Conclusion

The persistence of the *Tagbanwa*'s use of their customary laws testifies not only of their cultural resilience but also of the continued relevance of these laws. These laws are not just part of the past but also of the present. Serving as evidence of their highly developed capability for natural resource management, their customary laws must be supported and must never be supplanted by laws conceived at much later times that are patterned after western models. To the mainstream society who lost most of their indigenous identity to colonial exposure, the customary laws of the *Tagbanwa* are enriching. Through such laws, the *Tagbanwa* reveals how sustainable development was done in the past and should be done at present. They also serve as a guide to inspire the nation to attain sustainable development for the future.

A Synthesis on the Colloquium on Indigenous Peoples*

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I. The Process of Inquiry

This Synthesis presents the output of the Colloquium on Indigenous Peoples, held on November 14-15, 2002 at the Ateneo de Manila University School of Law. Articulating various insights formulated during the proceedings, it seeks to point out the emergent problem areas that were raised throughout the course of the proceedings, and to assemble the different propositions and recommendations of the participants into one coherent solution set. Specifically, it intends to abstract the various issues raised and discussed during the colloquium. The Synthesis is principally based on the opening remarks of key speakers, the presentation of research papers by various research institutions, the comments and debates held during the open fora, and to some extent, the author's own thoughts and observations while facilitating the conference. It may, therefore, serve as a digest of the actual proceedings. That this essay incidentally summarizes the Colloquium, however, is not to lose sight of its basic purpose: to engage the reader in a process of abstraction. To be comfortable with the analysis, therefore, it will be noteworthy to first review the speeches and position papers taken during the proceedings.

As this essay is titled, only the work product of the process will be outlined. A step-by-step comprehensive discussion on the methodological journey will not serve the purpose of this Synthesis. Propositions, therefore, will only constitute either of two things: the emergent problem areas or the set of principled standards.

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* This article is based on the author's synthesis of the first day of the Colloquium.

* Moderator and Master of Ceremonies during the first day of the Colloquium.

The author thanks Jose C. Salvosa for assisting him in formulating this synthesis during the Colloquium.

Cite as 47 Ateneo L.J. 775 (2002).

II. The Product of Inquiry

A. The Emergent Problem Areas

In progressive order, there were five problem areas that emerged in the proceedings: (1) the definition of the penumbra of rights of indigenous peoples; (2) the opposition of these rights with private rights of non-members; (3) the opposition of these rights with claims of the state; (4) the process of conflict resolution between the two; and (5), the means of enforcing a settled program of action.

1. Root Issue: The Rights of Indigenous Peoples

The discussion on the penumbra of rights of indigenous peoples focused mainly on definitional concerns. These rights include the problem of defining or delineating ancestral domain and ancestral land,[1] the auxiliary concept of ancestral waters,[2] and management rights over natural resources found therein.[3]

1. Atty. Evelyn Dunuan, Chairperson, National Commission on Indigenous Peoples, Welcome and Opening Remarks at the Colloquium on Indigenous Peoples (Nov. 14, 2002) (discussing the incomplete definitions of ancestral domain, ancestral land, and ancestral waters, among others).

2. Philippine Association for Inter-Cultural Development, A Study of the Clamian Tagbanua Ancestral Waters Claim (2002) (unpublished research paper) (on file with the author), *presented by* Kail Zingapan, Paper Presentation at the Colloquium on Indigenous Peoples (Nov. 14, 2002).

3. Raoul Cola, Tagbanwa Customary Law on Environmental Conservation (2002) (unpublished research paper) (on file with the Ateneo Law Journal), *presented by* Raoul Cola, Paper Presentation at the Colloquium on Indigenous Peoples (Nov. 14, 2002) (illustrating Tagbanwa customary laws such as hunting, fishing, selective farming, and other livelihood activities); PANLIPI, Claims and Counterclaims in the Mt. Halcon Ranges: The Iraya-Hanunuo People's Assertion of Rights Over Their Ancestral Domains (2002) (unpublished research paper) (on file with the Ateneo Law Journal), *presented by* Atty. Portia Martinez-Paniergo, Paper Presentation at the Colloquium on Indigenous Peoples (Nov. 14, 2002) (discussing the logging activities, other commercial activities, and government projects which affect the livelihood of Iraya Mangyans); PANLIPI, Partnership for Development in Mt. Guiting-Guiting: Delineation and Resource Management Planning by the Tagabukid Mangyan in Sibuyan Island (2002) (unpublished research paper) (on file with the Ateneo Law Journal), *presented by* Atty. Daniel Dinopol (discussing the process of delivery of resources to indigenous peoples for the multi-sectoral management of ancestral domain). A participant jokingly suggested that members of Indigenous Peoples should be classified as flora and fauna in order to grant them greater rights over the ancestral lands on which they sit.

