

AN INTRODUCTION TO NATIVE AMERICA: THE EXPERIENCE OF A RUSSIAN LAWYER

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“I am convinced that those societies (as the Indians) which live without government enjoy in their general mass an infinitely greater degree of happiness than those who live under the European governments.”

—Thomas Jefferson

I. INTRODUCTION

This article reports on the six months I spent in the United States with the Fulbright Program. I was involved with many activities during this period, and I hope this experience will flow into influential work dedicated to the protection of Native American rights. The six months I spent in America were an unforgettable time for me. I collected a wealth of library materials and met several interesting people, many of whom became my friends. I also participated in numerous events.

First, I attended a variety of events organized by the National Museum of American Indians in Washington, D.C.—such as cultural events, conferences, and discussions. I found these events extremely interesting and was able to meet many specialists in the field of Native American rights protection. Also, I worked with the director of the museum and other staff members, who graciously shared their resources with me.

Second, I visited several different organizations, including the Native American Rights Fund, the Cherokee Nation Washington Office, and the Navajo Nation Washington Office. Outside of Washington, D.C., I visited the following: the McNickle Center of the Newberry Library and the American Indian Center in Chicago; the United Nations Permanent Forum on Indigenous Issues in New York City, where I spent one week as an

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observer; and Navajo and Hopi reservations in the American Southwest. I spent several days among the Navajo in Arizona and was personally introduced to their style of life, an unforgettable experience from my stay in America. Additionally, I visited the capital of the reservation, Window Rock, where I met with Navajo Nation officials. I visited several medicine men, participated in sacred ceremonies, and slept in a hogan at a sheep camp near Kayenta¹—each of which provided excellent opportunities to learn more about the Navajo Nation's culture, traditions, and legal and political systems. I also attended oral arguments at the Navajo Nation Supreme Court, which was held at American University Washington College of Law. Further, I met with practicing lawyers in the field of the Federal Indian Law, and I visited the National Powwow in Washington, D.C. I tried to travel extensively to participate in different events and learn more about the beautiful culture and traditions of native people in America. Every event I attended was interesting and educational.

More than 400 years ago, English colonists created their first settlement in Jamestown, Virginia. The colonists had contact with the Native Americans, the Powhatan Confederacy, one of the most powerful confederacies of Algonquian Indian tribes who dominated these territories. I am glad I went to the United States and had the opportunity to do my research there at that particular time—the 400th anniversary of the establishment of the Jamestown colony.²

Originally, my research interest was in comparing the federal structure of the United States of America to Russia. I was especially interested in the legal status of the American Indian territories. In Russia, we do not have reservations. Our indigenous people do not have their own land or their own government; they have only some additional rights for hunting and access to natural recourses. We also refer to our indigenous people as indigenous minorities, provided that they do not number more than 50,000 people. The United States, on the other hand, defines its indigenous people differently—for example, the United States recognizes the Navajo Nation, comprised of 300,000 people, and the Cherokee Nation, totaling 250,000 people.

When I arrived in the United States and realized the research opportunities, I decided to broaden my research topic to Native American rights protection. I also included questions about the federal structure of the United States and the legal status of the American Indian reservations.

1. A family who kept sheep invited me to stay at their camp.

2. The first British colony established in North America was in Jamestown, Virginia. England's Queen Elizabeth II came to the anniversary celebration, which also marks the 400th anniversary of the first British-Native American contact.

II. THE STATUS OF NATIVE AMERICAN RIGHTS

In 1923, Haudenosaunee Chief Deskaheh of the Iroquois Nation traveled to Geneva to speak to the League of Nations and defend the right of his people to live under their own laws, on their own land, and under their own faith. He was not allowed to speak and returned home in 1924, but his vision began a movement on an international level for the generations that followed.

Indigenous people are the inheritors of unique cultures. They have social, cultural, economic, and political characteristics that are distinct from those of the dominant societies in which they live. Various groups of indigenous people share common problems related to the protection of their rights as distinct people. They seek recognition of their identities, their ways of life, and their right to traditional lands, territories, and natural resources. Throughout history, their rights have been violated. Indigenous people are arguably among the most disadvantaged and vulnerable groups of people in the world today. The international community now recognizes that special measures are required to protect the rights of indigenous people.

In 1994, the United Nations General Assembly launched the International Decade of the World's Indigenous Peoples, from 1995 to 2004, to increase the United Nations' commitment to promoting and protecting the rights of indigenous people worldwide. More recently, the United Nations General Assembly proclaimed the Second International Decade of the World's Indigenous Peoples from 2005 to 2015. The goal of the Second Decade is to further strengthen international cooperation for the solution of problems faced by indigenous people in areas such as culture, education, health, human rights, the environment, and social and economic development.

I decided to investigate the international and domestic protection of the indigenous people in the United States; I explored the existing systems of reservations and tribal self-government in the United States and their roles in the preservation of the traditions, language, and culture of Native Americans. The Soviet Union created a negative image of American reservations, and this image still exists in Russia. But, in my opinion, this image does not reflect the actual situation in the United States. In July 2007, when I visited the Navajo Nation reservation in Arizona, I saw many successful people. I witnessed their aspirations to work, live in peace, and raise their children in accordance with national traditions and customs, all of which they seem to do very well.

III. IMPROVING THE RIGHTS OF NATIVE AMERICANS

Native Americans still face many problems, such as poverty, alcoholism, and unemployment. One of the best ways to solve these problems is education. As one Russian proverb states, “Knowledge is power.” People should therefore become aware of international legal regulation of indigenous peoples’ rights and understand the main provisions of international documents like the International Labour Organization Indigenous and Tribal Peoples’ Convention 1989 (No. 169) and the United Nations Declaration on the rights of indigenous people, adopted by the Human Rights Council on June 29, 2006. Also, people should be familiar with the role that international organizations play in indigenous peoples’ rights protection, such as the United Nations’ role in maintaining the rights and freedom of indigenous people. People should understand the activities of the main bodies of the United Nations: the General Assembly, the Permanent Forum on Indigenous Issues, and the Office of the High Commissioner for Human Rights and the Human Rights Council. Moreover, people should understand the activities of regional organizations, such as the Organization of American States and some international non-governmental organizations.

