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STUDY OF THE PROBLEM OF DISCRIMINATION AGAINST
 INDIGENOUS POPULATIONS

Report of the Working Group on Indigenous Populations
 on its third session

Chairman-Rapporteur: Mrs. Erica-Irene A. Daes

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INTRODUCTION

1. The creation of the Working Group on Indigenous Populations was proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 2 (XXXIV) of 8 September 1981, endorsed by the Commission on Human Rights in its resolution 1982/19 of 10 March 1982 and authorized by the Economic and Social Council in its resolution 1982/34 of 7 May 1982. In that resolution the Council authorized the Sub-Commission to establish annually a Working Group on Indigenous Populations to meet for up to five working days before the annual sessions of the Sub-Commission in order to:

(a) Review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually from Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status, particularly those of indigenous peoples, to analyse such materials, and to submit its conclusions to the Sub-Commission, bearing in mind the report of the Special Rapporteur of the Sub-Commission;

(b) Give special attention to the evolution of standards concerning the rights of indigenous populations, taking account of both the similarities and the differences in the situations and aspirations of indigenous populations throughout the world.

2. The outgoing Chairman of the Sub-Commission at its thirty-sixth session, Mrs. Halima Embarek Warzazi, in consultation with the geographical groups, appointed Mrs. Erica-Irene A. Daes, Mr. Enzo Guistozi, Mrs. Yijie Gu, Mr. Aidiid Abdillahi Ilkahanaf and Mr. Ivan Tosevski, to serve on the Working Group on Indigenous Populations, during its third session in 1984.

3. The Working Group held meetings from 30 July to 2 August and on 6 August 1984.

Participation in the session

4. The session was attended by Mr. Miguel Alfonso Martínez, who served as alternate of Mr. Guistozi, Mrs. Erica-Irene A. Daes, Mrs. Yijie Gu and Mr. Ivan Tosevski.

5. The following States Members of the United Nations were represented by observers: Australia, Bolivia, Brazil, Canada, China, Colombia, France, Greece, Guatemala, India, Mexico, Nicaragua, Netherlands, New Zealand, Norway, Panama, Peru, Sweden, United States of America and Viet Nam. The Holy See, a non-member State was also represented by an observer.

6. The following United Nations specialized agencies and United Nations bodies were represented during the session: Office of the United Nations High Commissioner for Refugees, International Labour Organisation.

7. The following United Nations regional intergovernmental organization was represented: the League of Arab States.

8. The following National Liberation Movement was also represented: Pan Africanist Congress of Azania.

9. The following non-governmental organizations in consultative status with the Economic and Social Council were represented:

(a) Indigenous Peoples' NGOs: International Indian Treaty Council, World Council of Indigenous Peoples, Indian Council of South America (CISA), Indian Law Resource Centre, Four Directions Council, Inuit Circumpolar Conference and National Indian Youth Council.

(b) Other NGOs: World Federation of United Nations Associations, Anti-Slavery Society for the Protection of Human Rights, Defence for Children International Movement, International Federation for Human Rights, International Movement for Fraternal Union Among Races and Peoples, International Human Rights Internship Program, International League for the Rights and Liberation of Peoples, Romani Union, Survival International, Baha'i International Community, International Commission of Jurists, International Fellowship of Reconciliation, Minority Rights Group, Procedural Aspects of International Law Institute-International Human Rights Law Group, War Resisters International, Commission of the Churches on International Affairs and Friends World Committee for Consultation.

10. The following indigenous peoples' organizations as well as other organizations that furnished information to the Working Group with its consent, were also represented:

(a) Indigenous peoples' organizations: Alliance de profesionales indígenas bilingües, Asociación interétnica de desarrollo de la selva peruana (AIDSESP), Assembly of First Nations, Confederación de Nacionalidades Indígenas de la Amazonía Ecuatoriana (CONFENIAE), National Aboriginal Conference, National Aboriginal and Islander Health Organization, National Aboriginal and Islander Legal Service Secretariat (NAILSS), Native Council of Canada, New South Wales Aboriginal Land Council (NSWLC), Secretariat on National Aboriginal and Islander Child Care, Treaty, 6, 7, 8, Union de Naciones Indígenas (UNI), Western Shoshone Nation, Nordic Sami Council, Chakma People From Chittagong Hill Tracts, Innu Kanantwapatshet, Misatan, Tsistsistas (Southern Cheyenne) Nation, Hadenosaunce, Six Nation Iroquois Confederacy, Hawaiian Nation and Pueblo of Santo Domingo.

(b) Other organizations and groups: Indigenous Populations' Center for Documentation, Research and Information (DOCIP), Informationszentrale für Nordamerikanische Indianer. International Scholars for Indigenous Americans (ISIA) Svensk-Indianska Fordundet, Work Group Indigenous Peoples, American Indian Arts Exchange "No Beads no Trinkets", Asociación Indigenista del Paraguay, Association Diffusion (INTI), Association Suisse de Solidarite avec les Peuples Indigenes, Gesellschaft für bedrönte völker, Indigenous World, International Work Group for Indigenous Affairs, Free Papua Movement, Asociación Gremial de pequeños agricultores y artesanos Ad Mapu, Cultural Survival and Comité Belge - Amerique Indienne.

In addition, several participants in the Special Course on Indigenous Peoples - Human Rights Institute, Strasbourg, as well as scholars and individuals attended the meeting.

Election of Officers

11. At its first meeting, on 30 July 1984, the Working Group unanimously elected Mrs. Erica-Irene A. Daes as Chairman-Rapporteur.

Documentation

12. The documents submitted to the Working Group are listed in annex II to the present report.

I. GENERAL DEBATE

13. Opening the debate, the Chairman-Rapporteur referred to the mandate of the Working Group specified in Economic and Social Council resolution 1984/34 and recalled that, since its first session in 1982, the Working Group had chosen an open and flexible approach in order to obtain relevant information and the views from the indigenous populations and Governments in order to promote a constructive dialogue among them for the benefit of the human rights and fundamental freedoms of indigenous populations. That had made the procedure of the Working Group somewhat different from other bodies of the United Nations. Both observers from Governments and from indigenous organizations had found that approach useful and the Commission on Human Rights, in its resolution 1984/32, had noted with appreciation the valuable co-operation with the Working Group of a considerable number of Governments, specialized agencies, non-governmental organizations and organizations of the indigenous populations.

14. The Chairman-Rapporteur drew attention to the agreement which had prevailed among all participants at the two previous sessions that the Working Group was not to be used as a chamber of complaints or a tribunal, since it was outside the Working Group's mandate to assess evidence in connection with possible allegations.

15. A member of the Working Group urged participating organizations not only to register their wishes and aspirations, but also to contribute to a deeper and more critical analysis of the issues involved so as to assist the Working Group in adopting and being able to defend certain ideas.

16. Observers from Governments expressed their agreement with the methods of work adopted by the Working Group and agreed that it should not be turned into a chamber of complaints, since such a function would be outside the Working Group's mandate and would duplicate other United Nations procedures. Observers from indigenous and other organizations stressed the importance of the opportunity offered by the Working Group for a constructive dialogue to be established between Governments and indigenous representatives. In the context of the fruitful co-operation between the Working Group and indigenous organizations, the observer from the World Council of Indigenous Peoples (WCIP), a non-governmental organization in consultative status with the Economic and Social Council, invited the Working Group to participate in its fourth General Assembly to be held in Panama in September 1984 with the participation of indigenous delegations from 33 countries.

17. Regarding the work plan which the Working Group had set for itself, the observer from a Government expressed his agreement with the Plan of Action adopted in 1984. Another observer suggested that, for the preparation of its next session, the Working Group should: (a) request an analytical summary of the proposals made at its present session; (b) study the recommendations of the Study of Mr. Martínez Cobo concerning land rights; */ (c) request, through the Sub-Commission, comments, and additional proposals of Governments, specialized agencies and non-governmental organizations concerning land and also request the issuing of such comments and proposals in a summary document; (d) request, through the Sub-Commission, that the Secretariat give high priority to the preparation of documents for future sessions of the Working Group.

