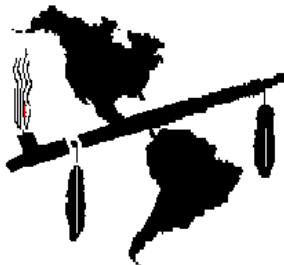


An Analysis of United States International Policy on Indigenous Peoples, the Human Right to Food and Food Security

prepared by

the International Indian Treaty Council

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“Profit to non-Natives means money. Profit to Natives means a good life derived from the land and sea, that’s what we’re all about... The land we hold in trust is our wealth. It is the only wealth we could possibly pass on to our children. Good old Mother Earth with all her bounty and rich culture we have developed from her treasures is our wealth. Without our homelands, we become true paupers.”

Antoinette Helmer, Alaska Native

“...The Right to Food of Indigenous Peoples is a collective right based on our special spiritual relationship with Mother Earth, our lands and territories, environment, and natural resources that provide our traditional nutrition; underscoring that the means of subsistence of Indigenous Peoples nourishes our cultures, languages, social life, worldview, and especially our relationship with Mother Earth; emphasizing that the denial of the Right to Food for Indigenous Peoples not only denies us our physical survival, but also denies us our social organization, our cultures, traditions, languages, spirituality, sovereignty, and total identity; it is a denial of our collective indigenous existence...”

The Declaration of Atitlan, from the 1st Indigenous Global Consultation on the Right to Food and Food Security, Panajachel, Guatemala, April 2002

I. Introduction

This paper examines United States international policy as well as its international legal obligations with regard to Indigenous Peoples’ food security and human right to food.*

For Indigenous Peoples throughout the United States and the world, the issues of food security and the right to food are directly tied to issues of land, natural resources and the environment as well as to traditional cultural relationships and practices. Increasingly,

* Given limitations on length, some issues important to Indigenous Peoples’ food security could not be covered. For example, the United States has been active in its support for the mining industry globally. See, eg., <http://www.moles.org>, Project Underground’s website, for description of the devastation of Indigenous lands and territories by North American transnational mining companies, particularly gold mining, internationally as well as in the United States. This devastation continues unabated, affecting the means of subsistence of Indigenous Peoples, ruining their rivers and groundwater, making it impossible in many cases for Indigenous Peoples to provide for their traditional means of subsistence.

Indigenous Peoples throughout the world, including the United States, are becoming wage earners tied to a money economy. Many now live in an urban environment. But life on the land based upon the practices of hunting, fishing, farming and gathering of traditional subsistence foods has always been the basis of Indigenous identity, culture, language and the religious practice. The use of traditional foods for cultural and ceremonial as well as health purposes, and return to reservations and rural communities for participation in subsistence activities at key times of the year, remain of core importance for many Native families who live in the cities.

The focus of this paper is on the rights of traditional Indigenous Peoples who still practice and wish to continue to practice their traditional means of subsistence, as well as those who are committed to strengthening and revitalization these practices as the basis of their individual and collective well being.

II. Economics, World Views and the Right to Food

Internationally, the United States has long held that that food is a matter of production and economic development, and not a question of human rights and fundamental freedoms. In fact, as a component of its international policy, the United States continues to question whether so-called “economic rights” such as the right to food are human rights at all. As a solution to the problems of poverty, hunger and food insecurity throughout the world, the United States has been aggressively steadfast in its promotion of the globalization of trade or “trade liberalization,” which promotes unrestricted trade between nations as something good for everyone. This theory contends that all countries become richer as they trade and allow the resulting prosperity to trickle down to their citizens.

As articulated by United States delegations at many international meetings, U.S. policy is based upon the premise that the production of more food, through economic development in general and industrialized agriculture in particular, will increase both food supplies and wealth, enabling more people to have money to buy more food (as well as other consumer items).

But there are profound contradictions between the dominant economic model based on promotion of economic globalization, unrestricted free trade and industrialized production and the vision of traditional Indigenous Peoples. The globalized market economy continues to prioritize the exploitation and movement of natural resources, products and capital at the expense of environmental protection, and the human rights and self determination of the peoples of the world.

Mining, oil drilling, industrialized agriculture, clear cutting of forests and mega-project damming all result in loss of traditional subsistence food resources and habitats. Yet these are considered to be hallmarks of progress, advancing the economic-based vision of development. Peoples' and communities' ancestral spiritual relationship to their lands, waters and traditional subsistence food resources cannot be measured in terms of dollars. They are of no value according to the dominant economic model of industrial

development; in fact they are often seen as standing in the way of true “progress”.

This contradiction is far more than a fascinating divergence of world-views. In the process of international investment and development, dominant global economic institutions and U.S. policies that support them continue to displace communities and to undercut Indigenous Peoples’ food security. They threaten to bring even more extreme poverty in many parts of the world.

One current example out of many around the world is Plan Puebla Panama. This mega-development plan is proposed by the United States, Mexico and Central American governments, and has already begun to threaten the food security and survival of the Indigenous Peoples living in its path.

Plan Puebla Panama covers the nine southernmost Mexican states of Puebla, Veracruz, Oaxaca, Chiapas, Tabasco, Campeche, Yucatan and Quintana Roo, and includes the entire region of Mezo-America, from Mexico to Panama. Funded by the Inter American Development Bank, the International Monetary Fund and the World Bank, among other international financial institutions, it establishes the foundation for the Free Trade Area of the Americas (FTAA) incorporating all of the western hemisphere except Cuba.¹ In Mexico work has already begun in the development of corridors within the nine southernmost Mexican states (with large indigenous populations), creating an elaborate infrastructure of ports, highways, airport and railway systems, to connect the development of petroleum, energy, maquiladora (assembly plants) and agricultural industries. It also intends to create a bank of cheap labor for the maquiladoras, and to exploit the natural resources of the region, including minerals, timber, petroleum, biodiversity and water.

In June 2001, 171 organizations from 16 countries, including many Indigenous Nations and organizations from Mexico and Central America, met in San Cristobal de las Casas, Chiapas Mexico, at the First Week for Biological and Cultural Diversity. Calling for food sovereignty and the right of Indigenous Peoples “to produce our own food,” the group declared their rejection of Plan Puebla Panama, “with all of the implications in detriment of our peoples, the biodiversity, and the natural and cultural resources.”²

The Congreso Nacional Indígena (CNI), of Mexico, at their Eighth National Assembly, also condemned Plan Puebla Panama, the massive loss of Indigenous lands and the appropriation by trans-nationals of Indigenous natural resources and traditional knowledge.³ The 86 Indigenous communities and organizations of the CNI, from 15 states of Mexico, composed of 30 Indigenous Nations,⁴ also declared:

“Finally, our own development model must be based upon the same roots of the existence of our peoples [and] promote the cultivation of corn and the ancestral culture that we have constructed in its cultivation.”⁵

On March 13 of this year, an article in *Indian Country Today*⁶ reported that there are already some 50 million acres of genetically engineered crops growing in the United

States, including farmlands near Indian country in North Dakota, South Dakota, Minnesota, Nebraska, Arizona and New Mexico. The importance of the protection of traditional subsistence food resources threatened by industrial models of production, including the genetic modification of corn plants by the biotechnology industry, was affirmed by Clayton Brascoupe, Director of the Traditional Native American Farmers Association.

Commenting on the fact that drift pollution contaminates the crops of traditional Native farmers in these areas when the wind, and insects carry the pollen to their natural crops, Mr. Brascoupe, a member of the Mohawk Nation and Tesuque Pueblo, said:

"When I first heard about the corruption of the genes of our Corn Mother, it frightened me because corn is at the heart of our survival as Indigenous Peoples of North, South and Central America. Corn is our Mother. She nourishes us and takes care of us. Our Creator gave it to us as a gift and instructed us on how to care for the corn so that it will care for us. It is our first medicine, and our people and corn are one in the same. Our mother is being corrupted by scientists and corporations, and if we don't stop it, she won't have the ability to heal us any longer."

In 2001, under the North American Free Trade Agreement, the U.S. shipped 6 million tons of corn to Mexico. According to the same *Indian Country Today* article, a quarter of this corn was genetically engineered, further undermining the subsistence corn based economy of the traditional Indian peoples of Mexico, in a continuous, destructive cycle.

III. The Human Right to Food

The right to food, defined internationally as an economic right, has been the subject of much consideration and activity by the United Nations. The United Nations Universal Declaration on the Eradication of Hunger and Malnutrition calls the right to food an "inalienable right."⁷ The Universal Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights both recognize the right to food and freedom from hunger.

Article 25 of the Universal Declaration on Human Rights (UDHR)⁸ affirms the right to a standard of living adequate for the health and well being of the human person and his or her family, including food, clothing, housing and medical services. The International Covenant on Economic, Social and Cultural Rights also speaks of an adequate standard of living including adequate food in Article 11. This same article recognizes the fundamental right of every person to be free from hunger and calls for international cooperation in the improvement of the production, conservation and distribution of food.

In 1999, the treaty-monitoring body of the International Convention on Economic, Social and Cultural Rights issued General Comment No. 12.⁹ This General Comment, meant to guide the States Parties in their implementation of the Covenant, affirms that the right to adequate food is indivisibly linked to the inherent dignity of the human person and is

indispensable for the fulfillment of all other human rights, "inseparable from social justice" requiring the adoption of appropriate economic, environmental and social policies leading to the eradication of poverty.

The United Nations Commission on Human Rights adopted a resolution in the year 2000, in its renewal of the mandate for its Special Rapporteur (a U.N. expert responsible for reporting to the CHR on the implementation of specific rights) on the Right to Food. The resolution calls hunger an outrage and a violation of human dignity that requires urgent measures at the national, regional and international level to eliminate it.¹⁰

In his first report in 2001, the United Nations Special Rapporteur on the Right to Food cited a United Nations Food and Agriculture Organization (FAO) estimate that "826 million people today are chronically and seriously undernourished."¹¹ Although data on Indigenous hunger and malnutrition is lacking, particularly in North America, studies show that Indigenous Peoples generally live under significantly worse socio-economic conditions, (including hunger and malnutrition) than the overall population, even in North America.¹²

A March, 2000 report by the South Dakota Advisory Committee to the U.S. Commission on Civil Rights affirms this dire fact in terms of the situation of at least some Indigenous Peoples in the United States. The report states that men in Bangladesh have a higher life expectancy than Native American men in South Dakota and that rates of death from a variety of causes was considerably higher for Native Americans than for the general U.S. population, including alcoholism (579%), tuberculosis (475%), and diabetes (231%).¹³

IV. The Right to Development and Indigenous Peoples

The right to development under international law is an inalienable human right by virtue of which every human person and *all peoples* are entitled to participate in, contribute to, and enjoy. Article 1 of the Declaration on the Right to Development characterizes the right to development as a right "in which all human rights and fundamental freedoms can be fully realized."¹⁴ As defined, the right to development encompasses not only economic rights but social, cultural and political rights as inherent to the right to development. Thus the full realization of the political right of peoples to self determination, including the exercise of their inalienable right to full sovereignty over their natural wealth and resources are fundamental to the right to development.

