

# American Indian Law Review

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Volume 19 | Number 1

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1-1-1994

## A Reflective Look at the Year for the World's Indigenous People

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### Recommended Citation

Chad Smith, *A Reflective Look at the Year for the World's Indigenous People*, 19 AM. INDIAN L. REV. 257 (1994),  
<https://digitalcommons.law.ou.edu/air/vol19/iss1/10>

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## SPECIAL FEATURES

### A REFLECTIVE LOOK AT THE YEAR FOR THE WORLD'S INDIGENOUS PEOPLE

*The General Assembly of the United Nations named 1993 the "International Year for the World's Indigenous People."<sup>1</sup> The world's native people observed 1993 in ways which were as diverse as the people themselves. In this feature, two leaders in the Native American legal community share their recollections of the Year for the World's Indigenous People. — Ed.*

CHAD SMITH:<sup>2</sup>

History and law always were boring subjects. History was stories about old aristocrats doing things which did not mean much. Law was a combination of abstract concepts which you manipulated in an attempt to achieve a certain outcome. What could be more painful than law and history combined?

It was only after hearing a tribal employee say, "We can't do that, the BIA won't let us," that I knew there was something fundamentally wrong in our view of tribal government. I surmised that there had to be some predicate for such an attitude. The old adage, "if we understand the past we can understand the present" seemed convenient. We began compiling a legal history of the Cherokee Nation to see what we were in the past, what we are today, and most importantly, what we could be tomorrow. Perhaps with that understanding our decision-makers could make better informed decisions.

That effort was a mistake. It became addictive.

Page after page of what should have been a boring treaty, a tedious statute, a musty legislative history, or a self-serving commentary became fascinating reading because the legal history of the Cherokee nation was a continual battle for survival against astronomical odds. The policy arguments found in a number of historical eras are heard today in the newspapers and government buildings of this state and nation.

For example, the first smokeshop case was decided by the U.S. Supreme Court in 1870, *Cherokee Tobacco*,<sup>3</sup> and was argued by E.C. Boundinot, the

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1. G.A. Res. 164, U.N. GAOR, 45th Sess., Supp. No. 49, at 277, U.N. Doc. A/Res/4.5/164 (1990).

2. Chadwick Smith (Cherokee) is the Director of the Office of Justice for the Cherokee Nation of Oklahoma. Smith wrote and edited the Cherokee Nation Penal Code, the Cherokee Nation's Criminal Procedure Code, the Cherokee Nation Uniform Dangerous Drug and Substance Code, and the Cherokee Nation Motor Vehicle Code. He received a B.S.Ed. from the University of Georgia, an M.S. in Public Administration from the University of Wisconsin, and his J.D. from the University of Tulsa.

3. 78 U.S. 616 (1870).

first Indian to appear in that court. Another example is the congressional record reflects instructions to appraisers to value the Cherokee Outlet at one-half market value because it was used for "Indian occupancy."<sup>4</sup> In our research, we found scandals by the United States and her citizens that would make the editors of any tabloid newspaper blush.

And there were episodes in which Tribal leaders masterfully used both the law and public opinion to defend the Cherokee Nation from outsiders. Their ingenuity was inspirational.

One of those inspirational episodes created the International Indian Council, which was called by the Cherokee Nation in 1843. Only four short years after the holocaust of the Trail of Tears, the Cherokee Nation and the other tribes in Indian Territory came together to establish governance among themselves without interference from the United States. Imagine — a six week period of deliberation involving as many as 6000 leaders from 19 tribes. It seems that such an event must have been momentous. However, the International Indian Council is unknown in popular Oklahoma history. In this regard, popular history is clearly remiss.

The International Indian Council was a major event. The concepts expressed through the 1843 orations were clear and strong. The Indian nations and tribes who gathered there understood the influences and forces against them. They carefully analyzed and planned for survival.

Should such a significant historical event be commemorated? Of course. What better way to demonstrate respect for the 1843 Council than to conduct a similar event, another International Indian Council. The 1993 Council would address some of the issues that Indian people faced 150 years earlier — including jurisdiction, land use, and alcoholism. It would also address new issues facing Indian tribes in 1993, such as health care, mascots, and degradation by the media. We knew that only diversity among the participants could clarify our thinking and enrich our experience. For each panel, speakers with diverse backgrounds and ideas were invited.

Principal Chief Mankiller extended invitations to each of the federally recognized tribes, welcoming them to attend the 150th anniversary of the 1843 International Indian Council on September 13, 14, and 15, 1993, at Sequoyah State Park outside Wagoner, Oklahoma. Invitations were extended to Canadian tribes and Hawaiian, Central and South American natives. Some ten panels, consisting of 67 outstanding Indian speakers and leaders came to talk. It was a council in which members of a number of tribes could consult and visit with each other. Each could learn from the others' historical and current experiences. The Council operated with no federal agenda, and without federal funds.

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4. H.R. DOC. NO. 89, 47th Cong., 1st Sess. 30 (1882).

Traditional leaders of the Cherokee and Cherokee Shawnees greeted Council participants. The Cherokee Delaware elders conducted a cleansing ceremony. A symbolic fire burned, representing the fire of 150 year ago. People and panels began to meet and discuss issues.

There was home cooking — including a fish fry and a hog fry; and entertainment — including a stomp dance exhibition, forty-nine songs, and Indian rap.

Orations were given. These were not conference speeches, but talks which echoed the sentiments of many generations. There were no key-note speakers, but leaders who delivered messages. Peterson Zah, President of the Dine' Nation (Navaho); Oren Lyons, Council of Chiefs of the Onondaga Nation; and Mililani B. Trask, Lia'aina, Ka Lahui Hawawi'i each gave stirring talks. Other panelists spoke with heart and vision, and in language which was clear, precise and moving.

The lasting personal impression for me occurred when I realized that the message Principal Chief John Ross gave 150 years ago rang true and had strength today:

Brothers, it is for renewing in the West the ancient talk of our forefathers, and of perpetuating forever the old pipe of peace, and of extending them from nation to nation . . . . Let us, therefore, so act that the peace which existed between our forefathers may be pursued, and that we may always live as members of the same family.<sup>5</sup>

For me, the historical meaning of this passage became vivid, and it became present. Among the participants from a hundred tribes, I saw that we, as Indian nations and tribes, have survived; we are heirs to peace among the Indian nations; we are members of the same family.

The experience was unique for me. I was reassured that the various Indian tribes and nations — including the Cherokee Nation — will be in existence for my heirs. These nations will be present when my heirs hold another Council, 150 years from now.

