

# The rights of Indigenous peoples

by Kathy Makela

One year after the 500th anniversary of Columbus being discovered by the indigenous peoples of the Americas the global community is celebrating the International Year for the World's Indigenous Peoples. The U.N. is hoping to mark this occasion with the adoption of the *Declaration on the Rights of Indigenous Peoples*. This declaration is of great significance for it marks the first time that an international organization such as the U.N. has recognized that indigenous peoples globally have certain "rights" above and beyond the "western" concept of individualistic human rights and fundamental freedoms. At the same time, it may mark a departure from the traditional "western" view that indigenous peoples are "domestic problems" subject to domestic remedies. That is, indigenous peoples are peoples in the true sense of the word, and as peoples they have the right to self-determination. Just how far this right will be recognized and enforced by the nation states of the world is another question, however.

In recent years the international community has become increasingly sensitive to the need to establish international standards in the area of rights of indigenous peoples. The U.N. began to formally address the concerns of indigenous peoples in 1970 after the release of the draft report on racial discrimination by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (the Sub-Commission). The Economic and Social Council (ECOSOC) of the U.N. authorized the Sub-Commission "to make a complete and comprehensive study on the problem of discrimination against indigenous populations," appointing Martinez Cobo Special Rapporteur.

After ten years of analyzing the global situation, Cobo presented his 1400 page report: "Much of their land has been taken away and whatever land is left to them is subject to constant encroachment. Their culture and their social and legal institutions and systems have been constantly under attack at all levels...It is only natural...that there should be resistance to further loss of their land and rejection of the distortion or denial of their history and culture and defensive/offensive reaction to the continual...aggressions and attacks on their way of life...They have a right to continue to exist, to defend their lands, to keep and transmit their culture, their language, their social and legal institutions and systems and their ways of life, which have been illegally and unjustifiably attacked."

In light of this study and pressing demands globally, the Sub-Commission, in 1981, proposed the creation of a Working Group on Indigenous Populations (W.G.I.P.), mandated to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of

indigenous peoples and to give special attention to the evolution of standards concerning the rights of indigenous peoples. This summer a complete draft declaration was ready for consideration by the Sub-Commission. If this draft is approved by the Sub-Commission, the Human Rights Commission and the ECOSOC, it will be before the G.A. by the fall of 1993. Once the G.A. approves the declaration, the Working Group can begin drafting a treaty or convention.

Paragraph 1 of the Draft provides: "Indigenous peoples have the right to self-determination, in accordance with international law. By virtue of this right, they freely determine their relationship with the States in which they live, in a spirit of coexistence with other citizens, and freely pursue their economic, social, cultural and spiritual development in conditions of freedom and dignity."

This right of self-determination has only recently found its way into the Draft, after years of years of lobbying for its inclusion by indigenous peoples and despite strenuous opposition by member states. In fact, member states are very reluctant to acknowledge indigenous peoples as having any type of rights beyond that which they have jealously and guardedly "given" to them. Why, and what is the significance of this reluctance?

As was submitted by the Indigenous Pre-Session to the Working Group in 1987, when indigenous peoples' speak of self-determination they are really speaking of collective political rights and collective land ownership and resource rights. This, essentially contrasts with the international law of human rights which is essentially individualistic and egalitarian - its framework is unable to adequately deal with collective rights. The right of "peoples" to "self-determination" is one of the few collective rights recognized under international human rights law. However, indigenous peoples have not fared much better by advocating an indigenous right to self-determination, for while there has been no legal justification for the colonial process which has served to create "indigenous enclave populations," nation states which control the international legal order have restricted the right of self-determination to non-contiguous territories.

Nonetheless, the right to self-determination is one of (if not the) most dynamic issues in international law today. After the First, and in particular, the Second World War, it was realized by the international community that colonialism (that being the denial of peoples' aspirations to establish their own institutions of government) had been a major cause of global instability over the past 200 years. The right of self-determination is, then, the right of people living in a territory to determine the political and legal status of that territory. This right has evolved into a program and policy of the U.N. known

as decolonization, beginning with its recognition in art. 1(2) and 55 of the U.N. Charter, with the principles guiding the policy being established under art. 73 and 74.

Art. 73 calls upon member states who administer non-self-governing territories to promote social, economic, political and educational progress in the territories and to assist in developing appropriate forms of self-government, taking into account the political aspirations and stages of "development" and "advancement" of each territory. The term "territory" was later defined by Res. 1541 to apply to "territories which are geographically separate and ethnically and/or culturally distinct from the country administering it," meaning the right was limited to the colonial context of overseas possessions. 1541 also defined the three forms self-determination may take: independence as a sovereign state; integration as a sovereign state; and, association with an independent state. Equally importantly, Res. 1514 established that any action which attempts partial or total disruption of the national unity and territorial integrity of a state is incompatible with the U.N. Charter.

