



U.N. DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

Special Issue of ICIK E-News Co-Sponsored by the Interinstitutional Consortium for Indigenous Knowledge (ICIK) and the University Libraries at The Pennsylvania State University in Collaboration with the United Nations Association, Centre County, Pennsylvania, USA, Chapter

Welcome to this Special Issue of ICIK E-News



This Special Issue of ICIK E-News highlights the United Nations Declaration on the Rights of Indigenous Peoples (UN DRIP). The Declaration was adopted by the UN General Assembly on September 13, 2007, after many years of concerted effort by indigenous communities around the world. The importance of the Declaration cannot be under-estimated. It reflects a broad consensus on the part of the world's nations that the rights of indigenous peoples must be respected, their voices heard, and their traditional lands protected from exploitation. However, it is equally clear that the power of the Declaration should not be over-estimated. The adoption of the Declaration by the General Assembly does not guarantee that all nations will ratify the Declaration (the US Congress has not done so), or that those nations that have ratified UN DRIP, will necessarily be bound by its precepts. It is in the implementation of the Declaration that its impact on indigenous communities will be felt. It is for this reason that the Interinstitutional Consortium for Indigenous Knowledge (ICIK) and the United Nations Association, Centre County, Pennsylvania, USA, Chapter, in collaboration with the Pennsylvania State University Libraries, have undertaken the publication and distribution of this Special Issue of ICIK E-News. These three bodies share a common interest in raising awareness and increasing the understanding of issues faced by indigenous communities in the United States and around the globe and, collectively, attempt to enhance the value of traditional and local knowledges within the local community and the academy.

The co-sponsors of this Special Issue of ICIK E-News would like to acknowledge Julie Rowland and Judy Bertonazzi who authored articles that are reprinted by permission in this issue. We would also like to thank Connie FileSteel, who

Continued on page 2.

In this issue

Newsletter of the UN Permanent Forum on Indigenous Issues.....	p. 2
Chief Edward John, Chairperson of the UN Permanent Forum on Indigenous Issues.....	p. 2
Fifth Anniversary of the UN Declaration on the Rights of Indigenous Peoples, Statement by Chief Edward John.....	p. 3
UN Permanent Forum on Indigenous Issues.....	p. 3
Indigenous Peoples' Rights, by Judy Bertonazzi.....	p. 4
The New Legal Context of Indigenous Peoples' Rights: The United Nations Declaration of the Rights of Indigenous Peoples, by Julie Rowland...	p. 14
UN Declaration on the Rights of Indigenous Peoples (Full Text of the Resolution.....	p. 26
Indigenous Peoples' Rights: An Historical and Contemporary Global Movement.....	p. 35
Trainings on Indigenous Peoples' Issues with UN Country Teams, Government Officials & Indigenous Peoples' Organizations.....	p. 37
Addressing Inequalities in the Post-2015 Development Agenda.....	p. 37
UN Resolution 66/142. Rights of Indigenous Peoples.....	p. 38

Welcome to this Special Issue of ICIK E-News

Continued from page 1.

joined Judy and Julie in presenting a program on indigenous peoples' rights during International Education Week in November, 2012. Excerpts from that presentation are also included in this issue.

We are especially grateful to Lori Thompson, the liaison for ICIK at the College of New Jersey, who has been the ICIK E-News Technical Editor for 5 years. Lori took on the challenging task of compiling, designing and editing this publication. Without her skills, dedication and enthusiasm, this Special Issue of ICIK E-News would never have materialized.

We hope you find this publication both interesting and informative. Please visit the [ICIK website](#) and add your name to the ICIK list serve to receive future issues of ICIK E-News and other information about global indigenous knowledge.

Audrey Maretzki, Professor Emerita and ICIK Co-Director,
The Pennsylvania State University

Helen Sheehy, Head, Social Sciences and Maps Libraries,
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Grand Chief Edward John (Photo from <http://www.culturalsurvival.org/>)

On June 29, 2006, the United Nations Human Rights Council adopted the [U.N. Declaration on the Rights of Indigenous Peoples](#). This decision comes as a result of more than twenty years of work by indigenous peoples and the United Nations system.

“From the moment the UN Declaration was adopted, it became a unique international instrument that set standards and the foundation for the continued survival of indigenous peoples, the protection of their rights, dignity and well-being.”

Fifth anniversary of the
UN Declaration on the
Rights of Indigenous Peoples

Excerpt from Statement
by Grand Chief Edward John,
Chairperson of the
UN Permanent Forum
on Indigenous Issues

[See the full text of
Chief Edward John's
Statement on page 3.](#)

Newsletter of the UN Permanent Forum on Indigenous Issues



Message Sticks

A Message Stick is a traditional Australian Aboriginal method of correspondence whereby runners would deliver messages carved in symbols on a piece of wood to inform other indigenous peoples of upcoming events. The [Message Stick](#) is a quarterly newsletter that highlights the efforts and activities of the United Nations Permanent Forum on Indigenous Issues. Please send any feedback you may have to indigenous_un@un.org.

Read more about Grand Chief Edward John:



[Justice for All: An interview with Grand Chief Edward John](#)



[Grand Chief Edward John Elected Chair of United Nations Permanent Forum on Indigenous Issues by Acclamation](#)



Chief Edward John (Photo from <http://indiancountrytodaymedianetwork.com/>)



Fifth Anniversary of the UN Declaration on the Rights of Indigenous Peoples

Statement by Chief Edward John,
Chairperson of the UN Permanent Forum on Indigenous Issues

Five years ago on this important day, 13 September, [2007] the United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly after more than two decades of intense struggles.

From the moment the UN Declaration was adopted, it became a unique international instrument that set standards and the foundation for the continued survival of indigenous peoples, the protection of their rights, dignity and well-being. The UN Declaration is an international human rights instrument that, today, enjoys universal consensus. It is the same instrument that underpins the activities of the Permanent Forum on Indigenous Issues.

Today we also need to extend our deep gratitude to the many committed representatives of indigenous peoples, non-governmental organizations, Governments and the United Nations whose passion and dedication lead to the adoption of the UN Declaration.

With the adoption of the UN Declaration five years ago, the Permanent Forum has new and extensive responsibilities to promote the incorporation of the UN Declaration into national law and policy, including national courts and administrative decisions. Second, it calls upon the Forum to follow up on the “effectiveness” of the Declaration – that is to examine and assess the realities on the ground, to see how the Declaration is implemented at the local and national levels and what gaps in implementation persist.

Even as indigenous peoples commemorate this historic moment, there is still a lot of work to be done. We cannot ignore the challenges and gaps in implementation of the UN Declaration, and I call on Governments, UN agencies and indigenous peoples to reaffirm the spirit, principles and rights enshrined in the UN Declaration and to renew our commitment to its full implementation.



UN Permanent Forum on Indigenous Issues

The United Nations Permanent Forum on Indigenous Issues (UNPFII) is an advisory body to the [Economic and Social Council](#) (ECOSOC), with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights.

[Thirteenth Session of the
United Nations Permanent Forum
on Indigenous Issues](#)

12-23 May 2014
United Nations Headquarters,
New York

Special Theme: “Principles of good governance consistent with the United Nations Declaration on the Rights of Indigenous Peoples: articles 3 to 6 and 46”.

Pre-Registration is now: **OPEN**

[How to Participate](#)
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UNPFII

Indigenous Peoples' Rights

By Judy Bertonazzi

Though the term "indigenous peoples" is open to some interpretation, the definition crafted by Special Rapporteur of the United Nations (UN) José Martínez Cobo has achieved wide acceptance and is regarded as the most comprehensive available:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

Indigenous peoples are located in 85 countries in the Americas, Asia, the Middle East, Africa, Australia, Europe and Oceania. Among them are more than 600 language groups and 5,000 ethnic groups.

Historical Background



Indigenous peoples' rights is an international human rights movement that attempts to protect indigenous peoples and build awareness of their history of oppression, subordination, and subjugation by dominant political and social groups. Indigenous peoples have had their lands taken away, have lost their cultures, and have had their basic human rights denied by national and international legal systems.

The history begins with the occupation and subjugation of indigenous peoples of South America by European colonial powers, mostly the Spanish, in sixteenth century. The European colonial powers occupied indigenous lands, exterminated many indigenous peoples, and then claimed sovereignty over those lands, along with full internal sovereignty over the remaining indigenous peoples. How-

ever, theologian and scholar Francisco de Vitoria challenged Spanish claims to indigenous peoples' land based on his understanding of natural and divine law. His *On the American Indian*, published in 1537-1538, argued that the Indians were the true owners of their lands and affirmed that they were human and entitled to enjoy civil and political rights.

Several others followed in de Vitoria's footsteps. In 1542, historian and missionary Bartolomé de Las Casas defended indigenous rights against colonialist aggressions in *Twenty Reasons Against Encomienda*. In 1625, Hugo Grotius, the "father of modern international law," wrote *De Jure Belli et Pacis* opposing the subjugation of peoples and their lands and arguing that Portugal's claim to the East Indies was a violation of natural law. William Blackstone, a noted English jurist, wrote *Commentaries on the Laws of England* in 1765-1769, which only recognized colonizers' occupation of land that was empty or uncultivated. The issue of indigenous peoples' rights was even more widely discussed in international law and policy in the nineteenth century. During this time, activism against the slave trade brought awareness of indigenous rights, which caused the issue to be raised in international courts.

Despite the legal activism of Vitoria, Las Casas, Grotius, Blackstone, and others, dispossession of lands remained the general rule through the end of the nineteenth century. An extensive body of legal theory was developed to justify these actions. For example, "extinguishment" is a principle used by settlers and colonizers that allows the "sovereign" (essentially, any government body) to cancel aboriginal titles to land. The most important statement of this concept was U.S. Supreme Court chief justice John Marshall's 1823 opinion in *Johnson v. McIntosh* which declared that Native American tribes could not sell their land to individual citizens, as only the federal government could extinguish or assume the Indians' "right of occupancy."

The first attempt by indigenous people to have their rights recognized internationally occurred in 1923 when Cayuga (Iroquois) chief Deskaheh tried to speak to the League of Nations about the U.S.-Iroquois treaty and the need for Iroquois self-government. Although Chief Deskaheh's efforts were blocked by Great Britain, his attempt anticipated the long struggle for self-government and legal recognition by indigenous peoples around the globe that would take place with the United Nations as its primary forum.

Continued on page 5.

Indigenous Peoples' Rights

Continued from page 4.

The years after World War II witnessed an acceleration of the movement for indigenous peoples' rights. In 1945, the United Nations was formed with a mandate to "maintain international peace and security." The body took an immediate interest in indigenous peoples, though the initial focus was on how they might be assimilated into their broader society. The founding of the UN Working Group on Indigenous Populations in 1982 was a landmark, signaling a shift toward protecting indigenous cultures, rather than erasing them.

In 1992, the UN Conference on Environment and Development (UNCED) adopted three major UN conventions on climate, biodiversity, and desertification. During the UNCED, the indigenous lobby made major gains in having the rights, knowledge, resources, and identities of indigenous peoples recognized by the UN member states. In 1993, the UN gathered in Vienna, Austria, for the World Conference on Human Rights. Pressure to address indigenous peoples' rights was a central theme, with many diverse indigenous groups from around the world represented.

In the last decade, great strides have been made to address indigenous peoples' rights in international law. In 2007, the UN Declaration on the Rights of Indigenous People (UNDRIP) was signed, and the Organization of American States (OAS) issued the first draft of its Declaration on the Rights of Indigenous Peoples. Both documents call for broad protections for indigenous peoples' rights.

