

December 2005

## The Indigenous Claim for Recognition in the International Public Sphere

Ronald Niezen

Follow this and additional works at: <https://scholarship.law.ufl.edu/fjil>

---

### Recommended Citation

Niezen, Ronald (2005) "The Indigenous Claim for Recognition in the International Public Sphere," *Florida Journal of International Law*. Vol. 17: Iss. 3, Article 7.

Available at: <https://scholarship.law.ufl.edu/fjil/vol17/iss3/7>

This Article is brought to you for free and open access by UF Law Scholarship Repository. It has been accepted for inclusion in Florida Journal of International Law by an authorized editor of UF Law Scholarship Repository. For more information, please contact [kaleita@law.ufl.edu](mailto:kaleita@law.ufl.edu).

THE INDIGENOUS CLAIM FOR RECOGNITION IN THE  
INTERNATIONAL PUBLIC SPHERE

*Ronald Niezen\**

I.	THE RHETORIC OF DISILLUSIONMENT .....	583
II.	THE ORIGINS OF INDIGENISM .....	587
III.	THE NEW POLITICS OF CULTURE .....	591
IV.	THE FORMALIZATION OF BELONGING AND CLAIMS OF COLLECTIVE RIGHTS .....	594
V.	THE CHALLENGE OF INDIGENOUS DIFFERENCE .....	598
VI.	CONCLUSIONS .....	599

I. THE RHETORIC OF DISILLUSIONMENT

Among the most problematic and unstable forms of relationships between states or empires and their politically marginalized subjects are those relationships that legally recognize the distinctiveness of dominated peoples without this recognition extending to autonomous, political, or economic power. It might appear to cost dominant powers less, in material, and political terms, to legally recognize the existence of distinct peoples or communities than it does to act upon that recognition by sharing resources and political control. Cultural re-awakening can be promoted as an avenue to self-determination with no significant cost. People can be encouraged to manage their affairs in the domains of spirituality and collective identity while leaving intact the state's or empire's monopolies of power, governance, and resource control.

It is a fundamental error, however, to accord legal and cultural recognition of differences without building upon that recognition with meaningful forms of autonomy. Promoting only the cultural autonomy of a marginalized people can create conditions for the reinforcement of distinctiveness and the sharpening of social boundaries, without the means to fulfill heightened expectations of power and prosperity. The sense of

---

\* McGill University, Department of Anthropology.

collective injury and injustice is only made more poignant by limited recognition in the context of ongoing oppression.

This can be seen, for example, in the way that the Commission on Human Rights has addressed the rights of indigenous peoples. The central goal of human rights initiatives on behalf of indigenous peoples is the cultivation of a more inclusive international community. Former U.N. High Commissioner Mary Robinson stated at the 2001 racism conference in Durban, that human rights initiatives take “action to combat racism and build a world community . . . around respect for cultural diversity.”<sup>1</sup> As this statement illustrates however, the agencies of international governance are inclined to recognize differences as cultural rather than constitutional, as legally protected only to the extent that they do not compromise state sovereignty. Rights of self-determination have been almost exclusively restricted to nation-states. Without broadening the legal and political foundations of self-determination there is no clear way to deal with minorities striving towards autonomy, whose social and political values are based on stateless tradition. One effect of this empty recognition is to sharpen the collective self-awareness of differences and distinct rights, while frustrating the abilities of distinct peoples to govern themselves.

Such frustrations have influenced the discourse of some indigenous representatives who have assessed the results of the International Decade of the World’s Indigenous People (Decade), which came to a close in December 2004. As early as 1997, a mere three years into the Decade, Ted Moses, then ambassador of the Grand Council of the Crees, signaled his disappointment with the negligible progress the United Nations had made on the Decade. Moses stated: “The International Decade of the World’s Indigenous Peoples appears to be an orphan within the U.N. system. It is barely recognized or acknowledged [by] the United Nations and appears not to affect the work of the United Nations.”<sup>2</sup>

At the close of the Decade, Gerald Alfred and Jeff Corntassel expressed disillusionment with the initiatives undertaken within the decade’s mandate: “The Decade,” they wrote . . . “has been remarkable only in the emptiness of the U.N.’s rhetoric and in how so little has been done by states and international organizations to bring practical effect to their lofty

---

1. Mary Robinson, UN High Commissioner for Human Rights, Remarks at the OHCHR Round-table on indigenous peoples issues (Sept. 5, 2001) at [www.unhchr.ch/hurricane/hurricane.nsf/\(symbol\)/OHCR.WCAR.PR.21.EN?Open Document](http://www.unhchr.ch/hurricane/hurricane.nsf/(symbol)/OHCR.WCAR.PR.21.EN?Open Document).

