

Book Review: Indigenous Nations' Rights in the Balance: An Analysis of the Declaration on the Rights of Indigenous Peoples

By Charmaine White Face, (Sumila Wobaga)

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A Review by Rudolph C. Rýser

The United Nations adopted the Declaration on the Rights of Indigenous Peoples on September 13, 2007—a milestone that culminated a more than 44 year process begun by the United Nations Commission on Human Rights in 1969. As Dr. Erica-Irene Diaz, Chairperson/Special Rapporteur for the UN Working Group on Indigenous Populations notes in her summation piece,

“Before 1969 the problems of indigenous populations have not been on the agenda of the Commission on Human Rights or of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, although a number of studies undertaken by Special Rapporteurs of the Sub-Commission on various discrimination issues indirectly benefited indigenous peoples.”

Iglala Tetuwan (spokesperson for the Sioux Nation Treaty Council) Charmaine White Face has penned an important historical analysis of the transformation of the first public draft of the United Nations Declaration on the Rights of Indigenous Peoples from 1994 to 2013 through subsequent modifications, resulting in its official adoption by the UN General Assembly. White Face laments the final product by suggesting that “the whole truth had to be told” about the now official Declaration, compared to “what the majority of the world’s indigenous peoples’ approved.”

In her crisply written prose describing paragraph-by-paragraph differences between

the “original version,” the “Human Rights Council version,” and the “General Assembly Version,” White Face delivers a powerful commentary on the shifting compromises and language changes that different United Nations bodies made in the document before it was finally approved.

The Declaration was first drafted by the UN Working Group on Indigenous Populations beginning in 1988, followed by 6 years of two-week meetings in Geneva, Switzerland. Dr. Diaz proclaimed, as Working Group chairperson, “the draft declaration has undergone an unprecedented process of discussion with all parties concerned.” Diaz traveled the world during her tenure as Special Rapporteur for the World Group meeting with indigenous community leaders and states’ government representatives informing the Working Group efforts. During its forty-sixth session (August 1994), the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities considered and approved the Working Group’s Draft as written; and then submitted the approved draft to the Commission on Human Rights. As it submitted the draft for Commission approval, a special request, Diaz reported, was sent to

“the Commission on Human Rights and the Economic and Social Council (ECOSOC) that they should take effective measures to ensure that representatives of indigenous peoples are able to participate in the consideration of the draft declaration by these two bodies, regardless of their

consultative status with the ECOSOC.”

The Commission on Human Rights did not fully consider the recommendations from the Sub-Commission to “take effective measures” to include the voice of indigenous peoples as participants as the body considered the Declaration’s language. It is at this point that White Face complains that in the agreed language generated for the Declaration by the Working Group, and agreed to by the Sub-Commission, significant language and narrative changes were made that would in her mind distort the language that she and literally hundreds of others worked to craft during the long meetings of the UN Working Group in the 1980s.

White Face hangs the distortions and significant changes to the Original Draft on the government of the United States and “other English speaking countries.” African states demanded changes, as did other countries with significant indigenous populations. Changes proposed and accepted tended to favor states’ government interests over the interests of indigenous nations. An example of one distortion is contained in what is usually referred to in human rights law as “Common Article 3” where the Declaration states: “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.” But as White Face demonstrates, this conventional language was significantly diminished by the language contained in the final Article [Article 4] which had originally appeared in the Working Group Draft as Article 31:

“Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their inter-

nal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic, activities, land and resources management, environment, and entry by non-members, as well as ways and means for financing these autonomous functions.”

The UN General Assembly changes rendered the Working Group Article 31 which now appears as 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.”

While the difference seems nuanced, White Face sees the final clause in the shortened version as language that “punishes the victim and was unfortunately retained.” She sees that final clause as evidence that states’ governments seek to deny indigenous peoples the ability to finance their autonomous functions while forcing “dependence on colonizing governments.”

Just as the UN Declaration on the Rights of Indigenous Peoples has been the focus of debate during and up to the point of UN General Assembly approval, Charmaine White Face’s review of the changes made in the Original Text from 1994 onward will itself serve as the focus of debate.

There is no doubt that the September 13, 2007 Declaration is a product of language, phrasing, and even paragraph compromises and one cannot expect there not to be compromises. Literally every state, every indigenous nation, civil society organization, institution of higher learning, business, labor, cultural group,

and all individuals young and old, men and women in the world have a stake in how the Declaration will be interpreted and implemented in the months and years ahead. Whether one decides the Declaration as it now stands is a small or large step forward or a betrayal that constitutes a step backward, there is no doubt that Charmaine White Face, Sumila Wobaga, will have made an important contribution to the debate and dialogue to come.

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