The Declaration on the Right to Development, concerned that all human rights are indivisible and interdependent, declares that the promotion and respect for, and the enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms.¹⁵ Any process of development that violates human rights, even if it improves the enjoyment of some rights, is by its very nature unsustainable and not consistent with the right to development.

The impact on Indigenous Peoples of the continued violation of this principle was noted by the 1990 United Nations Global Consultation on the Right to Development, which

stated that, "the most destructive and prevalent abuses of Indigenous rights are the direct consequences of development strategies that fail to respect their fundamental right of self-determination."

The first International Conference on Human Rights also found that "the enjoyment of economic and social rights is inherently linked with any meaningful enjoyment of civil and political rights and there is a profound interconnection between the realization of human rights and economic development."¹⁶ It has long been the position of Indigenous Peoples and their representatives internationally, that the right to development thus requires the recognition of the right of all peoples, including Indigenous Peoples, to determine for themselves the processes and forms of development necessarily appropriate to their cultures and circumstances, based on the principle of self-determination.

As defined by the Commission on Human Rights' Independent Expert (Special Rapporteur), the right to development is a right to a particular **process** by which "all human rights and fundamental freedoms can be fully realized."¹⁷ Development itself is described by the Preamble to the Declaration on the Right to Development as, "a global process which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from."

In this process of development, as States comply with their obligations to create conditions for the enjoyment of all human rights, the steps the State or international actors take in the process of development should ***actually improve conditions for the enjoyment of some human rights while not violating any other human rights.***¹⁸

The connection between the right to development and the right to food is fundamental for Indigenous Peoples. The Gwich'in of Canada and Alaska, for example, continue to maintain that their development and survival as a people is based on protection of the caribou rather than on oil development on their traditional lands. A statement issued in August 2002 by the Gwich'in Steering Committee, responding to renewed U.S. government threats to open the caribou calving ground in the Alaska National Wildlife Refuge to oil exploration, stated: "***Our traditional culture and way of life which is interconnected with the Porcupine Caribou Herd to meet all our essential needs such as food, clothing, tools, spirituality and social structure, is at stake.***"

V. Land, Resources and the Right to Food

"How firm we stand and plant our feet upon our land determines the strength of our children's heartbeats."

Polly Koutchak, Unalakleet Village, Alaska

Indigenous Peoples have relied for millennia on their lands and natural resources for their means of subsistence and for their cultural, physical and spiritual survival. This profound spiritual and material relationship is reflected in traditional songs, stories, ceremonies,

clan relationships and in the food gathering, processing and sharing practices which they have relied upon for millennia.

These fundamental relationships are also recognized in international human rights instruments,¹⁹ the studies of experts,²⁰ and in many World Conference declarations,²¹ all calling for the recognition, protection and enjoyment of Indigenous Peoples' right to their lands and the practice of their cultures, languages and religion.

Forced from their lands and into the cities through outright theft of land, loss of territory, and ruination of their environment, Indigenous Peoples are undergoing a trend of urbanization that is in full rigor. Although a limited form of self-determination is practiced by recognized Indian Tribes on reservations in the United States, the loss traditional territories, traditional use of subsistence resources and destruction of sacred sites located off the reservation continue unabated.

A recent Organization of American States (OAS) Inter-American Commission on Human Rights recently addressed the United States' confiscation of Western Shoshone livestock, grazed on lands that were traditional treaty lands but now are considered "federal" lands. Finding that the United States was violating the human rights of the Western Shoshone people, the OAS Inter-American Commission on Human Rights described the collective nature and the content of the right to property with regard to Indigenous Peoples, as well its interconnectedness with the relationship to land, the right of self-determination, the right to development and the right to food:

"Perhaps most fundamentally, the [Inter-American] Commission and other international authorities have recognized the collective aspect of Indigenous rights, in the sense of rights that are realized in part or in whole through their guarantee to groups or organizations of people. And this recognition has extended to acknowledgement of a particular connection between communities of Indigenous Peoples and the lands and resources that they have traditionally occupied and used, the preservation of which is fundamental to the effective realization of the human rights of Indigenous Peoples more generally and therefore warrants special measures of protection. The commission has observed, for example, that continued utilization of traditional collective systems for the control and use of territory are in many instances essential the individual and collective well-being, and indeed the survival of, Indigenous Peoples and that control over the land refers both to its capacity for providing the resources which sustain life, and to the geographic space necessary for the cultural and social reproduction of the group. The Inter-American Court of Human Rights has similarly recognized that for Indigenous communities the relation with the land is not merely a question of possession and production but has a material and spiritual element that must be fully enjoyed to preserve their cultural legacy and pass it on to future generations."²²

Indigenous Peoples' rights to aboriginal lands and their traditional use similarly has also been addressed by the United Nations Human Rights Committee, the Treaty Monitoring Body of the International Covenant on Civil and Political Rights (ICCPR). The Human

Rights Committee has recognized the ownership inherent in that use, directly recognizing the traditional physical and spiritual relationship of Indigenous Peoples to their traditional lands and the importance of this relationship to their means of subsistence and physical survival.²³

The Human Rights Committee has addressed Article 27 of the ICCPR and Indigenous Peoples' right to their traditional lands in the examination of periodic States' reports on "measures they have adopted which give effect to the rights recognized" by the Covenant, pursuant to Article 40 of the Covenant. In examining Chile's 1999 periodic report, for example, the Human Rights Committee found that the effect on the Mapuche peoples of hydroelectric and other development projects would affect their way of life so profoundly, that relocation and compensation were not appropriate to comply with Article 27:

"Therefore, when planning actions that affect Indigenous communities, the State party must pay primary attention to the sustainability of the Indigenous culture and way of life and to the participation of members of Indigenous communities in decisions that affect them."²⁴

In the case of free trade and globalized economies outside of the United States, it is important to note that the Human Rights Committee has also found that Article 1(3) "imposes specific obligations on States Parties, not only in relation to their own peoples, but *vis a vis* all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self determination."²⁵ Just as the United States cannot justifiably pick and choose which rights it will observe and which rights it will violate in the United States, neither can it pick and choose which Indigenous Peoples' rights it will respect or not respect in other countries in its promotion of globalization.

VI. The International Right of Self-Determination and Indigenous Peoples

The concept of self-determination is fundamental to the analysis of United States policy toward food security and the right to food. Although Indigenous Peoples in the United States normally speak of "sovereignty" with regard to an Indigenous Nation or Tribe and their right to manage their own affairs, in the United States the word "sovereignty" has become a relative term when coupled in U.S. statutes with words such as "domestic" and dependent." Tribes as well as the United States government usually take it to mean some form of internal autonomy or "self governance" rather than independence. And many Indian tribes question the extent to which even internal autonomy exists within the United States.

On the international level the right of all peoples to determine the full range of their affairs, territories and destinies is normally referred to as the right of self-determination. The word "sovereignty" is used in a very few international documents. The notable exception of the United Nations Resolution, "Permanent Sovereignty over Natural Resources" defining permanent sovereignty over natural resources as a right of States, peoples and nations.²⁶ This Resolution, in its preamble, states that such sovereignty "is a

basic constituent of the right of self-determination.”²⁷ A study recently begun the Sub-Commission on the Promotion and Protection of Human Rights has found that Indigenous Peoples have the right to permanent sovereignty over their natural resources.²⁸

The Universal Bill of Human Rights, consisting of the Universal Declaration on Human Rights, along with the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESC) defines the right of Self Determination in article 1 in Common to the ICCPR and ICESC:

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

"2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principles of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

"3. The States Parties to the present Covenant, including those having responsibilities for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”²⁹

The United States ratified the International Covenant on Civil and Political Rights (ICCPR) in 1992. Its international legally binding obligation with regard to Indigenous Peoples is to recognize and to respect the right of peoples to self-determination, including the right to control their own destiny and the right to survival as peoples. With regard to the right to food and food security, Article 1 in Common is the legally binding obligation to recognize and promote the right of peoples to use and control their own resources and make their own decisions about their own economic and social development. Most directly relevant to the right to food and food security, it commits the United States to the principle that “[I]n no case may a people be deprived of its own means of subsistence.” (emphasis supplied).

The Supreme Court of the United States is the arbiter of the United States Constitution. It decides if the Constitution is complied with or not. Similarly, the Human Rights Committee, the Treaty Monitoring Body of the International Covenant on Civil and Political Rights is the body that determines if the States parties are complying with their obligations to the Covenant. The jurisprudence of the Human Rights Committee, its interpretation of the provisions of the Covenant, is binding on all States Parties to the Covenant, including the United States.

Although initially reticent to apply the right of self determination under Article 1 of the Covenant to Indigenous Peoples,³⁰ the Human Rights Committee now recognizes that

the right of self determination applies Indigenous Peoples. In examining the 1999 Canadian periodic report, the Human Rights Committee stated:

“With reference to the conclusions by the [Royal Commission on Aboriginal Peoples (RCAP)] that without a greater share of lands and resources institutions of aboriginal self-government will fail, the Committee emphasizes that the right to self determination requires, *inter alia*, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence (Article 1(2)). The Committee recommends that decisive and urgent action be taken towards the full implementation of the RCAP recommendations that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with article 1 of the Covenant.”³¹

Since 1999, the Human Rights Committee has also applied the right of self determination to the Indigenous Peoples in Mexico,³² the Saami in Norway,³³ and the Aboriginal peoples in Australia.³⁴

VII. Indigenous Peoples as Peoples Under International Law

Article 1 in Common to the ICCPR and ICESAC states that **all** peoples have the right of self determination. The use and application of the term “peoples” as applied to Indigenous Peoples, critical for their enjoyment of the right to food as well as all other human rights, has been at the center of international debates for many years. Although now recognized by United Nations Treaty Monitoring Bodies and experts as a right of Indigenous Peoples, the struggle by Indigenous Peoples for recognition as “peoples” by the member States of the United Nations has been ongoing at the United Nations since the inception, in 1982, of the (sic) Working Group on Indigenous Populations.³⁵

The primary focus of this debate in recent years has been the ongoing discussions at the “Intersessional Ad Hoc Open Ended Working Group for the Elaboration of the Draft Declaration for the Rights of Indigenous Peoples” established by the United Nations Commission on Human Rights in 1995. One of the most controversial articles in the Draft Declaration is Article 3, which restates the words of Article 1 in common of the two International Human Rights Covenants, and affirms the applicability of this right of all peoples to Indigenous Peoples as follows: “*Indigenous Peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*”

The United States unfortunately has been at the center of the opposition to the recognition of Indigenous Peoples as peoples with the full range of rights designated for all peoples by international law at that body and many others. The United States as a matter of international policy has refused to recognize that Indigenous Peoples are “peoples” in order to avoid its legal obligation under international law. At the United Nations, the United States has fought consistently against the use of the term “peoples” to refer to Indigenous Peoples, recommending in its interventions that the term “populations”, “people”, and “persons belonging to Indigenous groups” be used instead.

