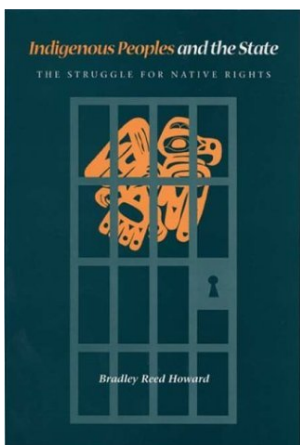


Protecting Indigenous Peoples

By Paul J. Magnarella



The Origins of Indigenism: Human Rights and the Politics of Identity by Ronald Niezen. Berkeley: University of California Press, 2003. 272pp.

Indigenous Peoples and the State: The Struggle for Native Rights by Bradley Reed Howard. Dekalb, IL: Northern Illinois University Press, 2003. 252pp.

Recent decades have witnessed an increased interest on the part of historians, social scientists and legal scholars in the human rights and welfare of indigenous peoples. Ronald Niezen, an anthropologist, and Bradley Reed Howard, an anthropologist/lawyer, share this concern. They have each contributed excellent studies describing indigenous struggles for group or communal human rights at both the local and international levels.

The destruction of indigenous societies represents a major threat to the contemporary world's rich inventory of cultures. Throughout the centuries, indigenous peoples have been forcibly removed from their lands, dispossessed of their natural resources, discriminated against, or simply decimated (Kuper 1989). "Indigenous peoples...derive much of their identity from histories of state-sponsored genocide, forced settlement, relocation, political marginalization, and various attempts at cultural destruction" (Niezen: 5). Most of the world's estimated 300 million indigenous peoples are less well off than are members of the dominant societies. Many, like the Indians of Central America, live in extreme poverty. Many wish to maintain their own unique cultures and ethnic identities and to control their traditional lands of occupation, or at least some portions of them. Indigenous peoples need protected enclaves if they are to survive globalization and the homogenizing centralizing powers of modern states.

Indigenous peoples, like humans everywhere, generally want to be able to make authoritative decisions over their own lives, enjoy some level of economic, physical and health security, have

access to educational opportunities, and enjoy the respect of their fellows, the affection of their friends and families, and the spiritual benefits of their chosen religions. In order to achieve this set of humanistic values and human rights, indigenous peoples need to be able to exercise the right of self-determination.

Who Are Indigenous Peoples?

Although there is no international legal definition of “peoples,” the term is generally used to describe a population that shares most of the following characteristics: a common historical tradition; self-identity as a distinctive cultural or ethnic group; cultural homogeneity; a shared language; a shared religion, and; a traditional territorial connection. Jose Martinez Cobo, the U.N. Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, formulated a working definition of indigenous peoples in his Study of the Problem of Discrimination against Indigenous Populations, which states that:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems (1986: para. 379).

The U.N. Working Group on Indigenous Populations defines indigenous peoples as:

the disadvantaged descendants of those peoples that inhabited a territory prior to the formation of a state. The term indigenous may be defined as a characteristic relating the identity of a particular people to a particular area and distinguishing them culturally from other people or peoples. When, for example, immigrants from Europe settled in the Americas and Oceania, or when new states were created after colonialism was abolished in Africa and Asia, certain peoples became marginalized and discriminated against, because their language, their religion, their culture and their whole way of life were different and perceived by the dominant society as being inferior. Insisting on their right to self-determination is indigenous peoples' way of overcoming these obstacles (1996: para.35).

During the sessions of the Working Group, many representatives of indigenous societies argued that an official legal definition of indigenous people is both unnecessary and unwise. They worried that such a definition would be limiting and might exclude some peoples who consider themselves to be indigenous. Consequently, the Working Group stressed the importance of self-identification. Article 8 of its Draft Declaration on the Rights of Indigenous Peoples provides that: “Indigenous peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognised as such.” However, Howard writes that some indigenous organizations, especially those in Asia, want the U.N. to adopt an official definition so that their governments cannot continue to deny their existence (Howard: 165).

Indigenous peoples are both similar to and different from minorities. Minorities, like indigenous people, are politically subordinate groups that possess “ethnic, religious or linguistic characteristics differing from those of the rest of the population” and demonstrate “a sense of solidarity, directed

towards preserving their culture, traditions, religion or language” (Capotorti 1991: para. 568). Unlike an indigenous people, however, a minority does not constitute a “first people,” who have a prior history of territorial occupation and an ancestral attachment to their land before it was conquered and occupied by others.

