Liberte, Egalite, Fraternite: The United Nations Declaration of the Rights of Indigenous Peoples Fails to Protect Hopi Katsinam from the Auction Block in France

Samantha K. Nikic

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LIBERTÉ, ÉGALITÉ, FRATERNITÉ?:
THE UNITED NATIONS DECLARATION
OF THE RIGHTS OF INDIGENOUS
PEOPLES FAILS TO PROTECT HOPI
KATSINAM FROM THE AUCTION
BLOCK IN FRANCE

“Don’t purchase that. It is a sacred being.”¹

INTRODUCTION

The shouts of a woman protesting over a room of applause for the $210,000 USD sale of a Native American headdress at French auction house Néret-Minet Tessier & Sarrou in April 2013 have gone unnoticed.² Unlike the underwhelming concern of auction houses and courts in France that have allowed the sales of Native American sacred property, international law has otherwise recognized the need to protect cultural property by adopting various conventions and ethical codes that afford due recognition to concerns over illicit and unethical trading.³ In acknowledgment of the international concern to prevent “theft, clandestine excavation, and illicit export” of cultural property, the United Nations Educational, Scientific and Cultural Organization (UNESCO) adopted the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property in 1970 and the International Code of Ethics for Dealings in Cultural

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² Id.
Property in 1999. In 2007, the General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples (the “UNDRIP”) to provide a set of principles that protect the rights of the world’s 370 million indigenous peoples, including the right to their cultural property.

However, the UNDRIP is not a binding piece of international law. This fatal flaw allows member states to act without consequence, as illustrated by a recent French judicial decision in June 2014, which stripped all Native Americans of standing to bring cultural claims in France. As a result of the UNDRIP’s failure to properly protect indigenous peoples, France, an otherwise enthusiastic member at ratification, has effectively abandoned their position that was originally in support of the UNDRIP. At the UNDRIP’s adoption, French representative Fabien Fieschi “believed that the Declaration was an essential step forward in the promotion and protection of human rights for all” and that “France had supported all multinational initi-


8. See Press Release, supra note 6; see Ciric, supra note 7; see Boehm, supra note 7.

9. Fabien Fieschi has been the Consul General of France since August 2012. See Fabien Fieschi, HUFFINGTON POST, http://www.huffingtonpost.com/fabien-fieschi/ (last visited Jan. 24, 2015). At the time of the UNDRIP’s adoption, Fieschi became First Secretary of the Permanent Mission of France to the U.N. in New York and was in charge of human rights. Id.
atives for indigenous peoples.”  

Fieschi further emphasized that many of the rights provided in the UNDRIP were already present in the French Constitution. France also developed their own legal framework regarding the sale of chattels at public auction in order to adequately regulate the sale of cultural property. On one hand, France vocally supports initiatives for indigenous peoples; however, when given the opportunity to act, France has actively taken away the Hopi’s international rights. Despite advancements in both international and domestic law, without binding force behind the UNDRIP, any member state can disregard indigenous peoples without penalty.

Notwithstanding the international human rights of Native Americans, France is able to inadvertently safeguard its historic auction houses in what appears to be an attempt to hold onto the semblance of market prominence in the sale of art. In the last few years, France’s role in the world’s art market has been declining from its previous position as a worldwide market leader. Mirroring the decline in global art sales, the amount of sales taking place at French-founded auction houses has dropped. Drouot, one of the oldest and largest public auction houses in the world, once dominated French auction house sales, but has declined in sales by approximately 20 percent in under ten years. Confronted with economic distress, France

11. Id.
12. See discussion infra Part II.B.
13. See Ciric, supra note 7; Boehm, supra note 7.
14. See discussion infra Part II.D; Ciric, supra note 7; and see Boehm, supra note 7.
17. See CVV Publishes Results, supra note 16; The Art of Beating the Economic Crisis, supra note 16; About Drouot, DROUOT, http://www.drouot.com/static/_drouot_pratique.html?lang=en (last visited
has turned to the State for funding and management of the arts, as well as selling fine wines in an attempt to replenish their one hundred billion euro deficit.\textsuperscript{18}

Notwithstanding the rights of the Hopi, a tribe and sovereign nation located in northeastern Arizona\textsuperscript{19} and considered indigenous peoples under the UNDRIP, France’s recent ruling has shielded the international community from the outcries of the Hopi.\textsuperscript{20} Regardless of how unjust the decision to strip the Hopi and Native Americans of standing may be, the UNDRIP has no power to correct it, as it is a nonbinding piece of international law.\textsuperscript{21} In order for the UNDRIP to rectify any wrongful decisions that adversely affect indigenous peoples, it must be transformed into binding law by way of treaty. As a multilateral treaty, which would be adopted into the law of member states, the UNDRIP would force member states to protect indigenous peoples worldwide and ensure consequences are exercised for domestic and global noncompliance.

Part I of this Note discusses the historical development of international law and the international movement toward protecting and regulating the dealings of cultural property, culminating into the drafting of the UNDRIP. This Part will also discuss important principles in the UNDRIP that protect indigenous peoples’ cultural property. Part II will detail the structure of French governance and discuss France’s own legal framework regarding cultural property in order to provide perspective on the impact of France’s recent decision. It will also illustrate the UNDRIP’s fatal flaw by discussing three contested sales of Native American artifacts at French auction houses, which culminated into France stripping the Hopi and all Na-

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\textsuperscript{20} See discussion infra Part II.C.

tive Americans of standing to bring cultural claims in France. Part III will argue that the UNDRIP is a toothless document that fails to protect indigenous peoples worldwide, as member states are free to act without consequence. This is evidenced by a seemingly economically driven motive that has allowed France to strip an entire group of people of standing, thereby creating a safe haven for the dealings of indigenous peoples' cultural property. Part III also suggests that the UNDRIP must be transformed into a multilateral treaty and in turn be adopted as binding law by member states to ensure consequences will be enforced for noncompliance. If such steps are not taken, the UNDRIP will continue to provide a grave precedent, allowing member states to disregard the rights of indigenous peoples.

I. INTERNATIONAL LAW AND THE UNDRIP

In order to understand the failure of the UNDRIP, it is important to discuss the development of relevant international law toward protecting and regulating dealings in cultural property. Such developments have fostered and influenced the UNDRIP’s attempt to provide similar protections for indigenous peoples. This part will provide a brief overview of important concepts in international law, discuss current international agreements pertaining to the protection of cultural property, and examine the UNDRIP in detail.

A. A Review of International Law

International Law is “the legal system governing the relationship between nations; more modernly, the law of international relations, embracing not only nations but also such participants as international organizations and individuals (such as those who invoke their human rights or commit war crimes).” There are two sets of international mechanisms that countries sign onto in order to set a standard of behavior: “1) treaties and conventions [which] possess the force of law in ratifying nations, and 2) declarations and resolutions [which] carry non-binding moral power as statements of principle.”