In recent years the United States has agreed to use the term Indigenous Peoples in United Nations documents, but has insisted on footnotes and caveats to the effect that the word would not have the same meaning with regard to the rights that “normally” attach to the word under international law.³⁶ During the last days of the Clinton Administration, in its consideration the use of the words “Indigenous Peoples” in the Declaration and Programme of Action of the World Conference Against Racism (WCAR), the Department of State issued a memorandum defining the U.S. position on the word “peoples” stating that the United States would not oppose the use of the words “Indigenous Peoples” in documents other than the WCAR Declaration, so long as this recognition “did not include a right of independence or permanent sovereignty over natural resources.”³⁷

According to the U.S. State Department, the new Administration of President Bush has confirmed their commitment to continue the old policy of agreeing to use the term "Indigenous Peoples" only while severely qualifying its applicability under international law, rejecting the Clinton policy. At a meeting of a Special Session on the “proposed American Declaration on the Rights of Indigenous Peoples” in Washington DC on March 14, 2002, the United States presented an oral intervention which was then distributed in written form. Addressing the issues of the rights of Indigenous Peoples to self-determination the U.S. statement proposed the following language for Article 15 (1): “Indigenous Peoples have the right to internal self-determination. By virtue of that right they may negotiate their political status within the framework of the existing nation state ...”

This attempt to relegate them to what Indigenous Peoples view as a “second class” of peoples, with limited rights under international law as compared with all other peoples, is a demonstration of blatant racism that has been vehemently opposed by Indigenous delegates at many international bodies. The delegates have insisted that any attempt to enforce an unequal application of international laws violates the fundamental principle of non-discrimination upon which international laws is supposed to be based.

An apparent breakthrough in this ongoing debate occurred very recently, on September 4, 2002, on the 11th hour of the last working day, the World Summit on Sustainable Development (WSSD) at Johannesburg, South Africa. With the United States delegation present, the WSSD adopted its Declaration by consensus of the States, reaffirming “the vital role of Indigenous Peoples in sustainable development” with no qualification on the word.³⁸

If not an oversight by the United States delegation, this unqualified use of the term “Indigenous Peoples” appears to be a recent and radical change in United Nations policy and practice. But whether or not the Bush Administration continues not to oppose the “s” on “Indigenous Peoples” the fact of U.S. opposition to the recognition of the right of self-determination of Indigenous Peoples without qualification is clear, given the more “liberal” Clinton State Department memo, which reduces Indigenous Peoples’ natural

resources to fodder for resource extraction and economic globalization. The significance and impact, if any, of the WSSD very recent development remains to be seen.

VIII. The United States' Position on the International Right to Food

The United States has not ratified the International Covenant on Economic, Social and Cultural Rights. In fact, the U.S. government's consistent position is that the right to food, along with rights such as the right to health, are specifically "economic rights" that the United States does not recognize.

According to Lynn Sicade, Deputy Directory of Multi-lateral affairs in the U.S. State Department's Bureau of Democracy, Human Rights and Labor, the United States continues to maintain that that enforcement of a State's obligation to the right to food as a human right applies strictly in "political" situations, such as when food is denied as a deliberate act of war or as a punishment for a group's role in a political or civil conflict.

The United States government does not agree that right to food is an enforceable human right in and of itself under international law. The United States, in a position which distinguishes it from most other countries in the United Nations system, maintains that the responsibility (as distinct from the legal obligation) of States is to "provide conditions whereby the individual is able to meet his or her own economic needs, including obtaining adequate food, through his or her own initiative."

The United States government asserted precisely that position in 2001, during the last session of the United Nations Commission on Human Rights. At that time it was the only State out of 53 to vote against a Commission Resolution on the Right to Food, which was adopted by a vote of 52 to 1. US Ambassador George Moose, in statement delivered to the Commission on April 20, 2001, stated the reason for the U.S. opposition to the resolution: *"It implies that citizens of a State have a human right to receive food directly from the government of the State and it also suggests a legal remedy at the national and international levels against a State for those individuals who believe that their presumed right has been denied"* (emphasis supplied).

As evidenced in its "rejection" of the OAS Inter-American Commission on Human Rights decision regarding the Western Shoshone lands, its assertion that it is exempt from obligations to so-called "economic rights" affirmed by the rest of the international community, as well as its position regarding the rights and status of Indigenous Peoples, the United States demonstrates a consistent pattern of ongoing selectivity about which international human rights and processes it chooses to respect or recognize, which it does not, and which it chooses to redefine or qualify to fit its own vision of development.

IX. Impediments to the Enjoyment of the Right to Food

The Universal Declaration on the Eradication of Hunger and Malnutrition (1974) recognizes that "the situation of the peoples affected by hunger and malnutrition arises from historical circumstances, especially social inequalities, including alien and colonial

domination, foreign occupation, racial discrimination, apartheid and neo-colonialism in all its forms, which continue to be among the greatest obstacles to the full emancipation and progress of the developing countries and peoples involved."

The Declaration on the Right to Development (1986) makes similar findings, "considering that the elimination of the massive and flagrant violations of the human rights of peoples and individuals affected by situations as those resulting from colonialism, neo-colonialism, apartheid, all forms of racial discrimination, foreign domination and occupation, aggression and threats against national sovereignty, national unity and territorial integrity and threats of war would contribute to the establishment of circumstances propitious to the development of a great part of mankind."

The Declaration on the Right to Development recognizes that the creation and conditions favorable to the development of peoples and individuals is the primary responsibility of their States. Article 5 calls upon States to take "resolute steps to eliminate massive and flagrant violations of peoples and individuals suffering situations of apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference" and other wrongs also mentioned in the Declaration on the Eradication of Hunger and Malnutrition. Article 5 includes as a fundamental wrong against which the States should take resolute steps, the refusal to recognize the fundamental right of peoples to self-determination.

The Commission on Human Rights Special Rapporteur on the Right to Food, Mr. Zeigler, identifies seven major economic obstacles that hinder or prevent the realization of the right to food:

1. Problems linked to developments in world trade, particularly the agricultural policies of developed countries, as sanctioned by the World Trade Organization (WTO), which perpetuate malnutrition and hunger in the South;
2. External debt servicing and its impact on food security, including the structural adjustment programmes of the International Monetary Fund (IMF), which consistently aggravate undernourishment and malnutrition in debtor countries;
3. Developments in biotechnology, including genetically modified plants, ownership of international patents by agribusiness from the North, and worldwide protection of these patents, hampering access to food and the availability of food;
4. Wars and their destructive impact on food security;
5. Corruption;
6. Access to land and credit;
7. Discrimination against women and its impact on the realization of the right to food.³⁹

In an effort to facilitate the input of Indigenous Peoples' issues to the "World Food Summit: five years later" and related events (below), the United Nations Food and Agriculture Organization provided primary financial support for the first Global Indigenous Consultation on the Right to Food, requesting that the International Indian Treaty Council serve as coordinator of the consultation. The consultation took place on the shores of Lake Atitlán in Panajachel, Guatemala in April 2002, and resulted in a Declaration that proposes actions from local to international levels, as well as commitments among the consultation participants and the communities, organizations, tribes and Nations they represented.

The 125 Indigenous farmers, fishermen, herders, hunters and other traditional subsistence practitioners and technical experts from 28 countries -- including the United States -- who participated in the consultation identified a number of obstacles to their food security and food sovereignty. The first obstacle the Declaration identified is: "*The implementation and domination of globalization and free trade, which act without limits nor morality in the theft of our lands, territories, and other resources necessary for our Food Security and Food Sovereignty*" (emphasis supplied).

X. Food Sovereignty, Health and Cultural Rights

The 1996 World Food Summit Plan of Action states that "Food Security exists when all people at all times have physical and economic access to sufficient, safe and nutritious food to meet their **dietary needs and food preferences** for an active and healthy life" (emphasis added). As an internationally accepted definition of food security, it therefore implies that Indigenous Peoples should have access to nutritional and culturally appropriate foods as part of a traditional, subsistence diet. The ceremonial songs, dances, prayers, clan relationships and other activities related to use and preparation of culturally appropriate foods are fundamental to the enjoyment of food security in its full meaning for Indigenous Peoples.

The General Comment on the Right to Adequate Food (UN/ECOSOC 1999) states that, "the core content of the right to adequate food implies: The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; The accessibility of such foods in ways that are sustainable and that do not interfere with the enjoyment of other human rights."

Throughout the years, an international movement for food sovereignty has gained momentum. Although a concept not yet recognized by the United Nations in a formal manner, farmers, fishing peoples, hunters and others from throughout the world have defined food sovereignty as the right of peoples to define their own policies and strategies for the sustainable production, distribution and consumption of food, with respect for their own cultures and own systems of management of natural resources and rural areas. Indigenous Peoples have been and are currently active in the movement for food sovereignty at local as well as international levels, maintaining that it is a prerequisite for food security.

The issues of dietary needs, culturally based food preferences and issues of health, as components of the right of Indigenous Peoples to food sovereignty, are critical for Indigenous Peoples. Studies have shown that for many Indigenous Peoples, the loss of a traditional diet due to land loss, urbanization or environmental degradation, and the adoption of a diet high in refined fats and sugars, have only made worse their susceptibility to diabetes which is reported at rates up to 80% in some U.S. tribes, as well as other diseases. Other studies have shown that a return to the traditional diet has improved health and well being. The U.S. government's role in influencing dietary choices for Indians in the United States is demonstrated in the high-fat, surplus cheese given out to Indian families through the Commodities Program. This program, which is basically a governmental subsidy program for U.S. farmers, meat and dairy producers, only contributes to disease among Indigenous Peoples.

Likewise, the U.S. role in eliminating traditional means of subsistence such as buffalo, as a deliberate strategy of political and economic subjugation, continues to have widespread health effects on the effected Indian Nations. But tribes, traditional communities and organizations -- notably the Intertribal Bison Cooperative, which is composed of more than 50 tribes in the United States and Alaska -- are making significant strides to restore the buffalo as a central component of a healthy, culturally appropriate diet for their peoples.

Impacts of industrial pollution and government indifference to it also have a severe impact on the health and culturally based subsistence practices of Indigenous Peoples in direct violation of international law.