*Thus, the Year of the Indigenous People was embodied in the 1943-1993 International Indian Council. The place of Native Americans in the international struggle for indigenous people is also illustrated by the experiences of Professor Kirke Kickingbird. The following retrospective presents a somewhat light-hearted documentation of Professor Kickingbird's experiences — as a member of the Kiowa tribe, as a father, and as a member of the world community — Ed.*

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5. John Mix Stanley, *Last Pages of History*, AMERICAN SCENE, Spring 1960, at 10.

KIRKE KICKINGBIRD:<sup>6</sup>

After weeks of turmoil and posturing on the brink of open warfare, Moscow seemed calm this weekend. Even the barricaded parliament building, known as the "White House," seemed calm. It was Sunday afternoon, September 26, 1993, and we were standing in front of the tomb of Lenin in Red Square. Red star.

Jim Anaya<sup>7</sup>, Bill Felice,<sup>8</sup> and I were attending a concert in Red Square when we heard a deep rumble. The thunder rumbled twice. We looked at one another. I'm sure their expressions of amazement and disbelief reflected my own — could the sound have been that of artillery fire? We looked at the clouds overhead. Surely that must have been thunder.

From my earliest childhood I remember visits to Chief's Knoll at Fort Sill, near Lawton, Oklahoma. My father had taken me to visit the grave of my ancestor from four generations ago, the Kiowa warrior statesman, Chief Kicking Bird. Red star.<sup>9</sup>

The United States government had established Fort Sill to discourage the Kiowa and Comanche practice of warrior traditions in eastern Oklahoma, Texas, and Mexico. In the summer of 1870, Chief Kicking Bird had to burn half of Texas to provoke McClellan's Sixth Cavalry into a fight so that the Chief could prove his generalship and maintain influence with the war-party

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6. Kirke Kickingbird graduated from the University of Oklahoma (B.A., 1966, J.D., 1969) and has practiced Indian law since 1969. He is a member of the Kiowa Tribe and the Kiowa Gourd Clan. He has written extensively on matters related to Indian law and tribal government. His first book, *One Hundred Million Acres* (Macmillan, 1973) was nominated by his published to the Pulitzer Committee. His 1987 work, *Indians and the U.S. Constitution: A Forgotten Legacy*, was honored by the U.S. Constitution Bicentennial Commission. He has provided training and technical assistance to over 150 tribal governments within the United States and Canada, and has consulted with experts and governmental officials from Canada, Norway, Australia, New Zealand, Japan, Namibia, and Russia on matters of indigenous people's rights. He has served on three U.S. delegations to United Nations and International Labor Organization conventions in Geneva dealing with the rights of indigenous peoples. He was director of the Washington, D.C.-based Institute for the Development of Indian for 12 years, General Counsel to the U.S. Congress' American Indian Policy Review Commission (1975-77), directed the Native American Unit and Denver Regional Office of the Legal Services Corporation (1987-88), and is currently the Director of the Native American Legal Resource Center at the Oklahoma City University School of Law and serves on the faculty. He is a member of the Oklahoma and District of Columbia bars and has been admitted to the Federal Tax Court. He is also a member of the Oklahoma Bar Association, the Oklahoma Indian Bar Association, and serves on the board of the Native American Bar Association. He was Chairman of the Board of Oklahoma Indian Legal Services from 1991 to 1994. He is currently Chairman of the Oklahoma Indian Affairs Commission.

7. Professor S. James Anaya, University of Iowa College of Law.

8. Dr. William Felice, Department of International Studies, Rhodes College, Memphis, Tennessee.

9. Kicking Bird, principal chief of the Kiowa from 1870-1875, was inducted into the National Hall of Fame for Famous American Indians, Anadarko, Oklahoma, on August 14, 1994.

of the Kiowa. As a child I read the headstone mortared into his crypt. It said, "Peace Chief."

In this century Fort Sill had become an army artillery school. On visits with my father, I often heard the artillery practice. Some rounds made the earth tremble as though tectonic plates were shifting. From the top of Mount Scott, north of Fort Sill, we could see the red earth explode into cascades of dust, as rounds impacted the target area far to the east.

The thunderous bass tones were repeated in Red Square and echoed off the walls of the Kremlin and Spasskaya Tower. There was no question now. It was cannon fire. We had come seven thousand miles for a peace conference. Now it seemed we had come seven thousand miles to participate in the beginning of the second Russian Revolution.

We were armed with papers on indigenous populations, American Indian law, and human rights. Our materials didn't seem to be the right resources for a Russian Revolution. The end of our conference was less than twenty-four hours old; we had post-conference meetings on Monday. The American Embassy would surely issue a warning to Americans about travel in Russia if another revolution should occur. But it seemed that those warnings would come too late to benefit the three of us. We had taken pride in being on the cutting edge of international law and indigenous rights. At that moment we shared what felt like the view of a surfer "hanging ten" — just below the crest of a powerful tidal wave.

This entire sequence of events had started in March of 1993. Dr. Bill Felice had invited me to participate in a conference on the Rights of Indigenous People in Moscow at the end of September. After one semester of an undergraduate Russian language course nearly thirty years earlier, I found that I could still decipher most of the Cyrillic alphabet. Even assuming that I had fully grasped them to begin with, Russian grammar, syntax and vocabulary were long gone. I had always wanted to visit Russia. It seemed that I was to have my wish because the USSR no longer existed.

I digress. My account of the Year of Indigenous People should properly begin in 1492. However, I will leave much of that story for another day, and move us forward to the story's second beginning — 1992 and the Quincentenary Celebration of Columbus' arrival in the New World.

The United Nations had briefly considered an international celebration of Columbus' arrival in the Americas. Some American states however, took issue with the idea of celebrating the subsequent conquest, pillage, and exploitation of American Indian and African peoples. The United Nations, then, declined to bless such an event.<sup>10</sup>

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10. Gray Rockwell, *In the Wake of Columbus*, CHICAGO TRIB., Oct. 6, 1991, at C1; see also John Noble Wilfery, *Italian Explorer Isn't Hero Anymore*, HOUSTON CHRONICLE, Oct. 14, 1991, at 1.

