We the peoples...

The United Nations Declaration on the Rights of Indigenous Peoples

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TEFAN DISK

The Declaration does not represent solely the viewpoint of the United Nations, nor does it represent solely the viewpoint of the Indigenous Peoples. It is a Declaration which combines our views and interests and which sets the framework for the future. It is a tool for peace and justice, based upon mutual recognition and mutual respect.

This is how Les Malezer, Chair of the Global Indigenous Peoples' Caucus, welcomed the adoption of the United Nations Declaration on the Rights of Indigenous Peoples in a statement to the 61st session of the United Nations General Assembly on 13 September 2007 (Resolution 61/295). In this article we report on the process of adopting of the Declaration and conclude by briefly considering how anthropology may engage this new human rights instrument most effectively.

The process leading to the adoption of the Declaration spanned a 23-year period and corresponds with the emergence and expansion of the international indigenous peoples' movement as a global movement focusing on the United Nations system (Barsh 1986, Alfredsson 1989, Sanders 1989, Stamatopoulou 1994, Brysk 2000, Muehlebach 2001, McIntosh 2001, García-Alix 2003, Chernela 2005, Morgan 2007, Frank 2008). This movement began in the 1970s and accelerated during the 1980s. Following the findings of the landmark Study of the problem of discrimination against indigenous populations, commissioned in 1971, and a 1977 NGO conference on the same subject, the UN established a Working Group on Indigenous Populations (WGIP) in 1982. The mandate of the Working Group included developing standard-setting instruments that led to the first draft of the Declaration. In 1993 the WGIP approved a final draft that was adopted in 1994 by its parent body, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities. This was then forwarded to the UN Commission on Human Rights, which in 1995 established an intergovernmental Working Group to elaborate the draft Declaration (WGDD).

In an important departure from UN procedure, indigenous peoples' delegates were allowed to participate in the development of the Declaration and so enjoyed an extraordinarily strong ownership over its contents. As Luís Chávez (Peru), who chaired the WGDD in its later sessions, explained when he introduced the text to the General Assembly, 'I must say that for the first time in the history of the United Nations representatives of indigenous peoples, those who were to enjoy the rights contained in the Draft, took part actively in the work on the text, attributing to it unquestionable legitimacy.' This was echoed by Victoria Tauli-Corpuz, Chair of the United Nations Permanent Forum on Indigenous Issues, in her speech to the Assembly upon the adoption of the Declaration: 'This Declaration has the distinction of being the only Declaration in the UN which was drafted with the rights-holders, themselves, the Indigenous Peoples.' Tauli-Corpuz also highlighted the wider significance of the Declaration: 'This is a Declaration which makes the opening phrase of the UN Charter, "We the Peoples..." meaningful for the more than 370 million indigenous persons all over the world.'

The Declaration is intended to serve 'as a standard of achievement to be pursued in a spirit of partnership and mutual respect' between states and indigenous peoples, providing 'the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world' (para. 24: Article 43). In common with the Universal Declaration of Human Rights, this new Declaration is expected to have moral force and forms part of international customary law. It is already being invoked in national and regional legal cases and may form the precursor to a legally binding Convention.

The Declaration consists of 24 preambulatory paragraphs and 46 operative articles setting out the international human rights of indigenous peoples including: self-definition as indigenous peoples, the right of self-determination, rights to lands, territories and natural resources, free, prior and informed consent for development activities, and rights embodied in the principal human rights instruments. Many of the rights set out in the Declaration are collec-

Fig. 1.Les Malezer, from the Foundation for Aboriginal & Islander Research Action (FAIRA), who served as Chair of the Global Indigenous Peoples' Caucus addresses the UN General Assembly following the adoption of the Declaration.

1 See the morning and afternoon webcasts of the 61st session of the General Assembly dated 13 September 2007. http://www. un.org/webcast/ga2007.html

2 As has been widely reported, the initial vote registered 143 states in favour. However, in the afternoon session Montenegro reported that their vote in favour had not registered and requested that the record be updated.



Fig. 2. Les Malezer (FAIRA) and Victoria Tauli-Corpuz (Chairperson of the United Nations Permanent Forum on Indigenous Issues) following the adoption of the Declaration by the General

tive in nature and framed in the terms 'Indigenous peoples have the right...' (Thompson 1997, Sanders 1991). However, collective rights are balanced by reference to the rights of individuals, such as the right of individuals to enjoy all human rights and fundamental freedoms, and specific provisions for women, children and persons with disabilities.