For example, in July 2000 the U.S. National Academy of Sciences released a study concluding that an estimated 60,000 babies born each year in the United States face serious threats of learning disabilities and other forms of neurological damage due to mercury contamination resulting from coal-fired power plant emissions released into rivers and lakes. The primary cause is consumption of contaminated fish by pregnant women living in the Great lakes, Northeast and other regions of the country. The Academy concluded that there is "little or no margin of safety" for the consumption of mercury by women of childbearing age, presenting a forced choice for Indigenous fishing communities who have relied on fish as the basis of their subsistence diets since time immemorial.

It should be noted that in some human rights conventions, like the ICCPR, "individual" complaints alleging violations of rights under the covenant or convention can be filed with the Treaty Monitoring Body. But this process is normally not required of a State ratifying the Convention or Covenant. A separate optional convention, called a "protocol" or an affirmative declaration by the State Party is required before people or peoples can file a complaint under most human rights instruments. But the interpretations of the Covenant made pursuant to these complaints are binding on all States Parties including the United States, even if they have not adopted the optional protocol. Under Protocol 1 to the ICCPR, allowing complaints, (not ratified by the United States) the Human Rights

Committee has accepted complaints and addressed the issue of land and Indigenous Peoples, in relation to Article 27 of the ICCPR. Article 27 states:

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

General Comment 23 of the Human Rights Committee is meant to serve as guidance to the States in their compliance with Article 27:

“3.2 The enjoyment of the rights to which article 27 relates does not prejudice the sovereignty and territorial integrity of a State party. At the same time, one or other aspect of the rights of individuals protected under that article – for example, to enjoy a particular culture – may consist in a way of life which is closely associated with territory and use of its resources. This may be particularly true of members of indigenous communities...”

“7. With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of Indigenous Peoples. That right may include such traditional activities as fishing or hunting, and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions that affect them.”⁴⁰

In the case of the Lubicon Lake Band of Canada, the Provincial government of Alberta had granted leases to private corporations in the exploitation of oil, gas, timber and other natural resources, and the construction of a pulp mill. The resulting environmental degradation had a devastating effect on the health of the Lubicon Lake Band, and on their traditional subsistence practices and traditional culture and way of life. Six years after the filing of a complaint, the Committee found a violation of Article 27 of the ICCPR.⁴¹

In reaching this conclusion the Committee recognized that the use of traditional lands in the practice of culture and interference with Indigenous traditional land uses by environmental degradation is not permitted under the ICCPR.⁴²

The Convention on the Rights of the Child, article 24, also recognizes the right of children to the enjoyment of the highest standard of health and mandates that state parties “shall pursue full implementation of this right.” States are required to “take appropriate measures to combat disease and malnutrition...” through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution.” The United States is one of two countries in the world that has not yet ratified this Treaty, although the Clinton Administration did sign it in 1994.

The only other “State” that has not ratified the Convention on the Rights of the Child is Somalia. Ratification is required before a Convention or Treaty is binding on the State.

XI. The United Nations Food and Agriculture Organization and The World Food Summit

According to its website⁴³, the United Nations Food and Agriculture Organization (FAO) is the lead U.N. agency for agriculture, forestry, fisheries and rural development issues. It is made up of 180 member states or governments, plus the European Community. It was founded in 1945 to raise levels of nutrition and standards of living, to improve agricultural productivity and to improve the condition of rural populations. FAO promotes the pursuit of "food security," which was defined by world leaders who gathered at the World Food Summit in 1996.

The World Food Summit and the Rome Declaration on World Food Security (1996)⁴⁴ reaffirmed that democracy and the promotion and protection of human rights and fundamental freedoms including the right to development are essential for achieving sustainable food security for all. The Rome Declaration considers the elimination of poverty essential to improve food security.

Declaring that food should not be used as an instrument for political and economic pressure, the States agreed in the Declaration that trade was a key element in achieving food security. They agreed to pursue food trade and overall trade policies that encourage producers and consumers to utilize available resources in an economically sound and sustainable manner "through a fair and market oriented world trade system."

The World Food Summit Plan of Action details the commitments made by the States in the declaration, with a view of reducing the number of undernourished people in the world by one half, no later than the year 2015, with a midterm review to determine whether this goal is possible earlier, by the year 2010. It is clear, by FAO statistics that this goal is far from being met.⁴⁵

The World Food Summit Plan of Action contains a series of seven generalized commitments, each with a set of bases for action and specific objectives and actions. Upon first impression, there are many laudable commitments and goals within the World Food Summit Plan of Action. Commitments include the creation of enabling conditions to eradicate poverty and for durable peace, based upon the full participation of women and men. Under this commitment, Commitment One, Objective and Action 1.1, the States “recognize and support (sic) indigenous people and their communities in their pursuit of economic and social development with full respect for their identity, traditions, forms of social organization and cultural values.”

At the World Food Summit, the States also committed to creating conditions within their States that enable the eradication of poverty, the economic and physical access by everyone to food and the sustainable development of food production capacities. They committed to combating pests, drought and desertification on a national level.

Other commitments include the eradication of poverty through, among other things, basic education and access to land, water and credit, and sustainable development projects in food, agriculture, fisheries, forestry and rural development, in order to maximize the incomes of the poor. Commitment Five details actions and goals that are offered in preparation for national emergencies in order to meet food requirements "in ways that encourage recovery, rehabilitation, development and capacity to satisfy future needs."

But the Commitments of the World Food Summit Plan of Action rely a great deal on the implementation of a "fair and market oriented world trade system." Commitment Four declares that "trade is a key element in achieving food security." Objectives and Actions under this commitment are the development of internal marketing and transportation systems to facilitate links with international marketing and transportation systems. These are precisely the intended outcomes of Plan Puebla Panama and other mega-development schemes toward which Indigenous Peoples of Mexico and other Central American states have expressed profound objection and concern. The States rely on the World Trade Organization to "ensure that developing countries are equal partners working for effective solutions that improve their access to markets." These so-called "solutions" have been identified by United Nations experts and Indigenous Peoples themselves as precisely the causes of the losses of Indigenous lands and increasing poverty, hunger and malnutrition and the growing numbers of poor and hungry throughout the world.

In major part, the World Food Summit Plan of Action relies on capital flows, the investment of dollars with a dollar return. It relies on international trade and the WTO and its members to provide this capital investment. But simply investing dollars in agriculture and measuring the return, also in dollars, has not created conditions for the enjoyment of the right to food. This reliance on international trade and capital flows, this reliance on the generation of dollars, has not improved the human right to food. It has in fact violated other human rights while also violating the right to food, as United Nations studies and experts,⁴⁶ as well as Indigenous Peoples and many other non-governmental and civil society originations involved in this process continue to point out.

The World Food Summit - five years later (WFS:fy) was held from June 10 – 13, 2002, as a follow-up to the 1996 Rome Summit.⁴⁷ The end product, the WFS:fy Declaration entitled "International Alliance Against Hunger" does not improve on the 1996 Declaration, identifies no new targets or commitments and maintains the 1996 WFS promotion of free trade and biotechnology as solutions for food insecurity.

As mentioned previously, the United States regards food security as an economic and development issue and disregards its human rights aspects. At the WFS:fy, the United States was belligerent in its refusal to accept the recognition of the human right to food in the final declaration. But in the face of persistent pressure from a majority of governments, the United States then took a different strategy: it agreed to the inclusion of the right to food, but also lodged a formal reservation to it, which allows the United States to qualify its position with regard to the Declaration. This position reflects the

United States' aversion to any human rights based approach that might be an impediment, to any degree, to globalization.⁴⁸

Yet as a result of Indigenous Peoples concentrated participation as a thematic group in the "Non Governmental Organization/Civil Society Forum for Food Sovereignty" that took place parallel to the WFS: fyl, FAO officials have accepted for consideration a list of action proposals that includes those contained in the Indigenous Peoples' Declaration of Atitlán. In November, 2002 FAO's Director General, Jaques Diouf, is scheduled to meet with Forum participants, including those in the Indigenous Peoples' thematic group, to discuss a possible plan and timeframe for the implementation of these proposals.

XII. The Environment and Food Security

In 1972, the United Nations held the World Conference on the Human Environment in Stockholm, Sweden. The resultant Declaration of the United Nations Conference on the Human Environment was the first pronouncement by the international community on the world's environment. Calling for an environment of a quality that permits a life of dignity and well being, the Conference established the United Nations Environmental Programme (UNEP), to serve a clearinghouse function for United Nations activity the field of the environment.

The Stockholm Declaration addressed the issue of the environment and development but left it up to the States to deal with the growing problem of environmental degradation as a result of development throughout the world. The Stockholm Declaration did recognize the connection between human right and the environment, but in its formulation of a right to the environment, it framed this right as an individual right even though the right to the environment, like the right of self determination, the right to development, and the right to peace, are all so-called "third generation" collective rights of peoples.

The World Conference on the Environment and Development (Rio) was held twenty years later, in 1992, in Rio de Janeiro, Brazil. Popularly known as "Rio," this conference led to an explosion of international activity, including international conventions, with regard to the environment. These include the Convention on Climate Change, the Convention on Biodiversity and the Convention on the Elimination of Persistent Organic Pollutants, none of which have been ratified as yet by the United States.

The Rio Conference did nothing to establish the environment as a human right. Mother Earth herself has no rights that are recognized by international law. Instead, Rio focused on international trade, calling for a "supportive and open economic systems" that "lead to economic growth and sustainable development."⁴⁹ Its solution to poverty is more "sustainable development" and the "equitable sharing" of its benefits, with no definitions or parameters provided for these key terms. This rhetoric has replaced time-bound commitments to action, and is constantly repeated by the United States at international fora. Meanwhile, globalization and imposed industrial development continues to lay waste to the world and to the lands and territories of Indigenous Peoples.

Principle 22 of the Rio Declaration recognizes that:

“Indigenous Peoples and their communities... have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of their sustainable development.”

But Principle 12 calls for “supportive and open international economic systems” that lead to economic growth and sustainable development, and trade measures that are not “disguised restrictions on international trade.”

The quandary for Indigenous Peoples posed by Rio is two-fold. Although it recognized the importance of Indigenous Peoples’ role in the preservation of Mother Earth, Rio also called for greater trade globalization; and, while calling for (but not defining) “sustainable development,” it explicitly promotes growth and more development. Many Indigenous Peoples’ representatives regard Rio’s use of the undefined term “sustainable development” as an oxymoron, a self-canceling phrase, which is used to promote globalization and forms of destructive resource extraction such as mining.