Spain had to settle for a 1992 World's Fair in Seville as the international backdrop for its celebration of her adopted son, Columbus. As the quincentenary year drew closer, America's native people forcefully protested. The juxtaposition of the Columbian Quincentenary and the International Year of Indigenous People was no accident. On December 18, 1990 the General Assembly of the United Nations passed a resolution declaring 1993 as the International Year for the World's Indigenous People.<sup>11</sup>

As we moved closer to 1993 other international agencies joined the celebration. One of these was the International Monetary Fund (IMF), who sponsored an exhibit on Indian history at the their Visitor's Center in Washington, D.C. I joined Dr. C. Blue Clark, executive vice president at Oklahoma City University, and Dr. Mary Jo Watson as curators of a show which combined twentieth-century Indian art with nineteenth- and twentieth-century photographs. Our goal was to distill the American Indian experience with manifest destiny. The exhibit, which opened in Washington, D.C. on January 19, 1993, was entitled, "Moving the Fire." Visitors were greeted with the following narrative:

Before the American Revolution (1775-1783) the British Crown had established Indian Country as the area west of the Appalachian watershed from Lake Ontario to the Florida panhandle. From the inception of the American Republic, American leaders embraced this idea of separating Indians from non-Indians and providing a distinct homeland for Indians alone. The continuing expansion of United States borders led to the acquisition of the territory known as the Louisiana Purchase in 1803 which included present day Oklahoma. The ongoing Indian-white conflict over land ownership gave rise to government policies which forced the uprooting and removal of thousands of American Indian peoples who journeyed long distances to reach their new lands in Oklahoma. Into the country claimed and used by the Quapaw, Osage, Caddo, Kiowa and Comanche came the tribes subjected to the Indian Removal Policy. The forced overland march filled with hardship, death and tragedy became popularly known as the "Trail of Tears." Into this dark journey these Indian people brought the glow of their spirit and the glow from the symbol of their national government, the Great Council Fire. In the process of Moving the Fire neither the fire of the spirit of the Indian people nor the fire of their tribal governments has been extinguished. Our retrospective takes up the story of these Indian Nations in the aftermath of Removal.<sup>12</sup>

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11. G.A. Res. 164, U.N. GAOR, 45th Sess., Supp. No. 49, at 277, U.N. Doc. A/Res/4.5/164 (1990).

12. STATE ARTS COUNCIL OF OKLAHOMA, MOVING THE FIRE: THE REMOVAL OF INDIAN

Crowds swept into the exhibit from 5 p.m. until closing. The guests were attired in everything from evening clothes to blue jeans, depending on which Presidential Inaugural event they were attending. Two days later I watched President Clinton being sworn in during bitterly cold weather, while I enjoyed the warm comfort of a National Airport restaurant. I heard my plane being announced as Maya Angelou finished reading her poem.

It was another two weeks before our exhibit gained media attention. Hank Burchard's review in the *Washington Post* summarized the American Indian point of view in the final line, "Happily, as we move toward a new century, the fire still burns."<sup>13</sup>

I carefully cut my clipping from the *Post* and filed it away in the quiet confidence that the remainder of the International Year of Indigenous People would settle into domestic, as opposed to international, routine. In the second week of March a letter arrived which would bring me back to a national capital to focus on the rights of native people — only the capital was not Washington, but Canberra.

Sir Ninian Stephen and Patrick Dodson, co-chairs of a conference titled, "The Position of Indigenous Peoples in National Constitutions," invited me to present a paper in June 1993. The conference was co-sponsored by the Council for Aboriginal Reconciliation and the Constitutional Centenary Foundation.<sup>14</sup>

The Council for Aboriginal Reconciliation was created in 1991 by the federal Parliament of the Commonwealth of Australia. Its twenty-five members consist of twelve Aborigines, two Torres Strait Islanders and eleven non-Aboriginal Australians. Its function is to "promote a process of reconciliation between Aborigines and Torres Strait Islanders and the wider Australian community."<sup>15</sup>

In April 1991 the Constitutional Centenary Conference was organized in Sydney to commemorate the centennial anniversary of the National Australian Constitutional Convention. In 1881 this convention had produced the first draft of the Australian Constitution. The 1991 Conference established a permanent organization whose purpose was summarized as follows:

In the year 2001 Australians will celebrate the centenary of  
Federation, the process by which Australia became a single

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NATIONS TO OKLAHOMA, EXHIBIT GUIDE (1993).

13. Hank Burchard, *On the Trail of Native Americans*, WASH. POST, Feb. 5, 1993, at N56.

14. Letter from Sir Ninian Stephen and Patrick Dodson to Kirke Kickingbird (Mar. 9, 1993) (on file with the Native American Legal Resource Center, Oklahoma City University Law School).

15. DEP'T OF THE PRIME MINISTER AND CABINET, ABORIGINAL RECONCILIATION UNIT, AUSTRALIAN GOV'T PUBLISHING SERVICE, CANBERRA, ISBN 0 644 29152 4, COUNCIL FOR ABORIGINAL RECONCILIATION, ANNUAL REPORT, 2 SEPTEMBER, 1991 TO 30 JUNE, 1992, at 1 (1992).



nation. The approach of this centenary provides an opportunity for a broad-based discussion of the Australian system of government and the principles on which it is based.

Australians rightly place great importance on the need to preserve and maintain stable constitutional government. They should also be encouraged to make informed decisions on whether (and, if so, how) they should change the way their country is run.

In April 1991 a Constitutional Centenary Conference in Sydney resolved "that a public process of education, review and development of the Australian constitutional system should be pursued, in the interests of all Australians, to be completed by the year 2001." The Constitutional Centenary Foundation was established to implement this.<sup>16</sup>

The Foundation would function in a fashion similar to the Commission on the Bicentennial of the United States Constitution.

When questions arose about the role of the Aboriginals and Torres Strait Islanders in the Australian constitutional system, the interests of the Council for Aboriginal Reconciliation and the Constitutional Centenary Foundation merged. As a result, an international conference was organized to examine the position of indigenous peoples in national constitutions.

There was another factor relevant to both reconciliation and the June conference. The High Court of Australia, their supreme court, had decided a major case which would create a wave of debate throughout my visit to Australia: *Mabo v. Queensland (No. 2)*.<sup>17</sup> The court summarized the beginning of the case this way:

In 1982 Eddie Mabo, David Passi and James Rice, members of the Meriam people who occupied the Murray Islands in the Torres Strait, brought an action against the State of Queensland and the Commonwealth of Australia in the High Court on their own behalf and on behalf of the members of their respective families, claiming that the Crown's Sovereignty over the Islands was subject to the land rights of the meriam people based upon local custom and traditional native title.<sup>18</sup>

The contention by native peoples in the United States, Canada, Australia, and New Zealand that they had been unfairly divested of their interests in land at some point during the historical development of their relationship with non-native people is not a new or surprising line of argument.<sup>19</sup> However, *Mabo*

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16. CONSTITUTIONAL CENTENARY FOUNDATION, INC., FIRST ANNUAL REPORT 20 (1992).

17. 175 C.L.R. 1 (Austl. 1992).

18. *Id.* at 1.

19. See KIRKE KICKINGBIRD & KAREN DUCHENEUX, ONE HUNDRED MILLION ACRES (1973).

was particularly significant because previous efforts by Australia's aboriginal people to assert their claims to land ownership had been rejected by the courts in *Milirrpum v. Nabalco Pty. Ltd.*<sup>20</sup> and *Coe v. Commonwealth of Australia*<sup>21</sup>.