Indigenous Rights Today



Under international law, it has been firmly established that indigenous peoples' rights include the right to a reasonable environment, to economic development, to international peace and security, to the common heritage of mankind, and to communications and humanitarian assistance. This means that indigenous peoples' claims are closely related to land rights, self-government, control of natural resources, environmental protection, and development assistance.

North America

In the United States, the Supreme Court has consciously and steadily eviscerated tribal authority in traditional indigenous territories, with major legal opinions building upon one another to assert that an indigenous tribe's jurisdiction exists almost exclusively over its members and not over its land. This has led to the obliteration of tribal authority over indigenous land and resources.

Perhaps the longest struggle between indigenous peoples and the U.S. government involves the Western Shoshone. In 1863, the Western Bands of the Shoshone Nation of Indians signed the Treaty of Peace and Friendship in Ruby Valley, Nevada. By signing the treaty, the U.S. government and the Shoshone agreed to mutual use of the tribe's millions of acres of ancestral lands without transferring them to U.S. authority and ownership. Both the natives and the U.S. government also agreed to allow westward bound settlers to cross through Western Shoshone territory.

The Shoshone argue that, despite the clear terms of the agreement, the U.S. Bureau of Land Management gradually assumed control over the land by redrawing the boundaries of reservation territories. In response to these claims, the U.S. government formed the TeMoak Tribal Council in 1962, gathering tribes into one group and granting monetary compensation for lost land. The Dann Band of Shoshone rejected the settlement, claiming that it was never part of the small Western Shoshone reservation and therefore it was not bound by the Treaty of Peace and Friendship or any other agreement. The U.S. government in turn brought a trespass suit against the Dann Band, stating that the Western Shoshone title had been notionally "extinguished."

In 1985, the U.S. Supreme Court ruled against the Dann Band, stating that tribal rights to land had indeed been extinguished, including the right to hunt and fish. In 1994, the Dann Band filed a petition to the Organization of American States (OAS) Inter-American Court of Human Rights (IACHR). The IACHR ruled in favor of the Shoshone and overturned the Supreme Court's ruling that their land title was extinguished. It also declared the transfer of land title to be a violation of human rights. The U.S. rejected the ruling, and so the Dann Band has filed a new suit, thus continuing the fight.

Continued on page 6.

Indigenous Peoples' Rights

Continued from page 5.

A similar struggle is taking place in Hawaii. In 1976, the Native Hawaiian community sought to regain access to the island of Kaho'olawe. Initially, the group was forced to violate federal law in order to visit the island. After protests and calls for religious freedom, however, the government provided some access to the island for ceremonial practices. Since then, Ka Lahui Hawai'i, a Native Hawaiian initiative for sovereignty, has declared five stated goals in order to end U.S. sovereignty in Hawaii. These are (1) resolution of historic claims involving the overthrow and misuse of native trust lands, violation of human and civil rights, and the occupation of lands and resources; (2) U.S. recognition of Native Hawaiian sovereignty and recognition of Ka Lahui as a Hawaiian Nation; (3) Ka Lahui authority over national assets, lands, and natural resources; (4) decolonization of Hawaii via the United Nations process for non-self-governing territories; and (5) restoration of traditional lands, national resources, ocean, and energy resources to the Ka Lahui National Land Trust.

In Canada, indigenous tribes have won some important legal victories. For example, the landmark 1990 court case *Sparrow v. The Queen* confirmed original fishing rights in both the past and the foreseeable future. Such victories often prove hollow, however. In the case of *Sparrow v. The Queen*, a trio of 1996 court decisions undermined the ruling, producing a more narrow and precise definition of aboriginal rights. So, despite the 2004 court cases of *Taku River Tlingit First Nation v. British Columbia* and *Haida First Nation v. British Columbia*, all of which affirmed Canada's obligation to uphold indigenous nations' rights, court cases and opinions have gradually strengthened Canadian sovereignty, making it more difficult for Canada's indigenous peoples to assert their rights.

Mexico allows indigenous peoples the right to political and legal autonomy, though national unity is emphasized. Mexico also has collective rights, including the "preservation of their way of life and social, economic and political organization" and "preserving and enriching their languages." In addition, Mexico grants indigenous peoples "differentiated rights" to natural resources, according to the type of natural resource at issue. Also included in Mexico's constitution is the right to a bilingual education for indigenous peoples. In fact, the country provides some of the broadest constitutional recognition of respect, promotion, guarantee, and cultural sensitivity toward indigenous peoples in the Americas.

Despite these constitutional provisions, there are several notable indigenous peoples' rights movements in Mexico. The most significant is the Zapatista resistance movement in southern Mexico, a recent development that is partly a result of the rise of maquiladoras (factories that import materials and equipment from another country and then export finished goods to that same country, a means of reducing labor costs for wealthy nations). The maquiladoras have had a decidedly negative effect on traditional indigenous communities. For example, the manufacturing plant situated in the village of Teziutlán introduced Western ideological and cultural practices and released toxic wastes into the soil. These developments, in turn, resulted in further poverty, crime, and drug abuse, despite the job opportunities that the plant ostensibly provided.

Latin America

There are 671 different indigenous peoples in the collective of nations referred to as Latin America. Nations that incorporated indigenous peoples' rights into their constitutions include Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, and Venezuela. The most extensive acknowledgement of indigenous peoples' rights in South and Central America occurs in Bolivia's constitution:



Given the pre-colonial existence of nations and original indigenous peoples and their ancestral control over their territories, one guarantees their self-determination in the setting of State unity, that consists of their right to autonomy, to self-governance, to their culture, to the recognition of their institutions and the consolidation of their territorial identities, which conform to this Constitution and to the Law.

Most Latin American constitutions provide for indigenous rights to lands, territories, and natural resources. The constitutions of Brazil, Mexico, Ecuador, and Bolivia all contain language that establishes differentiated rights to indigenous peoples according to the type of resource,

Continued on page 7.

Indigenous Peoples' Rights

Continued from page 6.



Bolivian president Evo Morales (left) an Aymara Indian and the nation's indigenous head of state, is welcomed at a rally in La Paz in October 2011. Days later, Morales canceled plans to build a highway through protected native lands in the Amazon Basin. (AP Photo/Dolores Ochoa)

such as natural resources (land, lakes, rivers), hydraulic and mineral resources, renewable resources, and nonrenewable resources. Historically speaking, the use of indigenous languages has been prohibited due to each country's desire to assimilate indigenous peoples into the dominant culture. The majority of Latin American constitutions refer to the indigenous peoples' rights to an intercultural bilingual education, while a few other nations' constitutions use the terms "education" or "bilingual literacy." Bolivia is the country with the most advanced and progressive terms for indigenous peoples' rights to a bilingual education. It establishes "intercultural, intracultural, multilingual education in all of the educational systems" and at all levels.

As in the case of Mexico, however, well-defined legal rights have not shielded the tribes from damage by the modern world. To take one example, in Chile the demand for electricity has compromised the lives of the indigenous Pehuenche. Where once these indigenous peoples thrived in the Andes Mountains between the Bío Bío and Queco Rivers, their lives have now been drastically altered since the National Electric Company relocated them in order to build a dam. The Pehuenche have been forced to assimilate to foreign structures of family and community, where collective qualities are replaced with individuation. Urbanization of the Pehuenche has also resulted in greater access

to alcohol and thus dramatically higher rates of alcoholism and related diseases.

Africa

Given the fluidity of African cultures and the frequent and widespread migration of the region's natives historically, it is rather more difficult to identify distinct communities of indigenous peoples in Africa than in most other places. For this reason, at least in part, Africa was the last global region to take steps toward the recognition of indigenous peoples' rights.

The first important development in this regard was the creation of the Indigenous Peoples of Africa Coordinating Committee (IPACC) in 1997. The main goals of IPACC are indigenous peoples' equality and equity with independent states, and increased visibility and influence through use of international rights standards and instruments. The activities of this group created new alliances within Africa that spanned languages, borders, and ethnic identities and prompted dialogue on international law, rights, and good governance.

The efforts of IPACC paid dividends fairly rapidly. In 2003, a subcommittee of the African Commission on Human and Peoples' Rights tasked with examining indigenous peoples' issues released its *Report of the African Commission's Working Group on Indigenous Populations/Communities*. The report contained extensive recommendations for protecting the rights and improving the lives of indigenous Africans. This was followed by widespread African adoption of UN-DRIP in 2007 (only Kenya and Nigeria abstained).

Although much progress has been made, there are still significant areas of concern for indigenous rights advocates in Africa. There has been little participation in IPACC by indigenous Northeast Africans in Eritrea, Ethiopia, Somalia, and Sudan. The same is true of hunter-gatherers from Central African Republic, Mauritania, Senegal, and Republic of the Congo. The government of the latter nation took steps to rectify this problem in 2010, passing Africa's first law directed specifically toward the protection of indigenous peoples. It remains to be seen if other nations will follow suit.

Asia and the Middle East

As in other regions, the indigenous peoples of Asia have generally been treated as second-class citizens, or worse. In India, for example, the indigenous Adivasis have experienced thousands of years of subordination—first at the hands of the Mauryan, Gupta, and Vijayanagara Empires, then during English colonization, and today by the Republic of India. The Adivasis struggle to main

Continued on page 8.

Indigenous Peoples' Rights

Continued from page 7.

tain forest rights, since they are a forest-dwelling people. Their territories contain timber and natural resources that India seeks to obtain; both the government and private industries in India have made consistent attempts to appropriate them.

An indigenous community in the Middle East—the Palestinians—has also struggled. The ancestral lands of the Palestinians were colonized by Western powers in the nineteenth century and then were used in 1947 to create a nation, Israel, for another displaced people. For those Palestinians who remain, their lands and culture have suffered serious damage, as Israel regards them as a threat to its security. More than 6 million have fled elsewhere, dispersing indigenous Palestinians across the Middle East, Europe, and the rest of the world. Nearly half of the people in the Palestinian Diaspora are refugees without citizenship or legal status in any nation.

Recent years have seen some limited efforts at indigenous rights advocacy in Asia. For example, the health of indigenous peoples is a paramount issue in the region for a number of reasons: (1) poor access to adequate and culturally appropriate health-care services due to the lack of health-care centers in indigenous territories; (2) discriminatory behavior of health personnel toward indigenous peoples and their practices; (3) pesticides, chemical fertilizers, mine tailings, and other substances that have left indigenous lands dangerously polluted; and (4) an increase in HIV/AIDS because of drug addiction and sex trafficking. In response to these problems, Indonesia staged the first Asia Indigenous Peoples Preparatory Meeting in 2006. The meeting developed Millennium Development Goals for health issues and has continued to meet annually since to continue work on the problem.

Europe

Although some of the 15 million Roma (sometimes called "gypsies," though they regard the term as derogatory) worldwide are scattered across the Americas, Australia, Africa, and some parts of Asia, Europe is the continent that contains by far the largest concentration of this indigenous group. About 70 percent of the nomads in Europe are Roma; others include the Yeniches in Belgium and France, the Woonwagenbewoners of the Netherlands, the Landfahrer in Germany, the Tattares in Sweden, and the Kalderash in Eastern Europe.

As with the Jewish Diaspora and the Irish Diaspora, the Roma have been victims of forced migrations (in their case, dating back to the tenth century C.E.). Like other diasporic peoples, the Roma have a history of persecution that continues to the present day. Currently, they tend to be targeted with legal charges centering on vagabondage. These charges often involve disputes over unauthorized camping, town planning, and trailer parks.