Agenda 21, the major product of Rio, is a detailed plan of action that attempts to somehow reconcile these diametrically opposed positions. Section 3 of Agenda 21 calls for strengthening the roles of major groups in development, elements of civil society that would counter “unsustainable” development. Nine Major groups are identified, including women, children and youth, non-governmental organizations, local authorities, workers and trade unions, business and industry, the science and technological community, farmers, and Indigenous Peoples. But globalization has progressed without regard to whatever influence these groups have been able to exert on the World Trade Organization or regional trade organizations like the North American Free Trade Agreement or international agencies of economic cooperation, like the IMF.

The World Trade Organization and the International Monetary Fund seem to be impervious to the perspectives and opinions of these “major groups.” These international financial and trade institutions have substantially more influence. And the United States, as a major contributor to the International Monetary Fund and a major host and beneficiary of trans-national corporations, is the major influence on both.

Indigenous Peoples have their own Chapter 26 in Agenda 21, which calls for a “full partnership” with Indigenous Peoples in the accomplishment of the goals of Agenda 21. Chapter 26.3 calls upon the States to “strengthen and facilitate” Indigenous Peoples’ participation in their own development and in external development activities that may affect them. But only “[I]n accordance with national legislation,” should Indigenous Peoples be accorded greater self-control over subsistence practices. The Gwich’in and other Indigenous Peoples’ rights to their major means of subsistence can be and are profoundly affected in negative ways by such national legislation.

Chapter 26 only recognizes Indigenous Peoples' rights already established under International Labor Organization Convention No. 169. It goes no further than calling upon the States to seek and incorporate the views of Indigenous Peoples and their organizations in the implementation and design, adoption and strengthening of policies to protect Indigenous Peoples intellectual and cultural property.⁵⁰

Other chapters of Agenda 21 also refer to Indigenous Peoples, primarily in the areas of traditional knowledge, in the case of fisheries and the incorporation of this knowledge into domestic marine ecosystems management plans.⁵¹ Chapter 11, Combating Deforestation, also calls for Indigenous "participation" in state activities pertaining to forests.⁵² Indigenous Peoples' ability to sustain themselves, to provide for their major means of subsistence and to continue the millennial practices in providing for their own means of subsistence in keeping with their own world view, are profoundly tied to all of these themes addressed by Agenda 21.

To be sure, Agenda 21 was a step in the right direction, as it did recognize the importance of Indigenous Peoples in the preservation of the environment.⁵³ The Statement on Principles on Forests,⁵⁴ also agreed at Rio, calls upon the States to "recognize and duly support the identity, cultures and rights of (sic) indigenous people, their communities and other communities and forest dwellers."⁵⁵ But Agenda 21 also subsumed the international human rights of Indigenous Peoples to national actions and national legislation. Indeed, it created the right of States, and through the States, multinational corporations, to exploit Indigenous traditional knowledge, albeit with the "participation" of Indigenous Peoples.⁵⁶ The inherent contradiction of recognizing international Indigenous "rights" on one hand but allowing States to determine their content on the other, can very well be seen as one step forward and two steps back.⁵⁷

Part of the explosion of international activity after Rio included the establishment of several United Nations organs to attempt the reconciliation of the contradictory messages of the Rio Declaration and Agenda 21. The Commission on Sustainable Development was meant to oversee the activities of Agenda 21, and to study the problem of "sustainable growth." It was given a broad agenda, including forests and traditional knowledge. The ad-hoc inter-governmental panel on forests, later the Intergovernmental Forum on Forests, and now the permanent United Nations Forum on Forests, was established to work on new "international arrangements" including an international Convention on Forests that has yet to happen.

While Agenda 21 called for the preservation of forests and their expansion, forest area losses for the past 20 years exceed the size of India, over 16 million hectares per year.⁵⁸ Worldwatch Institute cites illegal logging (2/3 of wood harvested in Indonesia is harvested illegally, 80% of logging in Brazil is illegal), and the over consumption of forest products by the north (77% of the world's commercial timber harvests are consumed by 22% of the world's people, in Japan, Europe, North America, and now China) as leading causes of forest loss.⁵⁹

All the verbiage, international meetings, and pronouncements at Rio and since, although recognizing Indigenous Peoples' traditional knowledge and its importance to conservation of the world's natural resources, have not stemmed the deforestation of the world nor the loss of land, ecosystems and natural resources, including the major means of subsistence of forest dwellers and other Indigenous Peoples. It has all gone to the generation of dollars and international trade, both "legal" and "illegal," and not to establishing food security for Indigenous Peoples of the forests or anyone else.

Yet it has been through the participation of Indigenous Peoples at the CSD, beginning primarily in 1999 with their concentrated work alongside non-Indigenous members of the Sustainable Agriculture and Food Systems Caucus, that the FAO has begun serious consideration of Indigenous Peoples' positions with regard to food security and cultural continuity.

The World Summit on Sustainable Development (WSSD) was held in Johannesburg, Republic of South Africa, in August-September of 2002. It was called by the United Nations to assess the progress made since Rio on sustainable development and the world's environment, and to set new goals and priorities based upon that assessment. In reality, globalization and un-sustainable development received a boost at the WSSD, primarily from the efforts of the United States, which, among other questionable actions, insisted on language in the declaration on "sustainable mining." In its assessment of the lamentable state of the world's environment, the WSSD did not address the negative impacts of the globalization of trade on the environment or on truly sustainable community-based development. It set no specific goals or deadlines on any theme relevant to the alarming deterioration of our Mother Earth.

XIII. U.N. Conventions on the Environment and Their Relationship to the Right to Food

The Framework Convention on Climate Change was a major theme and accomplishment of Rio. As a framework convention, it is an agreement to agree based upon the principles and guidelines established by the convention. 170 Nations agreed at Rio to reduce voluntarily their emissions of greenhouse gasses to 1990 levels. The Kyoto Protocol on Climate Change was to secure firm commitments from State Parties to the Convention on specific greenhouse gas reductions and deadlines. The United States is a signatory but has not ratified either the Convention or the Protocol. The Bush administration recently withdrew the United States commitment made under the Kyoto protocol.

As long recognized by traditional Indigenous Peoples, all things are inter-related. With regard to climate change, the massive loss of forests, particularly old growth, that serve as a filter to carbon in the atmosphere, has contributed to a global increase in greenhouse gasses in the atmosphere. Increased industrial production, particularly in the industrialized North, and China and a few other developing nations, is an obvious cause. Carbon emissions increased globally by 9% between 1992 and 2001.⁶⁰

Climate change affects Indigenous Peoples and their means of subsistence profoundly. As peoples dependent on the natural world for subsistence, the effects on the food chain and the cycles of floods and drought caused by climate change, the melting of the Arctic icecaps, desertification, changes in agricultural and migration cycles, and the decrease in fish, birds, seal and bear, Indigenous Peoples are experiencing greater food insecurity, malnutrition and hunger. The WSSD decried climate change but, in keeping with the United States position, recommended no fixed goals or deadlines for carbon emission reduction.⁶¹

The 2001 Stockholm Convention on Persistent Organic Pollutants (POPs) was, like the Convention on Climate Change, a showcase convention at Rio. After several years of negotiations, in December, 2000 in Johannesburg, South Africa, the language for a Treaty on POPs was finally approved. The Treaty supports elimination rather than reduction (as was proposed by the United States), as well as the precautionary rather than “acceptable risk” approach. This language was strongly advocated by Indigenous representatives and non-governmental organizations participating in the negotiating sessions.

At present, the convention prohibits the production and use of 12 chemicals, 9 pesticides, polychlorinated biphenyls (PCBs) and industrial by-products, dioxins and furans. But there is little information on the other 80,000 chemicals on the market today and their effects on the environment, human health, and Indigenous Peoples’ health and subsistence.⁶² Less is known of the “cocktail effect” of the combination of these chemicals once released into the environment, on life in all of its forms.

The growth of industrialized agriculture in the production of food for export, relying in many cases on deforestation, and in most cases on high doses of pesticides, is also affecting the bio-diversity of our planet and our ability to sustain ourselves, particularly in developing countries and on Indigenous lands.

The United States has not ratified this convention, although it took great pains to influence its results as it was being negotiated. Only 11 States have ratified this treaty, and it needs 50 ratifications before it enters into force (becomes legally binding). Representatives of the U.S. Department of State have indicated that the United States will sign the treaty only if no additional chemicals are added for elimination in the future.

Again, Indigenous Peoples are profoundly affected. POPs proliferate in the atmosphere, carried by water and wind currents from their industrial origins to the colder regions of the world, where they bio-accumulate in living beings. Bio-accumulation is exacerbated in human beings from food in the animals Indigenous Peoples eat, in particular in Northern climates where POPs tend to accumulate due to wind and water currents. For example, the Inuit living on Barring Island, Canada, carry seven times more PCBs in their body than people living in lower latitudes.⁶³ Illustrating the potential and alarming impacts on future generations, POPs also pass through the placenta to the unborn child, causing birth defects and learning disabilities. Residues of POPs, such as PCBs, dichlorodiphenyltrichloroethane (DDT) and dioxins also accumulate in blood, fat and mother’s breast milk.⁶⁴

The Indigenous Peoples of the Great Lakes region of the United States and Canada are also being severely affected by POPs from industrial emissions and the dumping of industrial waste in much the same way, from eating contaminated fish and wildlife, drinking water, soil dermal contact from swimming and the consumption of mother's breast milk. Indigenous women of the Great Lakes area carry PCBs in their bodies in gross amounts that are passed on to future generations.⁶⁵

In 1997 a study was conducted on the Indigenous Yaqui Nation in Rio Yaqui Sonora, an area targeted by the so-called "green revolution" and industrialized agriculture on the effects of the use of DDT on and around Yaqui traditional lands.⁶⁶ The study detected high levels of multiple pesticides in the in the cord blood of newborns and in mother's milk. Yaqui children living in areas contaminated by the high use of pesticides were tested with severe learning and developmental disabilities. Children living in areas of traditional Indigenous agriculture and little or no use of pesticides scored significantly higher in neurological and behavioral testing.⁶⁷

The POPs Treaty also requires all Parties to "regulate with the aim of preventing the production and use" of new pesticides and industrial chemicals which have POPs properties (toxic, persistent, bioaccumulation, long range transport). Since the Treaty contains no mechanisms to insure industry responsibility, state parties will need to exercise maximum responsibly and vigilance to monitor compliance and full participation of industries, including multi-national corporations.