It must be noted, however, that the above enumeration ostensibly belongs to the general class of property rights. The core of indigenous peoples' rights pertains to the norms and customs of indigenous communities, namely, the right to have their traditions preserved and freely practiced. The movement to codify customary law,[4] for instance, would fall under such a category. These rights, in particular, are kinds of liberties, and may even relate, to a great extent, to the more fundamental right to life.[5]

It may be said that although definitional problems over what constitutes ancestral domain and ancestral lands may more frequently hit the headlines, they nonetheless stay as derivative rights. The right to have one's culture and tradition preserved, on the other hand, should be perceived as original. But all these general classes of rights are very much intertwined, for culture is rooted spatially.[6] The right to have one's ancestral domain defined and ancestral land demarcated would flow from the more basic right to preserve one's lifestyle that has flourished over the same territory.[7] Property rights, at least in the case of indigenous peoples, are protected precisely to give meaning to the greater rights of life and liberty.[8]

Presently, definitional problems revolve around the central theme that rights over ancestral domain and ancestral land are merely nominal rights.[9] Broad definitions do exist but are unsatisfactory to meet concrete and specific circumstances. There is a need for depth and integration.[10] This is

4. This topic was a recurring theme during the afternoon open forum of November 14, 2002.

5. *See* PHIL. CONST. art. III, § 1 ("No person shall be deprived for life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."). For related provisions, see *id.* §§ 4-5 (providing for the freedom of speech and free exercise of religion).

6. *See* Philippine Association for Inter-Cultural Development, *supra* note 2 (stating that ancestral waters as part of the concept of ancestral domain is a source of livelihood and intertwined with culture and tradition).

7. *See id.*; Cola, *supra* note 3 (illustrating how the customary laws of the Tagbanwa cover hunting, fishing, selective farming, and other livelihood activities).

8. *Cf.* Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co. Inc., 50 SCRA 189 (1973) (discussing the primacy of human rights over property rights).

9. Dunuan, *supra* note 1 (discussing the existing problem of incomplete definitions regarding ancestral domain, ancestral land, and ancestral waters).

10. Werner Blenk, Director, International Labour Organization, Welcome and Opening Remarks at the Colloquium on Indigenous Peoples (Nov. 14, 2002) (discussing the need to develop a universal normative framework for the definition of rights of Indigenous Peoples, and suggesting existing foundational sources such as the United Nations Declaration of Human Rights, International

the fundamental problem. A clear example is the emerging and disputed notion of ancestral waters as part of the ancestral domain.[11] For without a concrete and consensual agreement over their definitions, the procedural aspect of conflict resolution would be rendered nugatory because it will be difficult to assert rights that are ill-defined. On the other hand, it can be argued that a procedure for dispute resolution was precisely laid down to help concretize these rights eventually.

The codification of customary law was another controversial topic during the afternoon open forum.[12] The codification movement is relevant to the matter of rights because to codify customary law would help preserve the same.[13] Certainly, members of indigenous cultural communities have a right to preserve their customs,[14] and codification was seen as a vital step towards a long-term solution. Associate Dean of the Ateneo de Manila University School of Law Sedfrey M. Candelaria, incidentally, citing the landmark case of *Cruz v. Secretary*,[15] posited that to codify customary law would publicize the fact of its existence and would therefore heighten respect for the same.[16]

The proposition to codify, however, met frequent opposition. Since most customary laws are based on generations of oral tradition, to codify them would negate their essential quality of verbal transmissibility. This conclusion can be gleaned from Atty. Daniel Dinopol's illustrations.[17] Many customs and practices are, by nature, preserved orally: the mode of transmission (and therefore, of preservation) is inseparable from, and forms an intrinsic part of, the substance transmitted. Moreover, it was asked

Covenant on Civil and Political Rights, and the International Covenant on Social and Economic Rights).

11. Philippine Association for Inter-Cultural Development, *supra* note 1 (discussing the definitional problems underlying the idea of ancestral waters, which may include underground caves, watershed areas, and mangroves); Dunuan, *supra* note 1 (discussing the existing problem of incomplete definitions regarding ancestral domain, ancestral land, and ancestral waters).

12. Afternoon Open Forum, Colloquium on Indigenous Peoples (Nov. 14, 2002) [hereinafter Afternoon Session].

13. *See* PHIL. CONST. art. XII, § 5 (providing for the protection of rights of indigenous cultural communities to ancestral land and the applicability of customary laws governing property rights and relations).

14. *See* Indigenous Peoples' Rights Act, Republic Act 8371 (1997).

15. 347 SCRA 128 (2000) (majority opinion) (holding in favor of the constitutionality of IPRA).