22. See Cric, supra note 7; Boehm, supra note 7.
23. ECHO-HAWK, supra note 5, at 69.
24. ECHO-HAWK, supra note 5, at 72.
The movement toward protecting cultural property commenced on November 14, 1970, with the passing of UNESCO’s Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (the “Convention”). The Convention defines cultural property as property that “on religious or secular grounds, is specifically designated by each State as being of importance for archeology, prehistory, history, literature, art or science.”

Member states are encouraged to formulate their own laws and regulations particularly with unlawful imports, exports, and transfers of ownership of cultural property and provide punishment for noncompliance with prohibitions laid out in the Convention. The Convention is “the most authoritative international agreement on the protection of cultural property” and paved the way for additional agreements pertaining to cultural property in the international community.

Subsequently, in 1999, UNESCO adopted The International Code of Ethics for Dealers in Cultural Property (the “Ethical Code”), which recognizes the important role of the arts globally and implements a set of rules that traders must follow in order to adequately protect cultural items from illicit import and export. The overall purpose of the Ethical Code is to acknowledge rising concerns of unethical trading of cultural property and install a binding ethical code on dealers for all ratified member states. In March 2011, the UNESCO Secretari-

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28. Phelan, supra note 27, at 527.
31. See id.
at\textsuperscript{32} participated in a workshop that planned to further demonstrate the importance of the Ethical Code and its predecessor, the Convention, in protecting cultural property from illicit dealing.\textsuperscript{33} The concern to regulate unethical trading occurred on domestic fronts as well, when France began to draft its own ethical code for auction houses during the same time period.\textsuperscript{34}

\textbf{B. The UNDRIP}

The U.N. was founded in the 1940s and entirely excluded indigenous peoples from representation.\textsuperscript{35} This exclusion led to in-depth studies on the discrimination of indigenous peoples and eventually laid the foundation for the U.N.’s work regarding indigenous peoples worldwide.\textsuperscript{36} In 2007, after extensive work by pioneers advancing the rights of indigenous peoples,\textsuperscript{37} the U.N. General Assembly\textsuperscript{38} adopted the UNIDRIP, which organized a set of principles that consolidated “the individual and collective rights” of the 370 million indigenous peoples worldwide and called “for the maintenance and strengthening of their cultural identities,” which ultimately emphasizes the

\textsuperscript{32} The Secretariat is made up of the Director-General and the staff they appoint, which “is divided into Professional and General Service categories” working in “65 field offices throughout the world.” See The Executive Branch of the Organization, UNESCO, http://www.unesco.org/new/en/unesco/about-us/who-we-are/secretariat/ (last visited Jan. 24, 2015).

\textsuperscript{33} See Intergovernmental Comm. for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation, Secretariat Report, Rep. of the UNESCO Secretariat, para. 21, CLT-2011/CONF.208/COM.17/2REV (2012); Code of Ethics for Cultural Property Dealers, supra note 3, art. 4.

\textsuperscript{34} See discussion infra Part II.B.


\textsuperscript{36} See id.

\textsuperscript{37} See Helen Quane, New Directions for Self-Determination and Participatory Rights?, in REFLECTIONS ON THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES 262 (Stephen Allen & Alexandra Xathaki eds., 2011) (noting that it took over twenty years to draft the UNDRIP, which included contentious questions of rights to include).

“right [of indigenous peoples] to pursue development in keeping with their own needs and aspirations.” 39 Like all international declarations, the UNDRIP is a nonbinding instrument that is not enforceable on “its own accord.” 40 Instead, the purpose of international declarations is to provide certain principles for member states 41 to follow. 42 The UNDRIP specifies that member states are to abide by its principles to show the development of international relations and reflect their commitment to protecting indigenous peoples who are thereby affected by such developing legal norms. 43

1. The Scope of the UNDRIP

Unlike treaties or conventions, the UNDRIP is not automatically enforceable and instead compels member states to take action using the UNDRIP as a guide, rather than as a law. 44 This is not to say that the UNDRIP cannot be used strategically—the International Law Association 45 determined that the international community has agreed to a number of customary rules of international law with binding force present in the UNDRIP. 46 Most importantly is that indigenous peoples have the rights to “self-determination . . . recognition and protection of cultural integrity . . . reparation and redress for wrongs suf-

39. Press Release, supra note 6; see Quane, supra note 37, at 262.
40. ECHO-HAWK, supra note 5, at 64.
42. See ECHO-HAWK, supra note 5, at 73.
43. See id.
44. See id.; Clive Baldwin & Cynthia Morel, Rights of Indigenous Peoples in Litigation, in REFLECTIONS ON THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES 121, 122 (Stephen Allen & Alexandra Xanthaki eds., 2011) (arguing for the UNDRIP to be accepted as an authoritative binding document in order for it to have an impact on the world in addressing issues on indigenous peoples).
45. The International Law Association is a nongovernmental organization consisting of specialized U.N. agencies around the world. See INTERNATIONAL LAW ASSOCIATION, http://www ila-hq.org (last visited Oct. 19, 2014). Its objectives are “the study, clarification and development of international law, both public and private, and the furtherance of international understanding and respect for international law.” Id.
46. For an in-depth view of each of the customary rules of binding force from the UNDRIP, see ECHO-HAWK, supra note 5, at 88.
ferred” and “that all agreements to which they are a party will be honored and fully implemented.”

While the UNDRIP does not define “indigenous peoples,” some view this as an opportunity for flexibility, rather than liability. Some definitions have likened indigenous peoples to “ethnic groups”; however, this is not always applicable to the international community. The Martínez-Cobo Report delves further into defining indigenous peoples, describing them as people who have a “historical continuity with pre-invasive and pre-colonial societies that developed on their territories, [and] are considered unlike other sectors of the dominant society in those territories or parts thereof.” The Martínez-Cobo Report offers a broad understanding of what “historical continuity” means, which is more amenable to the protection of indigenous peoples, by affording accountability to countries on their actions and not simply on geographical location. The Report discusses historic continuity as encompassing one or more factors of long-term persistence to the present, including: “occupation of ancestral territories . . . common ancestry with the original inhabitants . . . culture in general or in specific manifestations . . . language . . . residence in certain parts of their country or in certain regions of the world.” A definition by Erica Irene Daes, Chairperson of the U.N. Working Group on Indigenous Populations, who was inspired by the Martínez-Cobo Report, 

