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Preface

Empire has located its existence not in the smooth recurrent spinning time of cycles of the seasons but in the jagged time of rise and fall, of beginning and ends, of catastrophe. Empire dooms itself to live in history and plot against history. One thought alone preoccupies the submerged mind of Empire: how not to end, how not to die, how to prolong its era. — J.M. Coetzee, Waiting for the Barbarians (1980, 133)

A brief history of the struggle for Indigenous rights through the mechanism of the United Nations shows how urgent the need is for a better understanding of the relationship between Indigenous knowledge and Eurocentric thought, and illustrates some of the dilemmas in which we find ourselves as we seek to build some measure of understanding between these two very different ways of viewing the world. It also explains the perspectives of the authors as they embark on writing this book.

The UN Universal Declaration of Human Rights in 1948 was viewed by Indigenous peoples as a tool for decolonizing our oppressed lives. For the first time in history, the “equal and inalienable rights of all members of the human family” were asserted and recognized as the “foundation of freedom, justice and peace in the world.” The statement of principles in the Universal Declaration was transformed into two legally binding agreements: the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Those member-states who signed and ratified these agreements agreed to uphold the rights and freedoms defined by the covenants in their own states. The first article in both covenants asserts that “[a]ll peoples have the right of self determination.” By virtue of that right, all peoples have the right to “freely determine their political status and freely pursue their economic, social and cultural development.” In answering the question of where universal rights begin, the chair of the UN Human Rights Commission, Eleanor Roosevelt, stated that universal rights begin in “the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for process in the larger world” (Lennox & Wildeboer 1998, 7).

In the 1950s and 1960s, practically every colony in Asia, Africa, and Oceania availed itself of the right of self-determination and opted for political independence. A few colonies chose incorporation or free association with

member-states. These decisions were the colonizers' choices, since most of the colonized Indigenous peoples were not given the right to self-determination or other human rights (Anaya 1996). Despite the move by previously colonized countries toward self-determination, it was clear that governments were not extending human rights to Indigenous peoples. By the middle of 1970, Indigenous lawyers and leaders around the world attempted to have the international and national régimes respond to the growing crisis in human rights. One result was the international Indigenous network.

The network began as a talking circle in which Indigenous peoples discussed their failure to persuade governments to extend human rights to Indigenous peoples. The network was botanical in structure and operation. Liberation was defined, to the extent it ever was defined, as cultural and physical survival. The network was a manifestation of continued resistance to colonization, and it combined efforts that had been going on in isolation for many generations. The idea slowly arrived that Indigenous peoples needed a safe and peaceful place to meet, to talk, and to grow. We needed to extend our kinship and relationships.

We were the unofficially colonized peoples of the world, the tragic victims of modernization and progress. In every state and educational system, we were underrepresented or, more often, ignored. We were the forgotten peoples. Our daily wretchedness, violent deaths among our peoples, and our powerlessness to remedy our situations drove us to the United Nations, which had a long list of international treaties and covenants that could assist our survival. We sought to understand why the UN human rights covenants or the provisions of UNESCO (the United Nations Educational, Scientific and Cultural Organization) had never been used to protect us. Eventually, the United Nations responded to our questions and created the Working Group on Indigenous Populations in Geneva.

The Working Group on Indigenous Populations is a subgroup of the UN Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities. Five human rights experts from Africa, Asia, Central and South America, Eastern Europe, and the West lead the group, and Dr. Erica-Irene Daes of Greece is the chair. The members of the group are selected from the twenty-eight representatives of the sub-commission, who are elected based on their non-partisan expertise in the field of human rights. The purpose of the group is to review developments promoting and protecting the human rights and fundamental freedoms of Indigenous peoples, giving special attention to the development of new international agreements.

Geneva became a strange journey to the heart of our darkness: we had to travel into Europe to articulate our problems with Eurocentric colonization. We had no wealth to fund our travels from the margin to Geneva; we had no wealth to live in the exorbitant style of Geneva. Yet, we could not continue to live and die in utter hopelessness and despair. We traveled and lived thanks to

random acts of kindness and occasional support from organizations. Most participants in the international initiative were forced to live solitary, nomadic lives.

