

Beyond the Indigenous/Minority Dichotomy?
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The adoption of the Declaration on the Rights of Indigenous Peoples by the UN General Assembly in 2007 is a major victory for one of the most oppressed groups in the world. It can also be seen as a victory for international law itself. As various commentators have noted, international law has not only historically supported the colonization of indigenous peoples, it largely emerged precisely in order to facilitate European imperialism (Keal 2003; Anghie 2004). The Declaration suggests that international law has a capacity to overcome its imperial origins, and to become an instrument of justice. As James Anaya puts it, "international law, although once an instrument of colonialism, has developed and continues to develop, however grudgingly and imperfectly, to support indigenous peoples' demands" (Anaya 1996: 4).¹ If the Declaration helps to legitimize indigenous demands, it is equally true that the Declaration helps to re-legitimize international law itself in a post-colonial era (Xanthaki 2007: 6, 285).

The detailed provisions of the Declaration, and the "grudging and imperfect" support they provide to indigenous peoples, are discussed in other chapters in this volume. My concern in this paper is with the Declaration's implications for other historically oppressed substate groups. My main focus will be on one particular type of group – namely, "national minorities", also sometimes known as "stateless nations", "captive nations", or "substate nations" – such as the Scots, Catalans, Kurds, Chechens, Crimean Tatars, Kashmiris, Palestinians, and Tibetans. Like indigenous peoples, these are culturally distinct groups living on their traditional territory, who think of themselves as a distinct people or nation, and show a deep attachment to their cultural distinctiveness and to their homeland, which they have struggled to maintain despite being incorporated (often involuntarily) into a larger state. Such ethnonational groups are not typically seen as "indigenous peoples", but they share many of the same concerns about cultural integrity, non-discrimination, and the right to govern themselves and their territory. Given the many similarities between indigenous peoples and stateless nations, I'm interested in how developments regarding the former will affect the latter, and whether stateless nations can invoke international progress on indigenous rights as a precedent.

But national minorities are not the only type of group who might look to the indigenous Declaration as a possible model. The Declaration could serve as a precedent for a wider range of subaltern groups, including the Roma, Afro-descendants, Dalits, and immigrants. Unlike both substate nations and indigenous peoples, these are not 'homeland groups' in the traditional sense – that is, they are not groups living on a historic homeland which was subsequently incorporated into a larger state as a result of

¹ Similarly, Patrick Macklem argues that the Declaration can best be understood, not as responding to some exogenous injustice out in the world, but rather as rectifying injustices that international law itself created: "international indigenous rights mitigate some of the adverse consequences of how international law validates morally suspect colonization projects that participated in the production of the existing distribution of sovereign power." (Macklem forthcoming).

conquest, colonization or changes in state borders. Yet even if they do not have the same territorial claims, they certainly share the indigenous experience of suffering from cultural oppression, political marginalization and racial discrimination. As such, they may look to the indigenous Declaration as evidence that international law can be enlisted to support their struggles for respect and emancipation.

In this paper, I want to explore whether such hopes are realistic. Will the Declaration be the first step towards a broader transformation of international law's treatment of substate groups, or will it prove to be a one-off exception, with few if any implications for the rights of other minorities?

Many commentators view the Declaration as a first step towards a more systematic strengthening of the international standing of substate minority groups. According to Stephen Allen, for example, the success of indigenous peoples at the UN can be seen as a "foretaste" of the enhanced standing that other substate groups can expect to achieve "in a mature international society". It is particularly relevant, he suggests, for those national minorities seeking internal self-determination:

[G]rowing support for the indigenous right to self-determination empowers the societal claims of other challenged minorities. By securing the right of self-determination, indigenous societies have opened up the prospect of the internal right being made available to other sub-State societal groups. Moreover, the widening of the conception of people-hood is consistent with the notion of fragmented popular sovereignty...In particular, by dispelling the arbitrary distinction between 'minorities' and 'peoples', this development could contribute to the amelioration of ethnic tensions and, in turn, allay the fears of impending disintegration on the part of established States (Allen 2006: 335-6, 338).

On this view, indigenous peoples have opened the door for other "challenged minorities" to make progress in international law.

At first glance, this seems an eminently reasonable expectation. After all, it is widely recognized that indigenous peoples and minorities are "overlapping categories subject to common normative considerations", and that "indigenous and minority rights issues intersect substantially" (Anaya 2004: 21). Given these shared concerns, it is also widely acknowledged that the difference between such national minorities and indigenous peoples "is one of fuzzy edges rather than bright lines" (Thornberry 2002: 54). This is reflected in the overlap in participation in the UN Working Group on Minorities and the UN Working Group on Indigenous Populations, and in the ongoing difficulties the two Working Groups have had in determining the principles on which groups should be categorized as indigenous or minorities.² Indeed, the former Chair of the UN's Working

² See Tom Hadden's account of the Working Groups, noting that minorities and indigenous have "broadly similar concerns", that there is "a good deal of overlap" in representation in the two Working Groups, and that "it is difficult to distinguish clearly"

Group on Minorities, Asbjorn Eide, in a paper he co-authored with the Chair of the Working Group on Indigenous Populations, acknowledged that “The usefulness of a clear-cut distinction between minorities and indigenous peoples is debatable. The Sub-Commission, including the two authors of this paper, have played a major role in separating the two tracks. The time may have come for the Sub-Commission to review the issue again” (Eide and Daes 2000: para 25).³

Given the overlapping nature of the underlying concerns, and the fuzzy nature of the categories themselves, it seems natural, even inevitable, that the adoption of an indigenous rights Declaration should open the door for other minorities. Moreover, as Allen notes, the substantive provisions of the Declaration help to dispel many of the shibboleths that states have used historically to justify the oppression of minorities. The indigenous Declaration has shown that sovereignty can be multiple and multi-level rather than unitary and homogenous; that international human rights law can recognize collective and group-differentiated rights not just individual and universal rights; that self-determination can take many different forms, including internal autonomy; that cultural identities are worthy of respect and protection; that historic injustices should be rectified; and so on. In all of these respects, the indigenous Declaration has been described by commentators as rooted in a broader “multicultural outlook” (Xanthaki 2007: 90), or “multicultural model of political ordering” (Anaya 2004: 15), that has implications for the treatment of other forms of ethnic and cultural diversity. This broader multicultural outlook endorses ideas of multiple loyalties, cultural diversity, and dispersed sovereignty, and challenges outmoded ideas of national homogeneity, exclusive loyalty and monolithic sovereignty. For Xanthaki, the way in which international indigenous rights norms endorse this multicultural outlook is their “most important contribution”, relevant not just to indigenous peoples, but also to international human rights norms more generally (Xanthaki 2007: 90).

