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(Author not stated.)

Many Native groups and peoples are feeling the need to take their cases before international organizations to gain recognition of their rights. One very important reason is that there is virtually no country in the world where indigenous people can have their rights vindicated in the domestic courts of the country in which they live. Usually, the laws affecting native people enacted and implemented by the various states, particularly in this hemisphere, either amount to a kind on colonial legal system that itself deprives indigenous peoples of their rights, or these laws are set up to recognize the rights of citizens without differentiating the different population groups within the country and are incapable of dealing with profound cultural differences.

Over the past five years the aspirations most frequently expressed by Native peoples involves their right of self- determination. The right of self-determination is impossible to deal with on a domestic level. It is an international legal concept and is something which has become a very important part of international law and can be propounded only at that level.

It is often asserted that, under international law principles, people have a right of self-determination. A **right** is something the legal system will recognize and give some kind of remedy if that right is violated. Under classic legal thinking, if there is no remedy, there is no right. Human rights are not exactly the same as civil rights. Civil rights are rights to equality within the legal system, rights to equal protection of the laws. Theoretically all citizens within a state have the same rights relative to the laws of the state. Internationally protected human rights are concerned with many of the same things, but also involve other dimensions of rights far beyond civil rights. For example, the right of a people to exist, which has been memorialized in the Genocide Convention, is a very important fundamental human right. There is very limited recognition of these kinds of rights in the municipal laws of the nation states. In the US, there is some limited legal recognition of the validity of treaties signed between indigenous peoples and the United States, but for the most part, the rights of Native peoples as **peoples** is not recognized and the US legal system is not capable of recognizing those rights.

In the Americas, the Native peoples have no rights to a continued existence **as peoples**. If this were not true, people would take their cases to domestic courts.

Some rights have been recognized internationally and some have not yet been given broad recognition under international law. Some of these rights are fundamental to the existence of Native peoples as peoples, rather than as simply collections of individuals. If a people are asking for a right of citizenship, in company with all other citizens of a country, if that is the level of aspiration and of the rights being asserted, then those rights most often can best be dealt with at the domestic level. In some countries, however, the level of repression of all citizens is so great that the situation needs to be dealt with at the international level. In that case, the demand is for the rights of citizenship of all of the people.

In the case of Native people, the issue involves the rights of peoples to exist as distinct peoples, or in some cases as nations. Those things are very different from a simple demand for civil rights or equality of citizenship. This issue involves the effort to gain recognition of special rights, rights which either pre-exist the development of the state or rights the state is incapable of dealing with under the principle of equality of treatment.

One of these special rights is the right of self- determination. The right of self-determination, as it is developed in international law, is essentially twofold: the right to determine your own destiny as a people, and the right to be free of alien domination. In its most modern form, the right of self-determination is the result of a decolonization process in many areas of the world. It is basically a right of free choice -- to determine the political future of a people as a people. It could, in its largest sense, take the form of statehood, of sovereignty - - complete international sovereignty. It could mean a relationship of autonomy within a state. And it could mean complete merging within a state. The essential point is that the people, as a people, would have the right to choose what their political status would be.

The rights to a continued existence as distinct peoples is not recognized under the laws of the nation states. Many Native peoples often charge that, far from a recognition of their rights, the legal systems of these nation states enact policies which can be described as genocidal. Genocide is the intentional systematic effort of a state to eliminate a whole people, and the term has usually been interpreted to mean the physical extermination of a people. In recent years many of the Native people have been talking about **cultural** genocide, the systematic extinction of a people **as a people** through the destruction of their culture by forced assimilation into the larger society. At this point, most international lawyers have been unwilling to give legal recognition to the concept of cultural genocide. Very possibly, however, the concept of cultural genocide does exist in the Genocide Convention.

One of the crimes listed in the Convention is the removal of children from their parents into the custody of the dominant society. That would appear to be a very powerful expression of the concept of cultural genocide. In the case of the removal of children from their parents there is no talk of the concept of mass murder of people. The issue is one of severing the cultural (and/or

spiritual) connections of the generations in order to eliminate the existence of the people. It is one of the manifestations of cultural genocide and is in the Genocide Convention.

When the Convention was first being discussed there were some suggestions that to destroy the cultural heritage of the people was also a form of genocide. That concept was not included in the Convention. The original drafting of that provision had to do with museums, art objects, things of that sort which in the late 1940s was how Europeans viewed culture.

But Native peoples are talking about a much broader view of culture as fundamental to the identity and existence of peoples. Language and the suppression of language is one of these concerns.

In both the human rights conventions, the Convention on Civil and Political Rights and the Convention on Economic, Social and Cultural Rights, the first article expresses the rights of self- determination of peoples. That right is expressed both in political and in economic terms. The economic aspect of self- determination, at the most minimal level, is a prohibition against depriving people of their means of subsistence, their economic survival.