16. Afternoon Session, *supra* note 12.

17. Atty. Daniel Dinopol, Address at the Afternoon Session, *supra* note 12 (exemplifying the passage of oral tradition by the medium of the "binokot," a person trained to recite customary laws and historic myths).

whether codification could reflect the growth and continuing development of customary laws.[18] Though the suggestion to codify is seen as a way to integrate customary law with the "mainstream" justice system[19] and to operationalize the same within the existing legal framework, doubts exist, however, as to whether codification could reflect the dynamism of custom or would freeze it instead.[20] And even assuming that the great attempt to codify succeeds in covering the multitude of customs of all indigenous folk, it is still questionable whether such a code would universally be congenial to each indigenous cultural community.[21] Customs vary, and each is its own universe. A code of uniform customary law imbued with the force and effect of law would breed disharmony.[22]

A counter-suggestion, therefore, blossomed: the solution is not to codify but to document.[23] This way, the purpose of information dissemination, which was to heighten the awareness of the general public on matters of indigenous peoples' rights, would be attainable without jeopardizing inter-regional peace. The proposal to document customary law, however, faced criticism as well. For even if the attempt was made, some rituals, by nature, could not be documented, because these rituals were "experiences of the

18. Afternoon Session, *supra* note 12. *See* PANLIPI, Diverting the Mainstream: An Attempt to Reconcile Local Administration With the Indigenous Peoples' Right to Self-Governance (2002) (unpublished research paper) (on file with the Ateneo Law Journal) [hereinafter Diverting the Mainstream], *presented by* Atty. Dan Valenzuela, Paper Presentation at the Colloquium on Indigenous Peoples (Nov. 14, 2002) (suggesting integration).

19. *See* Diverting the Mainstream, *supra* note 18 (discussing the adulteration of tribal practices in tribal barangays and that no guidelines exist for the establishment of tribal barangays).

20. Afternoon Session, *supra* note 12.

21. *Id.*

22. The friction generated by a comprehensive code of customary law would therefore necessitate a set of internal conflicts of law provisions.

23. Afternoon Session, *supra* note 12. *See* Bakun Indigenous Tribes Organization, Integrating Indigenous Conflict Resolution Practices Into the Barangay Justice System: The Bakun, Benguet Kankanay-Bago Community Experience (2002) (unpublished research paper) (on file with the Ateneo Law Journal) [hereinafter Barangay Justice System], *presented by* Amos Bita-a, Paper Presentation at the Colloquium on Indigenous Peoples (Nov. 14, 2002) (discussing the documentation of indigenous peoples' laws IP laws by local government units).

spirit."[24] To reduce them on paper would do no justice to an otherwise infinite encounter.[25]

2. Rights of Indigenous Peoples Vs. Other Private Rights

Now comes the problem of the assertion of rights. While it was stated above that the rights of indigenous peoples remain on the whole nominal, this quality does not bar the possibility of conflict with rights of non-members. There exists today a recurring friction between the private sector's rights, notably the commercial sector, and the indigenous communities's rights. Many of the complaints lodged by indigenous people against private entities involve destructive commercial activities that degrade natural resources which, in turn, form part of the source of livelihood of the former.[26] Position papers submitted during the morning sessions of the Colloquium attest to incidents of illegal fishing such as cyanide and dynamite fishing, unsustainable accelerated activities of commercial fishing resulting to the depletion of fish stocks, destruction of coral reefs,[27] illegal logging,[28] and similar destructive commercial practices. The need to resolve this friction, therefore, becomes greater.[29]

But an even greater difficulty lies with enforcement. Agencies tasked to enforce the law are faced with a conflict of interests. Lt. Col. Cesar B. Yano,[30] the delegate from the Armed Forces of the Philippines (AFP), sought sympathy during the open fora: he was faced with a classic soldier's dilemma.[31] Should the military protect the rights of multinational companies

24. Unnamed member of an indigenous cultural community, Address at the Afternoon Session, *supra* note 12.

25. This argument, as well, may be thrown against proponents of the movement to codify customary law.

26. Morning Open Forum, Colloquim on Indigenous Peoples (Nov. 14, 2002) [hereinafter Morning Session].

27. Philippine Association for Inter-Cultural Development, *supra* note 1.

28. PANLIPI, Partnership for Development in Mt. Guiting-Guiting: Delineation and Resource Management Planning by the Tagabukid Mangyan in Sibuyan Island (2002) (unpublished research paper) (on file with the Ateneo Law Journal) [hereinafter, Iraya-Hanunuo].