18. The observer from another Government, noted that the third session of the Working Group had been particularly rich in ideas and concrete suggestions from

*/ E/CN.4/Sub.2/1983/21/Add.4 and E/CN.4/Sub.2/1983/21/Add.8, paras 509-574.

indigenous and other organizations and, with reference to the Working Group's future work, he submitted that at its next session the Working Group might wish to make full use of the time allotted to it for a constructive exchange of views among its members concerning those suggestions.

19. Several indigenous and other organizations, in a written text of proposals submitted to the Working Group (see annex III), suggested that principles concerning land rights developed during the third session of the Working Group as well as all relevant documents be considered by all participants before the next session of the Working Group, so that more fruitful and specific discussions on land and other natural resources may be held at the fourth session of the Working Group.

20. In the light of the discussions held and the over-all progress made during its third session, the Working Group adopted a Plan of Action from 1985 onwards (see annex I).

21. At its 2nd meeting, on 30 July 1984, the Minister for Aboriginal Affairs of Australia, The Honourable Clyde Holding, MP, addressed the Working Group.

II. REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS POPULATIONS

22. Item 4 was considered at the Group's 2nd, 3rd, 4th, 5th and 8th meetings.

23. The Chairman-Rapporteur, introducing the item, pointed out that pursuant to the mandate of the Working Group under Economic and Social Council resolution 1982/34, the general task of the Working Group was to identify pressing issues important to the indigenous populations and to Governments and to examine the evolution of policies, laws and practices in regard to those areas in order to be enabled to submit concrete and realistic conclusions and recommendations to the Sub-Commission. She recalled that the Working Group, at its second session, considered under item 4 certain areas like the right to life, to physical integrity and to security of the indigenous populations, the right to land, the right to develop their own cultural traditions, language, religious practices and way of life as well as the right to autonomy or self-determination and political institutions and the enjoyment of economic and social rights. She expressed the view that the Working Group, at its third session, might wish to continue consideration of these aspects. However, it should concentrate, in particular, on the right to land and other natural resources and the definition of indigenous populations, as it was decided by the Group at its second session.

24. The observers from indigenous populations, in their interventions, placed emphasis on a number of issues which are reflected below. Concern regarding several of these issues was also shared by some government observers present. Those observers provided information about policies, institutions and legislation planned or adopted in their countries with regard to indigenous populations. They also described the dialogue currently taking place between their Governments and representatives of indigenous populations, which aimed at improving relations with, and guaranteeing better protection of the rights of indigenous populations.

25. The statement made by observers of indigenous populations and by government observers, as well as by others, are reflected under the respective issue areas below.

26. It was stressed that the review of developments would provide the basis for the elaboration of standards, thus helping to improve the respect for, and obtaining effective recognition of, the rights of indigenous peoples.

A. The right to land and to natural resources

27. The idea was expressed by all the observers from indigenous populations who attended the meeting, that the preservation of the life and the culture of the indigenous populations was indissolubly linked to their lands and natural resources. The dispossession of their territorial base, the displacement to, or resettlement in, places with different environmental conditions, the deprivation of natural resources as basic as water and natural food in the areas where they lived and the loss of sacred lands and sites brought with them a disruption in the life and social and legal order of indigenous communities and plunged them into suffering, hunger, disease, death and moral despair. The restoration of at least some of their land base to indigenous communities was considered not only to represent a necessary compensation for years of oppression, but also as the only basis for ensuring the future of the indigenous populations.

28. The representative of the ILO, referring to the paper on land rights of indigenous populations submitted by the ILO, stressed the importance of ensuring that safeguards for land rights extended also to rights to the subsoil and other natural resources and to provide for wide consultation of the populations concerned in connection with such rights.

29. Several non-governmental organizations and indigenous organizations observers made statements referring to gross violations of their right to land. Emphasis was put on deprivation of their land, which led in certain cases to forced integration, dependency and poverty. This had happened, for example, to indians and aboriginals in several countries of the world. Extinguishment of aboriginal rights was alleged in return for settlement of land claims.

30. Other NGO observers drew attention to the situation of indigenous peoples and tribes in several countries.

31. Mention was made by NGOs and indigenous organizations of several projects such as hydro-electric power projects included in agricultural development projects and of enforced division of indigenous lands. It was alleged that many of those projects, plans and actions were implemented without consultation with or the consent of the indigenous populations concerned. Those projects, it was pointed out, violated the right of the indigenous populations to their land and natural resources and to live according to their own cultural and religious patterns within their own territory.

32. Some observers made particular mention of the negative impact of the transnational corporations as well as international and national agencies that provided funds or expertise for development projects.

33. It was stated that, in some cases, resistance from indigenous populations to accept intrusion, displacement, destruction of sacred places, deprivation of land and natural resources and changes in environmental conditions had resulted in persecution by public officials and armed forces against the communities and their leaders.

34. Several observers stressed that the indigenous populations should participate in all decision-making processes regarding development projects to be carried out in their own territories, or in lands where they lived or in any projects that would have an impact on their lives. The need for consultation and consent was particularly stressed.

35. Several indigenous organizations stated that treaties concluded in the past between indigenous populations and Governments had not been respected and that in law suits filed by the indigenous populations, the judiciary only applied legislation and patterns imposed by the national society. Indigenous claims to the land and natural resources assured to them by those treaties, were allegedly not respected. In cases where such incidents occurred, the indigenous populations were often powerless to prevent encroachment on or expropriation of, their lands because the law did not recognize their specific rights to land. This was compounded by an absence of legal remedies for violations of indigenous land rights. Some of the speakers suggested that the Working Group should include in its agenda the question of the respect for treaties concluded between the different categories of indigenous peoples and the respective Governments. An indigenous organization, in a written recommendation to the Working Group, suggested that the Working Group advise the Sub-Commission to study carefully Indian Treaties, the lack of observance of the treaties and its influence on the human rights situation of Indian Peoples in certain countries and to report to the Commission on Human Rights at its forty-third session. It was also suggested that this question should form the subject of a special study that took due account of the viewpoints of the Governments and the indigenous populations that are signatories to the treaties or agreements. Since several of the areas of concern identified by the Working Group as pertinent in connection with its mandate had been the subject of provisions or clauses in those treaties, that would provide the indigenous populations with a protection they did not have at the national level.

36. In this connection one NGO observer stated that the treaty signed by her people and the Government was in the past a treaty of peace and Friendship and did not, by any means, cede to the Government the land-ownership of her people. She mentioned that despite a decision by the Court recognizing their title to their lands, her people were forced into dependency and poverty, living on small reservations and were being threatened with extinction.

37. Several NGOs observers pointed to the fact that indigenous peoples had a unique and spiritual relationship to their land which was different from the Western European concept of land ownership. Indigenous peoples held their land collectively, not as individuals. Land was an intimate part of the life, culture, personality, religion, and sovereignty, autonomy, and self-determination of indigenous peoples. One NGO observer recalled that the Working Group on Indigenous Populations recognized, as did the World Conference to Combat Racism and Racial Discrimination of 1978, "the special relationship of indigenous peoples to their land and stresses that their land, land rights and natural resources should not be taken away from them". He stated that, discovery, conquest, and unilateral legislation were not legitimate bases for States to claim or retain the territories or natural resources of indigenous peoples. In no circumstances should indigenous peoples or groups be subjected to adverse discrimination with respect to their rights or claims to land, property, or natural resources. These principles, together with the proposals and recommendations of the Martínez Cobo report on land rights and other relevant documents, should be considered before the next session of the Working Group by all participants, particularly by indigenous people.

