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

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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]

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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

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 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 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 *Awas 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 determine 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 *jus 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.

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]

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 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.

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]

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 land[55] 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.

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 similarly. 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.

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]

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]

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.

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.

Acknowledgments

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Notes

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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/lpsclacp/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.

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.internationalfunders.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.internationalfunders.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 Angelique 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 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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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.

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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.

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