effective means of eliminating or assimilating a minority within the state is to eliminate its existing habitat, thereby attacking its cultural identity at the source—the land and village base. It could be here observed that state development schemes abound for social engineering purposes that are racist in intent. Not unlike the Thompson Commission plan (1953) and the Surplus Peoples Project (1982–83), which devised elaborate plans for forced removal of blacks in South Africa, or the demolition schemes of Israel's Markowitz Commission (1986) and its predecessors, which provide the blueprint for the "legal" and incremental elimination (or transfer) of indigenous Arab citizens of that country, Romania's notorious village destruction plan, popularly known as *sistematizarea*, clearly stands as one of the most ambitious such development schemes in this century.

The Hungarian population in Romania sees itself as largely, if not primarily, affected by this plan. The accomplished destruction of seven to eight thousand villages under this plan would bring about an irreparable loss not only to the Hungarians in Romania, but also to Germans, Serbs, Ukrainians, Gypsies and all minorities, as well as many ethnic Romanians. In response, this case has prompted the Hungarian government to recognize publicly the legal concept of "collective rights" as possessed by nationality groups, which go beyond individual human rights (55–56).

Fleishman dedicates one chapter to individual cases of Hungarian victims of persecution in Romania. The respondents in the interviews here cited echo the words of other threatened peoples, whether in Palestine or on Hopi land, in Arizona, facing expulsion from their immemorial communities: "They want to pull out the rug from under us—physically and spiritually...[but we] would rather give up [our] lives than [our] village" (53).

Bassiouni, M. Cherif and Louise Cainkar. **The Palestinian Intifada—December 9, 1987-December 8, 1988: A Record of Israeli Repression.** Chicago: DataBase Project on Palestinian Human Rights, 1989. x + 71 pages. Appendix A: Summary of Human Rights Violations under Israeli Rule during the Uprising to 78. Appendix B: Palestinians Killed by Israeli Occupation Forces, Settlers and Civilians during the First Year of the Uprising to 101. Appendix C: Institutions Closed during the Uprising to 108. Appendix D: Repression of Freedom of Information to 117. Appendix E to 179. Notes to 220. Bibliography to 234. $6.00, paper.

Younes, Fayez and Jamileh Saad. Edited by Paul Theodoulou. **The Uprising, December 8, 1987–March 8, 1988.** Nicosia: Bisan Press & Publication Institute, 1988. xii + 198 pages. Diary Appendices to 211. Documents to 271. No price indicated, paper.

National Lawyers Guild. **International Human Rights Law and Israel's Efforts to Suppress the Palestinian Uprising.** 1988 Report of the National Lawyers Guild. New York: National Lawyers Guild, 1989. xi + 95 pages. $10.00, paper.

al-Haq/Law in the Service of Man. **Punishing a Nation: Human Rights Violations During the Palestinian Uprising: December 1987–1988.** Ramallah, Palestine: *al-*

Haq/Law in the Service of Man, 1988. vi + 476 pages, incl. notes and chapter appendices. No price indicated.

These four works produced during the second year of the popular Palestinian uprising (*intifadah*) offer analytical retrospectives on the developments and events of the uprising's first year. Each is a collective effort which relies heavily upon documentation and conveys a firm sense of the law and its contravention in Israel's violation of the Palestinian people's rights, including the fundamental right to their self-determination.

A Record of Israeli Repression edited by Cherif Bassiouni and Louise Cainkar, with a preface by former U.S. Senator Charles Percy, is meticulously documented and academically sound. The introductory essay, which opens with a dedication to four Palestinian victims of shootings by Israeli occupation forces, presents the long-standing continuity of Israel's treatment of Palestinians: incremental expulsions and consistent gross violations of human rights.

This analysis demonstrates how legal measures, enforced by military means, are used to expel and otherwise eliminate the indigenous Palestinian people from the land. The result for Palestinians includes the theft of their livelihood, from land and water to the earned pension funds withheld from Palestinian workers; meanwhile, the occupier maintains strict control over public, private, political and economic life. Israeli practices are presented as contradictory to such international legal standards as the Geneva Civilians Convention, The Hague Conventions, the Nuremberg and Tokyo War Crimes Tribunals, and the international convention against torture, as well as violating U.S. legislation, a point made relevant by the charge that the United States remains the principal subsidizer of Israel, and thereby of its occupation of Palestinian lands acquired by force.

Section II of *A Record of Israeli Repression* summarizes the various devices used by Israel to accelerate its policies: namely, injuries and deaths by beating, by shooting and by the use of toxic gases; attacks by settlers; collective punishments; economic oppression; destruction of social institutions; "deportations" (a misnomer referring to expulsions); and arbitrary arrest and detention, including a discussion of deaths in detention. The statistical treatment, with some details on outstanding cases, of killings, institution closings and other quantifiable measures, is taken from the *Updates* of the Palestine Human Rights Information Center/DataBase Project on Palestinian Human Rights. Other appendices contain some of the relevant legal instruments and protocols, concluding with an excerpt on the occupied territories from the U.S. State Department *Country Reports on Human Rights Practices for 1988*.

The Uprising, by Fayez Younes and Jamileh Saad, is introduced with an essay summarizing the events of the *intifadah*'s first four months, again with a view to the international humanitarian and human rights laws, but with a more historical approach to the continuity that harkens back to the emergence of the ideology of Zionism.

The principal section of this book, "Diary: Events and Statements," features a day-to-day account of selected events, drawing from the daily reports of the Jerusalem Press Service issued before it was closed down by the Israeli authorities on 30 March 1988. This chronological narrative adds flesh and blood to the more analytical and documentary treatment in the first and third sections. The third and final section contains a collection of documents and official statements and reports of exemplary cases, also taken from the PHRIC/DataBase *Updates*.

International Human Rights Law and Israel's Efforts to Suppress the Palestinian

Uprising is the well-written report of the National Lawyers Guild (New York). This publication follows by a decade an earlier report by the Guild, after its delegation investigated Israeli practices in the occupied Palestinian territories in 1977. A chronological "Anatomy of the Palestinian Uprising of 1988" constitutes the first chapter, which is followed by a legal discussion of applicable humanitarian and human rights standards. The current study prepared by the Guild's Middle East Subcommittee deals less with certain issues (such as land confiscations) than the earlier report, but gives a broad overview of repressive Israeli measures within their legal contexts. Besides the use of force and other acts of agression, the authors note, for example, how emergency food supplies provided by Palestinian citizens of Israel to the communities under curfew in the occupied territories have been prevented since late 1988 (77–78).

The final chapters analyze Israeli culpability in violating international laws that pertain to both individuals and states, charging that Israel's cabinet and government leadership are liable for committing war crimes. Added to this is the liability shared by the international community, particulary that of the 165 states parties bound to article 1 of the Fourth Geneva (civilians) Convention. The monograph concludes with the fourteen demands of January 1988 issued by the Unified Leadership of the Uprising, calling for an end to human rights violations and the creation of an atmosphere conducive to the convening of an international peace conference.

Like *A Record of Israeli Repression*, the volume published by the legal offices of *al-Haq*/Law in the Service of Man, *Punishing a Nation*, covers the first year of the *intifadah* (December 1988–89). The work is carefully documented and well organized in nine chapters, under three thematic headings, each one drawing from testimonial documentation to portray the victims' experience with Israeli policies to suppress the occupied Palestinians during their uprising. Part I, "Use of Force," features affidavits on Israeli methods, concluding with an important discussion of Israel's deployment of death squads, obstruction of medical services, and a section on settler violence, which complement investigations previously produced by *al-Haq* (see, for example, Raja Shehadeh, *Occupier's Law: Israel and the West Bank* [Washington: Institute for Palestine Studies, 1985]).

Part II investigates the state violence of administrative detentions and punishments (without charges or appeal procedures). Here the team of authors mentions that Israel has accelerated its demolition of "illegal structures" during the *intifadah*. However, they dismiss further discussion and do not argue the unacceptability of Israel's determining Palestinian habitat to be "illegal," a technical maneuver that is essential to the unfolding pattern of these demolitions and Israel's time-honored land-confiscation schemes (219).

This book is dedicated to six *al-Haq* field workers who, for most of the period under review, had been held under administrative detention, including Riziq Shuqayr, abducted by Israeli soldiers on 19 November 1988, and currently counted among the Palestinian "disappeared."

These four titles represent the work of dedicated chroniclers and scholars who render a vital service to our understanding of the dynamics of this critical phase of the Palestinian/Zionist conflict, and of the legal values at stake. While their timely work focuses on Israel's current repression of the *intifadah* in the occupied West Bank and Gaza Strip, the story of the state's simultaneous repression of the Palestinian Arab citizens inside Israel has yet to be written.

Davis, Shelton H. **Land Rights and Indigenous Peoples: The Role of the Inter-American Commission on Human Rights.** Cultural Survival Report No. 29. Cambridge, MA: Cultural Survival, 1988. ix + 66 pages, incl. maps. Notes to 70. References to 79. Appendix 1: American Declaration on the Rights and Duties of Man to 114. Appendix 2: American Convention on Human Rights to 109. Appendix 3: Human Rights Resolutions Concerning Indigenous Populations to 114. $8.00, paper.

In recent years, official international agencies, representative Indian organizations and conscientious NGOs increasingly have coincided in their recognition that more attention needs to be paid to the issue of native peoples' rights to their land. This monograph, derived from the author's presentation at a Columbia University seminar on "Ethnicity and Rights: The Protection of Minorities," focuses on the positive contributions made to the movement to defend indigenous land rights by the Inter-American Council on Human Rights (IACHR), a body of the Organization of American States (OAS).

Shelton Davis introduces the reader to the evolution of indigenous rights as a global issue, particularly through efforts of the UN Working Group on Indigenous Populations. Davis defines the problem at hand and thereby clarifies the inextricable linkage between land rights and human rights as essential to the survival of indigenous peoples. He then summarizes the IACHR's attempts, since the early 1970s, to address abuses of indigenous peoples resulting from settler actions and other state-sponsored development schemes in the forest lowlands of South America.

When the IACHR first began to consider indigenous rights violations, it did not possess the experience or means to deal effectively with such cases; however, in the course of the past two decades, the IACHR has drawn upon diverse expert sources to adopt cases and intervene effectively, as in the three specific cases reviewed here. Davis traces the role of the IACHR in promoting and protecting the land rights of the Guahibo of eastern Colombia, the Aché of Paraguay and the Yanomami people of Brazil. These case studies serve as a useful guide for experts and NGOs to the practical workings of the IACHR, offering guidance for possible cooperation in the future among the commission, NGOs and affected communities. This monograph also is enlightening to the generalist who needs to become more familiar with the work in defense of the indigenous peoples.

This book avoids criticism of the IACHR for its slow progress in dealing with the grave human rights violations by states; however, the positive achievements of the largely uncelebrated IACHR should be better recognized. And this is an especially crucial time, in which fiscal cutbacks within the OAS threaten the further efforts of IACHR to defend vulnerable peoples throughout the continent.

Harris, Louis, project director; Ron Bass, research associate. **The Unfinished Agenda on Race in America**, Volume 1. New York: NAACP Legal Defense and Educational Fund, January 1989. Executive Summary, seven pages. v + seventy-two pages. Appendix A: Survey Method, to 83. Appendix B: The Questionnaires, eighty-nine pages.

———. **The Unfinished Agenda on Race in America**, Volume 2. New York: NAACP Legal Defense and Educational Fund, January 1989. 445 pages. Combined price $20.00, paper.

This two-volume report is the result of a study commissioned by the National

Association for the Advancement of Colored People (NAACP), which is intended to contribute to the continuing debate in the United States over civil rights, and to help in the planning of the agenda for future progress toward racial equality. The study polled the attitudes of the general U.S. public about racial issues, and surveyed the attitudes and conditions of the persistently poor in the black community, which constitute a part of what is often referred to as the "underclass."

Some may find the results surprising. The survey reveals the existence of something of a consensus between the general public and the persistently poor with regard to measures and programs needed to lift the poor from their plight. The findings also reveal, in contradiction to popular and derogatory stereotypes, that a large segment of the poor are working poor, that they seek jobs and job training, that they mostly do not benefit from federal assistance or other subsidy programs, and that they place a high value on education, particularly for their children.

These volumes include ample documentation to support the 80-page analysis—the second volume consists solely of tables. Both the findings and the recommendations presented here by the NAACP Legal Defense Fund will be essential for any future discussion in the United States of poverty, welfare programs, racism, or the economy in general. The survey also shows majority agreement that the federal government should do more to alleviate the plight of the persistently poor.

Katjavivi, Peter. **A History of Resistance in Namibia**. London: James Currey; Addis Ababa: OAU Inter-African Cultural Fund; Paris: UNESCO, 1988. xvi, eight maps and seven black & white plates + 130 pages. Notes to 143. Index to 152. £4.95, paper.

Peter Katjavivi portrays a historical continuum of resistance by the Namibian people throughout the colonial period into the present. He traces the Namibian people's socioeconomic formations preceding the arrival of the German colonizers in the late nineteenth century and how these formations interacted with, and were affected by, European penetration. This history also shows the Namibians' early realization that successful resistance against colonization depended on the national unity of Namibian societies, which was eventually realized first under the South West African National Union (SWANU) in 1959.

In this analytical chronology, Katjavivi demonstrates Namibia's consistent assertion of its rights through active resistance to colonization, long before this right was recognized by the International Court of Justice in 1971. Katjavivi documents this history with a wide range of published and unpublished sources, occasionally offering new insights into the personal thinking of Namibian strategic decisionmakers. These insights are aided by the author's first-hand experience as a native Namibian son and a leading activist in the South West African People's Organization (SWAPO).

Katjavivi argues that, particularly since the late 1960s, much of the international recognition of SWAPO was due to its decision to take up the armed struggle against South Africa. Katjavivi's approach to the indigenous resistance in Namibia places the conflict into its proper international context. He clarifies for the reader how wily South African tactics have attempted to divide Namibian society, as exemplified by the Turnhalle proposals, and have included the outright refusal to allow democratic elections, or to abide by minimum international legal standards.

On the international level, the 1977–78 Western Contact Group's efforts are seen as having contributed to the UN's plan for the independence of Namibia with its forthcoming elections, while the combined interests of South Africa and the United States, particularly during the Reagan administration, have delayed Namibian indepen-

dence. This work brings the reader up to the present with an overview of SWAPO's forward-looking policies for an independent Namibia, the anticipated next phase.

Moody, Roger, ed. **The Indigenous Voice: Visions & Realities**, Volume 1. London: Zed Books and Copenhagen: International Working Group for Indigenous Affairs, 1988. xxxii + 437 pages, incl. notes and black-and-white illustrations. Postscript to 444. £35.95/ $65.00, cloth; £13.95/$25.00, paper.

———. **The Indigenous Voice: Visions & Realities**, Volume 2. London: Zed Books and Copenhagen: International Working Group for Indigenous Affairs, 1988. xiii + 311 pages. Postscript to 317. £32.95/$60.00, cloth; £10.95/$19.95, paper.

Roger Moody, a nonindigneous person long involved in the struggles of the indigenous peoples, has compiled in these two volumes what could be considered the first anthology of first-person indigenous statements and testimonies on their own experience. This rich collection of documents is organized thematically, beginning, in the temporally oriented first volume, with stories and prophecies on the origins of the peoples, followed by historic and contemporary essays on "Dispossession" and "Present Struggles."

The second volume contains philosophical, tactical and practical essays under the headings of "Conscientisation and the Recovery of Origins," "Dialectics of Liberation" and "In Our Own Ways," a collection dealing with thought and work for building indigenous self-fulfillment and self-determination.

The two volumes are prefaced with an essay by the editor, which is part bibliographical essay, part personal testimony. It takes the reader on a global journey in search of a politically and spiritualy right path. Moody analyses some of the various, if not contradictory, motivations and perspectives leading people and organizations into contact with indigenous peoples, some of which may be destructive. Moody, however, finds and sensitively treats his subject not only as peoples historically inveigled out of their lands, or victims of conquest and assimilation, but as guides to our necessary ecological and spiritual development.

The main body of this anthology is a vehicle for most of the world's recognized indigenous nations and peoples to speak on subjects as diverse as land-based religion, nuclear power, racism and tourism. However, this two-volume edition has managed to draw out a common message, a call for a return to our origins and to the earth. It is an essential resource for all readers interested in history, development, theology, women's issues, international law or human rights.

Simon, Jean-Marie. **Guatemala: Eternal Spring, Eternal Tyranny**. New York and London: W.W. Norton, 1987. 247 pages of color plates and text. Maps to 249. Index to 256. $19.95, paper.

This stunning photographic essay is a study of the struggle between the urban elites and the peasantry in Guatemala. The reader is introduced to the country's recent history by an essay that makes but the subtlest reference to the historical continuum of European settler societies' victimization and dispossession of the native peoples of the Americas—but that is really what this story is about. Blame is laid squarely at the feet of U.S. corporate interests and their allies in Washington for exacerbating this conflict, and the author's eye is focused on the aggression of

Guatemala's wealthy classes and their progressive genocide of the vulnerable, indigenous Guatemalans. (Mention of other state contributors to this process is, however, absent.)

The photos succeed in portraying the striking contrasts of the sublime landscape and grinding poverty of Guatemalan village life on the one hand, and the dainty debutantes and landed opulence of the fortunate families on the other. The force that maintains this dichotomy, the state military punctuates a carefully documented narrative that breathes with the life of those bearing witness to this human tragedy of a state's war on its people. The reader is taken from stills of pastoral serenity to gory scenes of the army's handiwork—surely one of the contradictions perceived by Jean-Marie Simon, whose work in creating *Guatemala: Eternal Spring, Eternal Tyranny* is truly a labor of love. This collection of dazzling photography—some of which have become widely known—will not fail to move even the stoic to at least share a better sense of the human dimension of Guatemala's grim state.

Smith, David M. **Update: *Apartheid* in South Africa**, Second Edition. Cambridge: Cambridge University Press, 1988. Ninety-two pages, incl. maps, tables, charts and black & white plates. Bibliography and Sources to 96. $8.95.

This monograph on the case of institutionalized racism in South Africa is the first revision of the original 1983 publication of the same title produced by the Department of Geography and Earth Science at Queen Mary College, University of London.

This succinct, textbook-style treatment of *apartheid* emphasizes the functional aspects of South African racism. It presents a fact-oriented view of law, economics, labor supply and demand, urbanization and development under white-minority rule. While this approach conveys the image of *apartheid* as a massive social engineering strategy, it de-emphasizes the detail and passion of the victims' personal experiences.

The new, updated version includes an added feature to the first run: a ninth chapter dedicated to the subject of swelling social unrest, as well as a short and appropriately skeptical tenth chapter on "The 'Reform' of *Apartheid*." This handy reference will satisfy the reader who is interested in hard statistics and dispassionate commentary.

Titles Received

Brittain, Victoria. **Hidden Lives, Hidden Deaths: South Africa's Crippling of a Continent**. London and Boston: Faber and Faber, 1988. xvii + 182 pages, incl. maps. Index to 189. £9.95, cloth.

Clay, Jason W. **Indigenous Peoples and Tropical Forests: Models of Land Use and Management from Latin America**. Cultural Survival Report No. 27. viii + 73 pages, incl. notes, maps, tables and black-and-white plates. References to 112. $8.00, paper.

Crapanzano, Vincent. **Waiting: The Whites of South Africa**. New York: Vintage Books, 1986. xxiv + 336 pages. Epilogue to 331. Chronology to 338. Notes to 342. Bibliography to 347. Index to 361. $8.95, paper.

Davidson, Basil. **The African Slave Trade** (revised expanded edition). 286 pages. A Note to this Edition to 288. Reading Guide to 293. Index to 304. $10.95, paper.

———————. **The Lost Cities of Africa** revised edition). xxiii + 337 pages. General Bibliography to 357. Index to 366. $10.95, paper.

Duggal, N.K., ed. **Namibia: Legal Framework & Development Strategy Options for the Mining Industry**, Namibia Studies Series No. 10. (Based on the work of M.D. Bomani, H.S. Aulakh, W.W. Asombang and C. Ushewokunze.) Lusaka: United Nations Institute for Namibia, 1987. ix + 160 pages, incl. tables and notes. Annexes to 167. Index to 176. No price indicated, paper.

Escobar, Ticio. **Misión Etnocidio**. Asunción, Paraguay: Comisión de Solidaridad con los Pueblos Indígenas, 1988. Forty-four pages. Bibliography to 50. Interviews to 275. Essay by Oleg Vysokolan to 308. Includes twenty-four black-and-white plates. PYG14,000, paper.

Hart, Alan. **Arafat: A Political Biography** (first American edition). Bloomington and Indianapolis: Indiana University Press, 1989. 553 pages, incl. maps. Palestinian Leaders and Organizations to 557. Notes to 560. $18.95, paper.

International Progress Organization. **Zur Lage der Menschenrechte in Palästina**. Vienna: International Progress Organization, 1988. Thirty-four pages. No price indicated, paper.

Köchler, Hans, ed. **The International Campaign against Austrian President Kurt Waldheim: Documents of the International Solidarity Committee**. Vienna: International Progress Organization, 1988. Twenty-one pages. No price indicated, paper.

———————. **Foreign Policy and Democracy: Reconsidering the Universality of the Democratic Principles**. Vienna: International Progress Organization, 1988. Thirty-five pages. Bibliography to 38. No price indicated, paper.

The More Things Change... : Human Rights in Haiti. New York: Americas Watch/ National Coalition for Haitian Refugees/Caribbean Rights, 1989. v + 126 pages. $10.00, paper.

Nelson-Pallmeyer, Jack. **War against the Poor: Low-Intensity Conflict and Christian Faith**. Maryknoll, NY: Orbis Books, 1989. xii + 88 pages. Notes to 94. Index to 98. $11.95, paper.

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Views From the World Press

In this section, analysis and opinion from the international press are excerpted or reprinted in full. These selections focus on current issues and developments around the globe in response to racism and its practice, as well as efforts to combat racist ideologies and institutionalized forms of racism and discrimination.

• **The Debate That Wasn't:** Opposing views about Zionism and Jewish identity are exchanged between two prominent Jews in the United States, from an op-ed piece in *The Cincinnati Enquirer* and a reply published here for the first time;

• **Night of the Broken Sticks:** Fifty years after Kristallnacht, Hitler's "night of the broken glass," brutality finds new victims, as reported by a member of Israel's parliament;

• **Back to the Camps:** Reviewed here is Cologne, Germany's new plan to intern Gypsies on a toxic waste dump site that served as Hitler's collection station for Gypsies *en route* to World War II concentration camps;

• **Police as the Embodiment of Racism:** Police brutality making the news in two recent cases in the U.S. gives occasion for this young black man's testimony;

• **Talking to the ANC:** Johannesburg's biggest Afrikaans daily surprises readers again with this editorial advocating negotiations with the African National Congress;

• **Digging Up the Past:** A South African archaeologist explains how discoveries in his field help debunk Afrikaner colonial claims to African land;

• **Not Just for Art's Sake:** A review of a New York City exhibit of Aboriginal painting reveals the purpose and meaning of Australia's original art forms.

The Debate That Wasn't

Current events in Israel/Palestine have revived some critical thinking among Jewish communities, where the flourish of free debate over Zionism had all but died away. In North America, the dominant Reform tradition of Judaism, with its intellectual heritage and its devotion to inquiry, was for generations the ideological home of anti-Zionism. However, with the establishment of the state of Israel and its emergence as a Middle Eastern military garrison representing United States strategic interests, the state ideology of Zionism has captured the support of an increasingly secularized "Jewish community" in the United States. Those who have held fast to the spiritual traditions and the principles of anti-Zionism have observed with regret the values derived from the prophetic tradition being replaced by political Zionism and devotion to the Jewish state. Nevertheless, the essential elements of the debate have survived by virtue of a few, notable critics from the old school.