2. Ted Moses, Remarks by the Grand Council of the Crees, at the 15th session of the Working Group on Indigenous Peoples, International Decade of the World’s Indigenous Peoples, July 28-Aug. 1, 1997. (Transcript available at <http://www.unpo.org/news-detal.php?org=01&par=209>).

retorical concern for Indigenous peoples.”<sup>3</sup> Alfred and Corntassel express their disappointment regarding the Permanent Forum on Indigenous Issues, the centerpiece of the decade, in more strident terms:

Given its severe limitations in addressing or acting on the blatant injustices and continuing genocide perpetrated against 370 million Indigenous peoples worldwide, structuring the Permanent Forum to function solely as an internal report writing and data-gathering agency for state policy circles is tantamount to an act of criminal negligence on the part of the U.N.<sup>4</sup>

Estebancio Castro of the Kuna Nation of Panama expressed similar disappointment concerning the negligible progress on the Draft Declaration on the Rights of Indigenous Peoples:

In the name of progress we are asked to compromise or accept a lesser standard in a declaration that is specifically created to support our rights. It is obstructionist. States have made suggestions that will weaken international standards. The approach is to make up new or lesser [standards] or to hold other rights hostage.<sup>5</sup>

The discourse with which indigenous representatives have assessed the results of the Decade often contains distinct elements of skepticism, disappointment, disillusionment and frustration. These elements are directed, above all, toward the ongoing absence of clear and consistent recognition by states and institutions of global governance of indigenous peoples’ rights of self-determination.

Such views, however, do not fully and accurately reflect the results of the Decade. There are two ways that such expressions of disillusionment conceal from view some of the very dramatic changes that have taken place in recent years in the relationships between self-identifying indigenous peoples and dominant state and international powers. First, the emphasis by some indigenous leaders on obstacles to self-determination, or non-recognition of self-determination obscures the fact that virtually

3. Gerald Taiaiake Alfred & Jeff Corntassel, *A Decade of Rhetoric for Indigenous Peoples*, ONEWORLD.CA, Jan. 12, 2004, [www.oneworld.ca/article/view/76589/1/983](http://www.oneworld.ca/article/view/76589/1/983) (last visited Sept. 9, 2005).

4. *Id.*

5. Press Release, Joshua Cooper & Craig Benjamin, International Protection for Indigenous Peoples’ Human Rights Long Overdue (September 10, 2004), <http://news.amnest.org/movp/news.nsf/pnnt/ENGPOL3010092004>.

every institution of global governance now recognizes indigenous peoples as a distinct form of non-dominant society. These institutions have elaborated a wide range of programs and policies oriented toward amelioration of indigenous peoples' conditions of life.

During the first meeting of the Permanent Forum on Indigenous Issues in 2002, the U.N. found that many different projects and programs had been initiated by various U.N. agencies and satellite agencies. The first order of business was therefore to identify these programs and make them known to the indigenous peoples and organizations that may benefit from them. The World Health Organization, for example, hosted the 1999 International Consultation on the Health of Indigenous Peoples and initiated fact-finding missions to better identify the specific health concerns of indigenous peoples worldwide. In 2001, the Commission on Human Rights created a position for a Special Rapporteur on the human rights and fundamental freedoms of indigenous people. The Special Rapporteur investigates and reports on conditions in indigenous communities worldwide, with particular attention to state compliance with human rights norms and standards. The decade, following the 2001 action by the Commission on Human Rights, the Special Rapporteur has produced results, albeit formally and without fanfare, but many of its positive aspects have been overlooked. Since that decade time period has not specifically produced unanimous affirmation and action upon indigenous peoples' rights to self-determination, much of the growth of knowledge and many policy changes that have occurred in the past ten years or so have been overlooked or viewed with skepticism.

Another type of change obscured by the rhetoric of disillusionment has taken place in the ways that indigenous peoples express their distinctiveness through the politics of identity. The rhetoric of disillusionment emphasizes the limits to recognition without pointing to changes that have taken place in the collective identities of those societies seeking to be recognized. The rhetoric of disillusionment stresses the absence of self-determination but does not reveal the far-reaching implications of making claims for the protection of indigenous ways of life through new uses of human rights and the laws of nations.

To more fully understand indigenous representatives' harsh assessments of the results of the Decade, it is necessary to consider some of the changes that have occurred more recently, during what might be called the "small-'D' decade." These are changes to the social and political features of the indigenous peoples' movement that have taken place in the past ten years, outside the mandates of international institutions. These changes require a shift of view from public policy and the immediate goals

of transnational activism to a perspective that considers new dynamics in the politics of identity, and processes of collective self-representation.

The history of the international movement of indigenous peoples illustrates a central paradox of modernity: flux and uncertainty have become inducements to collective self-images of permanence and timelessness. The malleability of culture allows identity not only to change, but also to be shaped into more distinct entities. Identity attachments are capable of fluctuating into bounded, bordered essentialisms.

An increase in the re-configurative powers of collective identities has contributed to the rise of distinct sociopolitical entities with formal membership and sharper cultural boundaries. This process of cultural rediscovery, however, has not always resulted in expected forms of political and economic opportunity. The apparent stalemate in the U.N.'s efforts to build institutions and legal standards directed specifically toward those who claim indigenous identity cannot be understood merely by considering, at face value, the rhetoric of disappointment and disillusionment. It is ironically an outcome of profound and, in historical terms, rapid changes in the relationships between those who seek recognition as indigenous peoples and the nation-states in which their territories are situated. These relationships are mediated by new opportunities for legal reform, recognition, and collective self-expression in the institutions of global governance.