Both Niezen and Howard describe how spokespersons for various countries in Africa and Asia either deny that their states contain indigenous peoples or claim that all their citizens are indigenous. For example, in a statement sent to the U.N. Working Group in 1995, China claimed that “the question of indigenous peoples is the product of European countries’ recent pursuit of colonial policies in other parts of the world....there is no indigenous peoples’ question in China” (Niezen: 231). By contrast, some African indigenous peoples NGOs “point to postindependence continuities with their colonial subjection in support of their status as ‘indigenous’ peoples in need of protection and liberation from oppressive states” (Niezen: 75). Throughout much of his book, Niezen argues with supporting evidence that the concept “indigenous people” has become an internationally recognized identity, thanks in large part to the post-World War II development of international human rights conventions and their oversight committees.

The Conventional Rights of Indigenous Peoples

As both Niezen and Howard show, despite their often unequal status, indigenous peoples are entitled to enjoy the full protection of customary international human rights law and the international human rights conventions ratified by their countries of residence. Among the most important of these conventions are the following: The Convention on the Prevention and Punishment of Genocide, which prohibits “acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such” (Art. 2); the International Covenant on Civil and Political Rights (ICCPR) which “guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Art. 26). The ICCPR also provides that “in those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language” (Art. 27). The International Convention on the Elimination of All Forms of Racial Discrimination (Art. 1), and the International Covenant on Economic, Social and Cultural Rights (Art. 2) contain similar non-discriminatory provisions.

The United Nations Convention on the Rights of the Child calls on ratifying States to agree that the education of the child shall be directed to the development of respect for “his or her own cultural identity, language and values” (Art. 29(d)). This Convention also provides that “in those states in which ethnic, religious or linguistic minorities exist, a child belonging to such a minority or who is indigenous shall not be denied the right in community with the other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language” (Art. 30). All countries that have ratified any of these human rights conventions are required to adopt the legislation necessary to implement them. Consequently, indigenous peoples are also entitled to the human rights protections contained in the national law of their countries of residence.

With the exception of the Genocide Convention, the rights contained in the above conventions are individual rights or rights of members of ethnic, religious, racial, and national groups. Presently there are only two U.N. human rights conventions in force that are devoted specifically to the group rights of indigenous peoples. The older of the two is the International Labor Organization Convention 107 concerning the “Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries.” However, ILO 107 was generally rejected by indigenous peoples because its design was built on the assumption that full and equal integration into the ruling society was the best solution to the plight of indigenous peoples.

During the 1980s, the ILO, in consultation with various indigenous peoples’ organizations, reexamined this convention. In 1989, it adopted a replacement, the “Convention Concerning Indigenous and Tribal Peoples in Independent Countries” (ILO 169). ILO 169’s preamble states that developments in international law since 1957 and the aspirations of indigenous peoples to control their own institutions made it “appropriate to adopt new international standards on the subject [of indigenous rights] with a view to removing the assimilationist orientation of the earlier standards.” ILO 169 assumes that indigenous peoples should have the right to direct their own economic, social and cultural development, and it calls on States to facilitate and support such development.

With respect to land rights, Article 13 provides that “governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands...which they occupy or otherwise use,” and Article 16 offers protections and safeguards for indigenous peoples against their removal from their lands. Importantly, this convention also calls on governments to take appropriate measures to facilitate contacts between indigenous and tribal peoples across state borders and to facilitate their cooperation in economic, social, cultural, spiritual and environmental fields (Art. 32). Unfortunately, as Niezen explains, ILO 169 does not permit indigenous communities to submit complaints directly to the oversight committee. Only governments, business entities and labor unions are permitted to do so. Consequently, indigenous communities with grievances must first convince a recognized entity, such as a labor union, to file complaints on their behalf.

ILO 169 has influenced the development of both the U.N. Draft Resolution on the Rights of Indigenous Peoples (discussed below) and the Inter-American Draft Declaration on the Rights of Indigenous Peoples, which is presently with the General Assembly of the Organization of American States (OAS) and is being examined by various OAS committees and councils. As of June 1, 2005, only seventeen States were ratifying parties to ILO 169: Argentina; Bolivia; Brazil; Columbia; Costa Rica; Denmark; Dominica; Ecuador; Fiji; Guatemala; Honduras; Mexico; the Netherlands; Norway; Paraguay; Peru; and Venezuela. This number is far short of the approximately 70 states that Julian Burger (1987: 180) maintains contain about 5,000 distinct indigenous societies.

