CONFERENCE PROCEEDINGS:
THE SIGNIFICANCE OF THE DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

James E. Rogers College of Law, University of Arizona

April 26-27, 2012

Organized by: The University of Arizona in cooperation with the United Nations Office of the High Commissioner on Human Rights

Supported by: The Navajo Nation Human Rights Commission, the Ford Foundation, the National Congress of American Indians

ABSTRACT

The conference "The Significance of the Declaration on the Rights of Indigenous Peoples" was held at the James E. Rogers College of Law, University of Arizona, Tucson, Arizona, on April 26-27, 2012. The conference was part of an official visit to the United Stated by James Anaya, the United Nations Special Rapporteur on the Rights of Indigenous Peoples. The conference was designed to provide the Special Rapporteur with discussions by Native Americans and interested experts on indigenous self-determination and the implementation of the Declaration on the Rights of Indigenous Peoples. The conference consisted of four sessions of panelists and participants, as well as an open forum on the afternoon of April 27. The Special Rapporteur provided opening and closing comments.

OVERIEW

The conference featured presentations, discussion and consultation with the United Nations Special Rapporteur on the Rights of Indigenous Peoples, Professor James Anaya, in the context of his official visit to the United States to examine the situation of indigenous peoples in the country, especially in light of the standards expressed in the United Nations Declaration on the Rights of Indigenous Peoples. Among the principal speakers were long-term and nationally-recognized Native American activists such as Carrie Dann and Jefferson Keel, as well as exemplary scholars of Native American studies such as Joseph Kalt, Angela Riley, and Ronald Trosper. The conference was organized by the University of Arizona in cooperation with the United Nations Office of the High Commissioner for Human Rights and with the support of the Ford Foundation, the Navajo Nation Human Rights Commission and the National Congress of American Indians.

Prof. Robert Williams, the founder of the Indigenous Peoples Law and Policy Program (IPLP) at the UA Law School and one of the foremost authorities in Federal Indian Law, served as chair of the conference. The IPLP staff was instrumental in the coordination and administration of the conference. Seanna Howard served as conference manager, Carrie Stusse as administrator, Michael Wagenheim as information technology coordinator, and Ariel Mack as graphic designer.

The conference was divided into four topically-focused sessions: self-government, lands and resources, language/culture/sacred sites, and health, education, and development. An open forum session was provided for participants on the afternoon of April 27. Within each of these topics more specific themes were raised and articulated. Each session consisted of a moderator, 2-3 panelists, and multiple participants. Panelists spoke for 10-15 minutes, and each participant was given 5 minutes to speak.

The Special Rapporteur opened the conference with a discussion on the significance of the Declaration on the Rights of Indigenous Peoples. He described a pre-Declaration era of paternalism in which indigenous peoples were threatened with a loss of their culture and tradition as pressure was exerted on them to assimilate. The era was replaced by one that recognized the right of indigenous peoples to self-determination, which was symbolized by the United Nations' adoption of the Declaration in 2007. A third era, in which self-determination is realized, has yet to occur, but should be the goal of indigenous peoples worldwide. The Special Rapporteur concluded his comments by encouraging Native Americans to use the Declaration wherever applicable to assert their self-determination.

PURPOSE OF THE CONFERENCE

The purpose of the conference was to facilitate among indigenous representatives and invited experts an in-depth discussion of the content and meaning of the Declaration on the Rights of Indigenous Peoples, and of the Declaration's practical implications for indigenous peoples in the United States. The conference drew out specific examples of where conditions are in line with the Declaration and where they are not, as well as specific proposals for needed reforms.

This discussion was designed to assist the Special Rapporteur in his look into the human rights situation of the indigenous peoples in the country, in accordance with his mandate from the United Nations Human Rights Council to "examine ways and means of overcoming existing obstacles to the full and effective protection of the rights of indigenous peoples … and to identify best practices," and to "gather, request, receive and exchange information and

communications from all relevant sources, including Governments, indigenous peoples and their communities and organizations, on alleged violations of the rights of indigenous peoples."

Of particular relevance to the Special Rapporteur's official visit are the implications of the United States' endorsement, in December 2010, of the United Nations Declaration on the Rights of Indigenous Peoples. Through meetings and consultations with federal, state and indigenous representatives through the course of his U.S. visit from April 23 through May 4, 2012, the Special Rapporteur assessed the ways in which the standards of the Declaration are currently reflected in United States law and policy, both domestically and abroad, and identified areas of needed reform in light of the Declaration.