29. Blenk, *supra* note 10.

30. Chief, Plans and Programs Division, J7, Department of National Defense, Republic of the Philippines.

31. Morning Session. Lt. Col. Yano was the first to speak, instigating a lively discussion, sometimes heated but nonetheless fruitful. *See* ALEXANDER P. AGUIRRE, PEOPLE'S REVOLUTION OF OUR TIME 17 (1986) (discussing the concept of the soldier's dilemma as the ethical problem of choosing a course of action which would sacrifice an equally compelling value).

whose projects were conducted in close proximity with indigenous communities against the claims of the latter over ancestral land, or should they choose to defend property rights vested since time immemorial? These questions certainly disarm. But it does not at all help the soldier that the function of adjudicating over conflicting private rights lies elsewhere, that is to say, with the courts of justice. Any adjudication over the matter would involve both a question of policy and a question of law. It is a question of policy because a balancing act must be made between the nation's economic growth on one hand and social justice on the other. And it is also a question of law because the delineation of rights over ancestral domain is exclusively a judicial prerogative. This the Armed Forces cannot exercise, for theirs is an executive and not a judicial function. They must do as they are told by the political departments and occupy territory according to political expediency. In the meantime, the judicial system operates and lags behind military action; assuming, of course, that opportunity exists for indigenous communities to bring suit.[32]

3. Rights of Indigenous Peoples Vs. the State

Conflict with the armed forces, however, does not end with disputes involving private rights. For the military in the aforementioned cases are merely third parties who have been called upon to defend private interests. State interest here is indirect. A more direct collision with governmental interests lies in controversies involving claims over ancestral land or ancestral domain and claims by the national government over military reservation sites.[33] These controversies no longer pit private rights against other private rights. It is now a matter between the individual, or group of individuals, and the state.

Military reservation sites allegedly intrude upon ancestral lands and ancestral domain.[34] Military occupation over disputed areas has spawned numerous accusations of abusive treatment by members of the armed forces.[35] According to one representative from a southern indigenous group, the conduct of military exercises exposed surrounding communities to the

32. It was expressed both in the morning and afternoon open fora that, although the representatives of the various indigenous folk were appreciative of the voluntary legal services of PANLIPI, these services nonetheless remain grossly inadequate after considering that the needs outweigh available supply. Morning Session, *supra* note 26; Afternoon Session, *supra* note 12.

33. Dunuan, *supra* note 1 (discussing the conflict between military reservations and claims over ancestral domain).

34. *Id.*

35. Morning Session, *supra* note 26 (alleging that occupation over ancestral lands was substantial, involving several thousands of hectares in the southern regions).

danger of life and limb.[36] Some of these include bombardment exercises that use Howitzers and similar long-range artillery. Allegedly, shells fell randomly on areas reserved for indigenous communities. Again, the representative from the Armed Forces commented that since military contingents were powerless to exercise adjudicatory functions,[37] grievance claims had to be directed elsewhere. It was suggested, however, that by reason of the growing number of such complaints, a specialized department or an "IP Desk" in every AFP regional headquarter had to be formed in order to better address IP-related issues.[38] At the moment, desk officials have had to cope with the greater burden of performing tasks unrelated to their line functions.

Disputes involving the state, however, are not confined to issues related to military reservations. There is a much larger picture, and these have to do with the general controversy between what constitutes ancestral land and government land.[39] As earlier stated, these types of disputes stem from the more fundamental problem over definitions.[40] Government agencies tasked with the enforcement of national policies have encountered difficulties with conflicting claims involving ancestral land. One case study sought to demonstrate how difficult it was for the Iraya Mangyans to have certain areas recognized as ancestral land because of a tenacious insistence that the same were public lands.[41] Another study depicted how certain tribal communities were displaced because the lands over which they claim as ancestral lands had allegedly been awarded to third parties by virtue of agrarian reform laws. It was precisely because they were displaced that made it more difficult to rightfully claim title.

4. The Process of Conflict Resolution

A satisfactory procedure on the settlement of disputes involving indigenous peoples' claims requires at least three elements: first, the determination of which government agency wields primary jurisdiction; second, the formulation of the underlying or foundational principles that would guide

36. *Id.*

37. *Id.* Lt. Col. Cesar B. Yano, Address at the Morning Session.

38. Morning Session, *supra* note 26.

39. Afternoon Session, *supra* note 12 (ventilating concerns over the pending Senate bill to declare Mt. Apo as a national park); Ateneo Human Rights Center, A Study of the Application of IPRA to Reservations (2002) (unpublished research paper) (on file with the Ateneo Law Journal) [hereinafter IPRA to Reservations], *presented by* Ella Lopez, Paper Presentation at the Colloquium on Indigenous Peoples (Nov. 14, 2002).

40. *See supra* notes 1-11 and accompanying text.

41. Iraya-Hanunuo, *supra* note 3.

decision-making; and third, the establishment of concrete rules of procedure. The most important is the first requisite, that is, to determine which among the various government bodies have primary jurisdiction over controversies involving indigenous peoples' rights.

a. Competing Government Agencies

A case study submitted by the Ateneo Human Rights Center exemplifies the concern over jurisdictional issues.[42] In the Autonomous Region of Muslim Mindanao, three government bodies compete for jurisdiction: the Office of the Southern Cultural Communities (OSCC); the National Commission on Indigenous Peoples (NCIP); and the ARMM Deputy Governor for Indigenous Peoples. The conflict, however, is more prominent between the NCIP and the ARMM.