In short, by endorsing the legitimacy of concerns about cultural integrity and autonomy, and by endorsing a multiculturalist model of political ordering, the indigenous Declaration sets a precedent that minorities can invoke to defend their struggles for strengthened rights in international law. Moreover, the very process of drafting the Declaration, with its innovative procedures for ensuring the full participation of indigenous peoples themselves, also can be seen as opening the door for other minorities. During the long history of negotiations over the Declaration, UN decision-making fora and procedures that had previously been restricted to state representatives were opened up to representatives of indigenous peoples. This can be seen as setting a precedent for a wide range of sub-state ethnocultural groups to participate in the creation and enforcement of international law (Xanthaki 2007: 121, 282).

between indigenous and other substate ethnic groups (Hadden 2007: 296). He suggests therefore that, in the future, the two could be combined.

³ See also Brownlie 1988.

Both in its content and process, therefore, the Declaration seems to open the door for other minorities.⁴ This optimistic view of the broader transformative potential of the indigenous Declaration is both intuitively plausible and normatively attractive. However, I believe it is too optimistic. I see no evidence that the conceptual or procedural breakthroughs made by indigenous peoples are opening doors for minorities. On the contrary, as we will see, the dramatic enhancement of the rights of indigenous peoples over the past 15 years has coincided with a period of stagnation, even retrenchment, in the international status of minorities, and with growing international hostility to many minority rights claims. Indigenous peoples and minorities have been moving along very different, even opposite, trajectories at the UN.

Nor is this an accident. The success of the international indigenous movement to date has depended precisely on the assumption that progress for indigenous peoples need not, and will not, open the door to greater recognition or protection of other minorities. When Member States voted for the indigenous Declaration, they did so on the assumption that the UN can enhance the rights of indigenous peoples while simultaneously resisting the expansion of, or even diminishing, the rights of other minorities. In this sense, they presupposed what I call a “firewall” model of the relationship between indigenous peoples and minorities. On this view, the rights of indigenous peoples are categorically distinct from, and have no conceptual or legal implications for, other minorities, and an ironclad barrier will prevent other minorities from walking through any doors that indigenous peoples have opened.

The Declaration will not have broader transformative effects unless or until this firewall breaks down. And it is indeed possible that, over time, international law will need to acknowledge the overlapping categories and common concerns that connect indigenous and minority rights, and that the Declaration will thereby end up having transformative

⁴ Some commentators go even further, and argue that the success of the indigenous rights movement at the UN provides an opening, not just for ethnocultural groups, but for a broad array of new social movements devoted to social justice and global democracy, including women’s rights, environmental groups, and anti-poverty groups. This helps to explain the enormous interest in the international indigenous movement amongst scholars of new social movements and of “counter-hegemonic globalization” or “globalization from below”. These scholars hope and assume that the achievements of indigenous peoples at the UN are a precedent that other non-state actors can draw upon to help create a more just system of international law, and a more mature international society. These achievements are transformative, not just of the status of indigenous peoples and minorities, but of international law and international organizations more generally, changing the very ground rules of the Westphalian order that had privileged state actors over non-state actors, and privileged state sovereignty over principles of justice and democratic inclusion (eg., Muehlbach 2003; Passy 1999; Feldman 2002; Smith 2008; Morgan 2004; Falk 1988, 1995). However, my focus in this paper is on the impact of the indigenous Declaration on other ethnocultural groups. Even if the international indigenous movement has opened the door for new social movements generally, I will argue that it has not done so for other ethnocultural groups.

effects that member states neither intended nor desired. However, I will argue that we should not underestimate the capacity and determination of UN member states to prevent minorities from invoking the indigenous Declaration as a precedent or model. Moreover, even if the firewall were to break down, acknowledging the overlap between minorities and indigenous peoples could have unpredictable effects. It could result in the status of minorities in international law being pulled up by the achievements of indigenous peoples. However, it is equally possible that support for the rights of indigenous peoples would be dragged down by the international hostility to minority rights.

To my mind, this is one of the great uncertainties about the long-term effects of the Declaration. Will the core ideas of the Declaration – ideas of multicultural political ordering, multiple loyalties, cultural diversity, dispersed sovereignty and rectification of injustice - spread outwards to lift up other ethnocultural minorities? Or will state fears about the destabilizing effects of such a spread gradually erode support for indigenous rights? Or will the firewall in fact prove stable over time, allowing the UN to continue to enhance indigenous rights while resisting minority rights?

Since the Declaration was only adopted in 2007, it's obviously too soon to make definitive predictions. However, we can identify some of the factors that are likely to determine the long-term relationship between indigenous rights and minority rights. I will begin by outlining the divergent trajectories of minorities and indigenous peoples over the past 20 years at the UN, and how these trajectories reveal the pervasiveness of the firewall view. I will then explain why the firewall may ultimately break down, but in ways that are as likely to erode indigenous rights as to strengthen minority rights. I will conclude with some thoughts about how the concepts and categories currently used in international law might need to change if the broader transformative potential of the Declaration is to be realized.

The Need for Targeted Indigenous Rights

In order to see the shape of the problem here, we need to recall why indigenous peoples struggled to gain a dedicated Declaration on indigenous rights, separate from the rights owed to minorities under the UN. After all, the International Bill of Rights does not neglect issues of cultural diversity. Article 27 of the ICCPR, in particular, enshrines a right to enjoy one's culture:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

This guarantee of a right to enjoy one's culture in community with co-members is clearly relevant to many concerns of indigenous peoples, and indeed they have successfully

invoked Article 27 in a series of cases to help protect indigenous cultural practices that were threatened by state policies.⁵

However, while Article 27 has proven helpful, it has clear limitations as a framework for articulating indigenous claims. To oversimplify, Article 27 can be invoked to contest discrete laws or policies adopted by states, but it does not contest the structure of the state itself. It sets limits on how states govern their indigenous peoples, but it does not put in question the right of states to govern indigenous peoples and their territories. Yet it is precisely the structure of the state that is the central issue for many indigenous peoples. They do not simply want the state to govern them differently; rather, they want to govern themselves. They do not simply want to change how power is exercised over them, but who exercises that power. They seek self-government, not just because they see it as vital to their future well-being, but also because it is the core of the historic injustice inflicted upon them. The core injustice of colonialism was the assertion of claims to sovereignty over indigenous peoples and their territories by colonial settlers, and this was an injustice that was ratified by international law itself. By now affirming an indigenous right of self-government, international law can mitigate that injustice.