ORGANIZATION OF THE CONFERENCE

The conference was organized around seminal issues and rights contained in the Declaration and the current status of such issues and rights in Indian Country. As part of the Special Rapporteur's official visit to the United States, the conference provided a forum for discussion and the sharing of perspectives regarding some of the critical issues facing Native Americans today, both on and off their reservations. It also provided meaningful discussion of how the empowerment of Native Americans through the provisions of the Declaration might lead to a realization of self-determination.

SESSION I: SELF-GOVERNMENT

The first session was chaired by Prof. Melissa Tatum, who is Research Professor and Director of the Indigenous Peoples Law and Policy Program at the UA Law School. Jana Walker of the Indian Law Resources Center and Wendsler Nosie, Sr. of the San Carlos Apache served as panelists.

- ***Melissa Tatum*** focused her presentation on self-determination. She stated that self-determination is woven through all 46 articles of the Declaration. Self-determination means that people have rights to determine their destiny as well as to participate in shaping their government and other social institutions. All humans have the right, based on their customs and traditions, to determine how their communities operate and who will be a member of that community.
- ***Jana Walker*** stated that part of self-determination means that indigenous peoples have the right to make and enforce laws to govern their own affairs. The Declaration is a powerful affirmation that indigenous women are entitled to the rights of non-discrimination, gender equality, security of the person, access to justice, and full protection from all forms of violence. In the United States, violence against indigenous women is several times higher than similar crimes against other women. There is

great need to provide tribes with greater jurisdictional authority to effectively investigate and prosecute such cases.

- ***Wendsler Nosie, Sr.*** stated that healing internal problems on reservations is critical to empowerment. He described how his tribe, the San Carlos Apache, have made efforts to change the pattern of self-blame to one of refusing to become a victim. Native Americans need to be willing to think more "outside the box," no longer to accept the status the federal government has given me, and moving toward self-determination. One barrier to effective self-government is the fact that so much of Native American land is held in trust by the government, rather than being owned in fee by the Native Americans. This prevents Native Americans and tribal entities from becoming a viable part of the economy of the United States. There is also too much dependence by tribes on the federal government.

The participants then were called forward to address the conference. They addressed a variety of issues that they considered critical to the topic of self-government and self-determination. The issue raised by the participants included: the need for Native Americans to take greater responsibility in developing self-governance policies and measures; the problems faced by tribes that lack federal recognition; problems faced by tribes such as the Tohono O'odham who have members living on either side of the U.S.-Mexico border; struggles with a lack of effective services on reservations; current difficulties experienced by Navajo living on the Hopi Partition Land; and self-determination of native Hawaiians.

SESSION II: LANDS AND RESOURCES

The second sessions, which focused on lands and resources, was moderated by Prof. Ronald Trosper, the Program Head of the American Indian Studies Program at the University of Arizona. The panelists were the Honorable Ned Norris, Jr. of the Tohono O'odham Nation and Carrie Dann of the Western Shoshone.

- ***Ronald Trosper*** opened the session by stating that Article 32 of the Declaration was particularly relevant to this session. Article 32 focuses on indigenous peoples' rights to development of their lands and resources, and the responsibility of the state to obtain free, prior, and informed consent for any project that will affect indigenous lands and resources. He then described how the Flathead of Montana negotiated to have a hydroelectric dam constructed on their land. This control of water allowed the Flathead to take command of decision regarding the forests on their reservation, and to determine for themselves, without federal intervention, the plans that would be used to manage the forest resources. This constitutes a realization of self-determination, but Prof. Trosper was quick to point that several key factors needed to be in place for this to happen.

- ***Ned Norris, Jr.*** discussed the problems faced by the Tohono O'odham because tribal members live on both sides of the international border. He noted there is hope in the fact that Article 36 of the Declaration affirms the rights of indigenous peoples to cross international borders to maintain and develop contain with fellow tribal members. Many obstacles to realizing this right exist for the Tohono O'odham. He then turned to the issue of the Rosemont Copper Mine in southern Arizona and its adverse impact on a large number of cultural and sacred sites, all without consultation. The destruction of these sites represents an irreparable loss to the Tohono O'odham.
- ***Carrie Dann*** emphasized repeatedly the importance of traditional lands to indigenous peoples, how without access to sacred places and without protection of such places indigenous cultures are threatened. Land is not real estate to her people, but it is a mother, the mother of life. Humans share the land with all other living creatures and are part of the land just as all living creatures are. She referred to the mining that is occurring on Western Shoshone traditional lands as drilling through the skin of the mother and into her body underneath. Mining in the region has had a dramatic and negative impact on water, and everyone who lives in the region has felt its effects. She did not propose a way to end mining in areas that are sacred to Native Americans, but continuing to fight for rights was absolutely essential.