The primary questions affecting the Roma include illiteracy and the education of Roma children, official recognition of the Roma language, migration reforms that respect Roma cross-border travel, commercial support for nomadic trades, representation in domestic and European parliaments, and statehood (Romanestan). Thus far, Europe's national and regional institutions have done little to assist with these matters. Indeed, if anything, the trend has been in the opposite direction. For example, in 2008 the government of Italy declared the Roma a national security risk, blaming them for much of the crime in urban areas. Officials promised that steps would be taken to solve the *emergenza nomadi* (nomad emergency) and to eliminate the problem.

Continued on page 9.

World Conference on Indigenous Peoples

September 22-23, 2014

New York

The 66th Session of the UN General Assembly adopted Resolution [A/RES/66/296](#) on the Organization of the High-level Plenary Meeting of the 69th session of the General Assembly, to be known as the World Conference on Indigenous Peoples. In this resolution the General Assembly decided that the World Conference would be held on 22-23 September 2014 in New York at UN Headquarters. The resolution deals with organizational matters, such as round-tables and panel discussions in addition to the participation of indigenous peoples and their representatives.

Read more about the [World Conference on Indigenous Peoples](#).

See also the [Countdown to the World Conference](#).

Indigenous Peoples' Rights

Continued from page 8.

Oceania

Indigenous peoples in Australia and New Zealand are predominantly Torres Strait Islanders and Maori. In New Zealand, the Maori continue legal struggles over territorial rights to the foreshore (wetlands between the low and high tide marks) and the seabed. In Australia, the government has been supportive of indigenous peoples' rights, but was reluctant to support UNDRIP due to fears of secessionist movements that might arise following legal acceptance of indigenous rights. There has also been the concern that aboriginal law would supersede domestic law. The Department of Families, Housing, Community Services and Indigenous Affairs has been working with Australia's state and territory governments, indigenous groups, and external stakeholders such as the mining industry to address indigenous issues.

Ethnic Fijians and Fijians of Indian ethnicity have experienced recent conflicts. Fiji, which consists of 300 islands in the South Pacific, became an independent country in 1970. The Indian Fijians are descendants of large numbers of Indian laborers imported by the colonial British to work on sugar plantations between 1879 and 1916. For many years, land ownership was the privilege of indigenous Fijians. In 1987, a parliamentary election brought the Indian political party into power, and with it laws to change land ownership rules, which resulted in violence by ethnic Fijians against ethnic Indians. Indigenous peoples in several locations in Oceania have argued that because their ancestors have always inhabited the land, later immigrants cannot have the same rights to participate in political decisions regarding the land. However, this appears to be reverse discrimination, as the goals of human and indigenous rights activists are to have all peoples included in the political, social, economic, and cultural processes of a nation.

See also: Environmental Justice; Ethnic and Religious Conflict; Human Rights.



Further Reading

Akhtar, Zia. "Human Rights and American Indian Land Claims." *International Journal of Human Rights* 11:4 (December 2007): 529-534.

"Asia Indigenous Peoples Caucus Statement: Millennium Development Goals and Indigenous Peoples: Redefining the Goals." *Asia-Pacific Journal of Human Rights and the Law* 8:1 (June 2007): 64-100.

Crawhall, Nigel. "Africa and the UN Declaration on the Rights of Indigenous Peoples." *International journal of Human Rights* 15:1 (January 2011): 11-36.

Davis, Megan. "Indigenous Struggles in Standard Setting: The UN Declaration on the Rights of Indigenous Peoples." *Melbourne Journal of International Law* 9:2 (October 2008): 439-471.

Duncan, Ivison, Paul Patton, and Will Sanders, eds. *Political Theory and the Rights of Indigenous Peoples*. New York: Cambridge University Press, 2000.

Gilbert, Jeremie. *Indigenous Peoples' Land Rights Under International Law: From Victims to Actors*. Ardsley, NY: Transnational, 2006.

Iyall Smith, Keri E. "Comparing State and International Protections of Indigenous Peoples' Human Rights." *American Behavioral Scientist* 51 (2008): 1817-1835.

Manus, Peter. "Indigenous Peoples' Environmental Rights: Evolving Common Law Perspectives in Canada, Australia, and the United States." *Boston College Environmental Affairs Law Review* 33: 1 (2006): 1-86.

Marsico, Katie. *Indigenous Peoples' Rights*. San Francisco: Essential Library, 2011.

Peang-Meth, Abdulgaffar. "The Rights of Indigenous Peoples and Their Fight for Self-Determination." *World Affairs* 164:3 (Winter 2002): 101-114.

Reisman, W. Michael. "Protecting Indigenous Rights in International Adjudication." *American journal of International Law* 89:341 (1995): 350-362.

Continued on page 10.

Indigenous Peoples' Rights

Continued from page 9.

Sanders, Douglas. "The Re-Emergence of Indigenous Questions in International Law." *Canadian Human Right Yearbook* 3:2 (1983): 22-30.

Thornberry, Patrick. *Indigenous Peoples and Human Rights*. Huntington, NY: Juris, 2002.

Westra, Laura. *Environmental Justice and the Rights of Indigenous Peoples*. London: Earthscan, 2008.

Web Sites

African Commission on Human and Peoples' Rights: www.achpr.org

Amnesty International: www.amnesty.org Australians for Native Title and Reconciliation: www.antar.org.au

Cultural Survival Organization: www.culturalsurvival.org Human Rights Watch: www.hrw.org

Indian Land Tenure Foundation: www.iltf.org Indigenous Peoples in Nepal: www.iwgia.org/regions/asia/nepal

Indigenous Peoples of Africa Coordinating Committee: www.1pacc.org.za

Inter-American Commission on Human Rights: www.cidh.oas.org

International Working Group for Indigenous Affairs: www.iwgia.org

New on Indigenous Struggles: www.intercontinentalcry.org

Organization of American States: www.oas.org

Survival International: www.survivalinternational.org

Understanding Crown-Maori Relationships in New Zealand: www.posttreatysettlements.org.nz

United Nations Educational, Scientific and Cultural Organization: www.unesco.org

United Nations Permanent Forum on Indigenous Issues: www.un.org/esa/socdev/unpfii/

Documents

Document 1: "The Need to Turn Indians into U.S. Citizens," Chester A. Arthur, 1881

A common approach for dealing with indigenous peoples has been to try to assimilate them into the dominant culture. This impulse generally blends a charitable bent with an inherent and much less admirable assumption of indigenous inferiority. This excerpt from President Chester A. Arthur's 1881 State of the Union Address to the U.S. Congress provides an excellent example of this approach.

Prominent among the matters which challenge the attention of Congress at its present session is the management of our Indian Affairs. While this question has been a cause of trouble and embarrassment from the infancy of the Government, it is but recently that any effort has been made for its solution at once serious, determined, consistent, and promising success.

It has been easier to resort to convenient makeshifts for tiding over temporary difficulties than to grapple with the great permanent problem, and accordingly the easier course has almost invariably been pursued.

It was natural, at a time when the national territory seemed almost illimitable and contained many millions of acres far outside the bounds of civilized settlements, that a policy should have been initiated which more than aught else has been the fruitful source of our Indian complications.

I refer, of course, to the policy of dealing with the various Indian tribes as separate nationalities, of relegating them by treaty stipulations to the occupancy of immense reservations in the West, and of encouraging them to live a savage life, undisturbed by any earnest and well-directed efforts to bring them under the influence of civilization.



Continued on page 11.

Indigenous Peoples' Rights

Continued from page 10.

The unsatisfactory results which have sprung from this policy are becoming apparent to all. As the white settlements have crowded the borders of the reservations, the Indians, sometimes contentedly and sometimes against their will, have been transferred to other hunting grounds, from which they have again been dislodged whenever their new-found homes have been desired by the adventurous settlers. These removals and the frontier collisions by which they have often been preceded have led to frequent and disastrous conflicts between the races.

It is profitless to discuss here which of them has been chiefly responsible for the disturbances whose recital occupies so large a space upon the pages of our history. We have to deal with the appalling fact that though thousands of lives have been sacrificed and hundreds of millions of dollars expended in the attempt to solve the Indian problem, it has until within the past few years seemed scarcely nearer a solution than it was half a century ago. But the Government has of late been cautiously but steadily feeling its way to the adoption of a policy which has already produced gratifying results, and which, in my judgment, is likely, if Congress and the Executive accord in its support, to relieve us ere long from the difficulties which have hitherto beset us.

For the success of the efforts now making to introduce among the Indians the customs and pursuits of civilized life and gradually to absorb them into the mass of our citizens, sharing their rights and holden to their responsibilities, there is imperative need for legislative action.



My suggestions in that regard will be chiefly such as have been already called to the attention of Congress and have received to some extent its consideration.

First, I recommend the passage of an act making the laws of the various States and Territories applicable to the Indian reservations within their borders and extending the laws of the State of Arkansas to the portion of the Indian Territory not occupied by the Five Civilized Tribes.

The Indian should receive the protection of the law. He should be allowed to maintain in court his rights of person and property. He has repeatedly begged for this privilege. Its exercise would be very valuable to him in his progress toward civilization.

Second. Of even greater importance is a measure which has been frequently recommended by my predecessors in office, and in furtherance of which several bills have been from time to time introduced in both Houses of Congress. The enactment of a general law permitting the allotment in severalty, to such Indians, at least, as desire it, of a reasonable quantity of land secured to them by patent, and for their own protection made inalienable for twenty or twenty-five years, is demanded for their present welfare and their permanent advancement.

In return for such considerate action on the part of the Government, there is reason to believe that the Indians in large numbers would be persuaded to sever their tribal relations and to engage at once in agricultural pursuits. Many of them realize the fact that their hunting days are over and that it is now for their best interests to conform their manner of life to the new order of things. By no greater inducement than the assurance of permanent title to the soil can they be led to engage in the occupation of tilling it.

The well-attested reports of their increasing interest in husbandry justify the hope and belief that the enactment of such a statute as I recommend would be at once attended with gratifying results. A resort to the allotment system would have a direct and powerful influence in dissolving the tribal bond, which is so prominent a feature of savage life, and which tends so strongly to perpetuate it.

Third, I advise a liberal appropriation for the support of Indian schools, because of my confident belief that such a course is consistent with the wisest economy.

Source: The Miller Center at the University of Virginia.

Continued on page 12.

Indigenous Peoples' Rights

Continued from page 11.

Document 2: UN Declaration on the Rights of Indigenous Peoples, Preamble, 2007

On September 13, 2007, indigenous peoples' rights groups reached a milestone regarding their efforts toward inclusion, equality, and understanding when the United Nations adopted the Declaration on the Rights of Indigenous Peoples. Approved by 144 member nations, the declaration was a global affirmation of indigenous peoples' rights to equality, intellectual and cultural pursuits, and land and legal rights previously unacknowledged by an international intergovernmental body. Several nations that initially rejected the document—notably Australia, Canada, Colombia, New Zealand, Samoa, and the United States—later signed. The text that follows is the preamble:

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,



Continued on page 13.

Indigenous Peoples' Rights

Continued from page 12.

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action, affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international laws,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance the harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect.

Source: United Nations.