## II. THE ORIGINS OF INDIGENISM

The term "indigenous" invokes the idea of a community or society pursuing a timeless way of life, the first occupants of remote, wild territories living simply with the use of basic technology. The term has been commonly used for the past three decades only, and the legal foundations of the international community of indigenous peoples are almost as recent. According to the *Oxford English Dictionary*, before the mid-twentieth century the word "indigenous" was almost exclusively used in reference to plants and livestock native to a particular region. Starting in the mid-twentieth century, it was more commonly used in reference to human society, as in the *indigenization* of native school curriculums or approaches to theology under colonial rule. One of the first uses of "indigenous peoples" in direct reference to human groups was in the International Labour Organization's 1953 report, "*Indigenous Peoples: Living and Working Conditions of Aboriginal Populations.*" "Indigenous peoples" is a term of very recent usage, and has, paradoxically, become a

starting point for claims of distinct identity and rights based upon the principles of original occupation of land and the pursuit of traditional ways of life “from time immemorial.”<sup>6</sup>

The ability of leaders representing distinct peoples to take hold of the term “indigenous peoples” as a starting point of successful lobbying at international forums developed in the post World War II era of global governance. The greater openness of the rights of minorities in the wake of the Holocaust, and the process of decolonization led to more inclusive elaboration of the rights of distinct peoples. In 1957 the ILO took an early, awkward step in this direction, creating a new formal category of the underprivileged with, the Convention (No. 107) Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (Integration Convention). As the title suggests, the Integration Convention embodied contradictory objectives. It attempted to protect identifiable populations suffering from poor education and poverty at the same time that it tried to integrate them into the dominant cultures and politics of nation-states or “independent countries,” from which they had been unfairly excluded. This outwardly assimilationist goal in the wider historical context of decolonization, however, soon lost its legitimacy, even though the identification of a broad category of marginalized “indigenous” peoples or populations endured.

The transformation of the term “indigenous peoples” from an example of ponderous bureaucratic jargon to a legal category and source of identity has occurred very recently. The 1977 International NGO Conference on Discrimination against Indigenous Populations in the Americas was the first large gathering of indigenous peoples under the auspices of the United Nations. The International NGO Conference on Indigenous Peoples and the Land followed in 1981. In 1982, these gatherings at the U.N. headquarters in Geneva were permanently established with the promulgation of the United Nations Working Group on Indigenous Populations. In 1989, an International Conference of NGOs on discrimination against indigenous peoples in the Americas declared the right of indigenous nations to submit to international law and to be recognized as nations. Indigenous peoples were recognized “so long as they observed the fundamental conditions of every nation, as: (a) hav[ing]

---

6. Ronald Niezen, *Digital Identity: The Construction of Virtual Selfhood in the Indigenous Peoples' Movement*, 532-51 COMP. STUD. IN SOC'Y & HIST. (2005).

a permanent population; (b) possess[ing] a defined territory; [and] (c) hav[ing] the capacity to relate to other nations.”<sup>7</sup>

What type of general background conditions have made it possible for many marginalized societies to take up the ponderous word “indigenous” as a source of identity? How have these societies shaped the meaning of “indigenous” into the legal category that is now the focus of numerous human rights, health, and development initiatives in the U.N. system? Several significant developments seem to have occurred at once, beginning in the late 1970s and early 1980s. First, the terminology of global governance in the areas of decolonization, development, and nation building was seized by its subjects as a source of potential liberation. Second, the terminology was appropriated as an act of resistance and source of identity by those who were once meant only to be described by it, and perhaps to understand and conform to it, but certainly not to alter its meaning. Third, the terminology was certainly not meant to alter international law by broadening the principles of development into self-determination and the law of peoples.

The term “peoples” from the “we the peoples” of the U.N. Charter (now occupying a multiethnic banner on the U.N.’s Internet home page) had, from its inception, created a barrier between high-prestige that included nations and the rest of the world’s political communities. This barrier opened struggles for membership and invited realignments of political identity. The term “indigenous,” once used to designate those living without the advantages of civilization, acquired subjects who used it to designate themselves. The term acquired a common collective rubric for a significant number of people from many parts of the world who saw it as descriptive of themselves and their communities.

The development of the indigenous peoples movement was an unintended effect of state sponsored assimilation efforts, particularly education efforts, with self-defeating goals of cultivating independent, loyal citizens by instilling notorious regimes of cultural training and obedience. Residential education programs gave leaders of targeted communities the academic tools to pursue a legal dimension to cultural re-awakening, while often diminishing their loyalties to dominant societies. A new cadre of leaders emerged from among those communities once considered backward and in need of benevolent dissolution. These leaders came forward in international forums to claim a new collective status: they

---

7. Alcida Ramos, *Cutting Through State and Class: Sources and Strategies of Self-Representation in Latin America*, in *INDIGENOUS MOVEMENTS, SELF-REPRESENTATION, AND THE STATE IN LATIN AMERICA* 254 (Kay Warren & Jean Jackson eds., 2002) (citing France).



represented oppressed and neglected nations within nation-states with deeper territorial attachments than the societies that dominate them.

