



COLORADO JOURNAL OF INTERNATIONAL ENVIRONMENTAL LAW AND POLICY

Volume 4, Number 1

Winter 1993

United Nations Conference on Environment and Development (UNCED)

- DAVID H. GETCHES Foreward: The Challenge of Rio
- MAURICE STRONG Beyond Rio: Prospects and Portents
- TIMOTHY E. WIRTH The Road From Rio—Defining A New World Order
- MUKUL SANWAL Sustainable Development, the Rio Declaration and
Multilateral Cooperation
- M.P.A. KINDALL Talking Past Each Other at the Summit
- RUBENS RICUPERO UNCED and Agenda 21: Chronicle of a Negotiation
- ELIZABETH P. BARRATT-BROWN,
SCOTT A. HAJOST,
JOHN H. STEARNE A Forum for Action on Global Warming: The UN Framework
Convention on Climate Change
- JEFFREY KOVAR A Short Guide to the Rio Declaration
- MELINDA CHANDLER The Biodiversity Convention: Selected Issues of Interest to
the International Lawyer
- JORGE CAILLAUX Z.,
PATRICIA F. MOORE UNCED and Agenda 21: A View from Peru
- CHRIS WOLD An Earth Parliament for Indigenous Peoples: Investigating
Alternative World Governance

1992 Semiannual Survey

- Organization Summaries The Center for International Environmental Law
- Worldwatch Institute: Environmental Research for the 21st
Century
- Chronology Events of 1992

Book Review

- ANITA MARGARETHE HALVORSSSEN Changing Course: A Global Business Perspective on
Development and the Environment
by Stephan Schmidheiny

Comments

An Earth Parliament for Indigenous Peoples: Investigating Alternative World Governance

Chris Wold[†]

If you want us to live like savages, civilized people should set an example. They should turn off the lights in all the cities. Then if we're all in the dark, I'll accept the fact that we don't have any light. But if the rest of the world has light, why should we live in the dark?

Chief Juruna of the Xavantes Community¹

Poor polluted, exploited, resource-depleted, population-pressured, deforested and desertified countries. And none of their problems are of their own making. None of their problems proceed from fatuous oligarchies, mad corruption or whimsical property rights or from notions of individual liberty borrowed from termite mounds or from political systems that wouldn't pass muster in a troop of Barbary apes. None of their problems are the result of fondness for violence or sloth or of social traditions such as treating women like dogs and treating dogs like lunch. None of their problems are caused by religious zealotry, fanatical nationalism, tribalism, xenophobia or peculiar ideas about the nature of the world such as those held by Senator Al Gore.

P. J. O'Rourke²

The problems facing the indigenous peoples of the world today are tied to domestic and international politics, as well as to the often conflicting hopes and desires of the indigenous peoples themselves. On the first day of the Global Forum, the unofficial summit of nongovernmental organizations (NGOs) held parallel to the United Nations Conference on Environment and Development (UNCED), leaders from the Alliance of Forest Peoples, a coalition of indigenous peoples and rubber tappers, requested

[†] Attorney, Center for International Environmental Law (CIEL). The author gratefully acknowledges David Downes, CIEL attorney, both for his editing assistance as well as for his sanity-saving companionship in Rio during UNCED.

1. Pablo Vierci, *Chief Juruna: 'I defend the human right to life, not that of leopards,'* TERRA VIVA, June 9, 1992, at 11.

2. P. J. O'Rourke, *Going for the Green in Rio—Greenbacks, That Is*, ROLLING STONE, Aug. 20, 1992, at 37, 62.

the assistance of the Center for International Environmental Law (CIEL) to help them defend their land and their lives from Brazil's powerful interest groups and insensitive government authorities. They are victims of violent attacks by those who seek to clear-cut their land for timber or to burn off the forest to provide pasture for cattle. They are falsely charged with crimes. Drug dealers are trying to force the Ashininka Indians into the drug trade. Authorities award phony land titles to rubber barons who force the Forest Peoples into debt-slavery. Later the next week, Chief Moises of the Ashininka asked CIEL attorney David Downes to mediate a contract dispute with a photographer. Chief Moises claimed that the photographer owed his people royalty money from the sale of a book filled with pictures of his people. Speaking of the inequities posed by the international legal system, Davi Ianomami, chief of the Ianomami, stated unequivocally at Riocentro to a group of foreigners, "Your laws are worthless."³

At the same time, indigenous people do not always agree on what they want from the outside world. Some entertain thoughts of comfort, homes, and salaries. Others strongly wish to retain their traditional, subsistence cultures. The tension between the new and old worlds of indigenous peoples was put before me starkly when I traveled to Angoon, a Tlingit village of 400 on Admiralty Island in southeast Alaska. While there, I ate traditionally smoked salmon and dried seaweed with Tlingit friends. I also watched *Karate Kid Part II* on HBO and rode in one of the many trucks owned by the Tlingits to travel all of the three miles of road on the entire island.