Both Niezen and Howard point out that self-determination constitutes the crux of today’s controversy over the rights of indigenous people. Self-determination consists of those processes and structures through which a people gain and maintain control over their own destinies. As early as World War I, President Woodrow Wilson advocated self-determination of nations and protection of minorities. Niezen describes the gallant but ultimately unsuccessful efforts of Levi General Deskahah, Chief of the Younger Bear Clan of the Cayuga Nation and spokesman of the Six Nations of the Grand River Land in Ontario, to get a hearing before the League of Nations in Geneva to air

his people's dispute with the Canadian Government over tribal self-rule (Niezen: 31). Both the League then, and intergovernmental bodies today, are not sympathetic to claims of sovereignty or secession that conflict with the interests or territorial integrity of states.

With the creation of the United Nations, self-determination of peoples became a well-established, albeit abstract, principle of international law. The principle is embodied in the Charter of the United Nations and both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Common Article 1(1) of these Covenants provides that: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

In practice, however, the United Nations and its member states have been reluctant to extend the full right of self-determination to peoples beyond overseas colonized territories. But, indigenous peoples see their situations as being identical to those of colonized peoples who have been conquered and then ruled by others. They argue that the so-called "salt water test" (which limits the rights of self-determination to colonized lands that exist across the oceans from the colonizing country) should not apply to them.

The right of self-determination has also been recognized in other international and regional human rights instruments, such as Part VII of the Helsinki Final Act 1975 and Article 20 of the African Charter of Human and Peoples' Rights and the U.N. Declaration on the Granting of Independence to Colonial Territories and Peoples (1960). It has also been endorsed by the International Court of Justice in its Western Sahara advisory opinion (1975), which defined the principle of self-determination "as the need to pay regard to the freely expressed will of peoples."

Although the exercise of self-determination can include secession from an existing state and the creation of a new one (as an extreme remedy), it also includes other less dramatic choices. The non-binding U.N. Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States (1970) recognizes that implementation of the right to self-determination need not conflict with territorial sovereignty or the political unity of a State. States having governments that effectively represent all of their people conduct themselves in conformity with the principle of equal rights and self-determination of peoples under their jurisdiction. When this is not the case, however, peoples have the right to act to control their own destinies. Alternatives to the establishment of a sovereign and independent State include confederation, federation and regional autonomy.

Working Group on Indigenous Populations

The U.N. Sub-Commission on the Prevention of Discrimination and Protection of Minorities, comprised of 26 independent experts, created a Working Group on Indigenous Populations in 1982. This Group meets annually, providing a forum for representatives of indigenous communities around the world. By the year 2000, over 400 indigenous peoples NGOs were registered with it. Niezen demonstrates how leaders of many local indigenous groups have had the opportunity to attend Working Group sessions and personally inform the world about their local grievances. For instance, the Cree elders from the James Bay region of Quebec presented testimony on the flooding of their land by a mega-hydroelectric project (Niezen: 157).

After many years of work, the Sub-Commission adopted its Draft Declaration on the Rights of Indigenous Peoples in 1994 and submitted it to the Human Rights Committee (HRC) in 1995 for its consideration. If the HRC adopts the Declaration, it will pass it on to the U.N. Economic and Social Council, and, if it is adopted there, it will go on to the General Assembly. Consequently, the Draft has some distance to travel before it becomes a General Assembly declaration or convention open for ratification.

The right of self-determination includes interrelated political, economic, social and cultural aspects. Article 21 of the Draft Declaration addresses the economic and social aspects of the right of self-determination:

Indigenous peoples have the right to maintain and develop their political, economic and social systems, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. Indigenous peoples who have been deprived of their means of subsistence and development are entitled to just and fair compensation.

Article 3 of the Draft Declaration, its most controversial provision, is almost identical to common Article 1(1) of the two International Covenants, except that it replaces the phrase “all peoples” of the two Covenants with “Indigenous peoples.” Article 3 states: “Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

A number of governments have argued that Article 3 should be redrafted to strictly limit indigenous self-determination to forms other than secession and independence. They maintain that granting indigenous peoples the right to secede threatens the stability, integrity and territorial unity of existing States. Indigenous peoples have countered that their full right of self-determination cannot be qualified, because it is a right of “all peoples.” However, a comparative few indigenous peoples, such as the Kurds of Turkey and Iraq, have campaigned for complete independence. The goal of most others appears to be self-government and regional autonomy, not secession and independence.