47. Id. at 88–91.
50. See Rights of Indigenous People: Process, supra note 35, at 7 (explaining that due to an exclusion of indigenous peoples from the U.N., Jose Martínez Cobo “was appointed Special Rapporteur” for a study on “the problem of discrimination against Indigenous Peoples,” which was submitted to the Sub-Commission during 1981–1984 and became “the foundation of the future UN work relating to Indigenous Peoples”).
51. For a more in depth definition and discussion of indigenous peoples, see CHARTERS & STAVENHAGEN, supra note 49, at 153.
52. See id.
53. Id.
is more accommodating.\textsuperscript{55} Daes defines indigenous peoples by virtue of their descent from groups that were already established within a territory prior to the advent of other groups with different cultural or ethnic origins, and have yet maintained their identity in customs and traditions of their ancestors, despite changes to a state structure that is unlike their own.\textsuperscript{56} These definitions confining indigenous peoples to their geographical location restrict the effects of the principles provided by the UNDRIP to those states with dominion over the corresponding territories.\textsuperscript{57}

2. The UNDRIP Attempts to Provide Legal Recourse

It is important to note that the UNDRIP is universal and aims to resolve historic injustices suffered by indigenous peoples.\textsuperscript{58} This is especially important in applying the principles of the UNDRIP “to former colonizing states . . . [that] may still hold indigenous property or remains in their territory . . . [and as such] be liable to compensate for the major rights violations they have committed in the past.”\textsuperscript{59} The UNDRIP is not a time sensitive document, but rather sets out “clear principles on the basic rights of restoration or compensation,” which makes a strong basis for litigation or settlement.\textsuperscript{60} Whether it has been effective in bringing litigation or settlement to countries outside of currently set geographical borders is not clear, considering the recent events stripping the Hopi of standing in France.\textsuperscript{61} What is unfortunate in the case of the Hopi is that

\begin{itemize}
\item \textsuperscript{55} See Charters \& Stavenhagen, supra note 49, at 153; Baldwin \& Morel, supra note 44, at 133.
\item \textsuperscript{56} See Charters \& Stavenhagen, supra note 49, at 153; Baldwin \& Morel, supra note 44, at 133 (breaking down Daes’ definition into criteria, which include territorial occupation and self-perpetuated cultural individualism, among other factors.)
\item \textsuperscript{57} See Charters \& Stavenhagen, supra note 49, at 153.
\item \textsuperscript{58} See Baldwin \& Morel, supra note 44, at 140–41.
\item \textsuperscript{59} Id. at 141.
\item \textsuperscript{60} Id.
\item \textsuperscript{61} See discussion infra Part II.C.3.; Frederico Lenzerini, Reparations for Indigenous Peoples 29–31 (2008) (discussing limitations on the International Law Commission’s codified rules regarding state responsibility to reparations for the harms done to “aliens” and indigenous peoples, which includes liability for injuries suffered by acts prior to international law prohibiting them). However, indigenous peoples’ claims for reparation are said to be distinguishable from other reparation claims due to a long-developed “complex
the UNDRIP articulates its use in the litigation of any rights issue affecting indigenous peoples in at least two articles, but due to the lack of enforceability of the UNDRIP, the Hopi were unable to utilize these provisions.62 Article 40 specifically provides indigenous peoples with “just and fair procedures for the resolution of conflicts and disputes with States or other parties” and remedies for infringements of individual and collective rights, giving “due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.”63 The UNDRIP intends to provide indigenous peoples with rights to protect their cultural heritage and property.64

The UNDRIP provides for the full participation of indigenous peoples alongside the international community to maintain their cultural identities and shield indigenous peoples from discrimination.65 In order to accomplish this, the UNDRIP asks states to afford redress and restitution66 by means developed and powerful movement” to an international front, often with claims tied to property rights and other various distinguishing factors. See id. Additionally, the International Law Commission’s codified rules are to be applied “to the international community as a whole.” See id.

62. See Baldwin & Morel, supra note 44, at 127; G.A. Res. 61/295, supra note 5, art. 18 (providing for indigenous people’s participation in decision making by allowing them to provide their own representatives). See generally G.A. Res. 61/295, supra note 5, art. 40.

63. G.A. Res. 61/295, supra note 5, art. 40.

64. See H. Patrick Glenn, The Three Ironies of the UN Declaration on the Rights of Indigenous Peoples, in REFLECTIONS ON THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLE 171, 171–182 (discussing the irony of requiring indigenous peoples to participate within the scope of western cultural norms of the UNDRIP, despite that indigenous people often lack formal written law and/or sovereign status, they often possess alternative understandings of the world, and frequently carry with them other distinct characteristics).


alongside indigenous peoples “with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.”67 While the UNDRIP sets out these basic parameters affording indigenous peoples a voice, France has refused to listen. Without the ability to enforce its provisions, the Hopi are incapable of using the UNDRIP as a means of empowerment.

3. The UNDRIP’s Prospective Take on Indigenous Peoples’ Involvement in Lawmaking

When asking states to “enable the access and/or repatriation of ceremonial objects . . . through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned,” the UNDRIP intends for states to cooperate in good faith with indigenous peoples before they implement any type of lawmaking, whether by legislation or administrative procedures by obtaining the “free, prior and informed consent” of indigenous peoples.68 States are to work in conjunction with indigenous peoples to establish and implement “fair, independent, impartial, open and transparent process[es],” which acknowledge that indigenous peoples have unique laws, histories, and customs.”69 The UNDRIP concludes with the expectation that states are to comply with human rights obligations when they limit any of the rights set out in the UNDRIP.70 These limitations must “be non-discriminatory and strictly necessary” with the only “purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.”71 By calling upon international human rights obligations, the UNDRIP is relying on preexisting international law to give it power.

Subsequently, as the UNDRIP is a nonbinding agreement, there are no articles providing for either the implementation or enforcement of the agreement itself or consequence for the non-

67. See G.A. Res. 61/295, supra note 5, art. 11, paras. 2, 8.
68. Id. art. 8, paras. 2, 19.
69. Id. art. 27.
70. Id. art. 46, para. 2.
71. G.A. Res. 61/295, supra note 5, art. 46, para. 2 (emphasis added).
compliance of member states. The UNDRIP merely acts as a guide by which member states and France ought to act, rather than as law. This is the fundamental flaw of the UNDRIP, as it is powerless to oppose any decisions adversely affecting indigenous peoples, as illustrated by the recent French decisions that have stripped Native Americans of standing in France.

II. FRENCH DISREGARD OF THE HOPI: A CASE STUDY

EXEMPLIFYING THE UNDRIP’S FAILURE

Not only is France a member state of the aforementioned international instruments, but France has also instituted their own legal framework for protecting cultural property on the auction block in France. Flying in the face of advancements in international law and their own legal protections, France has hawked sacred Hopi masks at public auction and taken away any legal claims from indigenous peoples and specifically the Hopi tribe to reclaim the cultural property that was once theirs. This Part will provide a basic understanding of the French government and the laws implemented for the ethical trading of property at public auction. Additionally, this part will exemplify the UNDRIP’s fundamental flaw by illustrating that numerous controversial sales of Hopi katsinam at public auction in France have occurred without consequence.