The Australian legal decisions invoked one particularly nasty little legal concept, the doctrine of *terra nullius* — "a land belonging to no one."<sup>22</sup> The British claim to ownership of Australia was derived from Captain Cook's 1770 voyage of "discovery" down the east coast of the continent and the legal presumption demonstrated by *Milirrpum* and *Coe* was that Cook had encountered an uninhabited land.<sup>23</sup> Even my tourist guidebook for Australia pointed out what everyone knew: the Aborigines had pulled off their own discovery 40,000 years ago.<sup>24</sup> Under Commonwealth law, the 40,000 years of use and occupation went unrecognized. It was against this unfavorable precedent that the *Mabo* claim was to be measured.

The Court's decision was not consistent with the conclusion Australians had come to expect. Australians might have been less surprised had the Aborigines detonated a nuclear fission device a few hundred miles south of Darwin.

In *Mabo* the High Court interpreted Australian common law to recognize native title. Three justices felt that the Court could not perpetuate a view of the common law that was (1) unjust, and did not view all Australians as equal before the law; and (2) did not conform to the norms of international human rights.<sup>25</sup> Three other justices rejected *terra nullius* as repugnant and inconsistent with historical reality.<sup>26</sup> (My own thought was, "Forty thousand years of use and occupation might mean something after all.")

My reflections on the relationship between Australians throughout the debates following *Mabo* reminded me of analyses I had read of global nuclear war. The analysis focused on consequences seen in the final frames of *Dr. Strangelove*, which depicts the firestorm of nuclear war, followed by nuclear winter, with either event capable of bringing an end to civilization. The questions raised by *Mabo* had a similar firestorm-winter effect — heated emotions and chilling relationships.

The specific concern was whether or not *Mabo* would bring an end to land titles as both the states of the Commonwealth and its citizens knew them. I wasn't aware of the implications of *Mabo* at this stage. In their invitation to me, Stephen and Dodson had merely made passing reference to the "anniversary of the important Australian case, *Mabo v. Queensland*."

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20. 17 F.L.R. 141 (1971).

21. 53 A.L.J.R. 403 (1979).

22. HENRY REYNOLDS, *THE LAW OF THE LAND* 12 (2d ed. 1992).

23. *Id.* at 9.

24. *INSIGHT GUIDES AUSTRALIA* (D. McGonigal & J. Borthwick eds., 5th ed. 1993).

25. *Mabo*, 175 C.L.R. at 67-68.

26. COMMONWEALTH OF AUSTRALIA, AUSTRALIAN GOV'T PUBLISHING SERVICE, *MABO*, THE HIGH COURT DECISION ON NATIVE TITLE, DISCUSSION PAPER, at 14-15 (1993).

As my preparations my summer departure to Australia, I was invited to participate in another international event, a conference on "The Law of Indigenous People" to be held in Moscow on September 24-26, 1993. I agreed. And thus, with the upcoming visit to Russia in the background, the scene was set for my visit to Australia.

My son, Paul, went to Australia with me. He would be thirteen at the end of the summer. Inspired by my attendance at the bar mitzvah of the son of one of my colleagues, I wanted to do something memorable to recognize Paul's transition to manhood. Paul wouldn't actually be thirteen until after our Kiowa Gourd Clan ceremonials at the first of July.

Kiowa tradition had us take our sons on their first raid when they became young men. Northern Mexico was among our favorite raiding grounds. In one report of our ancient exploits, the members of the war expedition told stories about sightings of hairy old men with long tails — monkeys. These accounts suggest that they might have journeyed very far south.<sup>27</sup> I smiled as I considered that Australia presented an opportunity for the southern most raid I could find. So, consistent with Kiowa tradition, off we went.

The flight is fifteen hours from Los Angeles to Sydney. The Qantas 747 was packed. As I recall there were four movies, three meals, and selected short subjects. It seemed that all thoughts that year would eventually turn to our celebration of Indigenous people. Channel 12 on the headphones had a program titled "The First Born," hosted by a Margaret Throsby. The program had been developed to recognize the International Year of Indigenous People. It featured interviews with ten aboriginal Australians who talked about their views of what life was like before and since January 26, 1788, when English ships arrived in Sydney Harbour.

In Sydney we visited old friends who had been assigned to the Australian embassy when we had lived in Washington, D.C. Our luggage had been lost so we spent the day with kangaroos, emus, and an escaped koala who posed with us for a picture.

I had called Canberra to confirm our arrival, and reams of telefaxed documents began to appear under our doorway at the hotel. Some were schedules, others were law review articles, and still others were miscellaneous briefing materials on *Mabo*, the constitutional issues, the Centenary Foundation, and the conference itself.

My host in Sydney looked over one batch of scheduling documents and chortled. I inquired as to the reason for his good humor. He advised me that my itinerary for one of the days next week was the equivalent of conducting two separate speaking engagements and flying from Maine to Panama in a single day.

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27. WILBUR STURTEVANT NYE, *BAD MEDICINE AND GOOD: TALES OF THE KIWAS* at ix n.4 (1962).

On Thursday, June 3, 1993, the *Sydney Morning Herald* featured a front-page article whose headline declared, "National stability at risk, says *Mabo* paper." A 150-page report was circulating among Australia's cabinet ministers which the *Herald* interpreted in the following fashion:

Canberra: Australia faces serious political and legal upheavals, and future investment in major projects may be at risk because of the historic *Mabo* decision, Federal Cabinet has been warned.

A confidential document prepared by Cabinet's top advisers says that unless the Government produces credible measures to lift the quality of life for Aborigines, the issue of native title — raised by the *Mabo* decision — may become a "sovereign risk" for Australia.<sup>28</sup>

Acclimatized to Australia, Paul and I headed south to Canberra in a hired car. I had only two requirements for a car. I wanted a medium- to full-size model, and it had to be automatic. I didn't want to learn to manually shift with my left hand while watching the road for wombats. Dutifully placed in the slow lane it was the third group of honking cars that finally alerted me to my faux pas. The driver of the car hugging my rear bumper this time was pointing to the left lane. It dawned on me. That was the slow lane in Australia. It should have occurred to me sooner. I had turned on the windshield wipers ten times leaving Sydney while trying to engage the turn signal indicator.

The conference opened on schedule the next morning with a welcome from Ms. Matilda House from the Nggunawal Aboriginal Land Council, in whose country the conference was taking place. She was followed by Sir Ninian Stephen and Patrick Dodson on behalf of the conference sponsors. A final word of welcome came from the Honorable Robert Tickner, Minister for Aboriginal & Torres Strait Islander Affairs.

I was the first speaker in the regular session, followed by Patrick Macklem of the University of Toronto School of Law, Keith Sorrenson, an historian from the University of Auckland, Father Frank Brennan, of Uniya, and Miss Lois O'Donoghue, Chair of the Aboriginal and Torres Strait Islander Commission. Chief Ovide Mercredi, National Chief of the Assembly of First Nations of Canada, and Judge Edward Durie, Chair of the Waitangi Tribunal in New Zealand, were followed by a panel discussion and a series of workshop sessions.

