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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 head-dress 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

1. Tom Mashberg, *Auction of Hopi Masks Proceeds After Judge’s Ruling*, ARTSBEAT BLOG, (Apr. 12, 2013), <http://artsbeat.blogs.nytimes.com/2013/04/12/french-judge-rules-that-auction-of-hopi-masks-can-proceed/>.

2. *Id.*

3. *Id.*; see also U.N. Educ., Sci., and Cultural Org. [UNESCO], International Code of Ethics for Dealers in Cultural Property, CLT/CH/INS-06/25 rev (1999) [hereinafter Code of Ethics for Cultural Property Dealers], <http://unesdoc.unesco.org/images/0012/001213/121320M.pdf>; discussion *infra* Part I.A. See generally Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231, 10 I.L.M. 289 [hereinafter Convention on Cultural Property]. For a list of ratifying states, see Parties to the UNESCO Convention on Cultural Property, UNESCO, <http://www.unesco.org/eri/la/convention.asp?KO=13039&language=E&order=alpha> (last visited Oct. 25, 2015).

Property in 1999.⁴ 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.⁵

However, the UNDRIP is not a binding piece of international law.⁶ 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.⁷ 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.⁸ At the UNDRIP’s adoption, French representative Fabien Fieschi⁹ “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-

4. Convention on Cultural Property, *supra* note 3; *see also* Code of Ethics for Cultural Property Dealers, *supra* note 3.

5. *See* WALTER R. ECHO-HAWK, IN THE LIGHT OF JUSTICE: THE RISE OF HUMAN RIGHTS IN NATIVE AMERICA AND THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES 88 (2013). *See generally* G.A. Res. 61/295, Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007).

6. Press Release, Gen. Assembly, General Assembly Adopts Declaration on the Rights of Indigenous Peoples; ‘Major Step Forward’ Towards Human Rights for All, Says President, U.N. Press Release GA/10612 (Sept. 13, 2007).

7. Pierre Ciric, *Opinion: Hopi and Navajo Masks Auction Precedent in France Is Dangerous*, ARTNET NEWS (July 25, 2014), <http://news.artnet.com/art-world/opinion-hopi-and-navajo-masks-auction-precedent-in-france-is-dangerous-66975> (describing a French case which held that Native American tribes lack standing and therefore cannot sue in French court); Mike Boehm, *Sacred Hopi Tribal Masks are Again Sold at Auction in Paris*, L.A. TIMES (June 28, 2014), <http://www.latimes.com/entertainment/arts/culture/la-et-cm-native-american-hopi-sacred-mask-auction-paris-20140627-story.html> (referencing the ruling that Native American tribes lack standing to sue on “cultural claims” in French courts).

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.”¹⁰ Fieschi further emphasized that many of the rights provided in the UNDRIP were already present in the French Constitution.¹¹ 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.¹² 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.¹³ 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.¹⁴ 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.¹⁵ Mirroring the decline in global art sales, the amount of sales taking place at French-founded auction houses has dropped.¹⁶ 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.¹⁷ Confronted with economic distress, France

10. Press Release, *supra* note 6.

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.

15. See Jeremy R. Howard, *The Growth of the Auction Market*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/1557506/art-market>. See generally Dan Bilefsky & Doreen Carvajal, *A Capital of the Arts is Forced to Evolve*, N.Y. TIMES, Oct. 28, 2014, at A6.

16. See *The CVV Publishes its Results on France’s Sales Performance in 2013*, ART MEDIA AGENCY (Mar. 18, 2014), <http://en.artmediaagency.com/82800/the-cvv-publishes-its-results-on-frances-sales-performance-in-2013/> [hereinafter *CVV Publishes Results*]; *The Art of Beating the Economic Crisis*, EURONEWS (Apr. 19, 2013), <http://www.euronews.com/2013/04/19/the-art-of-beating-the-economic-crisis/>.