It is also necessary to teach native people how to use domestic mechanisms in the field of indigenous peoples’ rights and freedoms in the United States. I was interested in Federal Indian Law, which is a part of the federal system of United States law. In Russia, we find it unusual that the United States has a separate legal system that regulates the relations between tribes, states, and the federal government. This difference in legal systems presents a large amount of information for the Russian scholarly community of lawyers to study.

A. UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES

I attended the sixth session of the United Nations Permanent Forum on Indigenous Issues of the Economic and Social Council (ECOSOC) at the United Nations headquarters in New York City. The conference was entitled: *Territories, Lands and Natural Resources*. The Permanent Forum is an advisory body to ECOSOC, with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, and health and human rights. The first meeting of the Permanent Forum was held in May 2002, and annual sessions take place in New York City. The forum is intended to: (1) provide expert advice and recommendations to ECOSOC and the various programs, funds, and agencies of the United Nations systems through the Council; (2) raise

awareness and promote the integration and coordination of activities related to indigenous issues within the United Nations system; and (3) prepare and disseminate information on these issues.

There are sixteen independent experts appointed for a three-year term. At the end of their term, the experts can be re-elected or re-appointed for another term. Of these sixteen members, eight are nominated by the member governments of the United Nations, and the other eight are directly nominated by indigenous organizations. Those nominated by the governments are elected to office by ECOSOC based upon the representation of each regional grouping of states. Those nominated by indigenous organizations are appointed by the president of ECOSOC and represent the seven socio-cultural regions for broad representation of the world's indigenous people.

More than 1000 participants from around the world were at the sixth session of the Forum. There were people from different governments and other United Nations bodies, as well as academic representatives and non-governmental organizations with observer status. The opening of the Forum was held by the Onondaga chief. He was invited because the land where the United Nations is located belonged to his tribe before colonization. The chief welcomed the participants of the Forum in his native language and wished them good luck.

On the first day, there was also controversy concerning the headdress of one indigenous woman from Ecuador. A security guard asked the woman to take off her headdress for her entrance card photograph, but the woman refused. Security allowed her to take a picture with the headdress only after the chairman intervened in the situation.

The Forum is a place where indigenous people can discuss their problems and experiences. At the end of each session, advice and recommendations are given to the ECOSOC. People from many different countries are in attendance; some countries represented include Ecuador, Russia, the United States, Canada, Taiwan, Peru, Bolivia, and Kenya. There is always a large group of Native Americans from the United States, from the states of California, Arizona, New Mexico, and others. Many people are dressed in their native attire, providing an excellent opportunity to observe the diversity of various cultures and traditions.

B. UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the Human Rights Council on June 29, 2006, and was ratified by the General Assembly on September 13, 2007. It was not

accepted by Australia, New Zealand, the United States, or Canada, and Russia abstained from voting. All indigenous people awaited the ratification of the Declaration. The Declaration proclaims cultural, religious, educational, and other rights for indigenous people. This document allows the indigenous people to participate in the political and social life of their country's community.

Indigenous people need special attention for their problems. They should have the same rights as other people, in addition to the right to protect their traditional way of life. The Declaration fixes the right of self-determination, meaning indigenous people can establish their own political status and economic, social, and cultural development. They have the right of autonomy and self-government in their domestic issues; they are protected against violent assimilation,³ against violent deportation from their lands, and also from any other discrimination. Under the Declaration, indigenous people can keep their traditions and language—they can even provide education in their own language—and have access to their sacred places. They can create their own media services in their native language and keep their own traditional medicine.

But, perhaps the most significant aspect of the Declaration is its proclamation of indigenous people's land rights. Article twenty-six of the Declaration allows indigenous people to hold their native land and natural resources. This is the main reason why the United States, Australia, New Zealand, and Canada rejected the document and Russia abstained from it; it is clear there are a lot of natural resources in lands occupied by indigenous people in these countries. Article fifteen of the Russian Constitution states that international obligations have priority over domestic legislation. Therefore, signing this document would mean recognition of the right of indigenous minorities to their native lands, and the federal center would partly lose control over natural resources.

3. From 1871 until 1934, the United States attempted to assimilate the American Indians. The government wanted to "civilize" Indians and to integrate them into American society. The reservation system was not created in order to preserve the culture and language of Native Americans; the reservations were created to make the Native Americans "civilized" and to stamp out their traditions. The government also created residential schools for Indian children, where children were forced to be baptized, given American names, and prohibited from speaking their native language.

IV. CONCLUSION

There are more than 370 million indigenous people in about seventy countries worldwide. Native Americans are one of the most important parts of the indigenous world. Their culture is unique, and Native American culture is one of the greatest treasures of the United States. Native Americans themselves hold a special place in the American mosaic. We need to pay a special attention to their needs with the intention to preserve their culture, traditions, language, and religion. If we fail to do this, we will lose their interesting cultural contributions. I decided to write about Native Americans with the aim to raise awareness in the scholarly community of their unique culture. In the future, I also would like to write a book to inform people in Russia about Native Americans and to introduce our people to the system of indigenous peoples' rights in the United States. I will conclude with words from the Navajo (Dine) language: Ho' zoh go shii Nah Na shil – hozho. Nii Kayah be kah jii Na – dash – dal', which means "I wish you all the best, and I would like to come back sometime to your country."