No new rights

As has been discussed in ANTHROPOLOGY TODAY and elsewhere, debates on indigenous peoples' rights have raised contested questions about definitions of indigenous peoples, the significance of the right to self-determination of all peoples under the UN Charter as it applies to indigenous peoples: the nature of collective rights; free, prior and informed consent and with regard to lands, territories and natural resources (Sanders 1991, Thompson 1997, Bowen 2000, Colchester 2002, Kenrick and Lewis 2004, Mackey 2005). For many years the Declaration remained resolutely stuck in the WGDD owing to the complexity of these issues, foot-dragging by some states, and resistance by indigenous peoples' representatives to changes to the text of the 1994 draft Declaration. With support from friendly states, indigenous delegates successfully resisted efforts to weaken the text. It is therefore important to understand what members of the Global Indigenous Peoples' Caucus were trying to achieve during the many years of near deadlock over the Declaration.

A few anthropologists such as Kuper (2003) have alleged that the indigenous peoples' rights movement constitutes a manifestation of 'blood and soil' ethnonationalism with potentially catastrophic consequences (Beteille 1998, Saugestad 2004). However, as others have argued, the conflation of the indigenous peoples' rights movement with ethnonationalism, Nazism and apartheid misses the differential nature of the power relations involved and the position of structural inequality and marginalization of indigenous peoples (Ramos 2003, Robins 2003, Kenrick and Lewis 2004).

In particular, it is important to emphasize that indigenous representatives did not see themselves as demanding 'new' rights (Thornberry 2002, Morgan 2007). Rather, they consistently argued that they were seeking recognition and the application of universal human rights to indigenous peoples. Les Malezer reiterated this point in his speech to the General Assembly:

We emphasize once again that the Declaration on the Rights of Indigenous Peoples contains no new provisions of human rights. It affirms many rights already contained in international

human rights treaties, but rights which have been denied to the Indigenous Peoples.

Human rights instruments are not constructed from thin air as 'new' rights (Buergenthal 2006). Thus, in 1986 the General Assembly established that the development of new instruments should 'be consistent with the existing body of international human rights law' (Resolution 41/120). A close reading of the Declaration reveals that it is constructed from elements of the UN Charter, the Universal Declaration of Human Rights, the Human Rights Covenants, and conventions and declarations with respect to children (CRC), women (CEDAW), racial discrimination (CERD), genocide, minorities, religious intolerance, as well as the International Labour Organization's (ILO) Convention 169 (E/CN.4/Sub.2/1994/2). What was new was the application of these rights to indigenous peoples as peoples under international law, with the corresponding right of self-determination, rather than as mere 'populations' or fully essentialized 'indigenous people' (Beteille 1998, Bowen 2000, Muehlebach 2003, Morgan 2007). However, the provisions of the Declaration also presented clear challenges for states. In a reflection of debates within ANTHROPOLOGY TODAY, it would be Africa that would move to centre stage during the final negotiations on the Declaration (Kenrick and Lewis 2004).

Definitions and self-determination

At the concluding session of the WGDD in 2005 and 2006, Chair Luís Chávez produced a final compromise 'chair's text' that retained the main provisions of the 1994 Declaration, but reflected areas where consensus was not reached on self-determination, lands, territories and natural resources, and free, prior and informed consent (E/CN.4/2006/79). This text was adopted by the new 47member Human Rights Council in June 2006 by a vote of 30 states in favour, 2 opposing (Canada and the Russian Federation), and 12 abstentions (Resolution 2006/2). The stage appeared to be set for its adoption by the General Assembly in December 2006. However, initial jubilation within the Global Indigenous Peoples' Caucus turned to dismay when, in a surprise move, Namibia, acting on behalf of the African Group, tabled a proposal to postpone consideration of the Declaration to allow time for 'further consultations' (Resolution 61/178; Lutz 2007).

A 'Draft Aide–Memoire' by the African Group, dated 9 November 2006, set out a wide range of objections to the Declaration. They argued that the lack of a definition of indigenous peoples would 'create tensions amongst ethnic groups and instability within sovereign states' in a region recovering from 'ethnic based conflicts'. The African Group reiterated the familiar argument that the concept of self-determination applied only in situations of colonial domination and expressed fear that the right to self-determination would be 'misrepresented as conferring a unilateral right of self-determination and possible secession upon a specific subset of the national populace'.

By the sixth session of the Permanent Forum on Indigenous Issues in May 2007 these concerns had translated into a document containing 36 proposed amendments (see also Keating 2007). In late May the concerns in the original Aide-Memoire were rebutted in an opinion issued by the African Commission on Human and Peoples' Rights of the African Union. However, the African position became the focus of closed-door negotiations between Mexico and Namibia in the period leading up to the end of August 2007, with Mexico acting on behalf of the cosponsors of the Declaration and Namibia on behalf of the African Group. These negotiations were accompanied by active lobbying by the Global Indigenous Peoples' Caucus and supporting NGOs, with the Caucus refusing to consider proposals that had not been approved by both the

co-sponsors and the African Group, in order to minimize changes.

