



INTERNATIONAL INDIAN TREATY COUNCIL

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March 25, 2004

Mr. Julian Burger
Office of the High Commissioner for Human Rights
Palais des Nations
CH-1211 Geneve 10
Switzerland

Dear Mr. Burger,

Please receive our respectful greetings.

In an information note dated 9 February 2004, regarding the International Decade on the World's Indigenous Peoples (1995 – 2004), the Office of the High Commissioner for Human rights informed the International Indian Treaty Council of the Economic and Social Council's decision 2003/306, whereby it decided to conduct a review of the Decade. The Office of the High Commissioner requested that the IITC provide an assessment of the implementation of the Programme of Activities of the International Decade to further that review.

We are honored and pleased to provide that assessment, attached.

Thank you for your communication and the opportunity to present our comments.

for all our relations,

Alberto Saldamando
General Counsel, IITC

cc: Andrea Carmen, IITC Executive Director



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Assessment of the Implementation of the Programme of Activities of the International Decade

I. Background

In proclaiming the International Decade of the World's Indigenous Peoples, the General Assembly defined its goal as "the strengthening of international cooperation for the solution of problems faced by indigenous people in such areas as human rights, the environment, development, education and health."¹

This initial resolution requested all United Nations bodies and specialized agencies to designate focal points, for the coordination of activities related to the Decade with the Centre for Human Rights² and urged United Nations organs, programmes and specialized agencies to examine how existing programmes might be better utilized to benefit Indigenous Peoples.³ As a specific task, the General Assembly requested that the Commission on Human Rights give priority consideration to the creation of a permanent forum for Indigenous Peoples within the United Nations system.⁴

In proclaiming the Decade as beginning December 10, 1994, the General Assembly set aside the period from 1 January 1994 to 9 December 1994, for planning for the Decade, "in partnership" with Indigenous Peoples.⁵

The Second General Assembly resolution on the Decade⁶ called for greater participation by Indigenous Peoples in the planning and implementation of activities for the Decade as well as, "an operational focus to implement its goals; it also decided that the theme for the Decade would be, 'Indigenous People: partnership in action.'⁷ This resolution set out more specific tasks and objectives for the United Nations system during the decade.⁸

In its resolution 50/157 of 21 December 1995, the General Assembly identified a series of objectives that served as the basis of activity by the United Nations for the Decade for the World's Indigenous Peoples:

1. The specialized agencies of the United Nations system and other international and national agencies as well as communities and private enterprise, should devote special attention to development activities of benefit to Indigenous Peoples;
2. "... the education of indigenous and non-indigenous societies concerning the situation, cultures, languages, rights and aspirations of Indigenous Peoples ...;
3. "... the promotion and protection of the rights of Indigenous Peoples and their empowerment to make choices which enable them to retain their cultural identity

- while participating in political, economic and social life, with full respect for their cultural values, languages, traditions and forms of social organization;
4. “.. the implementation of the recommendations pertaining to Indigenous Peoples of all high-level international conferences, the World Conference on Human Rights, in particular, its recommendation that consideration be given to the establishment of a permanent forum for indigenous people in the United Nations system ...”; and,
 5. “... the adoption of the draft United Nations declaration on the Rights of indigenous people and the further development of international standards as well as national legislation for the promotion and protection of the human rights of indigenous people, including effective means of monitoring and guaranteeing those rights.”⁹

In its resolution 50/157, quoted above, the General Assembly also adopted the Secretary General’s recommendation that the objectives of the Decade should be assessed by **“quantifiable outcomes that will improve the lives of indigenous people** and can be evaluated halfway through the Decade and at its end.¹⁰ (emphasis supplied).

II. Measuring Progress in the Goals of the Decade - United Nations Mechanisms and Human Rights

Some important progress was made during the Decade on the part of the United Nations system to fulfill its goal for the Decade. Before examining each of the specific objectives set by the General Assembly meant to accomplish the goal, we examine the most notable accomplishments by the United Nations system during the Decade.

A. The Permanent Forum for Indigenous Issues: The United Nations system fulfilled one of its important objectives for the Decade, the Permanent Forum for Indigenous Issues, with the participation of Indigenous Peoples both in its design as well as its functioning. The Permanent Forum on Indigenous Issues is now established within the United Nations system, composed of 16 independent experts, 8 elected by the States, and 8 named by the President of ECOSOC from nominations by Indigenous Nations and organizations.

The Permanent Forum was established in 2000 by the Economic and Social Council, ECOSOC, with a mandate to discuss all issues within the mandate of the Council, economic and social development, culture, the environment, education, health and human rights, as they relate to Indigenous Peoples. The Permanent Forum is mandated to provide expert advice and recommendations on indigenous issues to the Council, as well as to programmes, funds and agencies of the United Nations, through the Council. It is also mandated to raise awareness and promote the integration and coordination of activities relating to Indigenous issues within the United Nations system.

The Permanent Forum is the equivalent of a functional commission of the United Nations. However, it cannot make recommendations directly to the United Nations system nor to UN member States on these broad and important themes. It can only make recommendations to ECOSOC, and via ECOSOC to the agencies or programmes of the

UN system. If there is no consensus among the member States of ECOSCO with the Permanent Forum's recommendation, that recommendation is not passed along. The Permanent Forum's mandate does not include making recommendations directly to other UN bodies, or conducting studies on key issues, factors which many see as limiting its potential effectiveness

The Permanent Forum's real ability to make effective contributions which strengthen international cooperation for solutions for the problems of Indigenous Peoples in ECOSOC's thematic areas still remains to be seen. Its first two or three years have had to focus on its establishment within the United Nations system, as well as on finding funding and support. The solutions that it could offer the United Nations system are totally dependent on the political good will of the States members of ECOSOC, and a very large and difficult-to-move United Nations bureaucracy. To realize its full effectiveness the Permanent Forum will need to find ways to address these limitations as it evolves into the future.

The fact that Indigenous experts from all regions of the world are seated as equal members of the Forum in the same number and standing as those nominated by the states must be considered a very important step towards the full and effective participation, as well as the recognition of Indigenous Peoples within the United Nations System.

B. The Special Rapporteur on Indigenous Human Rights:

Important progress was also made in the monitoring of Indigenous Peoples' human rights with the establishment of the Mandate for the Commission on Human Rights' Special Rapporteur on the Human Rights of Indigenous Peoples. Mr. Rodolfo Stavenhagen, the Special Rapporteur has energetically approached his mandate and made important reports to the Commission. Although the creation of this mandate was not directly part of the programme for the Decade, it does further directly one of the objectives of the Decade, "the promotion and protection of the rights of Indigenous Peoples."

