



General Assembly Third Committee
Topic 1: Protecting the Rights of Indigenous People¹

21 October 2011

More than 370 million indigenous people live in 90 countries worldwide.² According to the International Working Group for Indigenous Affairs, the definition of “indigenous” involves three criteria. First, a group of people is considered to be indigenous if its members are descendants of people who lived in a particular place before colonization or the arrival of a different ethnic group. Second, the group is socially, politically, and economically distinct from other groups. Third, people in the group think of themselves as part of the group. In addition, they may share a common language, occupation of ancestral land, and/or a common religion or belief structure.³

For centuries, indigenous persons and groups have been denied the opportunity to participate in the governments of the countries in which they reside. In addition, they have been denied the right to self-determination or self-government. To remedy this situation, in 2007, the UN General Assembly passed the Declaration on the Rights of Indigenous Peoples (UNDRIP).⁴ In doing so, the GA recognized indigenous peoples as members of the international system distinct from the states in which they reside and asserted that indigenous people are entitled to the same human rights as all people, as well as some rights unique to their indigenous status.

Despite UNDRIP, indigenous peoples continue to experience human rights challenges. There are three main challenges. The first challenge is to decide whether to treat indigenous people primarily as members of groups with distinct rights or as individuals with the rights that all people worldwide have. This issue arises because many indigenous peoples conceive of themselves primarily as members of a group, not as individuals. But international human rights law has historically applied just to individuals.

The second challenge is to decide whether to treat indigenous groups as social groups like any other within the UN member states in which they reside or as separate entities with their own sovereignty and right to “self-determination.” Currently, the right to vote in international organizations such as the UN has been conferred only on states -- governments that are able to use their political, military, and economic capabilities to enforce the law in a particular land. Because it has historically been governments that have deprived indigenous groups of their rights, many states have been reluctant to confer sovereignty, self-governing status, and the right to participate in international organizations to indigenous peoples.

According to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), social and cultural groups or “peoples” have a right to self-determination, in other words, to “freely determine their political status and freely pursue their economic,

¹ This document was written by Samantha Stephens, research assistant, and Karen Ruth Adams, faculty advisor. Copyright 2011 by Samantha Stephens and Karen Ruth Adams.

² United Nations Permanent Forum on Indigenous Issues, available at <http://www.un.org/esa/socdev/unpfii/>; accessed 30 January 2011.

³ International Working Group for Indigenous Affairs, “Indigenous People—Who are they?” available at <http://www.iwgia.org/sw641.asp>, accessed 15 March 2011.

⁴ United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 13 September 2007, available at <http://www.un.org/esa/socdev/unpfii/en/drip.html>.

social and cultural development.”⁵ But “peoples” is not clearly defined in either text. As a result, UN member states have largely chosen to not interpret the provision as referring to “indigenous peoples” due to fears of secession.⁶ This tension is reflected in the text of the UNDRIP. While some articles refer to the self-determination or self-government of indigenous groups, others assert that member states have the final authority over their own territory and the indigenous peoples within that territory.

The final challenge of indigenous rights is to determine when they are being violated in particular times and places and what UN member states should do about that when it occurs. Together, these challenges point to a need for the GA-3, with its emphasis on social and humanitarian issues, to clarify as much as possible what rights indigenous peoples have and how they should be enforced. This is especially important now, with just four years left in the Second Decade of the World’s Indigenous People.

History and Current Events

To understand and address this issue, it is necessary to understand the history of indigenous peoples’ attempts to receive recognition and the kinds of rights they have requested and been granted, both in international law and in particular countries.

A Brief History of the Indigenous Rights Movement

During European colonization and conquest, invading great powers such as the UK, France, Spain, Portugal, and Belgium viewed indigenous groups in newly conquered territory as “savages” and inferior. Moreover, they considered the land to be “unoccupied” and “newly discovered,” completely ignoring what they viewed as the current “non-human” occupants.⁷ Most indigenous groups lost large numbers of people to war and disease. Some were wiped out entirely, while others were relocated and lost access to their historical lands.

Indigenous groups protested this treatment in many ways and, as a result, have long asserted and sought their rights. After World War I, individuals representing indigenous groups took a new approach and appealed to the League of Nations, which had been established to prevent future interstate wars and which espoused the doctrine of “self-determination” for (at least some) ethnic groups. Among the individuals to do so was the Maori religious leader T.W. Ratana, who traveled to Europe in 1925. Ratana’s aim was to lodge a complaint about the 1840 Treaty of Waitangi between the Maori people of New Zealand and the British government with the British King and the League of Nations. But Ratana was not allowed to meet with them. Similar actions by other indigenous leaders – and similar treatment of their requests -- inspired indigenous peoples to assert their rights and organize to protect them.⁸

After WWII, the movement for indigenous rights began to take off. The movement was inspired by the fact that Europe and America—the allegedly “civilized” nations of the world—were seen to engage in incredible violence and barbarianism. In addition, the European empires were weakened by the war and began to lose hold of their colonies and overseas possessions. As a result, there was a massive movement towards self-determination and autonomy for a number of former colonies. But, although decolonization brought an unprecedented number of rights and freedoms to once-dominated peoples, it generally did not extend to indigenous peoples who lived in the

⁵ United Nations, International Covenant on Civil and Political Rights, 1966, available at <http://www.hrweb.org/legal/cpr.html>; United Nations, International Covenant on Economic, Social and Cultural Rights, 1966, available at <http://www2.ohchr.org/english/law/cescr.htm>.

