

SELF-DETERMINATION FOR INDIGENOUS PEOPLES AFTER KOSOVO: TRANSLATING SELF-DETERMINATION “INTO PRACTICE” AND “INTO PEACE”

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I. BRIEF HISTORY OF SELF-DETERMINATION

A. *Self-Determination as an Evolving Legal Precept*

Numerous scholars have traced the early origins of self-determination from the Marxist precepts of class liberation to the Wilsonian ideals of democracy and freedom. However, from the moment those words were first uttered by Wilson there was an almost immediate retreat (most notably by United State’s Secretary of State Robert Lansing) out of fear that it might be seen as a rallying point for independence movements outside the context of the Austro-Hungarian and Ottoman Empires.¹

In the aftermath of the Second World War, the concept of “self-determination of all peoples” was incorporated as part of international conventional law but within the statist framework of the United Nations Charter.² The push for decolonization in the 1960s, however, elevated self-determination to a right and brought to full light the need to contend with its humanistic components.

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1. See ANTONIO CASSESE, *SELF-DETERMINATION OF PEOPLES* (1995); HURST HANNUM, *AUTONOMY, SOVEREIGNTY, AND SELF-DETERMINATION* (1990).

2. *C.f.* U.N. CHARTER, art 1, para 2 with art. 2, para 4.

This shift in legal doctrine is evidenced in the 1970 Declaration on Principles of International Law Concerning Friendly Relations which condemns "the subjugation, domination, and exploitation" of peoples as contrary to "the promotion of international peace and security."³ It similarly links self-determination to the idea of full participatory rights without distinction as to race, creed, or color. Equally important are the limitations it imposes on the principles of territorial integrity and sovereignty when a state fails to meet its obligation of a "government representing the whole people."⁴ Within the international human rights movement, both the International Covenant on Economic, Social and Cultural Rights⁵ and the International Covenant on Civil and Political Rights⁶ state that "all peoples have the right of self-determination," which includes the right to "freely determine their political status," to "freely pursue their economic, social, and cultural development," and to "freely dispose of their natural wealth and resources."

Just as international law has evolved from being solely concerned with the rights and duties of sovereigns to include both individual as well as collective rights of human beings, so too has self-determination evolved into a legal precept benefiting "human beings as human beings and not sovereign entities as such."⁷ The term "peoples" evidences the collective nature of the right. And while much scholarship has been written on what the right of self-determination encompasses and who are the "peoples" entitled to that right, states themselves have been slow to acknowledge the relevance of this precept beyond the classical colonial context.⁸

3. Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the U.N. G.A. Res. 2624, 25 UN GAOR, Supp. 28 at 121, U.N. Doc A/8028 at 121 (1970) [hereinafter *Declaration on Friendly Relations*].

4. *Id.*

5. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, 6 I.L.M. 360 (1967) (Annex to G.A. Res. 2200, 21 GAOR, Supp. 16, U.N. Doc. A/6316 at 490) (entered into force Jan. 3, 1976).

6. International Covenant on Civil and Political Rights, Dec. 16, 1966 999 U.N.T.S. 171, 6 I.L.M. 368 (1967) (G.A. Res. 2200, 21 GAOR, Supp. 16 U.N. Doc A/6316, at 52) (entered into force Mar. 23, 1976).

7. S. James Anaya, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* (1996). See also *The Right to Self-Determination: Historical and Current Developments on the Basis of United Nations Instruments*, U.N. Doc. E/CN.4/Sub.2/404/Rev.1, at 31 (1981) (Aureliu Cristescu, Special Rapporteur); Hurst Hannum, *Self-Determination as a Human Right*, in *HUMAN RIGHTS IN THE WORLD COMMUNITY: ISSUES AND ACTION* 125 (Richard P. Claude & Burns H. Weston eds., 1992).

8. See, e.g., Cassese, *supra* note 1, at 67-155; Hurst Hannum, *Rethinking Self-Determination*, 34 VA. J. INT'L L. 1 (1993); Report of the Human Rights Committee, U.N. GAOR, 39th Sess. Supp. No. 40, at 142-43, U.N. Doc. A/39/40 (1984). See also *infra* notes 28 & 29 and accompanying text.

B. *Self-Determination in Practice*

Yet if we were to consider for a moment how that right has played itself out in practice, most notably in the last six months, we may once again be evidencing a shift in the conceptual understanding and scope of self-determination sufficient to warrant a re-examination of group claims to that right – in particular indigenous claims. This examination is critical given that the evolution of self-determination as a legal construct is continuously shaped by the realities of practice.