38. A Government observer stated that the debate about land rights, autonomy and self-determination raised controversial issues going to the heart of the sovereignty and national integrity of United Nations Member States. In identifying criteria to distinguish the rights of indigenous populations and in developing special measures to remedy their disadvantaged position, any suggestion about separate development or

secession should be avoided. He informed the Working Group that an aboriginal steering committee was formed in his country to provide advice to the Government on the development of proposals for model federal land rights legislation. However, it was made clear that neither the granting of land rights, nor the recognition of prior aboriginal occupation and ownership of the land in any way put national sovereignty in question.

39. One Government observer referred to the indigenous policy of his country which had brought towards positive results thanks to the criticism and proposals submitted by the indigenous organizations themselves. His country recognized that there existed three basic elements for the survival of indigenous ethnic groups: the land, the linguistic, cultural and educational policy and the political participation and self-determination of indigenous peoples. The indigenous policy of his country had met with variable results in connection with each of the three elements. He expressed the view that land was the fundamental element in the definition of human rights of indigenous peoples. He said that for indigenous peoples land was not simply a means of production or an exchange value, but it was a territory, an identity, a part of the social organization itself. It was impregnated with emotional, cultural, social, philosophical and religious values.

40. Another Government observer stated that in the review of developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations, one should take into account the real life experience of the indigenous populations; in particular the dispossession of land, the destruction of culture; and in some cases the prevention of their own development.

41. He emphasized the need to establish norms of separate rights for indigenous populations while at all times the universality of human rights should be recognized. In the elaboration of separate rights, land rights should be the essential element. He suggested that a document should be transmitted by the Secretariat to Governments, specialized agencies and non-governmental organizations concerned containing, inter alia, an analytical summary of the proposals in land rights made at the present session and the recommendations made in the chapter on land in Mr. Martínez Cobo's study. Comments received from Governments and organizations regarding this document should be submitted by the Secretary-General to the Working Group, at its fourth session.

42. One NGO observer stated that in his view, denial of basic human right to lands and natural resources was increasingly the cause for the eruption of political and violent confrontations between indigenous peoples and States. He urged the Working Group to recognize that indigenous peoples were human beings who had the original and inherent right to enjoy for their own benefit lands and natural resources without external interference and that they could not be denied the right to use and dispose of their own natural wealth.

43. Another NGO observer said that two tasks were given to the Working Group: to define indigenous populations and to investigate the land rights of indigenous populations. The Working Group should concentrate on examining substantive rights including land rights.

44. One NGO observer made a statement about the various treaties signed between the Indians and the Government of his country and suggested that the following principles be included in any instrument about the rights of indigenous populations: recognition of indigenous land tenure systems and land uses; participation and sharing of benefits in the development of natural resources; compensation for unjust taking of land; protection of sacred land and recognition of treaties and other agreements with indigenous populations.

45. Another NGO observer referred to the interrelationship which existed between the enjoyment of the right to land and the right of self-determination or self-government, the denial of full civil rights and access to legal processes and the extreme poverty and induced dependence.

46. In this regard it was underlined by some non-governmental observers that guaranteeing the right to land for indigenous populations was indispensable for their very existence as such. Some pointed out that the scope of land rights should be determined by the indigenous populations themselves.

47. One NGO observer submitted a written proposal to the Working Group suggesting that the discussion of the right to land and other natural resources should include the following topics: discriminatory denial of legal protection for land owned by indigenous peoples; abrogation or assumption of land-title by national Governments without a legal basis; failure by most Governments to give full legal effect and recognition to the land-ownership or title of indigenous peoples; imposition of involuntary trusteeship - holding indigenous land in trust by national Governments - and abuse of trust; denial of indigenous control over land and resources; land reform programmes which ignore or destroy indigenous land ownership; denial of fair, legal means for claiming or recovering lands owned by or illegally taken from indigenous people; fraudulent and unfair claim processes which result in the loss of indigenous rights; national colonization-settlements programmes which settle others in indigenous peoples' lands; allotment programmes which divide up communally held indigenous lands into individuals lots; taking of indigenous lands which have been guaranteed by legally binding treaties; the activity of transnational corporations; and environmental protection.

48. It was proposed by several representatives of indigenous organizations that the Working Group should take the following action: condemn the notion that indigenous or "tribal" peoples are culturally inferior and therefore free prey for neighbouring States' expansion and development; adopt in principle paragraphs 509-574 of the Final Report of Mr. Martínez Cobo, relating to measures for the recognition and protection of indigenous land rights; recognize the special relation of indigenous populations to land and emphasize in particular the fact that indigenous peoples have land-tenure systems of their own, which States should respect and protect; and urge the adoption by States of the principles of abstention from development programmes that displace indigenous populations. It was also suggested that effective mechanisms of redress be established and that such procedures be excluded from the normal statutory limitations.

49. One NGO observer was of the view that the distinction between land, people and culture was incomplete and a misleading abstraction. Indigenous societies unlike those societies with systems predisposed to operate in materialist and linear historical premises, did not conceive of institutionalized land as a commodity. According to him, the use of the armed force and exploitive technology were inconsistent with the traditional relationship. He suggested that where land cannot be returned, compensation should be made for the damage to land, the destruction of natural flora and fauna.

50. Another NGO observer submitted on behalf of a number of aboriginal organizations (a) that the doctrine of terra nullius be declared a crime against humanity, and (b) that a procedure be developed whereby the legal implications of the application of doctrines such as terra nullius could be referred to the International Court of Justice.

51. Several observers from Governments stated that significant developments had taken place recently. They stated that land rights had been granted to the indigenous populations in some parts of the territory of their countries, thus removing or alleviating injustices suffered by them in the past. For example, one Government observer indicated that in his country the protection of aboriginal and treaty rights was recently included in the national constitution. As part of these constitutional amendments, a political process was established at the highest level to define the specific content of these rights; this process involved Governments as well as leaders of the aboriginal populations. In that same country, a major land claim settlement was successfully negotiated during the past year. Legislative proposals to establish self-government for indigenous groups and to remove sexual discrimination in the identification of Indians were introduced in the national legislature.

52. Some Government observers provided information on the different existing programmes for the economic and social development of the indigenous populations. For example, it was reported that in one country, programmes to the amount of \$3 billion per annum were currently being implemented in the fields of education skills, training, economic development, social services, health care, housing, and community infrastructure. This was in addition to programmes of a general application to which all citizens of that country, including indigenous persons, had access.

53. One Government observer stated that her country, as well as many others, had promulgated legislation aimed at protecting the tribal populations from the transfer of tribal land to non-tribal interests and also at restoring to those populations the lands illegally acquired from them.

B. The right to life, to physical integrity and to security of the indigenous populations

54. Speakers from several non-governmental and indigenous organizations stated that the right to life, a basic human right recognized in several international instruments was repeatedly, and sometimes systematically, violated in the case of indigenous populations.

55. Allegations of genocide and ethnocide were made by these representatives. A few of them emphasized in particular the situation of the indigenous populations in some countries. It was stated that torture, murder, disappearances, massacres of entire indigenous communities, the burning of their houses and crops and persecution were carried out by official armed groups. This massive violation of the rights of the indigenous populations was alleged to constitute genocide. Ethnocide was also involved because part of the actions taken against the indigenous populations aimed at the annihilation of the indigenous culture and social organization. It was stated that the main problem was life and land.

56. It was further alleged that members of tribal hill groups were being killed and arbitrarily executed. Arson and deprivation of the traditional sources of survival were also claimed to be a direct cause of death.