These sorts of claims cannot plausibly be handled under Article 27. Article 27 is a generic minority rights clause that seeks to articulate a rights-claim that all minorities can invoke, regardless of their particular historical relationship with the state. It therefore applies to newly-arrived immigrants and refugees as well as to historically-settled indigenous peoples or national groups. The members of all such groups – new or old, large or small, territorially-concentrated or dispersed – have the right to enjoy their culture in community with their co-members. Indeed, the UN Human Rights Committee has ruled that even visitors to a country should be able to claim an Article 27 right to enjoy their culture.⁶

This right to enjoy one's culture is a profoundly important human right. But precisely because it is a generic minority right, claimable by visitors as much as indigenous peoples, it cannot speak to issues raised by histories of colonization and conquest, or to cases where the very right of the state to govern particular peoples or territories is in dispute. To deal with these issues and cases, a separate legal instrument is needed, focusing not on minorities in general, but on a narrower set of groups who share a particular pattern of injustice in their historical relationship to state power.

And this of course is the rationale and function of the indigenous Declaration. It focuses not just on the right of individuals to enjoy their culture in community with co-ethnics, but on the structure of the state, the distribution of political power over peoples and territories, and on rectifying historic injustice in that distribution. This is reflected in the Declaration's core principle of self-determination, and in its provisions regarding internal autonomy, legal pluralism, and control over traditional territory.

⁵ Kitok, Lansman, Hopu, Ominayak etc.

⁶ Human Rights Committee, General Comment No. 23, "Rights of Minorities (Article 27)", adopted 8 April 1994, para 5.1 and 5.2.

It's precisely these principles and provisions that most clearly mark the Declaration as rooted in a "multicultural model of political ordering" (Anaya 2004: 15). If Article 27 endorses a culturally-sensitive model of human rights, the indigenous Declaration endorses a multicultural model of the state. And this is why commentators have seen it as transformative. It doesn't just say that cultural identities are worthy of respect by the state. It also says that the state itself must be pluralized, accepting ideas of dispersed sovereignty, substate autonomies, legal pluralism, and multiple loyalties, and acknowledging the injustices done when political authority was illegitimately claimed over indigenous peoples and territories.

Can the Declaration be a Precedent?

In my view, justice for indigenous peoples requires addressing these issues of political order, and so a separate legal instrument was indeed needed that went beyond the generic minority rights guarantees of Article 27. The adoption of the Declaration is therefore a genuine achievement for indigenous peoples. My interest in this paper, however, is on its potential impact for other groups. In what ways, if any, can the Declaration serve as a model or precedent for other substate ethnocultural groups?

We can distinguish three different ways in which the Declaration could be seen as setting a precedent for other groups:

- First, at the level of substantive norms, the Declaration endorses a principle of (internal) self-determination for indigenous peoples. This principle is also central to the struggle of national minorities, and so the Declaration could be seen as setting a precedent for them, or for other groups who claim a sense of peoplehood or nationhood. As I noted earlier, Allen views this as the most obvious or likely effect of the indigenous Declaration. As he puts it, "by securing the right of self-determination, indigenous societies have opened up the prospect of the internal right being made available to other sub-State societal groups" (Allen 2006: 335).
- Second, at a more formal level, the Declaration involves the articulation of "targeted" rights. The Declaration rests on the premise that because of their distinctive history and relationship to the state, indigenous peoples require a separate legal instrument codifying rights that are specific to indigenous peoples, above and beyond the generic rights in Article 27 (and the 1992 UN Minorities Declaration) that accrue to all minorities. This idea of formulating targeted rights to deal with distinctive patterns of injustices is one that can be invoked by many types of substate groups, even if their substantive needs are different from those of indigenous peoples. The Roma, Afro-Latinos, Dalits and immigrants may not seek the same substantive norms as indigenous peoples (such as self-determination or territorial autonomy), but they too argue that they face distinctive patterns of injustice that are not adequately addressed by the generic Article 27 right to enjoy one's culture. The indigenous Declaration could be seen,

therefore, as a precedent for other sorts of targeted rights (eg., a “Charter of Romani Rights”).

- Third, at a procedural level, the indigenous Declaration emerged through a process that included indigenous peoples themselves. Indigenous peoples argued that historically they have been the objects of international law, but were not active subjects in its formulation, and that international law will only be fair and legitimate if the peoples governed by it have a say in the developments of its standards. This principle – that the objects of international law should also be its subjects – is one that can be invoked by many substate groups. While minorities have been the objects of international law dating back to the League of Nations, they have played virtually no role in the drafting of international minority rights norms, whether in the League’s minority protection scheme, Article 27 of the ICCPR, or of the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities. Minorities have been the object of international debate, but not active subjects in the debate. This was precisely the situation that indigenous peoples successfully contested (Barsh 1994), and minorities could claim that they too have the right to participate in the formulation of new international standards.

In all of these ways, the indigenous Declaration is potentially a model for other ethnocultural substate groups to seek enhanced recognition and rights. And indeed there have been efforts along all three of these lines: attempts to extend autonomy/self-determination to national minorities; attempts to formulate new types of targeted rights for a range of different types of groups; and attempts to develop mechanisms whereby minorities can participate in the formulation of new international standards. However, to date, none of these efforts have been a success, and we can learn important lessons from their failure.

Let me start with the first issue – the extension of rights of internal self-determination to national minorities. At the level of moral principle, this extension seems natural and obvious. All of the arguments I mentioned earlier for a separate indigenous Declaration – in particular, the inadequacy of Article 27, and the need to address issues of historic injustice and contested state authority – can and have been raised by stateless nations like the Chechens, Kurds, Kashmiris, Tibetans, Basques, and Palestinians. Like indigenous peoples, the members of these substate national groups do not simply seek the right to enjoy their culture with co-members. They also contest the authority of the state to govern them and their territories, seek acknowledgement of historic injustices, and seek to pluralize state structures through recognition of rights of self-determination or autonomy.

