CHAPTER TWENTY-ONE

THE UNITED NATIONS DECLARATION
ON THE RIGHTS OF INDIGENOUS PEOPLES

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It took a generation, 25 years exactly, to find the necessary consensus to declare, via the United Nations General Assembly, the ‘rights of indigenous peoples’. Such time frame is, however, only a blink of an eye in the slow development of general international law. What indigenous peoples and their proponents have achieved, in this brief span of time, is nothing short of revolutionary. From the down-and-out situation of their dispossession and attempts at cultural and, often, physical extermination, they have rallied in the last decades of the 20\textsuperscript{th} century, largely due to the advances of cross-border communications technology and a determined international effort of enlightened leaders designed to overcome the traditional, often colonial, policy of \textit{divide et impera}. With the help of influential insiders in the organized intergovernmental arena and dedicated NGOs, they have become recognized actors in the international legal process, have carved out their own rights, as a group, and have managed to achieve approval of their key demands: the rights to their traditional lands, to their culture, to their own systems of governance, their ancient ways of life.

It is my distinct pleasure and honor to address these issues in the context of a contribution to a Festschrift honoring my dear and long-time friend, Professor Kalliopi Koufa – a richly deserved homage not only to a brilliant scholar and outstanding diplomat of her beloved, classical home country, Greece, as well as a source of inspiration for those of us who have made the protection and promotion of human rights their life’s mission.\textsuperscript{1} I particularly appreciate her charter membership of our global faculty in St. Thomas University’s LL.M. and J.S.D. Programs in Intercultural Human Rights, providing guest lectures in the class on human rights and terrorism since its inception.\textsuperscript{2}

\footnote{Professor Koufa has left her indelible intellectual imprint, \textit{inter alia}, as a member of the United Nations Sub-Commission on the Promotion and Protection of Human Rights, as a member of the European Commission for Democracy through Law (known as the ‘Venice Commission’), and as the United Nations’ Special Rapporteur on Human Rights and Terrorism.}

\footnote{For the program and its distinguished faculty, see <www.stu.edu/law/Academics/Programs/LLMJSDDinInterculturalHumanRights/Faculty/tabid/1235/Default.aspx>, 25 May 2009.}
A good friend of our honoree and colleague of hers on the UN Sub-Commission on Prevention of Discrimination and the Protection of Minorities, has been a, if not the, most influential insider in the intergovernmental arena promoting the claims of indigenous peoples: Dr. Erica-Irene Daes. For eighteen years, she has served as the chairperson of the UN Working Group on Indigenous Populations, established in 1982, who created a place at the table of the United Nations for representatives of indigenous peoples, allowed them to articulate their plight, and elaborated, with representatives of states and NGOs, a Draft Declaration on the Rights of Indigenous Peoples, promulgated in 1993. This draft was subject to various changes and amendments in a working group of the Human Rights Commission dominated by states, before its final version was adopted, on 29 June 2006, by the newly-formed UN Human Rights Council, and, on 13 September 2007, by the UN General Assembly. This adoption came in a resounding 144 to 4 vote, with 12 abstentions. That the four dissenters were the United States, Canada, Australia and New Zealand – countries with a significant presence of indigenous peoples –, somewhat dampened the enthusiasm about this achievement. It still was a milestone on the long way back, the track of resurgence of the ‘First Nations’.

This contribution in honor of Professor Koufa sets out to highlight the importance of this Declaration, discuss its legal status, and address some of its major issues: the definition, or lack thereof, of indigenous peoples, and their rights to self-government, their culture, and their traditional lands.

1. The Legal Status of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

United Nations declarations, as almost any other resolution by the General Assembly, are according to Article 12 of the UN Charter, of a

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3 The story of her lifetime work and affection for indigenous peoples, their ways of life and culture has been told in Erica-Irene A. Daes, Indigenous Peoples. Keepers of our Past – Custodians of our Future (International Work Group for Indigenous Affairs, Copenhagen, 2008).