Our first talks at the working group in the summer of 1982 were as fragile as clay pots. We had to learn to trust each other, but our experience did not allow such trust. It was a time of listening. It was a time of understanding our teachings and experiences. In all the languages of the earth, we discussed our suffering and our dreams. Across countless generations, we were comforted by the safety of Indigenous languages, elders, and storytellers as they revealed Indigenous teachings. In different languages, at greater length and with more details than we can ever hope to grasp, these teachings gave form to an ecologically based vision of humanity.

As the discussion in Geneva progressed, the Indigenous people gathered there became people of a shared persuasion. We shared our experiences and ideas of humanity and justice, and we used these ideas to persuade others of the good and just road. These paths called on us to face others and ourselves on pivotal issues. We faced the unresolved and the unknown with awareness, courage, kindness, and honesty. We faced Eurocentric thought from the perspective of our own experience and our visions. From the small meeting rooms where we began to the cavernous, curved meeting rooms of the United Nations where we ended up, our dialogues were formalized.

The working group became the first international ceremony for Indigenous peoples. Each Indigenous group shared different parts of the new ritual as we struggled to eliminate colonialism and to learn the UN legal system. Through the long, hot days in the UN meeting rooms and restive obsidian nights in Geneva, we pursued an elusive consensus. As the summers slid by, our loneliness receded as we extended our friendships and sympathy to the Indigenous peoples around our mother, the earth. Our extended discussions were an effort to crystallize our vision of a postcolonial order into ink words. As the Lakota holy man Black Elk revealed in an ancient teaching: "A human being who has a vision is not able to use the power of it until after they have realized this vision on earth for people to see." In the alien and expensive meeting places of Geneva, which none of us could call home, we pondered the meaning of our humanity and our vision of a fair and good society. According to our teachings of our oral traditions, we explored the unknown territory of relationships with each other. In many languages and styles, we sought to initiate a creative, transformative vision of human rights to a complaisant world order. We probed for agreement on how the existing human rights covenants of the United Nations should be applied to Indigenous peoples.

It was not sufficient for the working group to have visions and talks. If we wanted a better life in an improving world, we had to have the courage to envision the impossible and translate it into text. We also had the obligation

of explaining our dreams to the human rights experts and baffled government representatives. We had the task of reconciling our visions within the six languages of the UN law. Each year the discussion and drafting of our declaration grew. From all four directions, Indigenous delegates arrived each summer to renew and criticize the drafts prepared by the five human right experts and their drafting teams. The working group began with a few dozen delegates and after a few years soared to more than eight hundred. Our loneliness was replaced by our deep doubts on how to compromise between all the deep and beautiful visions. Who could choose the "best" among these visions to create a fair and just order? Who could choose which visions could heal our peoples? We talked, we listened, and we learned. We networked and cared our visions into draft text.

As we worked, state representatives challenged our visions and our aspirations, practicing their old superior privileges. Many degrading ceremonies and embarrassing discussions arose. These representatives rejected our understanding of humanity and our aspirations. They insulted our efforts to change the way the "world" thought about us. They questioned our motives—were we socialists or communists?—never imagining that we rejected all these categories. When our delegates were killed, persecuted, and imprisoned when they returned home, the representatives mocked our efforts to bring the terrorists to justice. Often the representatives became complicit with our terrorizing: when we could get no visible results because of lack of agreement, governments spread rumors about our lifestyles and about the sources of funding among our people.

The arguments and strategies of the nation-states were neither new nor creative; they were familiar to our lives under oppressive régimes. What was new was that these governments had to hear our responses. Within the nation-states we were silenced and ignored; in the working group, these same governments had to live with our visions and voices. We forced a debate on the philosophy of total denial of our humanity. We were not anti-Eurocentric humanists; we merely questioned our exclusion from the category of human rights. We forced a debate on whether we were entitled to have the dignity of our humanity and personhood recognized by law. Specifically, we clashed with the nation-states over whether Indigenous populations were a "people" or "peoples" in the existing UN human rights covenants, in the famous struggle over the final "s." Through the debate, the state representatives implemented their juridical traditions of humiliation and terror. They urged us not to hold fast to our highest visions, labeling them impossible. They urged us to reach a consensus on the lowest common denominator. Because the nature of the multilateral forum is a maze of competing and conflicting interests, the lowest common denominator strategy created fears and doubts among the Indigenous participants. In the process, we left many ink trails or cognitive droppings in the fragmentary processes of the United Nations.