The Cincinnati Enquirer *nearly became the forum for such a debate when, on 14 October 1988, an op-ed essay appeared under the title, "Israel as the hub of the wheel." At the newspaper's invitation, its author, President of the Hebrew Union College Jewish Institute of Religion Dr. Alfred Gottschalk, expressed the popular Zionist view of Israel as central to Jewish identity and devotion. Writing in the tenth month of the Palestinian* intifadah *(uprising) in the lands occupied by Israel, Dr. Gottschalk begins his statement by admonishing Jews and others who break ranks with Zionist principles and the Jewish state, which he considers to be one with Jewish destiny. His opinion is reprinted here in full.*

After forty years as a sovereign nation, Israel remains the lodestar of the Jewish world. The overriding fact of contemporary life tends to be obscured by the political differences among Jews and friends of Jews on current events in the Middle East. When critics of government policies in Israel express their view vociferously, one may take this as a breaking of ranks. It is not.

Israel is central to all Jews today for living a normal Jewish life. It represents in its dream component and harsh realities the opportunity for the fulfillment of an individual as a Jew in a national environment and under circumstances which lead to a re-creation and reconstruction of the Jewish people within our time.

Jewish Living

A Jewish world without Israel at its center is but a shadow existence. Jews living in America who are leading Jewish lives to the best of their ability and within the context of the freedom accorded them will preserve Judaism and Jewishness in the American environment. With Israel at the center of Jewish concerns, in terms of spirituality, language, scholarship and the arts, that life will be enhanced and enriched.

Modern-day Israel's fierce determination to remain strong and invulnerable is far more than mere nationalism. The Jewish state of biblical times, like its modern-day successor, was continuously under attack by those in the region who wished to destroy it—the Assyrians, Babylonians, Egyptians and Romans in ancient times, and hostile Arab factions in modern times.

Israelis have never had any chance for a peaceful life, then or now. The Hebrew prophets did not see Israel as a land where all would expect to live in harmony, but rather as a beacon to the world, the embodiment of a vision that righteousness would rule mankind at the end of days.

The misguided moral questioning of Israel's political or military policies ignores this fundamental truth. Historic Judaism never claimed that the people of Israel were more moral than their neighbors. The prophets called on Jews to be a vehicle for the redemption of man. This commitment was echoed by the founders of the modern state and is shared today by Jews throughout the world who know that the survival of the state of Israel in the face of any external challenge is fundamental to the continuation of their reason for being.

The foundations of Jewish belief lie in a vast inherited tradition, a shared historical experience, and a world view that is shaped by core values. These can be understood as elements in a dynamic and developing process of reinterpretation in response to both external and internal forces and changes. The educational goals of Israel are to give the young a vision of citizenship and patriotism in accordance with a particular definition of Israel as a Jewish state. In the United States we contend with the challenge of living in two worlds and our Jewishness is shaped through interaction with cultural forces in the American environment as well as our bond with Israel.

Israel is the always-present and always-relevant factor of Jewish destiny. A century ago one of the great Russian Jewish thinkers, Ahad Ha-Am, called for an Israel that would be a spiritual center where the choices of Jewish intelligentsia would find their moorings. He hoped it would be "refuge for the spirit of the people, for that distinctive, unique cultural form, the result of the historical development of thousands of years which is still strong enough to live and to develop naturally in the future."

Mutual Caring

World events have made necessary a redefinition of this concept, and similar centers have now been created for the millions of Jews who live in the United States and other countries. In this way we are building a bridge of Jews who traverse the tangents between the center and the diaspora. We are scattered around the world but we are one, with a common destiny. We care about each other and about our welfare as a people, and we remember always that Israel is the hub of the wheel.

The following essay is a response offered by rabbi, longtime anti-Zionist and alumnus of Hebrew Union College, Dr. Elmer Berger. The Cincinnati Enquirer *elected not to publish the essay in any form, ostensibly owing to its length. By its editorial decision, the newspaper declined to provide the counterpart in a debate among North American Jews over the merits of traditional, spiritual—as opposed to Zionist—values.*

Particularly at a time when Israeli violations of Palestinian human rights in the occupied West Bank and Gaza Strip have gathered unprecedented public attention, an airing of the debate concerning Zionist ideology could not but serve greater peace efforts through improved public understanding of the underling causes of the conflict in Israel/Palestine.

A celebrated author whose works on theology and politics span more than five decades, Dr. Berger writes with the prophetic tradition as a constant guide. Without Prejudice *offers his essay in its entirety as a contribution to the needed public debate over the discriminatory ideology of Zionism which victimizes the Palestinian people and obscures the prophetic tradition and its moral lessons.*

The author of "Israel as the hub of the wheel" (17 October [1988]) is the president of the Hebrew Union College. The college is one of Cincinnati's world-class cultural assets essentially because for more than a century it has been a center for scholarship and leadership for Reform Judaism, nourishing and inspiring progressive religious thought primarily among Jews but also with an impact upon liberal denominations of Christianity. It is justifiable, therefore, to examine Dr. Gottschalk's perception of Jews and Judaism in the light of the history and traditions of the institution he now serves. The following reflects the judgment of a graduate of Hebrew Union College (HUC), class of 1932, who has served as a congregational rabbi and, for more than forty years now, has been a leader in organized efforts to sustain and expand knowledge of an interpretation of Judaism which transcends vestigial "Jewish" nationalism and ethnicism, learned and reinforced by training at the college. That was the college permeated by the legacies of Isaac M. Wise, Kaufmann Kohler, David Philipson, Samuel Cohon, Moses Buttenweiser, Jacob Marcus, and Abraham Cronbach among others of an illustrious faculty.

At the very core of the tradition taught and expanded by these men is the historic declaration of Reform Judaism, enunciated at Pittsburgh in 1885 and still known as the Pittsburgh Platform. Paragraph 4 stated, in part:

> We consider ourselves no longer a nation, but a religious community, and therefore expect neither a return to Palestine nor a sacrificial worship under the sons of Aaron, nor the restoration of any of the laws concerning the Jewish state.

This explicitly stated position followed logically from the Platform's introductory paragraph projecting a:

> God-idea as taught in our Holy Scriptures and developed and spiritualized by the Jewish teachers, in accordance with the moral and philosophical progress of their respective ages [as] the central religious truth for the human race.

Those were—and remain—prescriptions for a vision of God and a code of practice motivated by the optimistic faith that humans were capable of stretching both mind and spirit, a process in which Judaism must play an important role by championing

> the spirit of broad humanity...as our ally in fulfillment of our mission and therefore we extend the hand of fellowship to all who operate with us in the establishment of the reign of truth and righteousness among men. (Par. 6)

Gottschalk makes about a 179 degree turn from this fundamental principle of Reform Judaism when he declares the so-called "Jewish state" of Israel to be "central to all Jews today for living a normal Jewish life."

It may be informative to examine closely how the president of a theological institution with this historic tradition maneuvers the sharp curve to an interpretation of Judaism which accepts a small, militaristic state in which "basic" Zionist/national legislation makes its Jewish citizens "more equal than others," to use Orwell's famous phrase, an indispensable center for "normal" life for *all* Jews, most of whom live in other national states with their own national interests, rights and obligations.

Skeptics about the just-stated description of Israeli "democracy" may "look it up," to quote Casey Stengel. Before following Gottschalk's tergiversations they should examine, as the legal documents they are, Israel's Law of Return, its Citizenship Law and its so-called Status Law which makes the Zionist Organization either a part of the Israeli government or an agent of it. An element common to these Knesset enactments, which have the weight of constitutional legislation, is that all of them bestow a system of Israeli *national* rights and obligations upon an entity called "the Jewish people": all Jews, regardless of their conventionally recognized citizenships. In political terms, unless Jews actively reject these extraterritorial legislative arrogations, they are at risk in the countries of their residence and in international law of being perceived as accepting what a distinguished international lawyer has called "a functional second nationality." Israel has no nationality law and, unlike the United States, for example, nationality and citizenship are not identical. "The Jewish people" is the Zionist state's national constituency. This being true, its seven hundred thousand citizens who are not Jews cannot qualify for the Zionist rights stipulated in the three "basic" laws mentioned above, while any Jew, no matter where he or she may live and what nation-state he or she calls his/her country, may claim the advantages which Israel bestows upon any individual who qualifies as a member of "the Jewish people." It is this Zionist-inspired, automatic fusion of the "Jewish people's" nationality rights and obligations with their religious identity that nourishes the tradition of anti-Zionism among Jews.

But perhaps Gottschalk did not intend for this anachronistic centering of Judaism in the state of Israel to be an authoritative declaration as president of the HUC. Granting this possibility, it is almost unimaginable that any Jew, only partially familiar with the history of Jews, should say, "A Jewish world [whatever that means] without Israel as its center is but a shadow existence." Surely he must know that some of the most significant contributions in the evolution of Judaism, over a period of two millennia, were made when no sovereign, so-called "Jewish state" existed. The most respected version of the Talmud was a product of the Babylonian exile. The great twelfth century law codifier, Moses Maimonides, lived most of his life in centers of Islamic culture, in Spain and Egypt; and his most important work, *Guide to the Perplexed*, was written in Arabic. And although much of it was not theologically oriented, the vast, rich Yiddish literature of the Jews who lived precarious lives in the undemocratic, ethnically oriented states of central and eastern Europe often reflects such broad, universal themes portraying the best of human qualities that they have

found their way into liberal, western culture. The musical dramatization of Sholem Aleichem's story of Tevya in the Broadway hit, "Fiddler on the Roof" is an example familiar to many people all over the world. And the rich variety of the institutions of American Jews flourished years before the establishment of Zionism's Middle Eastern state. It is hardly worthy of the academic integrity required of the president of one of Judaism's acknowledged sources of teaching and learning to ignore these indisputable facts of history by declaring such pre-"Jewish state" contributions to be "but a shadow existence." If such deprecation is one conscious device Gottschalk employs to hustle a spurious indispensability to the state of Israel he does, indeed, owe an explanation to history, to many contemporary Jews and to people of other faiths who seek a partnership with Jews in a common struggle against the widely recognized evils of our times.

A second device Gottschalk employs to magnetize the concerns of Jews to Israel is to portray it as the little, peace-seeking David under constant attack by the Arab Goliath. "Israelis have never had any chance for a peaceful life..." he says. Apparently he has not followed his own script making Israel the center-piece of "Jewish life." For in recent years the Israeli government has begun to open archives with documents dating back to the middle 1940s and young Israeli scholars are writing essays and books full of official and authoritative records that contradict Gottschalk's dogmatic lament.

For example, the Provisional Government [of Israel] was confronted with opportunities to negotiate a comprehensive peace during and immediately after the negotiations for the armistices in 1948–49. Also, in the middle 1950s Nasser was prepared to offer a formula for "peaceful co-existence," eventually leading to "normalizing relations." The United States was prepared to offer Israel a "security pact" to sweeten the deal. According to the *Personal Diary* of Moshe Sharett, foreign minister at the time, [Moshe] Dayan and [David] Ben Gurion vetoed the bargain. The much-mentioned [United Nations Security Council] resolution 242, in 1967, provided another opening for negotiations. Some belligerent Arab states refused to comply. But with alacrity, Israel joined the rejecters and as the overwhelming victors in the war, Israel's lack of enthusiasm discouraged the international community from pursuing the question, although by 1968 all the Arab states except Syria had indicated they were prepared to negotiate on the basis of exchanging territory for peace and the formula calling for "a just solution of the refugee problem." But Israel's creeping annexation policies in Jerusalem, its rejection of the right of Palestinians to return as one part of a "just" formula, its refusal to cooperate with Gunnar Jarring, the UN's special representative supervising implementation of the resolution, emasculated the substantive ingredients for peace stipulated in the resolution. In 1982, Ronald Reagan offered an American formula for peace. It was deficient in many respects from the viewpoint of the Palestinians who, in the years since 1968 had fashioned the PLO into a party to be reckoned with in any "peace process" and which, in 1974, had been acknowledged by the Arab states as "the sole legitimate representative of the Palestinian *people*." By 1982, the PLO had implicitly resigned claims to all of Palestine and substituted, as its key demand, the so-called "two state solution" with Palestinians exercising their right to self-determination with sovereignty in the West Bank and Gaza [Strip]. Despite the outright objection to recognizing the PLO and its claim to a state, 'Arafat found "positive proposals" in the president's plan. Within a week after the public release of the U.S. proposal, an Arab summit meeting in Fez, Morocco, issued what came to be called "The Fez Plan." It, too, called for "Israeli withdrawal from *all Arab territories occupied in 1967* including *east* Jerusalem" [emphasis added]. It called also for "establishment of an independent Palestinian state with Jerusalem as its

capital" and "affirmed the right of *all* countries of the region to live in peace." (It is apparent that Israel and the major Arab parties had been shown the Reagan plan in advance of its publication on 2 September 1982).

It is important to emphasize that none of these Arab proposals was made in the form of a take-it-or-leave-it ultimatum. All of them simply stated principles the details of which were to be negotiated into specifics.

'Arafat had been at the Fez summit and publicly characterized the plan as "a unique opportunity for the achievement of the minimum base of the required justice" and he cautioned against "wast[ing] this opportunity for bringing peace to the region."

The genuineness of the Arab proposals was never tested. Israel offered no alternative or modifications to either the Reagan or Fez plans. The United States did nothing to translate either plan or any combination of them (which might have been possible) into some diplomatic modality.

Now, seven years later, the United States has declared that the *status quo* is unacceptable and Israel has concluded an election which portends continued rigidity with a corresponding increase of its "iron fist" policies of beatings, shootings, collective punishment, arbitrary arrests and detentions, deportation and even threats of "transfer" of the Palestinians in the West Bank and [the] Gaza [Strip]. The consensus among the most respected observers of the old problem is that prospects for a political settlement are more remote than ever.

The record refutes Gottschalk's unsubstantiated and unsubstantiable charge that Israel "has never had a chance for a peaceful life." But it is a tailor-made gimmick for an infusion of new sympathy for the Zionist state which, for the past eleven months, has rather desperately watched the ebbing of its once-high bloodcount of generally uninformed popularity, particularly in the United States. And as the general disillusion progresses, fueled by what is now generally perceived to be the persistent struggle of the Palestinians for an end to the occupation, Gottschalk must be apprehensive about the longevity of his exaltation of the Zionist state as "the lodestar of [what he calls] the Jewish world." Another mysticism in his panegyric is his claim that this "lodestar" is indispensable to "normal Jewish life" even though following his star will result in American Jews having to "contend with the challenge of living in two worlds." Some normality! That is a definition of Jewish identity no more palatable as the offering by the HUC president than it was when, certainly with more malice, it was often used to exclude Jews from "normal" patterns of societies in which they lived and in which they wished for acceptance.

Each of these disagreements with Gottschalk's bargain basement pastiche of generalizations in theology, history, politics, homiletics and intimations of messianism deserves not only further exposition but extended public debate. Limitations of space here however allow for no more than these suggestions of the inadequacies of his case in all of these areas, most of which involved questions of public policy. It is his argument that puts his notions of Judaism in the public domain because it is he who mixes a religious view, which in the United States is normally regarded as a private, personal affair, with political and social matters which are the business of all the people. American freedom permits such a mix. But the same freedom insists that those who hold different political, social ideas have an equal right to disagree, publicly. Gottschalk appears to try to veneer over any cause for challenge by suggesting his positions may be attributed to the "core values" of Judaism although he is sketchy about the specifics of those values. One certainty is that a Judaism which regards the state of Israel as "the hub of the wheel" is incompatible with the historic tradition of Reform Judaism and its Cincinnati seminary where "core values" made a God-concept of universal dimensions its "lodestar" and this vision of divinity could

ask, rhetorically, "Where is the house that ye may build unto Me? And where is the place that may be My resting place?" For "the heaven is My throne and the earth is My footstool" (Isaiah LXVI:1). And anyone who would make Zionism's Middle East state the center of the Prophetic Judaism which is the source of the "core values" of the HUC's authentic tradition should remember Jeremiah who stood "in the gates of the Lord's house" in the midst of a corrupt and sinning Kingdom of Judah and heaped scorn upon the ancient temple, saying in effect, you think this is the Lord's house! "Only if ye thoroughly execute justice between a man and his neighbor.. .and shed not innocent blood in this place... then will I cause you to dwell in this place" (VII:3 ff). And Amos was even more explicit. Articulating his inspired warning to an arrogant and iniquitous people he said, "I [God] hate, I despise your feasts and I will take no delight in your solemn assemblies...but let justice well up as waters and righteousness as a mighty stream" (V:21 ff).

Unfortunately, it is conventional wisdom today—particularly with politicians and professionals of Jewish organizations, largely financed by centralized fund-raising dominated by pro-Israel personnel—to consider that all Jews possess some vaguely defined affinity to some manufactured, idyllic visit of the Israeli state, which by some alchemy is perceived to embody traditional values of Judaism and to serve as a role model for democracy. But the image is far removed from the reality, and to challenge the image is no prescription for popularity. This may explain Gottschalk's distortion of the historic character of the institution he serves as president. He might better have turned to that institution's roots, Judaism's *Torah*, where he would have found numerous echoes of the prophetic influence. The following from the book of Exodus (XXIII:2) will serve as a highly relevant example:

> Thou shalt not follow a multitude to do evil, neither shalt thou witness in a cause to turn aside after a multitude to pervert justice.

To pursue that admonition, to extend the historic role of the Reform Judaism which once distinguished the College from other Jewish theological seminaries, to proclaim a vision of a Judaism which might give spiritual nourishment today to those American and Israeli Jews who are challenged by the revolt of the *intifadah* against the illegal, prolonged occupation of Israel and its denial of the human rights of Palestinians, Gottschalk might have employed another exhortation of Jewish law found in the Torah and violated by the Knesset: "Ye shall have one manner of law, as well for the stranger, as for the home born" (Leviticus XXIV:22), or still another, "Proclaim liberty throughout the land to *all* the inhabitants thereof" (Leviticus XXV:10), the inscription on the American Liberty Bell.

Such recommendations from the true center of Judaism might well have been the keystone in a bridge between the faith's authentic tradition and the state of Israel, and between Jews, no matter where they may live. A bridge built of these enduring ethical and moral maxims might well link the numerous populations of Jews into a "faith community," to borrow a phrase from one present member of the HUC faculty. And that would be a more traditional meaning of the term "Jewish people" than the politicized version, "the Jewish people," endowed gratuitously by Zionism with extra-territorial national rights and obligations to the Israeli state. Buttressing a vision of Judaism and Jews with such principles from Judaism's history, Gottschalk, among other contributions, might have added the prestige of his office to the near-universal recognition of the humanity of the Palestinians and have helped advance toward the ideal of the true, spiritual Zion, revered by Jews, Christians and Muslims—the Zion which shall be "redeemed with justice and they that return of her with righteousness"

(Isaiah 1:27), and a universal, "in-dwelling" God could then say, "My house shall be a house of prayer for all people" (Isaiah LXVI:7).

Taking the opportunity to reply to Elmer Berger's comments in a private letter, Alfred Gottschalk registered the following response:

Dear Rabbi Berger:

Thank you for sharing with me the critique of my column "Israel as the hub of the wheel" which you sent to Readers' Views at *The Cincinnati Enquirer*. I appreciate your courtesy and while we do not agree, I understand your point of view.

With many thanks,

Sincerely,

(signed) Alfred Gottschalk

Night of the Broken Sticks

The biannual period presently under review includes the fiftieth anniversary of Kristallnacht, the night of the broken glass, in which Adolf Hitler's anti-Jewish rantings translated into action. On 9 November 1938, Nazi mobs smashed, looted and burned Jewish shops and temples throughout Nazi Germany in a night of rage that has been recorded as a turning point on the way to holocaust. It was this and the unfolding policy of eliminating Jews in areas under Nazi control which compelled many Jews to seek refuge in the Zionist program to create a Jewish state in Palestine.

That program has, in turn, spawned a new generation of victims. In the same commemorative period, the popular Palestinian intifadah *(uprising) entered its second year, expressing the resistance of the people of Palestine against their elimination in their own land.*

The following article by a member of Israel's parliament, Yossi Sarid (Ratz/Citizens Rights Party), describes one shocking scene of brutality, the likes of which have become so familiar during the intifadah. *This 4 May 1989 entry in Sarid's weekly column in Israel's largest circulation newspaper,* Haaretz *(Tel Aviv), is entitled "The Night of the Broken Clubs." The title alludes hauntingly to Israeli adoption of Nazi-like behavior in an incident which took place only days after the world paused to remember Kristallnacht. While Sarid opens his essay with the nostalgic suggestion that today's Israel has deviated from a putatively nobler period of its earlier history, he concludes with the admission that today such brutality is no "aberration."*

The following story is a grim one. It cannot be evaded, because it will always pursue us. This is a story that makes you realize that Israel will no longer be what it once was [sic]. It is a different country, in the same way that the Israeli army is a different army; and in the new Israel, any atrocity is possible.

For reasons of my own, I am withholding the names and a few other identifying

details, but the rest of the details are [presented] in full and accurately. Actually, what difference do the names make? It can happen to any of us, or at least to almost anyone.

This story took place in the second month of the *intifadah*, at the end of January 1988, and has never been publicized. Captain A., the commander of a support company of a well-known battalion, was summoned to his commander, a lieutenant colonel who is the regional commander. The lieutenant colonel gave the captain clear instructions to carry out arrests in the village of Hawara outside of Nablus. Upon hearing the instructions, Captain A. angrily objected. He told his commander that in his view, they were neither in keeping with the Israeli army's morality, nor would they contribute to bringing calm to the area. The lieutenant colonel responded by saying that it was a new policy from on high and it must be implemented.

When the lieutenant colonel gave the orders, there were a few more officers of different ranks present in the room. Not one of them commented or interfered. Incensed, Captain A. asked if he was being required to carry out the mission; if so, he would carry it out in spite his opposition [on grounds of] conscience.

That was in the morning. In the afternoon, Colonel Z. summoned Captain A. in order to discuss "how all this would affect the company's morale." Captain A. was convinced that if Colonel Z. personally talked to the company it could help matters, and a talk was scheduled for the next day, after the night action in [the village of] Hawara.

In the evening, the company—forty soldiers and four officers—arrived at their departure point. They boarded a civilian bus and met up with three more officers in two jeeps. One of the officers, Major G., complained to Captain A. that he needed the whole operation like a hole in the head and that it could ruin his relations with the mukhtar of the village.

At approximately 11 p.m., the bus and the two jeeps arrived in Hawara. Major G. proposed that rather than have the soldiers go from house to house, he would instruct the mukhtar to gather the [wanted] men in one spot. Major G. went to the mukhtar and gave him a list of twelve persons, and within a short time they were rounded up by him without any problems. During the round-up, they sat on the sidewalk, by the shops in the center of the village, and didn't put up any resistance.

The soldiers shackled the villagers, and with their hands bound behind their backs they were led to the bus. Major G. left the site and disappeared. The bus started to drive and after 200-300 meters, it stopped beside an orchard. "The locals" were taken off the bus and led into the orchard in groups of three, one after the other. Every group was accompanied by an officer. All and all, there were four such groups. Captain A. himself was not psychologically prepared to take part in the action, but ensured all the while that it was being carried out in accordance with the orders. He later commented that dividing the men into groups of three was necessary in order to remain "on top of the situation."

In the darkness, in the orchard, the soldiers also shackled the Hawara residents' legs and laid them on the ground. The officers urged the soldiers to "get it over with quickly, so that we can leave and forget about it." Then, flannel was stuffed into the Arabs' mouths to prevent them from screaming and the bus driver revved up the motor so that the noise would drown out the cries.

And then the soldiers obediently carried out the orders they had been given:

– to break both their arms and both their legs by clubbing the Arabs;

– to avoid clubbing them on their heads;

– to remove their bonds after breaking their arms and legs, and to leave them at the site;

– to leave one local with broken arms but without broken legs so he could make it back to the village on his own and get help.

The mission was carried out to the full. In the course of [carrying it out], most of the wooden clubs used by the clubbers broke. The soldiers who under no circumstances wished to participate in the beatings were allowed to remain in the bus and guard the detainees.

Four and half months later, at the beginning of May, the Red Cross lodged a complaint with the police about the brutality of the IDF [Israel Defense Forces] soldiers toward the residents of the village of Hawara. An investigation was launched.... If it hadn't been for the complaining of the Red Cross, the entire affair would have remained buried in the orchard until now.

It is impossible to console oneself with the thought that we are talking here about an irregular occurrence—what is referred to as an "aberration." Exactly two days before, the same action, in accordance with the same instructions, with the same actors and additional officers, was carried out in the nearby village of Beita.

