

Citations/Footnotes: Paper by Mililani B. Trask Re: Lands Territories & Resources

1. PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES AND MINORITIES Indigenous peoples and their relationship to land
Final working paper prepared by the Special Rapporteur, Mrs. Erica-Irene A. Daes
E/CN.4/Sub.2/2001/21, 11 June 2001.

2. Martinez see: (M. Alfonso Martinez, Special Rapporteur, Final Report),
E/CN.4/Sub.2/1999/20, 22 June 1999, p. 39, para. 252: The first general conclusion concerns the issue of recognition of indigenous,
Erica Irene Daes see: U.N. Sub-Commission on the Promotion and Protection of Human Rights, Indigenous peoples and their relationship to land: Final working paper prepared by the Special Rapporteur, Mrs. Erica-Irene A. Daes, U.N. Doc. E/CN.4/Sub.2/2001/21, 11 June 2001, para. 9,
Chavez see: U.N. Commission on Human Rights, Report of the working group established in accordance with Commission on Human Rights resolution. 1995/32, UN. Doc. E/CN.4/2002/98, 6 March 2002 (Chairperson-Rapporteur: Mr. Luis-Enrique Chavez (Peru)), p. 8, para. .

3. S.J. Anaya, *The Native Hawaiian People and International Human Rights Law: Toward a Remedy for Past and Continuing Wrongs* (1994) 28 Georgia L. R. 309, at p. 346: The importance of lands and resources to the survival of indigenous cultures is widely acknowledged. Relevant to indigenous peoples linkage with lands and resources is the self-determination provision common to the International Human Rights Covenants, which affirms: In no case may a people be deprived of its own means of subsistence. See also: U.N. Commission on Human Rights, Human rights and indigenous issues: Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, Addendum: Mission to Canada, note 96, supra, p. 31, para. 95 (Conclusions): While Aboriginal persons may eventually attain material standards of living commensurate with other Canadians, the full enjoyment of all their human rights, including the right of peoples to self-determination, can only be achieved within the framework of their reconstituted communities and nations, in the context of secure enjoyment of adequate lands and resources.

4. U.N. General Assembly, The situation of human rights and fundamental freedoms of indigenous people: Note by the Secretary-General (Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people), note 14, supra, at p. 7, para. 17: The land rights issue cannot be separated from the issue of access to, and use of natural resources by indigenous communities, and is an essential issue for the survival of indigenous peoples, which must be carefully studied, since access to the natural resources present in their habitats is essential to their economic and social development. E. -I. Daes, *The Spirit and Letter of the Right to Self-Determination of Indigenous Peoples: Reflections on the Making of the United Nations Draft Declaration?*, in P. Aikio & M. Scheinin, eds., *Operationalizing the Right of Indigenous Peoples to*

Self-Determination (Turku/bo, Finland: Institute for Human Rights, bo Akademi University, 2000) 67, at p. 81: A fundamental aspect of the true spirit of self-determination is respect for the land without which indigenous peoples cannot fully enjoy their cultural freedom or cultural integrity.

5. U.N. Sub-Commission on the Promotion and Protection of Human Rights, Indigenous peoples permanent sovereignty over natural resources: Final report of the Special Rapporteur, Erica-Irene A. Daes, E/CN.4/Sub.2/2004/30, 13 July 2004, p. 13, para. 38: “Logically arising from these property rights, as well as their right to self-determination and the right to development, there is also an increased recognition of indigenous peoples right to give or withhold their prior and informed consent to activities within their lands and territories and to activities that may affect their lands, territories, and resources.” See identical Art. 1, para. 2 in the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights: “All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.”

6. U.N. General Assembly, The situation of human rights and fundamental freedoms of indigenous people: Note by the Secretary-General (Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people), note 14, supra, at p. 7, para. 17: The land rights issue cannot be separated from the issue of access to, and use of natural resources by indigenous communities, and is an essential issue for the survival of indigenous peoples, which must be carefully studied, since access to the natural resources present in their habitats is essential to their economic and social development. E.-I. Daes, *The Spirit and Letter of the Right to Self-Determination of Indigenous Peoples: Reflections on the Making of the United Nations Draft Declaration*, in P. Aikio & M. Scheinin, eds., *Operationalizing the Right of Indigenous Peoples to Self-Determination* (Turku/bo, Finland: Institute for Human Rights, bo Akademi University, 2000) 67, at p. 81: A fundamental aspect of the true spirit of self-determination is respect for the land without which indigenous peoples cannot fully enjoy their cultural freedom or cultural integrity.

7. see fn 5 above.

8. Stavenhagen, *The Ethnic Question: Conflicts, Development, and Human Rights*, note 7, supra, at p. 105: Indigenous peoples are aware of the fact that unless they are able to retain control over their land and territories, their survival as identifiable, distinct societies and cultures is seriously endangered. *Conclusions and Recommendations on Indigenous Autonomy and Self-Government*, note 148, supra, para. 4: Indigenous territory and the resources it contains are to the physical, cultural and spiritual existence of indigenous peoples and to the construction and effective exercise of indigenous autonomy and self-government.