57. Some observers from indigenous organizations said that in some countries the right to life of indigenous peoples was affected by the conditions under which they were forced to live. Those conditions were a source of physical and mental harm to the individuals of the indigenous groups and included imposed birth control measures, thus threatening the destruction of those communities as a whole. The lack of water and natural food and the changes in environmental conditions were also the cause of hunger, malnutrition diseases and death.

58. Some observers from indigenous and non-governmental organizations alleged that community and religious leaders, as well as ordinary members of indigenous groups had been arbitrarily arrested and detained, tortured or murdered by the regular armed forces and/or paramilitary groups as part of the phenomenon of retaliation for having protested against the serious situations affecting them.

59. Some NGO observers referring to the situation in their countries urged the Working Group to inform the Sub-Commission of the serious acts of gross human rights violations which allegedly existed there.

60. Many indigenous organizations stressed that the Working Group should take note of the continuing genocide of indigenous populations reported to occur in a number of countries in the world and reaffirm the right to life and physical integrity of indigenous populations.

61. An observer from an indigenous organization drew the attention of the Working Group to the high danger for indigenous populations of nuclear and other military testing on indigenous lands. The same observer presented an international petition to the Working Group on this matter.

62. An NGO observer suggested that the Working Group should recommend that United Nations Trusteeship should be extended to cover indigenous enclaves, and thus accountability to the international community should be established.

63. Some government observers stated that discrimination against indigenous populations did not exist in their countries. Some of them also stated that national legislation assured the equal enjoyment of civil and political rights to the entire population of the country and outlawed any kind of discrimination. Another government observer added that all democratic means to reach the objectives of the indigenous organizations were available to them, as well as to any other groups of the national community. Policies, legislation and institutions existing in their countries protected and promoted the right to life, to physical integrity and to security of the indigenous populations as well as their natural resources and their right to health.

64. The observer from a Government was of the view that indigenous populations, being an integral part of national communities, could enjoy the full civil and political rights of their fellow citizens, in addition to their own rights.

65. Another government observer mentioned that in addition to working towards legislation for land rights, his Government legislated in June of the current year for the preservation and protection of significant aboriginal sites and objects in an effort to promote and protect aboriginal cultural identity.

66. Another government observer referred to recent legislation being considered in his country on indigenous affairs which included a section of land ownership whose two objectives were to preserve indigenous identity in ownership and to express the unanimous desire of the indigenous people to use their assets more effectively.

C. The right to autonomy or self-determination and political institutions, and representation of indigenous populations

67. Many representatives of indigenous populations stated that they had traditional and legitimate Governments, a language, a culture, a history and racial and religious ties, a common economic base and territories which entitled them to recognition as peoples.

68. Indigenous populations' concern with autonomy, internal self-government and self-determination was raised. There was, however, no indication of the legal meanings given to these terms by the different speakers. Some observers from indigenous organizations stated that the indigenous populations should be given the right freely to decide the degree of self-government they wished to have in their territories, but that Governments often refused to recognize their right to autonomy or self-determination and, at the same time, applied policies and laws aimed at weakening the indigenous populations as distinct political, racial and national groups. Some of them stated that the lack of self-determination was the cause of a tragic gap between the economic, social and cultural situation of the other sectors of the population and that of the indigenous populations who lived within the territory of those countries.

69. Observers from indigenous organizations indicated that the laws governing the political relations between indigenous populations and national Governments did not contain appropriate norms that would assure protection for the specific rights of the indigenous populations. Furthermore, in some countries, the exercise of Government powers had no specific restrictions in national legislation to prevent violations of those rights.

70. Another NGO observer stated that in a particular country the Indian nationalities had been reduced to the position of being an internal colony and that the indigenous peoples' rights to self-determination, self-government and sovereignty should be respected and that unilateral constitutional renovation and legislation was not an acceptable substitute for the achievement of self-determination by negotiation and agreement.

71. Several Government observers stated that an ongoing dialogue had been opened between their Governments and indigenous groups, based on the recognition by Governments of the rights of those groups.

72. As reported by Government observers, policies oriented to an increasing self-determination of the indigenous populations included the enactment of new legislation and the establishment of institutions with the participation of the representatives of indigenous populations, who played a consultative, advisory or policy-making role. In some cases this included the assumption by the indigenous communities of responsibility for self-government and self-management of certain affairs.

73. In this connection many speakers suggested that the Working Group should consider indigenous populations as peoples "consisting of self-governing entities, having the right to control their land and natural resources". Reference was made to the wording "Indigenous peoples" contained in the resolution of the 1978 World Conference to Combat Racism and Racial Discrimination. It was said that the effect of the substitution would be to reserve to all indigenous peoples and nations the right ultimately to exercise self-determination over their political, economical, social and cultural institutions.

74. One Government observer expressed the view that "self-determination" in an external sovereignty sense did not apply in international law to enclave populations within non-colonial States. Practical forms of self-government within the framework of the State were, however, possible and necessary.

D. Other Rights

75. Several speakers from indigenous and non-governmental organizations also referred to the historical background of the present socio-economic situation of the indigenous populations in their countries. Some of them described the life, customs, values and social organization of the indigenous populations before the arrival of outsiders or invaders as far more conducive to harmony, the welfare of human beings and greater respect for the natural environment. They said that with the arrival of outsiders, indigenous populations had been massively killed and the survivors deprived not only of their lands and natural resources, but also of the right to organize their lives in accordance with their own cultural patterns and freely to practice their traditions and religions.

76. It was also said by some of these observers that in some countries a policy of forceful assimilation of indigenous populations was carried out initially by the colonialist Governments and subsequently by national Governments. Such policies of assimilation of the indigenous populations to the cultural patterns of other sectors now prevailing in those States was designed to destroy indigenous cultures and to subjugate persons to the point that they were only fit to serve as unskilled labourers and servants. The indigenous populations were denied the enjoyment of most fundamental rights and reduced to second-class citizens.

77. The indigenous observers further alleged that many indigenous populations still continued to be subjected to the systematic destruction of their cultures and distinct identity. This was particularly serious in some countries where indigenous populations constituted a large majority of the population.

78. It was said that even in countries where some improvement in the situation had recently taken place, indigenous populations continued to suffer violations of their rights to preserve their own culture and way of life.

79. The observer from an indigenous organization stressed how important it was for indigenous representatives to be able to speak in their own languages to the Working Group and expressed the wish that some arrangements might be made in that respect.

80. Allegations were also made about the destruction of religious sites and its effect on the traditional religious practices of indigenous populations through the exploitation of natural resources or the establishment of touristic and recreation areas within indigenous land under the pretext that such measures would be unavoidable for reasons of State interest. In this context one indigenous organization demanded that in accordance with internationally provided standards domestic laws should be adopted to protect the religious traditions of indigenous peoples.

81. The question of the enjoyment of economic and social rights was repeatedly brought up in statements by representatives of indigenous and non-governmental organizations who alleged that the gap between the socio-economic situation of indigenous and non-indigenous populations remained a tragic chasm.

82. Several indigenous observers stated that the serious situation of their communities was closely linked with the lack of land, the dispossession of their lands and natural resources and sometimes the division of their lands.

83. The situation of the indigenous populations regarding their health and sanitary conditions was also highlighted by several speakers. Doctors and health services in some areas of the world were insufficient and sometimes did not exist at all. Infectious and other diseases were in such cases a common occurrence, particularly among children due to poor water supplies, lack of sanitary facilities and malnutrition, and infant death rates were much higher than those existing among non-indigenous populations.

84. Those observers also said that illiteracy rates were alarmingly high in certain countries.

85. In that regard, some Government observers acknowledged that despite considerable efforts to improve the living conditions of indigenous populations, many problems remained; as a result, a number of observers indicated that their Governments were increasing their efforts to adopt plans for the development of the indigenous communities and territories, to improve the situation and to assure the indigenous populations the enjoyment of their economic and social rights.

