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BOOK REVIEW

At the Edge of the State: Indigenous Peoples and Self-Determination. BY MAIVÂN CLECH LÂM. Ardsley NY: Transnational Publishers, 2000.

*Jeffrey D. Martino**

At the Edge of the State is an erudite and practical work. In her book, Maivân Clech LÂM poses two questions: will indigenous peoples create and enforce an “international legal instrument” around their interests and will that instrument be binding on all states.¹ LÂM answers affirmatively to the first and conditions the second on a case by case basis.² She discusses the two seemingly opposing themes of self-determination of indigenous peoples and the desires of the state within a historical context to fashion a creative proposal for the international community. Ultimately, her proposal meets the needs of indigenous groups while maintaining the integrity of the state.

LÂM, indicative of her teaching style,³ presents a historical backdrop to support both a legal and an anthropological argument that promotes indigenous people’s right to self-determination. The state’s evolution and the emergence of the global economy serve as formidable obstacles to all people who are in need. Therefore, advocates for the rights of indigenous peoples must understand the legal and social history of the postmodern state to overcome the international community’s resistance of their right to self-determination. LÂM proposes questions such as:

And the historical record is in fact ambiguous: do nations need states, or do states (that is political organizations or movements) need nations, in order that there be lads in whose breasts bullets may nuzzle?⁴

LÂM argues that the States’ legal systems today are constrained

* 3L CUNY School of Law. Special thanks to Professor LÂM and the N.Y.C. L. REV.

¹ MAIVÂN CLECH LÂM, *AT THE EDGE OF STATE: INDIGENOUS PEOPLE AND SELF-DETERMINATION* 92-96 (Richard Falk ed., Transnational Publishers 2000).

² *Id.*

³ Professor LÂM taught Constitutional and Property Law at CUNY School of Law. I served as her teaching assistant for Property Law.

⁴ See LÂM, *supra* note 1, at 92 (Edward L. Keenan, *A Historian’s Perspective: Rethinking the U.S.S.R., Now That It’s Over*, N.Y. TIMES, Sept. 8, 1991, at E3).

by its habits rooted in Christendom Western Europe.⁵ Originating from the 1648 Peace of Westphalia, the modern states became "sovereign and independent" from the Holy Roman Empire, but co-joined governance with religion.⁶ Over time, French and German nationals became dissatisfied with the divine royalty and revolutionized their own form of states by asserting their ethnic and political ideologies.⁷ Nonetheless, the romance of the French Revolution failed to endure and the cultural strife remaining within most European states ignited the First World War.

The War exposed the States to their own vulnerability. Attempting to deter future battles, the League of Nations drew new boundaries for the losers and allowed the fallen empires to achieve international recognition of statehood if they would grant "citizenship" and "equal treatment" to the minority groups⁸ within their borders.⁹ Lacking any foresight, these negotiations excluded minority representatives whose rights were being determined.¹⁰ Furthermore, underdeveloped countries remained exposed to future colonization by Western European States.¹¹ Subsequently, after the Second World War, the aforementioned minority group protections were diminished to individual human rights when the United Nations (hereinafter, "U.N.") abandoned the League's approach and merely encouraged States to enter agreements between one another.¹²

Cutting against the grain of legal positivism present in the United States and international law, LÂM defines indigenous peoples, dissects the two competing forces (self-determination and the State), and then maneuvers between the two to suggest a creative and sound approach on how to ameliorate the injustice inflicted

⁵ LÂM, *supra* note 1, at 86.

⁶ LÂM, *supra* note 1, at 89 citing Antonio Cassese, *International Law in a Divided World*, Oxford: Clarendon Press (1986), 34.

⁷ LÂM, *supra* note 1, at 89-92. Highlighting the State's evolution is necessary. Perhaps a matured State can reflect upon its mistakes and realize the benefits of appeasing its people.

⁸ "A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members — being nationals of the State — possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only, implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language." F. Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, U.N. Doc. E/CN.4/Sub.2/384/Add. 1-7 (1979).

⁹ LÂM, *supra* note 1, at 93 (citing Richard B. Bilder, *Can Minorities Treatise Work?*, 20 *Israel Yearbook on Human Rights* 71 (1990)).

¹⁰ LÂM, *supra* note 1, at 92-96.