Based on our consensuses, we created new standards in UN law, the most comprehensive being the 1989 International Labour Organization Convention on Indigenous and Tribal Peoples. This convention defined Indigenous self-government in national contexts. Through this convention, we created the foundation of an ecological order. We also lobbied for a special chapter for Indigenous peoples' programs in Agenda 21, which was adopted by the UN Conference on the Environment in 1992. We lobbied for the inclusion of the traditional ecological knowledge of Indigenous peoples in the UN Convention on Biological Diversity that same year. In addition, we lobbied the UN General Assembly to have the International Year of the World's Indigenous Peoples in 1993. We lobbied for a permanent forum for Indigenous peoples, and for an International Decade of the World's Indigenous Peoples to be held from 1995 to 2004. And we lobbied for a special UN study on how to protect the heritage of Indigenous peoples, their treaties, their lands, and their natural resources. Combined, these UN documents manifested an Indigenous vision of our humanity for all people to read, and unleashed the power of the vision of an ecological theory of good order and human rights (Anaya 1996; Barsh 1994).

The final unfolding of the Indigenous vision was the Draft Declaration on the Rights of Indigenous Peoples. After twelve years, the working group reached a consensus on the declaration. The declaration articulated forty-five articles, which are minimum standards of Indigenous human rights. It was a first step in a slow journey to justice and respect. This remedial task witnessed a new style of collaboration between technical experts and oppressed people. The resulting text is an interpretive tool for applying the UN human rights covenants to the Indigenous peoples of the earth. The declaration is an enterprise of translating hope into insight, and experience into enactment. Our emerging compromises were fragile and tenderly spoke of honor, caring, and healing; still they had to be placed in the context of the drafting protocol of UN conventions on human rights and their normative categories. Translating our aspirations into human rights protocols was difficult. It was an aloof and sterile experience; the linguistic protocol contains the bitterness of our experience.

"Affirming that indigenous peoples are equal in dignity and rights to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such" was the deep agreement with which the intricate declaration began. Article 3 provides: "Indigenous peoples have the right of self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Our humanitarian and linguistic rights are articulated in part III of the declaration. Article 14 reads: "States shall take effective measures, especially whenever they may affect any right of indigenous peoples, to ensure this right and also to ensure that they can understand and

be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means." In addition, article 15 on the education of children provides: "All indigenous peoples . . . have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning. Indigenous children living outside their communities have the right to be provided access to education in their own culture and language. States shall take effective measures to provide appropriate resources for these purposes." Article 17 provides that "Indigenous peoples have the right to establish their own media in their own languages."

The declaration is a statement of principles for postcolonial self-determination and human rights, and as such it is not legally binding on the nation-states. However, if the declaration is passed by the UN General Assembly, it will have a certain intellectual force and political weight, and it will create certain troubling inconveniences for member-states. If the declaration is then enacted as a convention, it will be a legal treaty among ratifying states. We view the agreement as the first international postcolonial treaty among Indigenous peoples. The working group has taken the position that it will accept no changes to or censorship of the declaration. The states have no authority to appropriate Indigenous visions or consensus for their purposes. Human rights are universal and not relative. We feel it would be pointless and unavailing to accept human rights' standards less than those accorded to other peoples of the United Nations.

The Sub-Commission on Prevention of Discrimination and Protection of Minorities passed the declaration, but the Human Rights Committee found it to be too threatening. The review committee found the declaration consistent with existing UN human rights. Then the states lobbied the Human Rights Committee not to adopt the declaration. Yielding to the pressure, in 1995 the Human Rights Committee created a working group of fifty-three representatives from the nation-states to review the Indigenous declaration. It is called the Working Group on the Draft Declaration of Indigenous Rights; the ambassador of Peru was elected chair and rapporteur. Thus, Indigenous peoples were exposed to yet another degrading ceremony manufactured by the resisting states.

The necessity of striking the Working Group on the Draft Declaration of Indigenous Rights makes it clear that to a majority of nation-states, Indigenous humanity remains problematic. Despite many calls for the universalization of human rights, the nation-states fail to understand the necessity of the equal application of existing human rights to Indigenous peoples. In particular, the nation-states reject the right of Indigenous peoples to self-determination, since this might lead to unacceptable freedoms for them. They interpret the right of self-determination as being reserved to those who are

already privileged to exercise it—the colonizers. Such rights cannot be tolerated for those peoples who do not already exercise this privilege—the colonized (see Eide 1993; Hannum 1990). The resistance of the nation-states is based on their interpretation of state legitimacy and territorial integrity. They ignore the requirement laid out in the Principles on Friendly Relations Among States in Accordance with the Charter (1970) that they grant such ideas only to those states that conduct themselves in conformity with the principles of equality and self-determination of all peoples.