⁶ “Study Guide: The Rights of Indigenous Peoples,” University of Minnesota Human Rights Center, 2003, available at <http://www1.umn.edu/humanrts/edumat/studyguides/indigenous.html>.

⁷ Anup Shah, “Rights of Indigenous People,” *Global Issues*, October 16, 2010, available at <http://www.globalissues.org/article/693/rights-of-indigenous-people>.

⁸ United Nations Permanent Forum on Indigenous Issues.

newly-free nations.⁹ This was because the borders of the newly independent countries generally corresponded to those drawn by the European empires, and these borders lumped many different groups into a single state and divided the land of other groups across many states. This happened in many former colonies and affected modern ethnic and religious groups (which typically ended up running the newly independent governments), as well as older indigenous groups (which were often excluded).

Political Rights

Because many indigenous groups had their own governments and political systems prior to conquest, it can be difficult to reconcile traditional values and practices, on the one hand, and the rules of modern states, on the other. One of the most contentious portions of the UNDRIP agreement is the call for self-determination for indigenous groups. Articles 3, 4, 5, 6, and 20 all make references to self-determination or call for states to provide for self-government for indigenous groups that reside within their borders. To help guarantee these rights, Article 5 also provides for a right to fully participate in the political, economic and social life of the state in which the indigenous group resides.¹⁰ Article 33 grants indigenous persons the right to their own identity and membership in indigenous organizations and also states that they cannot be denied citizenship in the state in which they reside. Thus UNDRIP lays a foundation for very autonomous indigenous groups that have full rights to participate in all areas of life in the state they reside. However, Article 46(1) states:

Nothing in this declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.¹¹

The inclusion of such a provision is not unexpected, as the UN has always held national sovereignty and territorial integrity as fundamental to its mandate as expressed in the UN Charter.¹² However, although this provision is limited to the final article of the Declaration, it has implications for viability of the document as a whole.

In some respects, this is a familiar challenge. After all, the history of human rights is full of examples of states that have failed to protect their people, and the history of international relations is full of examples of other states that have intervened – or failed to intervene – to protect those rights. But here the situation is complicated by the fact that the rights of indigenous groups may be contrary to the rights of states to control their territory. With individual rights, it is usually thought that human rights and state rights are more compatible.

Given this tension between indigenous group rights and the rights of sovereign states, the primary approach of UN member states has been to give indigenous people individual political rights (such as the right to vote and run for office) while preserving the sovereignty of states over all groups within their territory. For example, in Bolivia, where indigenous groups were long excluded from politics, indigenous people can now participate in the political system. In fact, since 2005, the president of Bolivia has been Evo Morales, a member of the Aymara indigenous group. In 2009, Morales introduced an additional charter to the national constitution to grant indigenous groups distinct rights and to prevent the privatization of Bolivia's natural resources, upon which these groups depend for their livelihoods. These provisions faced major opposition from many of the southern regions of Bolivia that are predominantly populated by mixed-race, European descendants.¹³ Although a number of indigenous leaders criticized the charter for making too many concessions to its opponents, according to Eugenio Rojoas, the leader of the radical Aymaran group the Red Ponchos: "We are indigenous people that for the first time in history are in

⁹ Shah, "Rights of Indigenous People."

¹⁰ UNDRIP, Article 5.

¹¹ UNDRIP, Article 46(1).

¹² Charter of the United Nations, Article II(7), available at <http://www.un.org/en/documents/charter/index.shtml>.

¹³ Rory Carroll and Andres Schipani, "Bolivia set to adopt new constitution empowering indigenous majority," *The Guardian*, January 23, 2009, available at <http://www.guardian.co.uk/world/2009/jan/23/bolivia-indigenous-charter>.

power. We will fight to keep this constitution, we will fight hard to make it work and be respected.”¹⁴ This is an example of the possibility that indigenous rights and state rights can complement one another. By giving indigenous people political rights, their allegiance to the country they inhabit may be strengthened.

Social and Cultural Rights

Article 8 of UNDRIP provides indigenous persons protection from forced assimilation or any state practices that would be destructive of their culture. This provision includes protections for such things as ethnic identity and traditional territories, as well as preventing forced relocation or integration. In addition, Articles 11 and 12 call for protection of cultural and spiritual customs.¹⁵

Article 24 provides protections for traditional medicines and indigenous health practices.¹⁶ According to Dr. Uton Muchtar Rafei, a Regional Director of the World Health Organization, “Traditional medicine is an important part of human health care. It is the sum total of knowledge, skills, and practices based on the theory, beliefs, and experiences indigenous to different cultures used in maintaining good health as well as in curing diseases.”¹⁷ The ability of indigenous groups to patent or protect their traditional medicines and practices remains difficult, however.¹⁸