86. Some Government observers pointed out that indigenous aspirations and needs, and ways to meet them differed from one community to the other and that it was necessary for them to be in keeping with the possibilities available in each case. Several observers stated that the development of the indigenous populations was a matter of high priority for their countries. One of them indicated that officials were appointed in indigenous territories to ensure the implementation of the projects and development programmes outlined by the Government, sometimes with the co-operation of voluntary organizations financially assisted by the Government, and that sizable allocations had been earmarked for tribal areas.

87. In connection with this matter, a number of projects were mentioned by Government observers. Those projects concerned areas such as medical and legal services, housing, education, agricultural and technological development, communications, etc. In general, the speakers asserted that the policies of their Governments in these fields were guided by principles such as self-government or self-management as well as by the international instruments which established universally recognized standards.

III. EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

A. General

88. The Chairman-Rapporteur, introducing the topic, recalled that during the second session of the Working Group there was general agreement that standards concerning the rights of indigenous populations should be considered as an evolutionary and not a static concept. Therefore, in elaborating recommendations in this dynamic context, the Working Group should take into account the dialogue and experiences taking place in several States around the world.

89. Observers from Governments and indigenous organizations welcomed the fact that standards were viewed by the Working Group as an evolutionary concept developed on the basis of the diverse realities of indigenous populations around the world. It was pointed out by the observer from a Government that only by listening to indigenous people could Member States as well set appropriate standards and incorporate them in domestic law. Many speakers stressed that, although existing international instruments applied to indigenous populations, new standards had to be developed to respond to the particular and pressing needs of indigenous populations.

90. Many observers from indigenous and other organizations stressed the vital importance which the application of treaties concluded between their representatives and the authorities of other nations or nation-States had for indigenous peoples. In a written recommendation submitted to the Working Group by an indigenous organization it was stated that all treaties and other agreements ought to be recognized and applied according to international law; and that treaties ought to be construed as they were understood by the indigenous representatives who participated in their negotiation. The same organization recommended the adoption of a resolution by the Working Group according to which the Working Group would suggest to the Sub-Commission to study the lack of observance of treaties by certain nation-States and its effect on the human rights of indigenous populations.

91. The centrality of the right to life even during the standard-setting activities of the Working Group was stressed by the observers from many indigenous and other non-governmental organizations. According to those observers, due to the imminent risk of extinction that indigenous populations faced in some parts of the world, the Working Group might wish to make recommendations to the Sub-Commission at an early stage, taking note of the continuing genocide of indigenous populations in the world and reaffirming their right to life and physical integrity.

92. The observers from several indigenous organizations pointed out that in developing standards the Working Group should take into account the fundamental difference among the world-views of indigenous populations and those of Western or industrialized societies. This difference explained, for example, the unique relationship of indigenous populations with their land - a tie which was alien to non-indigenous societies.

93. Several observers from Governments and non-governmental organizations stressed the importance of the report of Mr. Martínez Cobo - especially of his conclusions and recommendations - for the standard-setting activity of the Working Group. It was suggested by some speakers that the Working Group might wish to consider recommending to the Sub-Commission the widest possible publicity and distribution of that report.

94. The observer for the ILO referred to the recent supervisory activities of that organization, especially of its Committee of Experts, with regard to ILO's Indigenous and Tribal Populations Convention of 1957 (No. 107). Regarding the current standard-setting activities of the ILO, he referred to the opinion expressed by a number of non-governmental organizations of indigenous populations and others as to the need for revision of ILO Convention No. 107 to adapt it to present day realities. In that connection, he informed the Working Group of ILO's project to convene a Committee of Experts in 1986 to make recommendations on the desirability, extent and nature of revision of this Convention, with a view to including the question in the agenda of the ILO Conference for 1988. In that connection, ILO was examining how to give representatives of indigenous populations and other non-governmental organizations an active role in the deliberations.

B. Kind of instruments to encompass standards

95. Several representatives of indigenous organizations stressed the importance of the decision on the kind of instrument to be elaborated, as the very formulation of the standards would depend on whether that instrument would be a declaration of rights or principles or a draft convention, the binding force of these instruments being of a different degree for States. Those representatives, therefore, strongly recommended to the Working Group to decide at its third session on the kind of instrument required to encompass standards on indigenous populations.

96. Stressing the timeliness of a new international instrument for the protection and promotion of the rights of indigenous populations everywhere, observers from some governments and non-governmental organizations stated that they supported in principle the eventual development of a convention.

97. Several observers from non-governmental organizations stressed that existing international instruments should be closely implemented and all existing procedures within the United Nations should be used regarding indigenous populations. In this connection, reference was made to the applicability of the Optional Protocol to the International Covenant on Civil and Political Rights regarding collective rights of indigenous peoples and it was suggested that the Working Group express its views on the admissibility of communications involving those rights - a question which was still pending within the Human Rights Committee.

98. In the light of the debate held on this issue several organizations of indigenous populations and other organizations, in a consensus text reflecting the consensus among them (E/CN.4/Sub.2/AC.4/1984/WP.1, (see also annex III)) stated that the Working Group should strive at this stage, "to draft a Declaration of Indigenous Rights which should be considered for adoption by the appropriate bodies of the United Nations, and may subsequently form the basis for a multilateral treaty or covenant". In the same consensus text submitted to the Working Group those organizations suggested, as a method of proceeding to the drafting of such a Declaration, that the Working Group "address each of the subjects in the previously-adopted Plan of Action, and begin to develop the elements of a declaration as these issues are discussed. In developing the elements of the declaration, the Working Group should analyse and distil the very worthwhile proposals and recommendations in the report of Mr. Martínez Cobo relevant to the subjects in the Plan of Action. The Working Group should also consider the other documents submitted to it, including in particular the 1977 Declaration of Principles for the Defence of the Indigenous Nations and Peoples of the Western Hemisphere, the 1982 Principles for Guiding the Deliberations of the Working Group on Indigenous Populations, and the other documents identified in chapter IV of the report of Mr. Martínez Cobo.

C. The question of a definition of indigenous populations

99. The Chairman-Rapporteur, introducing the topic, underlined the difficulty of the task of defining indigenous populations, particularly because of the need to collect further information about the definition used in different States, both by governments and by indigenous populations themselves. The purposes for which definitions were used also had to be clarified.

100. There was general agreement among speakers that any definition which might be eventually adopted should be flexible and allow for the different realities of indigenous populations around the world to be reflected.

101. Referring to law and practice in their countries, several observers from governments described their national experience regarding the definition of indigenous populations. Some of those speakers stated that the element of self-definition was already used in their countries. One speaker referred to the process of registration by which Indian status was recognized for persons who were defined as such and by which eligibility was decided for many federal programmes available to Indians. The same speaker also said that statutory definition did not exist for two aboriginal groups in his country, due to their isolation in hardly accessible areas or their dispersion within the country; the element of self-identification had always been adopted for one of those groups.

102. The observers from all indigenous organizations who addressed the issue of definition stressed that it was up to indigenous peoples to define themselves. Observers from Governments agreed that the definition which might eventually be adopted would include the subjective elements of self-definition and group acceptance. Some pointed out that certain objective elements, such as common ancestry and language should also be taken into account; it was important to find the limits or the balance between subjective and objective elements. One such speaker said that even in the same country there might be a need for different definition, depending on the area of consideration, i.e. whether land rights, cultural rights etc., were at stake.

103. In that connection, the representative of a specialized agency and some government observers stressed that governments should be involved in process of negotiation in order to arrive at mutually acceptable definitions of indigenous populations for certain specific purposes.

104. Observers from governments and non-governmental organizations pointed out that a clear distinction should be made between "indigenous populations" and "minorities". The observer from a government repeated her government's position presented to the Working Group during its second session that tribal populations should by no means be classified as indigenous populations; if tribals and semi-tribals were included in the definition, the Working Group would lose its principal focus and spread its concern over Asian and African nations as well.