XIV. Conventions on Biodiversity, Traditional Knowledge and Intellectual Property

The International Union for the Protection of New Varieties of Plants (UPOV) is an organization composed of 52 States, primarily from the North, including the United States. Its purpose is to protect "new" varieties of plants (the propagating material, or seeds) through the granting of "intellectual property rights" or patents.⁶⁸ UPOV is based upon the International Convention for the Protection of New Varieties of Plants, the UPOV Convention, as revised, of 1961. The UPOV Convention has undergone several major revisions since its inception in 1961.⁶⁹

Indigenous farmers have, for millennia, planted and harvested their traditional food, and in the process, over time, bred and developed new varieties of those traditional plants. Not restricted to food, Indigenous farmers also developed knowledge of plants for medicine and ceremony. The Maya, for example, the Corn People, have raised corn for thousands of years, and developed innovations and new plant varieties in the process. Using knowledge developed over many generations, the Hopi and Zuni in the Southwestern United States still breed and harvest different strains of red and purple corn. Theirs is knowledge of the millennia. Although originally meant to protect farmer's rights in 1961, the UPOV now only protects "breeders' rights. Traditional Indigenous knowledge is not protected by the UPOV.

Like all intellectual property schemes, as promoted by the United States, the UPOV only protects individuals (and a corporation, under U.S. law, is an “individual.”) It does not protect collective ownership and most Indigenous Knowledge is collective. The UPOV Convention protects breeders of *new* varieties of plants. A corporation can use Indigenous corn to develop a new variety of plant and sell it back to the Indigenous Peoples who developed and protected the original seed (and they do.). A Transnational can, under the 1991 Act to the UPOV Convention, prohibit the Indigenous farmer from saving surplus purchased seeds or seeds from his or her harvest for the next planting, and prohibit him or her from developing another variety from the purchased seed.⁷⁰ Indigenous seeds are considered the “Common Heritage of Mankind,” an international concept that defines traditional knowledge as unprotected and free for the taking. Yet Burpee or Monsanto seeds are private property to an extent even after they are sold.

The United States has also been promoting the United States patenting system as a model for the protection of “individual” intellectual property under the WTO Trade Related Aspects of Intellectual Property (TRIPS) agreement. Under the U.S. based system of patents, scientists from trans-nationals can “inventory” an Indigenous Peoples’ community of their traditional knowledge of plants, and patent their findings. Indigenous Peoples’ traditional knowledge is sold back to them in a sack or in a bottle.

The food security of Indigenous Peoples is being severely affected by these practices. Guatemala, home of the People of the Corn, for example, is a net importer of corn. Traditional Indigenous lands were cleared of Indigenous Peoples in the 1980’s in what the Guatemalan Truth Commission, led by respected United Nations experts called a “genocide” of 200,000 Indigenous Peoples, to establish the large tracts of land necessary for industrialized agriculture, including non-food crops such as coffee and cotton, for export to the US and Europe. Not only have Indigenous Peoples in Guatemala lost their lands to industrialized agriculture, the diminishing numbers of small-scale traditional Indigenous farmers is resulting in the loss of traditional knowledge and culture. Indigenous Peoples are being deprived of their means of subsistence and starvation is now a recognized problem in departments of Guatemala where Indigenous Peoples are the great majority of the population.

Industrialized agriculture, with its heavy use of pesticides and chemical fertilizers, is polluting Indigenous Peoples’ environment. Trans-nationals (with the knowledge and consent of the governments involved) are marketing pesticides and fertilizers which are currently banned for use in the United States and Europe but are nevertheless approved for export to Guatemala, Mexico and other third world countries, further poisoning Indigenous farmers, their families, communities and Mother Earth itself.

The Convention on Biological Diversity (CBD), the second of the showcase conventions adopted at the Rio Conference, has created some problems for the United States and its push to “rationalize” intellectual property schemes via the WTO. The CBD is another framework convention, laying out certain principles of agreement. This convention relies heavily on periodic meetings of the State Parties, called the Conference of Parties (COPS), to further the objectives of the convention and national plans that

incorporate principles established by the convention and the COPS. The United States is not a party to the CBD although it attends the meeting of the COPS and takes a great interest in influencing their results.

The aim of the Convention on Biological Diversity is the conservation and sustainable use of the world's biological resources.⁷¹ Of major interest to Indigenous Peoples is the CBD's recognition of Indigenous People's contribution to the preservation of the world's biodiversity. Although perhaps apocryphal, it is often said that over 80% of the world's remaining biodiversity is found on Indigenous lands and territories. It is generally accepted that the dominant world has abused and used up its own.

The CBD's Article 8(j) is of particular interest to Indigenous Peoples:

“(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.”

It must be kept in mind that the CBD is not meant to be entirely a convention for the conservation of the biosphere, but one devoted to the *use*, albeit “sustainable.” of biological resources. It also intends to promote the wider application of traditional knowledge and practices. Substantially, it is an intellectual property convention.

Indigenous Peoples have made some headway at the Conferences of Parties in participation as well as policy. At its fourth meeting in 1998 in Bratislava, Slovakia, COPS IV established an open ended Intersessional working group on the implementation of Article 8(j).⁷² This working group, attended by Indigenous Peoples as well as States, is meant to provide advice and recommendations to the COPS on the implementation of article 8(j). And although the CBD specifically recognizes the right of States (ironically calling it “sovereignty”) to exploit biological resources,⁷³ it does offer the potential for some measure of protection of biodiversity and traditional knowledge.

For example, under its national plan pursuant to article 8(j), the Philippines, by law, requires the free and informed consent of Indigenous Peoples before any prospecting, biological or mineral, on their lands. In the case of Indigenous Peoples, the law specifies that bio-prospecting and use shall be allowed “within the ancestral lands and domains of indigenous cultural communities only with the prior informed consent of such communities, obtained in accordance with the customary laws of the concerned community.”⁷⁴

Unfortunately, the United States is not a party to the convention. There is much potential in the work of the Convention on Biodiversity and the Conference of Parties for

Indigenous Peoples. This convention is raising issues that question the United States mantra of “free trade.”

In 1977, the Organization of African Unity (OAU), the regional organization of African States began to develop model legislation to guide African States in compliance with Article 8(j) as well as the WTO TRIPS agreement, which requires States to develop intellectual property protections. Although the United States has been strongly promoting the United States and UPOV models of individual patents, the WTO TRIPS agreement presently only requires that States adopt measures to protect intellectual property through patents or their own “*sui generis*” systems.

The OAU model legislation includes the requirement of free, prior and informed consent of communities, benefit sharing, and the inalienable and collective rights of communities to control access to their biological resources and traditional knowledge; it also requires that local communities receive 50% of any benefits derived by the government, and allows communities to properly exercise their own intellectual property rights collectively. And, consistent with Indigenous Peoples’ international position on the matter, the model legislation also declared the patenting of life forms immoral and illegal, and that no profits could be made from it.⁷⁵

The OAU invited the World Intellectual Property Organization and the UPOV to comment on this model legislation. Their comments, in technical language, rejected these provisions, particularly the inalienable and collective right of communities to control access to their biological resources and the prohibition on the patenting of life forms, promoted internationally by the United States and bio-technology trans-nationals.

The Cartagena Protocol on Biosafety was a result of the Convention on Biological Diversity’s recognition that genetically modified organisms (GMOs) are a danger to biodiversity.⁷⁶ Recently, for example, it was discovered that “terminator technology,” that of breeding varieties of plants that cannot reproduce, could spread to native species of the plant. Mexico imported United States corn seeds containing such technology. It was found that the terminator gene was cross-pollinating and infecting local native maize crops. Traditional Indigenous farmers’ right to use their own seed to grow their own traditional corn as they have done for millennia, is directly denied, as is their food security and right to food, not to mention their right of self determination and right to development.

The Conference of the Parties to the Convention on Biological Diversity adopted a supplementary agreement to the Convention known as the Cartagena Protocol on Biosafety on January 29, 2000. The Protocol seeks to protect biological diversity from the potential risks posed by living modified organisms resulting from modern biotechnology. It establishes an advance informed agreement (AIA) procedure for ensuring that countries are provided with the information necessary to make informed decisions before agreeing to the import of such organisms into their territory. The Protocol contains reference to the precautionary principle and reaffirms the precaution language in Principle 15 of the Rio Declaration on Environment and Development. The

Protocol also establishes a Biosafety Clearinghouse to facilitate the exchange of information on living modified organisms and to assist countries in the implementation of the Protocol.

The United States remains one of the very few countries in the world that recognizes patents on life forms. The U.S. patent office has wide-open doors to the biotechnology industry, allowing entire species of plants, transgenic animals, and over 500,000 whole or partial genes to be patented. Recently, the United States was politically isolated and defeated with regard to biotechnology and trade at the WSSD. A U.S. proposal to the WSSD Plan of Action would have given the WTO the power to override the Cartagena Protocol on Biosafety, thereby making it impossible for developing countries to reject GMO food and crop imports.⁷⁷

The Treaty on Plant Genetic Resources for Food and Agriculture reflects the concern over the loss of biodiversity as a result of industrialized agriculture and the patenting of plants and seeds, by the Conference of Parties of the Convention on Biodiversity. The COP has supported the development of an international convention for the protection of plant genetic resources. The result is the Treaty on Plant Genetic Resources for Food and Agriculture.⁷⁸

The objectives of this treaty are “the conservation and sustainable use of plant genetic resources for food and agriculture and a fair and equitable sharing of the benefits arising out of their use in harmony with the convention on biodiversity, for sustainable agriculture and food security”⁷⁹ This treaty links with the Convention on Biodiversity, its objectives and policies.

During the World Food Summit: five year later (WFS: fyl), the United States was successful in weakening a section calling on governments to sign and ratify the Treaty on Plant Genetic Resources for Food and Agriculture. But by the end of the WFS: fyl, 56 countries and the European Union had signed on to the Treaty, and the Treaty had received 7 ratifications.

XV. Conclusion

In 1945, the International Monetary Fund, the World Bank, and the General Agreement on Tariffs and Trade (the forerunner of the World Trade Organization) were established as part of the Bretton Woods Institutions by the victors of World War II. Since then, and particularly after the end of the Cold War and the fall of the Soviet Union, the United States as an economic superpower has promoted the liberalization of trade as the solution for poverty and hunger. This “solution” has been applied without regard to human rights or the underlying causes of poverty and food insecurity faced by Indigenous Peoples in all countries, both “developed” and “developing.” It is now generally recognized that globalization has not appreciably improve the lives of the impoverished, nor has it fed the world’s hungry. Indigenous Peoples, the poorest of the world’s poor, have been and continue to be severely and negatively affected by it.

Indigenous lands are essentially free for the taking by international development and lost as a major means of food security, subsistence and culture to Indigenous Peoples. If Indigenous Peoples are fortunate enough to keep their lands in spite of development, their environment is polluted and their major means of subsistence and food security undermined or compromised, more and more frequently beyond repair. As a solution to Indigenous food insecurity, globalization seeks to reduce Indigenous Peoples to wage earners in order to survive, and in the process, Indigenous languages, cultures and religions fade. The identity as Indigenous Peoples, so tied to the land, to the means of subsistence, and the spiritual relationship to the land, is forced merely into memory.