In a military police inquiry testimonies were taken from twenty-nine soldiers and all the officers involved.

The O/C Central Command didn't hear, didn't see and didn't know anything.

The commander, Colonel Z. didn't hear, didn't see and didn't know anything, in spite of the fact that according to other testimonies he met with the members of the support company prior to the action in the village of Hawara and following it.

The regional commander, Lieutenant Colonel Y., refused to give his version in writing or orally.

Major G. confirmed that there had been no need to employ force while making the arrests.

Captain A. said that immediately after the action he called together the disconcerted soldiers and promised them that he would go to Colonel Z. in order to ask him "not to give us any more such tasks." At the end of his testimony, he asked to stress that "this case, among other things, made me leave the IDF."

It should be noted that, since the incident in Hawara, some of the officers involved have been promoted in assignment or rank. No one has been brought to trial.*

Back to the Camps

The continuity of racism in history remains a consistent theme throughout the present review of the world's press. It has been often said that the lack of consciousness about or sensitivity to that history consigns us to repeat it. However, one can never assume with confidence that

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* A 17 April 1989 article from a military correspondent to the daily *Al-Hamishmar* (Tel Aviv) offered a follow-up on the Israeli army's internal investigation of this incident after it became subject to International Red Cross and public scrutiny. The subsequent reshuffle of Lieutenant Colonel Yehuda Meir from his West Bank army command to a new post in Israel's security service, Shabak, demonstrates the state's authorization of brutality toward Palestinian civilians—*Ed.*

decisionmakers necessarily ensure that past mistakes will not be committed again. This translated reprint from Die Tageszeitung *(Berlin) evokes for readers—and much more for its subjects—the historical consequences of internment of Gypsy, Jewish and other people in Nazi Europe. The following report of 26 October 1988, by Albrecht Kleser, sheds light on an official attempt to concentrate Cologne's Gypsies into an internment camp, one planned on the very site tainted by toxins and the crimes of a not-so-distant past.*

The city of Cologne wants to resettle some four hundred Roma [Gypsies] to the site of a former [Nazi] forced labor camp. The site is supposed to be fenced in and guarded, and other people are to be prevented from moving into [the area] by way of a system of control. As the Roma and their support groups only now learned, this place served in fascist times as the collection station for Gypsies who were being transported off to the concentration camps. In addition, toxic waste is stored on the site, which was used primarily by chemical companies following the Second World War. However, the city has claimed that these [wastes] would not cause harmful effects to health. The resettlement plan was adopted already in September [1988] with the [affirmative] vote of the [city's leading] political factions, the CDU [Christian Democratic Union] and the SPD [German Socialist Party].

Over the past two years, the Roma had hitherto found refuge in a place in the north of the city. Because the site lies within view of the European headquarters of the Sony corporation, the firm's managing director Jack Schmuckli has called for their expulsion in the interest of "industrial development and residential attractiveness."

The Cologne municipal authority has scrupulously spelled out how the resettlement plan is supposed to be carried out. In the official plan, it is stated that "comprehensive supervision of persons" is necessary in the former encampment site. Thus, in the official view, "different groups of persons" will be turned over to the alien persons authority [*Ausländerrecht*]. Those persons who are staying illegally in the federal district [of Cologne] will be "registered as deportable." This would affect, above all, the stateless Roma and those who have fled from Yugoslavia. Also, those persons whose asylum applications have been approved not for Cologne, but for other areas of the Federal Republic [of Germany] will be deported. According to the official plans, they will be expelled to the area corresponding to the [valid] asylum permit. Only those Roma who have entered the country legally or who are in possession of a valid residence permit are supposed to be encamped in the former forced-labor camp.

The official plan states further that, "the former encampment will be plowed up at a depth of approximately 50 cm., thus making it untrafficable." Finally, regarding the new site, the so-called "glitter grounds," the following will be adhered to: "In order to prevent further persons from moving into the area, the grounds will be fenced in and guarded." The precise location of the guard barracks is already designated, the cost estimate for which is projected to be, at most, DM360,000 annually for the staffed operation.

Disturbed by the shock aroused in public quarters, the Cologne SPD now is trying to mitigate the damage to the party's image. The party passed a resolution, with common references to human dignity, but confirmed the parliamentary group's decision with the statement that "the uncontrolled ingression of further people" and "free access" with vehicles must be prevented. The city internment camp is opposed by the Roma and their support groups. Cologne, as they emphasize, obviously is not

conscious of its historical responsibility for pogroms against the Roma and Sinti [German Gypsies]. From presently available documents, it emerges rather that the city with its plans demonstrates the [historical] continuity of internment policy.

Police as the Embodiment of Racism

It has often been charged that blacks in white-dominated society draw police harassment simply by being black. Recently, a television news report of the NBC (National Broadcasting Company) Nightly News, *in the United States, gave graphic evidence to this charge by recording a confrontation with police in Long Beach, California, a city of half a million people where civil rights groups have repeatedly claimed that the police department abuses blacks and other minorities. Investigating these claims, NBC reporters and cameramen had prearranged to follow young black men driving through Long Beach to record their experience. One of these black men was Don Jackson, a police officer on leave from the Hawthorne, California police department.*

On 14 January 1989, a Saturday night, Jackson rode as a passenger in a old-model car with another black man as the driver. For no apparent reason, Long Beach police stopped the black men's car, cursed at them, frisked Jackson, forcibly held him by twisting his arm and shoved his head through a plate glass window. Jackson was charged with offensive language and resisting arrest, and was jailed; the driver was cited for lane-straddling. The 16 January broadcast of the incident focused renewed public attention on the issue of police abuse of blacks in the United States. While man-on-the-street interviews following the airing of the report indicated popular interest in a full inquiry, Long Beach mayor Ernie Kell contended that an internal police department investigation would be sufficient.

Coincidentally, on the day of that broadcast, Miami City Police officer William Lozano (29) shot and killed black motorcyclists Clement Anthony Lloyd (23) and Allan Blanchard (24), while they were speeding in the Overtown section of Miami. In reaction to the killings, riots erupted in the Overtown and Liberty City sections of the city. After a week of rioting and scattered violence, the U.S. Justice Department's civil rights division launched an investigation into the shooting, and a city panel convened to review the incident. Many remained skeptical of the effectiveness of such symbolic measures in addressing problems that have been looming untreated for years. One local businessman interviewed by The Washington Post *(19 January 1989) remarked, "A review board is not going to do anything to quell the uprising. The police are shooting us like blackbirds."*

The op-ed piece reprinted below appeared in The New York Times *on 23 January 1989. Its author is the same Don Jackson who was brutalized and imprisoned by the Long Beach police. His essay eloquently reflects a*

view shared by many blacks in the United States—regardless of their socio-economic class—that the police stand as a constant source of fear and a tool of oppression. Mr. Jackson's view is a voice of experience, including his experience inside police ranks. His voice is added to those engaged in a continuing discourse, rarely heard in public debate, which addresses discriminatory administration of justice and police action against blacks and other minorities in the United States. The following is reprinted with permission (Copyright © 1989 Don Jackson from The New York Times*).*

The talk of the country today is about how I, a black police sergeant, was picked up and attacked by white police officers in Long Beach, Calif. Some people wonder how I have the audacity to challenge the police. I have the audacity because I know who I am and I know what the police have represented to my people.

It is the police that tracked us as we fled the plantation. It is the police that took Rosa Parks off the bus in Montgomery [Alabama]. It was police chief "Bull" Connor who set dogs and fire hoses on black men, women and children protesting for their civil rights in Birmingham [Alabama].

Knowing the history of law enforcement, how could I do otherwise? I am well aware of the black criminal, and I will stand against his or her presence in any community. However, I recognize the fact that blacks are labeled criminal at birth—for some causing self-fulfilling prophecy, for others the lingering mistrust for what I call the criminal injustice system.

In this county, a black man will spend more time in jail for killing a white than he will for killing one of his own. We know that blacks are more likely to see the death penalty than whites for committing the same crimes. We will also spend more time in jail for the same criminal acts. We will receive longer probation and fewer paroles than whites.*

In the past decade, I have watched from a fence post as the hopes and dreams of my people dwindled and declined in the back of America's priorities. The worst of our troubles, however, does not come in the form of social-economic disadvantage. The plight of the black American is made greatest by the removal of hope. The hope

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* For an investigation into the related issue of racially disproportionate imprisonment of blacks in the United States, see Darnell Hawkins, "Trends in Black-White Imprisonment: Changing Conceptions of Race or Changing Patterns of Social Control," *Crime and Social Justice* No. 24 (1985); also Alfred Blumstein, "On the Racial Disproportionality of the United States Prison Populations," *The Journal of Criminal Law and Criminology* No. 73 (Fall 1982).

For a study of the racially disproportionate application of the death penalty in the state of Georgia, see David C. Baldus, Charles Pulaski and George Woodworth, "Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience," *The Journal of Criminal Law and Criminology* No. 74 (Winter 1983). In the case of *McCleskey v. Zant* (ND Ga. 1984), the Federal District Court for the northern district of Georgia assured the validity of the Baldus study, but found the statistics "insufficient to demonstrate discriminatory intent or unconstitutional discrimination in the Fourteenth Amendment context, [and] insufficient to show irrationality, arbitrariness, and capriciousness under any kind of Eighth Amendment analysis" (Id. 580 f Supp., at 891). And in 1987, the U.S. Supreme Court held that the Baldus study did not establish that the administration of the Georgia capital punishment system violated the Equal Protection Clause (*McCleskey v. Kemp, Superintendent, Georgia Diagnostic and Classification Center* [No. 84–684], 22 April 1987)—*Ed.*

that we have lost is that the dream America offers to a world of immigrants is not available to its most faithful citizens.

Some may dare to ask, How is it that I call the black American more faithful than others? Well, it's like the woman married to an abusive husband. He keeps making promises that things will get better but the beating continues. She may stay with him but she knows he will never change his ways without accepting that he has a problem.

America certainly has a problem. Black Americans have picked cotton, scrubbed the floors, cooked the meals and laid the bricks in hopes that hard work would one day mean liberation and acceptance. We felt that somehow what is our birthright could be purchased by proving ourselves worthy. Yet, America demands more proof that we are worthy.

Since the signing of the Emancipation Proclamation, black Americans have awaited equal protection and opportunity.

[Being s]ubject to rape, lynching and thievery in a land that we helped to build has been the impetus for widespread frustration and confusion for black Americans. The feeling that no matter how hard you worked you could always be reduced to the status of a "field nigger" haunts the lives of black Americans at every economic stratum.

Equality is evasive and intermittent. We may now sit at the lunch counter but we cannot order the food that is available. The laws that say "no blacks allowed" are no longer on the books, but the spirit of those laws still lives on unabated.

The black American finds that the most prominent reminder of his second-class citizenship are the police. In the history of this country, police powers were collectively shared among whites regarding black people. A slave wandering off the plantation could be stopped and detained by any white person who saw fit to question his purpose for being away from home. A black man accused of accosting a white woman was subject to being tried and executed by the first group of angry whites he encountered.

A variety of stringent laws were enacted and enforced to stamp the imprint of inequality on the mind of the black American.

It has long been the role of the police to see that the plantation mentality is passed from one generation of blacks to another. No one has enforced these rules with more zeal than the police.

Operating free of constitutional limitations, the police have long been the greatest nemesis of blacks, irrespective of whether we are complying with the law or not. We have learned that there are cars we are not supposed to drive, streets we are not supposed to walk. We may still be stopped and asked "Where are you going, boy?" whether we're in a Mercedes or a Volkswagen.

In the South, white plantation owners would often hire an overseer to work the slaves and keep discipline. Though in most cases the overseers were white, sometimes they were black. Surprisingly, in many cases blacks were no less brutal than their white counterparts.

They protected the owner's property as if it were their own, with little compassion for their own people. Today, the unconscious black policeman occupies this role, often becoming as distant from the concerns of his people as some whites.

With the law enforcement skills I have attained, the snake has been made to bite its own tail. My skills are now used on behalf of the disadvantaged, be they black, brown, yellow, or white.

I choose to challenge the system when the system is wrong. For America to realize its dream it must first realize its promises to the least of its citizens. When the

"niggers" are gone, someone will be required to take their place. They might be short people or people who wear glasses or people with red hair. My reaction to America's reaction is that you are seeing in Long Beach a reflection of yourself, and I am proud to be the one who handed you the mirror.

Talking to the ANC

With the recent negotiated agreements between South Africa and its adversaries in Angola and the projected settlement toward the independence of Namibia, the Pretoria government is engaged in what has become known as "negotiation politics." A similar approach to dealing with opposition at home is the suggestion of an editorial published by the conservative Johannesburg daily Beeld, *on 16 January 1989. Breaking from its usual line, this newspaper regularly aligned with the ruling National Party came forth with the recommendation to release political prisoner Nelson Mandela.* In the editorial reprinted here,* Beeld *advocates that the Pretoria government pursue negotiations with the ANC as a tactic which will induce the liberation movement to submit to Pretoria's precondition that it foreswear violence.*

Was there ever a more opportune time to test, in the eyes of the world, the ANC claim that it is a liberation movement rather than a terrorist body?

Circumstances have changed dramatically for the organization during the past few months. The peace in Angola and the settlement in Namibia have caused its military power base to diminish visibly. The Russian *glasnost* not only contributed to this, but also brought its political might into effect.

As things stand now, the organization must begin to wonder how long it can still look to Moscow as its godfather. And whatever one may think of the conflicting decisions of the American departments of defense and foreign affairs, the final message is clear: the longer the organization continues with its terrorism, the stronger will be its condemnation in civilized circles.

As far as that is concerned, a turning point is clearly approaching. To summarize: world pressure on the ANC to stop violence can become so strong that it will no longer be necessary for the South African government to insist on this as a precondition to talks (a condition which has up to now been rejected by the ANC—understandably if one takes into consideration the fact that its leadership is just as pressured from within as that of any other government).

Another factor that it must eventually realize is that murderous bombs will not win its struggle in South Africa.

Beeld's opinion has always been that in the end the ANC, as the representative of one of the South African national groups, will have to be spoken with.

The high international profile that the organization has maintained until now can moreover help to make such talks possible. If it sets impossible conditions for

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* See "Freedom for Mandela?" in the "Views from the World Press," *Without Prejudice* Vol. II, No. 1, 99–102—*Ed.*

such a dialogue, it will do so in the face of the whole world and bodies like the [U.S. State Department], which is now so hesitant to condemn it.

So perhaps we must begin to think about giving the ANC a chance to prove that it is serious when it says that it seeks a political solution. Furthermore, it is high time that the negotiating process in South Africa is approached in a serious manner.

Is a discussion between the government and the ANC delegation under the leadership of a freed Nelson Mandela really so unthinkable? Just think what dividends (political and economic) such talks could give our country and its whole population.

Digging Up the Past

It is sometimes argued that science and politics don't mix; science is supposed to be purely objective and nonpartisan. However, in the November/December 1988 issue of Archaeology *magazine, one article made a case for the contribution of scientific inquiry to the task of opposing Afrikaner colonialism in the land of South Africa.*

Unfortunately, because of apartheid, *archaeologists working in South Africa are generally not invited to attend conferences and academic meetings in Europe or elsewhere, thus isolating some of the more progressive work. Professor of Archaeology Martin Hall, at the University of Cape Town, specializes in the early black settlement and colonial archaeology in South Africa. His article excerpted here gives evidence of some of the important work conducted in that country, debunking Afrikaner claims to equal rights to the land of the colonized. The following is reprinted with permission of* Archaeology *magazine Vol. 41, No. 6 (Copyright © The Archaeological Institute of America, 1988).*

CAPE TOWN: It is difficult to argue hereabouts that archaeology is independent of politics. Yet in books like Peter Ucko's recently published *Academic Freedom and* Apartheid: *The Story of the World Archaeological Congress*—which deals principally with the reaction of European archaeological groups to the *apartheid* system—there is almost no mention of what archaeology inside South Africa is all about.

What do archaeologists here do? More to the point, how do we contend with the ideology of *apartheid*? Can we change things for the better?

It should be realized, in the first place, that *apartheid* is not some psychological aberration, a hangover from early colonialism that has become part of the Afrikaner psyche. *Apartheid* is about resources—about keeping vast areas of productive farmland in the hands of a wealthy white minority, and about ensuring that large numbers of black migrant workers keep industry supplied with cheap, unorganized labor. Consequently, most of the black population is confined to small fragmented homelands in the less productive farming areas, from which the men can be bused to the cities and mines.

As with any such starkly inhuman economy, a consistent set of beliefs is necessary to persuade the whites that the system from which they profit is natural and justified. The cornerstone of this ideology is, of course, entrenched racism—a belief that blacks are inherently inferior and therefore naturally suited to their lot. Supporting this racism, and a bulwark of *apartheid*, is the belief that such a system is

historically justified—that the past validates the present. This is where archaeology comes in.

I would not like to give the impression that most, or even the majority, of archaeologists working inside South Africa see themselves as fighting at the intellectual barricades. The proper role of politics in archaeology has been debated here for several years, and individuals hold widely differing positions. But it can be argued that, whether or not every archaeologist likes it, the way in which South Africa's past is written, or rewritten, has implications for the politics of the present.

This point is best supported by several examples, which will also serve to illustrate the sort of archaeology that is being practiced in South Africa. For many years one of the principles of South African history, repeated endlessly in school textbooks, was that black, Bantu-speaking farmers migrated southward across the Limpopo Valley at the same time that white, Dutch speaking farmers moved northwards and eastward from the Cape. They met, it was maintained, at the Fish River. From this reconstruction, the lesson was simple. Both black and white had equal historical rights to the land: the past was a charter for the present.

But during the past twenty years, excavation, analysis and publication by archaeologists have shown that the ancestors of today's black South Africans had moved southward into the country by A.D. 200, some fifteen hundred years before the Dutch established a foothold at the Cape.

A second example, also closely tied to the issue of land rights, is the historical validity of the homelands—those little parcels of territory that can make a map of South Africa look particularly colorful. For a long time the South African government's *Yearbook* has presented these as the ancestral territories of their present confined populations—the Zulu, Sotho, Venda, Xhosa, and others who, under *apartheid*, are seen as being guided to statehood by their benign white overlords.

But again, archaeology tells a different story. Material culture, settlement patterns, economy, and ecology illustrate a complex early history in which land was settled and relinquished and communities moved and re-formed. Although archaeologists argue about what this complicated information means in terms of human behavior, it is abundantly clear that the *apartheid* history of late migration, settlement and tribal continuity into the present homelands has no basis in fact.

Intentionally or not, therefore, archaeological research has knocked the stuffing out of a central tenet of official South African history. Without the sanction of the past, white claims to the majority of the land look more like what they actually are—harsh exploitation rather than the natural order.

Equally important have been attacks on the notion that African societies have always been arcadian in their simplicity, rustic communities of people innocent of civilization who must serve apprenticeship as farm laborers or factory hands before they are ready for the complexities of the modern world. Scenes of Merrie Africa are on hand for any tourist: traditional villages, bare-breasted tribal dancers, quaint bead and basket work.

Again, archaeological work belies the convenient facade. By A.D. 1100, black rulers in the hot, dry Limpopo Valley were establishing hegemony over vast areas of land, basing their power on complex and profitable trading relations with the masters of Arabian dhows bartering for gold and ivory along the east African coastline. Within a few centuries the early Zimbabwe state had established a control that was to last far longer than Dutch control of the Cape. At its center was Great Zimbabwe, a city of more than thirty thousand people, with monumental stone architecture and storehouses of exotic trade goods.

At the same time, farmers on the high grasslands to the south were building

innumerable towns, with complex stone enclosures to house the cattle that were the basis of their prosperity. To the east, where the environment was too harsh to support profitable farming, communities concentrated on metal production, trading widely in high quality iron that had been produced by techniques common in Africa; meanwhile, Europe was still in a condition of preindustrial feudalism. Archaeology has shown that the wealth, aesthetics, exploitation, and suffering of civilization were well known in southern Africa before the colonial era.

Consider the San, or "Bushmen"—the hunters and gatherers of the Late Stone Age who were here long before either Dutch or Bantu-speaking farmers arrived and whose descendants live today in the arid lands of Namibia and Botswana. Their art—carefully executed drawings of drawings of animal and human figures—adorns the walls of rock shelters in all the major mountain ranges of South Africa. Yet they continue to be widely regarded as children of nature, left behind by human evolution, painting for infantile pleasure.

Archaeological work reveals a more complex reality, a mythological system in which shamans mediated between day-to-day experience and the life of the mind. San artists saw eland, elephant and other animals as symbols of great potency and placed their images on the rock surface in complex juxtapositions rich with meaning. Ideals and beliefs such as these are difficult to describe using western intellectual concepts and are hardly consistent with the image of nature's savage.

Finally, there is the image that the white population has chosen for its own history. The renovated and restored mansions and homesteads of the seventeenth- and eighteenth-century Cape are paragons of stately gentility. White-washed walls, ornate baroque gables and polished yellowwood floors immerse the visitor in spartan, god-fearing good sense. Cool vineyards and fine wines to sample add an impression of industry and good taste. The visitor leaves with the assurance that modern South Africa rests on solid historical foundations—forefathers who kept calm in crisis and won in the end.

The historical documents tell a different story. The early colonial Cape was a slave society, and by the end of the eighteenth century, slaves in Cape Town outnumbered the free by two to one. Slaves tilled the fields, picked the grapes, cleaned the floors, and shared their owners' beds. Slaves were kept in check by the combination of brutality and psychological control that is common to slave societies everywhere. The colonial population lived in constant fear of slave revolt, economic collapse and disease.

Not surprisingly, the realities of this life have been wished away in the present. Archaeology has the power to restore this hidden dimension—to tell of the day-to-day realities of early colonial society.

Not Just for Art's Sake

As a consequence of European colonial invasions at the end of the 15th century, indigenous art and culture have been looted, banned and perforce submerged into the dominant, new forms. Native artistic expression has since been dismissed and its importance minimized until this century, when the designs of the indigenous peoples began to gain some "official" acceptance as national art forms—first in Mexico, and soon after in other Latin American countries.

Lately, Australian Aboriginal art, too, is gaining new acceptability,

even respect, among whites for its imaginative brilliance and spiritual depth. Time's Robert Hughes reported, in that magazine's 31 October 1988 issue, on a recent exhibit in New York City. He describes the graphic contradiction Aboriginal art poses to English colonizers' racist denigration of Australia's first peoples. (Copyright © 1988 Time, Inc. Reprinted by permission.)

"The inhabitants of this Country," wrote William Dampier, the English sea dog who in 1688 became the first Englishman to record his impressions of Australia, "are the miserablest people in the World...Setting aside their humane shape, they differ but little from Brutes." Early this year, English journalist Auberon Waugh, who seems to have inherited his father Evelyn's racism if not his genius, visited Sydney for the Australian bicentennial. "They had no form of civil society at all, beyond whatever social organization may be observed in a swarm of locusts," he wrote of the Aborigines. Their art "must be judged [as] the merest piffle by civilized standards."

From brutes to insects, in only 300 years: what an evolution for English thought! And in between, for the Aborigines, a long and melancholy history of invasion, resistance, murder, rape, rum and the destruction of tribal identity by white paternalism and greed. No indigenous people ever had a worse deal from European colonists.

And yet they did survive. There are more than 225 thousand Aborigines living today, about 1.5 percent of Australia's population, and instead of dying out (as most whites around 1900 assumed they would), they are increasing their numbers. The fate of these people is now one of the prime moral dilemmas Australia faces. It has also made whites more aware of the realities of Aboriginal culture. For here is the oldest continuous tradition of visual art on earth (thirty thousand years at least, more than twice the age of the Lascaux Cave paintings), tenaciously maintained in the face of pressures from the white majority. It is not a single tradition, for the Aborigines were never a homogeneous people. Between their arrival in Australia forty thousand years ago and the whites' arrival in 1788, their society ramified into hundreds of tribes and languages, thinly spread across a landmass almost the size of the U.S.