The organizational infrastructure of the indigenous peoples movement's ability to create NGOs, lobby state capitals, bring information and opinions to a broad public, and gather in international meetings, with consistent agendas, would lack its transnational dimension without the cohesive effect of common experience. Many indigenous leaders have reported an overwhelming realization that there were many people from many parts of the world who shared the same sense of cultural loss, political isolation, and collective suffering. Every indigenous delegate belongs in international meetings because of a perception that indigenous people are victims of uncontrolled change, marginalization and exploitation, with nation-states and transnational corporations mostly at fault. Indigenous peoples thus share a sense of cultural loss, combined with attachments to a past that can only be recovered in fragments. Anderson Muutang Urud from the Kelabit tribe of the Sarawak in Malaysia expressed this kind of nostalgia at a meeting of the U.N. General Assembly:

My father and grandfather did not ask the government for jobs. They were never unemployed. They lived from the land and from the forests. It was a good life. We had much leisure time, and yet we were never hungry or in need . . . The government says that it is bringing us progress and development, but the only development that we see is the dusty logging roads and the relocation camps. This so-called progress means only starvation, dependency, helplessness and the destruction of our culture and demoralization of our people.<sup>8</sup>

In times of tumultuous change, the memory of a time and place in which one once lived, secure in the illusion of permanence, becomes a new reference point for the self. The idea of a life with a steady rhythm, predictable excitements, unnoticeable changes, without the rise and fall of civilizations, without turmoil and danger, without loss and nostalgia is comforting. The most important impetus behind the formation of the international movement of indigenous peoples was the widespread perception that such loss and hope of renewal had a global dimension.

---

8. Anderson Muutang Urud, VOICES OF INDIGENOUS PEOPLES: NATIVE PEOPLE ADDRESS THE UNITED NATIONS, *Address to the U.N. General Assembly (1993)*, (Alexander Ewen ed., 1994).

These relatively unknown developments, which in the manner of all U.N. initiatives might appear prosaic and routine, belie a remarkable shift in the politics of resistance among peoples and communities at the margins of nation-states. Resistance by the dispossessed and powerless no longer has to take the form of mostly ineffective passive resistance, nor does it necessarily shift toward racially motivated genocide or clandestine terrorism. Unlike the common experience many states have with ethnonationalist minorities oriented toward political independence, the indigenous peoples' movement has been built upon a commitment to nonviolence. This commitment has been broken only by a few who have not signed on to the legal strategy of resistance, but have used their indigenous status as a moral and political reference point. Groups that have made use of violence in the service of political gain include the indigenous Fijian rebels, the Zapatistas of Chiapas, Mexico, and a recent claimant of indigenous status, the Palestinians. These groups conduct their campaigns outside the transnational community, built around human rights initiatives. The mainstream of the indigenous peoples-movement holds together only the symbolic weapons of bureaucratic procedure, law, lobbying and the politics of embarrassment.

Indigenism has become inseparable from a global pattern of localism, from aspirations and actions toward self-determination, from sharpened boundaries of community identity and intensified pursuits of autonomy. The status of the international movement of indigenous peoples as an "ism," as a political movement driven by ideas of difference, is beyond doubt. A question remains, however, regarding the ability of international human rights and global governance institutions, to accommodate the political expectations raised by this new realization of distinctiveness.

### III. THE NEW POLITICS OF CULTURE

The international movement of indigenous peoples is part of a general transformation in the politics of culture, sometimes discussed in the context of globalization theory, in which the ability of the nation-state to be the principal object of cultural attachments and the sole custodian of constitutional rights and duties is brought into question. From this uncertainty, the integrity of states is cross-cut by dynamic transnational loyalties and, at the same time, by the deeper symbolic and affective attachments of newly reconstituted and reconstitutionalized distinct cultural communities. The indigenous peoples movement is probably the clearest example of this transformation because it formally represents ways of life most removed from legal and bureaucratic formality. It has

turned to transnational activism and supplemented local custom with law and bureaucracy to preserve the comforts and intuitive wisdom of simple, unhurried, earth-connected ways of life. Of all the world's distinct communities, indigenous peoples have had to do the most to achieve this revolution and they are therefore ideally representative of it.

The global transformations associated with the indigenous peoples movement have antecedents that go back to the immediate post- World War experience, the process of decolonization, and the formation of the earliest nongovernmental organizations (NGO) in the nineteenth century. The past decades, however, have seen a marked intensification of the conditions that have led to new dynamics in the indigenous politics of identity. The recent NGO boom, for example, was assisted enormously by the availability of the Internet as a resource for information, publicity and communication. The past several decades included the establishment of several thousand new NGOs concerned with the promotion of indigenous rights, including many Indigenous Peoples Organizations (or IPOs).