From an analytical standpoint, the application of this principle can be traced back in time to the breakup of the German, Austro-Hungarian and Ottoman empires, followed by the demise of classical colonialism, and more recently to the collapse of the Soviet Union and the disintegration of Yugoslavia. Given the focus of today's panel, however, I will limit my remarks to the United States - led NATO intervention in Kosovo and its relationship to indigenous rights.

II. ASSESSING RECENT EVENTS IN KOSOVO

My intent today is not to assess the “correctness” of the intervention as a matter of international law or policy, both of which have been widely debated.⁹ Rather it is to consider what that intervention – and the entire Kosovo response – might signal for the future recognition of indigenous peoples' right of self-determination. I will begin with the United States position on respecting the right of self-determination for the Kosovar people and then attempt to draw some parallels to the aboriginal context.

In a recent address on the Balkan question, Deputy Secretary of State Strobe Talbott noted that “how to translate th[e] phrase [self-determination] into practice – and into peace – was one of the challenges at Versailles eighty years ago, just as it was at Rambouillet six months ago, and just as it is in Pristina today.”¹⁰ While self-determination at Versailles meant “the dismant[ling] of empire[s] and the formation of a whole cluster of new nation-states,” Talbott states that the Balkans of today require “new answers to those old questions about nationhood, statehood, democracy, and self-determination.” He points to the complexity of the Kosovo situation in particular given the external suspension of Belgrade's power over the province, the ethnic Albanians' desire for independence, and the United States' hope for some form

9. David Fromkin, *KOSOVO CROSSING* (1999); Michael Mandelbaum, *A Perfect Failure: NATO's War Against Yugoslavia*, *Foreign Affairs*, September/October 1999, at 2; Henry Kissinger, *New World Disorder*, *Newsweek* May 31, 1999, at 41.

10. Strobe Talbott, Address at the Aspen Institute (visited August 24, 1999) *reprinted at* <http://www.state.gov/www/policy_remarks/1999/990824_talbot_aspen.html>

of self-governing autonomy should Serbia free itself from the existing regime of tyranny and oppression.

The provisions of the Rambouillet Agreement are a fairly good representation of where the United States and other NATO allies stood on the right self-determination for the Kosovar people. After paying homage to the "sovereignty and territorial integrity of the Federal Republic of Yugoslavia," the Agreement calls for a substantial transfer of sovereign power from the federation to the people of Kosovo.¹¹ Among other things, it provides for the adoption of a new constitution as well as the establishment of legislative, executive and judicial branches of government.¹²

Although there were important departures from the Rambouillet Agreement at the end of the conflict – most notably the absence of any referendum after a fixed period of time to decide Kosovo's ultimate status – the immediate goals prevailed. Kosovo is at the moment under the auspices of the international community and with the assistance of various international organizations is moving toward a United Nations Security Council mandate of "substantial autonomy."¹³ The United Nations Interim Administration Mission in Kosovo is the most "far-reaching" executive mission ever undertaken by the United Nations and is specifically designed to ensure that the Kosovar people have full participatory rights in the institutions of government under which they live, which in turn will provide them with greater control over their cultural, economic, and social developments.¹⁴

While noting that the "ultimate status of Kosovo is a question for the future," Talbott also provides some insight into current United States thinking on the future application of the right of self-determination beyond Kosovo.¹⁵ It includes creating an environment in which self-determination can flourish through a "pooling of sovereignty in certain areas of governance, and in other areas granting greater autonomy." He notes that the trend is already away from the "the old system of nation-states – each sovereign in its exercise of supreme, absolute and permanent authority" – to one of regional if not global interdependence. Obvious examples being the European Union and various multinational forces deployed around the world. The counterbalancing trend is the devolution

11. Rambouillet Accords, "Interim Agreement for Peace and Self-Government in Kosovo" (visited Feb. 19, 2000) *reprinted at* <http://www.state.gov/www/regions/Eur/ksvo_ambouillet_text.html>.

12. *See id.*, Chap. 1 (Constitution), Chap. 1, Art. II (Assembly); Chap. 1, Art. III (President of Kosovo); Chap. 1, Art. IV (Government and Administrative Organs); Chap. 1, Art. V (Judiciary).