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The New Legal Context of Indigenous Peoples' Rights: The United Nations Declaration on the Rights of Indigenous Peoples

By Julie Rowland

Indigenous nations and communities within the United States count two million tribal citizens, though many more identify as indigenous.¹ These United States Indian, Alaska Native, and Native Hawaiian peoples comprise 566 federally recognized nations.² Historically, the hegemonic regime has treated tribes in a discriminatory and oppressive manner. This treatment has led to the social and economic hardships faced by American tribes in the past and the present.³ Yet the United States government portrays a different narrative in which the government has historically treated tribes with respect and dignity and continues to support tribes through the Bureau of Indian Affairs and other government entities.⁴ The circumstances faced by American tribes are similar to the challenges and oppression faced by 370 million indigenous people around the world. These similar concerns among indigenous peoples globally have culminated in the United Nations Declaration on the Rights of Indigenous Peoples (“the Declaration”). The Declaration is a response to the shared concerns of indigenous peoples globally. It represents “the aspirations of the world’s indigenous peoples,” “a consensus by the world community,” and “a plan of action for states and indigenous peoples.”⁵

Creation and approval of the Declaration is part of a global social movement of indigenous nations and communities that began in the 1970s.⁶ The Declaration is “a first in international law” because indigenous peoples, whose rights are at stake, played a crucial role in the negotiations over its content.”⁷ From humble beginnings, the “Study of the Problem of Discrimination against Indigenous Populations” by the UN Sub-Commission on the Prevention of Discrimination of Minorities, and through a twenty-five-year process by the UN Working Group on Indigenous Populations, the final draft of the Declaration was completed in 2007.⁸ Now, with the Declaration passed, the next step is to produce enforceable national policies in line with the Declaration.

INDIGENOUS RIGHTS IN CONTEXT: INTERNATIONAL LAW

Modern international law recognizes the rights of individuals and the rights of nation-states but does not generally recognize other social entities, such as families or tribes, as capable of bearing similar rights.

Historically, international law has emphasized certain normative values derived from its western, Eurocentric roots.⁹ Specifically, the classical framework of international law relies on a positivist theory of law, in which sovereign states are equal and must consent to international rules before they are bound by them.¹⁰ This European model of international law remains pervasive today and shapes the context in which indigenous peoples’ rights are asserted.

Modern international law recognizes the rights of individuals and the rights of nation-states but does not generally recognize other social entities, such as families or tribes,

as capable of bearing similar rights. Under the traditional international law framework, the rights of indigenous people as a group are not recognized, though indigenous peoples as individuals are entitled to all of the same rights recognized for humans around the world.¹¹ However, indigenous peoples seek human rights recognition as a group rather than as individuals because “their [individual] identity is fundamentally tied to the group.”¹² The current, some might say Eurocentric, international law framework exists in tension with indigenous groups because the latter are organized differently from the accepted nation-state model. For example, indigenous groups of the western hemisphere are organized by tribal or kinship ties, their political structures are often decentralized, and they may share control of overlapping territory with other tribes or the larger nation-state.¹³

The Declaration on the Rights of Indigenous Peoples was drafted and adopted to address the common issues faced by indigenous peoples. The Declaration sets out a framework of rights to which indigenous peoples around the world aspire, but is not legally binding for any nation that chooses to adopt it.¹⁴ Nations that adopt the Declaration are independently responsible for enacting domestic legislation and policies that comply with the Declaration standards. Nations may use the Declaration as “the basis for legislation,” as in the Philippines, or as motivation to reform existing legislation or constitutions, as in some Latin American states.¹⁵ Most nations are likely to adopt the Declaration as a result of internal pressure from indigenous groups and external pressure from the international community. As a result, 144 states in the United Nations adopted the Declaration upon its completion in 2007, and



UN Photo/Devra Berkowitz

UN Permanent Forum on Indigenous Issues.

Continued on page 15.

The New Legal Context of Indigenous Peoples' Rights: The United Nations Declaration on the Rights of Indigenous Peoples

Continued from page 14.

the four states that initially voted against it—Australia, New Zealand, the United States, and Canada—had all adopted it by 2010.¹⁶ Problems concerning the Declaration lie not in the adoption process but rather in each nation's interpretation and implementation of its provisions.

The Declaration is unique in that it recognizes a “right of belated state building” by asking states to redefine and reinterpret how they interact with indigenous groups.¹⁷ This redefinition process requires that states recognize a new kind of statehood that reflects indigenous cultures and values. In a way, the Declaration asks nations to start anew with respect to indigenous peoples by addressing a historical problem—colonization—with a twenty-first-century approach of mutual respect and dedication to human rights. The Declaration has five key justifications, or purposes. The Declaration aims to (1) eliminate discrimination against indigenous peoples, (2) give indigenous peoples control over their lands, territories, and resources, (3) promote the maintenance and strengthening of their institutions, cultures, and traditions, (4) respect indigenous peoples' knowledge, cultures, and traditional practices regarding the environment, thus contributing to sustainable and equitable development and management of natural resources, and (5) contribute to peace, friendly relations, and social and economic progress by demilitarizing indigenous



UN Photo/John Isaac

Squamish Nation canoe approaching Bella Bella, Canada.

If provisions in the Declaration are characterized as reflecting customary international law, then the rights guaranteed by those provisions may become binding on all nations, including those that have not adopted the Declaration.²⁰ Those nations will then be obligated to ensure the rights guaranteed to indigenous peoples by the customary international law.

peoples' lands.¹⁸ Because all international law and policy is implemented at a national level, and may include even a state or local level, a nation's unique legal context will greatly impact how that nation interprets and implements international law. In the case of this Declaration, many nations have laws that impact indigenous peoples that were put in place by court decisions and legislative actions.¹⁹ When many nations share the same law, that law may be considered part of customary international law. If provisions in the Declaration are characterized as reflecting customary international law, then the rights guaranteed by those provisions may become binding on all nations, including those that have not adopted the Declaration.²⁰ Those nations will then be obligated to ensure the rights guaranteed to indigenous peoples by the customary international law.

Certain rights of indigenous peoples have already been recognized by scholars as constituting a part of customary international law. For example, in the landmark decision in the *Awasi Tingni* case, the Inter-American Court of Human Rights (IACHR) cited the right of indigenous peoples to the “demarcation, ownership, development, control and use of the lands they have traditionally owned or otherwise occupied and used” as customary international law.²¹ Moreover, in interpreting the Inter-American Convention's right to property, the IACHR emphasized the communal nature of indigenous property. This “fundamental reinterpretation” moved away from property rights focused on the individual and demonstrated a “significant shift in the normative expectations of the states,” although many states do not recognize these rights as representative of customary international law.²²

The nations who voted against the Declaration have rejected its provisions as evidence of customary international law.²³ The US Department of State has maintained that “while not legally binding or a statement of current international law,” the Declaration “has both moral and political force.”²⁴ In this way, nations like the United States protect themselves against international legal obligations that may conflict with national law or public policy.

SELF-DETERMINATION, IMPLEMENTATION, AND ISSUES OF INTERPRETATION

Self-determination is a right that is crucial to the good faith implementation of the Declaration. It has been called the “pillar” on which all other provisions of the Declaration depend.²⁵ When a people have the right of self-determination, they are free to deter

Continued on page 16.

The New Legal Context of Indigenous Peoples' Rights: The United Nations Declaration on the Rights of Indigenous Peoples

Continued from page 19.

mine their political status and to pursue their own choices in political, economic, social, and cultural developments.²⁶ A healthy cultural identity is linked to successful social and political institutions.²⁷ Indigenous peoples' self-determination will require two

overlapping spheres of authority: in the ideal self-determination scenario, indigenous peoples self-govern, and they also participate effectively in the political processes of the nation in which they reside.²⁸ Both spheres of authority are protected in the Declaration.²⁹

In terms of international law, many scholars argue that the right to self-determination should be classified as *ius cogens*, or a "peremptory norm."³⁰ A peremptory norm is defined as "a norm accepted and recognized by the international community of states...as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law."³¹ In other words, the right to self-determination may be so basic to the value systems of the majority of societies around the world that it cannot be altered or denied to any individual or group without consequences from the international community.



UN Photo/John Isaac

Thunderbird Dance Company.

From an historic western or Eurocentric legal perspective, self-determination necessarily implies independent statehood because, from that perspective, political recognition is rooted in the demarcation of territory as belonging to one group or another.³² For indigenous peoples residing within the territory of another nation, self-determination would allow the right to secede from the nation.³³ However, scholars have noted that this Eurocentric perspective "obscures the human rights character of self-determination" and fails to take into account "the contemporary realities of a world that is simultaneously moving toward greater interconnectedness and decentralization."³⁴ The Declaration and other international human rights legal instruments are pushing the boundaries of how international law views the entity in which rights inhere.³⁵ Rather than the sovereign state as the vessel for holding rights like self-determination, the individual or groups of individuals are seen as able to hold such rights. Ultimately, the successful implementation of the Declaration may depend on nations' ability to expand their views of law and statehood. Scholar Siegfried Wiessner has said that "the flame of self-determination...needs to burn from inside the indigenous community itself," meaning that while outside legal and political structures may protect and encourage the flame, self-determination will grow only as large as indigenous communities make it.³⁶

Article 46(1) states that "nothing in this Declaration may be interpreted as implying for any State, people or group of persons any right to engage in any activity or perform any act which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states."

Like a statute, the Declaration must be interpreted to be implemented. Interpretation may involve referencing the intent of the Declaration's drafters. Fortunately, the history and discussions surrounding the Declaration's creation are well documented, so the intent behind its provisions is unlikely to be misinterpreted. However, like much legislation passed in the United States, compromises were made during the drafting process to make the Declaration as acceptable as possible to the greatest number of interested parties. In these areas of controversy and compromise, or where the domestic context is uncommon or not considered, states may have space for varying interpretations of the Declaration's provisions.

One of the most important compromises was the inclusion of Article 46(1). The Declaration emphasizes the right of self-determination as a key component of the belated state-building process. However, political self-determination could weaken the unified nature of a nation-state or, if pursued to the extreme, result in secession of indigenous communities from the state.³⁷ To address fears of these potential ramifications, the drafters adopted Article 46(1), which states that "nothing in this Declaration may be interpreted as implying for any State, people or group of persons any right to engage in any activity or perform any act which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent

Continued on page 21.

The New Legal Context of Indigenous Peoples' Rights: The United Nations Declaration on the Rights of Indigenous Peoples

Continued from page 16.

states.”³⁸ Without further guidance, the state is left to define what, for example, an act that partly “impairs” the “territorial integrity or political unity” of the state might entail. A situation in which a tribe claims rights to ancestral lands now in the possession of the United States government is easily foreseeable as an act of self-determination. What if that land falls on the border between the United States and Mexico? Would either nation feel its territorial integrity was threatened in an age of border walls and the war on terror?³⁹

Similarly, another provision asks states to consider the unique situation of the indigenous peoples within their borders and act accordingly. Allowing this leeway in interpretation provides states with an opportunity to err on the side of their own interests under the guise of considering the unique context. Specifically, the paragraph asks that states consider “the significance of national and regional particularities and the various historical and cultural backgrounds [of indigenous groups].”⁴⁰ While this paragraph is necessary to account for the wide variations in indigenous cultures, the language gives equal weight to the particular needs of the nation. The nation’s needs are decided by the national government, which may use this language to protect itself before its indigenous peoples. This paragraph and Article 46(1) reflect an underlying fear that the hegemonic cultural and political groups might lose control if they promote self-determination and plurality. Another fear may be that, should indigenous peoples take full advantage of their rights, other minority groups may also be empowered to take extreme actions.