It is clear that under international law and jurisprudence, Indigenous Peoples are peoples in every legal sense of the word. Under international laws to which the United States is legally obligated, they may not be deprived of their means of subsistence. They also have the right to their traditional lands and territories, and to an environment that allows their traditional cultures and land use, including the production (or hunting, fishing, gathering or herding) of food.

Even though the United States claims not to recognize economic, cultural and social rights as they relate to the right of food, a fundamental principle of international law is that all human rights are related. Violations of the rights under Articles 1 and 27 of the International Covenant on Civil and Political Rights, to which the United States is legally obligated, are violations of their economic and social right to food, to development, and to the environment, particularly for Indigenous Peoples. This legally binding obligation extends to all Indigenous Peoples all over the world.

United States policy must undergo a radical transformation if it is to uphold the full range of international human rights and fundamental freedoms recognized as applicable to all peoples including Indigenous Peoples. The rights of Indigenous Peoples to food security and food sovereignty, included in international binding obligations of the United States under international law, must be honored. The U.S. government's role in promoting international trade and development must be based upon a human rights approach to development. For Indigenous Peoples this means respect and observance of the rights of self-determination and the principles of true sustainability for the generations of the future.

The involvement and activism of tribal governments as well as American Indian, Alaska and Hawaii Native community-based organizations across the United States can have a direct impact on informing and influencing U.S. international policy which directly impacts their lands and territories, their cultures and survival as peoples, as well as the preservation of their traditional means of subsistence, food sovereignty, their right to food and food security.

Endnotes

¹ For a full description of Plan Puebla Panama, see the Global Exchange website, <http://www.globalexchange.org/campaigns/mexico/ppp.html>, visited October 3, 2002.

² Forum on Biological and Cultural Diversity, Declaration, June 17, 2001, p. 3; found at Global Exchange website (see fn. 1).

³ Declaración Final, 3er Congreso Nacional Indígena (Final Declaration, 3rd National Indigenous Congress), Mexico City, 20 November 2001, (translated by Alberto Saldamando); Congreso Nacional Indígena (CNI) website, <http://www.laneta.apc.org/CNI>, visited 10/03/2002 (“Today, the neoliberal politics imposed by the [President of Mexico] Fox government in agreement with the large world financial centers expressed in plans and programs such as the so-called Plan Puebla Panama, intend the massive privatization of our territories, the disarticulation of the communal property of our peoples, and the appropriation, by large world consortiums, of our natural wealth and our traditional knowledge.”)

⁴ Final CNI Declaration, fn. 3, at page 6.

⁵ Final CNI Declaration, fn. 3, at p. 11. This paragraph continues: “In the same way, we must oppose the introduction of genetically modified organisms that threaten the food security of our nation...”

⁶ Posted March 13, 2002, on Indian Country Today website, <http://www.indiancountrytoday.com>, visited April 2, 2002.

⁷ Report of the World Food Conference, UN Doc. E/CONF.65/20, UN Publication Sales No. 75.II.A.3, Declaration: “1. Every man, woman and child has the **inalienable right** to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties.” (emphasis added)

⁸ Universal Declaration of Human Rights, Adopted and Proclaimed by General Assembly Resolution 217 A (III) of December, 1948. With a bit of patience, all United Nations Declarations, Human Rights Treaties, Covenants and Resolutions cited in this paper may be found on the Office of the High Commissioner for Human Rights website, <http://www.unhchr.ch>, by clicking “documents” on the home page.

⁹ General comment 12, CERD Committee (found on the UNHCHR website, fn. 8, (“treaty based bodies.”) Every Human Rights Covenant or Convention has provisions within it establishing a “Treaty Monitoring Body” that oversees the implementation of the Convention or Covenant by the States Parties to the Convention. They issue periodic “General Comments,” establishing standards by which the States Parties are bound and guided in the implementation of specific provisions. These General Comments, along with decisions under its complaints procedures, and Concluding Observations, serve as the jurisprudence of the Treaty, Convention or Covenant, establishing the content of the convention rights.

¹⁰ UN Commission on Human Rights, resolution 2000/10, April 17, 2000.

¹¹ Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, submitted in accordance with Commission on Human Rights resolution 2000/10, UN Doc. E/CN.4/2001/53, 7 February 2001, Summary.

¹² See, eg., Siri Damman, Nutritional vulnerability in the indigenous children of the Americas – a human rights issue, Institute for Nutrition Research, Faculty of Medicine, University of Oslo (Norway), October 10, 2001. “In Canada and the USA, stunting [in children] is said not to be a problem, and data are not found. However, and that goes for all countries, data might exist which were not detected in the preparation for this study. In Canada, the First Nation IMR [infant mortality rate] is shown to be 2-3 times higher than the population as such. Inuit children have a ratio of 2.2, while others (Métis and Canadian Indians) are at 1.9. In the USA there are also clear inequalities in regard to IMR.” at p. 9

¹³ Native Americans in South Dakota: An Erosion of Confidence in the Justice System, South Dakota Advisory Committee to the United States Commission on Civil Rights, US Commission on Civil Rights, Rocky Mountain Regional Office, Denver, Colorado, March 2000.

¹⁴ United Nations Declaration on the Right to Development, Adopted by General Assembly Resolution 41/128 of December 4, 1986, Article 1, parts 1 and 2.

¹⁵ Declaration on the Right to Development, *Article 9*:

1. All the aspects of the right to development set forth in the present Declaration are indivisible and interdependent and each of them should be considered in the context of the whole.
2. Nothing in the present Declaration shall be construed as being contrary to the purposes and principles of the United Nations, or as implying that any State, group or person has a right to engage in any activity or to perform any act aimed at the violation of the rights set forth in the Universal Declaration of Human Rights and in the International Covenants on Human Rights.

¹⁶ Resolution XVII, International Conference on Human Rights, Tehran, April 22 to May 13, 1968, in United Nations Action In the Field of Human Rights, Part IV. Existing Standards and their Promotion and Protection, D. The Right to Development, para. 2216; United Nations: New York, 1994.

¹⁷ Fourth Report of the Independent Expert on the right to development, Mr. Arjun Sengupta, E/CN.4/2000/WG.18/2, December 20, 2001, Introduction, para. 2, citing, *inter alia* his prior reports: First report, E/CN.4/1999/WG.18.2; Second report, E/CN.4/2000/WG.18/CRP/1; and, Third report, E/CN.4/2001/WB.18.2. This rapporteur's reports, as well as others cited herein can also be accessed through the Office of the United Nations High Commissioner for Human Rights website, <http://unhchr.ch>, under "program."

¹⁸ *Id.*, at para. 5.

¹⁹ International Labor Organization Convention No. 169, Article 7 (development); article 13 (Part II, Land).

²⁰ Mrs. Erica-Irene Daes, Special Rapportuer on the Human Rights of Indigenous Peoples, Indigenous Peoples and their relationship to land, Preliminary working paper, E/CN.4/Sub.2/1997/179 (20 June 1997); Progress report, E/CN.4/Sub.2/1998/15 (July 22, 1998); Second progress report, E/CN.4/Sub.2/1999/18 (3 June 1999); Final working paper, E/CN.4/Sub.2/2001/21 (2000).

²¹ See, eg., First World Conference to Combat Racism and Racial Discrimination, Declaration, Article 21, Geneva, August 1978 (Sales No. E.79.XIV.2, chap. II); Second World Conference to Combat Racism and Racial Discrimination, Geneva, August 1983, Declaration, Preamble and Chapter II, Article 22 (Sales No. E.83.XIV.4); World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, Durban South Africa, September, 2001, Declaration, para.43 (United Nations: New York, 2002).

²² Inter-American Commission on Human Rights, Report No. 113/01, Case No. 11.140, *Mary and Carrie Dann v. United States*, para. 128, p.31, (dated October 15, 2001, released in August of 2002), para. 128; Available on Indian Legal Resource Center website: <http://www.indianlaw.org>. Of interest, the Inter-American Commission found that the Western Shoshone had been deprived of the right to equal treatment under the law contrary to Articles II, XVII and XXIII of the American Declaration because the process of the Land Claims Act and the Commission itself did not allow them to raise the issue of title. See, *Dann v. US*, at para VI., 148. This case has major implications for other US Tribes, particularly the Hope and Lakota, as they too have refused to accept money awarded by the Land Claims Commission. The United States, in testimony before the US Senate, declared its "rejection" of this IACHR decision.

²³ See, eg., *Kitok v. Sweden*, Report of the Human Rights Committee, 43 UN GOAR Supp. (No. 40) at 221, A/43/40 (1988); *I. Lansman et. al v. Finland*, CCPR/C/52/D/511/ (1992).

²⁴ Concluding Observations of the Human Rights Committee: Chile, UN Doc. CCPR/C/79/Add.104, (1999), para. 22.

²⁵ Human Rights Committee, The right of self determination of peoples (Art.1): CCPR General Recommendation 12, (1984), para. 6.

²⁶ General Assembly Resolution 1803 (XVII) of December 14, 1962, “Permanent sovereignty over natural resources; available at <http://www.hri.ca/uninfo/treaties/8.shtml>, visited January 8, 2003.

²⁷ *Id.*, at para. 1 of the preamble.

²⁸ Working Paper by Erica-Irene Daes, former Chairperson-Rapporteur of the Working Group on Indigenous Populations, Indigenous Peoples’ permanent sovereignty over natural resources, UN doc. E/CN.4/Sub.2/2002/23, July 30, 2002, para. 7.

²⁹ Article 1 in Common, International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESC), both *Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1996*. Found in A Compilation of International Instruments, fn. 1, at p. 20 (ICCPR) and p. 8 (ICESC).

³⁰ See, *Ominayak v. Canada*, fn. 41 below, decided under Article 27 of the ICCPR at the time, and not under Article 1. A different approach would probably now be taken by the Human Rights Committee in addressing these issues, to include Article 1 as well as Article 27.

³¹ Concluding Observations of the Human Rights Committee: Canada. 07/04/99, at para. 8. UN Doc. CCPR/C/79/Add.105, (1999). In 2002, the Committee on the Elimination of Racial Discrimination, pursuant to the Convention on the Elimination of all Forms of Racial Discrimination, also called for compliance with the RCAP recommendations. Concluding observation of the [CERD] committee, Canada, UN doc. CERD/C/61/CO/3, August 23, 2002.

³² Concluding Observations of the Human Rights Committee: Mexico. UN Doc. CCPR/C/79/Add.109 (1999), at para 18.

³³ Concluding Observations of the Human Rights Committee: Norway. UN Doc. CCPR/C/Add.112 (1999), paras. 10 and 17.