The participants then were called forward to address the conference. They addressed a variety of issues that they considered critical to the topic of lands and resources. The issue raised by the participants included: the relationship between self-government and resource utilization; how the Declaration can be used to protect natural and cultural resources; the cultural and economic dependence that Indians have with their traditional lands; the threat of destruction of traditional territories from mining, oil and gas exploration, logging, and other development; loss of traditional lands through treaties and homesteading; the impact of the Patriot Act and increased activity of the Border Patrol on Indians crossing the U.S.-Mexico border; problems with access to a clean and adequate water supply; the effects of federal energy policy on Indian reservations; how free, prior, and informed consent applies to development projects in Indian Country; and involuntary resettlement of Native Americans to make room for mining and other operations.

SESSION III: LANGUAGE/CULTURE/SACRED SITES

The third sessions, which focused on language/culture/sacred sites, was moderated by Leonard Gorman, the Executive Director of the Navajo Nation Human Rights Commission. The panelists were Steve Darden of the Navajo Nation Human Rights Commission, Prof. Angela Riley of the UCLA Law School, and Dr. Suzan Shawn Harjo of the Morning Star Institute.

Special Rapporteur Anaya opened the session with a few comments, noting how important it was for people to come today to tell their stories so that the dialogue on self-determination and related issues remained fresh and vibrant. This dialogue can further serve to raise public awareness about the current issues facing American Indians today.

- ***Leonard Gorman*** opened the session and described some of the work his office has been doing with the United Nations. He highlighted the case of the San Francisco Peaks, and how no proper consultation or free, prior, and informed consent occurred. The San Francisco Peaks case represents a violation against the rights of indigenous peoples, and the Navajo Nation Human Rights Commission is considering taking action in the international arena. He also stressed the importance of language in the maintenance of indigenous cultures and religion, and the need to revitalize native languages.
- ***Steve Darden*** spoke about the San Francisco Peaks, noting that as traditional practitioner, he could not just say words about the mountains, but instead knows of songs that have emanated from the spirit of the mountains. He then offered a song about the mountains, and sang it to the attendees of the conference. He said that he wanted everyone present to join him in the song, wanted the song to be heard at the United Nations and resonate in the hearts and minds of its leadership. He concluded by stating that the artificial snow spread on the San Francisco Peaks for skiing shows a complete lack of regard for divinity and what is sacred.
- ***Angela Riley*** began her discussion with the question of how to implement the Declaration. To do so requires developing the jurisprudence around indigenous rights to encompass the provisions of the Declaration. One possible way to begin is to speak in the language of the Declaration and articulate indigenous rights within that language. The Declaration is ultimately about cultural survival, about being able to maintain one's culture into the future while working toward self-determination. The Declaration must be looked at as a living document; it is embryonic, and how it will be used and implemented remains to be seen. Finally, increasing population and extractive industries continue to threaten many indigenous sacred sites, which in turn threatens cultural survival.
- ***Suzan Shawn Harjo*** opened her presentation by reaffirming the need for Native Americans to remember who they are each day in the place where they were meant to be. She stated that, given the history of broken treaties and efforts by the government to break the spirit of Native Americans, it is a miracle that Native Americans have survived. Many of the laws put in place by the government have restricted the rights of Native Americans and have done enormous damage to their cultures and traditions. She referred to much of the attitude of the government toward Native Americans today as "white glove racism," because it leaves no prints and is increasingly difficult to detect or combat. At the same time, laws that are beneficial to Native Americans face dismantling by those who wish to persist in the centuries-old persecution. It is extremely important for Native American to remain vigilant and work to prevent such harm from occurring.

The participants then were called forward to address the conference. They addressed a variety of issues that they considered critical to the topics of language, culture, and sacred sites. The issue raised by the participants included:

lack of protection of sacred and archaeological sites and resulting destruction of such sites; the controversy of the ski resort on sacred land in the San Francisco Peaks of northern Arizona; cultural rights and the problems with maintaining them when traditional lands are lost; the peyote sacrament in the Native American Church; native language acquisition programs; and the need to reject the Doctrine of Discovery so that Indians can realize self-determination.

SESSION IV: HEALTH, EDUCATION, AND DEVELOPMENT

The final session, which focused on health, education, and development, was moderated by Prof. Joseph Kalt of the Harvard Project on American Indian Economic Development. The panelists were Jefferson Keel of the National Congress of American Indians and Rex Lee Jim of the Navajo Nation.