C. Other Non-Conventional Mechanisms;

Some important work was done by several Special Rapporteurs of the Commission on Human Rights, notably Mme. Daes, the past excellent chairwoman of the WGIP. During the Decade, her study on Indigenous Peoples and their relationship to land¹¹ remains a seminal study on this most fundamental of Indigenous rights. Her present on-going study on Indigenous Peoples permanent sovereignty over natural resources¹² has begun to establish this important right firmly within the framework of international law.

Others, such as Special Rapporteur Mr. Abdelfattah Amor, who addressed religious intolerance against Indigenous Peoples in the United States,¹³ also did much to further recognition and understanding of Indigenous Peoples rights by defining the right to religious expression as it pertains to Indigenous Peoples' spirituality, its connection to the land, and the need for protection of Sacred sites.

The former Special Rapporteur on Human Rights and the Environment, Mme. Fatma-Zohra Ksentini, also addressed Indigenous Peoples rights during the Decade within that

mandate (discussed below).¹⁴ Her work under her new name, Mme. Fatma-Zohra Ouhachi-Vesely, now the Special Rapporteur on the Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, has also addressed Indigenous Peoples in a comprehensive and positive manner regarding violations of their rights within her mandate.¹⁵

The United Nations Study on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous (sic) Populations, completed in 1999, half way through the Decade, by Special Rapporteur Mr. Miguel Alfonso Martinez is a notable example of achievement during the Decade within non-conventional mechanisms. When IITC began its work at the United Nations, the first matter it addressed was the unilateral and illegal abrogation by the United States of the 1868 Fort Laramie Treaty between the United States and the Sovereign Lakota Nation. The IITC was directed by its founders to seek a solution for the lack of effective mechanisms or redress, in particular within the domestic legal structures of the United States, and Canada, for ongoing violations of Indigenous Peoples' Treaty rights, and the principles of partnership, peaceful coexistence and free and informed consent which they embody.

This Study made some very important findings, including the fact that, "The Special Rapporteur is of the opinion that those instruments indeed maintain their original status and continue fully in effect, and consequently are sources of rights and obligations for all the original parties to them (or their successors), who (sic) shall implement their provisions in good faith."¹⁶ The Study also made some very important recommendations, including the international oversight of these Treaties between Indigenous Peoples and States. It must be noted that these same states, Canada and the United States, continue to this date to reject any form of international oversight and redress for these violations.

Other Rapporteurs whose mandates are especially important to Indigenous Peoples including the Special Rapporteur on the right to food¹⁷ and the Special Rapporteur on the right of everyone to enjoy the highest attainable standard of physical and mental health,¹⁸ have only recently begun to address Indigenous Peoples within their scope of work.

But the problem is not that Indigenous Peoples' human rights are not recognized or that violations of those rights are not reported. The Special Rapporteur on human rights and the environment, in 1994, the beginning of the Decade, found that Indigenous lands were under unprecedented pressure as a result of "development;" she was, "... impressed by the fact that the human rights violations at issue almost always arise as a consequence of land rights violations and environmental degradation, and indeed are inseparable from these factors."¹⁹ The Special Rapporteur on the human rights of Indigenous Peoples came to the same conclusions at the end of the Decade, noting that these human rights violations "have not ceased" and are linked to land rights.²⁰ The fundamental problem remains that the recommendations by these non-conventional mechanisms to the States and UN Bodies such as the Commission on Human Rights to cease or to at least to address documented violations of Indigenous rights, are for the most part ignored and remain largely without effective remedy.

D. The United Nations Human Rights Treaty Monitoring Bodies:

It is important to trace the evolution of human rights standards, particularly by the Treaty Monitoring Bodies of human rights treaties within the United Nations system during the Decade, in order to truly measure progress in meeting its goal..

Major United Nations human rights treaty monitoring bodies did very important work with relation to Indigenous Peoples during the Decade. Several Treaty Monitoring Bodies have, since the proclamation of the decade, adopted general recommendations to guide the States parties to their covenants or conventions in compliance, from the perspective of Indigenous Peoples' collective rights as Peoples. Their recent jurisprudence and Concluding observations and recommendations reflects much progress in the recognition of Indigenous Peoples' collective human rights.

1. The Human Rights Committee, International Covenant on Civil and Political Rights, in 1999, begin to apply Article 1, the right to self determination, to Indigenous Peoples, recognizing that Indigenous Peoples have the right of Self Determination of Article 1 of the Convention, particularly in use and possession of land and natural resources.²¹

In 1994, the Human Rights Committee also adopted General Comment 23 regarding the importance of land and natural resources and their use in order to satisfy the requirements of Article 27 of the ICCPR guaranteeing the right to practice culture, language and religion.²² It has applied these standards in their jurisprudence.²³

2. The Committee on the Elimination of Racial Discrimination, the Treaty Monitoring Body of the Convention on the Elimination of all Forms of Racial Discrimination (CERD), adopted General Comment XXIII, in 1977, specifically addressed to the rights of Indigenous Peoples under the CERD Convention. This standard for compliance with the CERD Convention requires States parties to provide Indigenous Peoples conditions allowing for sustainable economic and social development compatible with their cultural characteristics, and to ensure that indigenous peoples can exercise their rights to practice and revitalize their cultural traditions and customs and to preserve and practice their language. It calls upon the States to guarantee Indigenous traditional lands and their free use and administration by Indigenous Peoples, and reaffirms that Indigenous Peoples free and informed consent must be achieved before actions are taken that may affect them.²⁴

The CERD Committee has also applied these standards reaffirming Indigenous Peoples right to land and resources in its jurisprudence since the beginning of the Decade, in its examination of States reports under the convention²⁵ as well as its jurisprudence under its complaints procedures.²⁶

3. The Committee on Economic, Social and Cultural Rights, the treaty monitoring body of the International Covenant on Economic, Social and Cultural Rights has also addressed the particular human rights problems of Indigenous Peoples under the ICESCR.

The ESCR Committee adopted General Comments addressing in part the right of Indigenous Peoples to their land, pointing out that Indigenous Peoples are particularly vulnerable to forced evictions²⁷ and to the denial of food²⁸ when their lands are under attack.