Indigenous peoples, for the most part, have been victims of internal colonization. That is, their ancestral lands have been invaded, occupied, and literally taken over by European colonizers which have been portrayed throughout written history as "settlers" rather than colonizers. European laws, customs and religions were imposed and it was assumed that the indigenous peoples would accept their fate of assimilating into the dominate, colonizing society, with those who resisted eventually dying out. Consequently, indigenous claims to self-government have, up until this point, been dismissed by national governments as matters of "domestic concern" involving "their" minority groups or populations.

And so, when Canada voices strong conditional support of the W.G.I.P.'s mandate of developing international standards in the field of indigenous rights, its first condition is, of course, that references to aboriginal "peoples" is consistent with the terminology of the 1982 Constitution with respect to Canada's domestic situation. That is, it is not to be interpreted as supportive of the notion that Canada's aboriginal peoples are "peoples" in the sense of having the right of self-determination under international law.

Secondly, Canada maintains that the draft declaration must be consistent with, and should as much as possible build on, the relevant international instruments which embody universally recognized human right. Drawing from that premise, Canada maintains that the right of self-determination, if applicable to indigenous or aboriginal peoples, has limited application, given the 1970 U.N. Declaration of Principles of International Law on Friendly Relations and Cooperation Among States

which, in part, states: "Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action that would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states..."

And thirdly, in order to be effective, Canada feels that any such declaration must ultimately be acceptable to the member-states, keeping in mind that human rights are subject to certain justifiable limits under national laws. Therefore, a balance must be struck between the rights of indigenous peoples and the rights of others inhabiting the same territory. As well, the declaration must clearly indicate where specific rights accrue to the indigenous "collective" or indigenous individuals. Since the focus of the W.G.I.P. is on human rights, the government assumes the instrument should concentrate on the rights of the individual.

What has saved the draft declaration, in terms of maintaining member state support, is the operative paragraph (to be numbered) following para. 13, which reads: "Nothing in this Declaration may be interpreted as implying any right to engage in any activity or to perform any act contrary to the Charter of the U.N. or to the Declaration of Principles on Friendly Relations..." Consequently, while Canada may sign a declaration recognizing aboriginal peoples' right of self-determination, its interpretation of the right is far different than that of the indigenous peoples. It is a fairly restrictive right akin to a municipal type of government involving the delegation of specific powers over matters directly affecting indigenous peoples. This contrasts sharply with the indigenous view which sees itself as finally having the right to jurisdiction and decision-making powers over vast resources and areas of government traditionally under provincial or federal jurisdiction. And of course, by signing this declaration Canada is not committing itself to any binding provisions. It is merely a declaration announcing to the global community that yes, Canada acknowledges the existence of aboriginal peoples and yes, it is dealing with them.

## Partnerships

Continued from page 9

ward their fellow humans. They seek forgiveness for the cycle of brokenness, arrogance, impure thoughts and abusive actions that pervades their lives. They know too that they of themselves will have great difficulty breaking out of that very cycle. Nonetheless, each is encouraged to do so, and to work toward that day when our lives will be defined more by celebration and joy than by hate and anger.

## Douching

Continued from page 9

Everything about the way wimmin are portrayed in douching commercials and on douching packages present them in a stereotypical manner. Nature and the home are common settings for douching ads. Words like "fresh", "feminine" and "convenience" are often associated with douches and what they can do for wimmin. The names of douches evoke a passive image of wimmin, like Shy. Even their various scents encourage a view of wimmin as innocent and frivolous, for example baby powder scent and spring flower scent.

The wimmin in the douche commercials and on the packages are like the helpless victims in romance novels. These wimmin are in a predicament. The hero, Massengill douche, rescues the wimmin and thus solves all her problems (the major one being eliminating her female odor). It does not matter if it's her mother who hands her the douche. The problem is with the message that lurks beneath this beautiful (yet superficial) facade: "You're disgusting. You need this product to make you acceptable to the rest of us (society)."

But if you are going to douche there are some side effects that may be linked with douching. For example, the desire to run and/or dance through fields of flowers, the need to wear frilly and feminine dresses or white bathrobes and the urge to stop and smell the roses (or any other flower for that matter). Finally, these side effects have been known to occur most often on a summer's eve, especially to young, beautiful, white wimmin with slender figures.

## Apple Computer Dealership Notice

Effective February 15<sup>th</sup>, the University Bookstore will become an authorized educational dealer for Apple Computers. Our mandate will be to retail Apple computers to the full-time student, faculty, and staff of UNB and STU. Departmental Apple hardware needs will continue to be handled through the UNB Computing Services Department.

**UNIVERSITY BOOKSTORE**

Hours: 9:00 to 4:00/Mon-Fri

453-4664

AIESEC

Send a

**SING-A-GRAM**

to your Valentine

**When: February 8, 9, 10**  
from 9A.M. to 5P.M.

**Where: a booth will be set up in front**  
of the Help Centre in the SUB Lobby

**Cost: \$5.00**

An AIESEC member  
will deliver a **SONG**  
& **CARNATION** to your  
Valentine anywhere  
on campus.  
Deliveries made on  
February 10, 11, 12.



♥WIN DINNER FOR TWO♥  
at Mexicali Rosa's