A. Overview of the French System of Government

France’s most recent Constitution introduced the Constitutional Council, which is part of the judiciary and “has the pow-

73. See ECHO-HAWK, supra note 5, at 73.
74. See Cric, supra note 7; Boehm, supra note 7.
75. See discussion infra Part II.A.–B.
76. See Cric, supra note 7; see also Boehm, supra note 7.
er to interpret the highest French and International norms” and uphold the Constitution. Title VI, Article 55 of the French Constitution provides that “treaties or agreements duly ratified or approved shall, upon publication, prevail over Acts of Parliament, subject, with respect to each agreement or treaty, to its application by the other party,” and it is the job of the Constitutional Council to review the Constitution “if it is contrary to any treaty prior to their ratification.” The Constitutional Council’s role and authority is similar to that of the U.S. Supreme Court in that the Constitutional Council is “consulted on international agreements, on disputes between the government and the parliament, and, above all, on the constitutionality of legislation.” Providing the Constitutional Council finds new acts of government either contrary to the French Constitution or treaties that France is a party to, the Constitutional Council has the power to examine and nullify them. In the event that the UNDRIP was transformed into a treaty and instituted as binding law, such an action would be monumental in the Hopi’s case against France, because the Constitutional Council would be compelled to comply with the treaty.

B. French Law Codified

Whether instituted in light of the UNDRIP or self-propelled in order to further protect a market prominence in the art market, the French Commercial Code instituted the codes on the Voluntary Sales of Chattels by Public Auction in 2011,

1958, providing “for a strong executive to share power with a bicameral legislature”.

78. The power of the Constitutional Council in France is somewhat similar to judicial review in the United States, in which actions by the Legislative and Executive branches are subject to review by the courts and may be negated if contrary to higher authorities or the Constitution. See The French Legal System, supra note 77; Warren Michelen, The Supreme Court and Judicial Review, Constitutional Crisis, http://constitutionality.info/SupremeCourt.html (last visited Sept. 25, 2015).

79. 1958 Const. Title VI, Article 55 (Fr.); see also The French Legal System, supra note 77; Germain, supra note 77 (discussing the high regard of treaties because they are instituted into legislation when published in the Journal Officiel).


81. 1958 Const. arts. 56–63 (Fr.).
which reinforced the regulatory authority of the Conseil des Ventes, the board that stripped Native Americans of standing in France in June 2014. Additionally, the Minister of Justice approved by decree the Collection of the Ethical Obligations of Operators of Voluntary Sales of Chattels by Public Auction on February 21, 2012, and adopted the Council of Voluntary Sales of Chattels by Public Auction at its meeting held on February 15, 2012. This gives further authority to the Conseil des Ventes and reinforces ethical obligations placed on their review of the sale of goods at auction. The Collection of Ethical Obligations, approved by the Minister of Justice in 2012, dictates that there is an obligation of operators of voluntary sales to ensure proper due diligence is employed with respect to the origins of items up for sale by consulting “French and international databases and . . . relevant organizations.” It is clear that France intended to provide their own mechanisms for protecting cul-


83. See Germain, supra note 77; Ciric, supra note 7; Boehm, supra note 7. See generally CODE DE COMMERCE [C. COM.] [COMMERCIAL CODE] art. L.321 (Fr.).


86. Id.
tural property, as well as institute codified law in order to place ethical obligations on dealers in cultural property to ensure that rights in cultural property are protected in conjunction with international law.

C. France Has Gone Back on Their Word in More Ways Than One

On April 12, 2013, the sale of sacred Hopi masks, known as katsinam or “friends” to the Hopi, at Parisian auction house Néret-Minet Tessier & Sarrou87 marked the first of three controversial sales in France.88 The Hopi89 katsinam are sacred masks, which house “ancestral spirits, land animals and the natural world, [as well as] mythological beings, natural forces and social and moral values.”90 The katsinam are inhabited by spirits and are used in sacred dances of the Hopi that are intended to bring about rain, hydrate crops, celebrate the new moon, and honor man’s relationship to the eagle to maintain


89. The Hopi people believe they maintain a sacred covenant with the “caretaker of the earth, to live as peaceful and humble farmers respectful of the land and its resources,” and are proud to have retained their “culture, language and religion,” despite colonialization. See HOPI TRIBE OFFICIAL WEBSITE, supra note 19.

90. The Return of a Katsina, supra note 88.
balance between human and spirit.\textsuperscript{91} Pierre Servan-Schreiber,\textsuperscript{92} an attorney for the Hopi, illustrated the importance of these masks by likening them to selling Catholic relics, such as the bones of a Saint or wood from the cross on which Jesus Christ was crucified, in that the masks “are so deeply rooted in their religion [that] to sell to the highest bidder was simply inconceivable.”\textsuperscript{93} While the Hopi have masks for various occasions, like burial practices or clowning, katsinam are more than merely decorative masks to the Hopi—they are ceremonial helmets combined with deities, thereby demonstrating the belief that they are living beings.\textsuperscript{94}

In the past, France has been sympathetic to items with similar religious significance.\textsuperscript{95} In 2010, France effectively recognized the importance of Maori\textsuperscript{96} tattooed skulls, which were kept to honor ancestors, when the French Assembly returned them to New Zealand and the Maori tribe.\textsuperscript{97} In the Hopi’s case, France is disregarding what significance the embodiment of spirits in the katsinam have to the Hopi, despite France’s own sympathies to other items with similar sacred importance. Interestingly, France was far more robust in taking action when it concerned items without any religious significance. In 2000, France ruled that Yahoo! was required to remove Nazi memorabilia auctions on both Yahoo.com and its French counterpart.


\textsuperscript{92} Pierce Servan-Schreiber is a partner at Skadden, Arps, Slate, Meagher & Flom of Paris and a member of the Alliance of Lawyers for Human Rights, “a forum to which NGOs in need of pro bono legal advice can send their questions,” which in turn are sent to member firms for allocating the work. \textit{Bringing a Katsina Home}, supra note 91.

\textsuperscript{93} The Return of a Katsina, supra note 88.


\textsuperscript{95} See Yahoo! Inc. v. La Ligue Contre Le Racisme, 433 F.3d 1199, 1219 (2006).


In an attempt to render the French decision unenforceable in the United States, Yahoo! brought the decision and additional claims on appeal in the United States, which was later dismissed while on remand in 2006. While it may seem natural for a country to protect its own interests, by signing on as a member state to the UNDRIP, France effectively promised to abide by its principles. Yet, France has refused to adhere to some of the more fundamental articles of the UNDRIP, as evidenced by the sales of Hopi katsinam in Paris.