Universally, though, indigenous and traditional peoples demand the right to choose their future without interference from multilateral development institutions, national governments, or exploitive natural resource development. They had hoped for a serious and meaningful role in framing the content of the Rio documents, but instead they found themselves literally fighting to get inside the doors of Riocentro, the site of the UNCED meetings. Once again, they found themselves in the familiar position of consummate outsiders to the international law process that would affect their lives immensely. Unable to exercise their rights through the UNCED process, indigenous groups sought to address their problems at the activities of the Global Forum. One such effort was the Earth Parliament Preparatory Committee, organized by the Coalition for Biological and Cultural Diversity to create a permanent Earth Parliament for indigenous and traditional peoples.

3. *Indian Chiefs Had More to Tell Whites*, JORNAL DO BRASIL, June 5, 1992, at 6, (English ed.).

Although dominated by Brazilian indigenous peoples, the Earth Parliament Preparatory Committee brought together members of dozens of indigenous peoples from throughout the world to discuss options for sustainability and conservation methods already in use by indigenous and traditional peoples.⁴ The Earth Parliament also sought to establish relationships between indigenous and traditional peoples and environmentalists and scientists throughout the world and to develop strategies for strengthening the role of local communities in establishing global priorities.

Perhaps most importantly, the Earth Parliament sought to campaign against the absence of indigenous representation in international law by establishing a permanent Earth Parliament to lobby for indigenous and traditional peoples. To do so, the organizers of the Earth Parliament attempted to put together a group of lawyers and other professionals from throughout the world who represent the interests of indigenous peoples. For various reasons, the first meeting of the committee looked suspiciously like the type of forum from which the Earth Parliament was attempting to divorce itself: a group of white males (with the exception of Joseph Owondo, a human rights lawyer from Gabon). Although this problem persisted, Jorge Terena, one of Brazil's leading indigenous activists, joined the committee and helped us wade through the many different institutional proposals for alternative governance.

I. INSTITUTIONAL PROPOSALS

Ideas for alternative international governance that were discussed at the Global Forum covered a broad spectrum and were much more creative than anything proposed by a government delegation, whose recent proposals merely amended existing institutions. For example, the Global Environmental Facility, a mechanism to fund environmental projects, was put under the watchful eyes of the World Bank, an institution known more for its record of funding social and ecological destruction than for environmentally sound development.⁵ Meanwhile, nongovernmental organizations brought with them an array of proposals, some a bit unconventional but others that very well might reshape the course of international relations. The committee of the Earth Parliament set out to canvas the different ideas

4. Traditional peoples are vaguely defined as people such as rubber tappers, nut gatherers, and cocoa pickers.

5. See, e.g., FUNDING ECOLOGICAL AND SOCIAL DESTRUCTION: THE WORLD BANK AND THE INTERNATIONAL MONETARY FUND (The Bank Information Center ed., 1990) (discussing case studies of World Bank and IMF projects in eight countries that have had devastating ecological and social impacts); Bruce M. Rich, *The Multilateral Development Banks: Environmental Policy and the United States*, 12 *ECOLOGY L.Q.* 681 (1985) (describing a litany of World Bank projects that have been socially and environmentally destructive).

without advocating any particular proposals, a mandate that many committee members, intent on promoting their own ideas, found difficult to accept. The types of proposals that were seriously considered follow.

A. Judicial Proposals

Several organizations proposed various forms of an international court of the environment, all starting with the premise that individuals enjoy the fundamental right to the protection of the environment. The Italian-based International Court of the Environment Foundation sought the establishment of a court within the existing United Nations structure, which would recognize that states are responsible for many of the acts that damage the environment and should be liable to citizens for their acts. Thus, it would grant citizens and nongovernmental organizations, as well as supranational bodies such as the European Community, the right to appeal to the court. A revamped UN Security Council would enforce the court's decisions. The Mandate for Life offered a similar proposal, except that it made all people, rather than states only, responsible for environmental damage and it would not necessarily work through the United Nations; it could be free standing.

The World Uranium Hearing, held in September 1992, was a forum for testimony and inquiry designed to bring together indigenous peoples who have been harmed by activities associated with uranium mining, use, and disposal. The indigenous witnesses had a rare chance to tell their story to the world, testifying before a Board of Listeners drawn from the ranks of many different fields, including science, law, and the media. The hearing will publish a record of the proceeding but will not make formal findings of fact (because the universal legal criteria for assessing the facts have yet to be established), and will not make judgments (because the accused were not offered a chance to present a defense). The International Water Tribunal is similar in that it focuses on a single issue. It differs in that it offers the defendant an opportunity for defense and has a panel that rules on a decision.

Several organizations, including the Center for International Environmental Law (CIEL), the Natural Resources Defense Council, and the Environmental Defense Fund, advocate a tribunal for citizens to bring claims against multinational lending institutions.⁶ These proposals note the

6. See Chris Wold and Durwood Zaelke, *Establishing an Independent Review Board at the European Bank for Reconstruction and Development: A Model for Improving MDB Decisionmaking*, 2 DUKE ENVTL. LAW & POL'Y FORUM 59 (1992); Eric Christensen, *Green Appeal: A Proposal for an Environmental Commission of Enquiry at the World Bank* (Sept. 1990) (paper prepared for and on file with the *Natural Resources Defense Council*).

present lack of public participation and public accountability within the World Bank, the International Monetary Fund, and the European Bank for Reconstruction and Development. After a decade-long NGO campaign to persuade the banks—the World Bank in particular—to be more environmentally and socially responsible, the banks remain as intransigent as ever.⁷

B. Proposals Combining Judicial and Legislative Measures

The Japanese Federation of Bar Associations has devised a plan for universal legal protection of basic human rights to environment and nature, the right to live in peace, the right to equality, and the guarantee of civil and political liberties. To implement and enforce these rights, it would create new institutions and improve existing ones. A new United Nations committee, perhaps modeled on the International Labor Organization, would establish a code of conduct for transnational corporations. Another new United Nations organization would oversee each country's implementation of basic international environmental agreements. An international court of the environment, established either within or outside the UN, would protect rights established by existing treaties and the proposed new rights.

