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

By Charmaine White Face (aka Zumila Wobaga), Living Justice Press, Minnesota, 2013:  
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The United Nations' *Declaration on the Rights of Indigenous Peoples* (2007) received a mixed reception. Some commentators viewed it as setting important normative standards for the recognition of Indigenous human rights within the international law framework, whilst others have been critical of the declaration for unduly limiting the nature and scope of Indigenous rights (Anaya 2004; Churchill 2011; Davis 2008; Moreton-Robinson 2011; Pitty 2001; Watson and Venne 2012). *Indigenous Nations' Rights in the Balance: An Analysis of the Declaration on the Rights of Indigenous Peoples* by Charmaine White Face (2013) 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 for the recognition and realisation of Indigenous rights. White Face (2013) presents a unique analysis, drawing on her experience in the drafting process from 2004 to 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" (White Face 2013, 4).

*Indigenous Rights in the Balance: An Analysis of the Declaration on the Rights of Indigenous Peoples* provides a general critique of changes to the declaration, as well as how these changes specifically impact on the Great Sioux Nation and the implications for realising the rights negotiated in the Fort Laramie Treaty of 1868 with the United States of America. In the latter mentioned treaty, White Face (2013) characterises an international treaty negotiated between sovereign powers.

A draft *Declaration on the Rights of Indigenous Peoples*, developed by the Working Group on Indigenous Peoples (WGIP) and negotiated with the consensus of Indigenous people, was approved in 1994 by the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities. White Face (2013) documents how this draft declaration then took a tortured path following its referral to the Working Group on the Direct Declaration (WGDD) established in 1995, when 11 years of debate ensued. The impasse in seeking consensus for 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 United Nations Commission of Human Rights to present the original draft for approval, the subsequent abolition of this body and the establishment of the Human Rights Council (HRC)

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 (2013) stresses that the declaration that was ultimately presented to the UN General Assembly did not have the approval of Indigenous peoples.

The format of *Indigenous Rights in the Balance: An Analysis of the Declaration on the Rights of Indigenous Peoples* provides an article by article analysis of changes made to the declaration during the drafting process, setting out three different versions of the text: the original sub-commission's text; the Human Rights Council version; and the UN General Assembly version. This approach enabled 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 significantly altered the original meaning of the draft declaration, which presents a compelling argument that the UN General Assembly version, as the final declaration, is more effective in preserving the rights of nation states than realising the rights of Indigenous peoples.

White Face (2013, 4) argues that the addition of a large number of preambular paragraphs serves to provide an interpretative framework for the substantive text of the declaration—a move that is unparalleled in the UN standard setting. Importantly, White Face (2013, 86-87) highlights how many articles were reframed from being a positive expression of Indigenous 'rights' to state directives or mandates, without any enforcement mechanisms, which renders them ineffective (for example article 32, which relates to a need to obtain the free, prior and informed consent of Indigenous peoples in respect of development of Indigenous lands and territories). White Face (2013) is also critical of the removal of any language within the declaration that would suggest that Indigenous peoples or nations have full standing in international law, with all references to Indigenous 'nations' being deleted from the final text. *Indigenous Rights in the Balance: An Analysis of the Declaration on the Rights of Indigenous Peoples* also explains how the articles about treaty rights were amended to remove access to competent international bodies, in order to resolve disputes between Indigenous peoples and states. This is a position that clearly benefits nation states and, for White Face (2013), represents a "complete denunciation" (pp.93-94) of Indigenous peoples rights.

*Indigenous Nations' Rights in the Balance: An Analysis of the Declaration on the Rights of Indigenous Peoples* further discusses key amendments to the declaration that limit the right of self-determination for Indigenous peoples, restricting it to "internal and local affairs" (p. 41), which denies Indigenous nations their inherent sovereignty and the capacity to engage in international trade and agreements (White Face 2013). The book discusses, in depth, how Article 46 (the 'savings clause') was substantially amended in the drafting process to insert text in order to explicitly protect the political and territorial integrity of nation states. This is a position which White Face (2013) 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 (2013) 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 what it sets out to achieve by showing "the limits and dangers endemic in the version of the Declaration that the General Assembly approved" (p. 4). White Face (2013) 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 so doing, 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 (2013) speaks from a position of authority as a Sioux representative engaged in the process and her critique resonates with honesty and truth.

*Indigenous Nations' Rights in the Balance: An Analysis of the Declaration on the Rights of Indigenous Peoples* is likely to 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 that 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 who are inclined to take a more pragmatic approach to the negotiation of Indigenous rights locally and globally. This book is a timely addition to the literature, particularly given the recent observations of Professor James Anaya (2013) in his final report as the United Nations Special Rapporteur on the Rights and Fundamental Freedoms of Indigenous Peoples (2008-2013). In his report, Anaya (2013, 22) noted that 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. Anaya (2013, 22) also observes that many states maintain the position that Indigenous self-determination is fundamentally different from self-determination at international law. *Indigenous Rights in the Balance: An Analysis of the Declaration on the Rights of Indigenous Peoples* sheds some light on these ambiguities and raises important questions about the intent of nation states in opposing the original sub-commission's text. Anaya's (2013) 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. The important 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.

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