In General Comment 14, the ESCR Committee recognized the importance of traditional practices and medicines in Indigenous Peoples' enjoyment of the right to the highest attainable standard of health. The Committee also recognized the collective nature of Indigenous Peoples' right to health, and that, "development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands" are a violation of the right to health.²⁹

The Committee's most recent General Comment on the right to water, applies Article 1 in Common to Indigenous Peoples, noting that this article requires that "in no case may a peoples be deprived of its means of subsistence," the Committee requires States parties to the convention to "ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples."³⁰ This General Comment also requires the States parties, as an obligation under the Covenant, to take steps to ensure that access to water on ancestral lands are protected from encroachment and unlawful pollution.³¹ The ESCR Committee has also applied these standards, as well as free and informed consent, in their examination of State Party periodic reports.³²

4. The Committee on the Rights of the Child's General Guidelines³³ require the States parties to report on the state of Indigenous Children, particularly with regard to:
1. Translation of the Convention and the State's periodic reports into indigenous languages;³⁴
 2. Specific measures taken to reduce economic, social and geographic disparities to prevent discrimination against Indigenous children;³⁵
 3. Measures adopted to ensure the Indigenous child's freedom to manifest his or her religion, including respect for the child's rights in relation to any religious teaching in public schools and institutions, including limitations;³⁶
 4. Access to appropriate information with particular regard to the indigenous child's linguistic needs;³⁷
 5. Measures to ensure that Indigenous children are included in the preparation of children to participate "in a free society, in the spirit of understanding, peace, tolerance, equality of the sexes, and friendship among all peoples, ethnic, national and religious groups;"³⁸ and,
 6. Measures to ensure that Indigenous children are not denied the right to enjoy their own culture, to profess and practice their own religion, and to use their own language.³⁹

In 2003, the CRC Committee held a Day of General Discussion on the rights of Indigenous children. Its report and recommendations recognized that Indigenous children are disproportionately affected by institutionalization, urbanization, drug and alcohol abuse, trafficking, armed conflict, sexual exploitation, and child labour.⁴⁰ In the

recommendations the CRC acknowledged that the right to enjoy one's culture (article 30 of the CRC) may consist of a way of life which is closely associated with territory and use of its resources, particularly with regard to Indigenous Peoples.⁴¹

The CRC Committee has applied these standards to States Parties to the Convention, such as Canada, wherein it recommended:

“The Committee urges the Government to pursue its efforts to address the gap in life chances between Aboriginal and non-Aboriginal children. In this regard, it reiterates in particular the observations and recommendations with respect to land and resource allocation made by United Nations human rights treaty bodies, such as the Human Rights Committee (CCPR/C/79/Add.105, para. 8), the Committee on the Elimination of Racial Discrimination (A/57/18, para. 330) and the Committee on Economic, Social and Cultural Rights (E/C.12/1/Add.31, para. 18). The Committee equally notes the recommendations of the Royal Commission on Aboriginal Peoples and encourages the State party to ensure appropriate follow-up.”⁴²

As can be seen by the CRC Committee's citations of the other major treaty monitoring bodies recommendations, and its own comments to Canada with regard to Indigenous Peoples, the treaty monitoring bodies did much to recognize Indigenous collective human rights during the Decade. Nevertheless, once again the problem remains that States themselves have made little or no progress observing or promoting their enjoyment, despite the comments specifically directed to them by these high level UN bodies.

II. Measuring Progress in the Goal of the Decade – the Objectives

Objective 1: The specialized agencies of the United Nations system and other international and national agencies as well as communities and private enterprise, should devote special attention to development activities of benefit to Indigenous Peoples;

In its initial resolutions regarding the Decade, the General Assembly requested all United Nations bodies and specialized agencies to designate focal points, for the coordination of activities related to the Decade with the Centre for Human Rights and urged United Nations organs, programmes and specialized agencies to examine how existing programmes might be better utilized to benefit Indigenous Peoples.⁴³

As the Secretary General noted in his 1999 report on the programme of activities for the Decade, “there is virtually no United Nations activity which does not affect indigenous peoples in some way or another, and in which indigenous peoples do not have a legitimate interest.”⁴⁴ Yet, except for a very few notable examples, such as the Office of the High Commissioner for Human Rights, the International Labor Organization (ILO), the United Nations Development Programme (UNDP), and the Conference of Parties (COPS) to the Convention on Biodiversity, the response of the United Nations system as a whole has been painfully slow.

The IITC recognizes that steps taken by some of the subsidiary bodies that did respond has been a valuable beginning toward this objective. For example, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO) in particular have done work over a period of years during the Decade to increase Indigenous Peoples' participation and input within their mandates and programmes through conferences and consultations, and have issued important reports with regard to the specific related situations, problems and concerns of Indigenous Peoples. But this important work has not yet been institutionalized and remains therefore largely unfulfilled with regards to this objective.

Other bodies, such as the World Intellectual Property Organization, UNESCO, UNICEF, and UNEP, to name a few, have had consultations with Indigenous Peoples, and some have designated "focal points" within their organizations to collect and report on work done relevant to Indigenous Peoples. But these "focal points" and consultations are more of a temporary, *ad hoc* nature, promoting dialogue but not yet producing any long term institutional commitments with regard to Indigenous Peoples as requested by the General Assembly. Too often these consultations did not result in any effective mechanisms for ongoing input or in the implementation of any new policies or programmes.

In the case of the World Bank, their "consultations" with Indigenous Peoples actually produced a negative result. The World Bank group has participated consistently with the Permanent Forum and has had important policy guidelines in relation to Indigenous Peoples for many years. But, after over two years of "consultations" with Indigenous Peoples, "new" World Bank policy guidelines, developed during the Decade, are a retrogression of previous Bank policies regarding Indigenous Peoples and their human rights. For example, World Bank policies with regard to Indigenous Peoples are being amended to allow the forced relocation of Indigenous Peoples, without regard to cultural values, languages, traditions and forms of social organization. These new policies put a premium on the non-recognition of Indigenous Peoples themselves, or their own land tenure systems or traditions, or rights of ownership. And the little protection afforded Indigenous Peoples by these policies is operative only if the State itself recognizes them.

United Nations agencies have aided in an interagency support group for establishment of the Permanent Forum, conducted workshops and research projects on Indigenous Peoples, and should be commended for these efforts. But important United Nations agencies such as FAO, the World Food Programme, WIPO and others, still have no policy directives or internal guidelines governing the organization's work with and for Indigenous Peoples.