The proposed African amendments take us to the core of the controversy about the Declaration and debates about indigenous peoples' rights within anthropology. On definitions, the African Group proposed that '...every country or region shall have the prerogative to define who constitutes indigenous people in their respective countries or regions taking into account its national or regional peculiarities'. In short, states would decide who constituted indigenous 'people', thus ignoring the emphasis on self-definition that had emerged from over 20 years of debate in UN fora (Colchester 2002, Saugestad 2004). References to selfdetermination were replaced by the right 'to participate in the political affairs of the State', while provisions on land rights, education and a wide variety of other rights were rendered subject to 'national laws' and 'national legal systems'. Many of these proposed amendments were regarded as violating existing international law, including African regional instruments, and were opposed by a significant number of states, along with human rights organizations and indigenous peoples' organizations.

Further negotiations led to an agreement with the African Group on a Declaration containing only nine amendments. Of these, two are significant. The first is a reference to the varying situations and historical and cultural backgrounds of indigenous peoples in different countries and regions (para. 23), responding to the issue of definition but leaving self-definition intact. The second is a reference to the 1993 Vienna Declaration and Programme of Action affirming the right to self-determination of all peoples (Resolution 48/121; Chernela 2005). However, the Vienna Declaration also balanced this right through reference to the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States (Resolution 2625 [XXV]). The latter is not a human rights instrument. Article 46 of the Declaration, stating that, 'Nothing in the Declaration shall be interpreted as implying for any State, people, group or person to engage in activities contrary to the Charter of the United Nations' was extended to include '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' - a wording drawn from the Declaration on Friendly Relations. The question now was whether indigenous peoples could accept the Declaration with these changes.

A decisive moment

Over the course of the years hundreds of indigenous peoples' organizations from around the world participated in the development of the Declaration. However, the final stages of the negotiation posed acute challenges for indigenous representatives and support organizations, given the scale and diversity of the perspectives within the wider movement, resource limitations, the closed-door nature of the negotiations, and requirements for expertise in international law. Added to these complexities was the problem that opposing states (Canada, Australia, New Zealand and the US, known as CANZUS) would exploit disunity. Anthropology is largely unfamiliar with logistical, communications and political challenges of this magnitude. In response to these challenges, from 2005 the Global Indigenous Peoples' Caucus adopted an organizational model based on the seven regions of the UN Permanent Forum on Indigenous Issues. Using this model, indigenous peoples' organizations from Africa, Asia, North America, Latin America, the Pacific, Artic/Europe and Russia

nominated regional representatives to form a Steering

Committee. Chairperson Les Malezer, from Australia, took

up temporary residence in New York to follow the process

more closely. The Steering Committee took responsibility for lobbying for the adoption of the Declaration approved by the Human Rights Council, monitoring the closed-door negotiations, identifying threats to the Declaration and reporting to their regional networks. Given the strongly held views of many indigenous peoples' organizations, and the stakes involved, the adoption of an inclusive process was a challenging task. In view of this, the Steering Committee adopted a very cautious approach.

On 31 August 2007, the Steering Committee circulated a report entitled *UN Declaration on the Rights of Indigenous Peoples: Report of the Global Indigenous Peoples' Caucus Steering Committee* to inform the wider movement about proposals under debate by states. The report had three annexes: the first was the new compromise agreement brokered by Mexico with Namibia on behalf of the cosponsors and the African Group. The second was the original proposal by the African Group; the third was a brand new proposal from Canada, Colombia, New Zealand and the Russian Federation outlining major changes to 13 articles.

The co-sponsors explained that if the agreement was acceptable, the African Group had agreed to vote down any proposed amendments from the floor by known opposing states (e.g. CANZUS). The co-sponsors therefore wanted to '...know whether indigenous peoples can accept the Declaration or not with the newly negotiated changes'. They then 'repeated what has always been the case: that the co-sponsors will not go ahead and push for adoption of a Declaration that indigenous peoples do not want'. However, if the Caucus did not agree, and the text was delayed, opposing states would enter the debate and '[t]he only outcome would, in the co-sponsors' opinion, be a seriously diluted Declaration'.