1. April 2013 Decision

Not long before the sale of seventy katsinam on April 12, 2013, Leigh Kuwanwisiwma, the director of the Hopi Tribe’s Cultural Preservation Office, asked the Parisian auction house to stop the sale of the katsinam, marking the Hopi’s first international efforts to recover its artifacts. Kuwanwisiwma argued that the simple act of placing a price tag on the katsinam was “beyond offensive,” and the Hopi found the katsinam’s public display and sale a “grave offense.” Servan-Schreiber took on the case only days before the sale and, while the odds were not in the Hopi’s favor, Servan-Schreiber stated that the case was “interesting and intellectually challenging” with the fate of the Hopi people intertwined with the fate of the katsinam.

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99. Waters & Waldmeir, supra note 98; Yahoo!, 433 F.3d at 1224.
100. France is a member-state of the UNDRIP. See Press Release, supra note 6.
101. See generally G.A. Res. 61/295, supra note 5, arts. 18, 40.
102. Leigh is the director of the Hopi’s Cultural Preservation Office where his work has influenced the requirements for documentation of cultural affiliation under the Native American Graves Protection and Repatriation Act. AMWG Member Leigh Kuwanwisiwma Bio, U.S. BUREAU OF RECLAMATION (Feb. 27, 2013), http://www.usbr.gov/uc/rm/amp/amwg/amwgbio_kuwanwisiwma.html.
103. See Bringing a Katsina Home, supra note 91; Mariam Hai, Selling the Sacred: An Examination of Sacred Objects in Legal Contexts, 24 DEPAUL J. ART, TECH. & INTELL. PROP. L. 193, 193 (2013); Greenberg, supra note 88.
104. Bringing a Katsina Home, supra note 91.
105. Id.
Auction house director Gilles Néret-Minet\textsuperscript{106} regarded the sale as an “homage to the Hopi Indians.”\textsuperscript{107} From his perspective, the katsinam were “important works of art” and not sacred objects.\textsuperscript{108} However, the Hopi regarded the auction as a “desecration” of sacred objects, whereas buyers leaving the auction house with the katsinam in bags treated them merely as objects that would most likely never be seen by the Hopi again.\textsuperscript{109} Servan-Schreiber attempted to enjoin the April 2013 auction by using arguments based in French law in order to provide enough legal basis to enjoin the sale.\textsuperscript{110} First, he argued that prohibiting sales of funeral items and graves are alike the current sacred function of the katsinam as embodiments of the dead, thereby prohibiting their sales as funeral items.\textsuperscript{111} Second, French law prohibits an individual family member from selling an object that is otherwise owned by the entire family.\textsuperscript{112} However, the French Court of First Instance disregarded both arguments.\textsuperscript{113} The Court instead cited to an unrelated article in the Civil Code, stating that “in spite of their sacredness to the Hopi these masks are not a representation of any creature, alive or dead,”\textsuperscript{114} and “the claim that Hopi cultural patrimony is exclusively their property has no legal basis according to French law.”\textsuperscript{115} Servan-Schreiber found this to be an impres-

\textsuperscript{106} Gilles Néret-Minet is the expert in nautical items at the Parisian auction house Néret-Minet Tessier & Sarou. See Introduction to the Auction House, supra note 87.
\textsuperscript{107} Greenberg, supra note 88 (quoting Gilles Néret Minet).
\textsuperscript{108} See Mashberg, supra note 1.
\textsuperscript{109} Charles H. Rivken is the U.S. ambassador to France and through a spokesman said that he was “saddened to learn that Hopi sacred cultural objects are being put up for auction today in Paris.” See Mashberg, supra note 1.
\textsuperscript{110} Bringing a Katsina Home, supra note 91.
\textsuperscript{111} Id.
\textsuperscript{112} Id.
\textsuperscript{113} Id; Hai, supra note 103.
\textsuperscript{115} Cécile R. Ganteaume, Respecting Non-Western Sacred Objects: An A:\textsuperscript{i}shiwi A\textsuperscript{h}ay\textsuperscript{u}nda (Zuni War God), the Museum of the American Indian–Heye Foundation, and the Museum of Modern Art, NAT’L MUSEUM AM. INDIAN (Apr. 15, 2013), http://blog.nmai.si.edu/main/2013/04/respecting-non-western-sacred-objects.html; see also Bringing a Katsina Home, supra note 91.
sion of discomfort of the Court, which was finding an alternative justification for allowing the sale to continue.\textsuperscript{116} While the Court acknowledged the religious importance of the katsinam to the Hopi, it has otherwise refused to recognize them as a current part of worship and their sacredness alone was insignificant to warrant protection by the courts.\textsuperscript{117} This reasoning ultimately allowed for the sale to continue and generate $1.2 million USD in sales and auction house fees.\textsuperscript{118}

2. December 2013 Decision

In addition to the protests surrounding the April 2013 auction, in December 2013, a Hopi representative attempted to block yet another sale of katsinam that took place at Parisian auction house Drouot.\textsuperscript{119} Notwithstanding a request from the U.S. Embassy to delay the April 2013 sale, the Hopi instituted a new lawsuit over the December 2013 sales in order for Hopi representatives to identify the masks and determine whether they had any claims to the items under the Convention.\textsuperscript{120} However, the Court allowed the sale to continue because there was no French law that called for the protection of indigenous peoples, and the Hopi failed to prove that the case fell under the scope of the UNESCO Convention.\textsuperscript{121} The Hopi believe that the masks, dating back to the late nineteenth and early twentieth centuries, were taken illegally from a reservation in the twentieth century, and that selling them as commercial art is

\textsuperscript{116} See id.; Hai, supra note 103.
\textsuperscript{117} See id.; see also Mashberg, supra note 1.
\textsuperscript{118} See Hai, supra note 103; see also Mashberg, supra note 1.
\textsuperscript{121} Adamson, supra note 120; Boutron, supra note 88; see Adamson, supra note 119.
illegal because their spiritual significance and their communal ownership awarded them no commercial value.\textsuperscript{122} Regardless of Hopi and U.S. actions, the sale commenced with a light-hearted auctioneer Eric Geneste crying, “This is the event of the year . . . It’s right here, right now . . . This is the American Indian sale of 2013.”\textsuperscript{123} The items sold quickly, ultimately generating $1.6 million USD.\textsuperscript{124} Of this $1.6 million USD, the Annenberg Foundation\textsuperscript{125} spent $530,695 USD and bought twenty-one of the twenty-four Hopi objects to return them to the Hopi tribe. Servan-Schreiber, on behalf of a private buyer, was able to purchase a mask as a gift to the Hopi.\textsuperscript{126} While grateful for the return of twenty-two masks, the cultural director for the Hopi tribe was frustrated, telling reporters that “no one should have to buy back their sacred property.”\textsuperscript{127} Despite the “generous act” of the Annenberg Foundation, as said by David Killion, the U.S. Ambassador to the U.N. cultural agency,\textsuperscript{128} Killion believes that the battle has not yet been won.\textsuperscript{129} Though perhaps, tides are changing.\textsuperscript{130}