An additional compromise found in the Declaration centers on the interaction between states and indigenous peoples regarding indigenous peoples’ lands, territories, and resources. An early draft of the Declaration required states to “seek and obtain’ consent from indigenous peoples” before developing natural resources on traditional indigenous territories.⁴¹ In essence, the “seek and obtain consent” requirement would give indigenous peoples veto power over such developments.⁴² The official version of the Declaration requires only that states “consult prior to the commencement of any large-scale projects.”⁴³ These ten words raise a host of important questions. For example, how will we define a consultation? What will happen if the indigenous peoples involved refuse or are unable to communicate with the state on this issue? How much time and energy must the state expend before commencing a project without consultation in the name of the public interest? How will we define a large-scale project? At what point is a project too small to require consultation? Controversial language in the Declaration often centers around the requirement of states to seek consent or consult with indigenous peoples on matters that affect them.⁴⁴ Interested citizens should pay particular attention to how governments interpret these duties and carry them out, as well as how governments determine when a matter affects indigenous peoples.



UN Photo/Jean-Marc Ferré

Apache dancer.

APPLYING THE DECLARATION IN A NATIONAL CONTEXT

The United States Constitution

When the United States adopted the Declaration in 2010, President Obama issued a presidential memorandum titled “Announcement of United States Support” that detailed the government’s support of the Declaration and plans to implement it. The document explains that the “Departments of the Interior, Justice, and Health and Human Services are engaged in an unprecedented effort to consult with tribes to develop policy and implement this new law.”⁴⁵ The Announcement of Support covers five key areas of concern: (1) strengthening the government-to-government relationship; (2) protection of Native American lands and the environment, and redress; (3) addressing health care gaps; (4) promoting sustainable economic development; and (5) protecting Native American cultures.⁴⁶ This presidential memorandum lists numerous projects relating to its key goals. While the extent to which the United States government will support all of the Declaration’s provisions is ambiguous, it is also clear that individual indigenous nations and leaders may not have supported US involvement with the Declaration to the extent seen in other countries.⁴⁷

Continued on page 18.

The New Legal Context of Indigenous Peoples' Rights: The United Nations Declaration on the Rights of Indigenous Peoples

Continued from page 17.

“The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.” [Excerpt from Executive Order 13175 - Consultation and Coordination With Indian Tribal Governments, Section 2(a).]

With regard to self-determination, the announcement states that the Declaration’s “concept of self-determination is consistent with the United States’ existing recognition of, and relationship with, federally recognized tribes,” and it goes on to highlight the many federal government activities intended to enhance the self-determination of Native American tribes.⁴⁸ These activities include financial investments in tribal police and justice systems, bureaucratic changes such as streamlining the grant-making process into the Coordinated Tribal Assistance Solicitation, and legislative action such as the Tribal Law and Order Act. In addition, in 2000 President Obama officially issued a memorandum outlining plans of action, “Executive Order 13175—Consultation and Coordination with Indian Tribal Governments”.⁴⁹

These new federal laws and projects must interact and contend with the United States’ historical legal approaches to Native Americans. Like the other three nations that initially voted against the Declaration, the United States has a history of using legal doctrines to deny indigenous peoples certain rights. In particular, these nations have used the law to acquire indigenous peoples’ lands without consultation or compensation,⁵⁰ even though some of the negative effects of oppressive US laws such as the General Allotment Act of 1887 may have been mitigated by new laws like the Indian Reorganization Act of 1934.⁵¹

However, in the 1970s the judicial branch began to take a more active role in shaping the United States’ legal approach to Native American rights. The judicial branch’s policies were often “uneducated” and contravened the policies of the other two, more representative branches.⁵² Since 1985, the Supreme Court has ruled against tribes in more than 80 percent of the cases the Court has heard.⁵³ The history of the United States judiciary’s philosophy toward Native Americans reveals a tradition of the denial of rights. Over time, the Supreme Court developed doctrines that supported its philosophy. For example, the doctrine of discovery once gave title to Native American lands to the federal government by virtue of their discovery by a Christian people.⁵⁴ The plenary power doctrine ensured broad power by the federal government over Native American nations occupying that land⁵⁵ and is still valid law today.⁵⁶ Doctrines like these have been solidified over time through case law, in which court rulings build upon the reasoning of previous rulings to create a body of law made judicially.

“He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.” [Article 2, Section 2, Clause 2 of the Constitution of the United States]

The United States Constitution also impacts the context in which new law and policy inspired by the UN Declaration is implemented. Though not specific to Native Americans, Article II, Section 2, Clause 2 of the Constitution grants the president and the Senate the right to make treaties, and treaties became the “primary instrument” for legal interaction with tribes in the United States.⁵⁷ According to the Office of the Secretary of the Senate, Article I, Section 8, or the Indian Commerce Clause, provides the “main source of power for congressional legislation dealing with Native Americans.”⁵⁸ Because of its mandate giving Congress the power to regulate commerce with tribes, this clause has the potential to be interpreted to control a wide range of American Indian affairs. Both of these constitutional provisions have been used by the federal government to control the internal affairs of United States tribes, but the broad scope of this power has been questioned by at least one scholar.⁵⁹

Indigenous Peoples’ Cultural and Intellectual Property

Intellectual property is a “catch-all term that is used to describe copyrights, patents, trademarks, trade secrets, and other existing or newly created related rights.” International law has begun to merge cultural and intellectual property and to treat them similar-

Continued on page 19.

The New Legal Context of Indigenous Peoples' Rights: The United Nations Declaration on the Rights of Indigenous Peoples

Continued from page 18.

ly. Like international law, intellectual property law derives from a Western approach to property which typically recognizes only individual ownership. Indigenous peoples typically claim intellectual property rights to their “ways of using and conserving local land, flora, and fauna; intellectual and experiential learning related to nature and social interaction; knowledge handed down orally or in writing across the generations; artistic and cultural works; and intellectual conceptions and depictions of the ‘supernatural and sacred.’”⁶⁰ The Declaration’s Article 31 states:

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

In the United States, efforts have been made to protect indigenous groups’ rights to property as a collective. For example, the Native American Graves Protection and Repatriation Act gives federally controlled agencies and museums the duty to repatriate, or return, cultural objects and human remains to Native American tribes if certain conditions are met.⁶¹ While scholars have noted that “there are many precedents in intellectual property law...for bestowing collective rights on favored groups or corporations,” the question remains whether tribes will be considered a “favored group.” Precedent includes, for example, the phrase “Idaho potatoes,” which is owned collectively by the people and state of Idaho, but Idaho potatoes are a profitable industry.⁶² While collective ownership of their potatoes is related to the geographic location of Idahoan residents, tribal rights and responsibilities inhere to the individual belonging to that tribe, and future cases must draw this distinction. Because of the profits at

stake, cultural and intellectual property belonging to indigenous peoples is a key area to watch as the Declaration is implemented.



Photo source: <http://www.beaumontenterprise.com/photos/article/Controversial-kids-fashion-ads-3497918.php>

Recently, the Navajo Nation initiated a lawsuit against Urban Outfitters, a popular clothing retailer, for trademark infringement and violations of the Indian Arts and Crafts Act. The Act “makes it illegal to sell arts or crafts in a way to falsely suggest they were made by American Indians.” The offending products sold by Urban Outfitters include a Navajo print flask and Navajo print underwear.⁶³ Urban Outfitters attempted unsuccessfully to transfer the case to a district court in Pennsylvania, a court that is likely to be less familiar with the unique law and challenges faced by the Navajo Nation than the original court in New Mexico.⁶⁴ The two parties’ attempts to resolve their issues through mediation were unsuccessful. The trial is

set for approximately May 2015.⁶⁵ The nation will have its eye on how the United States District Court of New Mexico handles the case and whether the recently-adopted Declaration will have an impact on the Court’s decision.

Lands, Territories, and Resources

Indigenous groups often “embrace the concept of stewardship over lands and resources as a type of storehouse for the Seventh Generation in the future.”⁶⁶ Where conflict arises, however, is in the struggle between preservation of the past and so-called “progress.” While indigenous peoples may define progress as the preservation of land and resources for future generations, many in private industry and government promote development projects in the name of progress, profit, or the “state interest.” These projects might include “mining and extractive industries, hydrodams, energy projects, plantations” and others.⁶⁷

Conflicts between the internationally applicable provisions of the Declaration and the national context in which the Declaration is applied are especially evident in relation to land ownership. For example, in New Zealand, the right to control of lands traditionally owned, occupied, or used by indigenous peoples as required by Article 28 of the Declaration would potentially apply to the entire nation. New Zealand is unlikely to be able to compensate indigenous peoples for the value of the whole country.⁶⁸

In the process of building the border wall, the United States government has failed to consult with indigenous groups regarding the land and cultural, sacred, or burial sites that may be impacted.

Continued on page 20.

The New Legal Context of Indigenous Peoples' Rights: The United Nations Declaration on the Rights of Indigenous Peoples

Continued from page 19.

An example of a potential violation of the provisions of the Declaration in relation to lands and territories can be seen in the border wall between the United States and Mexico. In the process of building the border wall, the United States government has failed to consult with indigenous groups regarding the land and cultural, sacred, or burial sites that may be impacted. Additionally, the border wall requires that the United States Border Patrol militarize tribal lands. When done without the consent of the resident tribe, this militarization activity may be in direct violation of the UN Declaration's Article 30(1).⁶⁹ The United States government will likely argue that it is in the right because illegal immigration constitutes a "public interest."⁷⁰

The Declaration directly addresses situations in which indigenous peoples "divided by international borders have the right to maintain and develop contacts, relations, and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders." States are directed to "take effective measures to facilitate the exercise and ensure the implementation of this right."⁷¹ The United States is thus responsible for ensuring that tribes can cross the United States-Mexico border, but because of the controversial and politicized nature of immigration in the United States, tribes may need to take action to ensure their cross-border mobility.

OTHER SOURCES OF INDIGENOUS PEOPLES' RIGHTS

Other sources of indigenous peoples' rights include other international conventions and treaties, customary international law, and the domestic law of nations. For example, the International Covenant on Civil and Political Rights (ICCPR) "confirms the right of all peoples to retain their cultural and religious heritage and way of life," among other important rights.⁷² The ICCPR also establishes the United Nations Human Rights Council (previously Commission), which monitors compliance with the obligations of the ICCPR. This monitoring process occurs through periodic review of a nation through reports submitted by the nation itself, the UN's Office of the High Commissioner for Human Rights, and, perhaps most importantly, by stakeholders such as NGOs or research institutions.⁷³ For example, at the University of Oklahoma's College Law International Human Rights Clinic (IHRC), students and professors have prepared stakeholder reports for nations with indigenous peoples "facing complex legal and social issues," such as Guyana, Panama, Papua New Guinea, Suriname, Uganda, and Venezuela.⁷⁴

The UN Convention on Biodiversity, to which the United States is not a party, protects the "knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biodiversity," as well as the sharing of profits resulting from the use of such knowledge, innovations, or practices. The Convention compares to the Declaration's provisions protecting the rights of indigenous peoples to their intellectual property, which cannot be taken without their "free, prior, and informed consent."⁷⁵ Notably, the Declaration's definition of indigenous peoples' property includes "archaeological and historic sites, specimens of visual art, and literary works," which is a shift from more traditional definitions of "property."⁷⁶ Traditionally, property requires an identifiable author, which is often not the case with historical sites or works to which indigenous peoples' recognize a collective right.⁷⁷



UN Photo/Mark Garten

Indigenous people and food sovereignty.

Cultural genocide is defined as "any action which has the aim or effect of depriving [indigenous peoples] of their integrity as distinct peoples, or of their cultural values or ethnic identities" or "any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative, or other measures."