Clearly, the Decade was not meant to address international cooperation for the solution of the problems of Indigenous Peoples only for ten years. As the Secretary General reported: "Implicit in the theme of the Decade, 'Indigenous Peoples: partnership in action,' and the proposal to create a permanent forum is the notion that indigenous people and organizations should have recognized rights of participation in the United Nations

decision-making bodies and a formal or institutional role in international policy-formulation and policy-making in area affecting their lives.”⁴⁵

The United Nations system as a whole has up to now fallen short in this objective for the Decade as well. Understandably, given the sheer size of some of subsidiary organs and agencies, time (as well as funding) may have been too short. Whatever the reason, the subsidiary organs of the United Nations charged with key matters of vital concerns to the rights and survival of Indigenous Peoples have yet to fulfill their obligations under this objective of the Decade in any quantifiable way.

Objective 2: “... the education of indigenous and non-indigenous societies concerning the situation, cultures, languages, rights and aspirations of Indigenous Peoples ...;

There is no doubt, as the CERD Committee, the UNCED, and other UN fora have noted, Indigenous Peoples are a group extremely vulnerable to discrimination. This important goal of the Decade is particularly relevant to the education of the dominant societies that have institutionalized discrimination against Indigenous Peoples within their countries as a legacy of their colonialist past. But here too there have been few noteworthy successes during the Decade.

The Office of the High Commissioner, in conjunction with the ILO, UNESCO and the UN Sub-regional Centre for Human Rights and Democracy in Central Africa did conduct several workshops in Africa on Indigenous Peoples, and one, in Youndé, Cameroun, for Forest Peoples (Pygmies), which the IITC considers important and substantive in furtherance of this objective.

The OHCHR conducted other workshops on issues of great importance to Indigenous Peoples, including mining, the administration of justice, and the already mentioned ground-breaking Study on Treaties, agreements and other constructive arrangements between States and indigenous populations.

These workshops conducted by the OHCHR, important and groundbreaking as they were, did not manage to avoid or even mitigate the genocide being inflicted upon the Forest Peoples of Central Africa or the continued violations of the rights of Indigenous Peoples with regard to mining or their Sacred Treaties. All of their collective rights, as described by the Treaty Monitoring bodies, to land, to culture, to their own way of life on their own lands, to their means of subsistence, to their lives and physical integrity as individuals and as Peoples, continue to be grossly and systematically violated even now, as the world merely looks on.

It would take volumes to adequately describe the persistent and pervasive world-wide discrimination against Indigenous Peoples or to provide an overview of its many forms and impacts. The IITC agrees strongly that a serious attempt must be made, by both the United Nations system and the member States of the United Nations, to educate dominant societies about the dignity and worth of Indigenous Peoples’, their cultures, rights and

world views, as well as the absolute necessity to combat racism discrimination in all of its forms from the local level to the standard setting processes of the United Nations itself.

Objective 3: “... the promotion and protection of the rights of Indigenous Peoples and their empowerment to make choices which enable them to retain their cultural identity while participating in political, economic and social life, with full respect for their cultural values, languages, traditions and forms of social organization;”

The right described in this objective, the right of free and informed consent and full participation by Indigenous Peoples in matters that affect them, is fundamental to the enjoyment of all other rights. This is yet another area in which little effective progress has been made. In fact a great deal of resistance has been shown by some state members in this regard.

The right of free and informed consent, first enunciated by Article 6 of ILO Convention 169, expanded by the CERD Committee’s General Recommendation XXIII, required by the jurisprudence of the Human Rights Committee, CERD, the ICESCR Committee and the Committee on the Rights of the Child, as described above, is systematically ignored and violated. This is notable in the liberalization of trade and the policies of international trade organizations such as the World Trade Organization (WTO), the North American Free Trade Agreement (NAFTA) and international financing institutions such as the World Bank Group.

Even though, as was mentioned above, the UN’s Treaty Monitoring bodies made progress in providing Indigenous content to the human rights and fundamental freedoms described in the various human rights Covenants and conventions, Indigenous Peoples’ rights under this objective remain if anything less protected now than they were before the Decade was declared. For example, the CRC’s 2003 Concluding Observations regarding Canada, and the recommendations by all four major treaty monitoring bodies cited still have not been not adequately addressed by Canada, and serve as one example among many of the lack of progress within this objective.

The Permanent Forum,⁴⁶ the United Nations Working Group on Indigenous Populations,⁴⁷ as well as the United Nations Special Rapporteur on the human rights of Indigenous Peoples⁴⁸ have all studied the problem of globalization and its impact on Indigenous Peoples and come to the conclusion that the rapid and unbridled development of Indigenous lands and resources are destroying Indigenous Peoples, their cultures, languages, spirituality and identity. Indigenous Peoples are given no choice in the matter, and are forcibly resettled, or simply driven off their ancestral lands through militarization and physical or economic coercion. As reflected in the citations herein, the WGIP and the Permanent Forum have directly commented on the right of prior, free and informed consent as critical to the survival of Indigenous Peoples.

As stated above, World Bank policies have recently been amended to considerable lessen the recognition and observance of Indigenous Peoples’ rights by borrower governments and the projects that they finance. Most discouraging is the denial of the firmly

established Indigenous Peoples' right of prior free and informed consent (PIC) despite this stated objective of the Decade. In 2001, the World Bank President, Mr. James Wolfensohn, appointed Dr. Emil Salim, former Indonesian Minister of the Environment under Suharto, and a former director of Indonesia's largest coal company, to evaluate whether or how much extractive industries contribute to poverty alleviation. In January of 2004, Dr. Salim presented his report, *Extractive Industries Review Final Report: Striking a Better Balance*. This report recommended, among other things, that Indigenous Peoples human rights and fundamental freedoms be observed by borrower States, including the obtaining of prior informed consent of local and Indigenous communities affected by the proposed extraction as a pre-condition to financing by the World Bank Group.⁴⁹ It also recommended enhanced human rights protections, an end to support for destructive mining technologies, as well as the immediate cessation for coal projects world-wide and a phasing out of oil support by 2008. All of these key recommendations, as well as others, were welcome news to Indigenous Peoples all over the world affected by extractive industries.

In 2003, the World Bank had report to the Permanent Forum that four issues "remained unresolved," 1) full recognition of customary land rights, 2) recognition of the right to prior, free and informed consent, 3) self identification as a principal criteria for application of the WB Indigenous Policy, and 4) a complete prohibition of forced relocation of Indigenous Peoples. The WB informed the Permanent Forum that the new, amended policies would be adopted without these safe-guards, the Permanent Forum recommended that the World Bank revisit their new policies⁵⁰ particularly with regard to these issues.

