

BACKGROUND NOTE

International Symposium on

Indigenous Peoples and Borders: decolonization, contestation and trans-border practices
New York, 11-12 November 2019

organized by

Columbia University (Institute for the Study of Human Rights, Indigenous Peoples' Rights Program), UiT -The Arctic University of Norway and the University of British Columbia (First Nations and Indigenous Studies, Department of Political Science)

This International Symposium will be hosted by Columbia University in New York (at Heyman Center). It is co-sponsored by the Institute for the Study of Human Rights (Indigenous Peoples' Rights Program); UiT - The Arctic University of Norway; the University of British Columbia (First Nations and Indigenous Studies, Department of Political Science); University of Guelph (Political Science Department), Canada; University of Lapland, Finland (Sami and Arctic Indigenous Studies); New York University (Center for Latin American Studies); MADRE and the International Indian Treaty Council. Within Columbia it is also co-sponsored by the Institute for Comparative Literature and Society (ICLS), the Center for the Study of Ethnicity and Race and The University Seminar on Indigenous Studies.

Introduction

Indigenous Peoples' sovereignty, including freedom of movement, cultural integrity, connection to land and territories and resources and their overall well-being are in obvious and less obvious ways intimately connected with borders, threatened, defined and constrained by borders. This symposium aims at creating a rare opportunity for indigenous (focused) scholars and practitioners to engage in dialogue in and through border studies. This burgeoning research field can enrich our global knowledge community and vice versa stimulate border studies scholars to address topics of particular importance for the lived experiences of Indigenous Peoples. We shall below provide an overview of this increasingly diverse international research field, which started with a nearly exclusive focus on physical and political border issues, but has examined social, cultural and psychological dimensions in recent years. Some of this recent interdisciplinary scholarship, often-coined as "borderology" in Scandinavia, has opened up for important new contributions from the humanities, social sciences and law.

During the same period as border studies have been reinvigorated (from the late 1980s until presently), Indigenous Peoples and scholars have also contributed to a significant discourse around their own multiple borders, vis-a-vis states, or not having to do with states, such as cultural and social borders.

This striking convergence in knowledge shifts on one hand and too limited direct intellectual exchange on the other, make us firmly believe that there is much to be gained by bringing together these knowledge communities. Some of the recent theoretical innovations in border studies as well as innovative practices may stimulate not only novel insights into the intellectual sources (epistemology) underpinning the key international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration), but also help analyze the scope for successful political and juridical entrepreneurship at regional, sub-regional and local levels.

The link between human rights and borders is specifically recognized in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Art 36 stipulates that:

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

This provision is closely linked to all three major pillars of the Declaration, namely the right to self-determination, the right to lands, territories and resources and the cultural rights of indigenous peoples. The Declaration is not just concerned with the issue of physical and political borders, but also the very conditions for crossing and transcending borders, through political, social and cultural cooperation, other forms of mobility, and also transcending borders through public memory, border poetics and the like.

The ever-evolving human rights regime has been opening up international accountability and elevating individuals, groups and peoples, including Indigenous Peoples, to subjects of international law. Hence, borders, as vessels of territorial sovereignty of states, become relativized through the emergence and broad expansion of international human rights and humanitarian law in the last 70 years. State responses to border peoples' expanded range of public discourses on sovereignties are increasingly based on new surveillance technology that has unprecedented consequences for basic freedoms.

The approach of the Symposium will therefore be a multi-dimensional notion of borders that border studies and related disciplines elaborate as an exciting intellectual and policy-relevant development.

The International Symposium's priorities in terms of inquiry

Given the breadth and vitality of border studies and practices, the organizers hope that the Symposium can examine and debate useful specific examples (both case studies and comparative studies) on the ground that they will not only deepen academic understanding, but also identify some possible solutions/directions that can have positive impacts on the vexed political, legal, environmental, economic and cultural issues at hand.