Native peoples have demanded recognition of many kinds of rights, including their rights to hunt and fish. For many Native peoples, their continued existence as a distinct cultural entity is absolutely dependent on their ability to exercise their right to their traditional economy, and their traditional economy centers around hunting and/or fishing. It is no less true that for many of these peoples, their actual physical existence; or at the very least the quality of their physical existence, is also absolutely dependent on their right to hunt and/or fish.

The right to hold lands is another basic right which Native people have asserted is denied to them under the laws of many nation states. In Latin American countries, Indian peoples have held lands since time immemorial. In Guatemala, for example, the right of Indians to hold lands was in many cases recognized by the Spanish; these people have always held lands and subsist upon these lands. Today, in many cases, their right to that land is not recognized either as Indians or as individuals. In some cases the legal systems of Latin America do not recognize the right of Indians to hold property at all, much less do they recognize their aboriginal or inherited right to the lands which they already posses. Some of these legal systems do not even recognize the previous instruments (the Spanish recognitions) of their rights to hold property. This injustice in terms of land holdings is at the root of much of the unrest in these countries where Indians are being driven from their lands because of unrecognized titles. Tens of thousands of Indians are now forced to become refugees with the attendant human rights violations such as disappeared peoples, assassinated people, tortured persons, political prisoners, and so forth. All kinds of horrible human rights violations can be traced to the corruption manifested in the unwillingness or inability of these

governments to recognize the rights of these Indians.

Next to actual extermination, the deprivation of the right of land possession is the most fundamental oppression. Land is the most essential element to the integrity of a people and the integrity of their culture. Any real definition of what a people is includes a definition of territory. Land is the basis for the economy. It is the basis for the culture and the basis for the physical proximity of the people. Land is the place on which people exercise their basic human rights, including the right to exist.

Most of the horrible wrongs done to Indian people throughout history were the result of the greed for Indian land. The original settler colonies wanted the Indian land and invariably they also wanted Indian labor. At times the labor exploitation worked and at other times it didn't, but in every case greed for the annexation of land lies at the root of the oppression. The oppression has always taken the form of massacres and brutality and it is important to underline the fact that this is not simply a historic phenomenon, that this is occurring today, not just in Guatemala but in many parts of this Hemisphere and in many other parts of the world.

In some cases land titles have been guaranteed in international documents called treaties. Nation states today have asserted that the treaties that they have signed with Indian peoples are something less than real treaties. Under international law, from any reasonable standard, the treaties are valid international documents. The U.S., for example, does recognize the fact that the treaties with Indian nations are valid international documents. Under U.S. law, however, the power of Congress to unilaterally modify or abrogate any international treaty is unquestioned by the courts. It is impossible to challenge the power of Congress to abrogate a treaty right within the legal system of the United States. The situation is much more ambiguous in Canada. The Canadian treaties have not always been regarded under Canadian law as valid international documents. The level of protection afforded by Canadian law to those treaty rights has been even less, or at least potentially less, than in the United States.

In neither of these countries can the ultimate right to maintain the integrity of a territory be protected in the domestic legal system. If there is to be any protection at all, there must be some form of international recognition and international protection of these rights.

Two things happen when a treaty between a state and an indigenous people is violated: the principle of treaties in international law is violated and, at the same time, the human rights of the Native people is almost invariably violated. The violation of treaties is not simply a question of the right of state to control its internal affairs but is a matter which often involves the repression of culture and the repression of distinct peoples. Different countries of the world, despite the rather dismal record of protection of human rights in the world, today and in the past, did come together in the

1940s and 1950s and determined that they would agree to minimal standards that all countries must maintain in recognizing and implementing the rights of all of the people who reside within their borders. Many countries are violating those rights with impunity, but mechanisms have been set up within, and outside, the United Nations to provide an overview of that process and a place where people whose rights are being massively violated can be heard. When words such as "persistent," "massive," "gross," apply to violation of rights, then other states of the world will look at the situation and begin to deal with it either legalistically or diplomatically.

During the 1950s, for example, the U.S. adopted the Termination Policy which affected a number of Indian peoples. Through an Act of Congress some Indian peoples lost their lands and some individuals among them lost their homes. There was no recourse under U.S. law to protect their rights as distinct peoples at that time. Were such a policy to surface again, probably the only possible protection may lie in international law. The U.S. courts would not even seriously review a challenge to Congress' power over Indian peoples, but an international forum may one day do what the U.S. courts refuse to do.