Nevertheless, it is strange that in the U.S., where every kind of primitive art from Nigerian to Alaskan has been exhaustively studied and consumed, so little attention has been paid to Aboriginal art. Something so old is very new—at least in America. Hence the fascination of "Dreamings: the Art of Aboriginal Australia," on view at the Asia Society Galleries in New York City through Dec. 31. This show of some 100 paintings and carvings, the older ones in earth colors on bark, the more recent in modern acrylic pigments on canvas or panel, was mainly lent by the South Australian Museum, the prime collector of this work. Its importance lies in the link between ancestral Aboriginal painting and its contemporary forms—a third of which, in this show, comes from the Warlpiri culture at Papunya and Yuendumu, in the western desert.

A degree of *schadenfreude* (pleasure in the misfortunes of others) dogs the aesthete's responses to modern primitive art. It gets written off as airport stuff for tourists, insincere, perfunctory, without the aura of mythical use. With the best of contemporary Aboriginal painting this can not be done, partly because of the striking beauty and formal intensity of the work, but largely owing to the consistency and continuity of its central mythology—that of the Dreamings, or ancestral beings.

The show's five curators, anthropologists with an unusual sensitivity to the way

images work in Aboriginal life, have produced in their catalog what may be the best short introduction to the Aboriginal world view now in print. Very briefly, the Dreamings are the world's spirit ancestors; they brought the world out of chaos, formed it, filled it with plants, insects, animals and fish, created human society. They exist in vast numbers, and there is one for every nameable entity: a Honey Ant Dreaming, for instance, or a Witchetty Grub Dreaming, a Flannelflower Dreaming or a Bushfire Dreaming.

The deeds of each of these ancestors, in creating and sustaining the world, form an immense narrative beside which the Mahabharata is a mere short story, and all of them are embedded in the sacred sites that cover Australia. (From the Aboriginal point of view, in fact, Australia is one big sacred site.) Hence as curator Peter Sutton puts it in the catalog, "The land is already a narrative—an artifact of intellect—before people represent it. There is no wilderness."

The myriad dots that form atmospheric drifts of color in a recent Papunya school painting like Five Dreamings, 1984, by Michael Nelson Jakamarra and his wife Marjorie Napaljarri, may fill the space with an "all-overness" as complete as any painting by Jackson Pollock. But they are specific symbols for terrain, vegetation, movement, sites and animals, of which the most obvious is a big reddish snake. Concentric circles mark campsites or rock holes, straight lines the routes between them, wavy ones rain or water courses, and so on. Even the *toa* carvings collected from tribesmen around Lake Eyre in the early 1900s, which seem to radiate a degree of sculptural fantasy that predicts the surrealist work of Giacometti and the totems of David Smith, are maps of landscape and the ancestors it contains.

Tribal art is never free and does not want to be. The ancestors do not give one drop of *goanna* spit for "creativity." It is not a world, to put it mildly, that has much in common with a contemporary American's—or even a white Australian's. But it raises painful questions about the irreversible drainage from our own culture of spirituality, awe and connection to nature.

United Nations Update*

In an effort to promote international law and the efforts of the United Nations to eliminate racism and racial discrimination, Without Prejudice *regularly summarizes major activities undertaken in the United Nations and its environment toward that end. Special attention is given to the work of the United Nations Economic and Social Council, the Commission on Human Rights, the Committee on the Elimination of Racial Discrimination and other agencies and divisions dealing with the specific problems of* apartheid, *Namibia and Palestine, as well as relevant developments in the General Assembly and the Security Council during the forty-third session, from September 1988 to March 1989.*

Racism and Racial Discrimination

During the forty-third session, the theme of human rights within the UN environment was highlighted by activities commemorating the fortieth anniversary of the Universal Declaration of Human Rights. Before the opening of this session, the Centre for Human Rights had cosponsored with the University of Milan a three-day conference, on 7–9 September 1988 in Milan, on "The Declaration of Human Rights: Past, Present and Future." Under General Assembly (GA) resolution 926 (X) concerning human rights advisory services, the conference brought together European and North

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* The present report was compiled by Joseph Schechla and Virginia Tilley.

American experts, state representatives, nongovernmental organizations (NGOs) and the academic community for discussions on the effects of the universal declaration in defending human rights on the national and international levels, and on how to implement human rights standards by way of the UN's existing legal machinery.

The year 1988 also marked the midpoint in the Second Decade to Combat Racism and Racial Discrimination (declared in GA resolution 38/14 of 22 November 1983). Related activities currently underway include a compilation of national legislation of member states with a view to further developing such legislation on a universal basis. Other UN projects within the framework of the second decade include the preparation of "model legislation" to prevent racial discrimination, the organization of training courses and seminars for drafting antidiscrimination laws, and the preparation of a manual of existing national institutions which promote tolerance and combat racism and racial discrimination. On 27 September 1988, the secretary-general reported on the progress of these elements of the program of action to the General Assembly and presented a brief analysis of relevant national legislation of forty-four member states [A/43/637].

In paragraphs 55 and 56 of its program of action, the Second World Conference to Combat Racism and Racial Discrimination (1983) recognized the importance of nongovernmental efforts in combatting racism. During the previous session, the secretary-general had issued two *notes verbales* requesting reports from governments, intergovernmental agencies and NGOs on such private group action. Responses, though scanty, were positive; and the replies of Benin, the German Democratic Republic, Iraq, the Organization of American States and the United Nations Educational, Scientific and Cultural Organization (UNESCO) were relayed to the General Assembly on 26 September 1988 [A/43/631].

The resolution introduced by Tanzania and adopted by the GA on the subject of the second decade essentially reaffirmed the decisions of past years [43/91]. In substantive debate, however, the United States representative took the floor to announce that the U.S. would not participate in any action on this resolution, as it equated Zionism with racism. Israel rose to issue a similar statement of disapproval, after the adoption of the resolution without a vote. The Federal Republic of Germany (FRG) announced its satisfaction that the resolution was adopted without a vote; however, it rejected the resolution's references to migrant workers, as their status did not imply criteria for racial discrimination.

The GA's twenty-four-member Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples surveyed its work for 1988 in a report to the General Assembly in September [A/43/23 of 27 September 1988]. Among its reports on the various decolonization activities, the special committee reported its annual work in connection with the Second Decade to Combat Racism and Racial Discrimination. While taking note of the actions of states and UN bodies, two issues in this report were particularly notable. After reviewing once again the case of Puerto Rico, the special committee reaffirmed the right of the people of Puerto Rico to self-determination and independence [A/AC.109/973 of 16 August 1987]. Also, the special committee reaffirmed the imperative of severing all links with the racist regime in South Africa, and noted with regret that the World Bank and the International Monetary Fund continue to maintain relations with the South African government [A/43/23, op. cit., 34–35, para. 119].

Also within the framework of the program of action to combat racism, the secretary-general organized a global consultation on racial discrimination in Geneva, 6–8 October 1988. Under the chairmanship of Undersecretary-General for Human Rights Jan Martenson, the session included the participation of representatives of the UN system, of regional intergovernmental organizations and of NGOs in consultative status with

the Economic and Social Council (ECOSOC). The purpose of the three-day consultation was to help coordinate international activities to combat racism and racial discrimination, and it focused on the following topics:

(a) The international challenge of racism;
(b) The origins of racism and racial discrimination;
(c) Contemporary forms of racism, with particular reference to *apartheid*;
(d) Vulnerable groups and racism; and
(e) Current and future United Nations action in the field of racism and racial discrimination.

The proceedings and the resulting recommendations emphasized the need for states to increase appropriate legal measures to combat discrimination in their own jurisdiction. Participants also focused on the experience of the victim and on ways in which the role of United Nations bodies—including UNESCO, CERD and the Commission on Human Rights—could be strengthened through nonofficial and nongovernmental efforts [E/1989/48].

Economic and Social Council: Commission on Human Rights

The Subcommission on the Prevention of Discrimination and Protection of Minorities concluded its fortieth session on 2 September 1988. Agenda items included racism and racial discrimination, as well as *apartheid*, administration of justice, the rights of indigenous peoples, and slavery and slavery-like practices. Focus was directed to the countries of Chile, Haïti, El Salvador, Guatemala and Albania, with heightened attention given to the case of racism in South Africa and to Israel's practices in the occupied Arab territories.

The subcommission considered that a wider dissemination of printed and audio-visual materials, and the convening of a series of seminars on the threats to vulnerable groups, would enhance present efforts to combat racism and discrimination. It also called upon the secretary-general, within the framework of special advisory services, to convene a seminar on current manifestations of racism and their causes [1988/6 of 25 August 1988]. Concerning the violent Hutu-Tutsi conflict in Burundi leading to the mass killings and exodus of the Hutus in August 1988, the subcommission called upon the secretary-general to offer the Government of Burundi all assistance possible within the program of human rights advisory services to deal with the current conflict and its causes [1988/1 of 24 August 1988].

The subcommission called upon its parent Commission on Human Rights to adopt a resolution requesting the UN secretary-general to invite state parties [to the Slavery Convention (1926), the Supplementary Convention on the Abolition of Slavery, the Slave Trade and the Institutions and Practices Similar to Slavery (1956), and to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)] to submit regular reports on the situations in their countries. It also requested the secretary-general to report to the Working Group on Slavery and Slavery-like Practices at its fourteenth session on the sale of children. It also urged member states to enact legislation criminalizing the production, distribution and possession of pornographic material involving children [1988/31 of 1 September 1988]. The subcommission also recommended to the Commission on Human Rights to urge ECOSOC to adopt a resolution commemorating the fortieth anniversary of the adoption of the 1949 convention, and propose that 2 December be declared "World Day for the Abolition of Slavery in All Its Forms" [draft resolution VIII, in E/CN.4/Sub.2/1988/45

of 25 October 1988].

At its thirty-fourth session in 1978, the Commission on Human Rights had established an open-ended working group to draft a declaration on the rights of members of minorities, within the framework of the principles set forth in article 27 of the International Covenant on Civil and Political Rights (1966). Subsequently, a draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities, proposed by Yugoslavia [E/CN.4/L.1367/Rev.1], served as the basis for the working group's discussions. In the forty-fifth session of the Commission on Human Rights, this working group convened five meetings in February 1989, which culminated in agreement on significant parts of the draft declaration. Fine points of the draft declaration remain under discussion; however, the text of the document on which preliminary agreement has been reached was published this year along with amendments currently proposed by member states and NGOs [E/CN.4/1989/WG.5/ CRP.1].*

Committee on the Elimination of Racial Discrimination

During the General Assembly session, the fate of the Committee on the Elimination of Racial Discrimination (CERD) was discussed, and many speakers expressed regret that a lack of necessary funds had led to the curtailment of its most recent (thirty-sixth) session, 1–12 August 1988, which was cut short by one week. A resolution introduced by Yugoslavia called for the states members to the International Convention on the Elimination of All Forms of Racial Discrimination to honor their fiscal commitments, and to provide for an extended meeting of CERD during 1989, "pending resolution of the current financial difficulties" [43/96 of 8 December 1988]. The Netherlands explained that it had not sponsored this resolution as in previous years, as that delegation preferred the financial situation to be addressed more explicitly. They suggested that the GA should consider practical ways of resolving the crisis in an overall context covering all human rights bodies, and should go beyond merely expressing regret and seeking short-term and *ad-hoc* remedies. One such action could include the suspension of voting rights for delinquent states parties to the international convention in certain meetings. Denmark joined the Netherlands in suggesting that CERD be alternatively financed through the regular UN budget. Meanwhile, the functioning of this committee continues steadily to deteriorate.

The committee was formed in 1982 to examine measures taken by parties to the international convention to ensure protection against racial discrimination within state jurisdictions. The committee oversees the implementation of the convention, which now boasts 125 states parties. CERD is empowered under article 14 of the international convention to receive and consider reports and grievances of individuals or groups. The competence of the committee was affirmed when the tenth state made a declaration to recognize this article on 3 December 1982. The twelve countries which have so far made this declaration are: Costa Rica, Denmark, Ecuador, France, Iceland, Italy, the Netherlands, Norway, Peru, Senegal, Sweden and Uruguay. The present committee is comprised of the following eighteen experts: Mahmoud 'Abdoul-Nasr (Egypt), Hamzat Ahmadu (Nigeria), Michael Parker Banton (United Kingdom [*sic*]), Mohamed Omer Beshir (Sudan), André Braunschweig (France), Eduardo Ferrero Costa (Peru), Isi Foighel (Denmark), Ivan Garvalov (Bulgaria), George O. Lamptey (Ghana), Karl Joseph Partsch

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* The text of the current draft Declaration on the Rights of Persons Belonging to National, Ethnic, Religious or Linguistic Minorities is published in the "Documentation" section of this issue of *Without Prejudice—Ed.*

(Federal Republic of Germany), Yuri A. Reshetov (Soviet Union), Jorge Rhenan Segura (Costa Rica), Shanti Sadiq Ali (India), Agha Shahi (Pakistan), Michael E. Sherifis (Cyprus), Shahua Song (China), Kasimir Vidas (Yugoslavia) and Mario Jorge Yitzis (Argentina).

Nongovernmental Organizations

An International NGO Conference for Action to Combat Racism and Racial Discrimination in the Second UN Decade was convened under the auspices of the NGO Subcommittee on Racism, Racial Discrimination, *Apartheid* and Decolonization, 11–14 October 1988, whose convening coincided with the International Day of Solidarity with South African Political Prisoners. This conference, held at the Palais des Nations in Geneva, brought together representatives of national and international NGOs, liberation movements, migrant workers associations and indigenous peoples, as well as observers from governments and UN specialized agencies. The conference was convened under three main agenda items, concentrating on *apartheid* and the independence of Namibia, the elimination of discrimination against indigenous peoples, and racial discrimination against migrants and migrant workers. The NGO reports on these issues demonstrated exceptional clarity and depth of analysis, and the statement on southern Africa reflected a particularly well-informed position. Notable, too, is the statement on the "elimination of discrimination against indigenous peoples; protection of their human rights." This statement expressed universal solidarity with the oppressed and marginalized peoples of the world and contained the recognition—in spite of efforts by conference president Romesh Chandra (World Peace Council) unilaterally to remove it from the document—that the Palestinian people have rights as "the original inhabitants of Palestine."*

The report on migrant workers and their rights addressed itself mainly to conditions of foreign workers in Europe, and emphasized their rights to vote, to freedom of movement, and to education and training, and considered the special conditions of women migrants and migrant workers.

South Africa and Namibia

General Assembly/Security Council

The General Assembly and Security Council continued to focus on three dimensions of the conflict in southern Africa: the question of Namibia, the belligerent acts of South Africa to destabilize its neighboring states and the racist system of *apartheid* in South Africa itself.

Practical measures of the GA have sought to isolate South Africa through various sanctions that have been adopted by international consensus. The secretary-general reported to the GA the current national measures in individual member countries to implement this consensus [A/43/786 of 7 November 1988]. This report observed, however, that among the shortcomings in implementing these measures is the fact that, in most countries, the regulating agency is separate from the authority upon which implementation depends. The eleven-member Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa issued its report on 22

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* This historic document is reprinted in "Documentation," in this issue of *Without Prejudice—Ed.*

November 1988, citing seventy-seven cases of alleged violations of the international embargo. While, as a matter of policy, no net exporter or major producer of oil allows the export of its oil to South Africa, the most consistent violators listed were ships flying the flags of Norway, Liberia and Singapore, the latter two are not cited in the secretary-general's report as having legal bans on oil exports to the *apartheid* state.

On 5 December 1988, the GA adopted a series of resolutions on the situation in South Africa, with reference to sanctions, military cooperation, the oil embargo against South Africa, and Israel's relations with the *apartheid* regime [43/50 A–K].

Special Committee against Apartheid

Under the chairmanship of Joseph N. Garba (Nigeria), the GA's Special Committee against *Apartheid* began this review period with its sponsorship of the 2–4 September 1988 "Culture against *Apartheid*" symposium. The session, held in Athens and chaired by Minister of Culture of Greece Melina Mercouri, gathered international artists and celebrities, including Harry Belafonte, Glenda Jackson and Nigerian Nobel laureate Wole Soyinka, to consider the current situation in South Africa, to discuss the cultural boycott of that country and to consider new initiatives for the entertainment community in connection with the international efforts to isolate *apartheid* and the South African government.

Throughout its work, the special committee recognized the contradiction posed by the South African regime's involvement in diplomatic efforts aimed at a settlement of the conflict in southern Africa, while it has escalated its repression there. In the face of this contradiction, the special committee's report, "*Apartheid*: A Challenge to All Members of the International Community," asserted that the challenge to the international community remains as high as ever. It concluded, "*Apartheid* is not only being aggressively maintained, but is also becoming the object of a disingenuous effort to camouflage it through 'reforms'" [*Notes and Documents* 14/88 of December 1988].

This year, the special committee expressed concern over the close military collaboration between South Africa and the Government of Chile. In his statement, the chairman Major-General Garba stated that, through its recent actions, the Chilean government has disregarded its own pronouncements and expressed contempt for the international community's decisions—as embodied in Security Council resolutions 418 (1977) and 558 (1986) on the arms embargo against South Africa.*

The flood of refugees caused by South Africa's domestic and external policies counts as one of the pressing social consequences of *apartheid* that is borne by states neighboring South Africa. On 16–18 January 1989, the special committee convened a conference in Harare on "Special Needs of South African and Namibian Refugee Women and Children." The work of this meeting, organized in association with Women's Clubs of Zimbabwe, focused on the plight and special needs of refugee women and children, and reviewed the international response to these needs and ways to promote worldwide moral and material support. The Harare conference called for the establishment of a support group of eight prominent women to maintain close contact with the local situation, to provide publicity and to monitor the return and reintegration of Namibian women and children into a free Namibia.

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* Also see translated excerpt of "Pythagoras and Arms," from *Análisis* (Santiago) in "Views from the World Press," *Without Prejudice* Vol. II, No. 1, 106–7—*Ed.*

United Nations Council for Namibia

Much of the social and relief efforts of the UN Council for Namibia in the forty-third session was guided by the knowledge conveyed in its report (of Standing Committee II) on "Social Conditions in Namibia."

A report of the council on contacts between member states and South Africa was issued on 28 November 1988 [A/AC.131/297]. It reviewed the period since the adoption of resolution 42/14, calling for the cessation of political, economic, cultural and military relations. The report, although by no means comprehensive, mostly focused on western states and detailed select cases, such as the listing of British companies in Namibia and the direct investment in South Africa of the U.S., Canada, the FRG and United Kingdom (*sic*). The report conspicuously omits mention of Israel's relations with South Africa in all fields under review, except to assert that "Israel has maintained political, military and economic contacts with a number of bantustans" [Ibid., 5, para. 14].

This UN session coincided with the historical developments leading to the independence of Namibia. Although agreements among the South African, Angolan and Cuban governments were initiated and negotiated outside the United Nations framework, it was in the chambers of ECOSOC in New York that the agreements were signed on 22 December 1988.*

In support of the independence process, the General Assembly approved the resolution submitted by its fifth committee (Administrative and Budgetary) providing $416.2 million for the operations of the United Nations Transition Assistance Group (UNTAG), which was mandated to begin 1 April 1989 [GA/7821].

Economic and Social Council: Commission on Human Rights

On 23 February 1989, the Commission on Human Rights adopted seven resolutions relating to violations of human rights in southern Africa and to efforts at eliminating racism and racial discrimination. The commission urged governments not to recognize any administration or entity installed in Namibia that did not result from free elections supervised by the United Nations. It also called for the unconditional release of all children held in detention in South Africa and Namibia, and demanded the immediate dismantling of the so-called "rehabilitation camps" or "re-education centers," which serve as part of the strategy of *apartheid* to physically and mentally abuse African children. As usual, the commission called on all states that have not done so to ratify the relevant international instruments, particularly the International Convention on the Suppression and Punishment of the Crime of *Apartheid*. It was also noted that Mauritania acceded to that international convention on 13 December 1988, becoming the eighty-eighth state to do so.

The subcommission reaffirmed that *apartheid* is a crime against humanity and demanded the immediate lifting of the state of emergency and the release of all political prisoners in South Africa. It further condemned South Africa's imposition of the death penalty on fifty-three opponents of *apartheid*, including the "Sharpeville Six" (now commuted), and the decision to proceed with local elections organized along racial lines.

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* See the full text of these agreements reprinted in "Documentation," in this issue of *Without Prejudice—Ed.*

Prison conditions and the case of the hunger strike by detainees at Johannesburg Prison (February 1989) were the subject of a special Centre against *Apartheid* publication, *Resistance to* Apartheid: *Detainees Hunger Strike* (undated), in which the statements of the prisoners and their supporters were publicized.

Other United Nations Bodies

The problem of refugees and displaced persons in southern Africa was the subject of a 22–24 August 1988 conference, cosponsored by the Organization of African Unity (OAU) and agencies of the United Nations. It was convened in Oslo to consider the situation and to sensitize the international community to this grave problem now facing nine countries in the southern African region. The objectives of the conference also included building international solidarity and mobilizing increased material assistance to displaced persons as part of a plan of action for both the short and long term. However, the conference did not consider the plight of forcibly displaced persons by "legal" and extrajudicial measures inside South Africa.

Palestine

General Assembly/Security Council

In December 1988, the General Assembly adopted its usual series of resolutions condemning Israel for its violations of Palestinian rights and of international law regulating the behavior of states. However, a few extraordinary resolutions addressed specific matters of the day. In resolutions opposed only by the United States and Israel (with the United Kingdom [*sic*] abstaining), the GA deplored the action by the United States, as host country, of denying a visa to Palestine Liberation Organization (PLO) Chairman Yasir 'Arafat to address the assembly [43/48 of 30 November 1988]. The GA adopted a second resolution on the same issue, requesting that the secretary-general move the discussion of agenda item 37, "the Palestine question," to the United Nations Office in Geneva [43/49 of 2 December 1989]. Consequently, the debate on the Palestine question took place from 13–15 December 1989, and resulted in a resolution noting with appreciation Chairman 'Arafat's remarks at the session and welcoming the outcome of the Nineteenth Extraordinary Session of the Palestine National Council (the Palestinian Declaration of Independence)* as a positive contribution towards a peaceful settlement [A/RES/43/176 of 20 December 1988]. Also, the General Assembly adopted another resolution specifically condemning Israel for its suppression of Palestinians during the uprising [A/43/21 of 3 November 1988].**

The First Committee (Disarmament) passed a weak resolution without a vote, urging all states in the Middle East "to consider seriously taking the practical and urgent steps...to establish a nuclear-weapon-free zone in the region" [43/65 of 7 December 1988]. However, it adopted a more poignant and substantive resolution on the specific case of Israeli nuclear armament, in which the GA noted Israel's refusal so far to place its nuclear facilities under International Atomic Energy safeguards, and expressed alarm over

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* See "Palestine's Declaration of Independence" (Special Document), *Without Prejudice* Vol. II, No. 1, 72–81—*Ed.*

** This resolution is reprinted in the "Documentation" section of this issue of *Without Prejudice*—*Ed.*

and condemned Israeli-South African cooperation in nuclear weapons production [43/80 of 7 December 1988]. Only the United States and Israel opposed the latter resolution in a roll-call vote.

The GA's Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories again was prevented by Israel to enter Palestine, as has been the case since the establishment of its mandate in 1968 [2443 (XXIII) of 19 December 1968]. The special committee's report of 24 October 1988 [A/43/694] presented findings gathered from documentary sources, as well as oral testimonies delivered at hearings in Cairo, Damascus, 'Amman and Geneva. This year's report appears to be the most comprehensive and voluminous drafts ever presented to the GA on the subject. Two of the lengthiest accounts in the special committee's report are the sections on the "Wave of disturbances," offering a chronological account of the first year of the *intifadah* (uprising), and the section on "Treatment of detainees." This document also includes annexes listing the first 386 martyrs of the uprising (up to 10 August 1988) and a petition on conditions of detention as issued by a group of prisoners at Ansar III, the Israeli concentration tent prison. This report rivals much of the commercial and NGO publications on the *intifadah*'s first year, by virtue of its depth and thoroughness of reporting. The report was adopted by resolution A/43/L.21, with a vote of 130 in favor, sixteen abstaining, and only the United States and Israel opposing.

The special committee's annual report was augmented by periodic summaries on events in the occupied Palestinian territories [e.g., A/43/784 and S/20261 of 4 November 1988; A/43/806 (Annex) of 21 November 1988].