\begin{thebibliography}{9}
  \bibitem{Adamson} Adamson, supra note 120; Boutron, supra note 88; see Adamson, supra note 119.
  \bibitem{Adamson2} Adamson, supra note 120.
  \bibitem{Adamson3} \textit{Id.}; see Adamson, supra note 119 (expounding upon the beauty of the katsinam and the seller’s choice of Paris as the location for the sale of their katsinam evidenced that Paris is the world leader in primitive art sales).
  \bibitem{Annenberg} The Annenberg Foundation was established in 1989 by Walter H. Annenberg and as a family foundation it provides a number of services like grantmaking and charitable work to support the community of the world. \textit{See About the Foundation, ANNENBERG FOUNDATION, http://www.annenbergfoundation.org/about (last visited Jan. 24, 2015)}.
  \bibitem{Rosenberg} Rosenberg, supra note 119.
  \bibitem{Killion} \textit{Id.}
  \bibitem{Adamson3} Thomas Adamson, \textit{Hopi Tribe’s Plea to Not Sell Sacred Masks Ignored by Auction House, So Charity Does Something Amazing, HUFFINGTON POST (Dec. 12, 2013), http://www.huffingtonpost.com/2013/12/12/hopi-tribe_n_4432781.html}.
  \bibitem{Warshaw} Monroe Warshaw, an art collector from New York who purchased two katsinam in the April 2013 auction, visited the Hopi and promptly returned the masks to them in September 2013 after a change of heart. His visit en-
\end{thebibliography}
3. June 2014 Decision

Yet another auction took place on Friday June 27, 2014, at EVE Company in Paris, France, which flew in the face of efforts from the U.S. Embassy and other players to help the Hopi enjoin the two previous Parisian auctions of katsinam in April and December 2013. Represented by attorney Pierre Ciric and initiated by the Holocaust Art Restitution Project (HARP), the Hopi tribe brought yet another suit. HARP sought to enjoin the auction in another attempt for the Hopi to inspect the katsinam to determine their authenticity and whether they were taken without authorization by the Hopi, thus subject to restitution. Other interested parties began to voice concerns, including objections by Survival International, a lecture by Federal Judge Diane Humetewa, and Em-

lightened him on the special meaning the masks had to the Hopi tribe. See Adamson, supra note 119.

131. EVE Company was “founded in 2002 as a result of the reform of the public auction market requiring auctioneers to exercise the so-called voluntary activity independent form of judicial activity” and “organizes its sales mainly at Drouot around various specialties.” About Us, AUCTION EVE, http://www.auctioneve.com/statique/etude_en.jsp (last visited Jan. 24, 2015).


134. HARP was founded in 1997 to help Jewish families that fell victim to looted cultural property surrounding World War II and conduct research regarding stolen property during wartime. About, PLUNDERED ART, plundered-art.blogspot.com/p/about.html (last visited Aug. 29, 2015).

135. See Ciric, supra note 133; Mashberg, supra note 1.

136. See Boehm, supra note 7; Mashberg, supra note 1.

137. Survival International was founded in 1969 as the only organization created to help protect the land and cultures of tribal people throughout the world. About Us, SURVIVAL INT’L, http://www.survivalinternational.org/info (last visited Jan. 24, 2015).

138. Hopi Judge Diane Humetewa is the first female Native American to be appointed as a U.S. District Court Judge. See Michael Kiefer, First Native American Woman Confirmed as Federal Judge, USA TODAY (May 16, 2014),
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bassy minister counselor Philip J. Breeden, who hoped that her lectures generated enough publicity for buyers and sellers to reconsider the sales’ legality arguing that “the sale of a sacred object cannot be dismissed with the wave of a hand as mere commercial transaction.” The suit was brought by HARP Chairman Ori Z. Soltes to the Conseil des Ventes, an arm of the French government that in its administrative capacity regulates and supervises public auction sales in the French market, and urged the Conseil des Ventes to use their power to stop the sale. The Conseil des Ventes and the French judge hearing the civil suit seeking an injunction, ruled no differently than in each of the previous suits, finding that the auction house had not violated any French law. In a special hearing on June 25, 2014, despite evidence that the provenance of the katsinam was suspect, the Conseil des Ventes dismissed consideration on the issue and subsequently found that the Hopi and all Native American tribes lack the legal capacity or standing to bring any cultural claims in France. Following the Conseil des Ventes’ troubling ruling, an appeal to a Parisian court only days later failed, as the court rejected the injunction and the auction ultimately continued as planned. Regardless of yet another loss in court, publicity generated by the Hopi and other key players may have begun to take effect as only nine out of the twenty-nine Hopi artifacts were actually sold at the June 2014 auction, resulting in only a fraction of the sales generated by the two previous auctions: a mere $187,000 USD.


139. Boehm, supra note 7; see ICTMN Staff, supra note 132.


142. ICTMN Staff, supra note 132; Ciric, supra note 7.

143. Ciric, supra note 133.

144. See ICTMN Staff, supra note 132; Boehm, supra note 7.

145. See Mashberg, supra note 1; ICTMN Staff, supra note 132 (stating that a spokeswoman for EVE believes the sales have dropped from a more selective market).
4. Response to the June 2014 Decision

Following the latest sale of Hopi katsinam masks, Pierre Ciric, attorney for the HARP, wrote numerous articles online articulating his views on the two most disheartening perspectives of the Conseil des Ventes decision.\textsuperscript{146}

First, Ciric mentions Article 1-5-1 of the Conseil des Ventes Code of Ethics for Auction Houses, which requires due diligence in determining the origin of the item sold, whether the seller has a right in selling it, or if the origin is suspect, otherwise the auction house must enjoin the sale and notify the appropriate authorities.\textsuperscript{147} Despite claims by the Hopi that the legal appropriation of the katsinam was suspect and the auction house had only performed a cursory review of the seller’s right to auction them, the Conseil refused to apply the appropriate Article of their codified law or require EVE to provide further due diligence on the provenance of the katsinam.\textsuperscript{148} Considering the numerous U.S. laws regarding protection and restitution of Native American artifacts, and France’s own codified laws requiring due diligence prior to the sale of suspect objects, Ciric found it “incomprehensible” that the cursory reviews by EVE were sufficient to establish due diligence in good faith.\textsuperscript{149} Ciric coldly finds EVE’s “due diligence” more aligned with “conscious avoidance.”\textsuperscript{150}

Second, in stripping Native Americans of standing in cultural claims in France, the Conseil found the Hopi’s 1936 Constitution\textsuperscript{151} “insufficient to establish the tribe as a legal entity under French law,” which has otherwise been federally recognized by the United States, thereby affording “legal authority to act pursuant to conditions established by the Congress.”\textsuperscript{152} This