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.¹⁸

Notwithstanding the rights of the Hopi, a tribe and sovereign nation located in northeastern Arizona¹⁹ and considered indigenous peoples under the UNDRIP, France's recent ruling has shielded the international community from the outcries of the Hopi.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.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-

Jan. 24, 2015); Scott Sayare, *Chatter of Swindles and Scams at Auction House*, N.Y. TIMES, Apr. 27, 2010, at A6.

18. Alanna Petroff, *Hard-Up France Sells Presidential Wine*, CNN MONEY (May 1, 2013), <http://money.cnn.com/2013/05/01/news/economy/france-europe-wine/>.

19. HOPI TRIBE OFFICIAL WEBSITE, <http://www.hopi-nsn.gov/> (last visited Oct. 26, 2015).

20. See discussion *infra* Part II.C.

21. See Ciric, *supra* note 7; Boehm, *supra* note 7; Press Release, *supra* note 6; ECHO-HAWK, *supra* note 5, at 73 (quoting United Nations Permanent Forum on Indigenous Issues, *Declaration on the Rights of Indigenous Peoples Frequently Asked Questions*, http://www.un.org/esa/socdev/unpfii/documents/faq_drips_en.pdf (last visited Oct. 26, 2015)).

tive Americans of standing to bring cultural claims in France.²² 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)."²³ 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."²⁴

22. See Ciric, *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").²⁵ 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."²⁶ 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.²⁷ 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.²⁸

Subsequently, in 1999, UNESCO²⁹ 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.³⁰ The overall purpose of the Ethical Code is to acknowledge rising concerns of unethical trading of cultural property and instill a binding ethical code on dealers for all ratified member states.³¹ In March 2011, the UNESCO Secretari-

25. See generally Convention on Cultural Property, *supra* note 3.

26. Convention on Cultural Property, *supra* note 3, art. 1.

27. See Marilyn E. Phelan, *Stolen and Illegally Exported Cultural Property and International Legislation and Treaties Protecting Cultural Property*, in 6 A.L.R. INT'L 527, § 1 (2012); Convention on Cultural Property, *supra* note 3, art. 8.

28. Phelan, *supra* note 27, at 527.

29. UNESCO's mission is "to contribute to the building of peace, the eradication of poverty, sustainable development and intercultural dialogue through education, the sciences, culture, communication and information." See *About Us*, UNESCO, <http://www.unesco.org/new/en/unesco/about-us/> (last visited Jan. 24, 2015); *Introducing UNESCO: What We Are*, UNESCO, <http://www.unesco.org/new/en/unesco/about-us/who-we-are/introducing-unesco/> (last visited Jan. 24, 2015).

30. See generally Code of Ethics for Cultural Property Dealers, *supra* note 3.

31. See *id.*

at³² 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.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.³⁴

B. The UNDRIP

The U.N. was founded in the 1940s and entirely excluded indigenous peoples from representation.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.³⁶ In 2007, after extensive work by pioneers advancing the rights of indigenous peoples,³⁷ the U.N. General Assembly³⁸ adopted the UNDRIP, 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

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).

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.

34. See discussion *infra* Part II.B.

35. See *Rights of Indigenous People: Process*, DIALOGUE BETWEEN NATIONS, <http://www.dialoguebetweennations.com/ddd/Process.htm> (last visited Oct. 26, 2015).

36. See *id.*

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).

38. The General Assembly is “the chief deliberative, policymaking and representative organ of the United Nations” providing “a unique forum for multilateral discussion of the full spectrum of international issues.” See *Functions and Powers of the General Assembly*, UNITED NATIONS, <http://www.un.org/en/ga/about/background.shtml> (last visited Jan. 24, 2015).

“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 states⁴¹ 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 Association⁴⁵ 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.

41. For a list of all U.N. member-states, see *Member States of the United Nations*, UNITED NATIONS, <http://www.un.org/en/members/> (last visited Jan. 24, 2015).