105. Many indigenous organizations stressed that the term "indigenous populations" should be changed into "indigenous peoples" which in their opinion accurately reflected their reality. The right to self-determination, they pointed out, was tied to indigenous peoples. It was also suggested in a written proposal that the title of the Working Group be modified accordingly (E/CN.4/Sub.2/AC.4/1984/NGO/2).

106. Pointing to the difficulty that definition presented for the Working Group, one of the Group's members said that the term "indigenous peoples" might create problems in international law. The Charter of the United Nations recognized only "peoples". If the term "indigenous peoples" were to be introduced, this would imply the indirect recognition of two kinds of peoples.

107. There was a general agreement that it would be premature for the Working Group to adopt a final definition at its third session. It was pointed out that given the complexity of the question of definition, the Working Group might proceed in its discussion of standards, while the elements of definition might be gradually clarified during future sessions. Some observers from governments felt that a definition, even a broad one, would be necessary before the Working Group could move on to the consideration of standards.

108. There seemed to exist agreement among all speakers that there was a need at least for a working definition of indigenous populations at a first stage. Some observers suggested that the Working Group use at the moment the working definition provided in the report of Mr. Martínez Cobo. This definition reads as follows:

"Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems." */

A suggestion was made that some sort of working definition could be left to a later stage for formulation by the international agencies which would eventually be entrusted with the implementation of standards pertaining to indigenous populations.

109. The observer from an indigenous organization expressed the opinion that the working definition used in the report of Mr. Martínez Cobo was acceptable only in its first part, while the second part was deficient in the respect that it did not allow indigenous peoples themselves adequate control in determining membership in their nations. Additionally, the second half of the definition unjustly placed the burden on indigenous peoples to prove their legitimacy, rather than on the dominant or invading culture to disprove it. The definition also neglected to consider fully the impact of the results of colonization and domination of foreign cultures on indigenous people. The same observer submitted the following definition of indigenous populations (E/CN.4/Sub.2/AC.4/1984/NGO/2):

"1. Indigenous Peoples are composed of the existing descendants of the peoples who inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic origin arrived there from other parts of the world, overcame them and,

*/ E/CN.4/Sub.2/1983/21/Add.8, para. 379

by conquest, settlement or other means, reduced them to a non-dominant or colonial condition. (See Study of the Problem of Discrimination Against Indigenous Populations by Mr. Martínez Cobo.)

2. Indigenous people include, but are not necessarily limited to, those peoples, which have been identified as indigenous, for example, the Indians, Inuits, Eskimos, Metis, and Aleuts of the Americas and Greenland; the Maoris and Aborigines of the Pacific; the Sami of Scandinavia; and such other groups as may from time to time be identified. (See recommendation of the World Council of Indigenous Peoples to the first session of the United Nations Working Group on Indigenous People.)
3. This definition shall in no way limit the authority of Indigenous Nations and Peoples to determine their membership. And no state, through legislation regulation, or other means, shall take actions that interfere with the sovereign power of an Indigenous Nation or People to determine its own membership."

110. In the light of the discussion held, several indigenous and other organizations submitted a text, reflecting consensus among them, in which it was pointed out that indigenous peoples possess diverse approaches to define themselves. "There was, however, a consensus that any definition which might eventually need to be drafted in connection with the preparation of a declaration or convention should not come from Governments, but from indigenous peoples themselves" (see annex III).

D. Land and other natural resources

111. The observers from indigenous and other organizations who addressed the issue of land and other natural resources underlined the vital importance of land for the very existence of indigenous populations as such. They stressed that the rights of indigenous populations to their land were ancestral, imprescriptible and inalienable in nature and could not be terminated, ceded or in any other way vested upon others without the duly expressed formal consent of the legitimate representatives of the said populations. They also emphasized that, in addition, in many cases such rights to their ancestral lands had been formally recognized both in the municipal legislation of the nation States that later came into being, and even in formal agreements concluded by their authorities with the representatives of the various indigenous populations. However, they referred to certain situations where those laws and treaties were later ignored, violated or simply unilaterally abrogated by those very authorities of the same States.

112. Observers from Governments recognized that land was synonymous to life for indigenous populations both in a physical and in a spiritual sense. One such observer stated that his Government recognized aboriginal rights to land in accordance with five basic principles: (a) aboriginal land to be held under inalienable freehold title; (b) protection of aboriginal sites; (c) aboriginal control in relation to mining on aboriginal land; (d) access to mining royalty equivalents; and (e) compensation for lost land to be negotiated.

113. Regarding the relationship between the right to land and the issue of self-determination, the observer from a government underlined that neither the granting of land rights, nor the recognition of prior aboriginal occupation and ownership in any way put State sovereignty in question. Observers from indigenous organizations stated that land rights should be connected with political rights and that self-determination should be recognized within indigenous lands.

114. Several indigenous representatives pointed out that land rights could not be reviewed in terms of rights to property; they ought to be recognized on a territorial basis as the patrimony of the people as a whole. In order for land rights to be meaningful, they ought to include indigenous control of natural resources, subsoil as well as surface.

115. According to a written recommendation submitted by an indigenous organization, the "doctrine of aboriginal title" should govern issues relating to rights in land and natural resources, even if an indigenous people had not concluded a treaty or agreement with the nation-State within the borders of which it is located. The observer from another non-governmental organization recalled that, in one of its decisions the International Court of Justice recognized the legal character of the ties between a people and its territory based on immemorial possession and usage.

116. The observer from another non-governmental organization drew attention to the applicability of article 17 of the Universal Declaration of Human Rights in guaranteeing the land rights of indigenous populations. According to his submission many of the seizures of land from indigenous peoples had been in breach of that article; even if a State had not acceded to the ILO Conventions guaranteeing land rights, it might be in breach of its international obligations if it did not return land which had been arbitrarily seized. Another such observer pointed out that ILO Convention No. 107 had entered customary international law. The same observer submitted that the general principles of international law were applicable to indigenous land rights: (a) in public international law, it was recognized that a mere change of sovereignty or State succession did not affect private rights; (b) in private international law, the rules of conflicts of law provided that the law of the place, the *lex loci*, applied to lands due to the close connection between rules and the use of the land; laws of an external legal system did not have that close connection. Referring to the "fiction that native lands are vested in the public domain of the Crown or of the State", the same observer recalled that the Permanent Mandates Commission, in the 1920s, found that the so-called "public domain" was not to be considered as the private property of the mandator, but belonged to the peoples of the land.

117. It was suggested by several indigenous and other organizations that the discussion of the right to land and other natural resources should include the following topics: (a) the concept of territorial possession; (b) the frontier colonization process; (c) the question of recognition and demarcation; (d) the protection of the inalienability of the land; (e) the relationship between the control of natural resources and the preservation of the land; (f) the preservation of traditional economies; (g) the importance of collective tenure and usage patterns; (h) the vindication of claims by peoples who have been either partially or completely dispossessed of their lands; (i) treaty rights; (j) environmental protection; (l) the activities of international financial institutions - the World Bank; (m) the relationship between land rights and the right to self-determination; (n) involuntary trusteeship-holding of indigenous land in trust by national Governments and abuse of trust; (o) possible mechanisms for international protection.

118. In the light of the debate, on the basis of a text of proposals reflecting broad consensus among indigenous and other organizations (see annex III), it was submitted that the drafting of provisions for a declaration on the indigenous peoples' right to land was premature during the third session of the Working Group. The same text included statements on the nature of the right to land for indigenous peoples and recommendations for adoption by the Working Group.

119. There was also general agreement among the Members of the Working Group, that the issue of determining the foundations of the rights of the indigenous populations both under national and international law was a matter of interest for the future work of the Working Group and that, consequently, it should continue to be given due consideration by both the Working Group and the Sub-Commission.

