7 October 2019

Rights III: Indigenous Rights

Recap: Human Rights Discourse

* Two approaches to the study of rights
  + Analytical and ideal-theoretical
  + Historical and practical
* Post-WWII liberal international order building
  + The pre-WWII Western imperialist world order was overtly white supremacist
  + Colonialism remained a geopolitical reality after WWII
  + Decolonisation struggle was planetary, framed by the Cold War
  + Positive codification of human rights law – globally, regionally, and nationally
* Three generations of human rights
  + **Liberté** (freedoms, "civil and political" or "first generation" rights)
  + **Egalité** (equality, "socio-economic" or "second generation" rights)
  + **Fraternité** (solidarity, "collective-developmental" or "third generation" rights)

Indigenous Peoples

* The practice of the international community is that no single definition of Indigenous peoples is necessary and that a combination of subjective and objective criteria may be used in identifying Indigenous peoples.
* One criterion that underpins most definitions is **self-identification**.
* If a group of people defines themselves as Indigenous, then, unless manifestly illegitimate, such designation should be respected.
* Indigenous peoples are the first or earliest occupiers of lands.
* ~350 to 500 million people.
* 90% of the world’s cultural diversity.
* Occupy 20% of the Earth’s land mass.
* Indigenous peoples have rich and ancient cultural, religious traditions.
* Indigenous worldviews typically imagine their social, political, legal, economic, environmental and spiritual systems as **interdependent**.
* Indigenous peoples are among the world’s most oppressed groups.

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

* UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples) is a comprehensive international human rights document on the rights of Indigenous peoples. **It sets out the minimum standards for the survival, dignity, wellbeing, and rights of the world’s Indigenous peoples**.
  + <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf>
* Indigenous peoples, including Māori, were involved in drafting it.
  + “It has been at times an experience in which the often frustrating task of dealing with one Crown in Aotearoa/New Zealand is exacerbated by having to deal with over one hundred of them in Geneva. But it is made more difficult by the fact that the colonising construct that continues to shape events in this land is writ even larger in the international arena.” – Moana Jackson <http://www.nzlii.org/nz/journals/NZYbkNZJur/2005/14.html>
* Its 46 articles cover all areas of human rights as they apply specifically to Indigenous peoples individually and collectively. Key themes are:
  + Equality and non-discrimination
  + Self-determination, self-government, and self-defined development
  + Participation in decisionmaking, underpinned by free, prior, informed consent
  + Cultural survival and flourishing, incl. Indigenous institutions and governance
  + Protection, management, and sustainable development of land, territories, natural resources, and intellectual property
  + Redress for historical wrongs perpetrated or enabled by States
  + Procedural justice and dispute resolution mechanisms

UNDRIP in Global Historical Context

* UNDRIP was adopted by the United Nations General Assembly on September 13 2007.
  + The Declaration is the product of two decades of deliberation by UN member states and Indigenous groups.
* Indigenous peoples are now “important subjects of concern” within the international program to advance human rights.
* First generation human rights: individual political and civil rights.
* Second generation human rights: economic, social and cultural rights.
  + The **individual right to culture** is covered by such instruments, protecting such interests as access to education and cultural expression.
* Third generation rights include **collectively-held group rights**.
* An emergent and evolving global regime of **minimum standards** and specifically concerning the rights of Indigenous peoples.
* As a Declaration of the General Assembly, it is non-binding on State parties, but its normative significance extends beyond its formal legal status.
* UN bodies dedicated to Indigenous peoples include the **Expert Mechanism on the Rights of Indigenous Peoples**, the **Special Rapporteur**, and the **Permanent Forum on Indigenous Issues**.
* The UNDRIP was adopted by 144 of 193 countries:
  + 11 abstentions
  + 4 against
* **Canada, Australia, New Zealand, and the United States (CANZUS) – the Anglophone white settler colonies – originally voted against it**.
  + Indigenous self-determination is the last front in the decolonisation struggle.
* The Fifth Labour Government warned that UNDRIP was **fundamentally incompatible with New Zealand’s constitutional and legal systems**.

Actioning UNDRIP in Aotearoa/New Zealand

* In 2010, the Māori Party persuaded the Fifth National Government to support the Declaration.
* Sir Edward Taihakurei Durie, former Chair of the Waitangi Tribunal: “Notwithstanding the progress made through all the tribunal reports and court cases from the 1980s, and the consequential changes in legislation and official policy, I would still rank the day that New Zealand gave support to the Declaration as the most significant day, in advancing Māori rights, since 6th February 1840”.
* The statement in support of the declaration:
  + acknowledges that Maori hold a special status as tangata whenua, the indigenous people of New Zealand and have an interest in all policy and legislative matters;
  + affirms New Zealand's commitment to the common objectives of the declaration and the Treaty of Waitangi; and
  + **reaffirms the legal and constitutional frameworks that underpin New Zealand's legal system, noting that those existing frameworks define the bounds of New Zealand's engagement with the declaration**.  
    <https://www.beehive.govt.nz/release/national-govt-support-un-rights-declaration>
  + Aotearoa/New Zealand, under the Sixth Labour Government, now aims to be the first country in the world with an action plan to implement UNDRIP.
  + A complete reversal of Labour’s previous stance.
  + A high-level UN delegation from the Expert Mechanism on the Rights of Indigenous Peoples visited us to give advice on how implementing UNDRIP, which was introduced to Māori leaders and groups up and down the country and met with ministers.
  + “Other countries look to what we are doing… We will be the first in the world to have a plan that can hold the Government to account on how it is making progress on indigenous rights.” – Rt. Hon. Nanaia Mahuta
  + While there has been some **progress** in Aotearoa/New Zealand on the aspirations of the Declaration since 2010, no decisions were made at the time on how to develop a **plan** or **strategy** for **implementation**.
  + In March 2019, the Minister for Māori Development sought Cabinet agreement to develop an implementation plan that includes **time-bound, measurable actions** that show how we are making a concerted effort towards achieving the Declaration’s aspirations.
  + According to Te Puni Kokiri, this includes actions that:
    - come from the intersect between government priorities, Māori aspirations and international indigenous rights discourse
    - contribute to enhancing the self-determination of Māori as the indigenous peoples of Aotearoa / New Zealand
    - contribute to improving intergenerational Māori wellbeing
    - demonstrate ambitious actions as opposed to business as usual
  + <https://www.tpk.govt.nz/en/whakamahia/un-declaration-on-the-rights-of-indigenous-peoples>

Summary

* Defining Indigenous peoples.
* UNDRIP was adopted by the United Nations General Assembly on September 13 2007.
* UNDRIP as **minimum standard** – it has normative but not legal force.
* 46 articles cover all areas of human rights as they apply specifically to Indigenous peoples **individually** and **collectively**.
  + Third generation “collective-developmental” rights.
* Māori and other Indigenous peoples were involved in its construction.
* Anglophone white settler colonies (CANZUS) originally opposed it.
* Aotearoa/New Zealand is now focused on **actioning UNDRIP**.