7. For example, the World Bank commissioned an independent panel of experts to investigate the Sardar Sarovar Projects, a large hydroelectric project on India's Narmada River. The panel, chaired by Bradford Morse, former Under-Secretary-General of the United Nations and head of the United Nations Development Programme, concluded:

We think the Sardar Sarovar Projects as they stand are flawed, that resettlement and rehabilitation of all those displaced by the Projects is not possible under prevailing circumstances, and the environmental impacts of the Projects have not been properly considered or adequately addressed. Moreover, we believe that the Bank shares responsibility with the borrower for the situation that has developed.

Letter from Bradford Morse, Chairman, *Sardar Sarovar Projects Independent Review*, and Thomas Berger, Deputy Chairman, *Sardar Sarovar Projects Independent Review*, to Lewis T. Preston, President, The World Bank (June 18, 1992), reprinted in *THE REPORT OF THE INDEPENDENT REVIEW, SARDAR SAROVAR* (1992). The full 358-page report chronicles the Bank's failure to follow its own policies and its acquiescence to India's recalcitrance.

Despite this scathing condemnation of the Bank and the projects, the Bank rejected the recommendation of the Independent Review to "step back" from the projects. Instead, Bank management recommended continued funding under circumstances that violate the 1985 Credit and Loan Agreements with the government of India and the Indian state governments and the Bank's policies on resettlement and tribals. See Memorandum from World Bank Management to the Executive Directors, India: Sardar Sarovar (Narmada) Projects Bank Management Response, (Sept. 11, 1992) (on file with CIEL). Already, police have beaten many villagers in an attempt to get them to move to resettlement sites that lack quality irrigable soil, that lack trees, and that do not afford people a quality of life that allows them to meet their present and future needs. Authorities also have shot and killed at least one woman who would not leave her traditional land so that the government could build a resettlement site. The findings of the Narmada International Human Rights Panel, of which this author was a participant, indicate that a decision to continue funding under these circumstances will result in more violence. See *NARMADA INTERNATIONAL HUMAN RIGHTS PANEL, INTERIM REPORT* (Chris Wold, ed., 1992). On October 23, 1992, the World Bank Executive Directors agreed to continue funding the projects.

The Argentine NGO Fundación Para La Defensa Del Ambiente offered a very comprehensive scheme, which it ambitiously titled "The Establishment of a New International Institutional Order." Rejecting existing international institutional structures, the proposal seeks independent and efficient nongovernmental structures parallel to the United Nations. It would create a system of NGOs to address priority socioeconomic issues. It also would establish an International Court for Environment and Development to adjudicate alleged violations of human dignity and environmental safety and an environmental ombudsman to consider urgent issues. A new security council for the environment and development, which would eliminate a party's veto power, would consider and solve the most urgent and important questions. The program would be implemented regionally, using existing nongovernmental organizations, networks, and coalitions.

One World Now urges the democratization of the United Nations General Assembly by making it directly answerable to the popular will of citizens and by making its jurisdiction and authority supersede that of national governments on any issue of global concern. Specifically, One World Now advocates an amendment to the United Nations Charter at a Charter Convention in 1993. The new charter would create: (1) a popularly elected Assembly and secretary-general; (2) a reformed and expanded Security Council with no country possessing veto power; (3) regulatory agencies in a variety of areas including the environment, peace and security, human rights, and population; and (4) a hierarchical court system topped by a World Court with compulsory jurisdiction in global matters over nations and individuals. Indigenous and traditional peoples worldwide would elect members to their own commission which would govern their affairs and protect them from exploitation.

C. Service Organizations

The Mandate for Life submitted perhaps the most unique proposal at the Global Forum. It called for education and training in emergency response and prevention in communities with facilities that are potentially hazardous to human lives. In essence, the proposal is a combination of the Emergency Planning and Community-Right-to-Know Act⁸ (EPCRA), Green Cross, and the underlying philosophy of CIEL.

EPCRA is the US law that requires certain polluters to report the type and amount of hazardous substances stored on and released from their premises and to prepare an emergency response plan in coordination with

8. 42 U.S.C. §§ 11001-11050 (1988).

citizens and local officials. Green Cross is an idea to create international emergency response teams to enter a disaster area immediately after the disaster. CIEL's philosophy is to "democratize" environmental law. For example, it is educating and training the *Curadores do Meio Ambiente*, Brazil's environmental prosecutors, who, prior to CIEL's program, were not familiar with the laws that they are authorized to enforce and had little experience with investigating alleged violations of those laws. In addition, CIEL is preparing a series of *State of Environmental Law* reports that assess and evaluate the environmental laws of a country from the perspective of a citizen who wants to enforce those laws.