At this time, there has not been sufficient international attention to the issue of indigenous rights. The only existing international document which mentions specifically the rights of indigenous peoples is the International Labor Organization Convention 107, written in the 1950s. ILO Convention 107 is a blatantly integrationist document and at this point its existence is an embarrassment to the ILO, but it is the only international treaty which even mentions the concepts of indigenous rights, and few states have ratified it.

The states that exist in this Hemisphere were initially established in the lands of indigenous peoples. Those lands were annexed by settler colonies and these state structures which ultimately were established over all the lands were imposed on indigenous peoples. These structures did not, and do not, include indigenous peoples as peoples.

The concept of special categories of rights is difficult to put forward without creating confusion where ignorance reigned. It is important that all races of people and cultural categories of people should have access to the same rights as all other citizens of a country, and most people can readily understand this principle. However, the rights of distinct peoples to continue to exist as distinct peoples is, to many, a new way of thinking. The most progressive thinking during the 1950s and 1960s involved the development of principles of equality and integration; standards rather blindly applied to indigenous peoples with little or no understanding of the injustices which could result in the name of integration.

If some individuals of indigenous origins wish to become full citizens of those countries which were established in their lands, certainly they should have every right to do that, and no state should be able to deprive them of that

right. However, if they wish to maintain their existence as distinct peoples within their own territorial base, they should have that right as well. It is a right which predates the formation of these states; a right that existed among these people since time immemorial, and a right which must become recognized in international law by the community of nations of the world.

Possibly some indigenous groups might wish to become integrated into the body politic of a nation state. Under the principle of self-determination, that would be part of the range of choice. Up to this time, indigenous people have not approached the international forum and demanded the right to integrate. In fact, the experience has been quite the opposite -- Indian people have demanded recognition of their right to maintain their distinct identity. There is no need for a growth of law to encompass the principle of the right of integration. If Indian peoples wish to have their full rights in Canadian citizenship, for example, and if Canada is discriminating against people who wish to do that on the basis of their racial origin or cultural origin as Indian people, that would be a violation of an already firmly established international human right.

If an Indian people demand a certain kind of political status within the structure of a nation state, the question of rights become quite complicated. If the demand is autonomy rather than sovereignty, then it might be appropriately a matter for international concern. The Navajo Nation, for example, cannot demand, as a **right**, entry into the United States as the fifty- first state, but the Navajo Nation could make a demand to become an autonomous region of the U.S. under terms agreed upon by the Navajo Nation and the United States. The U.S. would be under no obligation to admit the Navajo into the Union, but might be under an obligation to recognize a certain level of autonomy under existing principles of international law.

The Basques, for example, have an autonomous region. If the Dene of the north want to have what the Basques have already accomplished, if they want to become an autonomous region within Canada, under the principle of the right of self-determination, that is a legitimate demand to take to an international forum. That is essentially what the Miskitos of Nicaragua are demanding. They are demanding a veto power over the kinds of national developments which take place in their area. It is the strongest form of autonomy, and usually autonomous regions don't achieve that much control over their territories.

Sometimes an autonomous arrangement is memorialized in the constitution of a nation state, and sometimes created through legislation. It is not very strong when it is legislated, and people who are demanding autonomy should probably make a demand that this would be a constitutionally mandated autonomy which cannot be amended without their consent. How that autonomy ultimately looks, what the relationship is between the central government and the autonomous region, is subject to negotiation, but in most cases where it does exist, the courts of the central government have

some authority within the autonomous region. Usually there is some kind of provision for federal or central veto of legislation within the autonomous region which conflicts with basic constitutional principles of the country as a whole. The exact nature of that relationship is usually subject to negotiation. There is usually a common customs union, a common military, and often a single police force. The question of natural resource exploitation would be subject to negotiation. That's what autonomy is. It includes citizenship. Under certain circumstances, the demand for autonomy could be an appropriate subject to bring before an international forum.

The Native peoples have been speaking for years about sovereignty, but the issues are really much broader. To people in the international arena, the demand for sovereignty is paramount to a demand for statehood (as a nation state, not as a state of the Union). Under some circumstances, some indigenous nations have been making demands for sovereignty. There is an historical validity to those demands -- they have treaty relations, they possess territory, and they have all the things that one would expect a state to have except for the fact that they have been colonized. They are demanding as part of their decolonization process and their right to self-determination that they have a right to statehood. At this time only a small number of indigenous peoples are making precisely this demand for statehood.

Some Native political organizations have attempted to engage in actual diplomacy and have approached nation states in attempts to arrange what might be seen as political alliances. The International Indian Treaty Council, for example, engages in dialogue with such states as Nicaragua. Such attempts at diplomacy are somewhat unusual when initiated by non-governmental organizations. Nation states, unlike NGOs, operate on a basis of narrow self-interest. Nicaragua, for example, recently rejected a proposal that it recognize the 1868 Fort Laramie Treaty between the U.S. and the Sioux Nation. There is little benefit to Nicaragua in recognizing the principle of the sovereignty of an indigenous nation in the U.S. while engaged in a bitter struggle with Miskito Indians who are demanding autonomy in Nicaragua.