The organizers also hope that papers will be presented from various regions and sub regions, including the US-Mexico border, the Canada-US border, African border regions, the borders between Bangladesh, India and Myanmar, as well in Sápmi (transcending the borders of Norway, Sweden, Finland and Russia) and regions of Central and South America where the Maya Indigenous Peoples live.

Selected issues for discussion

- Borders, territories and the politics of recognition: evolving contexts of statehood, and indigenous governance
- Borders, lands, territories in everyday life worlds, public memory and border poetics
- Re-bordering and de-bordering by the state and its high-tech intelligence-military complex
- The UN Declaration on the Rights of Indigenous Peoples as a universal document and framework of situated border politics
- Indigenous visions of multiple territorialities and trans border movements
- Well-being with culture and identity within and without borders in the light of the Sustainable Development Goals

Participation and structure

This will be a two-day interdisciplinary symposium. It will be open to academics, representatives and experts from Indigenous Peoples' organizations and nations, states, non-governmental organizations and intergovernmental organizations. This background note that briefly outlines certain key theoretical and analytical approaches as a basis for this International Symposium, will be posted by the organizers in due course.

An overview of border studies

Geography was one of the earliest disciplines to study the problem of borders, both human and physical. In recent decades, political geography and cultural geography, anthropology and humanistic disciplines have shown a renewed interest in the multi-scaled politics (and poetics) of borders, including invisible and imaginary borderscapes.

Early border studies in the late nineteenth century and first half of the twentieth century, took a mapping and historical-geographical approach to the evolution of international borders, not least delimitations of colonial possessions in Asia, the Americas, Africa and the Middle East. Numerous studies were devoted to classifications of borders as imposed barriers and the nature of contacts across them. The European concept of borders as physical and political realities along strictly fixed lines was a relatively uncontested paradigm. Insights from border studies both served to expose often-conflicting geopolitical realities and interests of states in particular.

Following the Second World War, functional approaches to transboundary interactions were in vogue. The understanding of border phenomena became more multifaceted and more broadly informed by a wider range of disciplines - most notably political science and law - and produced useful applicable insights for border cooperation and delimitation of more recent (late colonial and post-colonial) political borders.

With the rise of World Systems Theory from the late 1970s onward, border studies were influenced by structuralist macro-systems theory, and got enmeshed in studying hierarchical relations between center and periphery (North-South and within states). One also got interested in the political economy of political and economic integration (including transboundary) processes, which, more often than not, reproduced and even increased economic inequalities and discrimination. The permeable nature of state boundaries resulting from economic and political globalization, not least the expansion of the Bretton Woods institutions became a locus of inquiry. The rise in anthropology of ethnic studies, brought novel insights into sub-national and transnational ethnic (both armed and peaceful) movements and territorial formations (both political and cultural) in the different regions, exposing critical gaps and omissions in the dominant state and world-system centered approaches and debates. Political entrepreneurship (based on ethnic identity as the pivotal resource in politics of belonging), state capacity and will to accommodate (and repress) heterogeneity and ethno-nationalist formations became popular subjects of enquiry. Study of recent cases of secessionism (including self-proclaimed republics) became a related sub-field of inquiry, as became the ambitious reintegration project of creating a European supra-national political identity. The fragility of the concept of nation-state as a specific Western-European 19th century legacy was more closely interrogated. So was the importance of “context” in studying interrelations between social, political and natural borders and frontiers and the state, and its often lacking accommodation to distinct claims of cultural and political recognition, including self-rule and accommodative migration and other border-crossing

policies. In fact, when formulating policies and drafting the UN Declaration on the Rights of Indigenous Peoples, the rising international Indigenous movement made quite liberal use of these insights, which became an intellectual common good, without always acknowledging it came from border studies.

In spite of Emanuel Wallerstein's influential center-periphery theory's declining influence in the 1980s, the theoretical and methodological insights from grand-system theory about the nested and dynamic nature of borders and border regions were not outdated. Law, humanities and social sciences insisted on a partly distinct, partly overlapping locus on reterritorialization from below, invigorating border studies from the late 1980s onward.