- ***Joseph Kalt*** opened his remarks by asking why there is so much poverty and disadvantage amount indigenous peoples worldwide. The historical record of dispossession, theft of land, and failure to redress or compensate for the theft play critical roles in this development. He noted that despite these barriers, impressive accomplishments could be seen among many Native Americans, such as increase life expectancy among the Mississippi Band of Choctaw and the Salish and Kootenai Community College in Montana that is academically out-competing all other colleges in the state. The role of the federal government should be strengthen rather than retract the rights of Native Americans. In this way the dire conditions under which many Native Americans live might be improved and the impressive accomplishment by tribes will increase.
- ***Jefferson Keel*** emphasized the need to stop thinking as victims and for Native Americans to see themselves as stewards of their economy and their societies. It is important for Native American economies to diversify and create enterprises that are competitive in the larger American economy. Business ventures must always been balanced against cultural concerns. These types of decisions are critical to improving the quality of life for Native Americans. Because so much of reservation land is held in trust, it is difficult to obtain credit needed for ambitious economic undertakings; therefore, economic growth continues to be slow on reservations. The hold that the Department of the Interior has on trust lands has created a formidable bureaucracy that makes creating partnerships with non-Indian entities cumbersome and difficult. Current legislation has been proposed to streamline the process, which would be of great benefit to Native Americans.
- ***Rex Lee Jim*** stated that the Navajo Nation would not wait for the federal government to implement the Declaration but would take the initiative to exercise the rights granted in the instrument. The Declaration will hopefully fill in gaps where laws and policies of the government have failed. The Navajo Nation has undertaken the commitment to educate its children and to define education in its own terms. The school curriculum is based on local history, language, and culture. With the passage of the Navajo Sovereignty Act in 2005, the Navajo Nation began to exercise self-determination; an important component of this sovereignty regards traditional education for Navajo children. There is

similarly an interest in running the medical clinics on the reservation, and deliver healthcare to reservation residents rather than have the government do this.

The participants then were called forward to address the conference. They addressed a variety of issues that they considered critical to the topics of health, education, and development. The issue raised by the participants included: recent and proposed federal legislation designed to reduce burdens in Indian Country relating to education and economic development; the need to define education in indigenous terms; health issues that result from mining activities on reservations; the right to housing as critical to health and development; the historical trauma resulting from the Indian boarding school experience and the need for reconciliation; and the importance of traditional teaching.

OPEN FORUM

Many participants who were not able to speak because of time constraints during the regular sessions were given an opportunity to do so on the afternoon of April 27. The topics addressed by the panelists reflected and expended upon the themes of the four sessions. The theme of Indian incarceration and religious freedom during incarceration was discussed by a number of the participants. The need for Leonard Peltier to be freed was raised. Banishment from tribal rolls and the problems that arise for banished Indians was discussed. Another topic brought up was the fact that more than 100 immigrants crossing into the United States from Mexico have died on tribal lands. Concern was expressed for the large percentage of Indians living off reservation and the disconnect that has created between Indians and their cultures. The many problems in Navajo and Hopi country created by the Bennett Freeze was presented. Health risks from living close to expired mines was discussed by a number of participants.

CLOSING REMARKS

Special Rapporteur Anaya provided closing remarks for the conference. He began by thanking the conference participants and for their contributions to the discussion of indigenous self-determination. He also thanked the conference sponsors and the IPLP program, as well acknowledging the support of the United Nations Office of the High Commissioner on Human Rights. He reiterated the importance of the responsibilities that come with rights. The Special Rapporteur expressed hope that the discussions from the conference would continue to grow to include governments of States, and the discussions will eventually extend into the realization of changes that bring indigenous peoples closer to self-determination.

Special Rapporteur Anaya reflected upon his experience at the United Nations in September 2007 when, prior to his appointment as Special Rapporteur the General Assembly put the Declaration on the Rights of Indigenous Peoples to a vote. The experience of seeing the overwhelming majority of member states endorse the Declaration was powerful, but it was also very disappointing to see four States with large indigenous populations – the United States, Canada, Australia, and New Zealand – vote against it. Once appointed as Special Rapporteur, one of the activities Prof. Anaya became involved in was working to change the United States' vote on the Declaration. Now that this has been achieved, the next step is implementation of the provisions of the Declaration here in the United States. In this way the third era the Special Rapporteur spoke of in his opening comments – the era of realization of self-determination – will come into being.