Committee on the Exercise of the Inalienable Rights of the Palestinian People

The Committee on the Exercise of the Inalienable Rights of the Palestinian People (CEIRPP) received its new chairperson, Absa Claude Diallo (Senegal), during the forty-third session. Among her first duties in office, Mme. Diallo presented the report of CEIRPP to the General Assembly, recounting the activities and developments on the question of Palestine in the UN and NGO communities over the previous year [A/43/35 of 27 October 1988].

The committee sponsored the Twenty-first UN Seminar on the Question of Palestine (Fifth African Regional Seminar) in Cairo, 18–22 December 1988. This was immediately followed by the Second UN African Regional NGO Symposium on the Question of Palestine there, 18–21 December 1988. The themes explored by experts and state representatives at the twenty-first UN seminar included the *intifadah* and the urgency for an international peace conference, the role of the PLO, and the mobilization of public opinion on the Palestine question. At the NGO symposium, participants from twelve organizations listened to three panels and focused their practical work on mobilizing public opinion, and the relationship between the Palestinian uprising and the struggles of Namibia and South Africa, as well as on greater networking among African NGOs.

The committee also sponsored a number of events in conjunction with the United Nations Department of Public Information, with a view to improving international media coverage and content on the Palestine question. CEIRPP held an Asian regional journalists' encounter on the question of Palestine in Singapore, 31 January–1 February 1989, which was preceded by national encounters held at London (16 January), West Berlin and East Berlin (18 and 19 January, respectively), in New Delhi (24 January) and in Bangkok (26 January). Seminars were subsequently held in Sydney (3 February), Canberra (7 February), Wellington (9 February) and Tokyo (13 February). The objective

of these encounters was to promote better understanding of the question of Palestine among leaders in the media, bringing them together with experts on the subject for brief, in-depth, informal and candid discussions.

The Security Council's attention to the question of Palestine, this session, included the consideration of yet another resolution affirming the applicability of the Fourth Geneva Convention. Algeria, Colombia, Ethiopia, Malaysia, Senegal and Yugoslavia submitted the resolution which received fourteen votes cast in favor, with the veto vote coming from United States [S/20463].

Economic and Social Council: Commission on Human Rights

The forty-fifth session of the Commission on Human Rights (30 January–10 March) adopted several measures to protect and promote the worldwide observance of human rights and fundamental freedoms. With regard to the Palestine question, the commission welcomed the declaration of the State of Palestine and considered the decisions taken by the Palestine National Council on 15 November 1988 as a basis for establishing a just and lasting peace in the Middle East.

The commission called upon Israel to comply with its obligations under the United Nations Charter and to withdraw from the Palestinian and other Arab territories which it had occupied since 1967. It affirmed the *intifadah* against Israeli occupation since 8 December 1987 as a legitimate form of resistance and rejection of foreign occupation.

The Subcommission on the Prevention of Discrimination and Protection of Minorities reaffirmed its call for the convening of the international peace conference on the Middle East in accordance with GA resolution 38/58 C of 1983. It also affirmed that Israel's occupation of Arab territories itself constitutes a gross violation of human rights and a crime prejudicial to the peace and security of humanity under international law. Specifically, the subcommission recognized among Israel's practices toward the Palestinian people its subjection of Palestinian villages and cities to living conditions designed to destroy them, prevention of access to medical services, killings by asphyxia, and preventing new births by gassing and severely beating pregnant Palestinian women. In light of these conditions, the subcommission reaffirmed the right of the Palestinian people to resist occupation by all means.

During the six-week session, the Commission on Human Rights adopted four resolutions on the subject of human rights violations by Israel in the occupied territories of Palestine (including Jerusalem), Syria (Golan) and southern Lebanon.

UNRWA

As the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) looked ahead to another unpredictable winter in Palestine and Lebanon, it expressed concern for the thousands of Palestine refugees without housing in those countries. UNRWA Commissioner-General Giorgio Giacomelli reported, on 4 October 1988, that UNRWA was able to provide grants to eight hundred refugee families from Shatila and Burj ul-Burajnah camps for shelter reconstruction. He also testified that he had witnessed that "the number of casualties inflicted on the refugees [in the Israeli-occupied territories] by different means continues to be alarmingly high" [PAL/1698 of 4 October 1988].

UNRWA bears the responsibility of operating three training centers in the Jabal Nablus and Jabal al-Khalil regions (West Bank) and one training center in the Gaza district of occupied Palestine. These facilities educating 130,000 students had been closed since late 1987. In addition, UNRWA's ninety-nine elementary schools there have been

closed for the year, except for seven weeks of intermittent operation during May and June 1988. (Only schools in Jerusalem had been allowed to reopen.) Giacomelli concluded that the results of Israel's school-closing policy have been "tragic and costly" [PAL/1699]. UNRWA's financial report for 1987, its financial achievements in 1988 and its budget for 1989 were contained in the report of the commissioner-general on 20 October 1988 [A/43/13 (Suppl. No. 13)].

Indigenous Peoples

General Assembly/Security Council

It is notable that, in nearly all regular sessions of the United Nations concerned with social, political and human rights, reference to indigenous peoples is almost entirely missing. This is especially significant in general discussions and resolutions on decolonization and the liberation movements, in which the universally recognized right to resist imposed, alien regimes is not applied to indigenous peoples and their identical struggles to defend their lands and cultures. From an indigenous perspective, all the overgovernments are essentially colonialist, whether or not the indigenous peoples are pursuing federation schemes or other compromise strategies. However, this reality is denied by states themselves, whose preferences shape and limit UN debate in all intergovernmental forums. Thus the entirely pertinent issue of the indigenous peoples' oppression and resistance is generally obscured and omitted from discussion.

In this context, it is also notable that *apartheid* so dominates discussions of racism in the UN, seconded only by the volume of discussion on the effects of Zionism in Palestine. These emphases reflect the relatively well-organized and lively presence of advocates of both groups in the UN, as much as the obvious justice of the causes of black South Africans and the Palestinian people. Yet it may also be guessed that by the very fact that *apartheid* is so glaring a case of racism, and that world consensus has made it an acceptable object of censure, governments flock to condemn it in order to advertise their adherence to the relevant human rights covenants and conventions. One might also observe, even independently of South African propaganda efforts, that myriad cases of racism around the world go unmentioned in these debates, while many countries maintain an interest in avoiding or dismissing their own culpability for discriminatory domestic policies—especially toward the indigenous peoples.

With so few existing legal instruments recognizing the specific rights of indigenous peoples, one must defer to more general human rights instruments to find the mechanisms for defending indigenous peoples' rights. One issue currently debated in the GA and ECOSOC is the legal concept of group rights. International human rights law generally refers to individual rights, as according to the western European concepts of human rights; however, the traditional relationship of indigenous peoples to land and property is one of collective ownership. Therefore, the discussion of group rights as propounded by states advocating socialist legal concepts, though indirectly, has relevance to the indigenous peoples [see, among others, A/43/739 of 27 October 1988].

The existing monopoly of states on discourse over legal rights is once again made clear in the discussions about permanent sovereignty over natural resources. In the case of indigenous peoples, as well as that of Palestinians and black South Africans, state claims to resources in areas belonging to the indigenous population constitute a form of official theft of patrimony. The disavowal by states of this reality is evidenced by the absence of its consideration in recent reports of the secretary-general on the subject to the Committee on Natural Resources [e.g., E/C.7/1989/5 of 5 August 1988].

The evasion of the central issues confronting the indigenous world generally reflects governmental concern to avoid any domestic arrangements which may interfere with governmental development schemes, land acquisition, or with political control. It may also be seen as an anxiety to prevent any serious challenge to ideologies of "national" unity.

The issue of indigenous peoples as subjects of colonial domination is more readily recognized by states, however, when that indigenous population inhabits a territory noncontiguous to the dominant power, as in the case of overseas colonies. One such case is that of the indigenous Kanak people of New Caledonia, which falls within the competence of the GA's Fourth Committee (Decolonization). In its resolution, the GA noted that the French authorities are taking positive steps to promote political, economic and social development on New Caledonia within a framework of peaceful progress toward self-determination [43/34 of 22 November 1988]. The resolution also urged *all parties* to refrain from violence. After the vote, the French representative disassociated his country from the resolution as the Government of France considers that the determination of the status of territories whose populations are not yet self-governing falls entirely within the jurisdiction of the state(s) having administrative responsibility in those countries.

Economic and Social Council: Commission on Human Rights

The continuing efforts of the Working Group on Indigenous Populations (WGIP), serving the Commission on Human Rights by assembling a list of standards for indigenous rights constitutes an urgent and important contribution to the formulation of international consensus and law.* The provisions in these standards will provide a framework for relations *from the indigenous peoples' perspectives*, and as such will present critical challenges to basic statist assumptions about the exercise of state sovereignty at the expense of peoples. The standards indeed will highlight some of the contradictions inherent in the very concept of the modern nation-state—such as ethnic and racial heterogeneity, and the arbitrary assignment of borders bisecting peoples and their territories, and so may be expected to face fierce and rigid opposition by governments.

When completed, the standards of the working group will not as such constitute international law, but will provide guidelines for the drafting of treaties and related conventions. Critical to the establishment of indigenous rights is the concomitant study by Miguel Alfonso Martínez on the history and efficacy of treaties between states and indigenous peoples, for which he is preparing a formal outline, and on which he submitted a report to the Subcommission on the Prevention of Discrimination and Protection of Minorities on 24 August 1988 [E/CN.4/Sub.2/1988/24/Add.1]. The technical-juridical study will be aimed at establishing bases for "solid, durable and equitable" relations between indigenous populations and states. Its scope will be global, and its sources will include bilateral instruments, international multilateral instruments, indigenous peoples' uses and customs, jurisprudence, classical works of international law, and landmark works such as José R. Martínez Cobo's five-volume *Study on the Problem of Discrimination against Indigenous Peoples* [E/CN.4/Sub.2/1986/7 and Add.1–4]. Notable

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* These standards as contained in the draft Universal Declaration on the Rights of Indigenous People are contained in UN document E/CN.4/Sub.2/1988/25 and reprinted in "Documentation," *Without Prejudice* Vol. II, No. 1, 133–35—*Ed.*

in the discussion following Mr. A. Martínez' report was Canada's predictable intervention [E/CN.4/1989/51] praising the outline but emphasizing the "socio-economic realities of states and the inviolability of their sovereignty and territorial integrity," and cautioning avoidance of applying "inappropriate international concerns" to states' sovereign national issues.

One of the specific cases considered by the subcommission in its 1988 session was the continuing relocation of the Navajo and Hopi people by the U.S. Government in Arizona. Under its agenda item, "Discrimination against Indigenous Populations," the subcommission called for the urgent implementation of its resolution 1987/110 of the previous year, including the appointment of one subcommission member to contact authorities in the United States to prevent further relocations. The subcommission also decided to prepare a summary of information on the Navajo-Hopi relocation case for the use of the Commission on Human Rights. In a resolution on the meeting of experts on indigenous self-government, the subcommission suggested that the secretary-general organize that meeting during the first half of 1991 to include appropriate indigenous representation, and to be organized in consultation with indigenous peoples' organizations.

The work of NGOs in this area of human rights is essential to developing international standards and to facilitating access of indigenous base communities to the UN's legal machinery and informational services. It was in this spirit that EAFORD proposed, on 17 February 1989, that the United Nations program of advisory services develop a curriculum to teach indigenous children and other members of their societies about their human rights and how to avail themselves of the UN bodies to protect these rights [E/CN.4/1989/NGO/64 of 21 February 1989].

Meanwhile, the work of NGOs reflects burgeoning concern with the conditions of the indigenous peoples. In addition, a process of converging interests increasingly has brought environmental and development NGOs together on issues not only related to the planet's survival, but specifically on the protection of the environments and habitat of the indigenous peoples. The Seventeenth General Assembly of the Conference of NGOs in Consultative Status with ECOSOC, meeting at New York, 6–9 September 1988, warned against "collective suicide" through destruction of the environment, and noted the "genocidal measures against indigenous peoples in many countries," along with their concern for discrimination practiced in Namibia, South Africa, Palestine and against migrant workers.*

Some of the tension around the right to self-determination is born of disagreements as to its definition. During the decolonization era, "self-determination" was used extensively by liberation movements to signify the right to a state. Its use by the indigenous peoples is far less specific, varying with each people's specific circumstances and aspirations. Pending the finalization of the standards by the WGIP, the report by the Commission on the Elimination of Racial Discrimination against Indigenous Peoples, in the International NGO Conference for Action to Combat Racism and Racial Discrimination in the Second UN Decade of 11–14 October 1988, provides a useful reference to the contemporary indigenous consensus. The report insists on recognition of indigenous rights to self-determination and sovereignty, specifying that "we mean this to be: the management and implementation of our own political, health, education and economic/social systems...the right and responsibility to secure our own future." The report urges the adoption of the term "peoples," and reiterates support for the treaty study and the draft declaration of the WGIP discussed above. The sole reference to the right to a state lies in a historic clause recognizing the Palestinian people as the original

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* This resolution is reprinted in "Documentation," in this issue of *Without Prejudice—Ed.*

inhabitants of Palestine.*

The elaboration of social rights, the definition of the term "people," and the various expressions of self-determination for indigenous peoples were among the topics discussed and debated at the UN Seminar on the Effects of Racism and Racial Discrimination on the Social and Economic Relations between Indigenous Peoples and States, which was convened at Geneva, 16–20 January 1989. This seminar took the unprecedented step of including indigenous peoples' organizations and NGOs to participate on an equal footing with states. The report of the seminar recounted the ensuing debate, which resulted in solid and practical recommendations for the continuing relationship of indigenous peoples living within states ultimately to realize their social, cultural, economic and political rights [E/CN.4/1989/22 of 8 February 1989].**

International Labour Organisation

Nowhere is state anxiety about indigenous self-determination better illustrated than in this year's debate on the International Labour Organisation (ILO) Convention 107 revision, which was accompanied by months of bitter and divisive argument on the proposed substitution of the term "peoples" for "populations" throughout the revised document—a change on which the indigenous representatives were adamant. Representatives of the employers as well as many governments were equally adamant in rejecting the term, on the same grounds: that it carried with it the right to self-determination, as specified in the United Nations Charter. Later, in June 1989, the disagreement was ultimately to be "resolved" —to the outrage of the indigenous representatives present—by adopting the change with a special caveat [article 1.3], explicitly denying that the use of the term "peoples" carried any recognition of the international legal rights always previously associated with it. This defensive article indeed contributed heavily to the decision of the indigenous representatives to reject the new convention in its entirety, and to their subsequent mass walk-out during the presentation of the beleaguered ILO spokesman.***

Through its supervision of conditions within states and their direct contact missions, the ILO's Committee of Experts on the Application of Conventions and Recommendations was able to achieve some progress toward defending the rights of indigenous and tribals peoples in consultations with the governments of Bangladesh and Bolivia. Its efforts helped to bring about legislation that saw the beginning of the return and restitution of the dispossessed tribal people to the Chittagong Hill Tract in Bangladesh, where settlers supported by the state had committed atrocities against the traditional inhabitants. Likewise, in conjunction with the Inter-American Indian Institute, the ILO Committee of Experts assisted in a project to demarcate indigenous lands in eastern Bolivia with a view to preventing the assignment of title to persons not belonging to the indigenous populations [Report II (Part 4A), ILO Conference, Seventy-sixth Session (1989), 355–64].

Indigenous peoples' insistence on the right to meaningful sovereignty over

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* See Report of Commission II of this NGO conference reprinted in the "Documentation" section of this issue of *Without Prejudice—Ed.*

** For discussion of the seminar and of its proceedings, see Erica-Irene A. Daes, "On the Relations between Indigenous Peoples and States," in this issue of *Without Prejudice—Ed.*

*** See the 31 July 1989 statement by Lee Swepston to the UN Working Group on Indigenous Populations, reprinted in the introduction to "ILO Convention 169," in this issue of *Without Prejudice—Ed.*

indigenous affairs is steadfast, and not subject to compromise. The challenge this comprises to the world system is equally clear. In the NGO conference of 11–14 October 1988, Charon Asetoyer of the Native American Community Board (USA) attacked the colonial government policies as manifestations of a global system of exploitation and denial:

> U.S. intervention is a means of control and manipulation of the Third World and developing nations. The same intervention has targeted indigenous people and sees us as the expendable people...Efforts to control and manipulate indigenous people, from forms of genocide to massive attempts [at] assimilation, are forced on our people in order to eliminate our resistance to their continuous theft of our land and its natural resources...Racism is a mechanism for controlling indigenous people in order to maintain the balance of capitalism. Racism oppresses our people in many ways—by keeping us out of the political process and any form of policy-making.*

* Published in *Report of the International NGO Conference for Action to Combat Racism and Racial Discrimination in the Second UN Decade* (Geneva: NGO Subcommittee on Racism, Racial Discrimination, *Apartheid* and Decolonization, 1988), ST13–14—*Ed.*

Documentation

With a view to providing a continuous record of major developments in the field of racism and its elimination, Without Prejudice *reprints in this section relevant statements and documents issued by individuals, groups, organizations and governments during the recent period. Items in this section may relate to policies or developments which combat racism or further institutionalize its practice.*

I. Documents on Racism and Racial Discrimination

A. Resolution of the Commission of the Whole on the Second United Nations Decade against Racism and Racial Discrimination, Geneva, 6–9 September 1989.

B. Decision of the Supreme Court of the United States in *City of Richmond v. J.A. Croson Company* (No. 87–998), Washington, 23 January 1989.

C. Draft Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, Commission on Human Rights, Geneva, 27 February 1989.

II. Documents on South Africa and Namibia

A. Report of Commission I: The Struggle for the Elimination of Apartheid and for the Independence of Namibia, International NGO Conference for Action to Combat Racism and Racial Discrimination in the Second UN Decade, Geneva, 11–14 October 1988.

B. Agreements among the People's Republic of Angola, the Republic of Cuba and the Republic of South Africa [on Namibian independence and Cuban withdrawal from Angola], New York, 22 December 1988.

C. Statement of the Johannesburg Bar Council [concerning the judgement of Justice J.J. Strydom in *State v. Jacobus Vorster et al.*], 27 January 1989.

D. Response of the National Union of Mineworkers to the Anglo-American Corporation Code of Conduct, Johannesburg, February 1989.

E. Main Resolutions of the Special Conference of Dutch Reformed Churches, Reformed Ecumenical Council, Vereeniging, South Africa, 6–10 March 1989.

III. Documents on Palestine

A. UN General Assembly Resolution 43/21, "The Uprising (*Intifadah*) of the Palestinian People," New York, 3 November 1988.

B. Joint Statement of PLO Chairman Yasir 'Arafat and Five American Jews, Stockholm, 7 December 1988.

C. Statement of PLO Chairman Yasir 'Arafat to the UN General Assembly, Geneva, 13 December 1988.

D. Statement of U.S. Secretary of State George P. Shultz [on U.S.-PLO dialogue], Washington, 14 December 1988.

E. Statement of PLO Chairman Yasir Arafat, Geneva, 14 December 1988.

F. Final Declaration of the Second UN African Regional NGO Symposium on the Question of Palestine, Cairo, 18–22 December 1988.

IV. Documents on Indigenous Peoples

A. Constitution of Brazil, Brasília, adopted 5 October 1988.

B. Report of Commission II: Elimination of Racial Discrimination against Indigenous Peoples; Protection of Their Human Rights, International NGO Conference for Action to Combat Racism and Racial Discrimination in the Second UN Decade, Geneva, 11–14 October 1988.

C. Conclusions and Recommendations of the United Nations Seminar on the Effects of Racism and Racial Discrimination on the Social and Economic Relations between Indigenous Peoples and States, Geneva, 16–20 January 1989.

I:A
Resolution of the Commission of the Whole on the Second United Nations Decade against Racism and Racial Discrimination, Geneva, 6–9 September 1989.

The Commission of the Whole of the 17th General Assembly of the Conference of NGOs, meeting in New York,

Welcomes the increase in public awareness of the grave danger resulting from the criminal policies and practices of racism, racial discrimination and *apartheid*,

Notes that NGO actions all over the world in support of United Nations resolutions on these key issues have become stronger and more effective during the first half of the Second UN Decade against Racism,

Notes that nevertheless there has been an aggravation of racist policies and practices in certain countries,

Regrets that the evil system of *apartheid* has not been ended, and brutal repression against the peoples of South Africa and Namibia persists,

Reiterates full support to the peoples of South Africa and Namibia, and above all to the recognized liberation movements, who are carrying on a heroic struggle against *apartheid* and for liberation,

Appreciates the fact that movements of solidarity with the peoples of South Africa and Namibia and for the implementation of UN resolutions have reached unprecedented heights, and that the liberation of Nelson Mandela has become a demand of many NGOs,

Welcomes and supports the talks now taking place between the most concerned governments for a peaceful settlement in Angola, an end to intervention, and full independence of Namibia through the implementation of Resolution 435 of the Security Council,

Draws particular attention to the continuing racial discrimination and genocidal measures against indigenous peoples in many countries,

Emphasizes the need for increased actions by NGOs in cooperation with the United Nations to defend the lives and human rights of the indigenous peoples,

Draws attention to other racist policies and practices, particularly discrimination against migrant workers,

Supports the coming global consultations with NGOs which the UN Centre on Human Rights in undertaking, as well as the International NGO Conference for Action to Combat Racism and Racial Discrimination in the Second UN Decade (Geneva, 11–14 October 1988), which will undertake a detailed review of the present situation in regard to racism five years after the start of the Second Decade on Racism.

I:B
Decision of the Supreme Court of the United States in *City of Richmond v. J.A. Croson Company* (No. 87–998), Washington, 23 January 1989 (Excerpts).

Justice [Thurgood] Marshall, with whom Justice [William J.] Brennan and Justice [Harry A.] Blackmun join, dissenting.

It is a welcome symbol of racial progress when the former capital of the Confederacy acts forthrightly to confront the effects of racial discrimination in its

midst. In my view, nothing in the Constitution can be construed to prevent Richmond, Virginia, from allocating a portion of its contracting dollars for businesses owned or controlled by members of minority groups. Indeed, Richmond's set-aside program is indistinguishable in all meaningful respects from—and in fact was patterned upon—the federal set-aside plan which this Court upheld in *Fullilove v. Klutznick*, 448 U.S. 448, 100 S.Ct. 2758, 65 L.Ed. 2d 902 (1980).

A majority of this Court holds today, however, that the Equal Protection Clause of the Fourteenth Amendment blocks Richmond's initiative. The essence of the majority's position* is that Richmond has failed to catalogue adequate findings to prove that past discrimination has impeded minorities from joining or participating fully in Richmond's construction contracting industry. I find deep irony in second-guessing Richmond's judgement on this point. As much as any municipality in the United States, Richmond knows what racial discrimination is; a century of decisions by this and other federal courts has richly documented the city's disgraceful history of public and private racial discrimination. In any event, the Richmond City Council *has* supported its determination that minorities have been wrongly excluded from local construction contracting. Its proof includes statistics showing that minority-owned businesses have received virtually no city contracting dollars and rarely if ever belonged to area trade associations; testimony by municipal officials that discrimination has been widespread in the local construction industry; and the same exhaustive and widely publicized federal studies relied on in *Fullilove*, studies which showed that pervasive discrimination in the nation's tight-knit construction industry had operated to exclude minorities from public contracting. These are precisely the types of statistical and testimonial evidence which, until today, this Court had credited in cases approving of race-conscious measures designed to remedy past discrimination.

More fundamentally, today's decision marks a deliberate and giant step backward in this Court's affirmative action jurisprudence. Cynical of one municipality's attempt to redress the effects of past racial discrimination in a particular industry, the majority launches a grapeshot attack on race-conscious remedies in general. The majority's unnecessary pronouncements will inevitably discourage or prevent governmental entities, particularly states and localities, from acting to rectify the scourge of past discrimination. This is the harsh reality of the majority's decision, but it is not the Constitution's command.