One of the major “gaps” in the application of human rights standards to indigenous groups is the lack of access to traditional lands where they often have strong spiritual ties. Additionally, a number of groups seek to reclaim sacred objects and historical artifacts that are in the possession of national governments.¹⁹ Protection of indigenous intellectual property is further complicated by the collective nature of the knowledge. Often it is not just individuals that have a historical right to the knowledge that has been passed down through the group, rather the knowledge belongs to the group as a whole. This is one of the areas where a new conception of collective rights may be necessary to protect indigenous peoples and traditional knowledge.²⁰

Language Rights

Article 13 of UNDRIP states that “[i]ndigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.”²¹ Of the 7,000 some languages recognized today, indigenous peoples speak 4,000. By the end of the next century, language experts predict 90% of

¹⁴ Carroll and Schipani, “Bolivia set to adopt new constitution empowering indigenous majority.”

¹⁵ UNDRIP, Articles 8, 11 and 12.

¹⁶ UNDRIP, Article 24.

¹⁷ Uton Muchtar Rafei, World Health Organization, Regional Director’s Office WHO/SEARO, “Intellectual Property Rights and Traditional Medicine,” 2000, available at http://www.searo.who.int/en/Section980/Section1162/Section1167/Section1171_4770.htm, accessed June 27, 2011.

¹⁸ World Trade Organization, “Trips: Reviews, Article 27.3(b) and Related Issues: Background and Current Situation,” available at http://www.wto.org/english/tratop_e/trips_e/art27_3b_background_e.htm, accessed June 27, 2011.

¹⁹ Siegfried Wiessner, “United Nations Declaration on the Rights of Indigenous Peoples: General Assembly resolution 61/295,” United Nations Audiovisual Library of International Law, available at http://untreaty.un.org/cod/avl/ha/ga_61-295/ga_61-295.html; accessed 18 February 2011.

²⁰ Simon Brascoupe and Karin Endemann, “Intellectual Property and Aboriginal People: A Working Paper,” Canada, Department of Indian Affairs and Northern Development, Fall 1999, available at http://www.wipo.int/export/sites/www/tk/en/.../docs/ip_aboriginal_people.pdf.

²¹ UNDRIP, Article 13.

those languages will be extinct.²² An indigenous language is broadly defined as one that is “native” to any geographic area.²³ Africa is said to be home to over 2,000 languages, about one-third of those in existence.²⁴

The primary argument for revitalizing indigenous languages is the role a shared language can play in strengthening collective identity and furthering self-determination. For example, the Zapara is the smallest indigenous group in Ecuador, and the Zapara language has become a major symbol of Zapara identity. Even though Zapara is only spoken by the elders in the community, the Zapara people believe it is the cultural trait that most sets them apart from the other indigenous groups of Ecuador. Recently, the UN Educational, Scientific, and Cultural Organization (UNESCO) offered to fund revitalization and documentation efforts of the Zapara language based on its contribution to the Zapara identity.²⁵ According to many development experts, preserving indigenous languages is not just important for group cohesion but will also make it easier for communities to work together and achieve higher levels of development.²⁶

Language revitalization efforts have taken a number of forms. Most programs focus on language education in school systems. Article 14 of UNDRIP states that “Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own language, in a manner appropriate to their cultural methods of teaching and learning.”²⁷ However, this does not make national governments responsible for cultivating these languages or providing classes in the national school system. Classes that are provided are often criticized for providing some knowledge, but failing to achieve high levels of comprehension. Revitalization also faces the difficult task of overcoming a shortage of native-speakers and a lack of language resources (such as dictionaries and grammar books).

Many states have chosen to write indigenous language protections into their domestic constitutions. Article 32(2) of the Indonesian Constitution reads: “The state shall respect and preserve local languages as national cultural treasures.”²⁸ Malawi has a provision to provide those involved in criminal proceedings with an understanding of their situation in their own language. According to the Malawi Constitution: “Every person who is detained, including every sentenced prisoner, shall have the right to be informed promptly in a language which he or she understands the reason for his or her detention.”²⁹

Economic and Land Rights

Although indigenous peoples only account for 5% of the world’s population, they constitute 15% of the world’s poor.³⁰ In many nations, indigenous persons often rank the lowest for certain development indicators, such as

²² United Nations Permanent Forum on Indigenous Issues, “State of the World’s Indigenous Peoples,” available at <http://www.un.org/esa/socdev/unpfii/en/sowip.html>, accessed 25 July 2011.

²³ Michael Walsh, “Will Indigenous Languages Survive?” *Annual Review of Anthropology*, 2005; [journal on-line]; available at <http://www.annualreviews.org>; p. 294.

²⁴ Walsh, “Will Indigenous Languages Survive?” p. 296.

²⁵ Maximilian Viatori and Gloria Ushigua, “Speaking Sovereignty: Indigenous Languages and Self-Determination” *Wicazo Sa Review*; Vol. 22:2; Fall 2007; available through JSTOR; [data-base online]; p. 10.

²⁶ Gerry Abbott, “The Importance of Activating Indigenous Languages in the Drive for Development,” *Information Development* Vol. 18:4; December 2002; available through JSTOR; [data-base online], p. 229.