13. U.N. Security Council Res. 1244, 4011th meeting (June 10, 1999).

14. *See* Report of the Secretary-General Pursuant to Paragraph 10 of Security Council Resolution 1244, U.N. Doc. S/1999/672 (1999); Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, U.N. Doc. S/1999/779 (1999) (visited Feb. 18, 2000) *reprinted at* <<http://www.un.org/Depts/dhl/da/Kosovo/Kosovo3a.html>>.

15. *See* Talbott, *supra* note 10.

of power as a means of accommodating “communal identities and sensitivities.” Two examples include Spain, which has transferred substantial autonomy to culturally distinctive communities such as Catalonia, and the United Kingdom with the establishment of new parliaments in Scotland and Wales.

Recent scholarship has similarly emphasized the contradictions inherent in limiting the concept of self-determination to “mutually exclusive ‘sovereign’ territories.” Professor James Anaya states that such a limited conception of “peoples” as it relates to a contemporary understanding of self-determination “ignores the multiple, overlapping spheres of community, authority, and interdependency” that actually exists in the world today.¹⁶ These concepts of “autonomy” and “enhanced interconnectedness,” while gaining new prominence in the conceptual understanding of self-determination, are historically represented in indigenous thought and identities. For instance, the founding political philosophy of the Haudenosaunee or Iroquois Confederacy under the Great Law of Peace is built on the dual principles of unity among nations as well as mutual respect for distinct identities or difference among societies.¹⁷

This conceptual understanding of self-determination in practice has its critics. For instance, there are those who perceive the goal of autonomy – or “diversity-within-unity” – for culturally cohesive communities as nothing more than a train stop on the way to secession, pointing to the current thinking on the future status of Kosovo. Others continue to equate the scope of self-determination with the process of decolonization and independent statehood.¹⁸

Indeed, secession may be an appropriate remedy in certain situations where the “substantive aspects” of self-determination are not effectively attainable by other means or where there is a persistent pattern of violence and oppression against a particular group.¹⁹ Examples abound from the East Timorese to the people of Tibet. And it may ultimately be true for the Kosovo Albanians. Yet it is equally true that appeals to territorial integrity and sovereignty – which serve important stabilizing functions in the global community – can no longer be used as a shield against continued violations of

16. Anaya, *supra* note 7, at 77-79.

17. See Oren R. Lyons, *The American Indian in the Past*, in *EXILED IN THE LAND OF THE FREE* 13, 32-42 (Oren R. Lyons & John C. Mohawk eds., 1992; See also Anaya, *supra* note 7, at 79.

18. This interpretation of self-determination is difficult to support given the recent turn of events in Kosovo and elsewhere. See *infra* notes 40-1 and accompanying text. See also Anaya, *supra* note 7, at 77-85.

19. See *infra* notes 38-39 and accompanying text. See also Anaya, *supra* note 7 at 84-85; Ved Nanda, *The Birth of Bangladesh in Retrospect*, in *SELF-DETERMINATION: NATIONAL REGIONAL, AND GLOBAL DIMENSIONS* 193 (Yonah Alexander & Robert A. Friedlander eds, 1980). Professor Anaya reconceptualizes the principle of self-determination into a framework consisting of both substantive elements and remedial prescriptions. For a further discussion of this framework, see *infra* notes 30-34 and accompanying text.

self-determination and other human rights. As Secretary of State Madeline Albright noted in relation to the Kosovo crisis, a leader of a state “gives up the right to argue sovereignty ... when he decides to ... unilaterally ... exile a part of a community that lives within his borders.”²⁰

Once the substantive aspects of self-determination have been substantially violated, an appropriate remedy -that is not necessarily secessionist in character -must be considered and implemented.²¹ This is what the Rambouillet negotiations had hope to achieve, what the U.S-led NATO forces believed they had achieved, and what the current United Nations’ mission is now attempting to implement. Certainly one can only speculate whether the situation in Kosovo might have taken a different course had international procedures and institutions been in place to address early on alleged violations of a group’s claim of self-determination. As Professor Ved Nanda argued some twenty years ago “the absence of guidelines for hearing and evaluating such claims will leave little alternative to violence.”²²

Perhaps this is a lesson learned from the Kosovo experience – a lesson that could, along with recent events in places such as East Timor, pave the way for the development of appropriate procedures and institutions. At the very least, the Kosovo experience calls into question any lingering claims by participating States that the right of self-determination is limited in scope by the theoretical construct of territorial sovereignty. More importantly, it appears to signal a change in the conceptual understanding of self-determination, which brings me to the issue of indigenous peoples’ rights.