The Genocide Convention of 1948 includes a prohibition against cultural genocide. Cultural genocide is defined as "any action which has the aim or effect of depriving [indigenous peoples] of their integrity as distinct peoples, or of their cultural values or ethnic identities" or "any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative, or other measures." However, cultural genocide requires the additional element of a physical act of genocide.⁷⁸ While many indigenous groups, including those residing in the United States, have experienced genocide and other internationally recognized crimes that have left them in states of poverty for generations, these crimes occurred prior to the many international conventions prohibiting them.⁷⁹ In fact, international legal theory was shaped to justify these crimes at the time of their occurrence.

Continued on page 21.

The New Legal Context of Indigenous Peoples' Rights: The United Nations Declaration on the Rights of Indigenous Peoples

Continued from page 20.

Additionally, international treaties that protect the rights of minority groups, particularly against discrimination, are sources of indigenous peoples' rights.⁸⁰ Lastly, the International Labor Organization generated the Convention Concerning Indigenous and Tribal Peoples in Independent Countries (No. 169).⁸¹ The Convention has been used as evidence of customary international law relating to indigenous groups.⁸²

Recommendations

The first step to implementing the Declaration is to ensure that indigenous peoples can take full advantage of the right of self-determination. In many nations, this may require the national government to grant indigenous peoples greater political participation in the larger national government. Greater political participation may include reserving or increasing the number of reserved seats in legislative bodies, using proportional representation measures to ensure that indigenous peoples are adequately represented, and purposefully appointing indigenous peoples to important positions.⁸³ Additionally, public pressure from constituents will ensure that legislators abide by and promote the Declaration's provisions. Public pressure requires public support, which can be garnered through the strategic use of social media and framing indigenous rights as a new frontier in civil rights. Social media outlets should be explored as a means to popularize indigenous issues efficiently and to reach younger generations of the general public, who may be more open to promoting indigenous rights than past generations.

Because of the economic recession in the United States and the Supreme Court's retreat from defending the rights of minorities, the policy window for promoting indigenous rights may close quickly, and so immediate action is necessary. Current circumstances in the United States may require framing indigenous rights as the subject of a global movement toward a more humane and just world. Perhaps less tenable, framing indigenous rights as an economic issue in which indigenous communities seek increased self-reliance may allow advocates to link the rights guaranteed in the Declaration to decreased reliance on federal grants and programs. Alternatively, framing indigenous rights, especially self-determination, as analogous to the argument for states' rights might win support from more conservative communities. For further guidance on framing strategies, indigenous communities might look to other groups that are similarly situated with weak political power and a troubled public image, sometimes called a negative public construction.⁸⁴ Two groups in this category that have recently gained political ground in the United States through effective media use and framing techniques are undocumented immigrants and the LGBT community. These groups' techniques for gaining public and political support may be of use to indigenous communities. Overall, indigenous communities in the United States should work toward increasing the general public's awareness of challenges they face and to gain support for the Declaration and related causes. With greater public education and support, indigenous communities will gain the political leverage necessary to take steps toward full and effective implementation of the Declaration in the United States. Future steps might include the creation of new entities or empowerment of existing ones that can act as liaisons between state and federal governments and indigenous governments.

For citizens interested in advocating the proper implementation of the Declaration, the following areas are recommended for further study:

- Expansion of the national view of statehood and, as a corollary, the recognition of groups as political entities;
- How nations interpret their duties as described by the Declaration and how these duties are served, with particular attention to the interpretation of key language highlighted above (for example, how governments determine when a matter affects indigenous peoples);
- How the Declaration is presented to the public in the media and by the government (for example, who is chosen to speak on behalf of indigenous groups);
- How cultural and intellectual property of indigenous peoples is protected in capitalist economies where profit-making entities often carry greater political clout;
- Perhaps most importantly, how the Declaration and related information is disseminated to indigenous peoples and the public and which approaches are most successful and/or well-received by indigenous peoples and the public.

Continued on page 22.

The New Legal Context of Indigenous Peoples' Rights: The United Nations Declaration on the Rights of Indigenous Peoples

Continued from page 21.

Acknowledgments

Special thanks to Eryka Charley for her insight.

Notes

1. United States Senate, Committee on Indian Affairs, "Setting the Standard: Domestic Policy Implications of the UN Declaration on the Rights of Indigenous Peoples," (hearing before the Committee on Indian Affairs, United States Senate, 112th Congress, 1st Session, 2011), 1.
2. US Department of the Interior, Indian Affairs, "Frequently Asked Questions," <http://www.bia.gov/FAQs/index.htm>.
3. S. James Anaya, *Indigenous Peoples in International Law* (New York: Oxford University Press, 2004), 4.
4. Department of the Interior, "Frequently Asked Questions."
5. James Anaya, "Implementation of UN Declaration," James Anaya, *United Nations Rapporteur on the Rights of Indigenous Peoples*, <http://unsr.jamesanaya.org/videos/implementation-of-un-declaration>.
6. Siegfried Wiessner, "Indigenous Self-Determination, Culture, and Land: A Reassessment in Light of the 2007 UN Declaration on the Rights of Indigenous Peoples," in *Indigenous Rights in the Age of the UN Declaration*, ed. Elvira Pulitano (New York: Cambridge University Press, 2012), 38-42.
7. Elvira Pulitano, "Indigenous Rights and International Law: an Introduction," in *Indigenous Rights in the Age of the UN Declaration*, 1-2.
8. Wiessner, "Indigenous Self-Determination," 40-41; Roxanne Dunbar-Ortiz, "The First Decade of Indigenous Peoples at the United Nations, 1974-1983," *Peace & Change: A Journal of Peace Research* 31 (2006): 56-65.
9. Pulitano, "Indigenous Rights," 13.
10. David Luban, Julie R. O'Sullivan, and David P. Stewart, *International and Transnational Criminal Law* (New York: Aspen Publishers, 2010), 28-31.
11. Anaya, *Indigenous Peoples*, 21, 27.
12. Catherine J. Iorns Magallanes, "Indigenous Rights and Democratic Rights in International Law: An 'Uncomfortable Fit?'," *UCLA Journal of International Law and Foreign Affairs* 15 (2010): 120.
13. Anaya, *Indigenous Peoples*, 22.
14. Anaya, "Implementation."
15. Wiessner, "Indigenous Self-Determination," 44.
16. Eleven states abstained initially (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russia, Samoa and Ukraine), but Colombia and Samoa have now indicated their support.
17. Magallanes, "Indigenous Rights," 135.
18. United Nations Declaration on the Rights of Indigenous Peoples.
19. Ronald Kakungulu, "The United Nations Declaration on the Rights of Indigenous Peoples: A New Dawn for Indigenous Peoples Rights?" (Cornell Law School Inter-University Graduate Student Conference Papers, Paper 18, 2009), http://scholarship.law.cornell.edu/lps_clacp/18/.
20. Siegfried Wiessner and S. James Anaya, "The UN Declaration on the Rights of Indigenous Peoples: Towards Re-Empowerment," *Jurist: Legal News & Research* (2007), <http://jurist.law.pitt.edu/forumy/2007/10/un-declaration-on-rights-of-indigenous.php>.
21. Ibid.



UN Photo/Joseane Daher

Young Shavante Indians, Brazil

Continued on page 23.

The New Legal Context of Indigenous Peoples' Rights: The United Nations Declaration on the Rights of Indigenous Peoples

Continued from page 22.

22. Wiessner, "Indigenous Self-Determination," 54.

23. Wiessner and Anaya, "Towards Re-Empowerment."

24. US Department of State, "UN Declaration on the Rights of Indigenous Peoples Review," <http://www.state.gov/s/tribalconsultation/declaration/>.

25. Erica-Irene A. Daes, "The Contribution of the Working Group on Indigenous Populations to the Genesis and Evolution of the UN Declaration on the Rights of Indigenous Peoples," in *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous People*, ed. Claire Charters and Rodolfo Stavenhagen, trans. Elaine Bolton (Somerset: Transaction Publishers, 2010), 68, <http://www.internationalfund.org/documents/MakingtheDeclarationWork.pdf>. The Working Group on Indigenous Peoples was the first mechanism within the UN system, established in 1982, and was replaced with the present Expert Mechanism in 2006.

26. UN Declaration on the Rights of Indigenous Peoples, Article 3.

27. Magallanes, "Indigenous Rights," 115.

28. Anaya, *Indigenous Peoples*, 9.

29. UN Declaration on the Rights of Indigenous Peoples, Article 5.

30. Daes, "The Contribution of the Working Group," 68–69.

31. Luban, et al., *International and Transnational*, 47.

32. S. James Anaya, "The Right of Indigenous Peoples to Self-Determination in the Post-Declaration Era," in *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous People*, ed. Claire Charters and Rodolfo Stavenhagen, trans. Elaine Bolton (Somerset: Transaction Publishers, 2010), 186–87, <http://www.internationalfund.org/documents/MakingtheDeclarationWork.pdf>.

33. Daes, "The Contribution of the Working Group," 70–71.

34. Anaya, "The Right of Indigenous Peoples," 189.

35. *Ibid.*, 186.

36. Wiessner, "Indigenous Self-Determination," 63.

37. Magallanes, "Indigenous Rights," 137.

38. UN Declaration on the Rights of Indigenous Peoples, Art. 46(1); italics mine.

39. For a discussion of the negative impact of the border wall between the US and Mexico on indigenous peoples, see Angeliq EagleWoman, "The Eagle and the Condor of the Western Hemisphere: Application of International Indigenous Principles to Halt the United States Border Wall," *Idaho Law Review* 45 (2009): 565–67.

40. United Nations Declaration on the Rights of Indigenous Peoples, Annex.

41. Magallanes, "Indigenous Rights," 132–33.

42. *Ibid.*, 133.

43. *Ibid.*; italics mine.

44. *Ibid.*, 139–41.

45. US Department of State, "Announcement of US Support for the United Nations Declaration on the Rights of Indigenous Peoples, Initiatives to Promote the Government-to-Government Relationship & Improve the Lives of Indigenous Peoples," available online at <http://www.state.gov/documents/organization/153223.pdf>.

46. *Ibid.*, 2, 6, 9, 10, 13.

47. Pulitano, "Indigenous Rights," 7.

48. US Department of State, "Announcement," 3.



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Tibetan ethnic group, India.

Continued on page 24.

The New Legal Context of Indigenous Peoples' Rights: The United Nations Declaration on the Rights of Indigenous Peoples

Continued from page 23.