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.”⁴⁷

While the UNDRIP does not define “indigenous peoples,” some view this as an opportunity for flexibility, rather than liability.⁴⁸ Some definitions have likened indigenous peoples to “ethnic groups”; however, this is not always applicable to the international community.⁴⁹ The Martínez-Cobo Report⁵⁰ 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.”⁵¹ 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.⁵² 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.”⁵³ A definition by Erica Irene Daes, Chairperson of the U.N. Working Group on Indigenous Populations,⁵⁴ who was inspired by the Martínez-Cobo Report,

47. *Id.* at 88–91.

48. See Baldwin & Morel, *supra* note 44, at 132–34.

49. See CLAIRE CHARTERS & RODOLFO STAVENHAGEN, MAKING THE DECLARATION WORK: THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES 153 (2009).

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 Martinez 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.*

54. The Working Group on Indigenous Populations is a charter-based U.N. body established for indigenous peoples to bring their own experiences and concerns to the U.N., See WORKING GROUP ON INDIGENOUS POPULATIONS, <http://www.iwgia.org/human-rights/un-mechanisms-and-processes/working-group-on-indigenous-populations> (last visited Jan. 24, 2015).

is more accommodating.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.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.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.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.”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.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.⁶¹ What is unfortunate in the case of the Hopi is that

55. See CHARTERS & STAVENHAGEN, *supra* note 49, at 153; Baldwin & Morel, *supra* note 44, at 133.

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.)

57. See CHARTERS & STAVENHAGEN, *supra* note 49, at 153.

58. See Baldwin & Morel, *supra* note 44, at 140–41.

59. *Id.* at 141.

60. *Id.*

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).

65. *See* G.A. Res. 61/295, *supra* note 5, arts. 5, 11 (para. 2), 12 (para. 2), 19. The UNDRIP sets out the rights of indigenous people to “[1] maintain and strengthen their distinct . . . cultural institutions . . . [2] participate fully . . . in the . . . cultural life of the State . . . [3] revitalize their cultural traditions and customs . . . [and 4] use and control of their ceremonial objects.” *Id.*

66. Other countries, whether by way of the UNDRIP or on their own accord, have provided redress in various forms, including the United Kingdom’s removal of the accreditation status of museums for breaching set standards and practices. *See generally* *Sekhemka Statue: Northampton Museum Loses Art Council Accreditation*, BBC NEWS (Aug. 1, 2014) [hereinafter *Sekhemha Statue*], <http://www.bbc.com/news/uk-england-northamptonshire-28602849>.

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.⁷² The UNDRIP merely acts as a guide by which member states and France ought to act, rather than as law.⁷³ 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.⁷⁴

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.⁷⁵ 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.⁷⁶ 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 Constitution⁷⁷ introduced the Constitutional Council, which is part of the judiciary and "has the pow-

72. See Press Release, *supra* note 6.

73. See ECHO-HAWK, *supra* note 5, at 73.

74. See Ciric, *supra* note 7; Boehm, *supra* note 7.

75. See discussion *infra* Part II.A.–B.

76. See Ciric, *supra* note 7; see also Boehm, *supra* note 7.

77. France's Fifth Republic began in 1958 when Charles de Gaulle and Michel Debré drafted a constitution that increased executive powers. See *Fifth Republic*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/206499/Fifth-Republic> (last visited Jan. 24, 2015). See generally THE FRENCH LEGAL SYSTEM (Ministry of Justice ed., 2012), <http://www.justice.gouv.fr/multilinguisme-12198/english-12200/justice-in-france-22126.html>; Professor Claire M. Germain, *French Law Guide*, CORNELL U. L. LIBRARY <http://www.lawschool.cornell.edu/library/whatwedo/researchguides/french.cfm> (last visited Oct. 18, 2014)(discussing how France, now in its Fifth Republic, has had fifteen constitutions with the current one declared on October 4,

er to interpret the highest French and International norms” and uphold the Constitution.⁷⁸ 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.”⁷⁹ 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.”⁸⁰ 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.⁸¹ 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*, CONSTITUTIONALITY 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*).

80. J.H. Shennan, *The Role of the Constitutional Council*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/place/France/Government-and-soeity.html> (last visited Jan. 24, 2015).