Niezen is concerned, among other things, with the connection between local identities and the development of a universal indigenous identity through participation in international fora sponsored by the United Nations and non-governmental organizations.

Niezen compares the hierarchical, pastoral Tuaregs of the Western African Sahara with the egalitarian, sedentary Crees of northern Canada and finds that their negative experiences with state powers, in terms of treaty abrogation, resource extraction, forced settlement or resettlement, and alien education are common to them as they are to many other indigenous peoples throughout the world (Niezen: 86-93).

As case studies, Howard devotes considerable space to American Indians and the Maori of New Zealand. He describes the adverse impact European intrusions into the Americas had on the natives: the eventual loss of their lands and cultures as well as “an overall 90-95 percent reduction in the number of indigenous inhabitants...largely due to continuous epidemics of European-introduced diseases” (Howard: 39). He does a fine job explaining the changing ways the U.S. federal government has dealt with American Indians, from regarding them as sovereign nations capable of

making international treaties to making them wards of the State, whose lives can be legislated to suit federal policy. Howard also explains how some US anthropologists, both wittingly and unwittingly, facilitated the government's program of reducing Indians to marginalized citizens. Among the very interesting stories he tells, is the one about Lewis Cass, a leading nineteenth century American authority on Indian languages and culture. Cass served as President Andrew Jackson's Secretary of War and utilized, according to Howard, ethnological theory of his time to classify American Indians as culturally fixated in a nomadic hunter stage of cultural evolution and therefore incapable of progress (Howard: 14). In this way, Cass justified, even advocated, the removal of the Indians to the west of the Mississippi in order to liberate their lands for progress. Howard goes on to show that a significant number of early American ethnologists, even those with some admiration and sympathy for the Indians, regarded the latter as culturally inferior and unlikely to achieve the Euro-American level of civilization.

Both Niezen and Howard describe the results of the U.N.-declared International Decade of the World's Indigenous People (1994-2004) as negligible and disappointing. Many had hoped that during the Decade general acceptance of the Declaration on the Rights of Indigenous Peoples would have been achieved and greater progress made on economic and political issues.

Niezen does not romanticize indigenous cultures as pure and faultless. He cautions that achieving self-determination will still leave many indigenous societies with the challenge of addressing some of their own traditional practices that may constitute human rights abuses according to contemporary universal standards. In addition, indigenous collective rights are commonly associated with an emphasis on individual duties to the collective. Traditional community demands on individuals may contradict the individual freedoms that are associated with many current U.N. human rights conventions.

Howard offers rather detailed explanations of the various U.N. human rights instruments that can potentially affect indigenous peoples as well as the relatively feeble complaint mechanisms that some might have recourse to. Lacking the kind of political power enjoyed by States and access to authoritative international judicial fora, most indigenous people have to rely on shaming their governments through appeals to the general public via participation in international meetings and conferences, making their situations known through their own websites, and utilizing other means of communication with sympathetic audiences.

Neither author discusses in any depth the kinds of governmental units and judicial arrangements that could provide indigenous peoples with the space and protections needed to preserve their cultures and lands. The present debate on the self-determination of indigenous peoples rests on several historic legacies: the Westphalian idea that the territorial integrity of existing "national States" is sacrosanct; the League of Nations' practice of treating peoples not organized into States as wards of existing States; the U.N. salt water thesis that restricted full self-determination to classically colonized lands; and the U.N. tendency to treat the human rights violations of peoples as remediable individual grievances.

Federation and Autonomy

In many cases of repressive majority-indigenous relations, the classic, unitary nation-State has proved to be a dangerous fiction. Attempts by state governments to force diverse cultural populations into the majority ethnic mold have frequently led to human rights abuses. Historically,

diverse ethnic populations with a tradition of mutual animosity have not found common citizenship in a single State to be a sufficient basis for social harmony. On the contrary, the state form has simply become the new arena for interethnic political and economic battles. In those cases where peoples of different ethnicities are intermingled within the same territory, a culturally pluralistic, single State may be necessary. However, in cases of intra-state, inter-ethnic strife involving cultural populations who are numerically dominant in different regions of the country, at least two structural alternatives to the pluralistic State are possible. One structural solution involves restructuring the State with autonomous, ethnic cantons that form a confederation on the Swiss model. Another possibility is the creation of autonomous cultural regions on the Italian model. Both the Swiss cantons and the Italian system of decentralization have integrated culturally diverse populations into a single modern State while simultaneously observing human rights and ethnic minority status.