So if a powerful case can be made for having a separate indigenous Declaration, above and beyond Article 27, it seems that a similar case can be made for drafting a separate Declaration on the rights of substate national groups. And indeed this has been proposed, both at the UN and within Europe. For example, in 1993 – at the same time the indigenous Draft Declaration was first adopted by the UN Working Group –

Liechtenstein submitted to the UN General Assembly a “Draft Declaration on Self-Determination through Self-Administration”.⁷ This Draft Declaration, like the indigenous Draft Declaration, affirmed the right of self-determination for all peoples, and recognized a right of internal autonomy as an expression of that right. It differed from the indigenous Declaration, however, in understanding “all peoples” to include substate nations as well as indigenous peoples.

A similar debate about the rights of national minorities to autonomy was occurring at the Council of Europe. In 1993, for example, the Council of Europe’s Parliamentary Assembly adopted a Recommendation stating that

in the regions where they are a majority, the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching this specific historical and territorial situation and in accordance with the domestic legislation of the State (Recommendation 1201; article 11).

Unlike the Liechtenstein proposal, this Recommendation did not explicitly endorse a right to “self-determination” for national minorities. But it did endorse many of the same substantive rights and powers that are supposed to instantiate internal self-determination, in particular forms of regional autonomy, which many commentators viewed as implicitly drawing on norms of internal self-determination.

This Recommendation was generalizing a principle adopted two years earlier by the EU Commission regarding the recognition of independent states following the break-up of Yugoslavia. The Commission recommended that states seeking independence, like Croatia, should only receive international recognition if they grant “a special status of autonomy” to areas populated by national minorities.⁸ The Council of Europe’s Parliamentary Assembly suggested that this principle be affirmed as part of a new European declaration on the rights of national minorities, and/or as an additional protocol to the European Convention of Human Rights.

For a brief moment in the early 1990s, therefore, we see a striking parallel between debates about indigenous peoples and debates about national minorities. In both cases, influential voices at the UN and in regional organizations were drafting new declarations that would enshrine rights to internal autonomy, based on a new `multicultural model of

⁷ For the draft resolution submitted to the General Assembly, see UN A/C.3/48/L.17. The Draft Convention itself is reprinted as an appendix in Danspeckgruber 2002: 382-93, together with legal commentaries. See also the discussion in Welhengama 1998. When the Draft Convention was rebuffed at the UN, the Prince of Liechtenstein set up the “Liechtenstein Institute on Self-Determination” at Princeton University, in the hope that it would generate greater public debate and academic analysis of the issues involved. See www.princeton.edu/lisd/

⁸ For a discussion of this aspect of the European Commission Treaty Provisions for the Yugoslavia Draft Convention, see Caplan 2005.

political ordering'. And in both cases, the justifications for these claims had a similar dual structure. On the one hand, both indigenous peoples and national minorities appealed to facts of cultural distinctiveness, historical injustice, and contested legitimacy to ground their demands for self-government;⁹ and on the other hand, both emphasized that the generic minority rights in Article 27 were “fatally weak” (Barsh 1994: 81), and “completely inadequate...to their needs” (Aukerman 2000: 1030).

For a moment, therefore, it seemed possible that international law would develop two sets of targeted rights that went beyond generic Article 27 minority rights to include rights to internal self-government or autonomy: one for indigenous peoples, and one for national minorities. The Working Group’s 1993 draft Declaration on indigenous rights differed in some respects from Liechtenstein’s 1993 draft Declaration on self-determination for national minorities, or the Parliamentary Assembly’s 1993 Recommendation on territorial autonomy for national minorities. For example, issues regarding sacred sites, the repatriation of cultural objects, and the use of customary law are all more relevant to indigenous peoples than to national minorities (Xanthaki 2007:214-15). But the various declarations shared the core ideas of a multicultural model of political ordering, based on rights to self-government, and the renegotiation and dispersal of authority over peoples and territories. There was much talk at the time of “the evolving right to autonomy” in both contexts, and of the need to develop new models of political order in a “post-national world” that would accommodate both indigenous peoples and national minorities (Xanthaki 2007: 6).

This is a prime example of how indigenous rights might have interacted with minority rights in a mutually reinforcing way to help consolidate a new international commitment to a multicultural outlook. However, all of these proposals have come to naught. Liechtenstein’s 1993 draft declaration at the UN received no support, not even the courtesy of being discussed and studied. While the UN has progressively come to support autonomy for indigenous peoples, the idea that other substate national groups might have such rights remains anathema at the UN. Indeed, for reasons discussed below, opposition to that idea is more powerful today than in the mid-1990s. Similarly, when the Council of Europe finalized its Framework Convention on the Protection of National Minorities in 1995, it rejected the Parliamentary Assembly’s Recommendation 1201 on a right to autonomy. Indeed, it rejected any proposed articles that would have even hinted at the need for states to renegotiate the structure of state institutions, or the need to acknowledge the potential contestability of, and injustice in, state claims to authority over national minorities and their traditional territories.¹⁰ In this sense, the European Framework Convention on national minorities is essentially a dressed-up version of

⁹ As Miriam Aukerman notes, indigenous peoples and national minorities “share the goal of preserving their distinctive cultures, and justify their claims to group-differentiated rights with similar appeals to self-determination, equality, cultural diversity, history and vulnerability” (Aukerman 2000: 1045).

¹⁰ For a more detailed discussion of this shift in the Council of Europe (and other European organizations) from a commitment to substantive targeted rights for national minorities to more generic minority rights, see Kymlicka 2007: chap. 6.

Article 27. Like Article 27, it endorses a right to enjoy one's culture in community with others, and hence the legitimacy of cultural diversity, but refuses to address issues of state structure and contested claims to authority and territory.

Consider now the second possible transformative effect of the Declaration: namely, creating increased space for claims to "targeted rights". Before the drafting of the Declaration, international law operated on the assumption that issues of diversity were best addressed by putting together all of the different types of minorities – ethnic, national, linguistic, immigrant, indigenous etc – and according them all the same generic minority rights. The indigenous Declaration carves out a clear exception to this pattern, acknowledging the need to differentiate amongst different types of substate groups. At present, this is a one-off exception, leaving all of the other types of groups lumped together. But it can be seen as a precedent, rather than just an exception. Rather than a simple bifurcation between "indigenous peoples" and "minorities", we could instead have a "multi-targeted" scheme of international norms, with separate legal instruments for indigenous peoples, national minorities, the Romani, Afro-descendants, Dalits, immigrants, or other types of groups in other regions of the world. All such groups would benefit from the generic Article 27 right to enjoy one's culture – which would remain a bedrock principle of any human rights regime – but each would also benefit from targeted rights that address the path-dependent injustices that have arisen from their particular histories of interaction with, and incorporation into, the state.