³⁴ Concluding Observations of the Human Rights Committee: Australia. UN Doc. CCPR/CO/69/AUS (2000), para. 9.

³⁵ Not only Indigenous Peoples and their organizations and representatives at the United Nations, but UN experts themselves have called this failure of recognition a failure of logic and language, and racist: “These experiences have only confirmed to me that Indigenous Peoples in many countries continue to be the victims of racism and discrimination. Indeed, I believe that discrimination and racism are at the heart of the indigenous issue, whether this is expressed in the reluctance of many States to recognize the right of self-determination of Indigenous Peoples – a right recognized for all other peoples – or in the absurd denial of the use of the term ‘Indigenous Peoples’, contradicting all logic of language and pretending in doing so that the different Indigenous Peoples of the world do not have a language, history or culture unique to them, or in the insistence by the dominant world that Indigenous Peoples do not have their own long-established and dynamic systems of knowledge and law.” Working paper on discrimination against Indigenous Peoples submitted by Mrs. Erica-Irene Daes in accordance with Sub-Commission resolution 1999/20, E/CN.4/Sub.2/2001/2, August 18, 2001, para. 11.

³⁶ For more recent examples, see, eg., the name of the Permanent Forum for Indigenous Issues (instead of the Permanent Forum for Indigenous Peoples; World Conference Against Racism Declaration and Programme of Action, para. 24).

³⁷ Unclassified cable to the HUMAN RIGHTS COMMISSION COLLECTIVE, from SECSTATE WASHDC (STATE 10525), TAGS: PHUM, dated January 19, 2001.

³⁸ Final Draft, World Summit on Sustainable Development Declaration, September 3, 2002, para. 22 (bis).

³⁹ Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, submitted in accordance with commission on Human Rights Resolution 2001/10, UN Doc. E/CN.4/2001/53, February 7, 2001, at p. 3

⁴⁰ Human Rights Committee, General Comment 23, Article 27 (fiftieth session, 1994), cited in Daes, *op. cit.*, p. 47.

⁴¹ Bernard Ominayak, Chief of the Lubicon Lake Band. v. Canada, Communication No. 167/1984, Report of the Human Rights Committee, A/45/40, Vol. II, Annex IXA, para. 32.2.

⁴² In response, Canada recognized a 95 square mile territory for the Lubicon Lake Band, and recognized their subsurface mineral rights to approximately two-thirds of the territory, as well as programs, benefits and money. The Committee found this remedy acceptable.

⁴³ At <http://www.fao.org>, visited November 9, 2002.

⁴⁴ See <http://www.fao.org/docrep/003/w3613e/w3613e00.htm>, visited November 9, 2002.

⁴⁵ See, FAO website, home page, fn. 43.

⁴⁶ See, Special Rapporteur on the Right to Food, third report to the Human Rights Commission, UN doc. E/CN.4/2002/58, 10 January 2002. See also, Report of the High Commissioner on Human Rights, submitted in accordance with Commission on Human Rights resolution 2001/32, Globalization and its impact on the full enjoyment of human rights, UN doc. E/CN.4/2002/54, January 15, 2002, para. 6.

⁴⁷ See <http://www.fao.org/worldfoodsummit/english/index.html>, visited November 9, 2002.

⁴⁸ During the WFS: fyl, the United States also resisted inclusion of a voluntary Code of Conduct on the Right to Food which would have reminded the States of their human rights obligations under the International Covenant on Economic, Social and Cultural Rights and the right to food, and States' obligations to regulate private sector activities, consistent with Objective 7.4 of the 1996 World Food Summit Plan of Action. Canada (which often works hand-in-hand with the United States on globalization and related issues) argued that the right to food is already a human right and doesn't need to be singled out. Similar and purely voluntary codes of conduct for trans-national mining corporations and their obligation to observe human rights in their activities have also been opposed by the United States, even though these codes would be of a voluntary nature, notwithstanding any legal obligations of States. For an excellent description of the U.S. position at WFS: fyl, see, Peter Rosset, U.S. Opposes Right to Food at World Summit, Food First web page, <http://www.foodfirst.org/media/opeds/2002/usopposes.html>, visited October 10, 2002.

⁴⁹ Rio Declaration, principle 12. Ironically, the following year, at the World Conference on Human Rights, in Vienna, the Vienna Declaration scarcely mentioned the environment.

⁵⁰ Agenda 21, Chapter 26, 26.4 and 26.5. See, ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries: Article 2 (participation of Indigenous Peoples in development); Article 4 (protection of Indigenous cultures and environment); and Article 6 (consultations leading toward, but *not* requiring, consent on measures which may affect them directly). Indeed, Agenda 21 falls short of Article 27

of ILO #169, recognizing that Indigenous Peoples “shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands that they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development.” ILO Convention 169 is the only international convention on Indigenous Peoples and can be regarded as the “bottom” or basic document establishing recognition of the rights of Indigenous Peoples from which the development of international human rights standards concerning Indigenous Peoples should evolve. In no way should United Nations actions or documents reflect lesser human rights standards than those found in this basic convention.

⁵¹ Agenda 21, Chapter 17, 17.17.

⁵² Agenda 21, Chapter 11.1(b).

⁵³ Chapter 11 also calls for Indigenous Peoples’ participation in capacity building programs to facilitate research and the implementation of measures to protect forest ecosystems and biodiversity. It calls for the creation of protected reserves and areas, including the traditional territories of Indigenous Peoples.

⁵⁴ Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests. In addition to the Convention on Biodiversity and the Framework Convention on Climate Change, the States were also to agree on a Convention on Forests, but were unable to reach agreement. The Forest Principles were adopted instead. The Rio Declaration and Agenda 21, as well as the Forest Principles are not legally binding on any State.

⁵⁵ Principle 5(a). Principle 2(d) calls for the promotion and opportunity for the participation of Indigenous Peoples and forest dwellers in the development, implementation and planning of *national* forest policy.

⁵⁶ Agenda 21, Chapter 11.13(b).

⁵⁷ For an excellent discussion of the gains and challenges forest dwelling Indigenous Peoples made at Rio and beyond, see, Tom Griffiths, Consolidating the Gains. Indigenous Peoples’ Rights and Forest Policy Making at the United Nations, Forest Peoples Programme, Moreton-in-Marsh, UK, 2001.

⁵⁸ Janet N. Abramovitz, Too Much Talk, Too Little Action on Forests, Worldwatch Institute, World Summit Policy Brief #3, <http://www.worldwatch.org/worldsummit/briefs/20020416.html>, visited September 9, 2002.

⁵⁹ Id.

⁶⁰ Gary Gardner, Growing Awareness, Sluggish Response, Policy Brief #1, Worldwatch Institute, fn. 30,

61 The creation of carbon sinks, the planting of trees that would soak up the carbon in the atmosphere is a solution, proposed by the United States and other industrialized countries in furtherance of globalization and export agriculture. But this solution would replace forests with plantations, reducing the old growth that is the real carbon sink, replacing old growth forests with young “productive” trees that filter nothing. Plantations actually increase the loss of biodiversity and cause de-forestation. Another solution found in the Kyoto Protocols also supported by the United States, is that of tradable emissions, the selling of one country’s quota of emissions on the New York Stock Exchange to another country that is exceeding its quota. Such a solution does nothing to reduce carbon emissions and is obviously no solution at all.

⁶² Anne Platt McGinn, Reducing the Use of Toxic Chemicals Advances Health and Sustainable Development, Policy Brief #7, Worldwatch Institute, fn. 30.

⁶³ Transboundary Persistent Organic Pollutants (POPS), Human Rights and Indigenous Peoples, Indigenous Environmental Network presentation to the Special Rapporteur on the illicit movement and dumping of toxic and dangerous products and waste, United Nations Commission on Human Rights, presented by Tom

Goldtooth, National Director, IEN at a meeting with the Special Rapporteur, at the International Indian Treaty Council, San Francisco, California, December 13, 2001.

⁶⁴ Id., at p. 4.

⁶⁵ Id.

⁶⁶ Elizabeth A. Guillet and María Mercedes Meza, et. al., An Anthropological Approach to the Evaluation of Preschool Children Exposed to Pesticides in Mexico, Environmental Health Perspectives, Bureau of Applied Research in Anthropology, University of Arizona, Tucson Arizona, USA and the Dirección de Investigación y Estudios de Postgrado, Instituto de Tecnológico de Sonora, Obregon, Sonora, Mexico, <http://ehpnet1.niehs.nih.gov/members/1998/106p347-353guillette/guillette-full.html>, visited November 6, 2002.

⁶⁷ Id.

⁶⁸ International Union for the Protection of New Varieties of Plants, <http://www.upov.int/eng/dgtext.htm>, visited September 11, 2002.

⁶⁹ Changes in the UPOV are accomplished through “Acts” under the 1961 Convention, i.e. the 1978 Act, and the 1991 Act. See, <http://www.upov.int/eng/convntns/index.htm>

⁷⁰ See, <http://www.upov.int/eng/about/protect.htm#prelimin>, for the differences between the 1978 Act and the 1991 Act. The 1978 Act did not prohibit these uses.

⁷¹ “The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.” Article 1, Convention on Biodiversity, found at <http://www.biodiv.org/convention>, visited September 11, 2002.

⁷² “Open-ended” means any State can come, and includes the participation of Indigenous Peoples, their organizations and representatives. “Intersessional” means that it meets between sessions of the COPS.

⁷³ CBD, Article 3, Principle.

⁷⁴ [Philippine] Executive Order No. 247 (18.5.95), 1995.

⁷⁵ "Model Legislation on the Protection of the Rights of Local Communities, Farmers and Breeders and for the Regulation of Access to Biological Resources." See, Genetic Resources Action International (GRAIN) website for a full description of this incident at <http://216.15.202.3/publications/oau-brief-en.cfm>, visited September 11, 2002.

⁷⁶ Convention on Biodiversity, Article 19(3). For the Text of the Cartagena Protocol, see, the Convention on Biodiversity web page, <http://www.biodiv.org/biosafety/background.asp>, visited September 11, 2002.

⁷⁷ During the WFS:fyl, the US was successful in weakening a section of the draft WFS:fyl Declaration that called on governments to sign and ratify the Treaty on Plant Genetic Resources for Food and Agriculture. But by the end of the WFS: fyl, 56 countries and the European Union had signed on to the Treaty, and the Treaty had received 7 ratifications.

⁷⁸ For the text of the Treaty on Plant Genetic Resources for Food and Agriculture, as well as issues related to the conservation and use of plant genetic resources, see, the UK Agricultural Biodiversity Coalition web page see <http://www.ukabc.org>, visited September 11, 2002.

⁷⁹ Id., Treaty on Plant Genetic Resources, Article 1.