S. James Anaya (1996) proposes that the substance of the norm of self-determination should be analytically distinguished from what he calls its remedial prescriptions. For him, the substance constitutes a universe of human rights that attaches to all peoples and empowers them to control their destinies. When governments deviate from their human rights obligations, remedies are triggered. But the type of remedy is to be determined by the nature of the government's deviation—it is not the free choice of the injured people. The right of secession and independence would be justified only in the most extreme cases. For example, the appropriate remedy for colonialism is independence of the subjected people. Lesser deviations or human rights violations could trigger lesser remedies, such as federation or regional autonomy.

Federations differ from unitary States in that the political units comprising a federation retain limited sovereignty and exclusive competence within specified governmental realms. A federation's central government provides the unifying force, while the separate regional governments provide for cultural diversity. The federation's central government generally has exclusive competence in the areas of foreign relations, defense, constitutional courts, national transportation, postal and other communication services. Unless clearly provided for in its constitution, a federation's various units may not have the right of secession. For example, the Constitutional Court of Yugoslavia on January 14, 1991, annulled Slovenia's July 1990 sovereignty declaration on the grounds that it was unconstitutional. Slovenia refused to recognize the Court's competence, however, and stood by its December 1990 declaration of independence. War between the Serbian-dominated federal army and Slovenia ensued. By contrast, Czech government officials recognized as legitimate the declaration of sovereignty issued by the parliament of the Slovak Republic on July 17, 1992. In their meeting on August 26, 1992, the Czech and Slovak Premiers amicably agreed that the Czechoslovak Federation would be dissolved as of January 1, 1993.

Autonomy does not jeopardize the territorial integrity of a State. It can be structured within the constitutional framework of the State and can consist of a combination of political, economical and cultural elements. Autonomy can involve local control over some combination of education, religion, land use, taxation, family law, cultural institutions (e.g., museums, parks, art galleries) and municipal government. It does not involve control over foreign policy, national defense, aviation, postal services, monetary policy, etc. In the case of a State with one or more autonomous units, the central government delegates some degree of executive and legislative governmental powers to a local body. The local government is not, however, fully independent of the central legislature, which can override some, but not all local decisions. Italy, for example, has five special autonomous

regions with extensive local powers defined by the constitution: Trentino-Alto Adige (containing the German-speaking people of the South Tyrol), Friuli-Venezia Giulia (containing Slovene and Friulian speakers), Val d'Aosta (containing French speakers), as well as the islands of Sardinia and Sicily. Each of these regions has unique, "non-Italian" cultural, linguistic, and historical characteristics that have justified extensive delegations of powers from Rome to the regional authorities to permit decision-making on local educational, economic, cultural, and budgetary issues.

A number of other States have granted their indigenous populations various forms of autonomy. The particular autonomous arrangements have been uniquely influenced by local circumstances and histories. Some of these autonomy types are: autonomy based on contemporary indigenous political institutions, such as the Sami Parliaments in the Nordic countries; autonomy based on the concept of an indigenous ancestral territory, such as the arrangement for the Comarca Kuna Yala in Panama, and; regional autonomy within the State, such as the Nunavut territory in Canada and the indigenous autonomous regions in the Philippines (see Henriksen 1999).

Recourse to the International Court of Justice

In order to protect these types of federated and autonomous arrangements and promote harmonious relationships, both States and indigenous peoples would benefit greatly from the ability to have recourse to an independent, international judicial forum to settle their disputes. Article 36 of the U.N. Draft Declaration on the Rights of Indigenous Peoples states, in part: "conflicts and disputes [between a State and its indigenous peoples] which cannot otherwise be settled should be submitted to competent international bodies agreed to by all parties concerned."