81. 1958 CONST. arts. 56–63 (Fr.).

which reinforced the regulatory authority of the Conseil des Ventes,⁸² the board that stripped Native Americans of standing in France in June 2014.⁸³ Additionally, the Minister of Justice⁸⁴ 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.”⁸⁵ 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.”⁸⁶ It is clear that France intended to provide their own mechanisms for protecting cul-

82. The *Conseil des Ventes*, which is also known as the Council of Voluntary Sales of Chattels at Public Auction, was “created by the law on July 10, 2000.” See *CONSEIL DES VENTES, PUBLIC AUCTION SALES IN FRANCE: 2012 ACTIVITY REPORT* 4 (2012), http://www.conseildesventes.fr/sites/default/files/public_auction_sales_in_france_-_conseil_des_ventes_activity_report_2012.pdf. It is “an administrative body in charge of regulating and supervising auction sales on the French Market.” Holocaust Art Restitution Project, *The Holocaust Art Restitution Project Denounces a “Shameful” and “Tragic” Decision by the French Government to Refuse the Suspension of an Auction Sale of Sacred Hopi and Navajo Masks to be Held at Paris’ Hotel Drouot on June 27, 2014*, PLUNDEREDART (June 27, 2014), <http://plundered-art.blogspot.com/2014/06/the-holocaust-art-restitution-project.html>.

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.).

84. The Ministry of Justice administers the French judicial system, “lays down the major public policy guidelines in the field of Justice, draws up draft laws and regulations and oversees their implementation.” See *Justice in France*, MINISTÈRE DE LA JUSTICE [MINISTRY OF JUSTICE] (Jan. 3, 2013), <http://www.justice.gouv.fr/multilinguisme-12198/english-12200/justice-in-france-22126.html>.

85. Décret 0051 du 21 février 2012 portant approbation du recueil des obligations déontologiques des opérateurs de ventes volontaires de meubles aux enchères publiques [Decree 0051 of February 29, 2012 Approving the Collection of the Ethical Obligations of Operators of Voluntary Sales of Chattels by Public Auction], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [Official Gazette of France], Feb. 29, 2012, p. 3572.

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

87. Founded under the reign of King Louis XIV in 1691, Néret-Minet Tessier & Sarrou is still operated in Paris, France by the founding families, including auctioneers Rodolphe Tessier, Vincent Sarrou, and Maître Gilles Néret-Minet. See *Introduction to the Auction House*, TESSIER SARROU & ASSOC., http://www.neret-tessier.com/statique/presentation_en.jsp (last visited Jan. 24, 2015).

88. See Ariel J. Greenberg, *The Hopi Nation Attempts to Stop Paris Sale of Sacred Artifacts*, CTR. FOR ART L., (Apr. 8, 2013), <http://itsartlaw.com/2013/04/08/the-hopi-nation-attempts-to-stop-paris-sale-of-sacred-artifacts/>; Mashberg, *supra* note 1; Anne Boutron, *Vente de masques Hopi et Convention de l’Unesco du 14 novembre 1970 [Sale of Hopi Masks and the UNESCO Convention of November 14, 1970]*, UGGC.COM: ACTUALITÉS JUDICIAIRES : CIVIL, PÉNAL, COMMERCIAL, SANTÉ, MARCHÉ DE L’ART . . . CONTENTIEUX ET RÉOLUTION DES LITIGES. [JUDICIAL UPDATE: CIVIL, CRIMINAL, COMMERCIAL, HEALTH, ART MARKET . . . LITIGATION AND DISPUTE RESOLUTION] (July 1, 2014), <http://contentieux-et-resolution-des-litiges.uggc.com/2014/07/01/vente-de-masques-hopi-et-convention-de-lunesco-du-14-novembre-1970-tgi-paris-refere-6-decembre-2013-rg-1359110/>; *Le retour d’un Katsina [The Return of a Katsina]*, SURVIVAL FR. (Sept. 10, 2013), <http://www.survivalfrance.org/textes/3317-katsina>.