As the right of self-determination evolves, it must evolve to include the indigenous peoples. Sixty years ago self- determination was a new idea. Even though it was a major principle articulated by many of the states involved in World War I and it became the founding philosophy of the League of Nations, it was not regarded as a fundamental principle of international law. Now it is one of the fundamental issues and principles of international law.

It is time to begin to talk about self-determination in terms of decolonization in relation to Native peoples. People need to understand that the same processes which are called colonization which took place historically in Africa also took place in the Americas. The only difference is that people speak a

different language, have different skin color, and live within what is recognized to be the United States or one of the other states of the Western Hemisphere instead of living in Africa.

There are things happening in the world which pose threats to this process. The Israelis, for example, are asserting the principle that a people can have autonomy without territory. They are expressing a willingness to grant autonomy to the Palestinian people on the West Bank, but urge that the autonomy has nothing to do with the land base which would remain under Israeli sovereignty.

It is extremely important that representatives of indigenous people have an understanding of the context of international law that we are working in. In terms of human rights, it is clear that the concepts and international treaties that are already in existence are grossly inadequate to recognize and protect the rights of peoples. They were designed to protect the rights of individuals on an equal basis throughout the national society. Nevertheless we are largely forced to deal with international law as it is in our efforts to greatly expand its boundaries.

The most important single principle of international law as it relates to the rights of peoples is the right of self- determination. Self-determination is the right of a people to freely choose their political destiny without external interference. Within this principle is a wide range of possible choice that includes sovereignty, different forms of free association, autonomy, and complete merger with the surrounding state. The key element is the right of free choice so that each people can create relationships that best represent their specific needs. The principle of self-determination is a general principle which can encompass the various situations of all indigenous peoples.

Despite the importance of this principle, it must be understood that, at present, it is not generally regarded as applying to indigenous peoples whose territories exist within nation states. It is central to our struggle that we succeed in expanding the current definition to include ourselves. Self-determination is an evolving concept and many international lawyers have been thinking in terms of expanding the principle in recent years.

At the 1981 NGO Conference on Indigenous Peoples and the Land it was concluded that land rights, particularly territorial rights, were inseparably connected to the right of self- determination. Land rights cannot ultimately be protected without a continuation of the coherence of indigenous peoples as distinct peoples.

The primary importance of the principle of self-determination is that it is an already existing, vital principle of international law which is capable of expansion and it is a tree that we can all stand under.

Indigenous people have not had many opportunities to bring our case before

the world community. Each opportunity is precious to us. At recent meetings, however, a disturbing trend has been developing. Many indigenous representatives have felt compelled to state only the case of their own people in detail, excluding others, and preventing a discussion of general principles. It must be clearly understood that the only way to influence the world community is if we can create a general understanding that we are talking about a widespread, serious hemispheric and global problem. The world community will not respond to isolated violations of peoples' rights. They must be made to understand that the aspirations of the world's indigenous peoples is truly an international issue.

It is of course understandable that indigenous representatives who have been delegated by their own people want to address their own problems. However, it is questionable that NGO meetings are the appropriate place to "make a case" in detail. The only meeting to date organized with that specifically in mind was the Fourth Russell Tribunal. But even there, cases were carefully selected because they symbolized widespread problems of many peoples or distinct regional situations. At the other NGO meetings, sympathetic NGOs want to assist in establishing general principles that can become international law and can be applied to protect all indigenous peoples everywhere in the world. If each indigenous delegate wants to single-mindedly do his own dance, crucial and irreplaceable opportunities are lost. This has been happening all too often. Despite our widely differing needs and situations, we will stand or fall together on the same set of principles.

Another disturbing and dangerous phenomenon is the effort of some indigenous organizations to dominate the process. Often they have little actual understanding of the international context in which we are all working, and little grass-roots support. Some of them, at least, do have a comprehension of the liberation process, but recently others, made up of confused, thoroughly colonized and government-funded individuals, have appeared on the scene also seeking to dominate. We have also seen that some well-meaning human rights activists who know nothing whatever about indigenous peoples have recently leaped into the breach with draft declarations of treaties which are the result of lawyers' abstractions. We believe that such documents must emerge over a period of time from the indigenous communities themselves. Only then will they be authentic and effective. Indigenous peoples must have full participation in every aspect of the international process. To be truly effective, however, this participation must be knowledgeable and responsible.

In the meantime, let the people who know what they are doing do their work, while the rest educate ourselves so that all can participate in this effort that is so vital to our lives and our futures as peoples.

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