Two solutions have been raised.[43] The first recommends that the NCIP, as a national body, should have primary jurisdiction over claims involving ancestral land or ancestral domain. Under this setup, the OSCC would be treated as a field office of the NCIP, while a working relationship is to be established between the latter and the ARMM Deputy Governor. The second proposal, more in keeping with the quest for regional autonomy and decentralization, is that the ARMM should be granted primary jurisdiction. This framework recommends that the OSCC is to be made a regional office of the NCIP, while a more concrete delineation of functions is required for both the OSCC and the Deputy Governor to maintain a working relationship.

The attempt to design a satisfactory power sharing arrangement would have to consider the constitutional policy that favors local autonomy.[44] On the other hand, there is the issue of coordinative efficiency. Redundancy should be purged.[45] A streamlined coordination system among diverse

42. Ateneo Human Rights Center, A Study of the Jurisdictional Issue Over Ancestral Domain Claims of IPs Inside the ARMM (2002) (unpublished research paper) (on file with the Ateneo Law Journal) [hereinafter Jurisdictional Issue], *presented by* Jennifer Ong, Paper Presentation at the Colloquium on Indigenous Peoples (Nov. 14, 2002). *See* Morning Session, *supra* note 26 (expressing the concern over which government agency is in charge in recognizing disputes over ancestral waters, land, etc., and inquiring on the remedial process).

43. Jurisdictional Issue, *supra* note 42.

44. *See* PHIL. CONST. art. II, § 25 ("The State shall ensure the autonomy of local governments."); art. X, § 2 ("The Territorial and political subdivisions shall enjoy local autonomy.").

45. *See* Lt. Col. Cesar B. Yano, Address at the Morning Session, *supra* note 26 (questioning whether there is still a need for the OSCC-ARMM).

regions and regional bodies may require a broad umbrella structure. This would necessitate the appointment of a national body as the primary coordinative agency. These factors must be weighed in order to arrive at an optimal power arrangement.

b. Guiding Principles in Resolving Disputes

It is because of the opposition between the claims of the state and the claims of indigenous peoples that there arises the need to harmonize.[46] A balancing act must be made between legitimate national policies with policies protective of indigenous peoples' rights. But there cannot be a single overall solution—the problems are as diverse and unique as there are claims. It was suggested that the solution, therefore, is to be formulated on a subjective basis.[47] The solution would be a multidisciplinary one, involving legal as well as non-legal considerations. The underlying principle in every decision-making or policy formulation is to engage in a balancing of interests.

Other than the balancing act, two other principles crystallized. The first had already been discussed: the state policy for greater local autonomy.[48] It was suggested that this constitutional policy should be more frequently invoked against the tendencies of the national government to impose national programs incompatible with grass-root governance. But a deeper analysis shows that this is but an indirect concern for indigenous peoples, for the directive to decentralize is principally addressed to government. The more promising tenet, as discussed during the afternoon sessions, is the right to self-determination.[49] This general right is capable of direct invocation; it

46. *See, e.g.*, Atty. Daniel Dinopol, Address at the Morning Session, *supra* note 26 (speaking of the concept of management convergence in the Sibuyan Island case); Iraya-Hanunuo, *supra* note 28 (advocating that government projects should be in harmony with the interests of the Iraya-Hanunuo).