IV. THE ESTABLISHMENT OF A FUND FOR ALLOWING INDIGENOUS POPULATIONS TO PARTICIPATE IN THE WORK OF THE WORKING GROUP ON INDIGENOUS POPULATIONS

120. By its resolution 1982/31, the Sub-Commission requested that the Commission on Human Rights and the Economic and Social Council establish a fund for the purpose of allowing representatives of indigenous populations to travel to Geneva to participate in the work of the Working Group. The Commission on Human Rights, in its resolution 1983/23, decided, *inter alia*, to request the Sub-Commission to make more specific proposals regarding the possible establishment of such a fund, including criteria for its administration, as well as appropriate standards for making such a fund available to those who might be considered eligible. Pursuant to this resolution, the Secretary-General submitted a note E/CN.4/Sub.2/1983/20 to the Sub-Commission, containing information on possible arrangements for the establishment and management of the suggested fund. The note has been made available by the Secretariat for reference to the Working Group. At its fortieth session, in resolution 1984/32, the Commission on Human Rights took note with interest of the Working Group's discussions of the possible establishment of a voluntary fund and looked forward to its considered proposals in this regard.

121. The question of the fund was considered at the 8th meeting of the Working Group under item 6 of its agenda entitled "Other matters".

122. The Chairman-Rapporteur of the Working Group introducing the item suggested that the Working Group consider certain aspects concerning the administration of the fund and recommendations of provisional arrangements which would maintain the fund in the United Nations, with an advisory body which would consist of representatives of indigenous organizations in consultative status with the Economic and Social Council, as well as appropriate standards for making the fund available for those concerned. She recalled Commission on Human Rights resolution 1983/23 by which it decided to request the Sub-Commission to suggest appropriate means designed to ensure that the activities of the Working Group would be better known in every country so as to ensure the broadest possible participation of representatives observers from indigenous populations. She pointed to proposals made in this respect at the second session of the Group to proclaim an international day of solidarity with indigenous populations and an international year of the indigenous populations.

123. Several NGO observers emphasized the need to establish a fund in order to encourage indigenous participation in the activities of the Working Group. It was pointed out that such participation was often obstructed by a number of problems, such as expenses for travel, passport and other formalities, unfamiliarity with the procedures of the United Nations and the fact that official languages of the United Nations were sometimes unknown to the indigenous peoples. These problems could act as a barrier to communications. One speaker stated that the efforts of the Working Group were hampered by the fact that indigenous peoples from many parts of the world were not present during its deliberations because of lack of funds. He suggested that the Working Group should recommend to the Sub-Commission that Governments be encouraged to facilitate administratively the travel of indigenous peoples to the United Nations and that indigenous peoples should participate in the administration of the fund.

124. Another NGO observer informed the Working Group that his organization had established a Human Rights Fund For Indigenous Peoples with the view to helping the indigenous peoples to make their human rights problems better known to the international community and the public by assisting with travel and other expenses of representatives to the Working Group on Indigenous Populations. The aim of the fund was to encourage and support self-help initiatives by indigenous peoples in their efforts to get recognition and protection of their rights. He further informed the Working Group that at the present time the Human Rights Fund was guided by an Advisory Group composed of representatives of several NGOs and received support from various organizations and agencies.

125. One NGO observer said that the following basic principles should be applied for the establishment of the fund: (a) the fund should take into account the views of the indigenous people; (b) the fund should be organized in such a manner that Governments and other donors would be encouraged to donate money; (c) the fund should encourage broader participation of indigenous peoples; (d) and the fund should be independent of political pressure. He proposed that the structure of the fund follow the lines of the United Nations Trust Fund for Victims of Torture and that the Secretary-General would be the administrator of the fund.

126. A number of non-governmental organizations submitted proposals for the establishment of a fund by which the possible fund should be administered by the Secretary-General in accordance with the financial regulations of the United Nations with the assistance of a board of trustees composed of three persons, with relevant experience and acting in their personal capacity, selected by the Secretary-General in consultation with the members of the Working Group and having due regard for the need for the greatest possible indigenous representation of different areas of the world, on the board of trustees. The fund may receive applications from those members of indigenous populations who wish to participate as observers in the Working Group and may also receive recommendations from non-governmental organizations of indigenous populations. Under these proposals, the fund should consider several factors in deciding who shall receive assistance to attend and should authorize the Board to promote and solicit contributions and pledges. Some observers from Governments supported in principle the establishment of a fund to encourage and assist the participation of indigenous populations in the activities of the Working Group.

127. One government observer stated that her Government would consider the question of financial assistance for the fund, provided that satisfactory arrangements for its administration could be set up. She said that however it would take more time to study such proposed arrangements and consult with representatives of aboriginals of her country about the administration of the fund.

128. Another government observer referring to those who might be considered eligible by the fund, stated that priority should be given to those who had not yet participated in the Working Group.

129. One of the members of the Working Group suggested that a proposal to the Sub-Commission should be drafted taking into account the views expressed in the Working Group and the proposals submitted thereto. In his view the fund ought to be administered by the Secretary-General with the advice of a board of trustees composed of three persons appointed by him. This view was also shared by the other members of the Working Group.

ANNEX I

PLAN OF ACTION FROM 1985 ONWARDS

1. (a) This plan of action for the Working Group is indicative only and the sequence of priorities may be changed at later sessions; (b) the issue of treaties will be discussed, whenever pertinent, in connection with any theme. Each year, under the item "Other matters" of the agenda, themes not listed below may be taken up. Under the item of the agenda concerning the review of developments any issue may be brought up. It is expected that protection of the right to life, to physical integrity and security of indigenous populations will be discussed each year. It is also expected that information will be received and discussions will be held on the evolution of policies regarding indigenous populations.
2. Although a constructive and fruitful discussion took place in the Working Group, at its third session, on the right to land and to natural resources and on the question of the definition of indigenous populations, it is expected that these issues might be further considered by the Working Group, at its fourth session.

1985: Fourth session

- (i) Right of indigenous populations to develop their own culture, traditions, language and way of life, including the right to freedom of religion and traditional religious practices;
- (ii) Right to education.

3. List of preliminary priorities for the subsequent sessions of the Working Group

Right to autonomy and self-determination, including political representation and institutions; the duty of indigenous populations, as of all others, to respect universal human rights;

Right to health, medical care and other social services;

Right to legal assistance and protection in administrative and judicial affairs;

Right to association;

Right to social security and labour protection;

Right to trade and to maintain economic, technological, cultural and social relations.

ANNEX II

List of documents and materials submitted to the Third Session
of the Working Group on Indigenous Populations

A. Documents prepared by the Secretariat before the session

Provisional Agenda (E/CN.4/Sub.2/AC.4/1984/1).

Information received from Governments (E/CN.4/Sub.2/AC.4/1984/2 and Add. 1, 2 and 3).

Information received from United Nations specialized agencies and other bodies (E/CN.4/Sub.2/AC.4/1984/3).

Information received from regional intergovernmental organizations (E/CN.4/Sub.2/AC.4/1984/5 and Corr.1).

Information received from non-governmental organizations (E/CN.4/Sub.2/AC.4/1984/4 and Add. 1 and 2).

B. Working papers

Statement on the recognition and protection of indigenous peoples' right to land by the Four Directions Council (E/CN.4/Sub.2/AC.4/1984/NGO/1).

Recommendations of the International Indian Treaty Council (E/CN.4/Sub.2/AC.4/1984/NGO/2 and Add.1).

Proposals of several organizations of indigenous populations and participants (E/CN.4/Sub.2/AC.4/1984/WP.1).

C. Materials submitted to the Working Group

Speech to the United Nations Working Group on Indigenous Populations by the Honourable Clyde Holding, M.P., Australian Minister for Aboriginal Affairs.