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.⁹¹ Pierre Servan-Schreiber,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.”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.⁹⁴

In the past, France has been sympathetic to items with similar religious significance.⁹⁵ In 2010, France effectively recognized the importance of Maori⁹⁶ tattooed skulls, which were kept to honor ancestors, when the French Assembly returned them to New Zealand and the Maori tribe.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

91. *Bringing a Katsina Home*, SURVIVAL INT’L, <http://www.survivalinternational.org/articles/3315-bringing-a-katsina-home> (last visited Sept. 10, 2015).

92. Pierre 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. *Bringing a Katsina Home*, *supra* note 91.

93. *The Return of a Katsina*, *supra* note 88.

94. *See id.*; Patrick Perez, *Marchands et collectionneurs de sacré retour sur l’affaire des Katsinam Hopi* [Dealers and collectors Sacred: Return on the Business of the Hopi Katsinam], SURVIVAL FR. (Sept. 10, 2013), <http://www.survivalfrance.org/textes/3317-katsina>.

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

96. As of 2004, “there were over 500,000 Māori people, mostly living in cities of New Zealand.” *See* Te Ahukaramū Charles Royal, ‘Māori’, TE ARA, <http://www.TeAra.govt.nz/en/maori> (last updated Sept. 7, 2015).

97. *See* Derek Fincham, *France Decides to Return Tattooed Maori Remains*, ILLICIT CULTURAL PROP. (May 14, 2010), http://illicit-cultural-property.blogspot.com/2010_05_01_archive.html.

Yahoo.fr.⁹⁸ 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 2006.⁹⁹ 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.¹⁰⁰ 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.¹⁰¹

1. April 2013 Decision

Not long before the sale of seventy katsinam on April 12, 2013, Leigh Kuwanwisiwma,¹⁰² 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.¹⁰³ 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."¹⁰⁴ 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.¹⁰⁵

98. Juan Carlos Perez, *Yahoo Loses Appeal in Nazi Memorabilia Case*, PCWORLD (Jan. 16, 2006), <http://www.pcworld.com/article/124367/article.html>; Richard Waters & Patti Waldmeir, *Yahoo Loses Nazi Memorabilia Case*, FIN. TIMES, <http://www.ft.com/intl/cms/s/2/81127f12-83cb-11da-9017-0000779e2340.html#axzz3PnlpKAjZ> (last updated Jan. 13, 2006).

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-Minet¹⁰⁶ regarded the sale as an “homage to the Hopi Indians.”¹⁰⁷ From his perspective, the katsinam were “important works of art” and not sacred objects.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.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.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.¹¹¹ Second, French law prohibits an individual family member from selling an object that is otherwise owned by the entire family.¹¹² However, the French Court of First Instance disregarded both arguments.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,”¹¹⁴ and “the claim that Hopi cultural patrimony is exclusively their property has no legal basis according to French law.”¹¹⁵ Servan-Schreiber found this to be an impres-

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.

107. Greenberg, *supra* note 88 (quoting Gilles Néret Minet).

108. *See* Mashberg, *supra* note 1.

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.

110. *Bringing a Katsina Home*, *supra* note 91.

111. *Id.*

112. *Id.*

113. *Id.*; Hai, *supra* note 103.

114. *Paris Judge Rejects Attempt to Halt Auction of Hopi Sacred Objects*, SURVIVAL INT’L (Apr. 12, 2013), <http://www.survivalinternational.org/news/9135>; *see* *Bringing a Katsina Home*, *supra* note 91.