I. As an initial matter, the majority takes an exceedingly myopic view of the factual predicate on which the Richmond City Council relied when it passed the Minority Business Utilization Plan. The majority analyzes Richmond's initiative as if it were based solely upon the facts about local construction and contracting practices adduced during the City Council session at which the measure was enacted. *Ante* at 713–715. In so doing, the majority downplays the fact that the City Council had before it a rich trove of evidence that discrimination in the nation's construction industry had seriously impaired the competitive position of businesses owned or controlled by members of minority groups. It is only against this backdrop of documented national discrimination, however, that the local evidence adduced by Richmond can be properly understood. The majority's refusal to recognize that Richmond has proven itself no exception to the dismaying pattern of national exclusion which Congress so

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* In the interest of convenience, I refer to the opinion in this case authored by Justice O'Connor as "the majority," recognizing that certain portions of that opinion have been joined by only a plurality of the Court.

painstakingly identified infects its entire analysis of this case....
A. In concluding that remedial classifications warrant no different standard of review under the Constitution than the most brute and repugnant forms of state-sponsored racism, a majority of this Court signals that it regards racial discrimination as largely a phenomenon of the past, and that government bodies need no longer preoccupy themselves with rectifying racial injustice. I, however, do not believe this nation is anywhere close to eradicating racial discrimination or its vestiges. In constitutionalizing its wishful thinking, the majority today does a grave disservice not only to those victims of past and present racial discrimination in this nation whom government has sought to assist, but also to this Court's long tradition of approaching issues of race with the utmost sensitivity....

I:C
Draft Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, Commission on Human Rights, Geneva, 27 February 1989.*

The General Assembly,

Reaffirming that one of the basic aims of the United Nations, as proclaimed in its Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion,

[Reaffirming][Reiterating][Declaring] faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,

Desiring to promote the realization of the principles [concerning the rights of] [persons belonging to] [minorities] which form the basis of the Charter of the United Nations, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide and the International Convention on the Elimination of All Forms of Racial Discrimination as well as other relevant international instruments [that have been adopted at the universal or regional level and those concluded between individual States Members of the United Nations],

Inspired by [Based on] the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious or linguistic minorities,

Considering that the promotion and protection of persons belonging to [national or] ethnic, religious or linguistic minorities contribute to the political and social stability of states in which they live,

Confirming that friendly relations and cooperation among States, which take place in the spirit of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, contribute to international peace and security and to the creation of more favorable conditions for the realization and promotion of human rights, including the rights of [persons belonging to] [national or], ethnic, linguistic and religious minorities,

Emphasizing that the constant promotion and realization of the rights of persons belonging to minorities, as an integral part of the development of society as a whole

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* Text of that part of the draft declaration on which preliminary agreement has been reached so far—*Ed.*

and within the constitutional framework, would in turn contribute to the strengthening of friendship and cooperation among peoples and states,

Bearing in mind the work done so far within the United Nations system, in particular the Commission on Human Rights, the Subcommission on Prevention of Discrimination and Protection of Minorities as well as the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments on promoting and protecting the rights of persons belonging to [national or] ethnic, religious or linguistic minorities,

Recognizing the need to ensure even more effective implementation of international human rights instruments relating to the rights of persons belonging to [national or] ethnic, religious or linguistic minorities,

Proclaim this Declaration on the Rights of Persons Belonging to [National or] Ethnic, Religious or Linguistic Minorities:

Article 1

1. [Persons belonging to] [national or] ethnic, linguistic and religious minorities (hereinafter referred to as minorities) have the right to respect for, and the promotion of, their ethnic, cultural, linguistic and religious identity without any discrimination.

2. [Persons belonging to] minorities have the right to life, liberty and security of person and all other human rights and freedoms without discrimination.

Article 2

1. In accordance with the Charter of the United Nations and other relevant international instruments, persons belonging to minorities have the right to be protected against any activity, including propaganda, [directed against minorities] which:

(i) may threaten their existence [or identity];

(ii) [interferes with their freedom of expression or association] [or the development of their own characteristics]; or

(iii) otherwise prevents their full enjoyment and exercise of universally recognized human rights and fundamental freedoms.

2. In accordance with their respective constitutional processes [and in accordance with the relevant international treaties to which they are parties], all states shall undertake to adopt legislative or other appropriate measures to prevent and combat such activities, with due regard to the principles embodied in this Declaration and in the Universal Declaration of Human Rights.

Article 3

1. [Persons belonging to] minorities have the right, individually or in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, and to use their own language, freely and without interference or any form of discrimination.

2. All states [which have not yet done so] shall [take measures to create favorable conditions to enable [persons belonging to] minorities to freely] [ensure that [persons belonging to] minorities are freely able to] express their characteristics, to develop their [education,] culture, language, religion, traditions and customs, and to participate on an equitable basis in the cultural, religious, social, economic and political life in the country where they live.

3. To the same ends, persons belonging to minorities shall enjoy, without any

discrimination, the right to establish and maintain contacts with other members of their group [and with other minorities], especially by exercise of residence within the borders of each state, and the right to leave any country, including their own, and to return to their countries. [This right shall be exercised in accordance with national legislation and relevant international human rights instruments.]

Article 4

1. All states shall take legislative or other appropriate and effective measures, especially in the fields of teaching, education, culture and information, to promote and protect the human rights and fundamental freedoms of [persons belonging to] minorities.

2. Such measures shall include facilitation of the enjoyment by [persons belonging to] minorities of their freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, in particular through utilization of all forms of communication. [This freedom shall be exercised in accordance with national legislation and relevant international human rights instruments.]

3. Such measures should also include the exchange of information [and experience] among states in the aforementioned fields, with a view to strengthening mutual understanding, tolerance and friendship among all people, including [persons belonging to] minorities, [as well as to develop further friendly relations and cooperation among states in accordance with the Charter of the United Nations/as well as to develop further international cooperation in the spirit of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among states in accordance with the Charter of the United Nations].

II:A
Report of Commission I: The Struggle for the Elimination of *Apartheid* and for the Independence of Namibia, International NGO Conference for Action to Combat Racism and Racial Discrimination in the Second UN Decade, Geneva, 11–14 October 1988 (Excerpt).

...Under the first topic, "*Apartheid* and the urgent need to speed up its elimination," the commission noted:

- The deepening crisis presently facing the Pretoria regime as a result of increased and sustained mass popular resistance to its rule, resulting in the collapse of the philosophy of *apartheid*. As a result of these, the South African regime finds itself confronted with a crisis of legitimacy including growing uncertainty of its political strategy both inside South Africa and in the region.
- In an attempt to disentangle itself from this crisis, the Pretoria regime has embarked on a strategy combining so-called "reforms" and an unprecedented wave of terror and repression against opposition forces inside South Africa.
- Among its so-called "reform" policy is the planned 26 October 1988 bogus election, the aim of which is:
  (a) to win over some sections of the black population into willing tools for the perpetuation of the *apartheid* system;
  (b) to reassure the white population in general and the white electorate in particular that the regime is still in command of the reins of power;
  (c) to hoodwink the international community into believing that *apartheid* can be reformed.

- That behind these so-called "reforms" lies the intensification of terror and repressive measures and techniques such as murder, detentions without trial, psychological persecution and abuse of anti-*apartheid* activists including children, the physical elimination of activists of the ANC and the mass democratic movement both inside South Africa and abroad.
- That within the white community in South Africa there is a growing trend of divisions and splits signifying the crisis of confidence facing the Pretoria regime in as far as this section of the South African population is concerned. This is manifested in:
  (a) the increasing extra-parliamentary white opposition;
  (b) the increasing number of conscientious objectors to compulsory military service;
  (c) the growing tendency towards extremist right-wing politics and the emerging neo-fascist groupings.
- Also the deepening economic crisis gripping the *apartheid* regime as a result, among other things, of international pressure for the imposition of mandatory economic sanctions against South Africa and her general isolation and boycott.

On the topic, "The current situation in Southern Africa and the need to support the Frontline States," the commission noted:

- The intensification of acts of oppression and destabilization by South Africa of the frontline states, including its continued support for bandits of UNITA and MNR, resulting in:
  (a) the hinderance of peaceful development of the economies of these countries;
  (b) displacement of peoples;
  (c) massacre of innocent civilians and children.
- That the military diplomatic defeat suffered by racist South Africa at the hands of the combined Angolan and Cuban forces and the armed struggle waged by SWAPO of Namibia has led to the change in the balance of military forces in the region.
- The on-going diplomatic initiatives aimed at securing the independence of Namibia are a result not of the goodwill of the South African regime, but a combination of the military defeat of South Africa and international pressure.
- In the current diplomatic initiatives in the region, South Africa should not be allowed to portray itself as a "force of peace"; neither should these be used to question the legitimacy of the just struggle of the people of South Africa.

On the topic "Current diplomatic initiatives and independence for Namibia," the commission noted:

- South Africa is presently engaged in a strategy aimed at undermining diplomatic initiatives for the independence of Namibia by:
  (a) build-up of South African troops in Namibia and along the Angolan-Namibian border;
  (b) the massacre of villagers in northern Namibia;
  (c) the fanning of anti-SWAPO sentiments within the white population in Namibia;
  (d) the harassment of democratic forces inside Namibia including the suppression of current students' uprisings;
  (e) the suppression of public rallies in support for SWAPO;
  (f) the discrediting of the UN Security Council Resolution 435/78.

The Struggle to Combat Racism and Eliminate Racial Discrimination

The commission noted:

- That racism and racial discrimination still exist in many countries of the world;
- The need to combat all manifestations of racism and racial discrimination, expansion and consolidation of educational programmes including school curricula, aimed at combating racism and racial discrimination;
- The need to pay special attention to young people who are a vulnerable age group through which racial prejudice, racism and racial discrimination can be handed over to posterity;
- The need to expose the unholy racist alliance between Israel and South Africa, in their racial discriminatory practices against the peoples of Palestine and South Africa and also in the field of economic and nuclear collaboration.

The commission proposes to the plenary that action should be taken and intensified in the following areas of activity on:

SWAPO:

- Extension of financial support for SWAPO to enable it to participate effectively in the impending elections for the independence of Namibia;
- Extension of financial and material support for the resettlement of Namibian refugees during the implementation of resolution 435/78;
- Imposition of sanctions against South Africa and illegally occupied Namibia until the achievement of Namibia's independence;
- The NGOs to put pressure to bear on South Africa to take ongoing negotiations on Namibia's independence seriously;
- To campaign for the rejection of *apartheid* South Africa's claim that independent Namibia should inherit the debt incurred in their perpetuation of colonial domination of the Namibian people;
- To condemn and reject all attempts by the South African regime to bypass the UN plans for the independence of Namibia, by, among other things, the convening of an all-party conference prior to the implementation of UN resolution 435/78.

ANC:

- The condemnation of the 26 October 1988 bogus elections;
- Release of Nelson Mandela and all other political prisoners including women political prisoners;
- To campaign to save the lives of the "Sharpeville Six" and fifty more South African patriots condemned to death;
- To campaign for Prisoner of War status for captured Namibian and South African freedom fighters in accordance with the relevant Geneva conventions;
- To campaign for the release of children from detention;
- To intensify the call for the lifting of the state of emergency;
- To support the mass democratic movement inside South Africa including the churches, the UDF (United Democratic Front) and COSATU (Congress of South African Trade Unions);
- To intensify the campaign for the imposition of comprehensive mandatory economic sanctions against South Africa and for its all-round isolation;
- To put pressure to bear on the governments of the USA, the United Kingdom, the Federal Republic of Germany, France, Israel and Japan to end

all trade, economic, military and nuclear collaboration with racist South Africa.

Southern Africa:

- To support the frontline states through SADCC (South African Development Coordination Conference) and the Africa Fund;
- To support Namibian and South African refugees in the frontline state;
- To pressurize South Africa to discontinue its support for the bandits of MNR and UNITA.

General

The commission noted:

- That NGOs should request the assistance of UNESCO and other UN agencies to promote education to combat racism and racial discrimination at the international level;
- The need to intensify efforts aimed at improving the coordination of all anti-*apartheid* movements, like the Europe Liaison Group of All Anti-*Apartheid* Movements and the newly formed Pan-African Anti-*Apartheid* Movement;
- The need for UN specialized agencies to disseminate information on action to combat racism, racial discrimination and *apartheid* to NGOs;
- The importance of the forthcoming 13th World Festival of Youth and Students, to be held in Pyongyang in June 1989, and the need to use this forum for mobilizing against racism, racial discrimination and *apartheid*;
- The need to use the occasion of the bicentenary of the French Revolution to highlight the urgency of the implementation of the Universal Declaration of Human Rights;
- The effectiveness of "peoples sanctions" against South African goods...
- The special role culture and sports could play in mobilizing support for the fight against racism, racial discrimination and *apartheid*; the commission proposed that cultural events to include artists and cultural workers plan events around the theme "Struggle to Combat Racism, Racial Discrimination and *Apartheid*";
- It appealed that in the final document the following points should be added:
  1. to pledge solidarity with the struggle of the Palestinian people against Israeli occupation of their country;
  2. that the current global peace initiatives and the reduction of nuclear armaments should be used as a background in which this conference is taking place.

II:B
Agreements among the People's Republic of Angola, the Republic of Cuba and the Republic of South Africa [on Namibian independence and Cuban withdrawal from Angola], New York, 22 December 1988.

Namibia Agreement

The Governments of the People's Republic of Angola, the Republic of Cuba, and the Republic of South Africa, hereinafter designated as "the parties,"

Taking into account the "Principles for a Peaceful Settlement in Southwestern

Africa," approved by the parties on 20 July 1988, and the subsequent negotiations with respect to the implementation of these principles, each of which is indispensable to a comprehensive settlement,

Considering the acceptance by the parties of the implementation of United Nations Security Council resolution 435 (1978), adopted on 29 September 1978, hereinafter designated as "UNSCR 435/78,"

Considering the conclusion of the bilateral agreement between the People's Republic of Angola and the Republic of Cuba providing for the redeployment toward the North and the staged and total withdrawal of Cuban troops from the territory of the People's Republic of Angola,

Recognizing the role of the United Nations Security Council in implementing UNSCR 435/78 and in supporting the implementation of the present agreement,

Affirming the sovereignty, sovereign equality, and independence of all states of southwestern Africa,

Affirming the principle of noninterference in the internal affairs of states,

Affirming the principle of abstention from the threat or use of force against the territorial integrity or political independence of states,

Reaffirming the right of the peoples of the southwestern region of Africa to self-determination, independence, and equality of rights, and of the states of southwestern Africa to peace, development and social progress,

Urging African and international cooperation for the settlement of the problems of the development of the southwestern region of Africa,

Expressing their appreciation for the mediating role of the Government of the United States of America,

Desiring to contribute to the establishment of peace and security in southwestern Africa,

Agree to the provisions set forth below.

1. The parties shall immediately request the Secretary General of the United Nations to seek authority from the Security Council to commence implementation of UNSCR 435/78 on 1 April 1989.

2. All military forces of the Republic of South Africa shall depart Namibia in accordance with UNSCR 435/78.

3. Consistent with the provisions of UNSCR 435/78, the Republic of South Africa and the People's Republic of Angola shall cooperate with the Secretary General to insure the independence of Namibia through free and fair elections and shall abstain from any action that could prevent the execution of UNSCR 435/78. The parties shall respect the territorial integrity and inviolability of borders of Namibia and shall insure that their territories are not used by any state, organization or person in connection with acts of war, aggression, or violence against the territorial integrity or inviolability of borders of Namibia or any other action which could prevent the execution of UNSCR 435/78.

4. The People's Republic of Angola and the Republic of Cuba shall implement the bilateral agreement, signed on the date of signature of this agreement, providing for the redeployment toward the North and the staged and total withdrawal of Cuban troops from the territory of the People's Republic of Angola, and the arrangements made with the Security Council of the United Nations for the on-site verification of that withdrawal.

5. Consistent with their obligations under the Charter of the United Nations, the parties shall refrain from the threat or use of force, and shall insure that their respective territories are not used by any state, organization, or person in connection with any acts of war, aggression, or violence, against the territorial integrity,

inviolability of borders, or independence of any state of southwestern Africa.

6. The parties shall respect the principle of noninterference in the internal affairs of the states of southwestern Africa.

7. The parties shall comply in good faith with all obligations undertaken in this agreement and shall resolve through negotiation and in a spirit of cooperation any disputes with respect to the interpretation or implementation thereof.

8. This agreement shall enter into force upon signature.

Signed at New York in triplicate in the Portuguese, Spanish and English languages, each language being equally authentic, this 22nd day of December 1988.

Angola Agreement

The Government of the People's Republic of Angola and the Government of the Republic of Cuba, designated hereof as the parties,

Considering

That the implementation of resolution 435/78 of the Security Council of the United Nations for the independence of Namibia will begin on 1 April,

That the question of the independence of Namibia and the gateguard of the sovereignty, independence and territorial integrity of the People's Republic of Angola are intimately interconnected and linked to peace and security in the southwest region of Africa,

That on the same date of the signing of the present agreement a Tripartite Agreement shall also be signed by the government of the People's Republic of Angola, the government of the Republic of Cuba and the government of the Republic of South Africa which contain the essential elements to achieve peace in the southwest region of Africa,

That the acceptance and strict fulfillment of the preceding provisions eliminate the causes which motivated the request by the Government of the People's Republic of Angola—in legitimate use of its rights envisioned by article 51 of the United Nations Charter—for the sending into Angolan territory of a Cuban internationalist military contingent to insure, together with the FAPLA (the Angolan government army), its territorial integrity and sovereignty against the invasion and occupation of a part of its territory,

Taking into account the agreements signed by the Government of the People's Republic of Angola and the Republic of Cuba on 4 February 1982 and 19 March 1984, the platform of the Government of the People's Republic of Angola adopted in November 1984 and the Protocol of Brazzaville signed by the Governments of the People's Republic of Angola, the Republic of Cuba and the Republic of South Africa on 13 December 1988, it is thus established

In consequence that conditions have been created to begin the return home of the Cuban military contingent present in Angolan territory, after having successfully accomplished its internationalist mission.

Therefore the parties agree to the following:

Article I: To begin a staged redeployment to the 15th and 13th parallels and the total withdrawal to Cuba of the contingent of approximately 50,000 troops which make up the Cuban forces in the People's Republic of Angola, according to the paces and time frames established by the annexed calendar, which is an integral part of the present agreement. The total withdrawal will conclude on 1 July 1991.

Article II: The Governments of the People's Republic of Angola and the Republic of Cuba reserve for themselves the right to modify or alter their obligations under article I of this agreement if blatant breach of the Tripartite Agreement occurs.

Article III: Both parties, through the Secretary General of the United Nations, ask the Security Council to set up verification of the redeployment and staged and total withdrawal of the Cuban troops from the territory of the People's Republic of Angola. With this purpose the corresponding protocol shall be established.

Article IV: This agreement shall come into force as of the signing of the Tripartite Agreement between the governments of the People's Republic of Angola, the Republic of Cuba and the Republic of South Africa.

Signed on the 22nd day of December 1988 at the headquarters of the United Nations Organization in two equally valid copies in Portuguese and Spanish.

Signed for the Government of the People's Republic of Angola.

For the Government of the Republic of Cuba.

Annex

In fulfillment of article I of the agreement between the Government of the Republic of Cuba and the Government of the People's Republic of Angola on the conclusion of the internationalist mission of the Cuban military contingent present in Angolan territory, both parties establish the following calendar for the withdrawal:

Before 1 April 1989 (date of implementation of resolution 435): 3000 troops.

Total length of the calendar as of 1 April 1989: twenty-seven months.

- Redeployment to the north:
  - To the Fifteenth Parallel: 1 August 1989.
  - To the Thirteenth Parallel: 31 October 1989.
- Total Troops to be withdrawn:
  - By 1 November 1989: 25,000 (50 percent).
  - By 1 April 1990: 33,000 (66 percent).
  - By 1 October 1990: 38,000 (76 percent)
  - By 1 July 1991: 50,000 (100 percent).

The data base is a Cuban force of 50,000 troops.

II:C
Statement of the Johannesburg Bar Council [concerning the judgement of Justice J. J. Strydom in *State v. Jacobus Vorster et al.*], 27 January 1989 (Excerpt).

...Both accused were charged with murdering Eric Sambo by assaulting him on 11 and 12 December 1987, as a result of which he died on 12 December. Both accused pleaded not guilty to the main charge but, in the case of accused number two, to assault. After some evidence had been led by the state, the state accepted the aforementioned pleas.

In broad summary the evidence before the court revealed that the accused had together caught the deceased on 11 December 1987, after returning from a swim. They proceeded to take the deceased to the farm of accused number one where they assaulted him, *inter alia*, by kicking him while he lay tied on the ground and hitting him. The deceased was then tied to a tree for the duration of the night and the assault was resumed the next morning. In addition to hitting him and kicking him, accused number one hit the deceased with a stick and accused number two beat him with a nylon rope. Accused number one apparently encouraged some of his employees to hit the accused with a stick, which they did. The deceased was then taken to the police by accused number one. The deceased died shortly thereafter. The deceased died of internal bleeding as a result of the assault.

On a plea of guilty to culpable homicide, accused number one was found guilty of culpable homicide and sentenced to five years imprisonment completely suspended for five years on certain conditions, one of which was that he would pay R130,000 per month to the deceased's widow and children for a period of five years. He was also sentenced to a fine of R3000.00 or twelve months' imprisonment but this fine was payable at the rate of R250.00 per month over a period of five years. Accused number two, found guilty of assault on a plea of guilty thereto, was fined R500.00 or three months' imprisonment.

According to the transcript of the judgment of Mr. Justice Strydom, it was accused number one's youth and the rashness which goes with it (*onbesonnenheid*) plus a small amount of liquor abuse which landed number one in this problem situation. In fact, however, accused number one was twenty-two years old at the time the crime was committed and farmed on his own farm.

The record shows that liquor had at most a minimal effect on explaining the accused's case to the court. At the commencement of the trial, counsel for both accused specifically stated that alcohol was consumed on the evening and morning of the incident (a little of it) but that the alcohol did not have an influence on the actions of the two accused.

Mr. Justice Strydom also took into account "embarrassment" which Vorster would suffer as a result of a criminal conviction: so, e.g., whenever he applied for a passport in future he would have to state any previous convictions and the punishment therefor. Apart from the fact that the record contains no reference whatever to any evidence along these lines these considerations seem hardly relevant if compared to the fact that this person had been the cause of the brutal death of the accused. The judge also took into account that when the accused applied for a firearm licence he would have to make a similar revelation. The connection between these factors and an appropriate sentence in a case like this is not one that has previously been judicially discerned.

The court found that a certain amount of blame lay at the door of the deceased. This was a reference to a statement in the agreed facts to the effect that approximately two months before the killing took place the deceased, who at that time worked for accused number one's father, switched on a tractor which was connected to a bushcutter under which were two young puppies, notwithstanding the fact that the deceased was aware of the presence of the two puppies and had been warned not to switch on the tractor. As a result of the deceased's action in switching on the tractor, one of the puppies was killed and the other was maimed. The judge held that if the deceased had heeded the warning, this incident would never have taken place. This conclusion is inexplicable since the record reveals no evidence that the incident with the puppies, two months before the killing, played any part in motivating either of the accused. Neither of the accused gave any evidence.

The judge also took into account in favor of accused number one the evidence of a farmer and labor provider who had in the past supplied labor to the accused or his father. This witness was not cross-examined and he was permitted to give hearsay evidence about what the laborers whom he had provided said about the accused. It was held that the fact that the labor provider had given evidence of good cooperation between his laborers and accused number one and that accused number one had made land available to the labor provider and had plowed it for free, indicated good personal relationships and goodwill to the accused's fellow-man (*goeie menseverhoudings en welwillendheid teenoor jou medemens*).

The court also took into account that accused number one had a number of persons working for him who were dependent on him on his farm and that he and his

wife had suffered tension for a period of almost a year from the time the events had taken place to the time of the trial and that neither accused had any previous convictions.

Although the question of sentence is in the discretion of the judge hearing the trial and although the personal factors relating to the accused are of great importance in determining an appropriate sentence, the Bar Council is nevertheless of the opinion that the trial judge in weighing the personal factors relating to accused number one gave far too much weight to them than he should have, regard being had to the cruel manner in which the death of Mr. Sambo was caused by accused number one. The trial judge also took into account factors in mitigation of sentence of which there was no evidence or insufficient evidence.