The report to the networks declared: 'This is obviously a decisive moment in Indigenous peoples' struggle for respect and recognition of our rights. Indigenous peoples must now decide whether they can now accept the Declaration or not, with the new changes.' In setting the consultation in motion, the Steering Committee triggered an agreed 'orderly process' through which views would be channelled directly to regional representatives in order to assess the balance of opinions. As part of this strategy, the wider Caucus was urged not to circulate information that could be exploited by opposing states. A deadline was set for 12 noon, New York time, on 4 September. On 1 September organizations were urged to decide whether 'we can live with the amendments, and the Declaration is adopted, OR whether we cannot accept the agreed version, and the Declaration will not be adopted'.

This process did not, and indeed could not, involve every single indigenous organization or person. Rather, it referred to an agreed process through which the Steering Committee would be able to assess whether, on balance, the overall Caucus could or could not accept the amended Declaration. This position was critical because the cosponsors would not commit to an agreement against the wishes of the Caucus and were aware of the difficulties of organizing rapid regional consultations.

On 4 September, after many hours of intense debate, the Steering Committee issued a statement reporting on the outcome of the consultations as follows:

In these communications, many of the Indigenous Peoples supported the adoption of the amended Declaration. Many others took the position not to oppose the adoption of the Declaration. Some felt strongly that they should not be bound by the process and emphasized the right of Indigenous Peoples to decide our own arrangements in our own timeframe.

However, of most significance is the level of support received from Indigenous Peoples for States to introduce this modified Declaration for adoption, based upon the many important provisions preserved in the Declaration.

Alfredsson, G. 1989.
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Barsh, R.L. 1986. Indigenous peoples: An emerging object of international law. *The American Journal of International Law* 80(2): 369-385

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Bowen, J.R. 2000. Should we have a universal concept of 'indigenous peoples' rights'? Ethnicity and essentialism in the twenty-first century. *Anthropology Today* 16(4): 12-16.

Brysk, A. 2000. From tribal village to global village: Indian rights and international relations in Latin America. Stanford: Stanford University Press.

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Fig. 3. The General Assembly Votes to adopt the Declaration.

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Keating, N.B. 2007. UN General Assembly adopts Declaration on the Rights of Indigenous Peoples. Anthropology News 48(8): 22-23

Kenrick J. and Lewis, J. 2004. Indigenous people's rights and the politics of the term 'indigenous'. *Anthropology Today* 20(2): 4-9.

Kuper, A. 2003. The return of the Native. *Current Anthropology* 44(3): 389-402.

Lutz, E. 2007. Indigenous rights and the UN. Anthropology News 48(2):

Mackey, E. 2005. Universal rights in conflict: 'Backlash' and 'benevolent resistance' to indigenous land rights. *Anthropology Today* 21(2): 14-20. We are not at liberty to discuss the details of indigenous consultations that have not been made public. However, for the Asia Region, Victoria Tauli-Corpuz reported in a press statement on 6 September that '[a]round 400 Asian Indigenous organizations and networks from 14 countries responded and expressed their full support for the amended or modified text. Not a single organization opposed the modified text.'

Finally, the main negotiators, Mexico, Peru and Guatemala, were invited to a meeting with the Steering Committee and provided with an official statement of support. This support was conditional on the understanding that any further amendments from other states 'will be opposed by the Africa Group of States and the Co-sponsoring States'.

The vote

The 13th of September was a momentous day for the indigenous delegates, NGOs and governments present. Members of the Steering Committee, visiting chiefs and indigenous leaders were allocated seating in the VIP area in the General Assembly Hall. Most other members of the Caucus and their supporters sat in the viewing gallery to await the vote.

Since the entire debate is available in two United Nations webcasts, which provide an invaluable resource for further analysis and debate, we here confine ourselves to brief discussion of the context informing the vote.

Luís Chávez introduced the Declaration on the floor of the General Assembly and promptly called for its adoption by consensus without a vote. It was already known that opposing states would call for a vote. The real question was how many states would vote for the Declaration, with early speculation focusing on approximately 120 states – a clear majority.

The vote was called by Australia, New Zealand and the United States, who were joined in opposition by Canada. As expected, opposition focused on key provisions concerning: self-determination; land, territories and natural resources; free, prior and informed consent; and intellectual property. In particular, New Zealand argued that the provision regarding land rights (Article 26) created a situation where '... the entire country is potentially caught within the scope of the Article', while Articles 19 and 32(2) regarding free, prior and informed consent '...[imply] that indigenous peoples have a right of veto over a democratic legislature and natural resource management' and concluded that New Zealand 'must disassociate itself from this text'. The United States followed suit, arguing that the 'text as a whole is unacceptable' and stating that they would be voting against 'this flawed document'. None of this was surprising. What was significant was that these states failed to attract wider support.