An early benchmark for this development occurred when the Women's International League for Peace and Freedom organized the 1977 International NGO Conference on Discrimination against Indigenous Populations in the Americas which created an international space and a new sociopolitical reality for indigenous peoples. The prevalence of NGOs at international human rights meetings that not only represent particular causes, but distinct peoples, lends a unique flavor to the interactions between IPOs, states, and international agencies. Other NGOs have agendas that involve international legal reform, such as banishing land mines, abolishing exploitive child labor, and resisting the transnational sex trade. What makes the goals of indigenous peoples' organizations different is their emphasis on the claims of culture and rights to self-determination. The international movement of indigenous peoples is a form of national reawakening, or in Erika Daes's well-known words, "belated nation building," that functions explicitly through NGOs and mechanisms. The movement astutely though, probably unintentionally, combines the aspirations of territorially, inscribed political rights with the mobility and interconnectedness of a transnational movement.<sup>9</sup>

The global community of indigenous peoples has introduced a new "speech genre," a new language of collective self-awareness and strivings toward freedom, to the discourse of human rights. The expressions by indigenous representatives of disappointment about the limited progress

---

9. See RONALD NIEZEN, *THE ORIGINS OF INDIGENISM: HUMAN RIGHTS AND THE POLITICS OF IDENTITY* (2003).

of the decade are excellent examples of the recent transformations that have taken place in the use of the language of cultural identity as a tool of liberation. The language of indigenous identity is based on attachments to oral iteration, the authority of elders, and informal, consensus-oriented systems of justice and politics. At the same time the language invokes international law, the development of legal standards, the formal language of negotiation, and cultural claims in the arenas of global governance.<sup>10</sup>

The active participation of indigenous representatives, and organizations in the NGO boom, involves collaborative dynamics when expressing indigenous distinctiveness, in which the world's extant cultures are more commonly defending and defining themselves through a sympathetic public. The moral persuasiveness of indigenous peoples' claims to recognition derives not just from local grievances, but ultimately from a near-universal perception of cultural loss and nostalgia as well. It derives from a public that looks to timeless ways of life as a source of personal or civilizational improvement. It draws upon those who may have nothing to do with indigenous communities or international agencies, but who nevertheless feel strong stirrings of sympathy for those who represent a lost time of unhurried simplicity.

Leaders of indigenous movements gain some stature through their ability to navigate the workings of international organizations and organize themselves through NGOs. Wider support, however, comes from representing the concept of "community," by "demonstrating the power of the local,"<sup>11</sup> and by demonstrating the importance of indigenous locality for civilizational improvement. The indigenous peoples movement derives much of its energy and cultural creativity from those admirers who do not belong by birth to an indigenous community and who do not pursue a subsistence-based way of life. These individuals, nevertheless, often feel a deep sympathy for the values embodied by these communities and lifestyles. The products of indigenous self-discovery cannot, therefore, be entirely separated from a wide base of inter-cultural consumers. They are also interwoven with transnational relationships of organizational and cultural collaboration based upon broadly shared anti-modernist sentiments.

This support comes with a price because, to succeed, indigenous leaders must, to some extent, tailor their forms of cultural expression and exercise of power to the tastes and inclinations of their outside

---

10. NIEZEN, *supra* note 5.

11. Frederick Cooper & Randall Packard, *The History and Politics of Development Knowledge*, in *THE ANTHROPOLOGY OF DEVELOPMENT AND GLOBALIZATION* 136 (Marc Edelman & Angélique Haugerud eds., 2005).

sympathizers. The politics of embarrassment brings with it the risk of collective self-stereotyping in conformity with broadly accepted ideals of indigenous authenticity. The consumers of indigenous identity are intolerant of economic and political strategies that are inconsistent with their image of what an Indian society, in its many iterations, should entail. In political discourse, the presentation of indigenous peoples as environmentally sagacious conflicts with the presentation of histories of victimization, cultural loss, and dependency. The existence of genocide survivors, as representatives of environmental wisdom for the benefit of the world, either diminishes the consequences of genocide or suggests that indigenous claims of cultural wisdom are largely fabricated. The politics of difference in the international public sphere calls for the reiteration of difference and encourages claims of collective moral superiority on the part of those with histories of oppression. This is a situation that limits the exercise of collective self-determination, and constrains the freedom of political and economic action, through limits on the accepted rhetoric and strategies of emancipation.

While addressing the importance of popular ideas giving substance to distinct identities and regimes of rights, the original sources of grievance that form and solidify cultural boundaries and energize struggles for self-determination must be considered. It is essential to recognize that the claims of cultures cannot be properly understood and acted upon without matching them with their material/political corollaries, for example:<sup>12</sup> land claims are an outcome of displacement; claims of self-determination are a product of political marginalization; and, more generally, new collective identities are inseparable from global processes of “disembedding” and “dissolution.” Awareness of the dangers of frustrated collective identities must be combined with a compassionate understanding of the sources of their stridency.