A potential candidate for the competent international body being called for is the International Court of Justice, one of the United Nations' most important organs for the peaceful settlement of disputes. Unfortunately, at present, Article 2(7) of the United Nations Charter (prohibiting U.N. interference in intra-state matters) and Article 34(1) of the Statute of the International Court of Justice (ICJ) (limiting standing in contentious cases to States-Parties) effectively preclude the U.N. and the ICJ from playing a continuously active and positive role in the peaceful resolution of intra-state disputes involving indigenous peoples.

However, article 36(2) of the Court's Statute permits any U.N. Member State to declare unilaterally at any time that it recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the court in all legal disputes concerning: the interpretation of a treaty; any question of international law; the existence of any fact which, if established, would constitute a breach of an international obligation, and; the nature or extent of the reparation to be made for the breach of an international obligation. Consequently, two or more States may agree by treaty to refer certain issues to the Court in the event that they themselves are unable to resolve such issues.

Three tasks of the ICJ are: to decide disputes between States in accordance with the provisions of its statutes; to perform extra-judicial activities, including nominating neutral arbitrators or members of conciliation commissions, at the Parties' request, and; to provide judicial guidance and support for the work of other United Nations organs and for the autonomous specialized agencies (e.g., International Labor Organization, Food and Agricultural Organization, U.N. Educational, Scientific and Cultural Organization, International Monetary Fund, International Finance Corporation). Many constitutions of the specialized agencies contain a provision stating that

disputes between members arising out of the application or interpretations of their constitutions may be referred to the Court. Article 96(2) of the Charter empowers the General Assembly to authorize the specialized agencies to request advisory opinions on legal questions arising within the scope of their activities.

It is time to consider the inclusion of “quasi-States” within the Court’s jurisdiction. As defined here, quasi-States are either ethnic republics within a federal system (e.g., the former Yugoslavia) or autonomous, ethnic regions within pluralistic States whose distinct political, legal and ethnic status has been officially recognized by a central government (e.g., the Trentino-Alto Adige region of Italy). Such inclusion would be especially useful in those cases where the central government and the representatives of an indigenous autonomous region have entered into a governance agreement that delineates the two parties’ realms of authority, rights, duties and obligations. The U.N. could encourage such parties to add provisions to such agreements that obligate the parties to resort to the ICJ for an advisory opinion whenever they cannot agree on the interpretation of their agreement, for arbitration whenever they cannot agree on the proper outcome of a dispute, and for a hearing on the merits (contentious litigation) whenever they cannot satisfactorily settle a contested claim. In this way, the Court would gain jurisdiction by the consent of both the central government and the government of the ethnic, autonomous region.

Achieving standing for such quasi-States would require an amendment to Article 34 of the Court’s Statute. Any U.N. Member State or the Court itself may propose such an amendment. Article 70 of the Statute empowers the Court to propose amendments to the Statute through written communications to the Secretary-General. To be successful, a motion must receive a favorable vote of two thirds of the members of the General Assembly and ratification in accordance with their respective constitutional processes by two thirds of the members of the U.N., including all the permanent members of the Security Council. Once such an amendment is adopted, any State and internal autonomous government wishing to have the option of utilizing the ICJ to settle their future disputes need only add a choice of forum clause to their agreement that declares their mutual recognition of ICJ jurisdiction and then register that agreement with the U.N. Secretariat in accordance Article 102 of the U.N. Charter.

States historically have been adverse to granting their cultural minorities or indigenous peoples sufficient international legal personality to enjoy standing before world bodies. However, the time is ripe for change. Western European States now permit their citizens to have standing before the European Court of Human Rights to raise claims against their own governments. The European governments apparently believe that this arrangement will promote their long-term interests of legitimacy and social stability. With the rising tide of politicized ethnicity around the world, other governments would find it in their interests to extend autonomy offers to their rebellious regional minorities and indigenous peoples and to assure these peoples of their sincerity by providing for ICJ jurisdiction to deal with any future disputes over the interpretation of autonomy terms and the adjudication of claims.

Even though the changes advocated above will not eliminate all intra-state, inter-ethnic strife, they will offer States and their ethnically-distinct federated or autonomous regional units a currently unavailable option: the opportunity to turn to a neutral, third party judicial tribunal for a fair hearing and, possibly, a peaceful resolution to their disputes. This option not only offers troubled multi-ethnic states the talents of outstanding legal minds to address their problems, it also, through the

enforcement clause of U.N. Charter Article 94(2), potentially involves the attention of the Security Council to ensure that the Court's judgments are honored.

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