Inspired by the indigenous movement, other types of ethnocultural groups have indeed started to mobilize for targeted international rights. For example, there have been draft declarations on Romani rights (Klimova-Alexander 2005), as well as proposals for dedicated legal instruments regarding Afro-descendants in Latin America (Lennox 2006), or the Dalits in Asia (Bob 2007).¹¹ In each case, we see the same dynamic: groups are seeking targeted rights because the generic Article 27 right to enjoy one's culture is inadequate to address the distinctive needs arising from a distinctive history of (unjust) relations with the state. The detailed provisions of these proposals on Romani rights or Afro-Latino rights or Dalit rights are different from those of the indigenous Declaration, but they share a common goal of envisaging new multicultural models of political order based on targeted norms that address distinctive patterns of injustice in relations with the state.

This is another way in which the indigenous Declaration could help to consolidate a broader commitment to multiculturalism. However, here again, all of these proposals for targeted rights for other groups – whether for the Romani, Afro-Latinos, Dalits, or immigrants – have gone nowhere. While all of these groups continue to benefit from their

¹¹ See also the Parliamentary Assembly of the Council of Europe's recommendation for a declaration on immigrant rights: it "recognizes that immigrant populations whose members are citizens of the state in which they reside constitute special categories of minorities, and recommends that a specific Council of Europe instrument should be applied to them" (Recommendation 1402).

generic Article 27 right to enjoy one's culture, attempts to formulate more robust standards in light of their particular needs have failed.

Finally, let me turn to the third potential effect of the Declaration: namely, creating the precedent that the objects of international law should also be the subjects or co-authors of it, and should play a role in formulating its standards. The UN Working Group on Indigenous Populations is "widely viewed as a great success of the UN system" (Xanthaki 2007: 2) and as an "extraordinary" model of "human rights dynamism" (Morgan 2004), precisely because it helped establish new standards. As a result, it has become the focal point of a vibrant transnational advocacy movement, leading eventually to the creation of the higher-status Permanent Forum and the Expert Mechanism on the Rights of Indigenous Peoples.

Inspired by this example, minorities have also sought to gain "a seat at the table" at the UN. And indeed for many years there was a UN Working Group on Minorities, working in parallel to the UN Working Group on Indigenous Populations, which offered a forum for minorities to participate in Geneva. However, the two Working Groups could not have been more different. The Minorities Working Group had no mandate to draft new legal standards, or to monitor compliance with existing standards. As Tom Hadden notes, minority rights "has always been the poor relation in the human rights family" at the UN, and the Working Group on Minorities was "one of the weakest" of the human rights bodies (Hadden 2007: 285). The Working Group has now been replaced by the even weaker Forum on Minority Issues. Whereas the indigenous Working Group has been intensively studied as a model of transnational activism and human rights dynamism, the minorities Working Group was virtually unknown outside a small circle of activists and experts coordinated by the Minority Rights Group, which has valiantly (but unsuccessfully) tried to make it a meaningful international forum. Without a mandate to draft new standards, and given the inadequacy of relying on generic Article 27 rights, the Working Group on Minorities was unable to provide a meaningful forum for minorities to become subjects rather than objects of international law. While minorities have certainly made appeals at the international level – such as the pursuit of new targeted rights by national minorities, Roma, Dalits, and Afro-Latinos – the minorities Working Group had no mandate to draft such targeted rights, and so unlike the indigenous Working Group, it was largely unable to articulate the aspirations of its intended beneficiaries, and never became a focal point of mobilization or enthusiasm.

In short, since 1993, the remarkable progress we've seen in the formulation of targeted norms for indigenous peoples has coincided with more or less complete failure in terms of formulating new standards for other substate groups. In this sense, Allen's claim that the UN's endorsement of the indigenous right to self-determination "empowers the societal claims of other challenged minorities" seems overly-optimistic (Allen 2006: 335-6).

I don't mean to imply that the international community has been silent or indifferent to the needs of other groups. Various UN bodies have commissioned studies of 'best practices' regarding national minorities, Roma, Dalits and Afro-Latinos; UN human

rights committees often ask states to explain their policies towards such groups; and UN world conferences include references to the urgency of their respective situations. But all of this was also true of indigenous peoples before the indigenous Declaration. For indigenous peoples, all of these studies, questions and expressions of concern were not enough – indeed, they are of little use if there are no relevant standards for evaluating state conduct. The point of drafting a Declaration was precisely to turn vague expressions of international concern into tangible legal standards that can be internationally monitored. Indigenous advocates argued that the pre-existing international standard – namely, Article 27 – was simply inadequate. Indeed, it was regarded as “fatally weak” (Barsh 1994: 81). Without clearer and more robust standards that addressed the real problems in the relationship between states and indigenous peoples, vague expressions of international concern and/or lists of best practices had no bite, particularly in those states of greatest international concern. The formulation of new standards was an essential step in ensuring that international concern was effective, rather than just rhetorical or impotent.

And this is equally true, I believe, of other substate groups. The UN and other international organizations have expressed concern about national minorities, Roma, Dalits, immigrants, and Afro-Latinos, and have commissioned studies of best practices. For example, many international organizations have published glowing reports about how well autonomy works for national minorities in, say, South Tyrol, Catalonia or the Aland Islands. But as we have seen, those same organizations have steadfastly resisted any proposal to make these “best practices” a matter of legal right for national minorities. Similarly, there has been no willingness to turn best practices for the Roma, Dalits, or Afro-Latinos into new legal standards. In none of these cases has the UN been able to formulate standards that make any appreciable progress on the generic minority rights and anti-discrimination rights that exist in the ICCPR or ICERD.¹² And in the absence of strengthened standards, the expressions of international concern have been largely ineffective.¹³ So while we’ve seen episodic endorsements of multicultural models in relation to a wide range of groups, it is only in relation to indigenous peoples that serious efforts have been made at formulating new rights, standards or entitlements.

In short, the ground-breaking achievements of indigenous peoples have not – to date at least – had transformative effects for other minorities. The indigenous Declaration broke

¹² Some commentators argue that the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, and/or the 1995 Council of Europe Framework Convention on the Protection of National Minorities, make appreciable progress on Article 27. I disagree, for reasons explained in Kymlicka 2007: chap. 6. They are both fundamentally a restatement of generic Article 27 rights combined with a restatement of equally generic civil and political rights, leaving untouched the “fatal weakness” that led indigenous peoples and other groups to seek more targeted rights.