In spite of their own Extractive Industries Review, several years of consultations with Indigenous Peoples, and the recommendation of the Permanent Forum, all urging the World Bank Group to adopt these safeguards, the World Bank has so far refused. It has postponed the delivery of Dr. Salim's EIR Report, and indicated a rejection of the Extractive Industries Review recommendations.⁵¹

The World Bank's refusal to adopt human rights standards in its lending policies with regard to Indigenous Peoples' collective rights to land, resources and decision-making, and Canada's refusal to abide by recommendations by the Human Rights Committee, the CERD Committee the ESCR Committee, and the Committee on the Rights of the Child, with regard to Indigenous Peoples' rights to land and natural resources, seriously impair Indigenous Peoples' ability "to retain their cultural identity while participating in political, economic and social life, with full respect for their cultural values, languages, traditions and forms of social organization." They underscore the failure of this objective even to receive consideration by States and international financing institutions, as well as international trade organizations.

Objective 4: “.. the implementation of the recommendations pertaining to Indigenous Peoples of all high-level international conferences, the World Conference on Human Rights, in particular, its recommendation that consideration be given to the

establishment of a permanent forum for indigenous people in the United Nations system ...”

With regard to the recommendations of high level international conferences, the proclamation the General Assembly recognized the Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights in 1993, and its call for an international decade for the world’s indigenous people, “which should include action-oriented programmes to be decided upon in partnership with Indigenous Peoples.⁵² Significantly, the General Assembly resolution also welcomed the recognition of, “the vital role of Indigenous Peoples and their communities in the interrelationship between the natural environment and its sustainable development, ... including their holistic traditional scientific knowledge of their lands, natural resources and environment” by the UNCED, the 1992 United Nations Conference on Environment and Development, also known as “Rio.”⁵³

But little was done during the Decade in the formulation and execution of “action oriented programmes” decided in partnership with Indigenous Peoples. In fact some of the recommendations for such partnerships mandated even before the Decade began, have fallen far short of what was promised. For example, the recommendations of Agenda 21, with regard to Indigenous Peoples, Section 3 and its Chapter 26 (Indigenous Peoples) also called for Indigenous Peoples participation in development, with the view of national legislation that would accord Indigenous Peoples more control over their lands and natural resources.⁵⁴ These recommendations, as well as others on Fisheries (Chapter 17), Deforestation (Chapter 11), and the Principles on Forests, particularly Principle 5(a), calling upon governments “to recognize and duly support the identity, culture and rights of indigenous people, their communities and other communities and forest dwellers,” have also been ignored.

The World Conference Against Racism (WCAR) was asked by Indigenous Peoples to repeat a phrase found in the Declarations and Programmes of Action of the first two Conferences on Racism, that “Indigenous Peoples’ lands should not be taken away from them.” It was also asked to finally recognize Indigenous Peoples as “Peoples” and use the “s” at the end of the word, without qualifications in footnotes or asterisks stripping the word of all international significance. The WCAR refused both requests. Indigenous Peoples considered this overt failure to apply the same meaning to “Indigenous” Peoples as all other “peoples” to be the very definition of racial discrimination since it is a distinction based on race or ethnicity “that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”⁵⁵

Indigenous Peoples were deeply disappointed that such opportunities to further a core objective of the Decade were avoided and even openly thwarted by some of the most powerful States during the Decade, considering its stated goal and objectives.

Objective 5: “... the adoption of the draft United Nations declaration on the Rights of indigenous people and the further development of international standards as well as national legislation for the promotion and protection of the human rights of indigenous people, including effective means of monitoring and guaranteeing those rights.”

The implementation of this objective, vital above all others for the full recognition of Indigenous Peoples’ rights internationally, has been extremely disappointing to say the least. Although the Sub-Commission delivered the Draft Declaration on the rights of Indigenous Peoples to the Commission on Human Rights in 1994⁵⁶, and the Commission’s Inter-Sessional Working Group on the Elaboration of the Declaration (“ISWG”) began its work in 1995,⁵⁷ only two articles, both referring only to Indigenous individuals, and not Indigenous Peoples, have been formally and provisionally adopted.

The General Assembly, proclaiming the Decade, stated that it “***Encourages the Commission on Human Rights to consider the draft United Nations declaration on the rights of indigenous peoples contained in the annex to resolution 1994/45 of 26 August 1994 of the Subcommission on Prevention of Discrimination and Protection of Minorities*** (citation omitted) with the participation of representatives of Indigenous Peoples, ... with a view to achieving the adoption of a draft declaration by the General Assembly within the Decade.”⁵⁸ (emphasis supplied). The task as outlined in this initial GA resolution was to consider the Subcommission text.

However, ignoring this, some member States of the Commission objected to even the use of the term “Peoples” in the name of the Intersessional Working Group established to further the work towards its adoption. As reported by the President of the ISWG, with one year left in the Decade, no States participating in the last session objected to the use of the word “Peoples” as the Subcommission uses it, without qualification, an indication of notable progress in advancing equal recognition and rights in the context of these discussions. Yet a few States still insist that there is no consensus on the issue.⁵⁹

In order to advance understanding, promote dialogue and achieve consensus on the text, many proposals have been considered and discussed for these past 10 years by States and Indigenous Peoples. Although the Working Group on the Draft Declaration has agreed to consider and discuss proposals for changes, those changes, also by agreement, should:

- (a) Deviate as little as possible from the current text;
- (b) Attempt to strengthen or clarify the current text;
- (c) Uphold the fundamental principles of non-discrimination and racial equality.

Indigenous peoples’ organizations participating in this process and many more around the world have endorsed the text of the Sub-Commission for the Promotion and Protection of Human Rights as representing the minimum standard required for the survival of Indigenous Peoples. Many States have stated that they could now accept the original Subcommission text. As encouraged by the General Assembly, Indigenous participants,

the Chairman/Rapporteur and many of the States accept the current text as adopted by the Subcommittee as the basis of the discussions in the ISWG.

General Assembly resolution A/Res/41/120⁶⁰ emphasizes the primacy of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Cultural and Social Rights in the extensive network of international standards in the field of human rights established by United Nations bodies and specialized agencies.

Operative paragraph 2 of the resolution, “Urges Member States and United Nations bodies engaged in developing new international human rights standards to give due consideration in this work to the established international legal framework.”

The primary reason that for the notable lack of progress in this ISWG has been that certain recalcitrant or openly oppositional States continue to make proposals for text changes that do not comply with existing human rights standards or the “established international legal framework” as required by this General Assembly resolution on standard setting. Their proposals fact attempt to *diminish* Indigenous Peoples’ human rights recognized by the established international legal framework, and would subject internationally recognized rights of Indigenous Peoples to the limitations of domestic law, and only “wherever possible” or “reasonable” as determined by the states or even “third parties” such as land owners and corporations.