115. Cécile R. Ganteaume, *Respecting Non-Western Sacred Objects: An A:shiwí Ahayu:da (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.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.¹¹⁷ This reasoning ultimately allowed for the sale to continue and generate \$1.2 million USD in sales and auction house fees.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.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.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.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

116. See *id.*; Hai, *supra* note 103.

117. See *id.*; see also Mashberg, *supra* note 1.

118. See Hai, *supra* note 103; see also Mashberg, *supra* note 1.

119. See Alyssa Rosenberg, *How the Annenberg Foundation Secretly Saved Hopi and Apache Artifacts from Auction*, THINKPROGRESS (Dec. 17, 2013), <http://thinkprogress.org/alyssa/2013/12/17/3073831/anenberg-foundation-hopi/>; Thomas Adamson, *Lawyers Bring Fresh Lawsuit on Sale of Hopi Masks*, NATIVE AM. TIMES (Dec. 6, 2013), <http://www.nativetimes.com/index.php/news/international/9329-lawyers-bring-fresh-lawsuit-on-sale-of-hopi-masks>. Drouot is one of the oldest worldwide public auction houses and boasts itself as “a place of constant exchange with an ever-flowing stream of objects.” See *About Drouot*, *supra* note 17.

120. See discussion *infra* Part I.A.; Thomas Adamson, *Native Artifact Sale in Paris Makes \$1.6 Million*, NATIVE AM. TIMES (Dec. 13, 2013), <http://nativetimes.com/index.php/culture/9348-native-artifact-sale-in-paris-makes-1-6-million>; Boutron, *supra* note 88; see Adamson, *supra* note 119.

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.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.”¹²³ The items sold quickly, ultimately generating \$1.6 million USD.¹²⁴ Of this \$1.6 million USD, the Annenberg Foundation¹²⁵ 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.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.”¹²⁷ Despite the “generous act” of the Annenberg Foundation, as said by David Killion, the U.S. Ambassador to the U.N. cultural agency,¹²⁸ Killion believes that the battle has not yet been won.¹²⁹ Though perhaps, tides are changing.¹³⁰

122. Adamson, *supra* note 120; Boutron, *supra* note 88; *see* Adamson, *supra* note 119.

123. Adamson, *supra* note 120.

124. *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).

125. 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. *See About the Foundation, ANNENBERG FOUNDATION*, <http://www.annenbergfoundation.org/about> (last visited Jan. 24, 2015).

126. Rosenberg, *supra* note 119.

127. *Id.*

128. On April 10, 2014, David T. Killion was appointed Senate Staff Director for the U.S. Commission on Security and Cooperation in Europe (U.S. Helsinki Commission). *See* Biography of Ambassador David T. Killion, COMMISSION ON SECURITY & COOPERATION IN EUR., http://csce.gov/index.cfm?FuseAction=TextRecords.Display&TextRecord_id=82 (last visited Aug. 28, 2015).

129. Thomas Adamson, *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.

130. 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-

3. June 2014 Decision

Yet another auction took place on Friday June 27, 2014, at EVE Company¹³¹ 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 2013.¹³² Represented by attorney Pierre Ciric¹³³ and initiated by the Holocaust Art Restitution Project (HARP),¹³⁴ the Hopi tribe brought yet another suit.¹³⁵ 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.¹³⁶ Other interested parties began to voice concerns, including objections by Survival International,¹³⁷ a lecture by Federal Judge Diane Humetewa,¹³⁸ 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).

132. ICTMN Staff, *Not Again! Hopi Katsinam Auctioned in Paris Despite Outcry*, INDIAN COUNTRY TODAY MEDIA NETWORK (June 30, 2014), <http://indiancountrytodaymedianetwork.com/2014/06/30/not-again-hopi-katsinam-auctioned-paris-despite-outcry-155556>.

133. Pierre Ciric is an attorney in New York with his own law firm, the Ciric Law Firm, PLLC, which represents the HARP and its Director/Co-founder, Ori Z. Soltés. Pierre Ciric, *The French Government Creates a Tragic Precedent in Refusing to Suspend a Recent Sale of Sacred Hopi and Navajo Objects*, NEW JURIST (July 23, 2014), <http://newjurist.com/the-french-government-creates-a-tragic-precedent-in-refusing-to-suspend-a-recent-sale-of-sacred-hopi-and-navajo-sacred-objects.html>.