III. INDIGENOUS PEOPLES’ HUMAN RIGHTS STRUGGLE FOR SELF-DETERMINATION

In the past several decades, indigenous peoples have garnered international support for their rights to live and develop as distinct communities whose cultures and traditions are rooted in history and land.²³ Their efforts have brought about significant changes in both conventional and customary international law.²⁴ One primary example is ILO Convention No. 169, which recognizes “the aspirations of [indigenous] peoples to exercise control over their own institutions, ways of life, and economic development, and to maintain

20. Secretary of State Madeleine K. Albright, (The PBS Newshour With Jim Lehrer, June 10, 1999), (visited Feb. 18, 2000) *reprinted at* <<http://secretary.state.gov/www/statements/1999/990610c.html>>.

21. *See infra* notes 32-36 and accompanying text.

22. *See Nanda, supra* note 13, at 209.

23. *See Anaya, supra* note 7 at 45-58.

24. *See id.* at 47-58.

and develop their identities, languages and religions within the framework of the States in which they live.”²⁵

Even more far-reaching than Convention 169, however, is the Draft Declaration on the Rights of Indigenous Peoples.²⁶ In 1982, the United Nations Economic and Social Council, along with the United Nations Human Rights Commission authorized the formation of a Working Group on Indigenous Populations, made up of five experts from the Sub-commission on the Prevention of Discrimination and Protection of Minorities.²⁷ The Working Group’s original mandate was the development of international standards concerning the rights of indigenous populations. In 1993, a Draft Declaration on the Rights of Indigenous Peoples was completed and subsequently adopted by the Sub-commission. That same year, the General Assembly proclaimed the International Decade of the World’s Indigenous People beginning December 10, 1994.²⁸ These two events are conceptually linked in that the eventual adoption of the Declaration by the General Assembly is a major goal of the International Decade. In 1995, the Commission on Human Rights established an open-ended, inter-sessional working group to consider the various provisions of the draft declaration.²⁹

The declaration specifies all the various freedoms and conditions necessary for a people to be fully in control of its own destiny and affirms, among other things, indigenous peoples’ fundamental freedom to nondiscrimination, religion, self-government, control over lands and resources, and protection of their identities and cultures without assimilation.³⁰ The draft declaration also recognizes their right of self-determination, stating in Article 3 that “Indigenous 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 31 further articulates that:

25. Convention Concerning Indigenous and Tribal Peoples in Independent Countries (Convention 169), June 27, 1989, (entered into force Sept. 5, 1991).

26. Draft United Nations Declaration on the Rights of Indigenous Peoples, U.N. Doc E/CN.4/1995/2, E/CN.4/Sub.2/1994/56 (1994) [hereinafter *Draft Declaration*].

27. Human Rights Commission Res. 1982/19 (Mar. 10, 1982); E.S.C. Res. 1982/34, May 7, 1982, U.N. ESCOR, 1982, Supp. No. 1, at 26, U.N. Doc E/1982/82 (1982).

28. G.A. Res. 48/163 (1993) (commencing Dec. 10, 1994).

29. Human Rights Commission Res. 1995/32 (March 3, 1995). The meetings mark the first time in United Nations history that organizations without official consultative status at the United Nations have been involved in this level of United Nations policy-making. For indigenous peoples, this was an important step in the recognition of their rights to fully participate in matters affecting their future.

30. See Draft Declaration, *supra* note 22. A similar declaration is under consideration by the Organization of American States. See Proposed American Declaration on the Rights of Indigenous Peoples, OEA/Ser/L/V/II.95, Doc.6 (February 26, 1997).

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 internal 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.

Several states involved in the negotiations have expressed reservations against the affirmation of indigenous self-determination on two primary grounds: that indigenous peoples are not “peoples” entitled to the legal right of self-determination and that self-determination as a norm outside the decolonization context is at best debatable. For instance, in its 1995 Statement on Article 3, the United States stated that “there [is] no international practice or international instruments that recognizes indigenous groups as peoples in the sense of having the legal right of self-determination” and that “in the context of colonialism, the term has been interpreted to mean the right to an independent state. As a result, the draft declaration ... [goes] beyond the principle of self-determination as set forth in the Charter and other international instruments.”³¹ In a more recent statement on the issue, the United States articulated its objections in somewhat broader terms contending that “no international practice or instrument recognizes sub-national groups as having the legal right of self-determination” and further that the United States has “concerns about adopting a declaration which suggests that all indigenous groups ... have a right to be sovereign, independent states.”³²