Mandate for Life blends the three to create an atmosphere conducive to preventing accidents and training local people to respond to an emergency. First, it would require industries to disclose the amount and type of hazardous substances that they are producing and/or storing. In addition, it would educate lawyers as to the requirements of local law so that they could bring suit against noncomplying industries. It would also educate local doctors and other professionals who would need to respond effectively in an emergency.

II. PRESENTING THE PROPOSALS TO THE EARTH PARLIAMENT PREPARATORY COMMITTEE

Presenting the ideas to the Earth Parliament Preparatory Committee brought forth a curious blend of anticipated and unanticipated problems. The first question concerned who would present the products of the working group to the Earth Parliament. As the elected chair of the meeting, I suggested Jorge Terena or Maurice Iwu, the two indigenous or traditional representatives on the working group. Iwu had other commitments, and Terena, who would be chairing the day's Earth Parliament session, felt it would be inappropriate for him to also present the findings of the committee. Many on the committee seemed to relish the presenter's role as a way to advocate their own group's proposal and lend it credibility by having the indigenous peoples of the world accept it. The terms by which the committee was formed demanded objectivity, however. The presenter was to describe different alternatives, not prescribe them, and be no more than a facilitator of a discussion that hopefully would lead the indigenous peoples to a plan for the future. Fortunately, Terena ended the debate by suggesting that David Downes and I present the information to the indigenous peoples because we had chaired all the meetings of the working group.

With that matter resolved, we set about the task of presenting the information in a simple and clear manner. Terena reminded us that although most of the indigenous leaders recognized terms such as the United

Nations, they would not understand many of the proposals simply because the ideas were not relevant to their experience. The document that was distributed and described to the indigenous peoples as a means to initiate discussion comprised the following two paragraphs:

Examples of how the Earth Parliament could organize to carry out tasks after Rio to aid and support indigenous peoples include:

Permanent Court, Council, Parliament or Assembly. A permanent court or assembly could:

- give indigenous peoples a chance to communicate and plan among themselves;
- encourage reform of the official system so that indigenous and human rights are recognized and enforced;
- publicize cases and violations of indigenous and human rights and of indigenous peoples' sacred relationship with their land;
- communicate to the world the great value of the indigenous peoples (including their culture, knowledge, and wisdom) to the earth's biological and cultural diversity.

Action or Service Organization. This kind of organization could:

- monitor environmental safety and publicize environmental damage or disaster;
- provide training, equipment and supplies (including scientific, legal, medical, and fire-control) for emergency services;
- carry out seminars for indigenous peoples on legal, environmental, political and economic issues that concern them;
- create a network linking indigenous peoples (and possibly human rights and environmental groups) to share information about indigenous peoples' problems and solutions.

The plenary discussion of these proposals soon drifted into a litany of speeches from indigenous leaders decrying the problems they face in their villages. Little progress was being made toward determining what a permanent Earth Parliament would look like and what its functions would be. A momentary glimmer of hope appeared when Birici Brasil of the Ashininka proposed a parliamentary structure whereby the indigenous peoples of each country would assemble nationally and every two or three years an international assembly would meet. The idea gained some momentum but stalled quickly as it became apparent that many of the people did not fully understand the concept of a parliamentary body.

In the afternoon, the meeting was moved to a smaller room, where a Brazilian anthropologist offered an overview of parliamentary processes.

The smaller room and the Portuguese-language overview seemed to change the dynamics of the conversation for the better. The smaller room forced people to sit closer together. They were no longer able to find an inconspicuous corner of the room in which to hide, and they were forced to confront strangers (other indigenous peoples) with whom they were asked to join in a relationship. This point should not be overlooked. Many of the indigenous people, even those in Brazil, were meeting each other for the first time, and they were very reluctant to enter into a formal relationship to solve indigenous problems without first knowing the other people. The overview of parliamentary processes had obvious benefits. Speaking in Portuguese, the anthropologist was able to bypass the interpreters and choose words that most effectively conveyed the concepts of governance that we were asking the indigenous peoples to understand and discuss.

After more discussion, several points that the indigenous peoples thought should guide their decision became apparent. First, they felt an urgency to act quickly because the problems they face are serious, imminent, and irreversible. If they lose their lands and if the forests are cleared or disease is introduced by "intruders," they may not recover. Thus, solutions that would take a substantial amount of time to implement were eliminated. Second, they believed that indigenous and traditional peoples are strengthened when they work together. Although their problems often are different and the law often distinguishes between the two groups, the effects of problems on their cultures and the ability to sustain their cultures are similar. Third, the indigenous peoples had a very clear understanding that existing national and international law and institutions fail to take into account the plight of indigenous peoples. Particularly at the national and local level, the law is used by authorities and powerful interest groups to oppress indigenous peoples. Fourth, the indigenous and traditional peoples believed that national earth parliaments of indigenous peoples, linked together by an international Earth Parliament, would be the best structure for ensuring that as many indigenous and traditional peoples as possible can participate.