Studies on reterritorialization (through politics of belonging, new mobility patterns and forms of local self-rule etc.) interrogated challenges to state sovereignty and border management. Of particular importance were challenges from historically ancient resurging of sovereign or semi-sovereign formations of borderlands peoples, and from recent ethno-nationalist movements. These movements were understood as entrepreneurial identity projects in the making, as reterritorialization of borderlands occurred through opening up of market spaces, production zones, commodity chains, commodification of land, extractive industries, mass tourism, visa-free zones, and new political and cultural platforms. These processes were largely results of neoliberal globalization policies with their alluring slogans of borderless societies, free flows of peoples, goods, services and market-led growth as the very motor of human well-being and growth. One studied how reterritorialization shifted the bargaining power between states' legitimate use of force and non-state armed actors, often resulting in contested and blurred boundaries (privatization of violence and armies in urban and rural borderlands).

The last decades have brought increased attention to two interrelated areas. Firstly, processual aspects of territorial claims/imaginings/control, and conflict-ridden exercises of state sovereignty (often involving high-tech securitization practices) and a mix of resistance forms (both non-violent and violent) and variable degree of support from border populations. Secondly, the nexus of everyday lifeworlds and their construction of social borders, border-transcending practices and narrative constructions of borderlands and territorial realms, defined by the politics of recognition from below or above (both collective and individual rights claims).

By hindsight, we may ask if not postmodern and poststructuralist theorists have somewhat uncritically adopted neoliberal notions of borderless societies and regions and mobility, and adopted ethno-nationalist movements' politics of recognition of homelands within states or demands for transcending international borders. We hope that this symposium will inspire critical studies based on investigations of cases of "statist" political demands for homelands with fixed borders where once borders were fluid and highly dynamic.

From the vantage point of Indigenous Peoples and minorities, the notion of *regionis* important and multi-layered. Its references as a *geopolitical construct*, a *recent political construct* of new regionalism at a different level of integration, and *region as a mindscape*— are all distinct and require context-rich inquiries. Border as mindscape, creates and sustains notions of territory memorized and demarcated through mythologies, precious manuscripts, border poetics, sacred sites and routes, social (often sacralized) geographies of salient topographies etc. These dimensions may stimulate a study of *de jure*, *de facto* and *popularly imagined* notions of region and a more sophisticated situated understanding of tensions and overlap between the notions region and territory.

Borders, human rights and Indigenous Peoples

The inclusion of human rights in the UN Charter as one of the three main aims of the Organization created a revolution in international law and international relations by elevating individuals' and groups' human rights into an issue of international concern, beyond borders. From 1945 onwards and especially after the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, any concept of absolute sovereignty of the state within its borders in terms of the treatment of people gave way to a new regime. The ever-evolving human rights regime has been opening up international accountability and elevating individuals, groups and peoples, including Indigenous Peoples, to subjects of international law. By becoming parties to international human rights instruments, states cede part of that human rights-related sovereignty to the international community. Borders then, since the new era of human rights norms, have acquired a new significance, closely linking state (and interstate) responsibility to human dignity. Freedom of movement within borders and the right to leave any country and the right to return to one's own country (Article 13 of the UDHR) are part of this state responsibility.

Hence, borders, as vessels of territorial sovereignty of states, become relativized through the emergence and broad expansion of international human rights and humanitarian law in the last 70 years. The same is the case for the concept of state sovereignty itself. In fact, the still-not-fully accepted "responsibility to protect", that would allow physical international intervention to protect against egregious human rights violations, is but one of the expressions of relativized state sovereignty, and also controversial since it is vulnerable to misuse by great powers.