Friday night we had dinner at the High Court of Australia. The building is located within the Parliamentary Triangle and is a modernistic glass and concrete structure. The featured speaker was Professor Erica-Irene Daes, Chair of the United Nations Working Group on Indigenous Populations since

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28. Bernard Lagan & Paul Chamberlin, *National Stability at Risk, Says Mabo Paper*, SYDNEY MORNING HERALD, June 3, 1993, at 1.

1984. It appeared as though the organizers of the conference had gone to the special effort of providing a full eclipse of the moon during our evening. It turned blood red in the process of disappearing. Red star.

The proceedings from the conference have been published by the Council for Aboriginal Reconciliation and the Constitutional Centenary Foundation. These two offerings summarize the proceedings and provide the text of the presentations by the speakers at the conference.<sup>29</sup>

Our Monday morning flight from Canberra was delayed by fog but we did eventually make it to our destination — Melbourne. Sydney had the feel of New York, touched by a bit of San Francisco. Canberra had the feel of a science fiction movie set. Some locals asserted that it was a manufactured city and the ruin of a good sheep meadow. Melbourne was reminiscent of Boston or Philadelphia.

Canberra wasn't the only place fog was appearing. The Monday edition of the *Australian* included an article on its editorial pages by Geoffrey Ewing, Director of the Australian Mining Industry Council, with the title, "Governments must protect business against *Mabo* fallout":

The High court decision in the *Mabo* case has undermined Australia's ordered system of commerce and unless the system can adapt to accommodate *Mabo* the nation will face serious economic and perhaps social difficulties.

*Mabo* is threatening to prick the balloon of Australia's traditional sources of wealth — the industries which rely on the development or use of our natural resources.

Those industries — farming, mining, forestry, fishing, and tourism — rely on property laws. They need secure title not only to operate, but to raise capital and to promise some continuity of activity and revenue.

The *Mabo* decision has undermined the foundations of those laws. It has raised doubts about industry's continued access to land under conditions which have prevailed in Australia since European settlement, and in some cases about whether industry will be able to gain access at all.

If the economic consequences of the decision are not to be compounded, federal and State governments will have to act quickly to validate existing title.<sup>30</sup>

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29. AUSTRALIAN GOV'T PUBLISHING SERVICE, COUNCIL FOR ABORIGINAL RECONCILIATION, CONSTITUTIONAL CENTENARY FOUNDATION, *THE POSITION OF INDIGENOUS PEOPLE IN NATIONAL CONSTITUTION* (1993).

30. Geoffrey Ewing, *Governments Must Protect Business Against Mabo Fallout*, *THE AUSTRALIAN* (Canberra), June 7, 1993, at 11.

On the next morning, Tuesday, June 8, 1993, the *Age* had a front page spread on Mabo. The inch-high headlines read, "Premiers ready to say no." The subhead summarized, "Quick agreement on Mabo unlikely." Among photographs of the leader of the opposition to the Mabo settlement, as well as those of Eddie Mabo's widow and daughter, I find my own image. I am quoted as saying, "The fears about sudden loss of wealth through Aboriginal land ownership will pass. Once there is a level of stability, people will be able to tackle these problems effectively."<sup>31</sup>

On the next page was an article entitled, "Pow-wow on Mabo: expert." The expert noted that this was awfully late in history for Australia to be confronting these problems. In the United States the tribes' property ownership was assumed from the beginning. The expert went on to discuss inherent sovereign powers of tribes and the lack of a state role in Indian affairs. The article closed by saying:

Professor Kickingbird said he understood that many Australians were finding the debate about the rights of Aboriginal people unsettling, particularly when it came at a time when they were also considering republicanism and their emerging place in Asia. "The fears about sudden loss of wealth through Aboriginal land ownership will pass." he said.<sup>32</sup>

I delivered two lectures at the University of Melbourne that day. The next morning we were off to the University of Tasmania at Hobart, Tasmania. The temperature was in the high fifties, which Paul treated as shirtsleeve weather.

According to the morning news, things were not cool at the Victoria Parliament building, where Prime Minister Keating had convened a meeting of Australian federal and state government leaders. The *Age* in Melbourne began, "Talks between the Prime Minister, Mr. Keating, and state premiers on the High Court's Mabo judgment broke up last night without agreement, despite hours of protracted and at times heated exchanges."<sup>33</sup>

The Sydney headline declared, "PM, States deadlocked over Mabo." A smaller headline read "Premiers must accept High Court's ruling."<sup>34</sup> An inside story detailed new aboriginal land claims:

The claim by the ACTs [Australian Capital Territory] Ngunnawal people is similar in scope to one lodged in the High Court last week for more than a third of NSW [New South Wales]. It covers all of the 2400 sq. km. of the ACT, the Snowy Mountains

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31. *Premiers Ready To Say No: Quick Agreement on Mabo Unlikely*, THE AGE (Melbourne), June 8, 1993, at 1.

32. *Pow-wow on Mabo: Expert*, THE AGE (Melbourne), June 8, 1993, at 2.

33. Geoffrey Barker, *Bitter Mabo Clashes*, THE AGE (Melbourne), June 9, 1993, at 1.

34. *PM, States Deadlocked over Mabo: Premiers Must Accept High Court's Ruling*, THE AUSTRALIAN (Canberra), June 9, 1993, at 1.

and a section of southwestern NSW extending from Mittagong and Boorowa in the north, to Mount Kosciusko in the south and the Victorian border.<sup>35</sup>

The story went on to outline other claims. The Queensland Aboriginal Legal Service was planning a \$500 million claim for the Carnaarvon Ranges in central Queensland on behalf of the Bidjara.

Paul Coe of NSW Legal Services was planning to add claims to the north coast of New South Wales to the previous claims along the south coast. Mike Mansell's Tasmanian Aboriginal Centre was contemplating a claim to twenty percent of Tasmania.

We detoured for a television interview on the way to the university, got a brief tour of Hobart, arrived early enough to relax a moment before my noon lecture and proceeded to talk about *Mabo* from the perspective of U.S. law. We got a brief tour of the Hobart suburbs, including a view from Mt. Nelson, courtesy of Professor Don Chalmers, the head of the law school, and headed for our five o'clock flight back to Melbourne. My only regret is that we didn't have time to see a Tasmanian devil.