In an attempt to find common ground, Professor Anaya has suggested an approach to the issue of self-determination that distinguishes between the principle’s substantive and remedial aspects.³³ Substantive self-determination includes the right to participate in “the creation of or change in institutions of government” as well as the right “to make meaningful choices in matters touching upon all spheres of life on a continuous basis.”³⁴ “The substance of the norm,” however, “must be distinguished from the remedial prescriptions that may follow from a violation of the norm, such as those developed to undo colonization.”³⁵ He notes that the remedies currently being explored in the

31. Statements of the United States of America on the Draft UN Declaration on the Rights of Indigenous Peoples to the UN Intersessional Working Group, at 5 (November 27, 1995)[hereinafter *U.S. Statements*].

32. The United States Statement on Self-Determination to the UN Intersessional Working Group on the Draft Declaration on the Rights of Indigenous Peoples (December 7, 1998) (visited Feb. 18, 2000) reprinted at <<http://www.hookele.com/netwarriors/1998.html>>.

33. See Anaya, *supra* note 7 at 80-5.

34. *Id.* at 81-82.

35. *Id.* at 80.

context of indigenous peoples' rights do not suggest the formation of new states.³⁶

The substantive and remedial aspects of self-determination may in fact take many different forms. One recent example would be the birth of Nunavut, the newest Canadian territory, which provides substantial autonomy for the territory's 27,000 residents, 85% of whom are Inuit. Similar attempts to negotiate substantial autonomy for indigenous populations are being explored throughout the Western Hemisphere.³⁷ Regardless of the form, Professor Anaya suggests five international norms that are essential to any substantive-remedial scheme designed to ensure indigenous self-determination: non-discrimination, respect for cultural integrity, control over lands and resources, social welfare and development, and self-government.³⁸

While indigenous groups have expressed support for these various approaches to articulating the content of their right of self-determination, they are equally concerned with any attempts by states to "qualify or define-away" that right - a right which they see as the essence of their survival.³⁹ This is not to say that the prevailing indigenous views on self-determination are secessionist in character. Indigenous groups have stated on any number of occasions that they are not looking to dismantle nation-states. However, they do insist on the right to control their own territories, resources, and decision-making institutions, and to maintain their own distinct cultures.⁴⁰ In the case of Quebec mentioned earlier, the Cree People have stated that if the province of Quebec were ever to leave Canada they would "exercise [their] right of self-

36. Outside the colonial context, Professor Anaya suggests that the remedy of secession be limited to situations where "substantive self-determination for a particular group cannot otherwise be assured or where there is a net gain in the overall welfare of all concerned." *Id.* at 84-85.

37. For instance, the agreement between the Miskito Indians and the government of Nicaragua, which seeks to ensure greater administrative autonomy over their daily lives while at the same time providing for fuller participation in the Nicaraguan government. See Anaya, *supra* note 7, at 78-79, 87-88.

38. See Anaya, *supra* note 7, at 97-125. Since Indigenous peoples have suffered both historical as well as contemporary violations of their right of self-determination, they are entitled to an appropriate remedy. *Id.* at 85-86.

39. See, e.g., Statement by Assembly of First Nations to the Fourth Inter-sessional U.N. Working Group on the Draft Declaration on the Rights of Indigenous Peoples (December 8, 1998) (visited Feb. 18, 2000) reprinted at <<http://www.hookele.com/netwarriors/1998.html>>; Opening Statement of the Navajo Nation Delegation to the Fourth Inter-sessional U.N. Working Group (November 30, 1998) (visited Feb. 18, 2000) reprinted at <<http://www.hookele.com/netwarriors/1998.html>>.

40. See, e.g., Supplemental Opening Statement of the Navajo Nation to the Fourth Inter-sessional Working Group on the Draft Declaration on the Rights of Indigenous Peoples (December 1, 1998) (visited Feb. 18, 1999) reprinted at <<http://www.hookele.com/netwarriors/1998.html>>; Statement by the National Coalition of Aboriginal Organizations, Australia, at the 75th session of the International Labour Conference (June 13, 1988).

determination to choose to remain in Canada."⁴¹ Moreover, it is worth noting that secession is of limited practical value for many indigenous communities given their location, size, resource limitations, and security concerns.⁴²

