Good Governance and Indigenous and Tribal Peoples

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1. Introduction

One particular aspect of good governance in the international standards on indigenous and tribal peoples is consultation and participation. Much of the discussion in the symposium has concentrated on land and resource rights, which are of course crucial in this area. But even more fundamental is the right of indigenous and tribal peoples to take part in the decisions that affect them.

2. A Few Words on History

It is also instructive to understand how we got to where we are now. In fact, almost the entire international law on indigenous and tribal peoples has been constructed in the last 40 years, making it a very new subject for international lawyers. But there were a few other things before that.¹

The intergovernmental organization structure originated in 1919 with the Treaty of Versailles at the end of World War I. The Treaty created two organizations: the League of Nations meant to keep the peace in political and military terms, and the International Labour Organization (ILO) which was devoted to the social peace. For the present discussion, the interesting thing is that the founding fathers – there were few if any mothers present – consciously avoided any mention of human rights, and in particular any notion of the equality of races, because this would have called into question

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the structure of colonialism which was based on exploitation of the “lesser races” or “natives”, particularly in Africa and Asia. Nevertheless, the ILO, which was established to create standards to improve conditions of work, began in 1930 to adopt a series of Conventions known collectively as the “Native Labour Code”. These Conventions began for the first time to regulate the conditions of colonial workers in respect of forced labour, conditions of work, contracts of employment and other matters. What is more, the European States began to accept this idea that there should be rules on the extent to which they could exploit the indigenous peoples of the territories they ruled. The beginning of the end of colonialism was at hand as its moral underpinnings were called into question, and within 30 years it would be dead.

This work did not at first concern indigenous peoples in the way we understand it today, but beginning in 1936 the American States members of the ILO asked that this experience be extended to examining the situation of the indigenous peoples in their own countries. Thus, shortly before the League of Nations collapsed and the ILO suspended many of its operations with the coming of World War II, the ILO had begun to think about indigenous peoples in another way.

With the founding of the United Nations after the War, the ILO became the first specialized agency, and was the most experienced of the organizations of the new UN family. In 1952 it launched the Andean Indian Programme, leading several of the organizations of the UN system in the first coordinated attempt at development aid. The AIP was quite successful in its 20 years of work, even if it was hopelessly “top down” and assimilationist from the perspective of today.

In the early years of the AIP, there was also an invitation from the UN and other agencies to the ILO to adopt standards on indigenous peoples, on behalf of the entire international system. This was because of the ILO’s leadership in the AIP, as well as because the ILO was experienced in standard setting while the rest of the new international system had not yet undertaken this. The ILO therefore adopted the Indigenous and Tribal Populations Convention, 1957 (No. 107, hereinafter C107), in cooperation with much of the rest of the international system. A rereading of the Convention today reveals remarkable foresight and care in predicting the problems that would need to be dealt with as time went on. The major fault was the Convention’s assimilationist approach, which was accepted as being self-evident – when indigenous peoples were absorbed into the dominant population, their particular problems would disappear. In Latin America C107 was ratified by 14 of the 27 countries that ratified it worldwide, and in Asia by India; later Pakistan and Bangladesh also took over the Indian ratification when they became independent of India and later of each other. The ratifications by India and Bangladesh in particular are still important because these countries are bound by C107 while showing no sign of wanting to ratify the newer