¹¹ *Id.*

¹² *Id.*

upon indigenous peoples. Lâm describes common qualities of native peoples instead of assigning a limiting definition. She claims indigenous peoples “share a contemporary condition of subjugation to the domination, exploitation and territorial appropriation that States controlled by culturally alien peoples inflict or allow.”¹³

However, Lâm appropriately rejects those groups who have encroached into a State freely or “forcibly”.¹⁴ Finding its origin in the “ethnic minority” once identified by the League of Nations, this description draws out the tension existing between the State and indigenous peoples: the connection to the land indigenous peoples occupy vis-à-vis the unjust movement to control that land. The U.N. affirms her proposition by delineating three features that should be considered to determine whether a group can be recognized as belonging to an indigenous community: “a significant historical attachment to a territory; an explicit commitment to cultural distinctiveness; a resolve to preserve both territory and culture as a means of reproducing a singular ethnic community.”¹⁵ Lâm provided a functional definition of indigenous peoples for today’s international community.

Globalization reinforces the strain between the States and indigenous communities. For example, States are selling away resources¹⁶ treasured by indigenous peoples to large corporations, thus displacing the community. Although individuals belonging to an indigenous group may find themselves enjoying life in different locations and work-related environments, they forever remain a part of their “indigenous communities” that suffer the alienation from demanding “dominant societies”.¹⁷ In an effort to address this problem indigenous peoples have begun to collectively cry for international attention in order to preserve their identities, which has perpetuated the recent discussions between indigenous groups and the State among the international community.

Using her foresight, Lâm’s expanded characterization of indigenous peoples precludes the State from not acknowledging an indigenous presence within its border. Hence, the door opens for native peoples to assert their right to self-determination and empowers advocates to dissuade States from consenting to the locust acts of multi-national corporations. She focuses on Article III of the

¹³ LÂM, *supra* note 1, at 3.

¹⁴ LÂM, *supra* note 1, at 9.

¹⁵ *Id.*

¹⁶ Timber, minerals, land and labor.

¹⁷ LÂM, *supra* note 1, at 12.

Draft Declaration, which grants indigenous peoples the right to self-determination.¹⁸ “By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”¹⁹

The Draft Declaration enumerates “a comprehensive set of values” and characteristics of self-determination throughout each of its Articles including, but not limited to “equality, dignity, diversity, nondiscrimination, environmental integrity and non-militarization.”²⁰ The goal of these values is to have the political, economic, social and cultural norms of indigenous communities protected and recognized by both the international community and the States. *At the Edge of the State* describes how several Non-Governmental Organizations (NGO’s) at different U.N. Conventions pled for this right on behalf of indigenous peoples. These efforts resulted in the creation of the Working Group of Indigenous Peoples (WGIP)²¹ which proposed the Draft Declaration of 1994.²² Interestingly, Lãm points out that although indigenous people are associated with a territory, a self-determination claim is not to protect that resource. Rather, it is a right that preserves their identity and destiny.

Inspired by the development of the Draft’s Declaration, Lãm views the informal process of its crafting as revolutionary.²³ This method maintained an Order that represented a preamble to future relationships and discourse between indigenous peoples and the State.²⁴ Although States had no formal representatives present at the meetings, individuals from all indigenous communities were encouraged to attend and were asked to contribute. As its course unfolded, the Declaration’s language became more ascertainable and reflective of the indigenous peoples’ aspirations.

Tending to cast aside traditional roles, Lãm perceives the true nature of the indigenous voice as united, but idiosyncratic to par-

¹⁸ *Draft Declaration on the Rights of Indigenous Peoples*, U.N. Commission on Human Rights Sub-Commission on the Prevention of Discrimination and Protection of Minorities, U.N. Doc. E/CN.4/1995/2 (1994).

¹⁹ *Id.*

²⁰ LÂM, *supra* note 1, at 50.

²¹ Established in 1982, the WGIP is a five-member group created to closely monitor the relationship between indigenous peoples and States. See LÂM, *supra* note 1, at 43. Notably, no member is of a distinct indigenous group, but their inspiring foresight in developing the Draft Declaration exceeds the contemporary limiting analysis most state representatives bring to the international forum.

²² LÂM, *supra* note 1, at 50.

²³ LÂM, *supra* note 1, at 53-54.

²⁴ LÂM, *supra* note 1, at 54.

ticular indigenous community needs. For example, in contrast to some "settler states" where the "physical and cultural" distinctions between the indigenous peoples and colonizers is clear, Asian nations had a history of interacting amiably with other groups until attempts by the West to colonize and christianize Asian tribal groups tainted tribal groups trust in interacting with dominant groups.²⁵ Although Asian peoples became sovereign to these foreign invaders they remain distrustful of self-determination efforts as evidence of treacherous acts of foreign colonizers.²⁶

The Draft Declaration also outlines a model of interaction for States and indigenous communities. The U.N.'s adoption of the Draft Declaration would effectively flatten the bureaucratic international community²⁷ by providing an informal mechanism through which to recognize the cultural and political needs of indigenous peoples without the traditional rigid conventional formalities.