The refusal by the vast majority of Indigenous Peoples participating in this Working Group to compromise our rights by accepting such proposals has been characterized as obstinate, unrealistic and/or obstructionist by some states. Such proposals, including some presented to the ISWG’s September, 2003 delete or diminish key essential provisions of the current text on self-determination, treaty rights, land and natural resources to name a few. In the name of “progress” we are asked to “compromise” or “negotiate” by accepting lesser standards for Indigenous Peoples’ human rights and fundamental freedoms, in a Declaration specifically intended to recognize those rights and freedoms!

The next session of the WGDD, presently scheduled for September, 2004, may be the last, as it is now virtually impossible that a Declaration will be adopted by the consensus of Indigenous Peoples and States at this session for the above reasons. Its adoption at this session would require a complete and dramatic change of policy and position by a few powerful historically colonialist States and their successors. While we refuse to completely abandon hope for a change now or in the future, it must be understood by member States of the United Nations that Indigenous Peoples cannot and will not accept a Declaration of lesser rights for Indigenous Peoples.

III. Measuring Progress in the Goal of the Decade – A Major Obstacle

The Information Note from the OHCHR inviting these comments suggested that as the goal of the decade was to strengthen international cooperation in the areas of human rights, the environment, development, education and health, and that comments be

directed specifically to these major themes. The standard set by the General Assembly in measuring progress of the Decade, adopted the Secretary General's recommendation that the objectives of the Decade be assessed by "*quantifiable outcomes that will improve the lives of indigenous people*" and can be evaluated halfway through the Decade and at its end.⁶¹ (emphasis supplied)

A major problem identified by the Permanent Forum early on is that little data can be found within the international system that could in any reasonable way, measure the situation of Indigenous Peoples either before or after the Decade. Although Indigenous Peoples uniformly and consistently have been identified as a group highly vulnerable to oppression, poverty and disease by the United Nations system, Indigenous Peoples are usually grouped into general data on poverty and other human ills. The Permanent Forum identified the problem of lack of data with regard specifically to Indigenous and Tribal Peoples as an "urgent priority" at its Second Session, and has recently held a workshop on data collection and disaggregation, attended by 36 experts from the United Nations system and other intergovernmental organizations, governments, indigenous organizations and academics.

The Workshop discussed a number of case studies, examined challenges and made recommendations concerning data collection and disaggregation concerning indigenous peoples. The report of the Workshop,⁶² could only define the need for the disaggregation of existing data and standards for the collection of data, in this most important task. Actual data simply does not exist in any significant form.

It is difficult to quantify outcomes of the Decade that actually did improve the lives of Indigenous Peoples given the lack of data. But the many reports cited herein, and others found within the United Nations system, lead to the conclusion that Indigenous Peoples in general are no better off now than they were at the beginning of the Decade. Given that their human rights and fundamental freedoms have been more clearly defined and extensively debated, and have been applied to States as legal obligations by various competent international bodies since the Decade began, it is understandable if Indigenous Peoples view the continued denials of these rights as more deliberate and intentional than even before.

Conclusions and Recommendations

1. The International Indian Treaty Council recognizes that there were some areas of progress with regard to the goal of the Decade for the World's Indigenous Peoples, that of "the strengthening of international cooperation for the solution of problems faced by indigenous people in such areas as human rights, the environment, development, education and health," primarily in the field of the recognition of the human rights and fundamental freedoms of Indigenous Peoples.

In particular, the experts at the United Nations Seminar on Treaties, Agreements and other Constructive Arrangements between States and Indigenous Peoples in December

2003 agreed upon several conclusions and recommendations that directly support and advance the objectives of the Decade. These include:

“The Experts considered that treaties, agreements and other constructive arrangements constitute a means for the promotion of harmonious, just and more positive relations between States and indigenous peoples because of their consensual basis and because they provide mutual benefit to indigenous and non-indigenous peoples.

“The Experts welcomed the efforts being made by States exploring ways to redress historical and contemporary injustices related to treaties, agreements and other constructive arrangements through negotiations and underlined the principle of free, prior and informed consent.” and,

“The Experts recommend that the UN human rights treaty bodies pay specific attention to obligations contained in treaties, agreements and other constructive arrangements signed between States and indigenous peoples as the non-compliance of these obligations have negative effects with regard to rights protected under international human rights conventions.”⁶³

The IITC urges the General Assembly and all other relevant UN bodies to take these recommendations into consideration in their assessment of the progress made within this Decade, as well as the work still to be completed.

2. Although some States, primarily the powerful champions of unbridled globalization bitterly oppose the right of Indigenous Peoples to self determination and their lands and natural resources, not all States have adopted that negative view. In fact, we have seen a growing commitment to a new relationship with Indigenous Peoples among some if not many states, which can and must be encouraged and developed.

Important United Nations agencies and programmes, including the World Health Organization, the Food and Agriculture Organization, and the United Nations Environmental Programme have begun to work closely with Indigenous organizations to enhance and incorporate Indigenous Peoples participation in the formulation of policies and programmes. We also believe that the work begun by the Permanent Forum on Indigenous issues, including particularly the work it has begun on a real examination of the state of Indigenous Peoples, if continued and supported, could soon begin to exert a positive effect on the United Nations system and the further the goal of the Decade.

But the reports of the Committee on the Rights of the Child and other major treaty monitoring bodies, the Special Rapporteur on the human rights of Indigenous Peoples, the Permanent Forum for Indigenous Issues, the Working Group on Indigenous Populations, the World Health Organization and other United Nations fora, as well as their day to day experiences in their own communities, make it clear that Indigenous Peoples continue to be highly vulnerable to human rights violations and the loss of land and habitat, culture, language, natural resources and identity world-wide.

The United Nations has estimated that 80% of the world's remaining biodiversity, and 90% of the world's cultural diversity, is found within Indigenous Peoples' territories, benefiting all of humanity and the ecological balance of the planet. The survival and well-being of Indigenous Peoples, as well as their considerable contributions, are clearly of tantamount importance not only for Indigenous Peoples but for all members of the family of Nations.

The International Indian Treaty Council therefore recommends that a Second Decade of the World's Indigenous Peoples be declared by the General Assembly, so that the goal and objectives of the first Decade and the important positive steps that it began can be advanced and failings can also be corrected. We urge the General Assembly to call upon the United Nations and its member states to work with sincerity and diligence during this Second Decade so that the unfulfilled commitments to partnership, recognition, equality, empowerment and human rights for Indigenous Peoples of this first Decade not be blocked or interrupted and have a realistic prospect of fulfillment.