²⁷ UNDRIP, Article 14.

²⁸ Republic of Indonesia, Constitution, Article 32(2), available at <http://confinder.richmond.edu/>, accessed 22 March 2011.

²⁹ Republic of Malawi, Constitution, Article 42(1)(a), available at <http://confinder.richmond.edu/>, accessed 22 March. 2011.

³⁰ United Nations Permanent Forum on Indigenous Issues, “State of the World’s Indigenous Peoples.”

literacy, employment and overall standard of living. Indigenous persons also often face discrimination in the job market and in the national education system, further reducing their ability to succeed economically.³¹ Articles 23 and 32 of the UNDRIP grant indigenous groups the right to determine their own development. However, such development is difficult without help or supporting infrastructure from the state in which they reside.

One of the major issues regarding indigenous rights is that of land ownership and occupation. Indigenous groups face increasing difficulty in establishing ownership over or access to traditionally occupied lands. This difficulty is complicated by the contradiction between individual and collective rights. The growing trend towards individual land ownership makes land that has historically been used by indigenous groups available for sale to individuals and corporations for residences, industries, farming, forestry, and mining.³² According to indigenous rights groups, privatization of land is major threat to the survival and development of indigenous cultures worldwide. Traditionally-occupied lands are also often taken by governments and used for national development projects such as dams, as well as for protected areas such as national parks.

Article 25 of UNDRIP states that “Indigenous people have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.” Article 26 emphasizes this, adding that Member States have a responsibility to “give legal recognition and protection to these land, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.” UNDRIP also calls on States to provide assistance to any indigenous groups should they implement any environmental protections or conservation efforts on their land. UNDRIP not only extends protections to land currently occupied by indigenous groups. It also calls for retroactive restitution for land that once belonged to indigenous groups that was “confiscated, taken, occupied, used or damaged without their free, prior and informed consent.” This compensation would take the form of “lands, territories and resources equal in quality, size and legal status or of monetary compensation.”³³

Although still tentative, land rights for indigenous peoples have begun to take hold. In 2010, the African Commission on Human Rights issued a landmark decision condemning Kenya’s expulsion of the Endorois people from land near Lake Borogio in central Kenya in the 1970s. The Kenyan government evicted the Endorois to make way for a national reserve and tourist facilities. The decision by the African Human Rights Commission was groundbreaking as it represents the first ruling by the commission to recognize a distinct indigenous group and their right to traditionally occupied land. The Commission ruled that Kenya must restore the Endorois’ land and compensate them.³⁴

Although some recent cases demonstrate a positive shift towards indigenous land rights around the world, many indigenous groups are still faced with challenges to maintaining ownership of or access to traditionally occupied lands. For example, in southern Israel, the Bedouin village of al-‘Araqib has been demolished at least 20 times since July 2010 as the Israel Land Administration attempts to turn the area into a forest. Even though Al-‘Araqib is one of the approximately 40 “unrecognized” villages in Israel, the local people can document their ancestral occupation of the land back to the time of the Ottoman Empire.³⁵ In Bangladesh, a recent land dispute in

³¹ “Study Guide,” University of Minnesota: Human Rights Library.

³² International Working Group on Indigenous Affairs, “Indigenous Peoples and Land Rights,” available at <http://www.iwgia.org/sw231.asp>, accessed 25 May 2011.

³³ UNDRIP, Articles 25, 26, 28.

³⁴ “Kenya: Landmark Ruling on Indigenous Land Rights: African Human Rights Commission Condemns Expulsion of Endorois People for Tourism Development,” Human Rights Watch, February 4, 2010; available at <http://www.hrw.org/en/news/2010/02/04/kenya-landmark-ruling-indigenous-land-rights>.

³⁵ “Stop creating forests that are destroying Bedouin lives,” Amnesty International, April 11, 2011; available at <http://www.amnesty.org/en/appeals-for-action/stop-destruction-bedouin-village-and-its-inhabitants'-livelihoods-5>.

the Khagrachari District left 3 dead, over 20 injured, and at least 60 home burned as Bengali settlers occupied areas on Jumma ancestral land. Even though a peace accord was signed between the two parties in 1997, the Bangladeshi government has thus far been unable to prevent skirmishes over land rights.³⁶

The Arctic is one of the primary regional areas where land and natural resource use have become contentious issues. The Arctic is home to 4 million people in 30 different ethnic groups living in land that spans more than 30 million square kilometers, crosses all 24 time zones, and is claimed by many UN member states. On May 19, 2009, the Danish Parliament passed a self-rule (“selvstyre”) arrangement for Greenland that signaled the beginning of cooperation between at least one Arctic state and the indigenous peoples of the Arctic.³⁷ Because the livelihoods of indigenous peoples in the Arctic depend on animal life in the sea and on the ice sheets, global climate change has become a pressing topic that has strained many relationships between Arctic states and indigenous occupants. It is estimated that 25 percent of the world’s remaining oil and gas reserves are under the Arctic ice. As temperatures continue to rise, competition for indigenous land will increase.³⁸ However, not all reports view potential warming of the Arctic region as a bad thing. Some argue that although climate change could lead to the end of the high Arctic eco-system, it could usher in a more moderate ecosystem in the Arctic that would be more conducive to agriculture and resource extraction.³⁹