49. Available online at <http://ceq.hss.doe.gov/nepa/regs/eos/eo13175.html>.
50. Kakungulu, "The United Nations Declaration," 6.
51. G. William Rice, "On Sovereign Ground: Implementing the United Nation's Declaration on the Rights of Indigenous Peoples with Respect to Land," in *Sovereignty Symposium 2011: Seeds of Sovereignty* (Oklahoma City: Supreme Court of Oklahoma, 2011), 135. This volume is a collection of conference proceedings from the 24th Sovereignty Symposium, June 1-2, 2011, Oklahoma City, OK.
52. Matthew L. M. Fletcher, "The Supreme Court and Federal Indian Policy," *Nebraska Law Review* 85 (2011): 128.
53. Walter R. Echo-Hawk, "The Seeds of Sovereignty: Implementing the United Nations Declaration on the Rights of Indigenous Peoples," in *Sovereignty Symposium 2011*, 14-5.
54. Steve Newcomb, "Five Hundred Years of Injustice: The Legacy of Fifteenth Century Religious Prejudice," http://ili.nativeweb.org/sdrm_art.html (accessed 22 June 2012).
55. Robert T. Coulter, "The UN Declaration on the Rights of Indigenous Peoples: Improving Federal Law and Policy," in *Sovereignty Symposium 2011*, 112.
56. Nathan Speed, "Examining the Interstate Commerce Clause Through the Lens of the Indian Commerce Clause," *Boston University Law Review* 87 (2007): 485.
57. *Ibid.*, 473.
58. United States Senate, "Constitution of the United States," http://www.senate.gov/civics/constitution_item/constitution.htm#a1_sec8.
59. Speed, "Examining the Interstate Commerce Clause", 486.
60. Hannibal Travis, "The Cultural and Intellectual Property Interests of the Indigenous Peoples of Turkey and Iraq," *Texas Wesleyan Law Review* 15 (2009): 426-428.
61. Native American Graves Protection and Repatriation Act. Public Law 101-601, US Code Service 25 (1990) § 3006.
62. Travis, "Cultural and Intellectual Property Interests," 486.
63. Caroline Jamet, "Urban Outfitters Sued for Trademark Infringement by Navajo Nation," *American University College of Law, Intellectual Property Brief* (June 18, 2012), <http://www.ipbrief.net/2012/06/18/urban-outfitters-sued-for-trademark-infringement-by-navajo-nation/>. The district court complaint submitted by the plaintiffs is available here: <http://www.schwimmerlegal.com/2012/02/navajo-nation-v-urban-outfitters-re-navajo.html>.
64. *The Navajo Nation, et al. v. Urban Outfitters, Inc., et al.*, No. CIV 2012-00195 LH-WDS (D. New Mexico). Defendant's Motion to Transfer Venue Pursuant to U.S.C. § 1404(A).
65. Victoria Slind-Flor, "GSK, Urban Outfitters, Craigslist: Intellectual Property," *Bloomberg Law* (2013), <http://about.bloomberglaw.com/legal-news/gsk-urban-outfitters-craigslist-intellectual-property/>.
66. Eaglewoman, "The Eagle," 557.
67. UN Economic and Social Council HR/5093, "Despite Declaration, Reality for Indigenous Peoples One of Unacceptable Conditions that Requires Urgent Action by Governments Across the Globe, Permanent Forum Told," United Nations (May 15, 2012), <http://www.un.org/News/Press/docs/2012/hr5093.doc.htm>.
68. Kakungulu, "The United Nations Declaration," 4.



Dutch Consul General Rob de Vos (left) welcomes paddlers and the Chief of the Onondaga Nation, Tadodaho Sid Hill (right), at Pier 96

Continued on page 25.

The New Legal Context of Indigenous Peoples' Rights: The United Nations Declaration on the Rights of Indigenous Peoples

Continued from page 24.

69. Eaglewoman, "The Eagle," 569–71.

70. The Declaration's Article 30(1) reads, "Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned."

71. UN Declaration, Article 36; EagleWoman, "The Eagle," 571, n34.

72. ravis, "Cultural and Intellectual Property Interests," 425.

73. Giovanna E. Gismondi and Ryan J. Patterson, "The University of Oklahoma-International Human Rights Clinic and the United Nations Human Rights Council: Toward Cooperation for the Protection of Indigenous Peoples Rights around the World," in *Sovereignty Symposium* 2011, 140–45.

74. *Ibid.*, 143–44.

75. Travis, "Cultural and Intellectual Property Interests," 430, 432.

76. UN Declaration, Article 11.

77. Travis, "Cultural and Intellectual Property Interests," 486. 78.

78. *Ibid.*, 424.

79. EagleWoman, "The Eagle," 560.

80. See, e.g., the International Covenant on Civil and Political Rights (ICCPR), available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, and the International Convention on the Elimination of Forms of Racial Discrimination, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>.

81. Magallanes, "Indigenous Rights," 142. 82.

82. *Ibid.*, 144.

83. *Ibid.*, 126–27.

84. Anne Schneider and Helen Ingram, "Social Construction of Target Populations: Implications for Politics and Policy," *The American Political Science Review* 87, no. 2 (1993): 334–47.



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U.N. Declaration on the Rights of Indigenous Peoples

Resolution adopted by the General Assembly
[without reference to a Main Committee (A/61/L.67 and Add.1)]

61/295. United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006,¹ by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

Recalling its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

Adopts the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

*107th plenary meeting
13 September 2007*

Annex

United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Continued on page 27.

U.N. Declaration on the Rights of Indigenous Peoples

Continued from page 26.

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights² and the International Covenant on Civil and Political Rights,² as well as the Vienna Declaration and Programme of Action,³ affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights⁴ and international human rights law.

Continued on page 28.

U.N. Declaration on the Rights of Indigenous Peoples

Continued from page 27.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous 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.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
 - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
 - (d) Any form of forced assimilation or integration;
 - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Continued on page 29.

U.N. Declaration on the Rights of Indigenous Peoples

Continued from page 28.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

Continued on page 30.

U.N. Declaration on the Rights of Indigenous Peoples

Continued from page 29.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Continued on page 31.

U.N. Declaration on the Rights of Indigenous Peoples

Continued from page 30.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

Continued on page 32.

U.N. Declaration on the Rights of Indigenous Peoples

Continued from page 31.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Continued on page 33.

U.N. Declaration on the Rights of Indigenous Peoples

Continued from page 32.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Continued on page 34.

U.N. Declaration on the Rights of Indigenous Peoples

Continued from page 33.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

¹ See Official Records of the General Assembly, Sixty-first Session, Supplement No. 53(A/61/53), part one, chap. II, sect. A.

² See resolution 2200 A (XXI), annex.

³ A/CONF.157/24 (Part I), chap. III.

⁴ Resolution 217 A (III).

United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295)

Official UN languages

[\[AR\]](#) [\[EN\]](#) [\[ES\]](#) [\[FR\]](#) [\[RU\]](#) [\[ZH\]](#) (PDF version)

[\[AR\]](#) [\[EN\]](#) [\[ES\]](#) [\[FR\]](#) [\[RU\]](#) [\[ZH\]](#) (Official Resolution Text)

NGO Committee, UN
Decade for the World's
Indigenous Peoples



UN Photo/Devra Berkowitz

Indigenous Peoples' Rights: An Historical and Contemporary Global Movement

Indigenous Peoples' Rights: An Historical and Contemporary Global Movement is an International Education Week (IWE) program presented on 11/13/2012 in Foster Library at the Pennsylvania State University by Julie Rowland and Judy Bertonazzi. It was followed by a commentary by Connie FileSteel (White Clay/Assiniboine). The program was co-sponsored by the United Nations Association of Centre County PA, the Penn State University Libraries, and the Penn State Center for Global Studies. The full program is archived and can be viewed via [Mediasite Live](#) at live.libraries.psu.edu. The following content has been excerpted from a summary of the IWE program that was included in the spring 2013 issue of ICIK E-News. The article can be accessed on the ICIK newsletters [archives website](#).

Indigenous people are located in over 85 countries in the Americas, Asia, the Middle East, Oceania, Europe, and Africa. There are over 300 million indigenous people in the world. Their languages derive from over 600 language groups, and their identities are formed by over 5,000 ethnic groups.

UNDRIP can play a role in providing indigenous peoples with control, access and fair use of their lands. For example, in Australia, indigenous peoples are mainly Torres Strait Islanders. The Torres Strait Islanders and aboriginals struggle to gain economic sustainability by working in the mining industry, which they feel will also help them in the process of cultural survival. However, Australia, and the mining industry as a whole, has a history of denying Torres and aboriginals their rights to natural resources.

Two examples in Latin America, Bolivia and Chile, demonstrate one of the purposes of UNDRIP, which is to help mediate between nation states and indigenous peoples as a means to strengthen indigenous institutions, cultures and traditions. Out of Latin America's over 671 different indigenous peoples in its collective of nations, Bolivia's government is the most extensive in its acknowledgement of indigenous peoples' rights. Its constitution states: "Given the pre-colonial existence of nations and original indigenous peoples and their ancestral control over their territories, one guarantees their self-determination in the setting of the State unity, that consists of their right to autonomy, to self-governance, to their culture, to the recognition of their institutions and the consolidation of their territorial identities, which conform to this Constitution and to the Law."

Well defined legal rights, such as the Bolivian Constitution, do not guarantee that tribes will avoid damage by the modern world. In Chile, the demand for electricity has compromised the lives of indigenous Pehuenche. The Pehuenche used to live in the Andes Mountains. But ENDESA, the Chilean National Electric Company, has relocated them to urban areas in order to build a hydro-electric dam on the Bío Bío River. As a consequence, the Pehuenche have been forced to assimilate to unfamiliar structures of family and community, which replace their collective, communal existence with Eurocentric values focused on the individual. As a result of this urbanization, the Pehuenche have easy access to alcohol and their rates of alcoholism and related diseases have increased dramatically.



In 1997, a group of Pehuenche occupied Chile's Indigenous Affairs Bureau and the Environmental Protection Board to protest the licensing of the Ralco Dam saying "The Chilean government has once again shown its colonizing mentality by not respecting our people or the law." In 2003, the Pehuenche settled with Chile and ENDESA and received quality lands, support for agricultural production, and monetary compensation. However, in 2005, the Pehuenche were still petitioning the Chilean government and ENDESA to comply with the settlement.

The plight of the Adivasis illustrates UNDRIP's ability to help indigenous peoples and nation states develop more peaceful, friendly relations, as well as social and economic progress through the process of demilitarizing indigenous peoples' lands. In India, the indigenous Adivasi have experienced thousands of years of subjugation, first at the hands of the Mauryan, Gupta, and Vijayanagara Empires, then during English colonization. Today, the Adivasi are subjugated by the Republic of India. The Adivasi struggle to maintain forest rights, since they are forest-dwelling people. They also suffer from abject poverty. Their territories contain timber and natural resources that India and private industries continue to obtain.

Well defined legal rights, such as the Bolivian Constitution, do not guarantee that tribes will avoid damage by the modern world.

Continued on page 36.

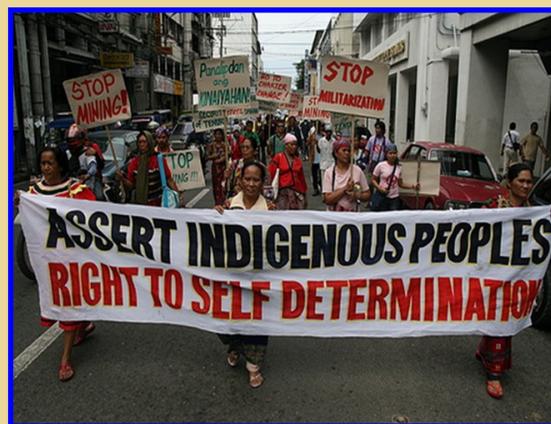
Indigenous Peoples' Rights: An Historical and Contemporary Global Movement

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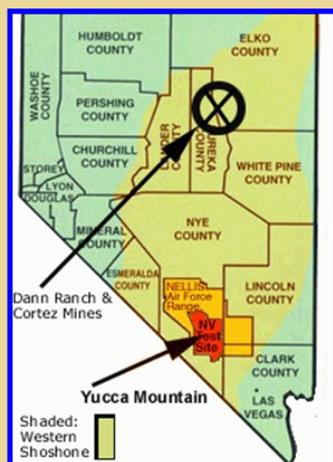
Self-determination is one of the goals of the United Nations and its developing legal policies. Africa was the last global region to take steps toward the recognition of indigenous peoples' rights. This is, in part, because of Africa's highly fluid cultures and the historically frequent and widespread migration of Africa's natives, and also because Africa's indigenous populations are predominantly hunters and gatherers.

