

Indigenous Peoples (2)

UN Working Group on Indigenous Populations The Second Decade of Indigenous Peoples: A new dawn or the last breath of international support?

Thomas Frank Jacob, Intern, IMADR Geneva Office

On the 22nd of July 2005 when Mr. Blackman and fellow indigenous activists finished their prayer song, it may have also concluded the very last session of the Working Group on Indigenous Populations (WGIP). Ongoing UN reforms may render the Sub-Commission and its Working Groups, including the WGIP, a dead letter. As a result, some indigenous representatives called this year's 23rd Session historic. However, no one was prepared to give up their struggle for indigenous rights. They believe that the UN reforms cannot stop the momentum of over 500 years of resistance by indigenous peoples all over the world. This belief and vision for the future was also reflected in the agenda of the session, in particular, standard-setting, the 'Second International Decade of the World's Indigenous People' and protection of traditional knowledge – this year's principal theme.

The discussion of international and domestic protection of traditional knowledge crystallized the existence of two different camps among indigenous peoples. The liberal school believes intrinsically in equitable benefit-sharing and co-existence, whereas the orthodox school, on the other hand, would rather have a clear geographic separation between indigenous and non-indigenous peoples, where traditional knowledge cannot be shared due to its sacredness. The first camp condemns the plunder of indigenous land and ideas by multinational corporations and their own governments, but is not averse to the idea of sharing knowledge in order to create workplaces for their peoples. Neither would the sale of indigenous products like

ceramics or musical instruments be unacceptable to them, as long as a fair share is given to the indigenous community. Speaking out for the orthodox camp, Mr. Adelard Blackman from the Buffalo River Dene Nation in Canada spoke strongly against selling traditional knowledge as it is sacred. To consolidate his opinion, he stressed that the exploitation of resources of any kind or form on indigenous territory by outsiders is an infringement of their right to self-determination.

Traditional knowledge plays an immensely important role in the culture of indigenous peoples, and therefore they ought to be the ones to decide what happens to it. Unfortunately, this is rarely the case. According to Mr. Mikhail Todyshev from the 'Association of Indigenous people of the North, Siberia and Far East of the Russian Federation', on the international level, the WGIP has no leverage to determine what is and what is not traditional knowledge or how to handle it. This is the task of the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO) and the Convention of Biological Diversity where the indigenous peoples do not even have formal observer status at present.

During a general debate on recent developments in the human rights situations of indigenous peoples, several indigenous participants such as Ms. Blanco representing the 'Embajadora de los Pueblos Indígenas Cumanagoto' from Venezuela reported on the barbed-wiring of indigenous lands, obstructing a nomadic way of life. The Mapuche people from Chile face a similar situation as their



Ms. Victoria Tauli-Corpuz

forests are being sold by the government for profit, while old treaties protecting the Mapuche are disrespected. The lack of implementation of existing laws and standards was raised recurrently throughout the week and most extensively under the topic of "free, prior, and informed consent". Equally of vital importance to many indigenous peoples represented at the Working Group was the situation of their exploitation by multinational corporations, which was labeled 'a new form of colonialism', threatening indigenous peoples' very existence. Others, albeit relatively few, brought more promising news from home. The delegation of the Government of Canada spoke of true conciliation, a new spirit of cooperation, and positive relationships between the indigenous peoples and the Government. The Chair commended these developments in Canada, which indicate an attempt on the part of the Government to found a new relationship with its indigenous populations in the present and future. In particular, he considered that those measures which have been taken in the field of education are of utmost importance as they are contributing to building trust between indigenous peoples and non-indigenous people. This was to be contrasted, however, with the Canadian government's position on the right of indigenous free, prior and informed consent. During debate on this topic,

Canada indicated they support not “consent”, but “consultation” with indigenous groups. This position, if implemented, would deny indigenous peoples a right of veto over their own knowledge and resources. In response, the chair indicated his surprise at the Canadian government’s position. Ms. Hampson also indicated she could not understand how any government could, in good faith, confuse a right to “consent” with mere “consultation”.

Indigenous peoples and conflict prevention and resolution is another main theme which was started last year. Looking at conflicts from a macro perspective, Ronald Barnes from Alaska pointed out that colonization is a root cause of conflict, with indigenous peoples having clashed with their colonizers since the time of colonialization. Even now, conflicts between the two parties continue as result of the second wave of colonialism. Consequently, conflict resolution, Mr. Atencio Lopez stressed, must take into consideration the influence of colonialism. A different interpretation came from Mr. Blackman who offered an alternative method of conflict resolution: in his view, self-determination is also a key to ending conflicts, as the non-recognition and negation of self-determination often result in conflict and violence.

Under its mandate for standard-setting, the WGIP discussed the concept of ‘free, prior, and informed consent’, a right that most indigenous peoples currently do not enjoy. State authorities are in general determined to avoid such terminology as, according to the working paper prepared by Ms. Antoanella-Iulia Motoc, a former member of the Working Group, indigenous peoples may derive the right to refuse development on their land at any point, or even more importantly the right to self-determination, from the implementation of free, prior and informed consent. Indeed, the use of the word ‘consultation’ instead of ‘consent’ is much more preferred by states and inter-governmental organizations such as WIPO. For all indigenous peoples, free,



Indigenous people from the Philippines at the UN Working Group of Indigenous Populations, July 2005

prior and informed consent is a central issue as it could provide them more security and a greater guarantee of autonomy. Expert member Ms. Hampson, however, reminded the session that the WGIP has no legislative powers and as a result time would be better invested in the formulation of guidelines for the effective implementation of existing norms as the interpretative space of laws is often left untouched. In this regard, a working paper prepared by the Saami Council and expert Mr. Yokota included, for the consideration of the working group, draft guidelines on the protection of the heritage of indigenous peoples. Their working paper further reaffirmed, as the basis of these guidelines, the right of indigenous peoples to sovereignty over their own natural resources, which is to be governed by and give full effect to the principle of free, prior, and informed consent.

This year marks the beginning of the ‘Second International Decade of the World’s Indigenous People’. This implies the inability to achieve all of the aims of the first decade within ten years, but it also reminds us that indigenous peoples are not forgotten in the international arena. Many indigenous peoples consider it a further opportunity to have the draft declaration on the rights of indigenous peoples adopted. On a broader scale, the next ten years should contribute to increased knowledge and awareness of indigenous peoples and an end to their

marginalization. In some countries, indigenous peoples are yet to be recognized. Even in those countries where they are, there is often no effective legislation. There is also the problem of apathy towards indigenous rights by state actors, and of a resulting lack of implementation of their rights, even when they are recognized. Therefore, many indigenous speakers called not only for more national protection but also for better implementation and more protection through UN channels. At the center of attention regarding the second decade stands the ‘Draft Declaration on the Rights of Indigenous Peoples’. For the second decade to be a success, the Draft Declaration must be passed, as this document represents the life work of the WGIP, and is the first document of its kind, drawn up with the active participation of indigenous peoples in elaboration of their own rights.

With regard to cooperation with other UN bodies, Ms. Hampson pointed out the importance of different indigenous fora at the UN that can protect the rights of indigenous peoples only in combination. Similar to the structure of a government, the three UN bodies of the Permanent Forum on Indigenous Issues, the Special Rapporteur on the Rights of Indigenous Peoples and the WGIP represent the three necessary functions of the executive (the

(continued on page 16)