Another point upon which there was consensus was that those present at the Earth Parliament Preparatory Committee did not have the authority to make decisions about its structure and mission. Although many Brazilian indigenous peoples participated, few indigenous and traditional peoples from other places were able to attend. Important questions concerning the Earth Parliament could not be answered without broader representation. Thus, the Brazilian indigenous peoples took responsibility to invite the indigenous and traditional peoples of the world to Mexico in November 1992 for a meeting of the Global Coalition for Biological and Cultural Diversity.

Due to a lack of money and time, invitations were not sent to as many people as possible. The mailing list of the Global Coalition for Biological and Cultural Diversity was used. Moreover, an attempt was made to keep the size of the group discussing the Earth Parliament small. Organizers of the November meeting in Mexico reserved a room with space for only forty people. Although the issue has been thoroughly discussed in Rio, the invitation did not make clear that those attending should come prepared to decide issues concerning the future of the Earth Parliament. This point is important, because many indigenous cultures do not consider representation in the same terms as Western culture does. For those groups that often make decisions based on consensus, a person designated to speak on behalf of the group can do so only within the confines of his delegated authority, which is often narrowly restricted to specific matters expressly agreed upon by the group beforehand. Once the discussion moves outside a previously agreed-upon agenda, the "representative" becomes a defender of his people's interests but is not allowed to represent those interests. Such a process precludes negotiating matters and agreeing to them simultaneously. A leader would need to return to his people first before agreement could be confirmed. In order to avoid unnecessary delay, representatives attending future meetings should come prepared to decide issues concerning the Earth Parliament.

The practical difficulties of such a decision process are enormous in the context of an Earth Parliament. Indigenous people generally are located in remote areas and lack communication equipment. In addition, the lack of money makes such a process impracticable when a worldwide meeting of indigenous peoples is considered. Thus, any large gathering will take enormous resources and the mobilization of many people. It is thus essential that organizers lay the groundwork for a productive gathering.

The Global Forum discussion revealed that the most pressing questions that representatives to the next meetings need to resolve include the following:

1. *Functions and Purposes.* What will be the functions and purposes of the Earth Parliament at the national and international level? Although this preparatory committee agreed upon the structural shell—national earth parliaments linked to a global Earth Parliament—it did not specify the issues that the Earth Parliament will consider. One idea is that the Earth Parliament could support a program to inform indigenous peoples of their legal rights under national and international law. For example, in the Juruá Valley in the Brazilian Amazon, the *patroes* (rubber barons) and cattle ranchers abuse legal procedures by forging land titles with the collusion of

authorities. Lacking knowledge of their legal rights, indigenous and traditional people often are not even aware that these land transfers are illegal, which greatly hampers their ability to defend themselves.

2. *Representation.* Who would be represented at the national and global earth parliaments? Deciding this may include defining what is meant by "indigenous peoples" and "traditional peoples." Also, many groups expressed a concern that they may not want to participate in a national earth parliament but would consider participating in the global Earth Parliament.

3. *Coordination with Existing National and International Institutions.* To move beyond an independent organization that defines and expresses the positions of indigenous peoples, the Earth Parliament may need to consider how it will interact with existing national and international institutions. Most countries have a government agency that purports to aid indigenous peoples, such as the Bureau of Indian Affairs in the United States and the Fundacao Nacional do Indio (FUNAI) in Brazil. Although many indigenous people distrust these agencies, they may wish to establish some formal relationship between such agencies and the corresponding national earth parliaments or replace the agency.

4. *Communication.* The representatives must establish a mechanism to overcome communication difficulties.

5. *Money.* Communication and travel costs will be massive. Approximately 250 million people live on this planet tribally or traditionally, from the Upik of the Arctic Circle to the aborigines of Australia.

III. A MODEL FOR THE EARTH PARLIAMENT

Under the rules of the Earth Parliament Preparatory Committee, I, as a nonindigenous person, was not allowed to make recommendations. That was not always an easy rule to follow, particularly when the deliberations strayed far from their intended course. Now, standing at a distance from the process, I would like to suggest possible answers to the larger questions that indigenous and traditional peoples will face as they prepare to discuss the Earth Parliament's structure and mission.

A. *The Invitation*

The first administrative hassle that must be overcome is inviting indigenous peoples from around the world to attend future meetings. In some countries, extensive lists of contact persons have been created. In addition, the Global Coalition for Biological and Cultural Diversity, the

organization responsible for the Earth Parliament Preparatory Committee, already has a list of several thousand indigenous groups.

B. Functions

1. Education

A primary focus of the Earth Parliament should be to educate indigenous and traditional people about their land rights, civil rights, environmental rights, and human rights. This could be done immediately by using the expertise of lawyers and others already working in the field. For example, the Núcleo de Direitos Indígenas (NDI), a Brazilian NGO that protects indigenous rights, has started a pilot project in which it is conducting education courses in indigenous rights under Brazilian law. NDI is training one or two Ticuna Indians in each Ticuna community to respond to attacks against their people's rights. The biggest problem NDI has had so far is finding a large enough room to meet the demand for the courses. Jorge Terena also has proposed a similar project to train paralegals in each community to recognize infringements of land, civil, human, and environmental rights.

