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

Ted Palys

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 (Chnaged 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 (Chnaged 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.

Working Group on Indigenous Populations
- Previous Sub-Commission on Prevention of Discrimination and Protection of Minorities
- 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.
- Five Members - one from each geographic region.
- Meets in Geneva each July for a week.

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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Working Group on Indigenous Populations
- 5 Members – one from each geographic region;
- Meets in Geneva each July for a week
Permanent Forum on Indigenous Issues: 2013

- H. Edward Johns, Chairperson
- Carlos Arias (Indigenous Representative)
- Ms. Malouinia Toli, New Zealand (Indigenous Representative)
- Ms. Mauve Fowi, New Zealand (Indigenous Representative)
- Mr. Raja Chowdhury Roy, Bangladesh (Indigenous Representative)
- Mr. Paul Ramphal, St. Lucia (Indigenous Representative)
- Mr. Juma Nakamoto, Tanzania (Indigenous Representative)

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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
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