#### IV. THE FORMALIZATION OF BELONGING AND CLAIMS OF COLLECTIVE RIGHTS

The development of increasingly sophisticated trans-cultural and transnational dynamics of resistance has occurred during the last several decades. As a result, indigenous peoples are increasingly recognized as the collective subjects of distinct rights. They have become, in Ricoeur’s

---

12. See generally SEYLA BENHABIB, *THE CLAIMS OF CULTURE: EQUALITY AND DIVERSITY IN THE GLOBAL ERA* (2002).

terms,<sup>13</sup> capable collective subjects who are identified as legitimate beneficiaries of distinct rights and separate forms of political mediation. The requirements of identifying the collective legal subjects of rights include clarity of definition and an unambiguous answer to the question, “who is the subject of rights?” Indigenous peoples have, therefore, drawn new cultural boundaries, and redefined themselves as nations. They have redefined the foundation of belonging to their individual members as more than kinship or shared culture, but also as distinct citizenship, and as belonging to a different regime of rights, entitlements, and obligations.

Legal defenses of a community require a clear definition of what that community is. Such defenses call for answers to questions concerning who is the beneficiary of rights and who is not, who belongs and who does not. Formalization of citizenship, the construction of official boundaries of inclusion and exclusion, is a consequence of legal activism.

Legal positivism attaches questions of rights to specifically defined subjects to whom specific rights and duties have been allocated. Collective rights and claims are consequently inextricably connected to the processes of ethnic formalization or nation building. In distinct societies there is a direct connection between the pursuit of collective rights and the process of formalization through constitutional acts of citizenship. Establishing one’s own criteria for exclusion, and enforcing them, is a vexed process for all boundary-erecting societies. It is especially troublesome for those “traditional” peoples whose most cherished political ideals are based on open decision-making processes and the achievement of a consensus in matters of importance. Seeking recognition as a separate community of rights holders entails pursuing strategies that are globally uniform and, in some ways, culturally corrosive.

Successful cultural claimants are not only those who identify themselves as fully belonging to a distinct people or community. Claimants may also be individuals whose particular strivings toward collective self-determination represent wider struggles to prevent global patterns of environmental destruction, social injustice, and shrinking of cultural possibility.<sup>14</sup> What does indigenous self-determination mean precisely? How is it most commonly expressed? Self-determination can include anything a people decides collectively to accomplish, including disbanding and dissolution into the nation-state, or the active exercise of autonomous law-making prerogatives. Ted Moses, grand chief of the Grand Council of the Crees, has expressed the widely shared view that

---

13. See generally PAUL RICOEUR, *THE JUST* (David Pellauer trans., Univ. of Chi. Press 2000).

14. RONALD NIEZEN, *A WORLD BEYOND DIFFERENCE: CULTURAL IDENTITY IN THE AGE OF GLOBALIZATION* 70 (2004).

self-determination is principally associated with a peoples' ability to pursue their own subsistence. At the same time it is also bound with spiritual, cultural, and political autonomy. Moses states, "self-determination protects our right to subsist, based on our own values and premises. In view of the profound relationship we have with our lands, resources and environment, subsistence for indigenous peoples has vital economic, social, cultural, spiritual and political dimensions."<sup>15</sup>

Defense of a distinct culture and form of subsistence does not prevent indigenous organizations from displaying their rights of self-determination in ways that purposefully represent the practices of nation-states. The office of the Grand Council of the Crees in Ottawa has accordingly been named the Cree Embassy, and when Moses informally took up the title of Ambassador, his title was accepted and used by state representatives. Similarly, the Six Nations Delegation that traveled to Geneva for the 1977 meeting on discrimination against indigenous populations in the Americas printed its own passports. The Delegation persuaded the Swiss immigration authorities to recognize them, a gesture that chief Oren Lyons later referred to as feeling and acting "like a nation."<sup>16</sup> In other words, taking on the boundary enhancing administrative and symbolic apparatuses of nation-states is a literal way of reconstituting self-determination by those displaced by nation-states. Indigenous peoples have drawn new cultural boundaries, redefined themselves as nations and by implication, redefined the foundation of belonging for their individual members. This is more than kinship or shared culture, but also as distinct citizenship, belonging to a distinct regime of rights, entitlements, and obligations.

The emphasis on rights to self-determination by indigenous delegates to the United Nations (an emphasis that has found a near-global consensus in the indigenous caucus, with only some delegations from Latin America dissenting) was probably unexpected and largely unwelcome on the part of the sponsoring agency, the Commission on Human Rights and, at a higher level in the U.N.'s administrative hierarchy, by the Economic and Social Council (ECOSOC). Use of the word "peoples" with an "S," in reference to "indigenous peoples," has sovereignty implications in international law, and has been resisted by several states and the United Nations itself. The United Nations has chosen to use such words as

---

15. Ted Moses, *The Right of Self-Determination and Its Significance to the Survival of Indigenous Peoples*, in OPERATIONALIZING THE RIGHT OF INDIGENOUS PEOPLES TO SELF DETERMINATION (Pekka Aikio & Martin Scheinin eds., 2000).