The daily existence of Indigenous peoples in the nation-states also reflects the debates and intellectual violence of the working group. In Eurocentric thought, the legal system is where the ideal of colonization has taken on a detailed institutional form. Eurocentric legal doctrine makes it possible to represent and discuss civilization and its institutions, and thus to sustain and develop the privileges of the colonists. We must grasp the negative role assigned to Indigenous peoples before we can effect positive change.

The governments of the day, often our legal guardians and fiduciaries, do not want to discuss ways of transforming legal or political institutions to include Indigenous peoples in nation-states. They do not want to end their national fantasies and myths about their nations. They do not want to expose the injustices that have informed the construction of state institutions and practices. They do not want to create postcolonial states. They do not want to sustain efforts at institutional reform. They reject the idea of hybridized states that include Indigenous peoples in the political and adjudicative realms. They want Indigenous peoples to vanish into separate replicative or imitative institutions or into organizations without equalized funds or capacities or shared rule. All these efforts are attempts to conceal the constitutive contradiction or unwanted side-effects of the artificial, imaginative settler state and law, whose search for innate order has failed. Most of the nation-states of the Working Group on the Draft Declaration want to rewrite the entire text of the declaration to conform to their colonial orthodoxies and views of Indigenous peoples as minorities. They have no remedies for colonization. They are preoccupied with a different idea: how not to end colonization, and how to prolong their gross privileges.

In this new, mean-spirited venue, Indigenous peoples continue a creative and chaotic dialogue about the wording of the declaration with the nation-states. In this dialogue, impenetrable ideas derived from colonialism and the failures of liberalism, socialism, and communism confront the ecological consciousness and order of Indigenous peoples. The ecological-human rights movement of the Indigenous representatives challenges the Eurocentric idea of the modern nation-state. An innovative and transformative dialogue is emerging. In an awkward way, this dialogue is forging the future of the environment and of the peoples of the world.

In the working group, the nation-states' ramshackle compromises and

makeshift apologies drawn from Eurocentric colonial ideology, humanities, philosophy, and legal traditions dominate daily discussions. It is a complicated discourse. Most of these efforts affirm that the UN human rights covenants protect only the colonizers, while they deny the colonized the same rights. In the context of human rights—the antidote for colonization—the nation-states seek the daring and implausible sanctification of colonization in the draft declaration. Only Canada has stated that Indigenous peoples have a right to self-determination. Nevertheless, even the Canadian state needs a more comfortable wording to limit the Indigenous peoples' right to unilateral succession. In many ways, the resisting state representatives resemble a "priesthood" that has lost its faith in the idea of human rights, but still keeps the instructions. Intransigent hope among the betrayed Indigenous peoples continues in the delight that the peoples can occasionally confront and render incoherent the priests of secular nationalism in the United Nations. Often, we find the mind's opportunity in the journey of the heart.

The chair of the Working Group on Indigenous Populations, Dr. Erica-Irene Daes, for the Sub-Commission on Prevention of Discrimination and Protection of Minorities, described our position accurately when she stated to the United Nations that the declaration is "belated state-building." Indigenous peoples know that the nation-states are strong and that we are vulnerable and poor. The discussion over Indigenous rights confirms this power imbalance. Compromising is difficult when Indigenous people know they are right. The states worry about the implications of the Indigenous rights. They refuse to return their stolen privileges and rights.

We continue to stress that our articulated vision is not subject to censorship by the states. We want our black-ink version passed without paternalistic amendments. We root our support of these minimal standards in a sense of injustice, our felt indignation, and our abhorrence of the wrong we have experienced. It is our expression of our humanity and our human rights.

As Indigenous peoples enter the twenty-first century, the need is great for the world's people to embrace a consciousness that enables all peoples to enrich their character and dignity. This consciousness should allow the once-powerless voices of Indigenous peoples to emerge from their roots and cultural experiences, and should welcome these voices as positive contributions to diversity rather than as sources of prejudice. To be heard in this way is one of the fundamental rights Indigenous peoples seek, but it is a right that is countered with state forms of structural marginalization and contested sites of struggle. For Indigenous peoples to emerge from these contested sites with harmony and dignity requires a consideration of the worldviews from which these sites have evolved.