Case Study: The Berber People of Northern Africa

The Berbers, also known as the Imazighen (or Amazigh), are one of the indigenous peoples of North Africa. Berbers are found in Libya, Tunisia, Egypt, Mali, Niger, Burkina Faso, and Mauritania and make up an estimated 25 percent of the Algerian population and 45 percent of the Moroccan population.⁴⁰ Berbers dominated Northern Africa until Arab conquest in the 7th Century. The name “Berber” is rumored to have derived from the ancient Greek term for “outsider” or “barbaros” and the term “Imazighen”—which is what the Berber people refer to themselves and means “free.”⁴¹

Treatment of the Berber people by North African governments has varied greatly over time. When Morocco became independent and wrote its constitution in 1962, it made no mention of the Berber language or culture. In fact, it declared Arabic the national language and defined the state as Muslim.⁴² However, on March 9, 2011, King Mohammed VI announced the drafting of a new constitution. In addition to ceding half of his power to

³⁶ “Amnesty International Public Statement: Indigenous land dispute turns deadly in Bangladesh,” Amnesty International, April 20, 2011; available at <http://www.amnesty.org/en/library/info/ASA13/003/2011/en>.

³⁷ Nikolaj Petersen, “The Arctic as a New Arena for Danish Foreign Policy: The Ilulissat Initiative and its Implications,” *Danish Foreign Policy Yearbook 2009*, Danish Institute for International Studies, 2009, p. 36; available at <http://www.arcticgovernance.org>.

³⁸ United Nations Permanent Forum on Indigenous Issues, “Report on the eighth session (18-29 May 2009),” Economic and Social Council, Official Records, Supp. No. 23, U.N. Doc E/C.19/2009/14, 2009; available at <http://www.un.org/esa/socdev/unpfii/en/indicators.html>.

³⁹ Petersen, “The Arctic as a New Arena for Danish Foreign Policy,” p. 40.

⁴⁰ Abderrahman el Aissati, “A Socio-Historical Perspective on the Amazigh (Berber) Cultural Movement in North Africa,” *Afrika Focus*, 2005; Vol. 18; p. 60.

⁴¹ “Q & A: The Berbers,” *BBC News Online*, March 12, 2004; available at <http://news.bbc.co.uk/2/hi/africa/3509799.stm>.

⁴² Aissati, “A Socio-Historical Perspective on the Amazigh (Berber) Cultural Movement in North Africa,” p. 62.

a prime minister, he called for the Berber mother tongue to become the second official language of the state. This announcement—and the constitution to follow—have been dubbed by many as the “King’s Revolution.”⁴³

One of the most active groups for promoting rights for the Berber people is the Kabyle Berbers, located in the Kabylie region in Algeria. The region is home to over 5 million Berbers. When Algeria became independent in 1962, the Kabyle people approached the government about the status of the Berber people within Algeria. When the Algerian government denied further rights for the Berbers as a distinct indigenous group, this led to a two-year rebellion from 1963 to 1965. In 1980, an incident known as the “Berber Spring” occurred when students took to the street protesting when a writer was denied access to a major Berber town where he was to give a lecture on ancient Berber poetry. This incident, as well as a number of others, has largely focused on the fight to have the Berber language become an official language of North African states. In the 2001 “Citizens’ Movement” that sparked riots all over the region, inclusion of the Berber language into national governments was one of primary demands.⁴⁴

The global focus on terrorism since 9/11 has also affected indigenous rights across North Africa. According to Hocine Ait Ahmed, the head of a major Berber rights group in Algeria, the war on terror has given totalitarian regimes the justification they needed to continue to deny any autonomy for indigenous groups.⁴⁵ In Libya, many Amazigh people have become involved in the revolution against Gaddafi’s government. Under Gaddafi, the Amazigh fought for years to maintain their cultural rights and heritage as a distinct indigenous group. For years many Berber regions within Libya lacked government support for education and infrastructure and Qaddafi went as far as to ban the naming of children Berber names.⁴⁶ The recent expansion of the anti-government forces provided many with a chance to join the movement against Qaddafi’s government.⁴⁷

Case Study: The Ainu People of Northern Japan

The situation of the Ainu people of Northern Japan clearly demonstrates the tension between indigenous groups and national governments regarding issues of collective rights and self-determination. The Ainu are the original occupants of the northern region and islands of Japan. The Ainu were traditionally hunters and fishermen. In the Ainu language, the term “ainu” means “person.”⁴⁸

The Ainu officially fell under Japanese rule in 1869, and by 1872 Ainu lands were nationalized and the Ainu people began to fall into poverty. Unlike many indigenous groups around the world, the Ainu were not incorporated into the Japanese state by treaty (or mutual agreement); rather the Ainu were forced to join the

⁴³ Ahmed Charai, “Bahrain Could Learn From Morocco’s Model: The king is proposing major democratic reforms without a shot being fired,” *The Wall Street Journal*, 16 March 2011, available at http://online.wsj.com/article_email/SB10001424052748703908304576201000083096940-1MyQjAxMTAxMDIwMTEyNDEyWj.html.