In the long term, the Earth Parliament's education activities should be to encourage members of the indigenous and traditional peoples to attend law school and then return to the village as advocates to defend the people's rights. In Brazil, for example, there are no indigenous people who have returned to their villages as lawyers. NDI also is assisting in the legal training of a Pankararu Indian. The recognized need for such education and legal training is underscored by the request of the Alliance of Forest Peoples from Brazil's Juruá Valley to CIEL for exactly this type of assistance.

2. Communication

The Earth Parliament also can serve as a means for communication. Communication would provide greater access to publicity, ensuring that information about these problems reaches the media and environmental and human rights groups. Greater communication would allow indigenous and traditional groups to share information that allows them to meet others in similar situations and ends an isolation that helps perpetuate undiscovered abuses of their rights. Greater communication also will allow them to share strategies, both successful and unsuccessful, for protecting the rights and interests of indigenous and traditional peoples.

In addition, greater communication would provide access to services such as lawyers and technical experts, which indigenous and traditional peoples might not otherwise know exist. A network of professionals who

are interested in working for indigenous and traditional peoples will decrease the costs of finding professionals such as attorneys or anthropologists who have helped implement successful strategies or who can assist in bringing legal claims regarding environmental or human rights abuses or demarcating indigenous lands.

Quick and effective communication of ideas and urgent problems will be handled best by a series of central reporting stations at the national level, which are connected to a global information center. Ordinary mail, although the cheapest form of communication, will be totally insufficient to conduct Earth Parliament business. The proliferation of computer mail networks makes such a system an attractive means of communication. But installation of a computer network is practicably impossible at the community level because many groups do not have electrical power. With a dedicated corps of individuals (or regular postal carriers) to relay important information, local communities could report to regional computer centers any human rights violations or simply record ideas that may be of use to indigenous and traditional peoples worldwide. These regional nodes could transmit information to an international computer center, which in turn would transmit the information to other regional nodes.

3. Model for Alternative Governance

In the short term, the Earth Parliament likely will have to find a mechanism for communicating with existing international organizations. In the long term, however, an Earth Parliament can serve as a model for meaningful, democratic participation at the global level. International relations remain almost exclusively the domain of nation-states, which claim to represent all other groups.⁹ UNCED highlighted the fact that citizens are not welcome in the decision-making process and that governments are not representing the opinions of a large number of citizens. International law remains undemocratic because it is not governed by people to serve people. It remains the law of a collection of nation-states rather than the law of an international society.¹⁰ The Earth Parliament, as conceived in Rio and elaborated upon in this article, offers the opportunity to put some of the wealth of ideas brought to the Global Forum into action through a demonstration project. If the Earth Parliament is able to implement its goals successfully and make decisions democratically concerning indigenous and traditional peoples using these alternative structures, the birth of a new world governance may become more of a reality.

9. *See generally* PHILIP ALLOTT, *INTERNATIONAL LAW AND INTERNATIONAL REVOLUTION: RECONCEIVING THE WORLD* (1989).

10. *Id.* at 8, 16-17.

C. Representation

With over 3,000 distinct indigenous and traditional groups in Brazil alone, an effective method for ensuring equitable participation must be implemented. To ensure maximum autonomy, the national parliaments would be allowed to choose their own method for local representation. However, imposing a uniform method for choosing representatives even at the national level likely would be an impossible task given the different types of governance employed by indigenous peoples. Some groups base leadership on heredity, similar to Western monarchies. Other groups make decisions by consensus only. Representation at the community or village level may be accomplished best by allowing each individual community or village to choose its representative in any manner it wants, provided that the community delegates authority to make decisions on behalf of the community. If that process creates an overly large national parliament, representation at the group level, rather than village level, may be required. In Brazil, this still means that 3,000 groups are eligible to participate, and they may find it useful to choose a higher level at which to organize.

D. Definition of Membership

A question that vexed the Earth Parliament Preparatory Committee was whether to define "indigenous peoples" and "traditional peoples" for purposes of limiting membership in the Earth Parliament. The term "indigenous peoples" was not so troubling, likely because almost everybody in the room was, without question, an indigenous person. The term had to be defined so that the term "peoples" was used to ensure that indigenous peoples would be entitled to the right to self-determination. "Traditional peoples," however, caused a bit more trouble, because there is a wide variety of people who could be considered "traditional" but for whom no special rights under international law exist. A full discussion was impossible (and perhaps unnecessary) at the Preparatory Meeting because only two traditional groups were represented, the *cabloclos* (backwoods people)¹¹ and the *serinqueriros* (rubber tappers). Traditional peoples, although "related" by vocation, form distinct groups separated by geography as well as culture. Presumably, they will not welcome classifications that, for example, treat all rubber tappers as one group. Rubber tappers in the Alto Juruá Valley have little contact with rubber tappers from other regions, although they are trying to change this. Rubber tappers from

11. The *cabloclos* are a "population of backwoods folk formed out of the long history of detribalization, miscegenation, and extraction, from each immigrant wave that left people behind in the region" that make their living by hunting, fishing, farming, and other means. SUSANNA HECHT & ALEXANDER COCKBURN, *THE FATE OF THE FOREST: DEVELOPERS, DESTROYERS AND DEFENDERS OF THE AMAZON* 167 (HarperCollins 1990) (1989).

distinct regions should be granted full rights to participate in the Earth Parliament. The same holds true for nut pickers, coffee bean pickers, and others.