The Bar Council considers that in the event the sentence imposed on accused number one is so grossly inappropriate as to induce not simply a sense of shock but one of outrage and concern. If there grew up in the community a belief that such a crime could merit so trivial a punishment, the maintenance of law and order would be gravely endangered and no law-abiding citizen would be safe from violent and callous killers.

II:D
Response of the National Union of Mineworkers to the Anglo-American Corporation Code of Conduct, Johannesburg, February 1989.*

1. Preamble

In order to establish an environment of social harmony and industrial peace to achieve economic growth, employers and employees acknowledge that the substantive causes of conflict generation have to be addressed if this is to be achieved.

In furtherance of this, employers and employees recognize that the payment of living wages, decent and acceptable working and living conditions and the respect for basic human rights are imperative if equitable and socially conducive relationships are to be developed.

This requires the parties to conduct themselves in accordance with internationally recognized industrial relations standards which respect the rights of each party.

2. Joint AAC/NUM Undertaking

The Anglo American Corporation and the National Union of Mineworkers acknowledge that the relationship between management and workers is characterized by common and conflicting interests. In certain instances, despite the existence of channels and procedures to resolve differences, harassment, victimization, racial discrimination, union bashing tactics, mass dismissals, gross violation of basic human rights and unnecessary violence and conflict have occurred which the parties agree should be prevented.

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* As published in *The Weekly Mail* (Johannesburg), 3–9 February 1989, 12–13; issued by the National Union of Mineworkers, P.O. Box 2424, Johannesburg 2000, South Africa—*Ed.*

The purpose of this Code of Conduct is therefore to eliminate harassment, victimization, racial discrimination, union bashing tactics, mass dismissals and unnecessary violence and conflict by promoting and maintaining acceptable norms of behavior and restoring the fundamental human rights to mineworkers.

To this end the corporation and its administered mines as well as the union and its members commit themselves to a Code of Conduct for regulating the conduct of all managerial and auxiliary personnel, the union and its members.

3. *Principles*

3.1. The parties to this agreement accept that each will be accountable and accept responsibility on the part of the AAC for the action of team leaders, miners, shift overseers, mine overseers, section managers, production managers, personnel managers, mine managers or equivalent officials as well as the security personnel. And on the part of the union: union members and officials.

That all these persons will take all steps available individually and collectively to ensure that all persons act at all times in the interest of industrial peace and a creation of an environment that is aimed at achieving better working and living conditions on the mines.

3.2. The parties will at all times seek to uphold and protect the following fundamental rights of workers:

- the right to work;
- the right to strike;
- the right to picket during strikes;
- the right to freedom of association;
- the right to freedom of movement;
- the right to fair disciplinary hearings with shaft stewards' representation;
- the right to assembly;
- the right to freedom from discrimination;
- the right to freedom of expression;
- the right to privacy;
- the right to have democratically elected workers committees to run hostels;
- the right to practice one's culture and traditions.

3.3. The parties will not promote or support the use of unlawful actions including the use of the police to deal with strikers or use any form of violence, cohesion or intimidation to achieve any objective coercion.

3.4. The corporation undertakes not to engage in provocative actions such as:

3.4.1. patrols of armored vehicles—*caspirs* and *hippos*.

3.4.2. forcing legal strikers back to work;

3.4.3. videotaping workers' meetings and movements;

3.4.4. dissemination of hostile propaganda against the union.

3.5. The parties agree that in the normal course of events or in the event of a lawful strike, lock-out or any other form of industrial action, management, workers and union representatives shall endeavor that the following activities are maintained:

- the hostels and all facilities inherent in the administration of hostels shall function normally and be under the responsibility of democratically elected hostel committees with management having an advisory role on technical and other matters;
- the mine and agreed essential services shall function normally under the responsibility of management;

- normal access to the hostel and the mine shall be accorded to management, workers and union officials;
- normal access to working places for those employed who choose to work during industrial action;
- picketing.

The corporation undertakes further that during the course of industrial action:

- the security forces shall remain in their barracks and not be used against strikers;
- there will be no mass dismissals;
- that the union shall have the right to have meetings and counsel and/or meet their members at any time;
- the SAP or SADF shall not be called in to deal with industrial relations matters.

II:E
Main Resolutions of the Special Conference of Dutch Reformed Churches, Reformed Ecumenical Council, Vereeniging, South Africa, 6–10 March 1989.*

Preamble

It is with gratitude to God that we churches of the Dutch Reformed Family, under the leadership of the Interim Committee of the Reformed Ecumenical Council, could meet in a brotherly discussion on social and ecclesiastical issues which trouble our churches.

We were reminded at the opening of the consultation of our need for full reliance on God in whose image we are made and whose representatives we are. We met in the awareness that He has given us a ministry of reconciliation in our troubled society as agents of justice and love. The spirit of love prevailed, even when there was a clear difference of opinion expressed on issues such as *apartheid* and the unity of the church. It was in the confrontation on the issues that the demands of social justice emerged most clearly.

In the discussions, it soon became apparent that, in spite of the different positions between the Dutch Reformed Church and the other churches in the same family, there was a solid basis on which we all could accept one another as fellow servants of God, as we seek for the coming of His Kingdom and its righteousness in this area of the world.

This mutual acceptance prevailed, even though delegates were all aware of the different perceptions of the political situation in South Africa and of the different responses to it. A key feature of this mutual acceptance was the expression of guilt by delegates of the Dutch Reformed Church [DRC] for its complicity in the system of *apartheid*.

It appeared at first that there was a far-reaching and unprecedented unity. But this perception was soon placed in doubt as the discussion progressed. For it soon became apparent that in spite of the basic oneness, the difference in perception and

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* As published in "The Saga of Vereeniging: The Decisions of the Dutch Reformed Churches," *Perspectives* (Supplement to DRCA Action, 2/89), available from Rudolph Meyer, P.O. Box 69011, Bryanston 2021, South Africa—*Ed.*

response could not easily be brought into a consensus statement that reflected a common mind. Rather, at the end of the second day the diverging perceptions assumed such a high profile that many were constrained to speak not only of different perceptions and different responses, but of two worlds in the one family of churches. Reference was made to the possibility that the black churches might have to go their own way without the company of the Dutch Reformed Church. The euphoria of the first days gave way to a feeling of near despair one day later.

But just when a break threatened, a consensus emerged, not one that reflected a common mind on all issues, but one that was deeper and better founded than the one earlier. For now the conviction prevailed that whatever the differences, and they should not be minimized, the churches needed to consult together and wanted to remain together. The areas of *agreement* and those where *more discussion* is needed and the *way ahead* for the Dutch Reformed Family are explained in the pages that follow.

Our Testimony

The consultation adopted the following motion in which it expressed its view of *apartheid* and the unity of the Church:

On Apartheid

1. We have heard from the representatives of the DRC repeated confessions of guilt with regard to the establishment, maintenance and justification of *apartheid*. We have heard their plea for forgiveness. We too confess that we have not always been willing to speak out clearly enough against *apartheid* through fear. We now respond by reaching out in forgiveness and brotherhood and assure our brothers from the white DRC that, well aware of our own weakness and sin, we do not intend to hold the past against them, but together seek a way forward to find God's will for all of us.

2. We say clearly and unequivocally that we regard *apartheid* in all its forms as a sin, as contrary to and irreconcilable with the Gospel of Jesus Christ. We agree that *apartheid* in all its forms cannot be reformed, but must be totally eradicated from the life of the South African nation and church.

3. In the light of this, we commit ourselves to work together towards the dismantling of *apartheid*. Therefore we believe that all discriminatory and unjust laws should be abolished, especially the Land Act, Group Areas Act, Separate Amenities Act and the Population Registration Act.

4. We call upon the government to:
   (a) cease immediately the practice of detention without trial;
   (b) lift the State of Emergency;
   (c) release all political prisoners and detainees;
   (d) unban all organizations opposing *apartheid*;
   (e) as a matter of urgency start negotiations with the authentic leaders of the majority in our country. Here we are not speaking of cooptation and consultation, but of genuine negotiations which will lead to a transfer of power to the majority by free and fair elections.

We believe that "sharing of power" means full and meaningful participation of all the people at all levels of government. We pledge continued support for non-racial, non-violent opposition to *apartheid*.

On Church Unity

5. We confess that even though we should be one in Christ, in fact we are

divided on the basis of race, ethnicity and color.

We pledge ourselves to become one, united, nonracial Reformed Church in Southern and Central Africa.

On the Future

6. We recognize that the people of South Africa are one nation. Political change is necessary, but we recognize that political change alone is not enough. We therefore commit ourselves to work towards genuine reconciliation based upon the demands of the Gospel for justice for all.

We will work towards an open, nonracial democratic society.

We realize that this is not an easy task, indeed for some it may be more difficult than for others. But we pledge solidarity to each other and obedience to God. We do this, not in our own strength, but in faith in Jesus Christ our Lord and depending upon the guidance of His Holy Spirit.

[Commentary]

The content of this motion represents the *official standpoint* of the consultation.

It became evident that the representatives of the DRC could not identify with the motion as it was adopted. They felt that this motion went beyond what was agreed upon by the DRC in *Church and Society* and that this document determines their present mandate. At our request, however, they were prepared to make some statements in which they expressed their own view of the burning issues at hand. They too realize that there are laws, such as the Land Act, Group Areas Act, Separate Amenities Act and the Population Registration Act, which are the four pillars of *apartheid* and are experienced by millions as degrading and as violating the human dignity, and they are willing, in cooperation with the other churches, to bring these matters to the attention of the present government.

In a statement presented to the consultation by the DRC delegation we found several Biblical principles that are accepted by all of us. The consultation, however, is of the opinion that this statement, just as *Church and Society*, stops short at the principles and fails to implement them in a practical and concrete way, by clearly indicating what is to be done. As long as this has not been done the *credibility of the DRC remains at stake*. As members of this consultation we urge the DRC to go beyond the position of *Church and Society* and spell out clearly and concretely what is the task of Christians in this day and in this land.

In the meantime we expect from the DRC delegates that they will present the motion adopted by the consultation to all the official church meetings for discussion and we also expect that the DRC, when and where possible, will act upon it.

On the unity of the Church the motion states unambiguously: "We pledge ourselves to become one, united, nonracial Reformed Church in Southern and Central Africa." The delegates of the DRC, however, stated that they could not identify with this pledge, because their church, while recognizing the need for spiritual and visible unity, is not yet ready to say what the structural model of the one-church-to-be will be. The consultation was deeply disappointed by this and therefore urges the DRC delegation to bring our pledge to their church as a matter of the greatest urgency.

The Future

As agreed at the beginning of the consultation, we all commit ourselves to bring

all the matters decided upon to our churches and seek from them the approval of these decisions. Unless disagreements have been indicated to the consultation, we will defend the resolutions of the consultation.

We also plead with all the member churches, as a matter of priority to bring the outcome of the consultation, with all the relevant documents (the statement of the DRC, and the statement of the NGKA [Nederduits Gereformeerde Kerk van Afrika (Dutch Reformed Church of Africa)], "The Struggle for Liberation between the Two Worlds in South Africa"), before their respective congregations and church bodies in order to involve in these discussions people belonging to the various churches.

Once again we say with the motion: "We realize that this is not an easy task, indeed for some it may be more difficult than for others. But we pledge solidarity to each other and obedience to God. We do this, not in our own strength, but in faith in Jesus Christ our Lord and depending upon the guidance of His Holy Spirit."

III:A
UN General Assembly Resolution 43/21, "The Uprising (*Intifadah*) of the Palestinian People," New York, 3 November 1988.

The General Assembly,

Aware of the uprising (*intifadah*) of the Palestinian people since 9 December 1987 against Israeli occupation, which has received significant attention and sympathy from world public opinion,

Deeply concerned at the alarming situation in the Palestinian territories occupied since 1967, including Jerusalem, as well as in the other occupied Arab territories, as a result of the continued occupation by Israel, the occupying power, and of its persistent policies and practices against the Palestinian people,

Reaffirming that the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949,[1] is applicable to all the Palestinian and other Arab territories occupied by Israel since 1967, including Jerusalem,

Recalling its relevant resolutions as well as Security Council resolutions 605 (1987) of 22 December 1987, 607 (1988) of 5 January 1988 and 608 (1988) of 14 January 1988,

Recognizing the need for increased support and aid for, and solidarity with, the Palestinian people under Israeli occupation,

Conscious of the urgent need to resolve the underlying problem through a comprehensive, just and lasting settlement, including a solution to the Palestinian problem in all its aspects,

1. *Condemns* Israel's persistent policies and practices violating the human rights of the Palestinian people in the occupied Palestinian territories, including Jerusalem, and, in particular, such acts as the opening of fire by the Israeli army and settlers that result in the killing and wounding of defenseless Palestinian civilians, the beating and breaking of bones, the deportation of Palestinian civilians, the imposition of restrictive economic measures, the demolition of houses, collective punishment and detentions, as well as denial of access to the media;

2. *Strongly deplores* the continuing disregard by Israel, the occupying Power, of

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[1] United Nations, *Treaty Series* Vol. 75, No. 973.

the relevant decisions of the Security Council;

3. *Reaffirms* that the occupation by Israel of the Palestinian territories since 1967, including Jerusalem, in no way changes the legal status of those territories;

4. *Demands* that Israel, the occupying power, abide immediately and scrupulously by the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949,[2] and desist forthwith from its policies and practices that are in violation of the provisions of the convention;

5. *Calls upon* all the high contracting parties to the convention to take appropriate measures to ensure respect by Israel, the occupying power, for the convention in all circumstances in conformity with their obligation under article 1 thereof;

6. *Invites* member states, the organizations of the United Nations system, governmental, intergovernmental and nongovernmental organizations, and the mass communications media to continue and enhance their support for the Palestinian people;

7. *Urges* the Security Council to consider the current situation in the occupied Palestinian territories, taking into account the recommendations contained in the report of the Secretary General;[3]

8. *Also requests* the Secretary General to examine the present situation in the occupied Palestinian territories by all means available to him and to submit periodic reports thereon, the first such report no later than 17 November 1988.[4]

III:B
Joint Statement of Palestine Liberation Organization Chairman Yasir 'Arafat and Five American Jews, Stockholm, 7 December 1988.*

The Palestinian National Council met in Algiers from 12–15 November 1988, and announced the declaration of independence which proclaimed the state of Palestine and issued a political statement.

The following explanation was given by the representatives of the PLO [Palestine Liberation Organization] of certain important points in the Palestinian declaration of independence and the political statement adopted by the PNC in Algiers.

Affirming the principle incorporated in those UN resolutions which call for a two-state solution of Israel and Palestine, the PNC:

1. Agreed to enter into peace negotiations at an international conference under the auspices of the UN with the participation of the permanent members of the Security Council and the PLO as the sole legitimate representative of the Palestinian people, on an equal footing with the other parties to the conflict; such an international conference is to be held on the basis of UN resolutions 242 and 338 and the right of the Palestinian people to self-determination, without external interference, as provided in the UN Charter, including the right to an independent

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[2] Ibid.

[3] S/19443.

[4] See A/43/806.

* As published by Reuter news agency and reprinted in *The Washington Post*, 14 December 1988, A22, cols. 1–4—*Ed.*

state, which conference should resolve the Palestinian problem in all its aspects;

2. Established the independent state of Palestine and accepted the existence of Israel as a state in the region;

3. Declared its rejection and condemnation of terrorism in all its forms, including state terrorism;

4. Called for a solution to the Palestinian refugee problem in accordance with international law and practices and relevant UN resolutions (including [the] right of return or compensation).

The American personalities strongly supported and applauded the Palestinian declaration of independence and the political statement adopted in Algiers and felt there was no further impediment to a direct dialogue between the United States government and the PLO.

III:C
Statement of Palestine Liberation Organization Chairman Yasir 'Arafat to the UN General Assembly, Geneva, 13 December 1988 (Excerpts).*

I am both proud and happy to meet with you today, here in Geneva, after an arbitrary American decision barred me from going to you there.

I extend deep gratitude to all nations, forces and international organizations and personalities who backed our people and supported its national rights...I also thank the western European nations and Japan for their latest stands toward our people and I invite them to take further steps to positively evolve their resolutions in order to open the way for peace and a just settlement in our region, the Middle East....

We set out in the Palestine Liberation Organization to look for realistic and attainable formulas that would settle the issue on the basis of possible— rather than absolute—justice, while securing the rights of our people to freedom, sovereignty and independence; insuring for everyone peace, security and stability; and sparing Palestine and the Middle East wars and battles that have been going on for forty years.

Israel's response to all this has been the escalation of its settlement and annexation schemes; the fanning of the flames of conflict with more destruction, devastation and bloodshed; and the expansion of the confrontation fronts to include brotherly Lebanon, which was invaded by the occupation troops in 1982, an invasion punctuated with slaughters and massacres perpetrated against the Lebanese and Palestinian peoples, including the Sabra and Chatilla massacres....

It is painful and regrettable that the American [U.S.] Government alone should continue to back these aggressive and expansionist schemes as well as Israel's continued occupation of Palestinian and Arab territories, its crimes, and its iron-fist policy against our children and women.

It is painful and regrettable too that the American [U.S.] Government should continue refusing to recognize the right of six million Palestinians to self-determination, a right which is sacred to the American [U.S.] people and other peoples on this planet....

Our peoples does not want a right which is not its own or which has not been vested in it by international legitimacy and international law. It does not seek its

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* Translation as provided by the PLO and published by Associated Press and reprinted in *The Washington Post*, 14 December 1988, A22, cols. 1–4—*Ed.*

freedom at the expense of anyone else's freedom, nor does it want a destiny which negates the destiny of another people. Our people refuses to be better or worse than any other people. Our people wants to be the equal of all other peoples, with the same rights and obligations....

While we greatly appreciate the free American [U.S.] voices that have explained and supported our position and resolutions, we note that the U.S. administration remains uncommitted to even-handedness in its dealings with the parties to the conflict. It continues to demand from us alone the acceptance of positions which cannot be determined prior to negotiations and dialogue within the framework of the international conference....

The Palestine National Council has also reaffirmed its rejection of terrorism in all its forms, including state terrorism, emphasizing its commitment to its past resolutions in this regard, and to the resolution of the Arab summit in Algiers in 1988, and to UN resolutions [GA] 42/159 of 1987 and [SC] 61/40 of 1985, and to what was stated on this subject in the Cairo Declaration of 7 November 1985.

This position, Mr. President, is clear and free of all ambiguity. And yet, I, as chairman of the Palestine Liberation Organization, hereby once more declare that I condemn terrorism in all its forms, and at the same time salute those sitting before me in this hall who, in the days when they fought to free their countries from the yoke of colonialism, were accused of terrorism by their oppressors, and who today are the faithful leaders of their peoples, stalwart champions of the values of justice and freedom....

The United Nations bears a historic, extraordinary responsibility toward our people and their rights. More than forty years ago, the United Nations, in its resolution 181, decided on the establishment of two states in Palestine, one Palestinian Arab and the other Jewish. Despite the historic wrong that was done to our people, it is our view today that the said resolution continues to meet the requirements of international legitimacy which guarantee the Palestinian Arab people's right to sovereignty and national independence....

In my capacity as chairman of the PLO executive committee, presently assuming the functions of the provisional government of the state of Palestine, I therefore present the following Palestinian peace initiative:

First: That a serious effort be made to convene, under the supervision of the secretary-general of the United Nations, the preparatory committee of the international conference for peace in the Middle East—in accordance with the initiative of President [Mikhail] Gorbachev and President [François] Mitterrand, which President Mitterrand presented to your assembly toward the end of last September and which was supported by many states—to pave the way for the convening of the international conference, which commands universal support except from the Government of Israel.

Second: In view of our belief in international legitimacy and the vital role of the United Nations, that actions be undertaken to place our occupied Palestinian land under temporary United Nations supervision, and that international forces be deployed there to protect our people and, at the same time, to supervise the withdrawal of the Israeli forces from our country.

Third: The PLO will seek a comprehensive settlement among the parties concerned in the Arab-Israeli conflict, including the state of Palestine, Israel and other neighbors, within the framework of the international conference for peace in the Middle East on the basis of resolutions 242 and 338 and so as to guarantee equality and the balance of interests, especially our people's rights in freedom, national independence, and respect the right to exist in peace and security for all....

If these principles are endorsed at the international conference, we will have come a long way toward a just settlement, and this will enable us to reach agreement on all security and peace arrangements...

I come to you in the name of my people, offering my hand so that we can make true peace, peace based on justice. I ask the leaders of Israel to come here under the sponsorship of the United Nations, so that, together, we can forge that peace.... And here, I would address myself specifically to the Israeli people in all their parties and forces, and especially to the advocates of democracy and peace among them. I say to them: Come let us make peace. Cast away fear and intimidation. Leave behind the specter of the wars that have raged continuously for the past forty years.

III:D
Statement of U.S. Secretary of State George P. Shultz [on U.S.-PLO dialogue], Washington, 14 December 1988.*

The Palestine Liberation Organization today issued a statement in which it accepted UN Security Council resolutions 242 and 338, recognized Israel's right to exist in peace and security and renounced terrorism. As a result, the United States is prepared for a substantive dialogue with PLO representatives.

I am designating our ambassador to Tunisia as the only authorized channel for that dialogue. The objective of the United States remains, as always, a comprehensive peace in the Middle East.

In that light, I view this development as one more step toward the beginning of direct negotiations between the parties, which alone can lead to such a peace.

Nothing here may be taken to imply an acceptance or recognition by the United States of an independent Palestinian state. The position of the United States is that the status of the West Bank and Gaza cannot be determined by unilateral acts of either side, but only through a process of negotiations. The United States does not recognize the declaration of an independent Palestinian state.

It is also important to emphasize that the United States' commitment to the security of Israel remains unflinching.

III:E
Statement of PLO Chairman Yasir 'Arafat, Geneva, 14 December 1988.**

Let me highlight my views before you. Our desire for peace is a strategy and not an interim tactic. We are bent to peace come what may.

Our statehood provides salvation to the Palestinians and peace to both Palestinians and Israelis. Self-determination means survival for the Palestinians.

And our survival does not destroy the survival of the Israelis as their rulers claim.

Yesterday in my speech, I made a reference to the United Nations resolution 181 [on the partition of Palestine with economic union] as the basis for Palestinian

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* As excerpted from statements at a news conference published by United Press International and reprinted in *The Washington Post*, 15 December 1988, A40, cols. 5–6—*Ed.*

** As published by Associated Press and reprinted in The Washington Post, 15 December 1988, A40, cols. 1–4—*Ed.*

independence. I also made a reference to our acceptance of resolutions 242 and 338 as the basis for negotiations with Israel within the framework of an international conference. These three resolutions were endorsed at our Palestinian National Council session in Algiers.

In my speech also yesterday it was clear that we mean our people's right to freedom and national independence according to resolution 181 and the right of all parties concerned in the Middle East conflict to exist in peace and security and, as I have mentioned, including the state of Palestine and Israel and other neighbors according to the resolution 242 and 338.

As for terrorism, I renounced it yesterday in no uncertain terms, and yet I repeat for the record that we totally and absolutely renounce all forms of terrorism, including individual, group and state terrorism. Between Geneva and Algiers, we have made our position crystal clear.

Any more talk such as the Palestinians should give more—you remember this slogan, the Palestinians should give it more—or it is not enough, or the Palestinians are engaging in propaganda games and public relations exercise, will be damaging and counterproductive.

Enough is enough. Enough is enough. Enough is enough. All remaining matters should be discussed around the table and within the international conference.

Let it be absolutely clear that neither 'Arafat nor any [one else] for that matter can stop the *intifadah*, the uprising. The *intifadah* will come to an end only and only when practical and tangible steps have been taken toward the achievement of our national aims and the establishment of our independent Palestinian state.

In this context, I expect the EEC [European Economic Community] to play a more effective role in promoting peace in our region. They have political responsibility, they have moral responsibility and they can deal with it.

Finally, I declare before you and I ask you to kindly quote me on that: we want peace. We want peace. We are committed to peace. We want to live in our Palestinian state and let live.

III:F
Final Declaration of the Second UN African Regional NGO Symposium on the Question of Palestine, Cairo, 18–22 December 1988 (Excerpt).

