# INTRODUCTION TO SYMPOSIUM ON INTERNATIONAL INDIGENOUS RIGHTS, FINANCIAL DECISIONS, AND LOCAL POLICY

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Almost a decade after the 2007 adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) by the UN General Assembly,[1] international law scholarship on Indigenous rights is gradually expanding, with significant new works scheduled to be released in the remaining time before UNDRIP's tenth anniversary.[2] There had been customary international law on Indigenous rights before UNDRIP,[3] but the adoption of UNDRIP nonetheless marked a significant moment in the development of international law. Its significance arguably includes substantive dimensions in its effects on the legal status of some Indigenous rights,[4] broad procedural dimensions related to the very significant participation by Indigenous peoples themselves in the drafting of UNDRIP,[5] and theoretical dimensions related to its historic adoption of many collective rights into international law.[6]

Some of the recent scholarship on Indigenous rights engages with the complex questions raised by UNDRIP's tacit attempt to codify or entrench universalized Indigenous rights. To mention just some examples, scholars like Willem van Genugten have examined the complex engagement between African states and Indigenous rights,[7] Karen Engle has discussed the subtle pressures on identities of minority groups that had not previously

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[1] Declaration on the Rights of Indigenous Peoples, GA Res. 61/295 (Sept. 13, 2007).

[2] *See, e.g.,* ALEXANDRA XANTHAKI, INDIGENOUS RIGHTS AND UNITED NATIONS STANDARDS: SELF-DETERMINATION, CULTURE, AND LAND (2007); REFLECTIONS ON THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (Stephen Allen & Alexandra Xanthaki eds., 2011); MAURO BARELLI, SEEKING JUSTICE IN INTERNATIONAL LAW: THE SIGNIFICANCE AND IMPLICATIONS OF THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (forthcoming 2016); SHERYL LIGHTFOOT, GLOBAL INDIGENOUS POLITICS: A SUBTLE REVOLUTION (forthcoming 2016); BEN SAUL, INDIGENOUS PEOPLES AND HUMAN RIGHTS: INTERNATIONAL AND REGIONAL JURISPRUDENCE (forthcoming 2016); THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: A COMMENTARY (Marc Weiler & Jessie Hohmann eds., forthcoming 2017).

[3] *See* JAMES ANAYA, INDIGENOUS PEOPLES IN INTERNATIONAL LAW, (2d ed. 2004).

[4] *See, e.g.,* International Law Association, Resolution No. 5/2012: Rights of Indigenous Peoples (2012).

[5] *See, e.g.,* LIGHTFOOT, *supra* note 2.

[6] *See, e.g.,* BARELLI, *supra* note 2; Dwight Newman, *Theorizing Collective Indigenous Rights*, 31 AM. INDIAN L. REV. 273 (2006). *See also generally,* DWIGHT NEWMAN, COMMUNITY AND COLLECTIVE RIGHTS: A THEORETICAL FRAMEWORK FOR RIGHTS HELD BY GROUPS (2011).

[7] Willem van Genugten, *Protection of Indigenous Peoples on the African Continent: Concepts, Position Seeking, and the Interaction of Legal Systems*, 104 AJIL 29 (2010).

identified as Indigenous to shift to such an identification,[8] and Kirsty Gover has discussed ways in which constitutional protections for Indigenous rights in some states may, paradoxically, make it more challenging for those states to adapt to reframed, universalized international norms on Indigenous rights.[9]

The three essays on Indigenous rights in this AJIL Unbound Symposium are implicitly engaged with some of the challenges associated with universalized normative frameworks on Indigenous rights, with all three tending toward more localized engagement. Asta Hill examines potential relocation of Indigenous communities in Western Australia, discussing the topic first in light of international norms but ultimately in terms of domestic policy.[10] Dwight Newman discusses Indigenous land title claims in the context of a major Supreme Court of Canada judgment, ultimately examining localized and circumstantial considerations bearing on domestic law on Indigenous rights and suggesting that these considerations may refract back to international law.[11] Ibironke Odumosu-Ayanu examines contractual arrangements between industry and Indigenous communities (some in the form of Impact Benefit Agreements or IBAs), ultimately suggesting that a discussion of Indigenous communities in international law requires an examination of highly localized and even contractual arrangements.[12]

In different ways, these pieces develop a theme that international law discussion on Indigenous rights is actually deeply embedded in domestic contexts. They also develop a theme that respect for rights involves complex pronouncements on policy, potentially making the latter a more primary site of interrogation than is often realized when discussing Indigenous rights issues.

At the same time, these essays also all engage in complex, nuanced ways with different ideas related to the developing role of an international standard of consent of Indigenous communities ("free, prior, and informed consent" or "FPIC"),[13] whether in the context of relocation, of contractual-type arrangements, or of uses of Indigenous lands.

Together, these pieces are immersed in larger international law conversations, with ongoing, paradoxically simultaneous competition and mutual reinforcement between domestic and international norms. Indigenous rights are both a specific site of developing international law and a place where all of international law's traditional tensions play out in new ways.

[8] KAREN ENGLE, THE ELUSIVE PROMISE OF INDIGENOUS DEVELOPMENT: RIGHTS, CULTURE, STRATEGY (2010).

[9] Kirsty Gover, *Settler-State Political Theory, 'CANZUS' and the UN Declaration on the Rights of Indigenous Peoples*, 26 EUR. J. INT'L L. 345 (2015).

[10] Asta Hill, *Western Australia's Remote Indigenous Communities: A Case against Closures and a Call for New Governance*, 109 AJIL UNBOUND 209 (2015).

[11] Dwight Newman, *Indigenous Title and Its Contextual Economic Implications: Lessons for International Law from Canada's* Tsilhqot'in *Decision*, 109 AJIL UNBOUND 215 (2015).

[12] Ibironke Odumosu-Ayanu, *Indigenous Peoples, International Law, and Extractive Industry Contracts*, 109 AJIL UNBOUND 220 (2015).

[13] *Cf. also,* S.J. ROMBOUTS, HAVING A SAY: INDIGENOUS PEOPLES, INTERNATIONAL LAW, AND FREE, PRIOR, AND INFORMED CONSENT (2014); CATHAL M. DOYLE, INDIGENOUS PEOPLES, TITLE TO TERRITORY, AND RIGHTS AND RESOURCES: THE TRANSFORMATIVE ROLE OF FREE PRIOR AND INFORMED CONSENT (2014).