We have also learned the hard way in recent decades that the trappings of formal democracy do not necessarily signify a democratic society. On the contrary, they . . . conceal injustices, inequalities and discriminations.²⁸

Transitioning her focus to the State, LÂM critiques the state-centered approach in international law by questioning democratic principles. She presents the positivist state arguments and then rebuts them on legal and contextual grounds. Her rebuttal demonstrates the impracticality of the States' contentions. First, LÂM shows that both Western and Asian States refuse to accept the liberal categorization of self-determination.²⁹ She asserts that these States contend that self-determination, as it is now written in the Draft Declaration, encompasses an internal and external right, the latter of which States fear because it threatens their territorial economic stability.³⁰ States fear that allowing indigenous people to exercise the external right of self-determination, it would ultimately grant them the power to secede from the State. LÂM analyzes the

²⁵ *Id.*

²⁶ *Id.*

²⁷ "International community" denotes a sense of collective ideas and common goals. Currently, states exercise their paternalistic nature by announcing that they speak for the people. LÂM exposes the nature of States and addresses the looming developments indigenous peoples are making in international law.

²⁸ LÂM, *supra* note 1, at 160; citing Donald Clark & Robert Williamson eds., *Self Determination: International Perspectives*, 8 (London: Macmillan Press, 1996).

²⁹ LÂM, *supra* note 1, at 141.

³⁰ LÂM, *supra* note 1, at 137.

different state arguments based upon a "set of propositions."³¹

Finding legal support entrenched in several accepted doctrines,³² the State contends that the people's right to secede rests only in the State's political process and not through a claim of self-determination. For example, Resolution 1514 declares those who are experiencing subjugation in the colonial context by foreign military occupation and racist governance may maintain a limited right to external self-determination.³³ States that protest these treatises do not recognize indigenous peoples as holding an external right that would empower them to unilaterally secede from the State. Rather, the only way for secession to be legally recognized by a state is if the whole nation votes for its secession.³⁴ This standpoint is supported legally by the International Court of Justice in *Concerning Military and Paramilitary Activities in and Against Nicaragua*.³⁵ In this case, the Court held "[a]dherence by a State to any particular doctrine does not constitute a violation of customary law."³⁶ Hence, LÂM argues that the State will continue to determine people's rights and assume their traditional absolutist position.³⁷

Second, LÂM, who recognizes the ill effect of such dominant characteristics, rationally raises aspects of principle, community, and the need to debate the State's view.³⁸ Although States may determine democratic governance is tantamount to self-determination, LÂM asserts that self-determination rises above any embraced tenet and deters conflicts recognized by all States.³⁹

Third, she posits that the State's image of itself is flawed. In fact, she claims the Postmodern State is weaker than ever.⁴⁰ Falling to capitalist demands of transnational institutions such as the International Monetary Fund, the World Bank and the World Trade Organization, the State conveniently claims to be powerless to protect

³¹ LÂM, *supra* note 1, at 144. These propositions are: 1. Secession of a colony is the right of all people within that territory; 2. Those colonial borders are determined by the State; 3. There is a distinction between colonial and indigenous peoples; 4. There must be "egregious" behavior by the foreign occupier; 5. It is the states' sole right to define the above; 6. The Draft Declaration fails to define indigenous peoples.

³² See generally LÂM, *supra* note 1, at 138-41.

³³ LÂM, *supra* note 1, at 137-38.

³⁴ LÂM, *supra* note 1, at 137-38.

³⁵ 1986 *International Court of Justice Reports*, at para. 263.

³⁶ *Id.* (see also LÂM, *supra* note 1, at 160).

³⁷ LÂM, *supra* note 1, at 144.

³⁸ LÂM, *supra* note 1, at 145-82.

³⁹ LÂM, *supra* note 1, at 160.