Australian Airlines took us north the next day to Brisbane, and on to our ultimate destination of Townsville in Queensland. A law student picked us up at the airport and advised us that we were to be billeted in Townsville at Bob Munn's home. She asked me if I knew what billeted meant. I said, "Sure. It's when the Redcoats forced the citizens of Boston to quarter their troops without pay or permission."<sup>36</sup>

From the Townsville shore, the view out toward Magnetic Island presented the sea, whitecapped in the strong wind. But upon turning inland, looking around each end of Castle Hill, the red earth and dry landscape might convince you that you were in New Mexico.

This fine and sunny Thursday, there was news from the south. Prime Minister Keating had convened the leaders of the states of Australia in conference as the Council of Australian Governments to address *Mabo*. The Australian had a large headline reading, "PM plans to impose Mabo Law on States." The state leaders were refusing to cooperate and a smaller headline read, "Federalism crashes to premiers' intransigence."<sup>37</sup>

The *Australian* offered these comments in its editorial:

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35. *Tickner Attacks Mabo-style Claims*, THE AUSTRALIAN (Canberra), June 9, 1993, at 2.

36. Aboriginal law student Beverly Coleman did not think my comment was funny, but she is not without a sense of humor. It was displayed in a law review article, *Travels with Chief Kicking Bird*, 18 PRECEDENT 19 (1993) (Law Bulletin of the James Cook University of Law Society, Inc.).

37. *PM Plans To Impose Mabo Law on States: Federalism Crashes to Premiers' Intransigence*, THE AUSTRALIAN (Canberra), June 10, 1993, at 1.

The failure of the Council of Australian Governments conference in Melbourne yesterday to reach a consensus on the implementation of the High Court's Mabo decision is disappointing. It suggests that the States of Victoria and Western Australia in particular have failed to recognise the imperative of the High Court's power to make law and the necessity for that response to be uniform and national. The result can only serve to fuel the economic and investment uncertainty sparked by the original Mabo ruling.

Even more galling was the divisive rhetoric of those States' premiers, Mr. Kennett and Mr. Court respectively, who in their bid for political capital at home have only added to the confusion about the implications of the Mabo decision in the general community. Their pandering to sectional political interests coupled with the actions of some Aboriginal groups which in the last few days have made inflammatory and largely pointless ambit claims over large tracts of NSW [New South Wales], and ACT [Australian Capital Territory] play into the hands of the extremists, both pro and anti-Mabo, who wish to make the issue into something that would threaten the entire community.

Both parties, by their words and actions, have aggravated the danger of the debate over the meaning of Mabo degenerating into a bitter and divisive argument. This would be a great pity given the wider social implications of Mabo and the opportunity it presents to right historic wrongs and further the reconciliation process. The challenge for the Prime Minister, Mr. Keating, then, is not only to push ahead in seeking an acceptable compromise with the States but to ensure that the continuing debate is calm, reasoned and informed.<sup>38</sup>

I finished my lecture at Townsville and headed north to Cairns, Queensland and another brunch at James Cook University. The next few days included a dinner was at Kunjal, an Aborigine cabaret dinner theater, with a menu featuring water buffalo, venison, emu and crocodile meat; the traditional fare was accompanied by traditional and contemporary Aboriginal dancers.

Monday, June 14, 1993, was the Queen's Birthday and an Australian holiday. While Paul and I ventured to the Great Barrier Reef in celebration, *Mabo* continued to create troublesome headlines:

The business section of the Australian warned, "Mabo threatens overseas investment, say analysts";<sup>39</sup> while the mining section ran an equally fearful

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38. *Seeking the Consensus on Mabo*, THE AUSTRALIAN (Canberra), June 10, 1993, at 10.

39. *Mabo Threatens Overseas Investment, Say Analysts*, THE AUSTRALIAN (Canberra), June 14, 1993, at 25.



message, "Miners fear losing 80pc of WA to Mabo claims."<sup>40</sup> The mining piece opened with this paragraph: "More than 80 per cent of Western Australia, which covers a third of Australia, is open to claims for native title under the Mabo ruling."<sup>41</sup>

On Tuesday I set out for Yarrabah Aboriginal Community. As I traveled I was faced, yet again, with my own name. The headline of the *Cairns Post* announced, "Yarrabah visit by Kickingbird." This time I had said:

Reconciliation between white Australians and indigenous people would be reached within four to six years, a prominent American Indian spokesman and legal expert says.

Prof. Kirke Kickingbird, who will visit Yarrabah Aboriginal Community today, said it would be in Australia's best economic interests to resolve racial problems quickly within at least the next 10 years.

Prof. Kickingbird, a member of the Kiowa tribe, arrived in Cairns on Sunday to discuss with Far North Queensland indigenous peoples the scope of native American rights.<sup>42</sup>

Yarrabah could have been the Gila River Reservation, or Salt River, or White Eagle south of Ponca City, or Carnegie, Oklahoma, or Santa Ana Pueblo. All you had to do was add the South Pacific and palm trees. The feeling and atmosphere was just the same. It was a reminder of home, as we readied ourselves for our return to the United States.

The remainder of the summer was quiet. Our family went to the Kiowa Gourd Clan ceremonials at the first of July. I taught at Florida State University in a special seminar for Indian high school students from Florida sponsored by the Governor's Commission on Indian Affairs in mid-July.

American Indians have attempted to engage the political and legal assistance of international groups operating under the sponsorship of the United Nations. Consequently, first thoughts about international issues generally turn to Geneva, Switzerland, or the Hague. However, my next international gathering was in Tahlequah, Oklahoma.

The gathering of Indian Nations in Oklahoma began long before there were historic records. One early rendezvous point was in eastern Oklahoma where Spiro Mound marks the site of a ceremonial and trade center established around A.D. 900.

In 1843 the Cherokees demonstrated their political genius by organizing a great council at Tahlequah. The gathering was known as the International Treaty Council. It was meant to form a bulwark against white encroachment

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40. *Miners Fear Losing 80pc of WA to Mabo Claims*, THE AUSTRALIAN (Canberra), June 14, 1993, at 28.

41. *Id.*

42. *Yarrabah Visit by Kickingbird*, CAIRNS POST (Cairns, Queensland), June 15, 1993, at 3.

in Indian Country. Thirty-six tribes between the Mississippi and Rocky Mountains were invited, and eighteen tribes attended. The specific goal of the council was to establish document documents for an organic union of the tribes. The council drew up a compact.<sup>43</sup>

The week-long 1993 celebration of the 1843 International Treaty Council, which was convened by the Cherokee Nation from September 13-14, 1993, represented the 150th anniversary of the original gathering. It celebrated more than the political consciousness of a bygone era. It celebrated the political consciousness of Indian nations in the present. In large part the tribes are still struggling to perfect the appropriate political alliances that the Cherokee had envisioned so long ago. The Indian governments are presently struggling with the age-old questions of the 1843 International Indian Council: tribal citizenship, regulation of criminal conduct, jurisdiction of tribal courts over Indians of other tribes, promotion of agriculture and industry, and the protection of tribal lands.