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Moreover, Article 32 of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization Convention (ILO) states that “Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and cooperation between indigenous and tribal peoples *across borders*, including activities in the economic, social, cultural, spiritual and environmental fields”. This article not only emphasizes the importance of trans-border cooperation and management, but also border peoples as *borderscape* heritage custodians. Political and physical borderscapes do cross through indigenous peoples’ ancestral lands, undercut their governance systems and undermine their economies, wellbeing and cultures. Challenges faced by many Indigenous Peoples divided by borders continue. From the Mohawks, to the Yaqui, to the Sami, to the Maasai, the integrity and human rights of Indigenous Peoples are negatively affected by indignities imposed through both external and internal borders. Self-governance structures, citizenship, salient identity markers that underpin their integrity as peoples are facing constant affronts, not least because of increased securitization of borders and movement across them in the current era of anti-terrorism aided by high-tech surveillance technology. Trafficking and other criminal activities, undue interference with lawful economic trade and claims to social entitlements and conflict (also violent), often affect borderlands communities.

Efforts of states to deal with issues of Indigenous Peoples divided by borders are far and few in-between and their results leave a lot to be desired. Whether it is the Mohawks who are divided by the US-Canadian border, or the Maya who are divided by state borders between states in Latin America, the realities of Indigenous Peoples sustaining such divisions are enmeshed with convoluted and imposed legal and political systems of settler colonial states. These have deep impacts on the peoples’ own governing structures, their everyday lives, cultures and the overall well-being.

The issue of borders affecting the cultural and political, economic and social integrity of Indigenous Peoples does not arise only from inter-state borders. It is directly relevant as well to Indigenous Peoples’ rights to lands, territories and resources. It is also relevant within states where reservations exist for Indigenous Peoples. Such realities are often linked to gradations of recognition apportioned by the state, as it sees fit to serve and perpetuate domination and in

many or most cases are contested by Indigenous Peoples. Citizenship rights are part of those state-imposed systems in connection with borders. Indigenous Peoples' own struggles, as they exercise their right to self-determination at political, juridical and other levels, including at international level, have achieved not just the proclamation of strong international norms through the UNDRIP, but also significant case law by national and international courts as well as political breakthroughs and practical examples of indigenous governance and positive effects in their lived experiences that show the way to possible answers to the negative impacts of borders on Indigenous Peoples' fundamental rights.

The UN Permanent Forum on Indigenous Issues has made several recommendations pertaining to cross-border issues. In 2009, it urged the Nordic States to ratify, as soon as possible, the Nordic Sami Convention, which could set an example for other Indigenous Peoples whose traditional territories were divided by international borders ([E/2009/43](#), para. 55). In 2010, it recommended that the Governments of Canada and the United States of America should address the border issues, such as those related to the Mohawk Nation and the Haudenosaunee Confederacy, by taking effective measures to implement the United Nations Declaration on the Rights of Indigenous Peoples ([E/2010/43](#), para. 98). In 2013, the Permanent Forum expressed alarm at the continuing acts of violence being perpetrated against indigenous peoples by Member States and others. It therefore acknowledged the need for States to establish a monitoring mechanism to address violence against Indigenous Peoples, including assassinations, assassination attempts and rapes, and intimidation of Indigenous Peoples in their attempts to safeguard and use their homelands, regions and territories that transcended national borders, including the non-recognition of their membership identification and documents and the criminalization of their related activities. It said that specific attention must be paid to such actions being perpetrated by State and local police, the military, law enforcement institutions, the judiciary and other State-controlled institutions against Indigenous Peoples ([E/2013/43](#), para. 41). In 2013 as well, the Permanent Forum underlined the need for States to respect and promote Indigenous Peoples' definitions of learning and education, founded on the values and priorities of the relevant Indigenous Peoples, noting that the right to education was independent of State borders and should be expressed by Indigenous Peoples' right to freely traverse borders, as supported by articles 9 and 36 of the United Nations Declaration on the Rights of Indigenous Peoples.

On a final note, a study entitled “Cross-border issues, including recognition of the right of Indigenous Peoples to trade in goods and services across borders and militarized areas” (E/C.19/2015/9), was conducted by Megan Davis, Member of the UN Permanent Forum on Indigenous Issues. Davis gave special emphasis on North America, the Arctic and Australia. Among the review’s relevant conclusions for this Symposium, is Davis’ finding (based on literature on Indigenous Peoples, cross-border rights and international jurisprudence) that bilateral and international agreements are the best way to approach cross-border peoples.