16. First Nations International Court of Justice, 1996, at 7. "The First nations of Turtle Island and Her Majesty the Queen in Right of Canada (Transcripts of Proceedings)." Vol. 1, Toronto, File no. F.N.001/95 (unpublished document).

indigenous “populations” and “issues” rather than, as indigenous delegates have insisted, the term “peoples.” The “battle of the ‘S’” remains undecided and occurs whenever dominant powers, states, and agencies of global governance avoid or oppose the legal language of self-determination.

This controversy flared up at the 2000 meeting of the ad hoc working group on a new permanent forum when the forum’s title was debated.<sup>17</sup> Several states made it clear that they could not possibly accept the word “peoples” in the title of the forum and proposed that it be called the Permanent Forum for Indigenous Issues. This was, of course, contrary to the aspirations of the indigenous delegates, who argued for the word “peoples” and thus for recognition of their rights of self-determination.

When the meeting adjourned for a short recess, some indigenous delegates, created narrow signs printed on yellow paper that fit on their desks in front of the placards identifying their organizations. These signs read, “WE ARE PEOPLES, NOT ISSUES.” When the meeting reconvened, the state and U.N. delegates faced the signs, and a more vocal protest, from the indigenous delegates denouncing the omission of the word “peoples” from the title of the forum. The Economic and Social Council, exercising its ultimate decision-making power in this matter, backed the concerned states and decided on the title, “Permanent United Nations Forum for Indigenous Issues.”

There are several possible reasons for this official reticence. Nation-states themselves jealously guard their virtual monopoly on representation at the highest levels of the United Nations. Open recognition and inclusion of a rival form of political community would challenge this monopoly. Lurking behind the state-exclusivism of the international community is the perceived possibility of global destabilization through a “Russian doll” pattern of political emergence, of ever more particular claims of recognition and autonomy.

To some purveyors of human rights the indigenous assertions of rights and recognition present a challenge to liberal individualism. They represent pre-modern forms of society with social structures arranged in static hierarchies and cradle-to-grave ascribed identities. These identities give, as much as possible, predictable patterns and outcomes to individual life histories, leaving little room for self-actualizing exploration, and less room for social dissent. They have therefore introduced, and exacerbated, a tension in the human rights community between individual and collective rights. They have exacerbated the conflict between orienting the world’s

---

17. NIEZEN, *supra* note 8, at 164.



major source of moral or legal common denominators toward the individual as a potential victim of his or her nation, or towards communities and nations as the true source of collective nurturance and protection of the individual.

The human rights community has overwhelmingly favored the development and assertion of individual rights, even while collective claims have slipped a foot in the door. The insistence on maintaining this individual rights exclusivism by the Commission on Human Rights conflicts with the collective claims and strivings of indigenous peoples. Indigenous leaders are seeking more than cultural inclusion; they are demanding political inclusion, formal recognition and promotion of indigenous peoples' status as *peoples*. They are bodies of citizens that deserve a place in the community of nations, even as some have expressed it, even if only as self-determining nations within nation-states.

#### V. THE CHALLENGE OF INDIGENOUS DIFFERENCE

What would fulfillment of the self-determination goals of indigenous peoples entail? Are there dangers inherent in the rise of indigenous identity that might parallel the intolerance and conflicts that have accompanied the political aspirations of ethnic groups? What might be the consequences of following cultural recognition of indigenous peoples with an impasse in acting upon their claims to self-determination? Is strident secessionism a likely outcome of such frustration? Any survey of the twentieth century's history of ethnic conflict reveals that frustrated collective ambition can fuel stridency, counter-intolerance, and transformation of pride into essentialism and failed relationships with rival governments. It is possible that reinforced identities built on formally constituted boundaries inscribed by citizenship might inspire more strident avenues of empowerment, leading to deterioration of relations between indigenous peoples and nation-states.

It is important to stress, however, that as things now stand, concern over a global conflagration of indigenous secessionist movements is largely fanciful. Indigenous peoples are almost unanimously attached to the treaty and other obligations of nation-states toward them. They usually lack the resources for statehood and the resistance struggles needed to pursue statehood. Fully recognized rights of self-determination mean new forms of autonomy within states, the erection of new intra-state constitutional structures, and a shift toward formalized criteria and administration of citizenship within indigenous polities. Logically, this means a form of constitutional devolution in which minority nations

(indigenous nations and others with similar claims to distinct “peoplehood”) situate themselves semi-autonomously within states rather than dissolve their rights and identities into nation-states. It entails, in other words, an extension of the process of decolonization without the use of statehood as a method or manifestation of political autonomy.

The struggle for self-determination against perceived enemies should be the focus of our concern, not the achievement of self-determination. Reasserted communities emerge most stridently through their denial. A proven way to mobilize movements of self-determination is to forcefully assert that a community does not or cannot define itself. Among the disenfranchised and dispossessed, the search for a secure homeland and sense of place can readily take the form of a strident “We.” It can involve strategies of resistance that, in giving new life to the collective self, build walls against the hostile overtures of the world economy. It simultaneously constructs new perceptions of outside enemies and internal fifth columns, a process that Castells aptly calls “the exclusion of the excluders by the excluded.”<sup>18</sup> The political strivings of micro-nations with sharpened cultural boundaries can create new conditions for exclusivity, division, and the growth of racism.