The scale of support within the General Assembly became clear when the giant screens above the podium flashed green as delegations pushed the buttons on their desks to record their vote. The final vote registered as 144 in favour, 4 against (CANZUS) and 11 abstentions.² Although restricted to the viewing gallery of the General Assembly, Kenneth Deer of the Mohawk Nation led the applause on behalf of the Caucus.

Fig. 4. Members of the Global Indigenous Peoples' Caucus in the VIP area of the General Assembly embrace after the vote.

McIntosh, I. 2001. UN Permanent Forum on Indigenous Issues. Anthropology Today 17(6): 22-23.

Merry, S.E. 2006. Anthropology and international law. *Annual Review of Anthropology* 35: 99-116.

Messer, E. 1993. Anthropology and human

Anthropology and human rights. *Annual Review of Anthropology* 22: 221-249 Muehlebach, A. 2001.

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Morgan, R. 2007. On political institutions and social movement dynamics: The case of the United Nations and the global indigenous movement. *International Political Science Review* 28(3): 273-292.

Ramos, A.R. 2003. Comments: The return of the Native. *Current Anthropology* 44(3): 397-398

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Stamatopoulou, E. 1994. Indigenous peoples and the United Nations: Human rights as a developing dynamic. *Human Rights Quarterly* 16(1): 58-81.

Thompson, R.H. 1997. Ethnic minorities and the case for collective rights. *American Anthropologist* 99(4): 786-798.

Thornberry, P. 2002. Indigenous peoples and human rights. New York, Manchester: Juris Publishing/Manchester University Press.



During the explanations and statements after the vote, the importance of Article 46 and the provisions on sovereignty and territorial integrity in providing 'comfort language' were highlighted by 15 mainly developing countries. The UK, which along with the entire European Union, voted in favour, welcomed the Declaration but expressed its long-standing opposition to collective human rights, with the exception of a 'new and distinct' right of self-determination for indigenous peoples. However, the UK then welcomed the measures taken by other states to recognize precisely such rights. In the only statement that referred to the interests of the research and museum community, the UK argued that rights to redress and repatriation for ceremonial objects and human remains would only be relevant where they are in state possession. Furthermore, human remains would only be returned where the people concerned were clearly identifiable.

At 4.16 pm the Chair lifted the gavel and ended the formal session with the words 'so decided'. The Declaration was approved. The session then moved into an informal mode during which Victoria Tauli-Corpuz and Les Malezer addressed the General Assembly. In her speech, Tauli-Corpuz paid tribute to those involved in the course of the negotiations including, among others, the late British anthropologist Andrew Gray:

Let me also reiterate my thanks to all the Indigenous leaders, activists and experts and NGO experts who all contributed to this historic achievement. Some of them are here with us today and some of them have already passed away. I would like to specifically mention Ingrid Washinawatok, Tony Blackfeather, Ed Burnstick and Andrew Gray, Howard Berman and Bob Epstein. Let us all pay tribute to them and thank them in our hearts.

Since anthropologists are rarely mentioned on the floor of the UN General Assembly, this was a fitting tribute to Andrew Gray and his colleagues, who worked with such dedication for the realization of the Declaration.

That evening members of the Global Indigenous Peoples' Caucus met to share in the success and express their gratitude to their colleagues. When the celebration moved on to a karaoke bar, Mattias Ahren of the Saami Council drew thunderous applause from the slightly bewildered audience on announcing the adoption of the Declaration.

Conclusions

The adoption of the Declaration on the Rights of Indigenous Peoples represents a historic achievement of the global indigenous peoples' rights movement that should be welcomed by anthropologists, many of whom have contributed in various ways to this Declaration, including through their participation in NGOs and human rights organizations. This raises the question: how might anthropologists continue to contribute to Tauli-Corpuz' call to make the Declaration a 'living document for the common future of humanity'?

In the broadest sense, this Declaration merits anthropological analysis in contribution to the emerging anthropology of international institutions, law and human rights (Messer 1993, Merry 2006, Goodale 2006). This may well involve a more critical stance on human rights law and its limitations than we have adopted here.

However, anthropologists can do more than that. First, the Declaration and relevant literature should ideally be incorporated into the basic curriculum for anthropology students. Second, the Declaration merits consideration with respect to its implications for professional codes of ethics. Third, anthropologists engaged in field research with indigenous peoples could periodically 'report in' to assess the status and uptake of the Declaration. The United Nations Permanent Forum on Indigenous Issues will take practical responsibility for assessing progress in implementation of the Declaration. Anthropologists could contribute to such assessments and their contributions will be welcomed particularly where they are prepared in direct collaboration with indigenous peoples' organizations.