In 1997, however, Africa developed the Indigenous Peoples of Africa Coordinating Committee (IPACC). The main goals of IPACC are indigenous peoples' equity and equality with independent states. They also seek increased visibility and influence through the use of international rights standards and instruments, such as the United Nations. The development of IPACC is proving to be highly beneficial for indigenous peoples. IPACC has already created new alliances within Africa that span languages, borders, and ethnic identities. IPACC has also prompted dialogue on international law, rights, and good governance, as well as widespread acceptance of UNDRIP. Still, Africa has its challenges in indigenous peoples' rights policies. There has been little participation in IPACC by indigenous Northeast Africans in Eritrea, Ethiopia, Somalia, and Sudan. Hunter gatherers from Central African Republic, Mauritania, Senegal, and Republic of Congo have also been reluctant to participate in IPACC.

However, there is some good news from the Republic of Congo. In 2010, they passed Africa's first law directed specifically toward the protection of indigenous peoples.



In the United States, the *Western Shoshone v. U.S.* legal battle is seen as the country's longest legal court case between indigenous peoples and the U.S. government. In 1863, the Western Bands of the Shoshone Nation of Indians signed the Treaty of Peace and Friendship in Ruby Valley, Nevada. By signing the treaty, both the Shoshone and the U.S. government agreed to mutual use of the tribe's millions of acres of ancestral lands without transferring them to U.S. authority and ownership.



Both the Shoshone and the U.S. government also agreed to allow westward-bound settlers to cross through Western Shoshone territory, which includes parts of Nevada, Idaho, Utah, and California.

The Shoshone argue that, despite the clear terms of the agreement, the U.S. Bureau of Land Management gradually assumed control over the land by redrawing the boundaries of reservation territories. In response to these claims, the U.S. government formed the Te-Moak Tribal Council in 1962, gathering tribes into one group and granting monetary compensation for lost land. The Dann Band of Shoshone, represented by matriarchs Carrie and recently deceased Mary Dann, rejected the settlement, claiming that they were never part of the Te-Moak Western Shoshone reservation, and therefore they were not bound by the Treaty of Peace and Friendship or any other agreement. The U.S. government in turn brought a trespass suit against the Dann Band, stating that the Western Shoshone title had been "extinguished." The legal doctrine of "extinguishment"

of land titles continue to be applied to more contemporary legal cases, though it began in U.S. legal discourse in the mid-1800s.

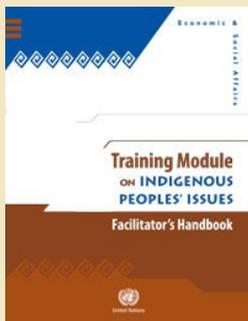
In 1985, the U.S. Supreme Court ruled against the Dann Band, stating that tribal rights to land had indeed been extinguished, including the right to hunt and fish. In 1994, the Dann Band filed a petition to the Organization of American States (OAS) Inter-American Court of Human Rights (IACHR). The OAS IACHR ruled in favor of the Shoshone and overturned the Supreme Court's ruling that their land title was extinguished. It also declared the transfer of land title to be a violation of human rights. The U.S. rejected the ruling, and so the Dann Band has filed a new suit, and this court case continues to this day.

United Nations Special Rapporteur James Anaya, in reference to Carrie Dann and the Western Shoshone's legal battles with the U.S., states: "We cannot construct a notion of native rights in opposition to fundamental concepts of equality. They can only be constructed upon the fundamental notion and norm of equality, which is what the Western Shoshone people are doing."

Trainings on Indigenous Peoples' Issues with United Nations Country Teams, Government Officials, and Indigenous Peoples' Organizations

Training Materials

Materials and Programmes from Countries Where Trainings Have Been Held:



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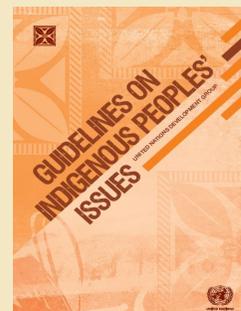
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For complete information on training materials and programs, visit the UNPFII at:
<http://undesadspd.org/IndigenousPeoples/Training.aspx>.

Addressing Inequalities in the Post-2015 Development Agenda

From November 27 to December 19, 2012, the Secretariat of the Permanent Forum on Indigenous Issues and UNICEF co-moderated an [e-discussion on the theme "Indigenous Peoples and Inequality"](#) in the framework of the global thematic consultation on "Addressing Inequalities" in the Post-2015 Development Agenda.

The key-message highlighted by indigenous peoples is that the implementation of a human rights-based approach to development should take into account issues of equality and sustainability, and endorse the fundamental concept of development with culture and identity. Participants in the e-discussion also underlined that the UN system should reach out and engage in partnerships with indigenous peoples to ensure their effective participation in the post-2015 development agenda and any emerging sustainable development goals. The inputs should be guided by the principles of equality and non-discrimination and include voices from indigenous women, youth and children, and persons with disabilities.

Other **main priority areas** identified by participants at the on-line consultation are the following:

1. Recognition of indigenous peoples at national and international levels;
2. Recognition of indigenous peoples' collective rights, in particular the right to land, territories and natural resources;
3. Enactment of intercultural and cultural-sensitive policies at the national level, especially in the areas of education and health;
4. Prioritization of the special conditions and needs of indigenous women, children, youth and indigenous persons with disabilities;
5. Recognition of culture as the 4th pillar of sustainable development, and the inclusion of the indigenous view of development with culture and identity;
6. Enactment of the right to free, prior and informed consent in all matters affecting indigenous peoples;
7. Establishment of partnerships for development issues relating to indigenous peoples.





General Assembly

Distr.: General
30 March 2012

Sixty-sixth session

Agenda item 66 (a)

Resolution adopted by the General Assembly on 19 December 2011

[on the report of the Third Committee (A/66/459)]

66/142. Rights of indigenous peoples

The General Assembly,

Recalling all relevant resolutions of the General Assembly, the Human Rights Council and the Economic and Social Council relating to the rights of indigenous peoples,

Reaffirming its resolution 65/198 of 21 December 2010, in which it decided to organize a high-level plenary meeting of the General Assembly, to be known as the World Conference on Indigenous Peoples, to be held in 2014,

Recalling its resolution 59/174 of 20 December 2004 on the Second International Decade of the World's Indigenous People (2005–2014),

Recalling also the 2007 United Nations Declaration on the Rights of Indigenous Peoples,¹ which addresses their individual and collective rights, *Recalling* further the United Nations Millennium Declaration,² the 2005 World Summit Outcome³ and the outcome document of the High-level Plenary Meeting of the General Assembly on the Millennium Development Goals,⁴

Recalling Human Rights Council resolution 18/8 of 29 September 2011 on human rights and indigenous peoples,⁵

Recalling also the first Peoples' World Conference on Climate Change and the Rights of Mother Earth,⁶ hosted by the Plurinational State of Bolivia in Cochabamba from 20 to 22 April 2010,

Stressing the importance of promoting and pursuing the objectives of the United Nations Declaration on the Rights of Indigenous Peoples also through international cooperation to support national and regional efforts to achieve the ends of the Declaration, including the right to maintain and strengthen the distinct political, legal, economic, social and cultural institutions of indigenous peoples and the right to participate fully, if they so choose, in the political, economic, social and cultural life of the State,

Recognizing the value and the diversity of the cultures and the form of the social organization of indigenous peoples and their holistic traditional scientific knowledge of their lands, natural resources and environment,

Concerned about the extreme disadvantages that indigenous peoples have typically faced across a range of social and economic indicators and about the impediments to their full enjoyment of their rights,

Recalling its resolution 65/198, by which it decided to expand the mandate of the United Nations Voluntary Fund for Indigenous Populations so that it could assist representatives of indigenous peoples' organizations and communities to participate in sessions of the Human Rights Council and of human rights treaty bodies, on the basis of diverse and renewed participation and in accordance with relevant rules and regulations, including Economic and Social Council resolution 1996/31 of 25 July 1996, and urged States to contribute to the Fund,

Continued on page 29.

U.N. Resolution 66/142. Rights of Indigenous Peoples

Continued from page 38.

1. Welcomes the work of the Expert Mechanism on the Rights of Indigenous Peoples and of the Special Rapporteur on the rights of indigenous peoples, takes note of his report on the rights of indigenous peoples,⁷ and encourages all Governments to respond favourably to his requests for visits;
2. Urges Governments and intergovernmental and non-governmental organizations to continue to contribute to the United Nations Voluntary Fund for Indigenous Populations and the Trust Fund for the Second International Decade of the World's Indigenous People, and invites indigenous organizations and private institutions and individuals to do likewise;
3. Encourages those States that have not yet ratified or acceded to the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169)⁸ to consider doing so and to consider supporting the United Nations Declaration on the Rights of Indigenous Peoples,¹ and welcomes the increased support by States for the Declaration;
4. Encourages States, in consultation and cooperation with indigenous peoples, to take the appropriate measures, including legislative measures, to achieve the ends of the Declaration;
5. Encourages all interested parties, in particular indigenous peoples, to disseminate and consider good practices at different levels as a practical guide on how to attain the goals of the Declaration;
6. Requests the Secretary-General, in coordination with the United Nations Permanent Forum on Indigenous Issues, to convene, within existing resources, a high-level event during the eleventh session of the Forum to commemorate the fifth anniversary of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples in order to raise awareness of the importance of pursuing its objectives;
7. Stresses that the result of that event could serve as an input for the preparation of the high-level plenary meeting of the General Assembly in 2014, to be known as the World Conference on Indigenous Peoples;
8. Invites Governments, indigenous peoples and other stakeholders, including the media, as well as relevant organizations and bodies of the United Nations system, to carry out activities focused on marking the fifth anniversary of the adoption of the Declaration, at the regional and national levels;
9. Decides to continue consideration of the question at its sixty-seventh session, under the item entitled "Rights of indigenous peoples".

89th plenary meeting

19 December 2011

¹ Resolution 61/295, annex.

² See resolution 55/2.

³ See resolution 60/1.

⁴ See resolution 65/1.

⁵ See Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 53A and corrigendum (A/66/53/Add.1 and Corr.1), chap. II.

⁶ See A/64/777, annexes I and II. A/RES/66/142

⁷ See A/66/288.

⁸ United Nations, Treaty Series, vol. 1650, No. 28383. A/RES/66/142



UN Photo/Paulo Figueiras



Special Note to Contributing Authors

We encourage and appreciate articles submitted for publication consideration in ICIK E-News. Please note that articles accepted for publication in future issues must have a **clear focus on indigenous knowledge**. Through ICIK E-News, we report on, honor, and celebrate the diversity of “ways of knowing” among indigenous peoples around the world.

Your Questions and Comments are Welcome!

The ICIK E-Newsletter is published each semester—fall, spring, and summer. If you have questions or comments about this newsletter, or ideas for articles, features, or general information you would like to see in upcoming newsletters, please contact Audrey Maretzki. Questions regarding ICIK may be directed to Dr. Maretzki.



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We encourage your submissions for future newsletters.

Please Note: ICIK reserves the right to accept or refuse submissions, and to edit those submissions that are published.

**Summer 2014 ICIK E-News
article submissions due by
June 1, 2014**