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),

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."¹³⁹ The suit was brought by HARP Chairman Ori Z. Soltes¹⁴⁰ to the Conseil des Ventés, 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 Ventés to use their power to stop the sale.¹⁴¹ The Conseil des Ventés 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.¹⁴² In a special hearing on June 25, 2014, despite evidence that the provenance of the katsinam was suspect, the Conseil des Ventés 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.¹⁴³ Following the Conseil des Ventés' 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.¹⁴⁴ 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.¹⁴⁵

<http://www.usatoday.com/story/news/nation/2014/05/16/first-native-american-woman-confirmed-as-federal-judge-/9160947/>.

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

140. Ori Z. Soltes is the Director of the National Jewish Museum and the cofounder of HARP, and spent years researching the issue of Nazi-looted art. See *Bio*, ORI Z. SOLTES, <http://www.orizsoltes.com/html/bio.html> (last visited Jan. 24, 2015).

141. Boehm, *supra* note 7; *2010 Top French Auction Houses*, ART MEDIA AGENCY (June 24, 2011), <http://en.artmediaagency.com/20966/2010-top-french-auction-houses/>.

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 Ventés decision.¹⁴⁶

First, Ciric mentions Article 1-5-1 of the Conseil des Ventés 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.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.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.¹⁴⁹ Ciric coldly finds EVE's "due diligence" more aligned with "conscious avoidance."¹⁵⁰

Second, in stripping Native Americans of standing in cultural claims in France, the Conseil found the Hopi's 1936 Constitution¹⁵¹ "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."¹⁵² This

146. See generally Ciric, *supra* note 133; see also Ciric, *supra* note 7.

147. Ciric, *supra* note 133.

148. *Id.*

149. See *id.*

150. *Id.*

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. DEP'T OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS, CONSTITUTION AND BY-LAWS OF THE HOPI TRIBE ARIZONA pmb. (1936), available at <http://www.loc.gov/law/help/american-indian-consts/PDF/37026339.pdf>.

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.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.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.¹⁵⁵

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.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.¹⁵⁷ France was a historic leader in the global art market, but its position has recently declined.¹⁵⁸ The percentage of art

153. For a critique of France's disregard for the courtesy the United States affords foreign citizens, see *id.*

154. *Id.*

155. *Id.*; Boehm, *supra* note 7; Holocaust Art Restitution Project, *supra* note 82.

156. See generally Boehm, *supra* note 7.

157. See *id.*

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, *The World's Strongest Economy? The Global Art Market*, FORBES (Feb. 29, 2012), <http://www.forbes.com/sites/abigaillesman/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.¹⁵⁹ Not to the surprise of some, Drouot faced scandal in 2010, when Drouot was the source of an underground art-trafficking ring.¹⁶⁰ 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.”¹⁶¹

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.¹⁶² 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.¹⁶³ 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.¹⁶⁴

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

schild, Richard Seymour-Conway, and state-sponsored auction house the Hôtel Drouot attracted a bounty of art sales).

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.

163. See *id.*; Howard, *supra* note 15; Bilefsky & Carvajal, *supra* note 15. See generally Esman, *supra* note 160.

164. See Dominique Godreche, *Lawyer Has Hope That Auctions of Sacred Items Will Someday Stop*, INDIAN COUNTRY TODAY MEDIA NETWORK (Dec. 22, 2014), <http://indiancountrytodaymedianetwork.com/2014/12/22/lawyer-has-hope-auctions-sacred-items-will-someday-stop-158421> (describing another auction of Hopi katsinam that took place at a Parisian auction house in December 2014); ICTMN Staff, *Selling the Sacred, Again: Another Auction of Hopi Katsinam Takes Place in Paris*, INDIAN COUNTRY TODAY MEDIA NETWORK, (June 1, 2015), <http://indiancountrytodaymedianetwork.com/2015/06/01/selling-sacred-again-another-auction-hopi-katsinam-takes-place-paris-160568> (June 2015); Sayare, *supra* note 17. See generally Bilefsky & Doreen, *supra* note 15; ICTMN Staff, *supra* note 132.