\textsuperscript{146} See generally Ciric, supra note 133; see also Ciric, supra note 7.
\textsuperscript{147} Ciric, supra note 133.
\textsuperscript{148} Id.
\textsuperscript{149} See id.
\textsuperscript{150} Id.
\textsuperscript{151} Approved on December 19, 1936, the Constitution and By-Laws of the Hopi Tribe were adopted in order “to provide a way of working together for peace and agreement between villages, and of preserving the good things of the Hopi life, and to provide a way of organizing to deal with modern problems, with the United States Government and with the outside world generally.” See U.S. DEPT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS, CONSTITUTION AND BY-LAWS OF THE HOPI TRIBE ARIZONA pmbl. (1936), available at http://www.loc.gov/law/help/american-indian-consts/PDF/37026339.pdf.
\textsuperscript{152} Ciric, supra note 133.
decision is troubling because France is not affording legal entities under U.S. law the same courtesy that U.S. courts provide for foreigners, by generally accepting a foreigner’s standing on the home nation’s definition of citizenship.\textsuperscript{153} Ciric and others are outraged by the recent Conseil decision, which Ciric believes has created a dangerous precedent for other indigenous peoples to similarly lose the right to bring claims on their cultural property, as well as allowing France to be a “safe haven” for the sales of indigenous cultural property.\textsuperscript{154}

Ori Z. Soltes, the chairman of the HARP, also spoke out against the “tragic and shameful” decision by the Conseil des Ventes on the group’s blog, finding that the Conseil’s decision “flies in the face of the progress made in international law by all tribes and indigenous peoples,” despite France’s support of the UNDRIP and its grant of legal status to indigenous peoples.\textsuperscript{155}

\textit{D. Did France’s Financial Distress Drive Decisions to Ignore the Outcry of the Hopi?}

In light of its decision to strip Native Americans of standing to bring cultural claims in France, France is willing to turn a blind eye to the inequities that Native Americans face.\textsuperscript{156} Rather than provide an open forum and investigation into the progeny of these katsinam, France has incidentally safeguarded their own auction houses from involvement in future litigation.\textsuperscript{157} France was a historic leader in the global art market, but its position has recently declined.\textsuperscript{158} The percentage of art

\textsuperscript{153}. For a critique of France’s disregard for the courtesy the United States affords foreign citizens, see id.
\textsuperscript{154}. Id.
\textsuperscript{155}. Id.; Boehm, supra note 7; Holocaust Art Restitution Project, supra note 82.
\textsuperscript{156}. See generally Boehm, supra note 7.
\textsuperscript{157}. See id.
\textsuperscript{158}. See Howard, supra note 15; Bilefsky & Carvajal, supra note 15 (stating that as of 2013, France was ranked fourth in contemporary art sales at only €26 million, which was well behind the first-place holder, China, which sold about $800 million USD in that same period). See generally Abigail R. Esman, \textit{The World's Strongest Economy? The Global Art Market}, FORBES (Feb. 29, 2012), http://www.forbes.com/sites/abigail-esman/2012/02/29/the-worlds-strongest-economy-the-global-art-market/ (noting that Paris, France became an auction center in the nineteenth-century when Baron James de Roth-
sales taking place at French institutions has similarly dropped. Not to the surprise of some, Drouot faced scandal in 2010, when Drouot was the source of an underground art-trafficking ring. In response, many Drouot auctioneers stressed the need for Drouot to modernize, and even the Justice Ministry voiced its hope to “save it from itself.”

Additionally in 2013, France desperately turned to selling an estimated $250,000 USD worth of fine wines in order to reinvest in vintages, only a minute amount compared to France’s €100 billion deficit. A declining market prominence and France’s attempt to replenish a vast deficit through the sales of wine seem to suggest that France’s financial distress is a cause of worry on numerous fronts. Coincidentally, through the actions of the Conseil des Ventes and France’s judiciary, France has allowed katsinam auctions to continue with the inadvertent and somewhat suspect effect of protecting a decaying position in the art market and shielding auction houses from the outcries of the Hopi.

The Conseil des Ventes has done little to rebut the implication that there may be motives behind their decision to prevent indigenous people from bringing cultural claims in France, and

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159. See CVV Publishes Results, supra note 16 (stating that auction house Drouot represented over 58 percent of the sales in Paris in 2005, compared to a 20 percent decline in 2013 to only 37.5 percent of sales); The Art of Beating the Economic Crisis, supra note 16.
160. See Sayare, supra note 17.
161. Id.
162. Petroff, supra note 18.
that this decision is ultimately putting more money into the hands of auction houses. Chadelet claimed that it is not the Conseil’s role to decide which objects are to be or not to be sold, but rather the Conseil must independently, impartially, and transparently regulate, defend, and control auctions in order to prevent public disorder. However, the Conseil actively chose to allow the sale of katsinam to continue in June 2014. Additionally, the Conseil went beyond its supposed role and stripped all Native Americans of standing, which is a power beyond their reach, according to its president. In 2014, the President of the Conseil des Ventes, Catherine Chadelat, disclosed a fear that auctioneers’ roles are in danger and further admitted that in order to improve sales on individual and corporate levels, the Conseil must redefine its role by looking to the art market in a sociological sense along with the accounting side of auction houses. In response to Chadalet’s fear that auctioneers’ roles are in danger, the Symev (the National Union for Houses of Voluntary Sales) spoke out in defense, arguing that the Conseil itself is what is in danger and even questioned the Conseil’s legitimacy.

166. *See generally* Circon, supra note 133.
167. *See id.*; Sasportas, supra note 165.
170. Cold Auctioneers, supra note 168.
III. THE FAILURE OF THE UNDRIP: INDIGENOUS PEOPLES REMAIN POWERLESS

The UNDRIP is a document that guides member states to act justly, but without consequences for noncompliance, member states are free to act without regard to any indigenous peoples. The UNDRIP is powerless to protect indigenous peoples in light of its status as a declaration under international law. This Part will address these concerns and offer the following solution: in order for the UNDRIP to protect indigenous people from decisions that adversely affect them, it is the U.N.’s duty to transform the principles of the UNDRIP into a multilateral treaty, which must then be adopted into the law of member states. This solution will ultimately guarantee legal consequences are provided for any potential noncompliance.

A. The UNDRIP Fails to Prevent France from Hawking Hopi Katsinam

The UNDRIP attempts to impose on states an arena for indigenous peoples to participate in various decisions that affect them and remedies for indigenous peoples otherwise infringed upon. However, these principles of the UNDRIP do not hold water, as the document has no binding force. This fatal flaw of the UNDRIP results in a document that is powerless to protect indigenous peoples worldwide. This is an exemplary incident of where the UNDRIP has failed: defenseless indigenous peoples are without recognition or protection from the international community. Regardless of France’s allegedly economically driven judicial decision, and their hypocritical adherence to the principles set out in the UNDRIP, the problem originates with the power the UNDRIP fails to possess.