...20. We further reaffirm the strong connection between the struggle for national liberation and peace with justice in the Middle East and that in southern Africa. We express our total and unflinching support for the struggle for the realization of the rights of self-determination, independence and other human rights in Namibia and South Africa, which must be enjoyed on the basis of equality and nondiscrimination. We call upon all states and the international community to stop aiding Israel and *apartheid* South Africa, and urge African states to continue the severance of all relations with and the isolation of both regimes until the people realize its inalienable rights.

21. We reaffirm the necessity of strengthening Afro-Arab cooperation as an indispensable medium of promoting the development of the two (African and Arab) people as well as the struggle against domination and racial discrimination in southern Africa and in Israeli-occupied Palestine.

22. As NGOs, we resolve to exert every effort to oppose the cooperation between Israel and *apartheid* South Africa. We condemn their military nuclear build-

up which is a serious threat to regional and international peace and security.

23. We express our solidarity with democratic and peace-loving forces in Israel, which struggle against Israeli occupationist, expansionist and militarist policies and actions, and which support the *intifadah*, the proclaimed independent Palestinian state on Palestinian land and the inalienable rights of the Palestinian people. We strongly condemn the unjust Israeli law [Antiterrorism Ordinance of 1948] which prohibits contacts between the people of Israel and the PLO and demand its total and immediate abrogation.

IV:A
Constitution of Brazil, Brasília, adopted 5 October 1988 (Selected articles concerning indigenous peoples approved in first round of voting).*

Title VII: Of the Economic and Financial Order

Chapter I: On General Principles, Intervention of the State, the Regime of Property, Subsoils and Economic Activity

Article 205: Deposits, mines and other mineral resources, including hydroelectric potential, constitute property distinct from the soil. They are for industrial exploitation and use while pertaining to the union [state of Brazil]. The concessionary or authorized party receives as property the product of the mine.

Paragraph 2: The exploitation of hydroelectric potential and the mining of mineral resources may only be undertaken with an authorization or concession of the union, acting in the national interest, and by Brazilians or Brazilian enterprises with national capital. Mining and hydropower tapping must be undertaken according to the laws that define the specific conditions regarding such activities within the confines of indigenous lands or on the frontier.

Chapter III: On Education, Culture and Sports

Article 244: Regular instruction will be administered in the Portuguese language, with the assurance to the indigenous communities that their own languages and learning processes will be utilized in fundamental education.

Article 251: The state will protect the manifestations of popular, indigenous and Afro-Brazilian culture—as well as the manifestations of other cultures—that have participated in the Brazilian civilizing process.

Title VIII: On the Social Order

Chapter VIII: On the Indians

Article 268: Recognized are the Indians' social organizations, customs, languages, beliefs and traditions, as well as their original rights over the lands they have traditionally occupied. It is the union's responsibility to demarcate, protect and ensure respect for property on Indian lands. The use of water resources, including hydroelectric capacity, and the research and mining of mineral riches on Indian lands may only be undertaken with authorization of the National Congress following

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* Translation provided by the Centro Ecumênico de Documentação e Informação (CEDI), São Paulo, as published in *Cultural Survival Quarterly* Vol. 13, No. 1 (1988)—*Ed.*

Congress's consultation with affected communities. These communities are assured participation in the results of the mining according to law.

Article 269: Lands traditionally occupied by Indians are destined for their permanent possession, allowing the Indians exclusive usufruct over the soil, river and lake resources that exist on them.

Paragraph 1: Lands traditionally occupied by the Indians are those that they inhabit permanently, those utilized for their productivity—including those indispensable to the preservation of the environmental resources necessary for their well-being—and those necessary for their physical and cultural reproduction according to their uses, customs and traditions.

Paragraph 2: The lands traditionally occupied by the Indians are inalienable and nontransferable, and the rights concerning them are improscriptible.

Paragraph 3: The removal of indigenous groups from the lands that they traditionally occupy is forbidden except *ad referendum* by the National Congress in cases of catastrophes or epidemics that threaten Indian populations and except in cases concerning the interest of national sovereignty following a deliberation of the National Congress. In any case, the Indians' immediate return is guaranteed once the threat has waned.

Paragraph 4: Those acts intended to occupy, dominate and possess the lands that are classified according to paragraph 1 of this article, or those intended to exploit the soil, water and lake resources that are on these lands, are null, extinct and devoid of juridical effect. The relevant public interest according to the dictates of a complementary law is reserved for the union. The nullity and extinction to which this paragraph refers do not give a right to take action against or seek indemnification from the union, except for the improvements made on land that are derived from a good-faith, lawful occupation.

Paragraph 5: The dictates of paragraph 3 of article 203 do not apply to Indian lands.

(Paragraph 3 of article 203: The state will favor the cooperative organization of prospector activity, taking into account the protection of the environment and economic/social development of the prospectors. Cooperatives will have priority in authorizing or conceding to research and extraction of resources in minable areas wherever they may be, and in those places they will be fixed lawfully according to article 23, insert 24.)

Article 270: The Indians, their communities and organizations are legitimate parties able to take legal action in defense of their interests and rights. The Public Minister will mediate in all stages of the case.

Isolated Measures

Article 21: Included in the goods pertaining to the union are the lands occupied permanently by the Indians.

Article 23: The union has the exclusive right to legislate over indigenous populations.

Article 27: Lands of extinct Indian villages pertain to the states.

Article 58: The National Congress can exclusively authorize the exploitation of mineral resources in indigenous lands.

Article 131: Federal judges are to preside over and judge disputes concerning indigenous rights.

Article 152: Judicial defense of the interests and rights of the indigenous populations are institutional functions of the Public Ministry.

Transitory Measures (not confirmed by vote at time of printing)

Article 26: The union will finish, within five years, the demarcation process of Indian lands.

Article 26: [the substituting amendment of the Centrão]: The union will finish, within five years, the demarcation process of Indian lands. A complementing law will regulate this measure.

Article 26: [differing amendment of Deputy Eraldo Trin[i]dade, PFL/AP, of number 2P 01445–3]: Public power will, in the time span of five years following promulgation of this constitution, demarcate the lands occupied by the Indians that are as yet undemarcated.

Article 262: Paragraph 1: ...it is incumbent upon public power: ... IV: lawfully to require, before installing a work or activity that will potentially cause significant damage to the environment, an environmental impact study that is given publicity.

Paragraph 2: Those who exploit mineral resources are obligated to recuperate degraded environment in accordance with the technical solution lawfully required by the public organ.

Paragraph 4: The Amazon Forest, the Atlantic Forest, the Mountains of the Sea [*Serra do Mar*], the Matogrosso Wetlands and the Coastal Zone are of the National Patrimony; their lawful utilization will be undertaken in conditions that ensure the preservation of the environment and its natural resources.

IV:B
Report of Commission II: Elimination of Racial Discrimination against Indigenous Peoples; Protection of Their Human Rights, International NGO Conference for Action to Combat Racism and Racial Discrimination in the Second UN Decade, Geneva, 11-14 October 1988 (Excerpt).

Point of Action Number 1

We repudiate any and all celebrations of 1992; the celebrations of five hundred years of the alleged "discovery" of America are themselves a form a racism, celebrating the colonization, genocide and other crimes committed against indigenous peoples.

These types of actions by governments have been condemned by the United Nations and must *never* be celebrated. We request that NGOs, churches, national liberation movements and the international community proclaim 1992 as "the Year of Indigenous Peoples' Rights," and urge the holding of an international conference of indigenous peoples during the year. To this day the indigenous peoples of the world suffer from the effects of genocide, in the form of continuous colonial intervention.

Point of Action Number 2

Concerning the revision of the ILO Convention 107 we relay this message: the use of the word people, instead of population, is the only way to refer to the indigenous peoples all over the world and anything less is unacceptable. We ask the ILO to utilize all means to ensure full participation of indigenous people at all levels of the revision process.

Point of Action Number 3

We support the undertaking of a study on the treaties, to include agreements and other constructive arrangements between states and indigenous peoples. We request the rapporteur, Mr. A[lfónso] Martínez, to utilize the consultation and recommendations of indigenous people to the greatest extent possible.

Point of Action Number 4

We support the efforts of the United Nations and Dr. E[rica-Irene A.] Daes in preparing a draft declaration on the rights of indigenous peoples. Noting the 31 January 1989 deadline for receiving comments, we urge immediate dissemination of this draft declaration to indigenous people worldwide. We consider this an urgent call for action.

Point of Action Number 5

It is clear that the only real experts on indigenous issues are indigenous people. We urge full participation of indigenous people in all matters concerning us, at all levels, in particular the mandatory participation of indigenous peoples in the Working Group on Indigenous Peoples [*sic*].

Point of Action Number 6

We remind the Australian government of its commitment to negotiate a treaty with the *Aboriginal people* of that land. We urge that immediate negotiations commence between the government and the *Aboriginal people* of Australia.

Point of Action Number 7

We urge the Nicaraguan government to ensure that self-determination be a principle applied in their negotiations with the indigenous people of that region.

Point of Action Number 8

We urge that the problems of alcohol and drug abuse, and lack of access to health and education facilities be addressed immediately by the states. We ask that states, UNESCO, the World Health Organization and other international bodies take immediate action with the full participation of indigenous peoples and design a system whereby indigenous peoples have direct access and representation to the services of those agencies. We condemn especially the promotion of alcohol and drug abuse among indigenous peoples as a modern form of genocide.

Point of Action Number 9

For the full enjoyment of indigenous rights, and fundamental freedoms, our right to self-determination and sovereignty must be recognized and respected; we understand this to be: the management and implementation of our own political, health, education and economic/social systems. It means the right and responsibility to secure our own future. We must have control of our own territories and manage the resources in accordance with our traditional practices in life. This is essential to our existence and survival as a people. Transnationals and states must abstain from

continuing to violate our territorial integrity and the pillaging of indigenous resources.

Point of Action Number 10

We note that even as we attend these commission meetings, atrocities are being committed against indigenous peoples. We call on all nation-states to cease and desist from these attacks against indigenous peoples. It appears that the most consistent violators are El Salvador, Guatemala, Columbia and Peru, although there are violations in all nation-states with indigenous peoples. We urge immediate action by NGOs, national liberation movements and the international community to this effect.

Point of Action Number 11

We support the recommendations made by Dr. E. Daes at the UN Global Consultation on Racism (3–6 October 1988 in Geneva) that:

(a) the UN Centre for Human Rights set up a special section to deal exclusively with indigenous peoples' rights. This office should, among other things, provide technical and advisory assistance to indigenous peoples attending United Nations meetings;

(b) the United Nations should release funds to the Centre for Human Rights so that it can produce fact sheets on indigenous peoples to be distributed worldwide.

We express our deep concern and solidarity with the South African people. We condemn the regime of *apartheid* as an institutionalized form of oppression in South Africa. We support all efforts for its total elimination.

We support the struggle for decolonization and the independence of Namibia.

We express our solidarity and deep concern over the human rights violations of migrant workers and support all efforts to eliminate these human rights violations.

We support the struggle of the Palestinian people and urge all nation-states to recognize their rights as original inhabitants of Palestine. Those rights include self-determination and a nation-state.

EAFORD Activities

In this section, Without Prejudice *offers a biannual summary of educational and informational activities of the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD) on issues of racism and racial discrimination. This serves as a record of EAFORD's contributions toward the promotion of international law and the work of the United Nations which seeks to combat racism and its effects.*

A. *Cooperation with United Nations Bodies and Agencies*

EAFORD collaborates in activities and maintains contact with United Nations bodies, including the United Nations Economic and Social Council (ECOSOC) and the Commission on Human Rights and its various subcommissions, as well as seminars and conferences organized by UN agencies and affiliates in the following:

1. Division for Palestinian Rights (New York);
2. Centre against *Apartheid* (New York);
3. Centre for Human Rights (Geneva and New York);
4. Commission on Human Rights (Geneva):
   a. Subcommission on Prevention of Discrimination and Protection of Minorities (Geneva);
   b. Working Group on Indigenous Populations (Geneva);
5. Conference of Nongovernmental Organizations (Geneva and New York);
6. Commission on Human Settlements/HABITAT (Nairobi and New York);
7. United Nations Department of Public Information (Geneva and New York);
8. International Bank for Reconstruction and Development/World Bank (Washington);
9. International Labour Organisation (Geneva).

B. *Cooperation with Other Nongovernmental Organizations (NGOs)*

EAFORD has been engaged in a number of activities with other nongovernmental organizations through its cooperation with various UN bodies, and is a full member of:

1. NGO Committee on Human Rights (Geneva);
2. NGO Subcommission on Racism, Racial Discrimination and *Apartheid* (Geneva);
3. European Regional, North American Regional and International United Nations NGO Conferences on the Question of Palestine;

In the past semiannual period, EAFORD has also contributed to international antiracism efforts by participating with other associations and NGOs in a variety of issues and programs, with special emphasis on strategizing for the defense of colonized and indigenous peoples' rights to maintain their lands and cultures. In doing so, EAFORD has regularly cooperated with organizations in the western hemisphere and globally on such issues as the defense of indigenous habitat in the tropical forests of Brazil and Ecuador; land rights of the Mapuches in Chile; and cases of forced relocations, such as that of the Navajo and Hopi people by the United States courts. EAFORD has also remained concerned with the drastic reduction of staff and services of the Inter-American Commission on Human Rights (Organization of American States), whose role it is to promote and protect the human rights of indigenous populations in Latin America.

In defense of the land rights of indigenous peoples, EAFORD has also been active in a number of efforts in Europe and in North and South America to bring the case of the Palestinian people to the public. In this regard, EAFORD continues to promote the International Convention on the Elimination of All Forms of Racial Discrimination and other international laws, and to emphasize the contradiction of Zionist laws to these legal standards and to the principles of nondiscrimination and the elimination of all forms of racism. EAFORD has focused especially on the practice of house and village demolitions carried out in the Israeli-occupied territories, as well as the policy of incrementally eliminating the habitat of Palestinian Arab citizens of the state of Israel by demolishing their homes and villages inside 1948 Palestine, and by simultaneously confiscating these citizens' land under various legal pretexts. Besides introducing the issue of Israel's house demolition and land theft practiced against Palestinian citizens of that state in the Commission on Human Rights, EAFORD initiated discussion of this case for the first time to the United Nations Commission on Human Settlements.

In the case of *apartheid* in southern Africa, EAFORD has cooperated with efforts to document and publicize the legal situation in South Africa and Namibia, which, grounded in the premise of white superiority, consistently denies basic freedoms for the indigenous African and other black residents of that region. EAFORD also has cooperated in this concern with a number of authors and academics to produce critical scholarly analyses for publication in the future. EAFORD is currently preparing to publish analytical materials on the policies of western states toward southern Africa, with a focus on developments in the case of Namibia.

EAFORD has maintained a high level of cooperation with other NGOs in consultative status with the UN through the various forums at Geneva concerned

with human rights and racial discrimination. In such representations, EAFORD has concentrated on the three main areas of its concern—*apartheid*, Zionism and discrimination against the indigenous peoples—in addition to critical cases of racial and minority discrimination that threaten the rule of law, human rights, world order and peace. Among these are the heightened conflict in Tibet, the conflict in Eritrea, the plight of the Romani people in Europe, the treatment of the ethnic Hungarian citizens by Romania, and the suppression leading to expulsion of the Turkish community in Bulgaria, as well as the human rights situation in Africa.

C. *Representation at Conferences, Seminars and Symposia*

Through its members and directors, EAFORD regularly participates in international conferences under United Nations, governmental and nongovernmental auspices which relate to EAFORD's areas of expertise. During the past half-year period, EAFORD has been represented at various levels in the following:

1. Fourth International NGO Symposium on the Question of Palestine, Geneva, 31 August–2 September 1988: EAFORD participated in workshops on new initiatives for mobilizing for a just peace and in a special interest group on the Palestinian right of return;
2. "Together for Peace: An NGO Agenda for the Future," commemorating the International Day of Peace, Geneva, 1–2 September 1988;
3. Seventeenth General Assembly of the Conference of NGOs in Consultative Status with ECOSOC, New York, 6–9 September 1988;
4. United Nations Department of Public Information Annual Conference of Nongovernmental Organizations, New York, 14–16 September 1988;
5. "The *Intifada* and Palestinian Statehood," Palestine Human Rights Campaign Convention, Chicago, 1–2 October 1988;
6. Global Consultation on Racism and Racial Discrimination, organized within the framework of the United Nations Second Decade to Combat Racism and Racial Discrimination, Geneva, 3–6 October 1988: the consultation considered the issues of the international challenge to racism today; origins or racism and racial discrimination; contemporary forms of racism, with particular reference to *apartheid*; vulnerable groups and racism; current and future UN action; and coordination and strengthening international action at all levels;
7. Annual meeting of the National Conference of Black Lawyers (Washington): participated in a panel/workshop, "Bantustans in the Promised Land," Washington, 9 October 1988;
8. Meeting of Chairmen of Treaty Bodies, Geneva, 10–14 October 1988: during deliberations, UN Commission on Human Rights Chairman especially commending EAFORD for its active participation in the commission and subcommission (on minorities) for its attention to human rights in Africa and the Arab world;
9. International NGO Conference for Action to Combat Racism and Racial Discrimination in the Second UN Decade, convened under the auspices of the NGO Subcommittee on Racism, Racial Discrimination, *Apartheid* and Decolonization, Geneva, 11–14 October 1988: EAFORD served as a member of the Steering Committee for the conference and focused mainly on the issue of the elimination of racial discrimination against indigenous peoples and the protection of their human rights, and contributed to deliberations

which resulted in NGO recognition of the Palestinian people as the original inhabitants of Palestine;

10. Briefing with Prakash Diar, attorney for the Sharpeville Six, convened by the Lawyers Committee for Human Rights under Law, Washington, 14 October 1988;
11. Thirty-fourth session of the Commission on Human Rights, Geneva, 24 October–11 November 1988, meeting to examine state reports (Mexico, Netherlands, Norway and United Kingdom [*sic*] and dependent territories) concerning implementation of the provisions of the International Convention on Civil and Political Rights and any progress realized in those countries in the human rights field;
12. Roundtable discussion of the Covenant on Civil and Political Rights as part of the United Nations Bill of Rights, Geneva, 3 November 1988;
13. African Studies Association Conference, Chicago, November 1988;
14. Middle East Studies Association Conference, Los Angeles, November 1988;
15. Informal meeting on human rights in Turkey, sponsored by Amnesty International and the International Service for Human Rights, Geneva, 10 November 1988;
16. Conference of Nongovernmental Organizations (CONGO) meeting, discussion of UN-NGO relations and the fortieth anniversary of the Universal Declaration of Human Rights, 29–30 November 1988;
17. Commemoration of the International Day in Solidarity with the Palestinian People, Geneva, 2 November 1988;
18. Seminar on Human Rights and the Disadvantaged, commemorating the fortieth anniversary of the Universal Declaration of Human Rights and hosted by French President François Mitterand, Paris, 8–10 December 1988;
19. Commemoration of the first anniversary of the *intifadah* (popular Palestinian uprising in the occupied territories), Geneva, 9 December 1988;
20. Consultation between the United Nations Centre for Human Rights and NGOs, Geneva, 12 December 1988;
21. Ceremony celebrating the fortieth anniversary of the Universal Declaration of Human Rights, Geneva, 12 December 1988;
22. UN General Assembly session on the Question of Palestine, Geneva, 13–16 December 1988;
23. Palestine Annual Festival, organized by the Committee for a Democratic Palestine, Washington, 19 February 1989;
24. United Nations Commission on Human Rights, Geneva, February/March 1989: EAFORD President Abdalla Sharafeddin and Executive Director Hussein Raiani (International Secretariat) spoke in general debate on the connection between human rights violations in southern Africa and Palestine.

D. Research and Publications

In addition to its biannual publication of *Without Prejudice*, EAFORD regularly undertakes to support, conduct and publish research on contemporary cases of racism and racial discrimination with a focus on those issues which are prominent on the agenda of the United Nations. In the recent period, EAFORD has accomplished the following:

1. Revised and updated *A Partisan History of Judaism*, by Elmer Berger (original

edition, 1951), for publication in the near future;

2. Supported research toward an analytical volume on United States foreign policy toward southern Africa during the Reagan administration, 1981–88, by Alfred T. Moleah, for publication in the near future;
3. Translated EAFORD Paper No. 24, *Zionism and* Apartheid*: The Negation of Human Rights* for publication in French under the title, *Violations des droits des Palestinians: comparaison avec l'Afrique du Sud* (EAFORD Paper No. 42);
4. Conducted research toward copublication (with the DataBase Project on Palestinian Human Rights, Chicago) of *The Destruction of Palestinian Homes and Other Structures by Israeli Authorities*, a preliminary report, in English and Spanish, on Israel's policy of house and village demolitions in all of historic Palestine.

EAFORD Papers

5 *Dossier: Le Racisme au Quebec*, le mouvement Québécois pour combattre le racisme. $1.50

7 *La relation et les relations entre Israël et l'Afrique du Sud*, Elisabeth Mathiot. $1.00

8 *A Question of Identity and Self-fulfilment*, Anis Al-Qasem and Roberto Cardoso de Oliviera. $1.00

9 *Israel and South Africa: Ideology and Practice*, Alfred T. Moleah. $1.00

10 *The Structure of the Zionist Movement in the United States*, Elmer Berger. $1.00

11 *The Case in South Africa*, Türkkaya Ataöv. $1.00

12 *Sanctions against South Africa: The Lessons of Sanctions against Rhodesia*, Alfred T. Moleah. $1.00

13 *The Autonomy Plan: Israeli Colonisation under a New Name* (published by EURABIA, Paris), Elisabeth Mathiot. $1.00

14 *Le Racisme en France, par un groupe de stagiaires Québécois. $1.00*

15 *An International View of Racial Discrimination*, Anis Al-Qasem. $1.00

16 *Zionist Ideology—Obstacle to Peace*, Elmer Berger. $1.00

17 *Zionism and the Lands of Palestine*, Sami Hadawi and Walter Lehn. $1.00

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23 *The Caribs and Their Colonizers: The Problem of Land*, Chief Hilary Frederick. $1.00

24 *Zionism and Apartheid: The Negation of Human Rights*, Alfred T. Moleah. $1.00

25 *Zionism, A System of Apartheid*, Elisabeth Mathiot. 1.00

26 *Human Rights or Self-righteousness in the State of Israel*, Elmer Berger. $1.00

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28 *Israel and Nuremberg: Are Israel's Leaders Guilty of War Crimes?*, John Reddaway. $1.00

29 *Internal Control in Israel and South Africa: The Mechanisms of Colonial-Settler Regimes*, Christopher Mansour and Richard P. Stevens. $1.00

30 *Proceedings of the Symposium on Ethnic Groups and Racism*, EAFORD and the Universidade de Brasilia. $1.00

31 *The Image of the Amerindian in Quebec Textbooks*, Sylvie Vincent and Bernard Arcand. $1.00

33 *Education, Culture and Identity among Palestinians in Israel*, Sami Khalil Mar'i. $1.00

34 *Racial Discrimination and Refugee Law*, Anis Al-Qasem. $1.00

35 *Insensitivity to Wrong*, Anis Al-Qasem. $1.00

36 *The Apartheid Fraud: The So-called New Constitutional Dispensation*, Alfred T. Moleah. $1.00

37 *Racisme, Sionisme, Antisemitisme* (public debate, Montréal), EAFORD, le mouvement Québécois et Centrale de l'Enseignement du Québec. $1.00

38 *Palestinian Rights and Israeli Institutionalized Racism*, Anis Al-Qasem. $1.00

39 *New Trends in Brazilian Indian Affairs*, Roque de Barros Laraia. $1.00

40 *Jewish Nationality Status as the Basis for Institutionalized Racism in Israel*, Roselle Tekiner. $1.00

41 *The Torah and Political Zionism*, Joseph Becher. $1.00

42 *Violations des droits des Palestiniens: comparaison avec l'Afrique du Sud*, Alfred T. Moleah. $1.00

43 *White Racial Nationalism in the United States*, Ronald Walters. $1.00

44 *State Terrorism at Sea: A Preliminary Report on the Case of Israel*, Committee against State Terrorism at Sea (Jerusalem). $1.00

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