47. IPRA to Reservations, *supra* note 39.

48. Afternoon Session, *supra* note 12.

49. *Id.* For a discussion on the concept of self-determination as a principle of international law, see Advisory Opinion, Western Sahara case, 1975 I.C.J. 12; *Declaration on the Granting of Independence to Colonial Territories and Peoples*, G.A. Res. 1514 (XV), U.N. GAOR, 15th Sess., Supp. No. 16, at 66 (Dec. 14, 1960) ("2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development;"). As to the application of the principle of self-determination to indigenous communities and other non-state groups, see Benedict Kingsbury, *Claims by Non-State Groups in International Law*, 25 CORNELL INT'L L.J. 481 (1992) (discussing claims by non-state groups to self-determination, minority rights claims, and human rights claims); Lea Brilmayer, *Groups, Histories, and International Law*, 25 CORNELL INT'L L.J. 555 (1992) (investigating the reasons that the international system has not been able to resolve the problems concerning rights of non-state groups); Mary Ellen Turpel, *Indigenous Peoples' Rights of Political Participation and Self-Determination: Recent International Legal Developments and the Continuing Struggle for Recognition*, 25 CORNELL INT'L L.J. 579 (1992) (examining the notion of indigenous political participation rights in light of international developments of interest in Canada); Miavân Clech Lâm, *Making Room for Peoples at the United Nations: Thoughts Provoked by Indigenous Claims to Self-Determination*, 25 CORNELL INT'L L.J. 603 (1992) (discussing the campaign of self-determination under the United Nations); Daniel Thürer, *The Right of Self-Determination of Peoples*, 35 LAW AND STATE 22 (1987) (discussing the legal status, content and scope of the principle of self-determination especially in light of four concepts: 1) the "democratic" right of self-determination; 2) the right of "national self-determination; 3) the "socialist" right of self-determination; 4) the "colonial" right of self-determination); Dirk Berg-Schlosser, *Democracy Advancing in the Third World*, 35 LAW AND STATE 82 (1987) (discussing democratic development in third world); 87 ASIL PROC. 173-266 (1993) (discussing in Crosscutting Theme II: Communities in Transition: Autonomy, Self-Governance and Independence the total disintegration of some states such as soviet union, Yugoslavia, Somalia, Czechoslovakia as independence movements and minority groups within states press for greater autonomy and self-governance); 88 ASIL PROC. 197-211 (1994) (discussing under "Democratization and International Law: Building the Institutions of Civil Society" how democratization seems to be "breaking out" in every region in the world such as Russia, Africa, Latin America, and Asia); 90 ASIL PROC. 471-487 (1996) (discussing the violent breakup of Yugoslavia and conditions of recognition employed by the European Union; religious and cultural self-determination, secession, succession and independence). ASIL stands for The American Society of International Law, Washington, D.C. *See also* Joaquin G. Bernas, S.J., *More on Self-Determination*, TODAY, May 14, 2000, at 8 (discussing the relationship between self-determination and territorial boundaries). The right to self-determination was not part of international law before the passage of the United Nations Charter. D.J. HARRIS, CASES AND MATERIALS ON INTERNATIONAL LAW 116 (4th ed. 1991), *citing* Report of the International Committee of Jurists in the *Aaland Islands* case, L.N.O.J., Special Supp. No. 3, 5 (1920). Harris, citing several materials, suggests that the point has been reached where the principle has generated a rule of international law, by which the political future of a colonial or similar non-independent territory should be determined in accordance with the wishes of its inhabitants. D.J. HARRIS, CASES AND MATERIALS ON INTERNATIONAL LAW 116 (4th ed. 1991), *citing* UN LAW/FUNDAMENTAL RIGHTS: TWO TOPICS IN INTERNATIONAL LAW 167 (Cassese ed., 1979) (arguing that self-determination is a rule of jus cogens).

can be carried out imaginatively. For it may serve as the principal justification for a greater integration of customs and traditions into the mainstream system of governance. To invoke the right to determine one's social, political, and economic well-being may well facilitate the institutionalization of traditional modes of dispute settlement at least on the

barangay level.[50] This leads to the third element of a workable process of conflict resolution—the establishment of adequate rules of procedure.

c. The Formulation of Rules of Procedure[51]

Atty. Bernal recommended the representative of the Legal Rights and Natural Resources Center, that it is preferable to employ alternative dispute resolution mechanisms to lessen conflict between the state and tribal laws. The substantive law upon which such procedure is to be based, together with the nature of the procedure itself, is to be culled from traditional methods.[52] The effect would be to institutionalize a hybrid justice system interfaced with indigenous and mainstream qualities.[53]

5. The Implementation and Execution Stage

Even if a viable solution emerges, either as a fruit of the adjudication process or as a program of action consensually formed, there is still the recurring problem of implementation. Concerns on implementation range from lack of technical expertise, insufficient financial and human resources, [54] inadequate dissemination and awareness of rights and obligations, and similar constraints.[55] Conceivably, these evils are not confined to controversies involving indigenous folk but constitute a universal concern as well but their needs call for a solution. Other proposals were likewise made. Notably, there was recognition of the need for a more specialized department within the AFP to handle controversies involving indigenous communities.[56] It was

50. *See* Diverting the Mainstream, *supra* note 18 (discussing the structure of "tribal barangays" and that there were no adequate guidelines for the establishment of the same); PANLIPI, Cultural Interaction The Way to Justice: The Manobos in Arakan Valley Amids Armed Conflict (2002) (unpublished research paper) (on file with the Ateneo Law Journal) [hereinafter Manobos], *presented by* Lilian Radam, Paper Presentation at the Colloquium on Indigenous Peoples (Nov. 14, 2002) (suggesting the institutionalization of the Datu-System in the Manobo Communities and that the Manobos should be allowed to resolve their disputes using their own customary laws).

51. It is not the purpose of the Synthesis to design a comprehensive set of procedural rules ideally congenial to the settlement of indigenous peoples' claims. Briefly, however, the basis for the adjudication process will be suggested.

52. *See* Diverting the Mainstream, *supra* note 18.

53. *See* Barangay Justice System, *supra* note 23 (discussing the thrust to interface local laws with customs of indigenous cultural communities).