⁴⁴ “Q & A: The Berbers,” *BBC News Online*.

⁴⁵ Bruce Maddy-Weitzman, “Ethno-politics and globalization in North Africa: The Berber Culture Movement,” *The Journal of North African Studies*, 11:1; [journal on-line]; available at <http://dx.doi.org/10.1080/13629380500409917>.

⁴⁶ Scott Sayare, “Berber Rebels in Libya’s West Face Long Odds Against Qaddafi,” *The New York Times*, April 24, 2011; available at http://www.nytimes.com/2011/04/25/world/africa/25western.html?_r=1&scp=1&sq=Berber&st=nyt.

⁴⁷ Ghaith Abdul-Ahad, “Libya’s Berbers join the revolution in fight to reclaim ancient identity,” *Guardian.co.uk*, 28 February 2011; [newspaper on-line]; available at <http://www.guardian.co.uk/world/2011/feb/28/libya-amazigh-identity-tribes-gaddafi>.

⁴⁸ Mizuno Takaaki, “Ainu, The Invisible Minority,” *Japanese Quarterly* Vol. 34:2; April-June 1987.

Japanese state.⁴⁹ Although Japan experienced substantial economic growth in the 1950s, 1960s, and 1970s, the Ainu did not benefit as much as the majority population of Japan. For example, in the 1970s, when the unemployment rate for the Japanese was around 5% it stood at 11% for the Ainu. This has been largely attributed to racial discrimination.⁵⁰

In 1980, when Japan issued its first periodic report to the UN International Covenant on Civil and Political Rights, it stated that ethnic minorities “did not exist in Japan.” In imperial Japan, individuals were not defined based on concepts of individual or natural rights, but rather as being part of the collective of the *minzoku* or ‘nation,’ which places race and bloodline as the foundation of the nation. This has made integration and political involvement efforts for indigenous groups difficult. However, in 1997, the government passed the Ainu Cultural Promotion Act (CPA), representing the first multicultural legislation in Japan. Although recognized for its attempt to protect Ainu culture, it provides no collective rights for the Ainu group as a separate political entity.⁵¹

In June 2008, the government of Japan issued its first formal recognition of the Ainu people as a distinct cultural group of Northern Japan. The resolution from Japan’s parliament states that Japan is not an ethnically homogenous country and that the Ainu have “a distinct language, religion and culture.”⁵² However, the Japanese government has thus far refused to recognize the Ainu as an “indigenous” group.⁵³ Many argue Japanese opposition to the UNDRIP stems from its fear of increased sovereignty for the Ainu people and self-government over Ainu territory.⁵⁴

Currently, about 24,000 Ainu reside in Northern Japan, although the number may be much higher as many conceal indigenous roots to avoid discrimination.⁵⁵ The Ainu people continue to face challenges in their attempts to achieve collective rights due to Japan’s refusal to recognize them as an indigenous group.

Previous Committee Work on This Topic

Although a number of declarations and conventions throughout history assert very specific rights on the world population as a whole, a number of these rights have been continually denied to indigenous peoples and groups. In 1948, the GA adopted the Universal Declaration of Human Rights (UDHR), recognizing that all person are “equal in dignity and rights,” and that everyone is entitled to these rights regardless of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁵⁶ This idea

⁴⁹ Richard Siddle, “The Limits of Citizenship in Japan: Multiculturalism, Indigenous Rights and the Ainu,” *Citizenship Studies* Vol. 7:4, 2003; [journal on-line]; available at <http://dx.doi.org/10.1080/1362102032000134976>, p. 452, 456.

⁵⁰ “Ainu Rights,” *Japanese Quarterly* Vol. 21:3; July-September 1974.

⁵¹ Siddle, “The Limits of Citizenship in Japan,” pp. 448-450.

⁵² United Nations Permanent Forum on Indigenous Issues, “Advances in the Recognition of Indigenous Rights Since the Adoption of the UN Declaration.”

⁵³ International Working Group for Indigenous Affairs, “Country Profile: Japan,” 2008; [publication on-line]; available at <http://www.iwgia.org/sw35277.asp>.

⁵⁴ Siddle, “The Limits of Citizenship in Japan,” p. 457.

⁵⁵ Anthony Kuhn, “Japan Recognizes Indigenous Group,” *National Public Radio*, 12 August 2008, [article on-line]; available at <http://www.npr.org/templates/story/story.php?storyId=93540770>.