The History of Aboriginal Land Rights in Australia, by the Department of Aboriginal Affairs, Heritage Division.

Indigenous and tribal peoples and land rights (submitted by the ILO)

Documentos concernientes a la situación que están viviendo los pueblos indios de Colombia, Argentina y Brazil (submitted by the Consejo Indio de Sud America (CISA)).

Information on the right of land and natural resources, the right to life, to physical integrity and to security of indigenous populations (Paper 1). A perspective on the Indian Nations in Canada (Paper 2). (Submitted by the Union of New Brunswick Indians).

The situation of the Indians in Brazil (Historical and political aspects, juridical aspects). (Submitted by the International League for the Rights and Liberation of Peoples).

Official Policy of Bolivia with Regard to the Indigenous Villages and Communities of Eastern Bolivia. (Submitted by the Center of Indigenous Peoples and Communities of Eastern Bolivia).

The assimilation of the indigenous peoples in upper North America through Canadian legislation on the definition of Indian status and band membership. (Submitted by the International Indian Treaty Council).

Presentation of the Lummi Tribe to United Nations Working Group. Presentor, Rudolph C. Ryser (Statement submitted by the Lummi Indian Business Council).

Statement of the Quinault Indian Nation before the United Nations Working Group, 31 July 1984 (with two attachments).

Statement by the Nuxalk Nation, 31 July 1984.

The situation in West Papua under Indonesian neo-colonialist, expansionist and racist domination. (Submitted by Free Papua Movement)

Pueblos indígenas de la Amazonía Peruana: Tierra, recursos naturales y definición de pueblos indígenas. (Submitted by the Asociación Interétnica de Desarrollo de la Selva Peruana- AIDSESP- member of the Coordinadora de las Organizaciones Indígenas de la Cuenca Amazónica).

Definition of Indigenous Peoples. (Submitted by the Uniao das Nocoos Indigenas -UNI- member of the Coordinadora de las Organizaciones Indígenas de la Cuenca Amazónica).

Situación y realidad actual de los pueblos indígenas de la Amazonía Ecuatoriana (with four annexes). (Submitted by the Confederación de Nacionalidades Indígenas de la Amazonía Ecuatoriana "CONFENIAE" member of the Coordinadora de las Organizaciones Indígenas de la Cuenca Amazónica).

Report submitted to the Working Group by the Nordic Sami Council.

A proposal for the establishment of a possible fund. (Submitted by Non-governmental organizations and participants).

Joint statement by Australian Aboriginal Delegations.

Summary of National Aboriginal and Islander Legal Services, intervention on the evolution of standards.

Comments by the Secretariat of National Aboriginal and Islander Child Care - Australia.

Statement by National Aboriginal Conference - Australia on Evolution of Standards.

Supplementary statement by National Aboriginal Conference- Australia- on Evolution of Standards and Review of Developments.

Information from Indigenous World; "Miskitos in Nicaragua" (English and Spanish) and "Indians of the Americas: Human Rights and Self-Determination".

Statement of the International Indian Treaty Council on Recent Developments concerning the Human Rights of the Indigenous Hawaiian Nation. (Submitted by Mahawahine Noa).

Written statement by the International Commission of Jurists on "The problem of defining indigenous populations".

"Human Rights in Guatemala". (Submitted by the Commission of Human Rights of Guatemala under the auspices of the International Federation of Human Rights).

Submission on standards by the New Brunswick Indians.

Draft proposals for a resolution on land rights of Indian nations submitted by the International Indian Treaty Council.

Povos Indígenas no Brazil/83. (Submitted by the Centro Ecuménico de Documentação e Informação).

Statement submitted by the Western Shoshone Nation.

Statement on the forced involvement of indigenous peoples in the nuclear cycle. (Submitted by the Coalition of First Nations).

The Land Question-Brazil. (Submitted by the International Indian Treaty Council).

Decree 88.118 of 23 February 1983-Brazil. (Submitted by the International Indian Treaty Council).

Yanomami Lands-Brazil. (Submitted by the International Indian Treaty Council).

Interdepartmental Preamble 055 signed 1 August 1983 by the Ministers of Justice, of the Interior and of Land Management, and approved 20 September 1983 by the President of the Republic-Brazil. (Submitted by the International Indian Treaty Council).

Forms of Discrimination-Brazil. (Submitted by the International Indian Treaty Council).

Comments on Article 3 of the New Brazilian Civil Code Project and on the Emancipation Law Project No. 2465/83. (Submitted by the International Indian Treaty Council).

Decree 88.985/83 (10 November 1983) - Brazil. (Submitted by the International Indian Treaty Council).

ANNEX III

PROPOSALS OF SEVERAL ORGANIZATIONS OF INDIGENOUS
POPULATIONS AND PARTICIPANTS ^{*/}

The Working Group has previously identified a number of possible objectives through which it might fulfill its mandate "to give special attention to the evolution of standards concerning the rights of indigenous populations." Among those objectives are the development of principles, a declaration, and/or a multilateral treaty. The Working Group should strive to draft a Declaration of Indigenous Rights which should be considered for adoption by the appropriate bodies of the United Nations, and may subsequently form the basis for a multilateral treaty or covenant.

The Working Group should address each of the subjects in the previously-adopted Plan of Action, and should begin to develop the elements of a Declaration as these issues are discussed. In developing the elements of the Declaration, the Working Group should analyse and distill the very worthwhile proposals and recommendations of the Martínez Cobo report relevant to the subjects in the Plan of Action. The Working Group should also consider the other documents submitted to it, including particularly the 1977 Declaration of Principles for the Defence of the Indigenous Nations and Peoples of the Western Hemisphere, the 1982 Principles for Guiding the Deliberations of the Working Group on Indigenous Populations, and the other documents identified in Chapter IV of the Martínez Cobo report.

Because of the change in the membership of the Working Group, because of the still incomplete nature of the discussion at the third session of the Working Group, because land is so intimately related to other problems facing indigenous peoples still to be discussed by the Working Group (including the rights to life, culture, religion, and family), because more discussion is required among indigenous peoples and the Working Group, it is premature to draft provisions for a declaration concerning indigenous peoples' right to land during the current session. Nevertheless, a very preliminary synthesis of the discussion and materials before the Working Group on this subject might be made as follows:

Indigenous peoples have a unique and spiritual relationship to their land which is very different from the Western European concept of land ownership. Indigenous peoples hold their land collectively, not as individuals. Land is an intimate part of the life, culture, personality, religion, and sovereignty, autonomy, and self-determination of indigenous peoples.

The Working Group on Indigenous Populations recognizes, as did the World Conference to Combat Racism and Racial Discrimination of 1978, "the special relationship of indigenous peoples to their land and stresses that their land, land rights and natural resources should not be taken away from them." Discovery, conquest, and unilateral legislation are not legitimate bases for States to claim or retain the territories or natural resources of indigenous

^{*/} Also appeared as document E/CN.4/Sub.2/AC.4/1984/WP.1.

peoples. In no circumstances should indigenous peoples or groups be subjected to adverse discrimination with respect to their rights or claims to land, property, or natural resources.

These principles, together with the proposals and recommendations of the Martínez Cobo report on land rights and other relevant documents, need to be considered before the next session of the Working Group by all participants - particularly by indigenous peoples - so that more fruitful and specific discussion may occur at the next session of the Working Group.

The question of the definition of indigenous populations was not discussed at great length at the third session of the Working Group, because it appeared to be the consensus of indigenous participants that the question of definition was entirely premature; because most of the Working Group's time was absorbed in discussion of the critical issue of land; and because indigenous peoples possess quite diverse approaches to defining themselves. There was, however, a consensus that any definition which might eventually need to be drafted in connection with the preparation of a declaration or convention should not come from Governments, but from indigenous peoples themselves.