B. A U.S.-Franco Treaty is Not Enough

In light of the ongoing prejudice and in defense of the Hopi, Servan-Schreiber and Judge Humetewa have spoken about a

171. See Press Release, supra note 6; Godreche, supra note 164; ICTMN Staff, supra note 164. See generally Holocaust Art Restitution Project, supra note 82.
172. See G.A. Res. 61/295, supra note 5, arts. 5, 8 (para. 2) & 11.
173. See id. art. 40.
175. See Ciric, supra note 7; Boehm, supra note 7.
desire to come together and suggest creating a U.S.-Franco agreement that can resolve the sacrilegious sales of Hopi katsinam.\textsuperscript{176} In an interview, Servan-Schreiber explained that the Hopi community would like for the U.S. Native American Graves Protection and Repatriation Act\textsuperscript{177} be reciprocated in France.\textsuperscript{178} The idea to protect Native American artifacts in France was brought to the attention of the Minister of Justice in France, though no progress has been made.\textsuperscript{179} Servan-Schreiber recognizes that the process to develop, draft, and incorporate a treaty is long and hard.\textsuperscript{180} “This is not going to happen tomorrow,” as Servan-Schreiber said himself, thus while the idea is percolating with the Minister of Justice in France, the Hopi will need to work for many years before even a draft law is sent through French Parliament and proposed.\textsuperscript{181}

Although the efforts of the Hopi and attorney Servan-Schreiber are admirable, the mere idea to propose a bilateral U.S.-Franco treaty neglects to address the predominant issue that the UNDRIP fails to protect indigenous peoples worldwide. It is speculative that Servan-Schreiber and the Hopi’s concept would even go through French Parliament. However, even if the many years of work to accomplish their goal of forming a U.S.-Franco treaty is successful, the treaty will only solve isolated incidents of France selling Hopi katsinam and other Native American sacramentals. This theoretical treaty, like the UNDRIP, would fail to provide protection to all of the indigenous peoples of the world. No matter the outcome of a hypothetical U.S.-Franco treaty may be, the UNDRIP will remain

\textsuperscript{176} See Godreche, supra note 164.
\textsuperscript{178} Godreche, supra note 164.
\textsuperscript{179} Id.
\textsuperscript{180} See id.
\textsuperscript{181} Id.
just as powerless to protect all other indigenous peoples throughout world.

C. The U.N. Has a Duty to Protect Indigenous People

The Preamble to the U.N. Charter lists four objectives that specifically include the goal “to promote social progress and better standards of life in larger freedom, and for these ends . . . to practice tolerance and live together in peace with one another as good neighbours.”182 If countries like France continue to disregard the integrity of international law, there is no incentive for other member states to abide by the principles set out in the UNDRIP and protect those who cannot protect themselves. However tainted decisions may be, indigenous peoples worldwide are nevertheless powerless to protect their sacramentals, unless these hallowed ends made under the U.N. Charter are honored and the UNDRIP is enforced. Clearly demonstrated, countries are reluctant to follow through with tolerance as good neighbors when faced with a choice between keeping a sacred promise to the international community and saving themselves from economic difficulty.183

The UNDRIP must be transformed into a multilateral treaty, adopted by member states, and instituted into binding law. The principles in the UNDRIP have the potential to protect indigenous peoples from various adverse decisions, providing they have binding force behind them.184 If the UNDRIP is instituted as a treaty, further abuse by member states would be prevented through the enforcement of UNDRIP provisions or otherwise states would face consequences for noncompliance.

Transforming the UNDRIP into a treaty with binding force is not an unattainable goal. On December 10, 1948, the U.N. General Assembly adopted the Universal Declaration of Human Rights as a result of the atrocities of World War II in order to set out an international commitment that recognized “the inherent dignity and . . . equal and inalienable rights of all members of the human family is the foundation of freedom,

182. U.N. Charter pmbl.
183. See discussion infra Part II.C.
184. See G.A. Res. 61/295, supra note 5, arts. 8 (para. 2), 11, 40 (providing that indigenous people are to be afforded “just and fair procedures” when resolving disputes between parties as well as be provided remedies that consider the “customs, traditions, rules and legal systems” of indigenous peoples).
justice and peace in the world.”185 This declaration has led to numerous “legally binding international human rights treaties,” including the adoption of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 1976, which together with the Universal Declaration of Human Rights comprises the International Bill of Human Rights.186 When signing onto these treaties, member states agree to implement their own legislation that will adhere to the duties and obligations required of them.187 However, where there fails to be redress at the local level, there are international procedures and mechanisms available to ensure that human rights standards are upheld and enforced at the micro level.188 Similarly, the UNDRIP as a treaty would require member states to implement legislation that aligns with UNDRIP provisions and where redress cannot be provided domestically, indigenous people would be able to follow the international human rights procedures already in place.

CONCLUSION

The U.N. avows itself,

to maintain international peace and security . . . develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples . . . achieve international co-operation in solving international problems . . . and be a centre for harmonizing the actions of nations in the attainment of these common ends.189

It is by these purposes that the U.N. ought to be compelled to follow the example set by the Universal Declaration of Human

186. Id.
188. Id.
189. U.N. Charter art. I.
Rights, and establish binding force behind the principles set out in the UNDRIP. Whether such binding force be created by adopting international covenants or implementing other forms of multilateral treaties with binding force on member states, the U.N. must follow their own goal “to practice tolerance and live together in peace with one another as good neighbours”\textsuperscript{190} and actively protect the 370 million indigenous peoples throughout the world.\textsuperscript{191}

\textit{Samantha K. Nikic}\textsuperscript{*}

\textsuperscript{190} Id. pmbl.

\textsuperscript{191} Press Release, \textit{supra} note 6.

* B.A., Fordham University (2011); J.D. Brooklyn Law School (expected 2016); Executive Notes and Comments Editor of the \textit{Brooklyn Journal of International Law} (2015-2016). First and foremost, I would like to thank my parents, Diella and Nicholas, and my brother Nick: my gratitude for your unconditional love, support, and encouragement is immeasurable. Thank you to my entire family, and especially my grandparents – poor Albanian farmers who emigrated from the former Yugoslavia in search of opportunity: I stand proudly today because I stand on your shoulders. Many thanks are also due to the the staff of the \textit{Journal} for their hard work and guidance throughout the drafting of this Note. And to the Hopi: I have sought in this Note to shed light on an ongoing injustice to your faith and culture. It is my sincerest wish that your Katsinam are brought home for good. All errors and omissions are my own.