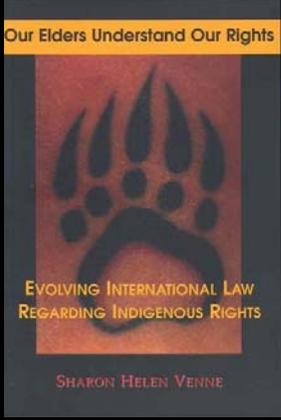


Be Careful What You Wish For:
Reconciling Indigenous and
State Interests at the UN

Ted Palys



Our Elders Understand Our Rights



EVOLVING INTERNATIONAL LAW
REGARDING INDIGENOUS RIGHTS

SHARON HELEN VENNE

From Objects to Subjects



UN Charter / Article 1

- The purposes of the UN:
 - “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;”

UN Covenants

- © “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

- Article 1 from both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights

UN General Assembly

- (Currently 193 Member States)

Economic and Social Council (ECOSOC)

- 54 member Governments elected by the General Assembly for overlapping three-year terms

Human Rights Council

- Formerly Commission on Human Rights (Changed in 2006)
- (47 Member States)

Sub-Commission on the Promotion and Protection of Human Rights

- Previously Sub-Commission on Prevention of Discrimination and Protection of Minorities (Changed in 1999)
- Membership = seven experts from African States, five from Asia, five from Latin America, three from Eastern Europe and six from Western Europe and other States.)

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Working Group on Indigenous Populations

- 5 Members – one from each geographic region;
- Met in Geneva each July for a week

Working Group on Indigenous Populations



Mme. Erica Daes

Main Project: Draft Declaration on the Rights of Indigenous Peoples



Miguel Alfonso Martinez

Study of Treaties, Agreements and Other Constructive Arrangements

Working Group on Indigenous Populations

- ⦿ First UN forum devoted exclusively to Indigenous issues
- ⦿ Great success for three main reasons:
 - First UN forum to have open participation for Indigenous delegates
 - Process was a collaborative one, e.g., Draft Declaration went through 12 iterations from 1982 to 1994
 - Major ongoing agenda item of “recent developments” brought current issues to the fore

Creation of Structures

- ⦿ Establishment by the UN of the *Permanent Forum on Indigenous Issues* in 2000
- ⦿ Meets in New York each May



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Permanent Forum on Indigenous Issues created in 2000

Permanent Forum on Indigenous Issues: 2013

- Mr. Edward John, Chairperson**
Canada (Indigenous Nominated)
- Ms. Dalee Sambo Dorrough**
United States (Indigenous Nominated)
- Ms. Vaimaine Toki**
New Zealand (Indigenous Nominated)
- Ms. Myrna Cunningham Kain**
Nicaragua (Indigenous Nominated)
- Mr. Raja Devasish Roy**
Bangladesh (Indigenous Nominated)
- Mr. Saul Vicente Vazquez**
Mexico (Indigenous Nominated)
- Mr. Paul Kanyinke Sena**
Kenya (Indigenous Nominated)
- Ms. Anna Naikanchina**
Russian Federation (Indigenous Nominated)

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Creation of Structures

- Appointment in 2001 of a *Special Rapporteur* to deal with human rights and fundamental freedoms of Indigenous peoples

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Special Rapporteur on Indigenous Issues established in 2001

Replaced by the Expert Mechanism on the Rights of Indigenous Peoples in 2008

Expert Mechanism on the Rights of Indigenous Peoples

- Working Group terminated 2007
- EMRIP created 2007; first meets in 2008
- Meets in Geneva every July
- “Preference” for Indigenous representatives
- Main mandate to provide the Human Rights Commission with “thematic advice” relating to the implementation of the *Declaration*



But be Careful What You Wish For

- The alchemy of sovereignty continues where there is one rule for nation states and another rule for “others”
- “Full” rights still go to states while “diminished” rights still go to Indigenous peoples
- For example, there are still debates about the letter “s” in relation to Indigenous peoples

Be Careful What You Wish For

- UNDRIP (Article 46):
 - 46. 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.

Be Careful What You Wish For

- Permanent Forum:
 - UN Organizations still do not take Indigenous perspectives seriously
 - Very much a nation state/corporate point of view



But be Careful What You Wish For

- ⊙ Expert Mechanism:
 - No more “recent developments”
- ⊙ Special Rapporteur:
 - Dependent on nation state governments for access; Canada is an example of how countries can impede, stall.
- ⊙ The contemporary critique:
 - Domestication
 - Individualization of Indigenous rights

Thank you