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.¹⁶⁵ However, the Conseil actively chose to allow the sale of katinam to continue in June 2014.¹⁶⁶ 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.¹⁶⁷ 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.¹⁶⁸ In response to Chadalet's fear that auctioneers' roles are in danger, the Symev (the National Union for Houses of Voluntary Sales)¹⁶⁹ spoke out in defense, arguing that the Conseil itself is what is in danger and even questioned the Conseil's legitimacy.¹⁷⁰

165. Valérie Sasportas, *La Cadence des Ventes Sensibles s'Accélère*, [*The Pace of Sales Is Accelerating Sensitively*], LE FIGARO (Apr. 29, 2014), <http://www.lefigaro.fr/culture/encheres/2014/04/29/03016-20140429ARTFIG00008-catherine-chadelat-la-cadence-des-ventes-sensibles-s-accelerent.php>.

166. See generally Ciric, *supra* note 133.

167. See *id.*; Sasportas, *supra* note 165.

168. *Les commissaires-priseurs en froid avec le Conseil des Ventes et sa présidente* [The Cold Auctioneers with the Council and Its President of Sales], ART MEDIA AGENCY (Jan. 27, 2014) [hereinafter *Cold Auctioneers*], <http://fr.artmediaagency.com/87529/les-commissaires-priseurs-en-froid-avec-le-conseil-des-ventes-et-sa-presidente/>. See generally Valérie Sasportas, *Le Conseil des Ventes Sonne L'Alarme* [The Conseil des Ventes Sounds the Alarm], LE FIGARO (Jan. 23, 2014), <http://www.lefigaro.fr/culture/encheres/2014/01/23/03016-20140123ARTFIG00285-le-conseil-des-ventes-sonne-l-alarme.php>.

169. The Symev is a union that defends the interests of auctioneers. See SYMEV, <http://symev.org> (last visited Oct. 26, 2015).

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.¹⁷¹ 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 them¹⁷² and remedies for indigenous peoples otherwise infringed upon.¹⁷³ However, these principles of the UNDRIP do not hold water, as the document has no binding force.¹⁷⁴ 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.¹⁷⁵

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.

174. See Press Release, *supra* note 6.

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.¹⁷⁶ In an interview, Servan-Schreiber explained that the Hopi community would like for the U.S. Native American Graves Protection and Repatriation Act¹⁷⁷ be reciprocated in France.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.¹⁷⁹ Servan-Schreiber recognizes that the process to develop, draft, and incorporate a treaty is long and hard.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.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

176. See Godreche, *supra* note 164.

177. The Native American Graves Protection Repatriation Act (NAGPRA) protects Native American property with “burial, funerary, religious, or cultural patrimonial context” and provides for their return in specific contexts. Francis P. McManamon, *The Native American Graves Protection and Repatriation Act*, in *ARCHAEOLOGICAL METHOD AND THEORY: AN ENCYCLOPEDIA*, (Linda Ellis ed., 2000). NAGPRA has prohibited sales of sacred property of Native Americans since 1990 and provides a way for “tribes to reclaim cultural items within the U.S., but the law has no power overseas.” See *Navajo Officials Buy Back Tribal Masks at Controversial French Auction*, CIRCA (Dec. 16, 2014), <http://cir.ca/news/native-americans-challenge-artifact-auctions>.

178. Godreche, *supra* note 164.

179. *Id.*

180. *See id.*

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 pmb1.

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

185. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, pmbl. (Dec. 10, 1948); see History of the Universal Declaration of Human Rights, UNITED NATIONS, <http://www.un.org/en/documents/udhr/history.shtml> (last visited, Sept. 27, 2015); *Human Rights Law*, UNITED NATIONS, <http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html> (last visited, Jan. 15, 2016).

186. *Id.*

187. *International Human Rights Law*, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>, (last visited Oct. 24, 2015).

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”¹⁹⁰ and actively protect the 370 million indigenous peoples throughout the world.¹⁹¹

*Samantha K. Nikic**

190. *Id.* pmb1.

191. Press Release, *supra* note 6.

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