Are the peoples that constitute the indigenous peoples movement somehow immune from the pathologies of rediscovered nationhood? Are people without aspirations toward statehood somehow less likely to become embroiled in the wounded pride, hatreds, and racial injustice characteristics of other ethnic minorities? No group of people that has been racially categorized, humiliated, excluded, impoverished, and — most significantly — only partially liberated is entirely immune from outward displays of grievance, self-directed cultural romanticism, and politics. The groups are also subject to self-directed cultural romanticism and political desperation, the primary ingredients of exclusivist hatred.

A central difference between indigenous peoples and ethnic groups lies in their proclivities towards intolerance and violence. This difference stems from the wide networks of cooperation among indigenous organizations and the reliance of these organizations on popular images of natural social harmony and environmental sagacity. International recognition of distinct indigenous communities and peoples depends on many different things. It depends on possession of homelands, histories of oppression and collective grievance. It encompasses the peoples’ ability to fulfill wider expectations of displays of cultural wisdom, to surpass

---

18. *See generally* MANUEL CASTELLS, *THE POWER OF IDENTITY: THE INFORMATION AGE — ECONOMY, SOCIETY, AND CULTURE* (1997).

mere commitments to peace and cooperation with organizations of international governance, and to combine legal or institutional sophistication with oral or a-historical myth-derived environmental sagacity. Such expectations limit the accepted range of cultural expression, making it more difficult to express virulent inter-cultural hatred and violent strategies toward political autonomy.

## VI. CONCLUSIONS

Small-scale societies, even though distinct, have long been under pressure from expanding civilizations and have always been open to cultural exchange and adaptation to domination. There is something, however, in the current era of global cultural politics that lends itself to cultural boundary enhancement. As territories are invaded from a variety of new global forces, the basis of community formation undergoes transformation from territorially-inscribed ways of life to claims of self-determination. More than any other period in world history, cultures seem to be readily “redeployed,” “reinvented,” and solidified into ethnic, national, and religious fundamentalisms. My description of the indigenous peoples movement as an “ism,” a doctrine of political virtue or a group membership with tendencies toward stridency, with an implied relationship with *schism*, is consistent with this wider trend in the politics of identity. Global indigenism is associated with a shift toward reduction of the reach of the nation-state in favor of transnational associations of community identities.

The social reality of the increasingly common experience of deracination involves strident assertions of cultural difference, and the elaboration of an ismatic quality to articulations of belonging. If the solidification of cultural boundaries into fundamentalism or other “isms” is a uniquely common expression of our current liberalizing globalization, then there really is something unique about the current phase of globalization. There is a new way that societies are interacting, and some truth to the idea that the word “globalization” denotes a shrinking of the variety of forms of life, creative spontaneity, and a simultaneous growth in the interactions between those that remain.

The strategies pursued by the indigenous peoples movement clearly illustrate such dilemmas of identity. Its leaders have attached the claims of distinct cultures to a concept of “indigenous peoples,” with global reach. They have defended societies based on oral iteration and the authority of elders through Internet lobbying and legal processes. They have navigated bureaucracies, and even erected their own formal

institutions, in efforts to protect subsistence pursuits based on hunting, nomadism or simple agriculture. It is not strictly the numerical shrinking of cultural possibilities that makes the current era of globalization different from other periods of civilizational encounters. The differences that do exist are, more than ever before, drawn into the dilemmas of global assertions of localism, dilemmas that follow from acting transnationally upon ideas and aspirations of local belonging.

Awareness of these global developments gives a more complete understanding of the rhetoric of disillusionment with which many indigenous spokespeople have greeted the close of the first decade. Recognition of indigenous peoples as the subjects of rights has far outpaced the elaboration of those rights. Through sophisticated use of the mechanisms of transnational lobbying, indigenous leaders have made a clear case that the people they represent are genuine collective legal subjects. This has, however, not usually been met with the elaboration of new regimes of economic and political autonomy. The United Nations has not been able to match the changes taking place in the structures and strategies of indigenous peoples' organizations. It has not kept pace with the growing effectiveness of their transnational activism with reforms and policies that meet the expectations of indigenous leaders or that have positive effects on the lives of their constituents. There is a gap between the "normal" glacial pace of international legal and institutional reform and the rapid growth of indigenous peoples' networks. A gap also exists between the solidification of indigenous political consciousness and the rising expectations that accompany new powers of collective self-representation.

The close of the decade brought indigenous peoples to a point at which they have developed a sharper sense of collective being. Absent a corresponding sense of belonging, however, there is no widely accepted, appropriate place in the global institutions of nation-states, and no clear indication that such a state of inclusion can be readily achieved. The rhetoric of disillusionment expressed by some indigenous leaders stems from a disjuncture between the rapid pace and effectiveness of transnational cultural activism and the incomplete progress of reform within the mechanisms and instruments of the international public sphere.