With that said, it must be asked why indigenous peoples should be expected to accept restrictions or limitations on their claims of self-determination, even if recognition of that right meant political independence for the small few that would benefit from such an endeavor. The Declaration on Friendly Relations provides for just such a remedy when a state fails to meet its obligation of a government representing the whole people.⁴³ Moreover, where serious human rights violations persist and no other remedy is available secession may be the only proper course of action. The Canadian Supreme Court in its recent decision on the secession of Quebec reached a similar conclusion, noting that:

[I]nternational law . . . generates . . . a right to external self-determination in situations of former colonies; where a people are oppressed, as for example under foreign military occupation; or where a definable group is denied meaningful access to government to pursue their political, economic, social and cultural development.⁴⁴

The Quebec situation further highlights the practical importance of recognizing indigenous self-determination. Should the people of Quebec ever vote in favor of secession, recognition of indigenous self-determination ensures that the aboriginal peoples of the province are guaranteed the right to participate fully in any negotiations affecting their future. While the government of Canada appears to be moving toward a broader more inclusive understanding of indigenous self-determination,⁴⁵ other states, such as the United States and Australia, appear to be at a standstill after almost five years of negotiations on the draft declaration.⁴⁶

41. Dr. Ted Moses, Grand Council of the Crees, Address at the Australian Reconciliation Convention (May 27, 1997).

42. See Erica-Irene Daes, *Some Considerations on the Right of Indigenous Peoples to Self-Determination*, *TRANSNAT'L L. & CONTEMP. PROBS.* 3, 9 (1993).

43. See Declaration on Friendly Relations, *supra* note 3.

44. Reference Re Secession of Quebec, 37 I.L.M. 1340, 1373 (1998).

45. See Statement of Canada on Self-Determination to the U.N. Working Group on the Draft Declaration on the Rights of Indigenous Peoples (December 7, 1998) (visited Feb. 18, 1999) *reprinted at* <<http://www.hookele.com/netwarriors/1998.html>>.

46. See the following internet site for various statements of participating states (visited Feb. 18, 1999) <<http://www.hookele.com/netwarriors/1998.html>>. See also U.S. Statements, *supra* notes 31 & 32.

IV. RESPECTING THE UNIVERSALITY OF HUMAN RIGHTS

Yet, as I stated earlier, the Kosovo response may represent a shift in the conceptual understanding and scope of self-determination sufficient to warrant an honest re-examination of indigenous claims. As Deputy Secretary Talbott noted one of the major challenges for the 21st century is how to translate the phrase "self-determination" into practice and into peace. The Rambouillet Accords and what followed thereafter were an attempt -however imperfect -to articulate and uphold that principle for a "sub-national group" in a non-colonial context. The seriousness of the injustices wrought on the Kosovar people after failed negotiations served as the remedial justification for setting aside the Federal Republic of Yugoslavia's claims to sovereignty and territorial integrity.

What we have then is recognition by the United States and others that the right of self-determination is a fundamental human right of all "peoples," the beneficiaries of whom are not limited by adherence to specious appeals to sovereign boundaries. Equally important is the realization that self-determination is not limited in its practical application to the act of secession, but rather embodies in its fullest sense the right to live and develop as culturally distinct groups, in control of their own destinies, and under conditions of equality.⁴⁷ These recent events suggest that at minimum Indigenous peoples' claims of self-determination should be accorded equal consideration, since all human rights -including the right of self-determination -are universal in scope. Unequal application of this principle would impugn the fundamental integrity of those opposing such rights as well as the international legal system itself.

Yet adhering to principles of equal rights and indigenous self-determination will not lead inevitably to the kind of political instability and disruption of territorial unity often alluded to in arguments against such claims. Indeed, just the opposite may be true. Special Rapporteur Erica-Irene Daes notes that "the far more realistic fear" is that the denial of self-determination for Indigenous Peoples will "leave the most marginalized and excluded of all the worlds' peoples with out a legal, peaceful weapon to press for genuine democracy in the states in which they live."⁴⁸

Let me just close by saying that in the last six weeks I have heard it twice stated that the defining issue in international law for the 21st century is finding compromises between the principles of self-determination and the sanctity of borders. In the context of indigenous claims, both the Draft Declaration and the Permanent Forum for Indigenous Peoples currently under discussion at the United Nations offer the best hope for finding just such a compromise -first through the recognition of indigenous peoples' fundamental rights and second

47. See, e.g., Anaya *supra* note, at 77-88.

48. See Daes, *supra* note 35.

through a process of negotiated settlements between states and indigenous communities.