The International Treaty Council of 1993 does not represent an historical artifact from the ancient past. The Council represents a respected template for addressing immediate and pressing questions confronting the tribes. The International Treaty Council represents the promise for the future, by providing a mechanism for regulating future political relationships with the state and federal governments. And finally, it may provide the means to catapult the Indian nations back into the international arena where these questions first began to be addressed nearly 500 years ago.

My visit to Tahlequah and the International Indian Council caused me to contemplate the future of Indian nations, while transporting me back more than 150 years.

Just a few weeks later, I traveled to another world, Moscow, which is how this story began. My Delta flight left at 10 a.m. on Wednesday morning, September 22, 1993, and arrived in Moscow at 11 a.m. on September 23.

Our conference convened on September 24, at the offices of the Federation of Peace and Conciliation, and continued through the afternoon of September 25. The Federation of Peace and Conciliation was formerly the Soviet Peace Commission, a conflict resolution organization. The conference theme was the "Indigenous People's Rights in National Legislation of the Countries of the World."

The building housing the Federation was a modern design, circa 1960, with two conference halls. There were about twenty-five people attending the conference in the small hall. The large hall appeared to hold three times as many participants. The conference resources included translation services.

In Russia I turned to local newspapers, as I had in Australia, to put our conference in the context of local events. The *Moscow Times* carried this

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43. ANGIE DEBO, *THE ROAD TO DISAPPEARANCE* 135 (1967).

headline in its Friday edition: "Yeltsin Closes In on Parliament Foes." The story began, "President Boris Yeltsin on Thursday set early elections for next June as support for his emergency rule and parliament leaders began to speak of defeat and even coming imprisonment."<sup>44</sup>

The story summarized the latest events with Yeltsin's decree setting presidential elections for June 1994, the legislature's ineffective responses, and the Public Prosecutor Valentin Stepankov's decision to abandon parliament and join Yeltsin. "Yeltsin's chief opponent, parliament speaker Ruslan Khasbulatov and rival 'president' Alexander Ruskoj, by contrast appeared to be losing political momentum."<sup>45</sup>

The participants from the United States each presented their papers at the conference. Bill Felice's paper was "People's Rights and Democratic Theory." Jim Anaya's paper was titled, "The Emergence of New International Law Concerning the Rights of Indigenous Peoples." I had been asked to prepare a presentation called, "Indigenous People's Rights: Legislation and Implementation in the United States."

A headline from the *Moscow Tribune* on Saturday morning underlined the growing tensions: "Moscow Braces for Violence."

Tension increased in Moscow after a clash between pro-Congress demonstrators and police left several wounded on Friday night.

Witnesses said that police used clubs on protestors when they attempted to block the passage of a convoy of crack interior ministry troops around 9 p.m., Interfax reported.

The violence was sporadic and threatened to continue as both sides assumed intransigent positions.

Opposition deputies continued to occupy a barricaded White House in defiance of Yeltsin's Tuesday decree dissolving parliament, amid speculation that government troops might storm the building and a mixture of belligerence and calls for peaceful resolution emanating from both sides.

The president set a 5 a.m. deadline for government forces to disarm the volunteers guarding the parliament. The government noose around the embattled Parliament building, which has already had its telephones and media outlets shut off, tightened yesterday as a police cordon was thrown around the area, diverting traffic and pedestrians, and several hundred Interior Ministry troops mustered two kilometres away in Trubnaya Square armed with grenade launchers and sub-machine guns.<sup>46</sup>

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44. *Yeltsin Closes in on Parliament Foes*, MOSCOW TIMES, Sept. 24, 1993, at 1.

45. *Id.*

46. *Moscow Braces for Violence*, MOSCOW TRIB., Sept. 25, 1993, at 1.

At the end of the afternoon on Saturday we tried to bring closure to the conference by discussing future meetings, and by passing a resolution to improve conditions for indigenous peoples which was addressed to United Nations Secretary General, B. Boutros-Ghaly, the U.N. Coordinator for the Year of the Indigenous People, Professor I. Fall, and CSCE (Conference on Security and Cooperation in Europe) Secretariat. Our resolution included recommending the adoption of International Labour Organization Convention 169 (1989) by all U.N. member countries, the protection of indigenous people under international law by expanding the jurisdiction of the International Court of Justice and the International Criminal Court and by the development of a mechanism for the direct representation of indigenous people at the United Nations.<sup>47</sup>

It was on the Sunday following the conference that we were in Red Square attending the concert with Boris Yeltsin — and five thousand of his closest friends. The occasion was a visit by the National Symphony Orchestra, from Washington, D.C. The conductor was the formerly exiled Mstislav Rostropovich, who had been forced to leave Russia because of his efforts to defend another exile, Alexander Solzhenitsyn.

The program featured Prokofiev's cantata, "Alexander Nevsky." We did not hear Prokofiev. We heard nothing but cannon fire echoing off the walls and towers of the Kremlin with the recent headlines in our minds, and our hearts in our throats. The sharp wind from the north suddenly stopped. From the south where the outdoor theatre for the orchestra had been set up the cannon fire thundered ever more loudly without the wind and carried with it the concluding phrases of Tchaikovsky's "1812 Overture."<sup>48</sup>

Although the conference concluded on the afternoon of September 25, we took the opportunity to meet with several parties interested in these same issues on Monday, September 27.

Our first meeting on Monday was with V.M. Sangi, President of the Association of North Nations, who spoke about the Northern People in Siberia. He was particularly concerned about local autonomy relating to the control of resource development. Internally, I felt my experiences of the past year merge; from his words, Mr. Sangi could have been an Aborigine in Australia, or a tribal leader in Oklahoma.

Our second meeting was with Professor Boris N. Topornin, Director of the Institute of State and Law of the Russian Academy of Sciences. We had a separate meeting with Dr. Yury L. Shulschenko, the Deputy Director of the Institute. We also met briefly with Dr. Vladlen S. Vereshchetin, a specialist in space law and a member of the UN International Law Commission and an arbitrator of the Permanent Court of Arbitration in the Hague.

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47. The full text of this resolution can be found in the appendix at the end of this article.

48. *Mstislav Rostropovich in Red Square*, MOSCOW TIMES, Sept. 10, 1993, at 12.

Because of Oklahoma City University's work with Moscow State University, I had been invited to lecture at their branch campus 500 miles east of Moscow. Since 1989 O.C.U. has been training groups of 15-25 executives from Russia government and industry in American business management and administration.

I spent three days in Ulyanovsk, lecturing on the United States Constitution and American government. I was struck by the irony: Ulyanovsk was Lenin's hometown.

The following Saturday I made my way back home on a Delta flight. That evening, Ruskoi supporters took the television station, and several people were killed.