For All Our Relations.

¹ International Decade of the World's Indigenous Peoples, General Assembly resolution 48/163 of 21 December 1993, A/RES/48/163, Operative paragraph 2.

² Id, at Operative Paragraph 7.

³ Id, at Operative Paragraph 19.

⁴ Id, at Operative paragraph 20.

⁵ Id. at Operative paragraph 1.

⁶ International Decade of the World's Indigenous People, General Assembly resolution 1994/214, A/RES/49/214, 23 December 1994.

⁷ Id, at Operational Paragraph 4.

⁸ Id, at paragraphs: 5. Encouraging the Commission on Human rights to consider the "draft United Nations declaration on the rights of indigenous peoples" (emphasis supplied) as proposed by the Sub-Commission, "with the participation of representatives of indigenous people, with a view to achieving the adoption of a draft declaration by the General Assembly within the Decade; 6. Recognizing the importance of considering the establishment of a permanent forum for indigenous peoples during the Decade ...; 7. Recognizing the importance of strengthening the human and institutional capacity of Indigenous peoples to develop their own solutions to their problems; 4. Decides that the International Day of the World's Indigenous Peoples shall be observed every year during the Decade, on August 9, [the anniversary of the first meeting of the Working Group on Indigenous Populations]. 6. Again, recommends that Indigenous Peoples participate in the planning and implementation of activities for the Decade, and further recommended that the United Nations system recruit indigenous peoples.

⁹ General Assembly resolution 50/157, Fiftieth Session, Programme of Activities for the International Decade of the World's Indigenous Peoples, UN Doc. A/Res/50/157, Programme of Activities for the World's Indigenous Peoples [adopting the Secretary General's preliminary report on a comprehensive

programme of action for the International Decade for the World's Indigenous People], Annex, part A. Objectives, paras. 2 – 6.

¹⁰ Id, at Annex, part A. Objectives, para. 7.

¹¹ Mrs. Erica-Irene Daes, Special Rapporteur on Indigenous Peoples and their relationship to land, E/CN.4/Sub.2/2000/25, 30 June 2000; and E/CN.4/Sub.2/2001/21, 11 June 2001.

¹² Mrs. Erica-Irene Daes, Special Rapporteur on Indigenous Peoples permanent sovereignty over natural resources, Preliminary report, E/CN.4/Sub.2/2003/20, 21 July 2001.

¹³ Mr. Abdelfattah Amor, Special Rapporteur on Freedom of Religion, Report, Visit to the United States, E/CN.4/1999/58/Add.1, 9 December 1999.

¹⁴ See, Final Report prepared by Mrs. Fatma Zohra Ksintini, Special Rapporteur on Human Rights and the Environment, “Indigenous peoples and the Environment,” Chapter III, paras. 74 – 94, E/CN.4/Sub.2/1994/9, 6 July 1994. Mme. Ksentini apparently married and also acquired a nee mandate. She is now Mme. Vesely, the Special Rapporteur on toxics.

¹⁵ See, Report prepared by Mrs. Ms. Fatma-Zohra Ouhachi-Vesely, Special Rapporteur on the Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, E/CN.4/2004/46, 15 December 2003.

¹⁶ UN Special Rapporteur Miguel Alfonso Martinez, Study on treaties, agreements and other constructive arrangements between States and indigenous populations (hereinafter, Treaty Study), Second Progress Report, E/CN.4/Sub.2/1995/27, 31 July 1995, para.. 271.

¹⁷ See, Report prepared by Mr. Jean Ziegler, Special Rapporteur on the right to food, Commission on Human Rights 60th Session, E/CN.4/10, 9 February 2004.

¹⁸ See, Report prepared by Mr. Paul Hunt, Special Rapporteur on the right of everyone to enjoy the highest attainable standard of physical and mental health, Addendum, Mission to the World Trade Organization, E/CN.4/49/Add.1, 1 March 2001.

¹⁹ Final Report prepared by Mrs. Fatma Zohra Ksentini, Special Rapporteur on Human rights and the environment, E/CN.4/Sub.2/1994/9, 6 July 1994, at para. 88.

²⁰ Report prepared by Mr. Rodolfo Stavenhagen, Special Rapporteur on the Human Rights of Indigenous Peoples, E/CN.4/2003/90/Add.1, 31 January 2003: “The Special Rapporteur notes with regret that violent acts against indigenous persons and communities in different parts of the world have not ceased. They are usually inked to social conflicts over land rights and use of resources.” See, also. Fn. 47.

²¹ Concluding Observations of the Human Rights Committee: Mexico, CCPR/C/79/99/Add.109, para. 19, (1999); Concluding Observations of the Human Rights Committee: Norway, CCPR/C/79/Add.112, paras. 10 and 17 (1999); Concluding Observations of the Human Rights Committee; Canada, 07/04/99, para. 8, UN Doc. CCPR/C/79/Add.105. (1999). Concluding Observations of the Human Rights Committee: Australia, CCPR/CO/69/Aus, para. 9, 2000. Concluding Observations of the Human Rights Committee: Australia, CCPR/C/79/Add.105, para. 8 (2002).

²² Human Rights Committee, General Comment 23, Article 27 (fiftieth session, 1994).

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

²⁴ Committee on the Elimination of Racial Discrimination, General Comment XXIII on the rights of indigenous peoples, adopted at the Committee's 1235th meeting, on 18 August, 1997, General Recommendation 4(c).

²⁵ See, e.g., Concluding observations of the Committee on the Elimination of Racial Discrimination : Colombia.20/08/99. Concluding observations of the Committee on the Elimination of Racial Discrimination : Costa Rica. 20/03/2002. Concluding observations of the Committee on the Elimination of Racial Discrimination United States of America. 14/08/200. Concluding observations of the Committee on the Elimination of Racial Discrimination : Argentina.27/04/2001.

²⁶ Decision 1(54) on Australia: Australia. 11/08/98, at paras. 3 and 4. UN Doc. A/53/18, para. 22. Decision 2 (54) on Australia : Australia. 18/03/99. UN Doc. A/54/18,para.21(2).

²⁷ ESCR Committee, General Comment 7, the right to adequate housing (art. 11.1 of the ICESCR): forced evictions; adopted at the Committee's Sixteenth session, 1997.