The more difficult question is who *is* a traditional person? Will the distinction be made based on vocation, on level of acculturation into mainstream society, on the degree to which that classification of individuals subsists, or on some other arbitrary basis? Because the Earth Parliament is essentially about empowering those people who traditionally find themselves politically disenfranchised, an inclusive definition is most appropriate. Disenfranchisement in itself is not a useful measure, however, because the great majority of the population, whether living traditionally or not, would be included. For the purposes of the Earth Parliament, any definition must be politically and administratively feasible. A definition characterized by existing legal parameters, such as those of the International Labour Organisation's Conventions Concerning Indigenous and Tribal Peoples (Nos. 107 and 169),¹² is useful to bring clarity and consistency to the types of people and rights that should be included.

The sensitivity of indigenous peoples to nonindigenous peoples' efforts to fashion a definition is notable. Indigenous peoples have criticized strongly the ILO Conventions for their paternalistic nature.¹³ The draft text of the United Nations Draft Universal Declaration of Indigenous Rights does not even have a definition of "indigenous peoples," apparently allowing groups the right to determine for themselves whether they are indigenous.¹⁴ Nonetheless, in order to provide a reasonable model by which to structure the Earth Parliament, "traditional peoples" must be defined so that initial efforts to form the Earth Parliament are not bogged down by the sheer numbers of people who wish to take part. The clearest way to do this is to use existing parameters for defining "indigenous peoples," such as those found in ILO 169. ILO 169 defines "tribals" and "indigenous peoples" as those peoples whose social, cultural, and economic conditions and practices differ from those of the national community and whose

12. Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, adopted June 26, 1957, 328 U.N.T.S. 247, International Labour Organisation Convention No. 107 (entered into force June 2, 1959); Convention Concerning Indigenous and Tribal Peoples in Independent Countries, adopted June 27, 1989, art. 1, 28 I.L.M. 1382, International Labour Organisation Convention No. 169 [hereinafter Convention No. 169].

13. See, e.g., Sharon Venne, *The New Language of Assimilation: A Brief Analysis of ILO 169*, WITHOUT PREJUDICE, vol. II, No. 2, 1989, at 53.

14. *Discrimination Against Indigenous Peoples: Report of the Working Group on Indigenous Populations on its Ninth Session*, U.N. Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 43rd Sess., at para. 73, U.N. Doc. E/CN.4/Sub.2/1991/40 (1991).

ancestry originates prior to conquest, colonization, or establishment of the existing state.¹⁵

Two critical factors in the ILO definition are the temporal dimension and the development dimension. The temporal dimension considers the length of time a group of people has been living under certain conditions. The conditions under which they continue to live form the development dimension. Because traditional groups cannot base their rights, as indigenous peoples can, on displacement by new settlers (often they are part of the colonizing group), the temporal factor need not go back to the time of colonization or conquest. There is a need to show some longevity, however, because the term "traditional" implies a long-standing practice or history. Thus, the time dimension requires that a group of people has lived under the prescribed set of conditions for three or four generations in order to be considered eligible for traditional status within the Earth Parliament. For the purpose of creating a clear parameter, I will arbitrarily choose four generations, or roughly 100 years.

To satisfy the development dimension, a group of people should live under conditions that existed prior to the Industrial Revolution. Those groups defined as traditional should employ methods for the harvest of crops or the hunting of animals that were used prior to the Industrial Revolution, the moment in history when the implements of production changed the majority of the Earth's population from a marginally unsustainable society to an enormously unsustainable society. Still, some degree of mechanization should be allowed; how much is difficult to determine arbitrarily. The rubber tappers, who use motors to bring their products to market, are traditional. The Amish, who use saws to cut wood and who must enroll their children in schools established by the dominant culture, are traditional.¹⁶ At what point has the group exceeded the level of development that will bar it from participation in the Earth Parliament? A perfect definition of traditional peoples may be impossible. For the purposes of the

15. Convention No. 169, *supra* note 12, at 1384-85.

16. An interesting question posed by the development dimension is whether indigenous peoples lose their rights as indigenous peoples based on their level of development and its effect on their traditional economic, social, and cultural ways of living. For example, when Native Americans in Alaska begin to hunt with high-powered rifles and snowmobiles and, as a result, they begin to hunt in a way that greatly exceeds their subsistence needs, do they lose their rights (but not status) as indigenous peoples? Before an indigenous people loses its rights, is more required, such as cable TV, loss of other cultural traditions, or greater reliance on the dominant economic system? Or do indigenous peoples, by virtue of their existence in a region prior to the arrival of Europeans always maintain their rights as indigenous peoples?

This question is being argued intensely in Brazil after Chief Paiakan of the Kaiapo was charged with raping a woman. In addition to gaining international fame for ousting gold prospectors mining illegally on Kaiapo land, stopping the government from disposing

Earth Parliament, however, a broad definition should be permitted. Groups that fall reasonably well into the temporal and development factors outlined above should be allowed to participate.