⁵⁶ United Nations, Universal Declaration of Human Rights, Articles 1 and 2, 1948, available at <http://www.un.org/en/documents/udhr/>, accessed May 15, 2011.

was reaffirmed in the 1969 Convention on the Elimination of All Forms of Racial Discrimination.⁵⁷ In 1951, the GA also passed the Convention on the Prevention and Punishment of the Crime of Genocide, protecting national, ethnical, racial or religious groups from intentional destruction by any state.⁵⁸ In 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were both adopted by the GA and opened for signature and ratification by UN member states. The ICCPR grants special rights to minority groups, while the ICESCR recognizes collective rights.⁵⁹

In 1989, the International Labor Organization established the Convention Concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) ensuring indigenous rights to ownership and possession of the land they occupy and use. The basic principles of the Convention include: identification of indigenous and tribal peoples, non-discrimination, recognition of and special measures to be taken to safeguard indigenous culture, participatory roles of indigenous peoples and nation states, and the “right to decide priorities for development.” As of 2011, just 20 of the UN’s 193 member states have ratified this Convention, including a number of Latin American countries with indigenous populations.⁶⁰

With the exception of the UDHR, all of the measures mentioned so far are treaties that have been ratified by a number of UN member states and therefore are legally binding on them. By contrast, the remaining measures discussed in this section are GA resolutions, which are simply recommendations to states. This demonstrates the problem that indigenous groups face. How can they secure human rights as groups if states are not willing to enter into binding commitments?

In 1992, the General Assembly passed the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. This declaration outlines both the responsibilities that states owe minority groups as well as the specific rights of minority groups.⁶¹ Also in 1992, two documents arising out of the Rio de Janeiro Earth Summit emphasized the importance of indigenous rights in context of environmental management and development. First, Principle 22 of the Rio Declaration acknowledges the vital role traditional practices play in environmental management and development.⁶² Second, to act on this, Agenda 21 recommends that indigenous people be given increased control over their land and have full participation in decisions affecting them.⁶³ The notion of indigenous rights is also present in a number of other UN environmental treaties. For example, Article 8(j) of the Convention on Biological Diversity asks nations to “respect, preserve and maintain

⁵⁷ United Nations, International Convention on the Elimination of All Forms of Racial Discrimination, Article 1, entry into force in 1969, available at <http://www2.ohchr.org/english/law/cerd.htm>, accessed May 15, 2011.

⁵⁸ Convention on the Prevention and Punishment of the Crime of Genocide, Articles 1 and 2, entry into force in 1951, available at <http://www.hrweb.org/legal/genocide.html>, accessed May 15, 2011.

⁵⁹ United Nations, International Covenant on Civil and Political Rights, Article 27, 1966; United Nations, International Covenant on Economic, Social and Cultural Rights, 1966.

⁶⁰ International Labor Organization, *Convention No. 169*, available at <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>, accessed 18 February 2011.

⁶¹ United Nations, Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, 1992, available at <http://www2.ohchr.org/english/law/minorities.htm>, accessed July 25, 2011.

⁶² United Nations Conference on Environment and Development, Rio Declaration on Environment and Development, Principle 22, June 3-14, 1992, available at <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>, accessed August 3, 2011.

⁶³ United Nations Economic and Social Development, Division for Sustainable Development, Agenda 21, Earth Summit, Rio de Janeiro, 1992, available at http://www.un.org/esa/dsd/agenda21/res_agenda21_00.shtml, accessed August 3, 2011.

knowledge, innovations and practices of indigenous and local communities” and to encourage the spread of these ideas.⁶⁴

In 2000, the GA created the UN Permanent Forum on Indigenous issues to discuss indigenous issues relating to economic and social development, culture, the environment, education, health, and human rights. The Forum includes eight indigenous experts and meets once a year for ten days. It was the first international body in the UN that has indigenous persons as members.⁶⁵

In 2007, the GA adopted the Declaration on the Rights of Indigenous Peoples (UNDRIP) with affirmative votes from 143 states. The United States, Canada, Australia, and New Zealand were the only four states to vote against the resolution. Eleven states abstained. UNDRIP is said to provide indigenous people with an unprecedented level of collective rights.⁶⁶ Although it is not legally binding, UNDRIP has already been referred to in a number of international law cases regarding indigenous rights. For example, in November 2007, the Inter-American Court of Human Rights referred to Article 32(2)—the requirement that prior consent be obtained for resource development projects on indigenous land—in the case of *Saramaka People v. Suriname*.⁶⁷ In addition, each year the Office of the High Commissioner for Human Rights reviews UN member states’ implementation of UNDRIP principles in its annual report.

In 2005, General Assembly Resolution 59/174 launched the Second Decade of the World’s Indigenous People with the theme of “Partnership for Action and Dignity.” The First Decade ran from 1995-2004 and followed the International Year of the World’s Indigenous People in 1993. During the First Decade, the UN and indigenous rights groups designed and implemented projects to promote the health, education, employment, and development to further the interests, customs and practices of indigenous peoples. In 2004, it was found that although the Decade had helped indigenous peoples effectively use the UN as a discussion forum for raising awareness, there had been little impact on the policies of the UN or UN member states.⁶⁸ Thus the purpose of the Second Decade is to promote “non-discrimination and inclusion of indigenous peoples” in various aspects of national and international politics, including law and politics, as well as land and environment, culture and diversity, social and cultural development, and health, with emphasis on indigenous women, children and youth.⁶⁹

In 2009, the GA asked UN member states to submit reports on their progress for a midterm report on the objectives outlined in the Action Plan for the Second Decade. 11 Member States, 19 UN agencies, and 11 indigenous peoples’ organizations responded.⁷⁰ According to the report, the major achievement from the first five years of the Second Decade was the passage of UNDRIP in 2007.