²⁸ ESCR Committee General Comment 13, the right to adequate food art. (11 of the ICESCR), adopted at the Committee's twentieth session, 1999. UN Doc. E/C.12/1999/5

²⁹ ESCR Committee General Comment No. 14 (article 12 of the ICESCR) the right to the highest attainable standard of health; adopted at their 22nd Session, May, 2000. UN Doc E/C.12/2000/4, August 2000

³⁰ ESCR Committee, General Comment No. 15 (2002) the right to water (arts. 11 and 12 of the ICESCR), adopted at their Twenty-ninth session, November 2002, para. 7.

³¹ Id, General comment 15, at para. 16(d).

³² See, e.g., Concluding Observations of the Committee on Economic, Social and Cultural Rights: Colombia, 30/11/2001, E/C.12/Add. 1/74, at para.12, 33. Concluding Observations of the Committee on ESCR, Brazil, 23/05/2003, E/C.12/1/Add. 87, 23 May 2003.

³³ Committee on the Rights of the Child, General guidelines for Periodic Report, adopted by the Committee at its 343rd meeting (Thirteenth Session) 11 October 1966, UN Doc. CRC/C/58, 20 November 1996.

³⁴ Id, at paras. 22, 23.

³⁵ Id, at para. 27.

³⁶ Id, at para. 56.

³⁷ Id, at para. 60.

³⁸ Id, at 106.

³⁹ Id, at para. 165.

⁴⁰ Committee on the Rights of the Child, 34 Session, Day of General Discussion on the Rights of Indigenous Children, Recommendations, 3 October 2003.

⁴¹ Id, at para 4, citing the Human Rights Committee General Comment No. 23 (fn. 22) and ILO Convention No. 169.

⁴² Committee on the Rights of the Child, Concluding Observations: Canada. CRC/C/15/Add.215, 27 October 2003.

⁴³ See, GA Res. 48/163, footnotes 4 and 5.

⁴⁴ Programme of activities of the International Decade of the World's Indigenous People, Report of the Secretary General, General Assembly, Fifty-fourth session, A/54/487, 21 October 1999.

⁴⁵ *Id.*, at para. 11.

⁴⁶ “The Forum expresses concern over development practices that do not take into account the particular characteristics of indigenous communities as groups, with their distinct cultural identities and often their own systems of representation, thus significantly undermining meaningful ways of participation in the assessment, preparation, execution and evaluation of development programmes of their concern.” United Nations Permanent Forum on Indigenous Issues, Report of their Second session, E/2003/43, UN Doc. E/C.19/2003/22. May, 2003.

⁴⁷ “The Working Group noted the comments provided by indigenous participants relating to the impact of globalization on their livelihoods, economically self-sufficient ways of life, cultures, social and political organizations, and lands and resources. It noted also the concerns expressed about forced displacement of indigenous peoples due to natural resource extraction and other developments on their lands, the unequal and unjust relations prevailing between indigenous communities and large corporations implementing projects on their territories, the exploitation of indigenous knowledge, and the declining public services available due to privatization, structural adjustment policies, indebtedness and other factors.”, and, “The Working Group considered that it was necessary to promote a global project to ensure the well-being and human rights of all, promote alternative models of development with social rather exclusively economic goals, and ensure that indigenous peoples determined whether and under what conditions activities took place on their lands on the basis of the principle of free, prior and informed consent.” Report of the Working Group on Indigenous Populations at its twenty-first session, E/CN.4/Sub.2/2003/22, at paras. 101-102.

⁴⁸ “The principal human rights effects of these projects for indigenous peoples relate to loss of traditional territories and land, eviction, migration and eventual resettlement, depletion of resources necessary for physical and cultural survival, destruction and pollution of the traditional environment, social and community disorganization, long-term negative health and nutritional impacts as well as, in some cases, harassment and violence.” Report prepared by Rodolfo Stavenhagen, Special Rapporteur on the Situation of human rights and fundamental freedoms of Indigenous people, E/CN.4/2003/90, at Executive Summary, p. 2.

⁴⁹ The full report can be found at the Extractive Industries Review web page, <http://www.eireview.org/>, last visited March 22, 2004.

⁵⁰ Fn. 46, above, Permanent Forum, 2nd Session Report, at para. 33.

⁵¹ See the Extractive Industries Review Web Page, cited at fn. 49, for complete, unresponsive responses from WBG management.

⁵² Fn. 8, GA Res. 48/163, at preambular paragraph 8.

⁵³ *Id.*, at Preambular paragraph 7.

⁵⁴ UNCED, Agenda 21, Chapter 26.3.

⁵⁵ International Convention on the Elimination of all Forms of Racial Discrimination, Adopted for signature and ratification by General Assembly resolution 2106 A (XX) of 31 December 1965, Article 1.

⁵⁶ *United Nations Declaration on the Rights of Indigenous Peoples (Draft)*, in U.N. Doc. E/CN.4/1995/2; E/CN.4/Sub.2/1994/5, 26 August 1994, Annex, *reprinted in* (1995) 34 I.L.M. 541.

⁵⁷ U.N. Commission on Human Rights, *Establishment of a working group of the Commission on Human Rights to elaborate a draft declaration in accordance with paragraph 5 of General Assembly resolution 49/214 of 23 December 1994*, Res. 1995/32, 3 March 1995.

⁵⁸ General Assembly resolution 1994/214 of 23 December 1994, UN Doc. A/RES/49/214, 17 February 1995, Operative Paragraph 5.

⁵⁹ Report of the Working group of the Commission on Human Rights to elaborate a draft declaration in accordance with paragraph 5 of General Assembly resolution 49/214 of 23 December 1994, E/CN.4/84 and E/CN.4/84/add.1, 2004.

⁶⁰ General Assembly resolution, *Setting international standards in the field of human rights*, adopted at their 97th plenary meeting, A/RES/41/120, 4 December 1986.

⁶¹ General Assembly resolution 50/157 and Annex, part A. Objectives, adopting the Secretary General's preliminary report on a comprehensive programme of action for the International Decade for the World's Indigenous People, 21 December 1995, UN Doc. A/Res/50/157, 29 February 1996.

⁶² PERMANENT FORUM ON INDIGENOUS ISSUES, *Report on the Workshop on Data Collection and Disaggregation for Indigenous Peoples*, E/CN.19/2004, New York, 19 – 21 January 2004, found at the Permanent Forum for Indigenous Issues web page, <http://www.un.org/esa/socdev/pfii/Draft%20Report%20Data%20Collection.htm>, visited March 25, 2004.

⁶³ *Conclusions and Recommendations of the Seminar on Treaties, agreements and other constructive arrangements between states and indigenous peoples*, Geneva, 15 –17 2003, E/CN.4/2004-111, paras. 3, 4, and 15.