THE (RE-)EMERGENCE OF INDIGENOUS PEOPLES AS ACTORS IN INTERNATIONAL LAW

INTRODUCTION

The Permanent Forum on Indigenous Issues, which held its first session from 13-24 May 2002, “is a mile stone in the struggle of thousands of indigenous peoples to win recognition of their rights and identities”, Deputy Secretary-General Louise Fréchette said during the first session of the Forum. Further, she underlined that the medicinal knowledge of indigenous peoples is of enormous value, and the world also has much to learn from them in managing complex ecosystems, promoting biodiversity, increasing crop productivity and conserving land. However, such interaction between indigenous peoples and the rest of the international community could only succeed if indigenous peoples were secure in their human rights, she said, noting that indigenous peoples shared a “terrible history” of injustice. They had been killed, tortured and enslaved. They had been deprived of their political rights, such as the right to vote. Their lands have been taken by conquest and colonization. Questions of self-determination, self-rule, and autonomy raised fundamental issues of sovereignty and the prerogatives of the nation-State.

During the same session Mary Robinson, United Nations High Commissioner for Human Rights, said the Forum represented a challenge that had actually been met – to find space within the United Nations system to address the issues affecting indigenous communities. The structure that encourages partnership between governments and organizations of the peoples, was particularly laudable. That sense of partnership must continue, she said. This was a body that could address indigenous issues in a holistic manner. Ivan Simonovic, President of the Economic and Social Council, added the Forum represented “a chance to make up for some of the numerous injustices experienced by indigenous peoples”.

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The purpose of this article is to put the Permanent Forum on Indigenous Issues in a broader (historical) perspective of indigenous peoples’ rights. More specifically, the following three issues will be considered: a) The ‘terrible history’ of injustice which indigenous peoples share; b) The place of this Forum and indigenous peoples’ rights in the UN system and, more generally, in the system of human rights; c) The chance of the Forum to make up for the injustices towards indigenous peoples.

1 THE ‘TERRIBLE HISTORY’ OF INJUSTICE WHICH INDIGENOUS PEOPLES SHARE

1.1 Indigenous Peoples

During the first meeting of the Permanent Forum Deputy Secretary-General Louise Fréchette underlined that “not all indigenous people share the same priorities; some are concerned primarily with land, others with culture. Nor do they share the same point of view. Some might want to preserve, unchanged, their ways of life, while others wanted to participate fully in the material and cultural life of the societies around them.”

Who are the “Indigenous Peoples” whose issues the Permanent Forum is dealing with? The question of a definition of “Indigenous Peoples” has, as far as practical use in international legal and political (draft) documents is concerned, been answered by Martínez Cobo, Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, in his *Study of the Problem of Discrimination against Indigenous Populations*:

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 of 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

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