¹³ I discuss the (genuine) international efforts at promoting multicultural models as “best practices”, and their general ineffectiveness in the absence of appropriate standards, in Kymlicka 2007: chaps. 6-7.

new ground (i) in its substantive norms (such as self-determination, legal pluralism, autonomy); (ii) in its very form – namely, as a “targeted” instrument that seeks to identify norms that are appropriate for a particular type of group, rather than relying exclusively on “generic” minority rights norms that apply to all groups, such as Article 27 or the 1992 UN Minorities Declaration; and (iii) in its drafting process, which gave the objects of international law a chance to become its subject. None of these breakthroughs has been replicated for other substate groups. Efforts by national minorities to appeal to the substantive norms of self-government and autonomy have been repudiated, as have efforts by other groups to seek targeted minority rights, and no comparable mechanisms have been created that would enable minorities to become subjects of international law.

These divergent trajectories of indigenous and minority rights clearly suggest that UN member states are operating with a firewall view. They are assuming that it is possible to enhance the rights of indigenous peoples while resisting the rights of minorities; that it is possible to create targeted legal norms for indigenous peoples while relegating all other groups to generic minority rights; and that that it is possible to strengthen the standard-setting mandate of UN bodies dealing with indigenous issues, while weakening the mandate of UN bodies dealing with minority issues. In all of these ways, optimistic predictions about the broader transformative effects of the indigenous Declaration have not acknowledged the capacity and determination of UN Member States to prevent minorities from taking advantage of indigenous achievements.

Will the Firewall Endure?

And yet, as I noted earlier, there are serious questions about whether this sort of firewall can endure indefinitely. Indeed, while member states will cling as long as possible to the firewall, I suspect it will ultimately break down. I will focus in this section on the pressures that may require international law to acknowledge the commonalities and overlap between indigenous peoples and national minorities.

The attempt to create an inviolable hedge between indigenous peoples and national minorities is subject to multiple stresses, even contradictions. For one thing, the firewall creates moral inconsistencies, since whatever arguments exist for recognizing rights of self-government for indigenous peoples also apply to national minorities. This is clear from the explanations given within the UN itself for the targeted indigenous track. Consider the co-authored paper by the Chair of the UN’s Working Group on Minorities (Asbjorn Eide) and the Chair of the UN Working Group on Indigenous Populations (Erica-Irene Daes) on the distinction between “indigenous peoples” on the one hand, and “national, ethnic, religious and linguistic minorities” on the other (Eide and Daes 2000). In explaining why indigenous peoples are entitled to targeted rights beyond those available to all minorities under the generic Article 27, the two Chairs identified three key differences: (a) whereas minorities seek institutional integration, indigenous peoples seek to preserve a degree of institutional separateness; (b) whereas minorities seek individual rights, indigenous peoples seek collectively-exercised rights; (c) whereas minorities seek non-discrimination, indigenous peoples seek self-government. These are indeed relevant differences between different types of ethnocultural groups, but none of

them distinguishes indigenous peoples from national minorities. On all three points national minorities fall on the same side of the ledger as indigenous peoples.

In an earlier document, Daes offered a somewhat different account. She stated that the distinguishing feature of indigenous peoples, compared to minorities in general, is that they have a strong attachment to a traditional territory. As she puts it, “attachment to a homeland is nonetheless definitive of the identity and integrity of the [indigenous] group, socially and culturally. This may suggest a very narrow but precise definition of ‘indigenous’, sufficient to be applied to any situation where the problem is one of distinguishing an indigenous people [from] the larger class of minorities” (Daes 1996: para 39). But this criterion – “attachment to a homeland” – applies to national minorities as well as indigenous peoples.

Or consider Xanthaki’s account of why indigenous peoples are entitled to representation in the international legal sphere: namely, that “indigenous peoples are not merely groups organized around particular issues, but long-standing communities with historically rooted cultures and distinct political and social institutions” (Xanthaki 2007: 4). Is this not equally true of the Basques, Kurds or Tibetans?

Some indigenous scholars accept that the underlying core principles apply equally to national minorities. According to James Anaya, for example, all substate nations or peoples have the same substantive rights to internal self-determination as indigenous peoples. The rationale for having international norms targeted specifically at indigenous peoples, on his view, is purely a remedial one: indigenous peoples are more likely to have had their substantive rights violated in the past (Anaya 1996). Indeed, it is widely acknowledged that the problems of indigenous peoples and national minorities “are the same in principle” (Brownlie 1998),¹⁴ that they raise “broadly similar concerns” (Hadden 2007), and are subject to “common normative considerations” (Anaya 2004). As historically-settled groups living on their homelands, both national minorities and indigenous peoples have legitimate interests with respect to the governance of their traditional territory, and to the expression of their language and culture within the public institutions of that territory, and hence to a restructuring of state power – and all of these shared interests and claims go beyond the generic minority rights accorded to all minorities.

Since the principles advanced within the UN for targeted indigenous rights also apply to national minorities, the sharp gulf in legal status between the two groups lacks any clear

¹⁴ The “heterogeneous terminology which has been used over the years – reference to ‘nationalities’, peoples’ ‘minorities’ and ‘indigenous populations’ – involves essentially the same idea... the problems of the Lapps, the Inuit, Australian Aboriginals, the Welsh, the Quebecois, the Armenians, the Palestinians and so forth are the same in principle... the separation of the topic of indigenous populations from the question of self-determination and the treatment of minorities is not justified either as a matter of principle or by practical considerations” (Brownlie 1988: 5, 16).

moral justification. There was, at first, an understandable justification for prioritizing the rights of indigenous peoples. The subjugation of indigenous peoples by overseas European colonizers was typically a more brutal process than the subjugation of national minorities by their neighbouring societies, leaving indigenous peoples more vulnerable, and hence in more urgent need of international protection. As a result, there was a plausible moral argument for giving priority to indigenous peoples over national minorities in the codification of self-government rights in international law.

However, what began as a difference in relative urgency between the claims of indigenous peoples and national minorities has developed into a total rupture at the level of international law. Across a wide range of international documents, indigenous peoples have been distinguished from national minorities, and claims to autonomy or internal self-determination have been restricted to the former. National minorities are lumped together with visitors, immigrants and diasporas and accorded only generic minority rights, ignoring their distinctive needs and aspirations relating to historic settlement and territorial concentration. The distinction between indigenous peoples and other homeland minorities has thereby assumed a significance within international law that is morally difficult to justify or sustain.