I arrived in Oklahoma City about midnight, went home, and went straight to bed. About noon on Sunday a local television station called and asked for an interview that afternoon about the turmoil in Russia. Red star.

By the time the reporter and film crew arrived at my house Sunday afternoon, the lead story was the fighting in Moscow — in the streets and at the television center. The *New York Times* summarized it as a day in

which rampaging bands of supporters of the legislators, wielding clubs, iron staves and sometimes Kalashnikov assault rifles and waving the red flag of the Soviet Union and the white, black and gold czarist flag of extreme nationalists, fought pitched battles across Moscow in which at least 25 people died and hundreds were wounded.

The heaviest fighting Sunday was around the Ostankino broadcasting center, where the rebels blasted down the entry door with a rocket-propelled grenade and fought a three-hour gun battle before they were expelled.

The violence Sunday shocked the capital on a beautiful fall day. It came on the 13th day of the standoff between Mr. Yeltsin, who is backed by those seeking political and economic changes in Russia and by Western nations, and the tough-minded Parliament leaders who have blocked many of his efforts.<sup>49</sup>

That evening I watched myself mumble briefly on the Sunday night news, and then I went to bed. My biorhythms were definitely out of kilter. I couldn't sleep and got up at about three in the morning and turned on CNN. The final battle at the White House was underway. I had passed by that building only a week before. The cannon-fire of the 1812 Overture flashed through my mind. The cannon-fire was real this time. I felt relief that I was not in Moscow. Timing is everything.

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49. *Showdown in Moscow: The Overview*, N.Y. TIMES, Oct. 4, 1993, at A1.

I thought about the *Mabo* decision and the new claims for aboriginal lands. I thought about the conflict between Yeltsin and Rutskoi. I thought about the Cherokee International Treaty Council's effort to weld the tribes together in 1843, and I considered the reasons why that effort is still needed today. I thought about Sangi and the Peoples of the North and their efforts to control resource development. I thought about the acknowledgment of tribal land ownership in treaties with the United States and the inherent sovereign powers of Indian nations. Timing is everything.

It was now October 1993. The International Year of Indigenous People was nearly at an end. The struggle was not over, not in Australia, not in Russia, not at the United Nations, not here, not anywhere.<sup>50</sup>

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50. For a better understanding of the struggles of indigenous people, see Russel L. Barsh, *Indigenous Peoples in the 1990's: From Object to Subject of International Law?*, 7 HARV. HUM. RTS. J. 33 (1994).

## APPENDIX

We, the representatives of the Indigenous Peoples of Russia and the USA, lawyers, scientists and practitioners having met at the International conference co-initiated by the International Association "Commonwealth lawyers for cooperation in Asia-Pacific" (COMLAP) and the International Association "Federation for Peace and Conciliation" in Moscow on 24-25 September 1993 within the framework of the UN Indigenous Peoples' Year address to you our conclusions and recommendations aimed at enhancing the conditions of indigenous peoples of the world<sup>51</sup> by legal means:

1. To pursue states who are ILO members to ratify its Convention No. 169; in particular—Russia, China and USA as permanent members of the Security Council with the biggest numbers of indigenous populations and largest among states — who are members of that important UN body.

2. To enhance the legal power of the Convention No. 169 as well as other international instruments on protecting indigenous peoples by way of establishing mechanisms to protect them by international law.

In particular:

- if the Human Rights High Commissioner is established in the UN following the suggestion of the Vienna UN Second Conference on Human Rights he should have the authority to verify [the] status and real living and administrative conditions of Indigenous People in any state that is a UN member, have a special body within his staff for that, have the power to make concrete suggestions on these matters to the UN Secretary-General;

- the High Commissioner of the CSCE for National Minorities might have been additionally empowered to deal on the same lines with indigenous peoples' problems in Europe;

- to provide in the Statute of the International Criminal Court being prepared by the UN International Law Commission the right of indigenous peoples to prosecute criminal offenders against them in that Court;

- to enlarge the competence of the UN International Court of Justice by permitting it to try cases on the basis of suits on the part of peoples including indigenous peoples;

- the Convention No. 169 might have been amended with a provision establishing a kind of "Committee on Indigenous People" in parallel with the UN conventional human rights institutions;

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51. This is the only international judicial instrument in force referring to the rights of native people of the entire world. See Lee Swepton, *A New Step in the International Law on Indigenous and Tribal Peoples: ILO Convention No. 169 of 1989*, 15 OKLA. CITY U.L. REV. 677 (1990); Russel L. Barsh, *An Advocate's Guide to the Convention on Indigenous and Tribal Peoples*, 15 OKLA. CITY U.L. REV. 209 (1990); 2 INTERNATIONAL LABOR CONVENTIONS AND RECOMMENDATIONS, 1919-1991, at 1436 n.1 (International Labour Office, Geneva, 1992).

- there should be established a Peoples' Assembly in the UN which in particular might directly represent Indigenous People too. (Not to revise the UN Charter it may start as a subsidiary body of the General Assembly as its committee, for example);

- the right of veto of indigenous peoples, while solving their problems, should become an international standard;

- It also must be an international standard that in administrative/governmental bodies on the territories where those peoples live, they should be represented not only on a professional, but also on a quota basis with decisive voice;

- in accordance with the principle of equality and self-determination, indigenous peoples have the right to establish autonomies of their own to be represented in the legislative bodies of the State;

- the practice of indigenous peoples concluding treaties with local and central administrations should be authorized as an international standard;

- representation and revival of customary laws and juridical systems, not contradicting internationally recognized rights and freedoms of individuals and of peoples, should be an inalienable part of the preservation and revival of the identity of indigenous peoples;

- in order to prevent violations of the rights and freedoms of indigenous peoples and in ethnic conflicts, representative diplomacy of NGO's<sup>52</sup> (both national and international) must be widely and actively practiced;

With those recommendation the participants of the conference are contributing to the Indigenous Peoples' Year and to the UN Decade of International Law, and express their willingness to being the UN Year of Tolerance.

COMLAP President

Prof. R.A. Touzmuhammad (Russia)

Federation for Peace and Conciliation Secretary-General

Dr. G.M. Lokshin (Russia)

President of the Association of Indigenous Peoples of the North  
Sanghi, V.M (Russia)

General Secretary of the International League of Indigenous Peoples and  
Ethnic Groups

Gaer, E.A. (Russia)

Member of the Secretariat of the International League of Rights and  
Liberation of Indigenous Peoples and Ethnic Groups

William F. Felice

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52. NGO stands for nongovernmental organization and refers to organizations that have consultative status with the United Nations. See CHIANG PEI-HENG, *NON-GOVERNMENTAL ORGANIZATIONS AT THE UNITED NATIONS: IDENTITY, ROLE AND FUNCTION* (1981).



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