54. *See, e.g.*, Diverting the Mainstream, *supra* note 18 (discussing the lack of financial systems, hindering the establishment of tribal barangays).

55. Morning Session, *supra* note 26; Afternoon Session, *supra* note 12.

56. Lt. Col. Cesar B. Yano, Address at the Morning Session, *supra* note 26.

acknowledged that the NCIP and other national agencies should be allotted more resources and a budget adequate for the enforcement of policies especially in far-flung areas. [57] Technical assistance and resources should be delivered directly to indigenous cultural communities in order to help members thereof in the management of portions of ancestral domain. Upon delivery, transparency in these activities, especially in financial matters, should be maintained. The collaborative effort should be multi-sectoral and cannot solely be a government burden.[58] And the effort must be sustainable and continually developed. [59] The promising thought is that existing international organizations have persevered in acting as catalysts or change agents, seeking to empower indigenous peoples through the implementation of socio-economic changes.[60]

B. The Emergent Solutions: Core Principled Standards

From the sea of recommendations brought about by the aforementioned problem areas surfaces five principled standards: first, awareness and information dissemination; second, the principle of free and informed prior consent; third, the principle of participation in important policy-making decisions; fourth, the balancing of interests test; and fifth, the efficient use of resources. These principled standards are also to be applied in progressive order.[61]

1. Awareness Campaign

Before rights are to be exercised, it is essential that the right-holder must be made aware of them. However, the holder of the right may be an organ of the state, in which case it is not to be called a right but a power. In both cases, the same rule holds—that each must be taught, as an essential precondition, the nature of the right or power before the same may be exercised properly. Unfortunately, it had been voiced out in the course of the proceedings that both the local governments and indigenous

57. *Id.*

58. *See* Iraya-Hanunuo, *supra* note 28; Terence Jones, United Nations Development Programme Resident Representative, Welcome and Opening Remarks at the Colloquium on Indigenous Peoples (Nov. 14, 2002) (discussing the need to deliver resources to indigenous peoples).

59. Rosanne Mallillin, SPC, Executive Secretary, Catholic Bishop's Conference of the Philippines-NASSA, Welcome and Opening Remarks at the Colloquium on Indigenous Peoples (Nov. 14, 2002) [hereinafter Rosanne Mallillin] (discussing the need to continue development and implementation of policies).

60. Blenk, *supra* note 10 (discussing the need to empower indigenous peoples through socio-economic changes by agents of change such as the INDISCO).

61. They do not, however, correspond to the five problem areas abovestated.

communities, though nominally possessing certain rights or powers, do not know how to exercise them. And in many instances, this is the result of ignorance.

Worries, for instance, consist of the lack of information and education in the manner of establishing the tribal barangay system as allowed by law.[62] It was suggested that local governments should be charged with the documentation of customary laws in order to facilitate the establishment of a hybrid justice system. The result of the documentation process would thereafter be disseminated both to the members of surrounding indigenous communities and the local government units themselves.[63] Other problems regarding want of knowledge, too many to be conveniently enumerated, were discussed.[64]

As a response to these problems, a sustained and continuing information dissemination campaign and an open dialogue became the obvious solution.[65] It was suggested that there should be established a system of awarding scholarship grants to members of indigenous communities for their education in the urban centers should be established once they return, they are to act as internal change agents tasked with the dissemination of information on existing laws and the protection they confer.[66] The need to continually advocate the Indigenous People's Rights Act was raised by key speakers.[67] Advocacy and awareness were viewed as essential conditions for the formation of any free and prior informed consent.[68]

2. Free and Informed Prior Consent

Now, the principle of free and informed prior consent became a recurring theme during the morning and afternoon discussions. It was regarded to be among the more important and guarded rights belonging to indigenous peoples which, as already discussed, presupposes an adequately informed right-holder. As the nomenclature suggests, consent must be both *free* and

62. Diverting the Mainstream, *supra* note 18.

63. Barangay Justice System, *supra* note 23.

64. Morning Session, *supra* note 26; Afternoon Session, *supra* note 12.

65. Morning Session, *supra* note 26 (ventilating the need for a continued dialogue).

66. Afternoon Session, *supra* note 12.

67. Rosanne Mallillin, *supra* note 61; Atty. Hesiquio Mallillin, Chairman, Board of Trustees, Legal Assistance Center for Indigenous Filipinos (PANLIPI), Welcome and Opening Remarks at the Colloquium on Indigenous Peoples (Nov. 14, 2002) [hereinafter Hesiquio Maillillin].

