

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

By Charmaine White Face, Zumila Wobaga, Living Justice Press, Minnesota, 2013: 144 pages (paperback), \$20.00USD. ISBN 9780972188685

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The United Nations *Declaration on the Rights of Indigenous Peoples* (2007) has received a mixed reception with some commentators viewing it as setting important normative standards for the recognition of Indigenous human rights within the international law framework, whilst others are critical of the declaration for unduly limiting the nature and scope of Indigenous rights (Anaya 2004, Churchill 2011, Davis 2008, Moreton-Robinson 2011, Pitty YEAR, Watson and Venne 2012). *Indigenous Nations' Rights in the Balance* by Charmaine White Face makes an important contribution to this debate by methodically charting the key changes made during the passage of the declaration through the United Nations process and highlighting the significance of these changes to the recognition and realisation of Indigenous rights. White Face presents her unique analysis – drawing on her experience in the drafting process from 2004 – 2006 as a spokesperson for the Sioux Nation Treaty Council. One of the key aims of the book is to document the history of this process for future generations, and to forewarn all people concerned with achieving justice for Indigenous peoples that the declaration, as it currently stands, 'will benefit the colonizers more than the nations it was designed for – the Indigenous nations' (p. 4).

*Indigenous Rights in the Balance* provides a both a general critique of changes to the declaration and also how these changes specifically impact on the Great Sioux Nation and the implications for realising rights negotiated in the Fort Laramie Treaty of 1868 with the United States of America – which White Face characterises an international treaty negotiated between sovereign powers. White Face documents how the draft declaration of 1994, which was negotiated with the consensus of Indigenous people, then took a tortured path following its referral to the Working Group on the Draft Declaration (WGDD) established in 1995, where eleven years of debate ensued. The impasse in seeking consensus on the draft declaration was subverted by the chairperson-rapporteur of the WGDD, Louis Enrique Chavez, significantly redrafting the declaration for presentation to the UN Commission on Human Rights – a document which subsequently became known as the 'Chairperson's Text'. It was at this stage of the negotiations that a number of Indigenous representatives staged a hunger strike in an attempt to preserve the original WGIP text. Although a deal was brokered with the UNCHR to present the original draft for approval, the subsequent abolition of this body and establishment of the Human Rights Council nullified the deal and the chairperson's text was presented to the HRC for approval in 2006. Further debates and opposition from English speaking nations and the African Union led to further amendments to the declaration before it was finally adopted by the UN General Assembly in 2007. White Face stresses that the declaration that was ultimately presented to the General Assembly did not have the approval of Indigenous peoples.

The format of the book provides an article by article analysis of changes made to the declaration during the drafting process, setting out different three versions of the text: the Original Sub-Commission Text; the Human Rights Council Version; and the General Assembly Version. This approach enables a close textual analysis of some of the subtle (and not so

subtle) changes in language from the original declaration to subsequent versions. The analysis is accompanied by an insightful commentary on how the amendments have significantly altered the original meaning of the draft declaration – which presents a compelling argument that the General Assembly version is final declaration is more effective in preserving the rights of nation states than realising the rights of Indigenous peoples.

White Face argues that the addition of a large number of pre-ambular paragraphs serves to provide an interpretative framework for the substantive text of the declaration - a move that is unparalleled in UN standard setting (p.4). Importantly she highlights how many articles were reframed from being a positive expression of Indigenous 'rights' - to State directives or mandates – with no enforcement mechanisms – which renders them ineffective (for example article 32 – which relates to need to obtain the free, prior and informed consent of Indigenous peoples in respect of development of Indigenous lands and territories (p.86-87). She is also critical of the removal of any language within the declaration which would suggest that Indigenous peoples or nations have full standing in international law – with all references to Indigenous 'nations' deleted from the final text. The book also explains how the articles on treaty rights were amended to remove access to competent international bodies to resolve disputes between Indigenous peoples and states - a position that clearly benefits nations states and for White Face represents a 'complete denunciation' of Indigenous peoples rights (p.93-94).

*Indigenous Nations' Rights in the Balance* also discusses key amendments to the declaration that limit the right of self determination for Indigenous peoples – restricting it to 'internal and local affairs' – which denies Indigenous nations their inherent sovereignty and the capacity to engage in international trade and agreements (p. 41). It also discusses in depth how Article 46 – the 'savings clause' – was substantially amended in the drafting process to insert text to explicitly protect the political and territorial integrity of nation states – a position which White Face describes as 'very offensive to all Indigenous peoples of the world who have suffered the longest from the lack of human rights' (p.106).

White Face's analysis is sharp and succinct, providing a lucid account of the declaration and its effectiveness as an international instrument to promote the rights of Indigenous peoples. The book delivers on what it sets out to achieve by showing the 'the limits and dangers endemic in the version of the Declaration that the General Assembly approved.' (p. 4) It applies a global analysis of the Declaration to the local and specific concerns of the Sioux Great Nation Council and its relationship with the government of the United States, and in doing so highlights issues of concern to many Indigenous peoples across the globe. While there may have been some benefit in adding other scholarly commentary to this analysis, the absence of other voices does not necessarily detract from the book's impact. Charmaine White Face speaks from a position of authority as a Sioux representative engaged in the process, and her critique resonates with honesty and truth.

The book will be instructive to any reader who wants to gain an understanding of the history of the drafting of the declaration, and how its passage through the United Nations was constrained by the state-centric nature of this institution. It offers many insights to those who engage in critical scholarship in the area of international law and Indigenous peoples, and may offer some valuable lessons to those whom are inclined to take a more pragmatic approach to the negotiation of Indigenous rights locally and globally. It is a timely addition to the literature, particularly given the recent observations of Professor James Anaya, in his final

report as the United Nations Special Rapporteur on the Rights and Fundamental Freedoms of Indigenous Peoples (2008-2013), in which he noted the commitment of states to the declaration has been 'weakened by certain ambiguities and positions about the status and content of the declaration,' and repeated assertions that the declaration is non-binding (2013, 22). Anaya also observes that many states maintain the position that Indigenous self determination, *is fundamentally different from self determination at international law* (2013, 22). *Indigenous Rights in the Balance* sheds some light on these ambiguities and raises important questions about the intent of nation states in opposing the original sub-commission text. Anaya's observations leave the impression that the debates that characterised the drafting of the declaration are far from over, and will continue to inform the way it is interpreted by nation states. Therefore the important take home message from this book is the need for more robust international standards to overcome the systemic human rights abuses against Indigenous peoples that have characterised international law from its very inception, and which threaten the very survival of Indigenous peoples into the future.

## References

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