This inconsistency raises the question of why the international community has been so much more sympathetic to the claims of indigenous peoples than to national minorities. There are many reasons (Kymlicka 2007), but the core of the problem is revealed in a passing comment by Erica-Irene Daes. In trying to diminish state opposition to indigenous claims to self-determination, she states that “in view of their small size, limited resources and vulnerability”, it is “not realistic to fear indigenous peoples’ exercise of the right to self-determination” (Daes 1993: para 28). The clear if unintended implication is that it would be realistic to fear the exercise of self-determination by groups that are not small, or that have sufficient resources (or allies) to credibly challenge state power. And this, of course, is precisely how states think of national minorities like the Kurds, Tibetans or Palestinians. They are seen, not as small, weak and peripheral, but as potential players or pawns in regional geo-political struggles that threaten the very existence of the state. Some of these fears about national minorities are paranoia, but not all. History shows that national minorities often have been recruited as proxies, collaborators or fifth-columns in struggles between neighbouring states or between rival regional powers. The assumption that national minorities are the potential cause of, or pretext for, geo-political conflict has been omnipresent in all of the international deliberations on national minorities, dating back to the League of Nations. As a result, discussions of national minority rights are heavily “securitized”, in a way that precludes recognition of, or even discussion of, the “common normative considerations” that connect indigenous peoples and national minorities. Whereas humanitarian concerns and arguments of justice have driven UN debates on indigenous peoples, security concerns have driven the debate on national minorities.¹⁵

¹⁵ For detailed discussion of this difference in the geo-political role of national minorities and indigenous peoples, and the resulting contrast between a humanitarian debate on

When Daes insisted that states should not fear the self-determination of indigenous peoples because of their small size and vulnerability, she was implicitly acknowledging the pervasiveness of state fears about the self-determination claims of larger national minorities. She was saying, in effect, that while the fear of self-determination by national minorities is understandable, states should draw a bright line between national minorities and indigenous peoples, and should not let their fear of the former erode their recognition of the latter.

In short, Daes was appealing to something like the firewall strategy. Aware of the depth of their anxiety about national minorities, she was asking state representatives to think of indigenous peoples, not as sharing common normative concerns with national minorities, but as radically different from national minorities. Rather than emphasizing the ways in which national minorities and indigenous peoples share experiences of unjust and involuntary incorporation into larger states, resulting in cultural oppression and loss of self-government, Daes instead emphasized how indigenous peoples are not as scary as national minorities, since they are numerically small, politically weak, geographically peripheral, and geo-politically innocent.

Given the securitization of national minority issues, it was perhaps inevitable that advocates of indigenous rights would adopt this firewall strategy. UN Member States simply would not have endorsed the Declaration if they thought it was opening the door for the self-determination of national minorities. So it was essential for advocates to downplay the possible normative commonalities between indigenous peoples and national minorities, and instead to emphasize their geo-political differences.

The firewall strategy has therefore served the interests of both indigenous advocates and member-states. Neither side in the struggle between indigenous peoples and states has had an interest in drawing attention to the moral inconsistencies involved in the diverging treatment of indigenous peoples and national minorities. This helps to explain why the firewall has been so pervasive and enduring at the UN.

If the only problem with the firewall strategy was its moral inconsistency, it could probably endure. But there is another, perhaps deeper, source of instability. Drawing a firewall between indigenous peoples and minorities is not only morally suspect, it is also conceptually unstable, as the very distinction is difficult to draw in much of the world. In the West, there is a relatively clear distinction to be drawn between European national minorities and New World indigenous peoples. Both are groups whose historic homeland has been incorporated into a larger state, but the former have been incorporated into a larger state dominated by a neighbouring people, whereas the latter have been colonized and settled by a distant colonial power. As I noted earlier, the latter process has typically been more brutal and disruptive, and this provides some reason for prioritizing the

indigenous peoples and a “securitized” debate on national minorities, see Kymlicka 2007: chap. 7.

international protection of indigenous peoples. However, it is less clear how we can draw this distinction in Africa, Asia or the Middle East.

In one sense, no groups in Africa, Asia or the Middle East fit the traditional profile of indigenous peoples. All homeland minorities in these regions have been incorporated into larger states dominated by neighbouring groups, rather than being incorporated into settler states. In that sense, they are all closer to the profile of European national minorities than to New World indigenous peoples. And for this reason, several Asian and African countries insist that none of their minorities should be designated as indigenous peoples. However, if targeted indigenous norms do not apply in Asia or Africa, then minorities are left with only the weak generic minority rights under Article 27, and these provide no protection for their legitimate interests in self-government and territorial autonomy.

In order to extend the protections of international law to some particularly vulnerable groups, therefore, the UN has attempted to re-conceptualize the category of indigenous peoples to cover at least some minorities in post-colonial states. On this view, we shouldn't focus on whether minorities are dominated by settlers from a distant colonial power as opposed to neighbouring peoples. What matters is simply the facts of domination and vulnerability, and finding appropriate means to remedy them. And so various IOs have encouraged groups in Africa, Asia and the Middle East to identify themselves as indigenous peoples in order to gain greater international protection.

This push to extend the category of indigenous peoples beyond its original New World setting is a logical result of the humanitarian motivation that led to the targeting of indigenous peoples in the first place. Insofar as the motivation for targeted rights was the distinctive vulnerability of indigenous peoples in New World settler states, it was natural to expand the category to include groups elsewhere in the world that share similar vulnerabilities, even if they were not subject to settler colonialism.

The difficult question however is how to identify *which* homeland groups in Africa, Asia or the Middle East should be designated as indigenous peoples under international law. Once we start down the road of applying the category of indigenous peoples beyond the core case of New World settler states, there is no obvious stopping point. Indeed, there are significant disagreements within IOs about how widely to apply the category of indigenous peoples in post-colonial states (Kingsbury 1995, 1998, 1999). Some would limit it to isolated peoples, such as hill tribes or forest peoples in southeast Asia, or pastoralists in Africa. Others would extend the category much more widely to encompass all historically-subordinated homeland minorities that suffer from some combination of political exclusion or cultural vulnerability.

Under these circumstances, attempts to draw a sharp distinction between national minorities and indigenous peoples will seem arbitrary. Moreover, any such line will be politically unsustainable. The problem here is not simply that the category of indigenous peoples has grey areas and fuzzy boundaries – that is true of many categories in both domestic and international law. The problem, rather, is that too much depends on which

side of the line groups fall on, and as a result, there is intense political pressure to change where the line is drawn, in ways that are politically unsustainable.