⁶⁴ United Nations Convention on Biological Diversity, Article 8(j), available at <http://www.cbd.int/convention/articles/?a=cbd-08>, accessed 18 February 2011.

⁶⁵ “Study Guide,” University of Minnesota: Human Rights Library.

⁶⁶ Wiessner, “United Nations Declaration on the Rights of Indigenous Peoples.”

⁶⁷ Wiessner, “United Nations Declaration on the Rights of Indigenous Peoples.”

⁶⁸ United Nations General Assembly, Report of the Secretary- General, “Midterm assessment of the progress made in the achievement of the goal and objectives of the Second International Decade of the World’s Indigenous People,” 23 July 2010, available at <http://www.un.org/esa/socdev/unpfii/en/second.html>, p. 3.

⁶⁹ United Nations Permanent Forum on Indigenous Issues, “Second International Decade of the World’s Indigenous People,” available at <http://www.un.org/esa/socdev/unpfii/en/second.html>; accessed 30 January 2011.

⁷⁰ The following states submitted reports: Bolivia, Colombia, Cuba, Denmark, Ecuador, Finland, Japan, Mexico, Nicaragua, Tunisia, and Venezuela.

Since its inception, UNDRIP has influenced a number of UN member states to amend their constitutions to provide legal protections for indigenous groups. Some countries have also begun to integrate the concept of “interculturality” into domestic legal systems.

Yet UNDRIP continues to face opposition from a number of UN member states. When it was adopted in 2007, the US, Australia and New Zealand issued a joint statement in opposition, stating that “No government can accept the notion of creating different classes of citizens.” A number of states also disagreed with the land provisions under UNDRIP, arguing that many of the traditional lands that would fall under the declaration already legally belong to other people. The debate over traditional lands is complicated by the fact that some indigenous groups were nomadic at the time of European settlement, making it uncertain what land they occupied.⁷¹ This is why the question of restitution, discussed above, is often raised.

Conclusion

The tension between the rights of indigenous groups and the rights of UN member states remains a major obstacle to the realization of collective rights for indigenous groups around the world. How can the GA-3 contribute to clarification on this issue, as well as improvement in the treatment of particular indigenous persons and groups worldwide? As you research your country’s position on this topic, consider the following questions :

- How many indigenous groups does your country have within its borders? How many does it recognize and/or not recognize? What are the particular issues and challenges faced by indigenous persons and groups in your country?
- Are there any indigenous persons in leadership positions within your country?
- What is the history of the indigenous rights movement in your country? Has your country been the target of criticism for its treatment of indigenous people?
- What is your country’s record of support for indigenous people worldwide? Are there particular indigenous groups beyond your country’s borders that it is especially interested in or involved with?
- Did your country pass the UNDRIP Resolution? Has it ratified the treaties mentioned above? Does it participate in the UN’s Permanent Forum on Indigenous Rights?
- What can and should the GA do to publicize, expand, and/or enforce indigenous rights in the last four years of the Second Decade of the World’s Indigenous People?

Recommended Reading

First Voices Project. Available at <http://www.firstvoices.com>

This website contains a language archive for indigenous languages spoken in North America. You can use the interactive map to see how many indigenous languages are spoken in the region and what kind of what efforts have been taken to preserve them.

Human Rights Watch. Available at <http://www.hrw.org/>

Human Rights Watch is a non-governmental organization that promotes human rights and publicizes human rights abuses worldwide. To find out about indigenous rights issues in your country, search on your country’s name and the word “indigenous.”

“Study Guide: The Rights of Indigenous Peoples.” University of Minnesota Human Rights Center. 2003. Available at <http://www1.umn.edu/humanrts/edumat/studyguides/indigenous.html>

This website provides a good source of introductory information regarding the history of the rights of indigenous persons as well as a description of a number of key terms that are used in the debate regarding indigenous rights.

⁷¹ Shah, “Rights of Indigenous People.”

Survival International: The Movement for Tribal Peoples. Available at <http://www.survivalinternational.org/>

This website provides a wide selection of information regarding the history of the indigenous rights movement as well as an annual report on global progress towards granting indigenous rights.

United Nations Educational, Scientific and Cultural Organization. Available at <http://www.unesco.org/new/en/unesco/>

This site provides comprehensive information on what efforts have been taken to provide educational, scientific and cultural protections for groups all over the world—indigenous and other. In addition, it provides up-to-date news on contemporary issues regarding areas of cultural preservation.

United Nations Permanent Forum on Indigenous Issues. Available at <http://www.un.org/esa/socdev/unpfii/en/history.html>

This website provides a historical prospective of the development of the indigenous rights movement as well as information regarding contemporary projects and issues in this area. This site also includes the text for most of the major indigenous rights conventions as well as that of the First and Second Decade for Indigenous Rights and country assessments.

Wiessner, Siegfried. “United Nations Declaration on the Rights of Indigenous Peoples: General Assembly resolution 61/295,” United Nations Audiovisual Library of International Law. Available at http://untreaty.un.org/cod/avl/ha/ga_61-295/ga_61-295.html

This article includes a timeline of the development of international conventions regarding indigenous rights as well as a breakdown of some of the more important articles in UNDRIP and how they have affected international legal and political decisions.