IV. CONCLUSION

A global Earth Parliament to provide a platform for organizing and addressing indigenous and traditional people's ideas and concerns is a much needed institution given the open hostility, or at least ambivalence, of many nations towards indigenous peoples' needs and rights. A global Earth Parliament also is an extremely ambitious dream. But, as Mickey Rourke's character Boogie says in the movie *Diner*, "If you don't have good dreams, you have nightmares."

At present, most indigenous peoples are living a nightmare, due in part to national problems, of which P. J. O'Rourke speaks, and international problems, which Chief Juruna addresses. The murder of Chico Mendes is the most well-known of hundreds of violent attacks on rubber tappers and indigenous people throughout the Amazon. Americas Watch reports that more than 1,500 people have been murdered over the past twenty-five years in land disputes in Brazil's interior.¹⁷ Rubber tappers and indigenous peoples who try to organize their people or form trade unions are beaten, threatened with death, or murdered.¹⁸ In most cases, authorities fail to protect the victims or even to investigate the crimes. For instance, an individual linked to logging interests who threatened Antônio Macedo, regional coordinator of the National Council of Rubber Tappers, was never prosecuted, although military police witnessed the assault.¹⁹ In addition, the rubber barons conspire with local authorities to bring false criminal and

nuclear waste and initiating a World Bank project on Kaiapo lands, Paiakan also owns two cars, an airplane, is director of an ecological company set up by the London-based cosmetic company Body Shop, and sits on the board of the Rainforest Foundation, which was established by musician Sting. In a court appearance, Paiakan arrived in war paint and departed accompanied by five airplanes (purchased from the sale of logs from the Kaiapo reservation) and about 40 Kaiapo armed with bows and arrows. If Paiakan is considered an Indian, he is not subject to Brazilian law, because the law treats Indians as having "limited capacity." On the other hand, Brazilian law provides that Indians may become emancipated and subject to Brazilian law. See Julia Preston, *Trial Spurs Debate on Brazil's Indians; Cultural Identity, Legal Status at Issue in Kaiapo Couple's Rape Case*, WASH. POST, Aug. 17, 1992, at A1.

17. AMERICA'S WATCH, THE STRUGGLE FOR LAND IN BRAZIL 1 (1992).

18. See *A Voz Da Floresta, Os Povos Do Tinton-Rene* [A Voice of the Forest, The People of Tinton-Rene](videotape on file with CIEL) (showing the beating of Antônio Macedo, a rubber tapper and organizer in the Juruá Valley).

19. See *Amazon Environmental Leaders Face Prison*, NATIONAL COUNCIL OF RUBBER TAPPERS PRESS RELEASE (Brazil), May 28, 1992 (on file with author).

civil charges against the rubber tappers and indigenous peoples.²⁰ In at least one case, a woman was paid to bring false criminal charges against a leader of the rubber tappers.

Even when the Forest Peoples are able to obtain legal representation, they have great difficulty in obtaining redress. At least one judge in the State of Acre, apparently in complicity with the powerful families that dominate the state, has publicly announced that he views the rubber tappers as enemies, and his decisions reflect this antagonism. The courts have ordered rubber tappers who use certain lands to pay "rent" to *patroes* and loggers who do not even have title. They have issued orders forbidding rubber tappers to hold meetings, violating their human right to freely associate. Finally, it appears that environmental authorities frequently issue licenses for clearing of the rain forest in a manner contrary to law. According to a report by Friends of the Earth-UK, nearly 100% of the Brazilian mahogany that enters the international market is stolen by loggers from the lands of indigenous peoples and rubber tappers.

International law, despite some exceptions, continues to allow states to present themselves as representing the entire society, when they are actually excluding many groups of people.²¹ UNCED highlighted the fact that citizens are not welcome in the decision-making process and that governments are not representing the opinions of a large number of citizens. International law remains entrenched in traditional notions of statism, rather than recognizing the citizen as sovereign.²² The lack of citizen participation and the lack of real substantive obligations at UNCED led Aisha Mustafa of the Sudan to comment that the world's governments have chosen a plan for sustainable politics rather than a sustainable plan for the earth.²³ The implications of this undemocratic system of international law will be the continued failure to promote and achieve sustainable living and sustainable use of the world's resources—knowledge of which seems to belong largely to indigenous and traditional peoples. According to British legal scholar Philip Allott, the long-term effects of this undemocratic system may eventually destroy international society.²⁴

20. For example, rubber barons and loggers brought charges against Antônio Macedo and Damiao Goncalves da Silva for failure to pay "rent" on trails that are claimed by loggers but to which they have no legal title.

21. See generally ALLOTT, *supra* note 9.

22. See Anthony D'Amato, *The Invasion of Panama Was a Lawful Response to Tyranny*, 84 AM. J. INT'L L. 516 (1990).

23. Personal Interview in Rio de Janeiro with Aisha Mustafa, Environmental Liaison Center International (June 4, 1992).

24. PHILIP ALLOTT, *EUNOMIA* Xix (1990).

An Earth Parliament may be the first step toward democratic participation for indigenous and traditional peoples and may serve as a model for international law reform. It offers a possibility for greater communication, cooperation, and coordination among indigenous groups. It is a dream, but a dream worth dreaming.