As should be clear by now, the current UN framework provides no incentive for any homeland minority to identify itself as a national minority, since national minorities can claim only generic minority rights. Instead, all homeland minorities have an incentive to (re)-define themselves as “indigenous peoples”. If they come to the UN under the heading of “national minority”, they get nothing other than generic Article 27 rights; if they come as “indigenous peoples”, they have the promise of land rights, control over natural resources, political autonomy, language rights, and legal pluralism.

Not surprisingly, an increasing number of homeland groups in Africa, Asia and the Middle East are adopting the indigenous label. Consider the Arab-speaking minority in the Ahwaz region of Iran, whose homeland has been subject to state policies of Persianization, including the suppression of Arab language rights, renaming of towns and villages to erase evidence of their Arab history, and settlement policies that swamp the Ahwaz with Persian settlers. In the past, Ahwaz leaders have gone to the UN Working Group on Minorities to complain that their rights as a national minority in relation to their traditional territory are not respected. But since the UN does not recognize national minorities as having any distinctive rights in relation to their areas of historic settlement, the Ahwaz have re-labeled themselves as an indigenous people, and have attended the UN Working Group on Indigenous Populations instead. Similarly, various homeland minorities in Africa that once attended the Working Group on Minorities have re-branded themselves as indigenous peoples, primarily to gain protection for their land rights. Leaders amongst the Crimean Tatars, Roma, Afro-Latinos, Palestinians, Chechens, Dalits, and Tibetans are now debating whether to self-identify as indigenous (Lennox 2006; Aukerman 2000; Klimova-Alexander 2007; Jamal 2005). Even the Kurds - the textbook example of a ‘captive nation’ or stateless national minority – are debating this option. And if the Kurds, why not the Catalans or the Basques? Indeed, some advocates for the historic Frisian minority in the Netherlands have started to adopt the label of an indigenous people (Onsman 2004)

In all of these cases, national minorities are responding to the fact that the UN’s generic minority rights are “fatally weak”, since they do not protect any claims based on historic settlement or territorial attachments. Given international law as it stands, recognition as an indigenous people is the only route to secure protection for these interests.

The availability of this back-door route for national minorities to gain targeted self-government rights may seem like a good thing. After all, the underlying moral logic should be to acknowledge the legitimate interests relating to historic settlement and territory shared by all homeland minorities, and expanding the category of indigenous people to cover national minorities is one possible way to do this.

Unfortunately, this is not a sustainable approach. The tendency of national minorities to adopt the label of indigenous peoples is likely to lead to the collapse of the international system of indigenous rights. As we’ve seen, the UN and other IOs have repeatedly

rejected attempts to codify rights of self-government for powerful substate national groups, in part because of their geo-political security implications. They are not going to allow such groups to gain rights of self-government through the back-door by redefining themselves as indigenous peoples. If more and more homeland groups adopt the indigenous label, the likely result is that IOs will retreat from the targeted indigenous rights track.

There are a number of ways this retreat could take place. One scenario would be for states to attempt to put sharp limits on which groups qualify as indigenous, so as to ensure national minorities do not sneak in. For example, the category of indigenous peoples could be restricted to New World settler states, or to small groups, or to geographically isolated groups maintaining a subsistence economy. But I don't think such stipulative redefinitions will work, since they would rule out many of the most influential participants in (and indeed founders of) the international indigenous movement. For example, the Sami are not in the New World; the Quechua are not small; the Mohawks are not isolated or engaged in subsistence living, and so on. The category of indigenous peoples is therefore likely to continue to expand, including to groups that formerly were seen as national minorities. But we know that states will not extend rights of self-determination to national minorities. The likely result, therefore, is that as the category of indigenous peoples expands, states will start to retreat from the substantive provisions of the Declaration. The Declaration's most transformative elements relating to political ordering will be downplayed or ignored, and focus shifted instead to the sorts of cultural recognition issues addressed by Article 27. We can already see signs of this in the way the World Bank interprets indigenous rights as a matter of culturally-sensitive development policy, rather than as a matter of the political restructuring of the state. Whatever the technique, the result of such a retreat would be to undermine the major progress that has occurred to date in the indigenous track.¹⁶

This suggests that the long-term future of the UN's indigenous track is unclear. It is often cited as the clearest success story in developing international minority rights, but its success rests on shaky foundations. The UN has attempted to create a legal firewall between the rights of indigenous peoples and national minorities. This firewall was needed to get the indigenous track off the ground, but it is at odds with the moral logic of multiculturalism, and is politically unsustainable. A durable international framework will

¹⁶ For various expressions of this worry, see Aukerman 2000: 1017 ("The very success of the indigenous peoples movement in developing an ambitious rights framework and in gaining an institutionalized presence at the United Nations through the working group threatens to undermine the fragile, unspoken standards of inclusion which have characterized the movement up until now"); Kingsbury 1998: 419 ("There is an appreciable risk for the indigenous peoples' movement that the existing and highly functional international political distinction between indigenous peoples and ethnic and other minorities will erode, galvanizing opposition to claims of indigenous peoples"); and Barsh 1994: 81-2 ("Indigenous organizations will have to choose between excluding these [national minority] groups from the movement and attracting the hostility of many states that have previously taken no interest in indigenous issues").

require a more coherent account of the relationship between indigenous peoples and national minorities, and a more consistent approach to self-government rights. And this in turn will require a dramatic rethinking of the underlying concepts and categories used in international law. We need to recognize that indigenous peoples aren't the only group in need of targeted rights – this is also true, in different ways, of national minorities, the Roma, Dalits, immigrants, and others. The idea of indigenous rights as just a one-off exception to the rule that minorities are a single category with generic minority rights is not sustainable, either morally or politically. This broader rethinking of categories is needed not only to achieve the broader transformative potential of the indigenous Declaration for other groups, but also perhaps to prevent a retreat in support for indigenous peoples themselves.

Unfortunately, I am not optimistic that such a rethinking is likely in the foreseeable future. Security-based fears about national minorities are deeply entrenched in the international order, and neither states nor indigenous groups have much interest in questioning the current exclusion of national minorities from the debate. Both states and indigenous peoples are likely therefore to continue to act on the assumption of a firewall, even amidst the growing signs of its dissolution. Sooner or later, however, we will need to address more systemic questions about the relationship between national minorities and indigenous peoples, between generic rights and targeted rights, and between normative principles of justice and geo-political security fears. Without a more coherent account of these relationships, the indigenous Declaration rests on shifting sands.

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