68. *See* PANLIPI, Partnership for Development in Mt. Guiting-Guiting: Delineation and Resource Management Planning by the Tagabukid Mangyan in Sibuyan Island (2002) [hereinafter, Mangyan, Sibuyan Island].

informed. It must also be procured *prior* to the implementation of any program of action. The application of the principle covered management and development programs must be spearheaded by government agencies[69] as well as non-government organizations.[70] Discussions on the principle also turned to the codification movement: the free and informed prior consent of those trained in the oral traditions must be obtained before any project at codifying such traditions is to be initiated.[71] Conceivably, the application of the principle is called for in every situation that could possibly affect the substantive rights of indigenous peoples.

3. Full-Participation in Policy-Making

The principle of obtaining free and informed prior consent graduates to another level: every important policy formulation, particularly those made at the local government level, must allow for representatives from the indigenous community affected to fully participate at least in the deliberation process.[72] The interfacing of local laws with indigenous customs falls under the application of this principle,[73] such as the institutionalization of the *Datu System* in the Manobo communities.[74] The mutli-sectoral thrust at management convergence in the Sibuyan Islands would require a tri-partite dialogue among the local governments, the private sector, and the local indigenous communities.[75] The idea of integrated planning, to be initiated by the government sector, should include substantial participation by representatives of directly affected tribal communities.[76]

69. Iraya-Hanunuo, *supra* note 28.

70. Mangyan, Sibuyan Island, *supra* note 71.

71. Atty. Daniel Dinopol, Address at the Afternoon Session, *supra* note 12 (stating that the free and informed prior consent of the "binokot," the person trained to pass on the oral tradition, is needed before codification).

72. Atty. Hesiquio Mallillin, Chairman, Board of Trustees, Legal Assistance Center for Indigenous Filipinos (PANLIPI); Jones, *supra* note 58 (stating that there must be efforts to ensure full participation of indigenous peoples). Note that it is not actual participation but the opportunity to participate that is mandated.

73. Barangay Justice System, *supra* note 23 (discussing the interfacing of local laws with IP customs); Diverting the Mainstream, *supra* note 18 (discussing the institution of the tribal barangay).

74. Manobos, *supra* note 51.

75. Mangyan, Sibuyan Island, *supra* note 71; Atty. Daniel Dinopol, Address at the Morning Session, *supra* note 12.

76. Iraya-Hanunuo, *supra* note 28.

4. The Balancing of Interests Test

The balancing of interests test principle had been previously discussed as a guiding principle in the resolution of controversies the principle of the balancing of interests.[77] It must be remembered that the principle arises in recognition of ancestral claims that compete against substantial government interests. These state interests may appear to be equally, if not more, compelling, such as the policy of agrarian reform[78] and economic policies relating to foreign investment.[79] The balancing act, therefore, is a delicate task requiring a multi-disciplinary approach to be made on a case-to-case basis.

5. Efficient Deployment and Use of Resources

The principle of efficient deployment and the use of resources is broad and self-explanatory. In many ways the principle of efficiency is dependent on the degree of competence of and determination by the public and private sectors. But it has some salient points: first, the principle is directed both to government and to the indigenous community; and second, it puts emphasis not only on the need for *more* resources but also on *how* they are utilized.

The highlight of the proceedings, arguably, would have to be the introduction of the idea of the change agent. Traditional modes in streamlining resource management follow an interventionist approach; these include the delivery of financial, technical, and human services from external sources, whether state-funded or otherwise, and stricter transparency measures. However, the discussion on the change agent, initially described by Mr. Werner Blenk as a function of intergovernmental agencies[80] but metamorphosed in the afternoon open forum as one pertaining to an internal agent instead, ponders on the act of immersing select representatives of indigenous communities into mainstream society, educating them through scholarship grants, and releasing them back to their respective regions. Perceivably, this method of empowerment is the more effective one, consisting of inculcation rather than dole-outs, of invitation and not imposition. The medium of change as suggested by the idea is now an internal agent whose congeniality with local norms and traditions is superior to any outsider's. Of course, the idea of the internal change agent could work in tandem with the traditional approach, for the two do not mutually exclude the other.

77. *See supra* notes 47-48 and accompanying text.

78. *See supra* note 41.

79. *See* supra notes 31-32 and accompanying text.

80. Blenk, *supra* note 10.

III. Epilogue

It was Mr. Terence Jones, resident representative of the United Nations Development Programme who, in his opening remarks, spoke of the need to establish peace between indigenous peoples and the state.[81] After all, the above principled standards were forged with a view to attain public peace as the ultimate norm. Mr. Jones was concerned over the current threat of terrorism and, in particular, how insurgent groups and terrorist organizations remain viable by capitalizing on the poverty of certain indigenous communities and enlisting them among their ranks. In such a case there are no balancing of interests involved anymore, for in the final analysis, it is public order and inter-regional peace that occupy the highest values. The process of settling controversies in which indigenous peoples' rights are asserted must be made with a view to attain such a purpose. For it is now the existence of the state that is being questioned.

81. Jones, *supra* note 58.