9. International Covenant on Civil and Political Rights, Art. 47 and International

Covenant on Economic, Social and Cultural Rights, Art. 25.” Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.”

See also: J. Crawford, *The Right of Self-Determination in International Law: Its Development and Future*, note 150, *supra*, at p. 21: “Self-determination was a right of peoples, but if it was the first to be accepted it was by no means the only such right. For example, the principle of permanent sovereignty over natural resources could be seen as a right of peoples to long-term control over their own resources, including the right of a later generation to review earlier agreements for the exploitation of natural resources in the light of changed circumstances.”

Re: *Jus Cogens* see: I. Brownlie, *Principles of Public International Law*, note 102, *supra*, at p. 515: Other rules that have this special status [of *jus cogens*] include the principle of permanent sovereignty over natural resources and the principle of self-determination.

10. U.N. Sub-Commission on the Promotion and Protection of Human Rights, *Indigenous peoples permanent sovereignty over natural resources: Final report of the Special Rapporteur, Erica-Irene A. Daes*, note 187, *supra*, at p. 17, para. 56 (Principal Conclusions): The right of indigenous peoples to permanent sovereignty over natural resources may be articulated as follows: it is a collective right by virtue of which States are obligated to respect, protect, and promote the governmental and property interests of indigenous peoples (as collectivities) in their natural resources.

See also: A.A. Forno, *Indigenous Peoples and the Right of Self-Determination: A Governmental Perspective in International Centre for Human Rights and Democratic Development, Seminar: Right to Self-Determination of Indigenous Peoples (Montreal: ICHRDD, 2002)* 38 at p. 42: It cannot be forgotten that the right of peoples to dispose freely of natural wealth and resources so as to pursue their development is granted by virtue of the exercise of self-determination on the part of both indigenous and national peoples. A violation of the right to self-determination would occur if indigenous peoples were discriminated against or marginalized from the benefit of natural wealth and resources, especially when the latter are located in the territory where they live.

11. [204] Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, note 95, *supra*, para. 8: the [Human Rights] Committee emphasizes that the right to self-determination requires, *inter alia*, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence (art. 1, para. 2). Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Russian Federation*, U.N. Doc. E/C.12 /1/Add.94, 12 December 2003, para. 39: The Committee, recalling the right to self-determination enshrined in article 1 of the Covenant, urges the State party to intensify its efforts to improve the situation of the indigenous peoples and to ensure that they are not deprived of their means of subsistence. Committee on Economic, Social and Cultural Rights, *General Comment No. 15, The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, 29 th sess., U.N. Doc. E/C.12/2002/11, 20 January 2002, para. 7: Taking note of the duty in article 1, paragraph 2, of the Covenant, which provides that a people may not be deprived of its means of subsistence, States parties should

ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples.

See also: Economic and Social Council, Human Rights: Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, U.N. Doc. E/2003/73, 25 June 2002, p. 3, para. 4: The activities of human rights treaty monitoring bodies contribute to the implementation of the U.N. Millennium goals. While analyzing reports of States parties, the treaty bodies consider country policy, law and practice, and advise Governments on shortcomings and possible improvements. This dialogue, although focusing on treaty obligations, provides, given the link between human rights and the goals, an important support to the latter. The treaty bodies through their general comments contribute to the clarification of the legal and policy ramifications of the implementation of the human rights standards and thus provide an invaluable input to the concretization and realization of the goals.

12. Committee on the Elimination of Racial Discrimination, General Recommendation XXIII (51) concerning Indigenous Peoples, CERD/C/51/Misc.13/Rev.4, (adopted at the Committee the meeting on 18 August 1997), para. 5: The Committee [on the Elimination of Racial Discrimination] especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return these lands and territories. Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination: Brazil, CERD/C/64/CO/2, 12 March 2004, para. 15: the Committee [on the Elimination of Racial Discrimination] recommends that the State party adopt urgent measures to recognize and protect, in practice, the right of indigenous peoples to own, develop, control and use their lands, territories and resources.

13. Extractive Industries Review, Striking a Better Balance: The Final Report of the Extractive Industries Review, Vol. I, note 79, supra, at p. 40.

14. U.N. Commission on Human Rights, Global Consultation on the Realization of the Right to Development as a Human Right: Report prepared by the Secretary-General pursuant to Commission on Human Rights resolution 1989/45, U.N. Doc. E/CN.4/1990/9/ Rev. 1, 26 September 1990, para. 104: The experience of indigenous peoples and development clearly demonstrated that human rights and development are inseparable, for the abuse of the rights of indigenous peoples is principally a development issue. Forced development has deprived them of their human rights, in particular the right to life and the right to their own means of subsistence, two of the most fundamental of all rights. Indigenous peoples have been, in fact, victims of development policies that deprive them of their economic base - land and resources.