⁴⁰ LÂM, *supra* note 1, at 165.

indigenous communities from these conglomerates.⁴¹ Cynically, the State creates this facade to deflect accountability in its plight for absolutism; however, Lâm does not concede the relevance of such imagery. Rather, she surmises that the State is merely a pawn to commercial regimes whose influence exerts a transnational political muscle capable of legally protecting its interests both domestically and internationally.⁴² Hence, these international capitalist organizations easily manipulate the State through their contributions to political parties, which results in the State failing to address the needs of its own “frustrated” citizenry.⁴³

Lâm believes that with indigenous voices lures a renewal of ideas. “International Law, like other social constructs, is an adaptive response to changing conditions, including the condition of knowledge. Such responses, at best, serve their time and embody defensible approaches to problems as they were perceived.”⁴⁴ The dichotomy of State and self-determination of indigenous peoples already lies on a path heading toward amenable co-existence. Lâm stresses that the international forum can build upon the foundation laid by past and present efforts of indigenous communities and the State. Lâm utilizes this groundwork to fashion “a proposal” for the U.N.⁴⁵ In this proposal, she outlines three requirements the U.N. must meet in order to reconcile the differences between indigenous peoples and States. These measures will supplement the ongoing discourse in the international community and assist those efforts still needed at the local level.

Initially, she proposes U.N. recognition of the right to self-determination. Lâm states the U.N. would attain the balancing of power between the State and indigenous peoples, forbidding “exploitation of a bilateral conflict,” and creation of a regime that enhances “peace and justice.”⁴⁶ Propelling the State to enter into negotiations, these objectives call upon indigenous peoples to champion their own rights.⁴⁷ However, Lâm admits that indigenous representatives may not possess the political savvy required at these negotiations to adequately communicate their community’s needs. Lâm recognizes these dynamics and suggests that additional nonpartisan mediators from the U.N. attend these negotiations to

⁴¹ LÂM, *supra* note 1, at 166.

⁴² LÂM, *supra* note 1, at 168.

⁴³ LÂM, *supra* note 1, at 167.

⁴⁴ LÂM, *supra* note 1, at 209.

⁴⁵ LÂM, *supra* note 1, at 183.

⁴⁶ LÂM, *supra* note 1, at 185.

⁴⁷ LÂM, *supra* note 1, at 188-90.

stabilize the inequity.⁴⁸

Next, Lãm suggests that a permanent forum be created to address matters relating to indigenous peoples. Presently, advocates and representatives of indigenous peoples come together at certain delegated U.N. conventions, signing-up at the door if they want to be heard before the WGIP. Despite the inconsistent membership and lack of formality, the Conventions' nontraditional approach to U.N. procedure is precisely the forum indigenous peoples seek internationally.⁴⁹ Moreover, since Lãm believes indigenous peoples' status requires protection, constructing a permanent forum would ensure this.

Serving many functions, this structure would encourage effective communication and efficient operation of purely indigenous community matters. The forum would serve as an avenue for indigenous peoples to exchange valuable information about themselves, which delegates can then use in turn to competently coordinate and evaluate U.N. activities.⁵⁰ Furthermore, dialogues concerning prevention and resolution of State and indigenous conflicts could increase awareness for possible future emergencies and necessary supportive programs.⁵¹

Lãm argues that the historical lesson to be derived from the League of Nations is how paternalistic ideals could be counter-productive vis-à-vis minorities. Learning from past mistakes it becomes clear to declare inclusion now. However, Lãm observantly separates herself from what many activists perceive the Permanent Forum should achieve. Many proponents of a Permanent Forum remain consistent with former custodial aspects of the League, which joins "prevention" and "oversight."⁵² Lãm differentiates the two themes and calls for a separate entity to manage certain "flared" disputes. She notes that if these heated disputes were to remain in the Permanent Forum they would only cause undue stress, slowing any progression.⁵³ Therefore, disillusioned parties will replicate the faults of the former League of Nations and once again the international community will disavow collective rights

⁴⁸ LÂM, *supra* note 1, at 195.

⁴⁹ LÂM, *supra* note 1, at 191.

⁵⁰ LÂM, *supra* note 1, at 192.

⁵¹ LÂM, *supra* note 1, at 192.

⁵² LÂM, *supra* note 1, at 196 (compares this open-ended and stable exercise of self determination with the potentially unstable or sometimes violent attempts by minority groups to form their own independent State in order to achieve international recognition, e.g. the French Revolution, Middle East and the Soviet Union).

⁵³ LÂM, *supra* note 1, at 94.

and recede to individual human rights.⁵⁴

Finally, LÂM calls upon the U.N. to participate as an observer in the negotiations between indigenous and State parties. Compelling States to settle disputes with indigenous peoples, Article 36 of the Draft Declaration requires that a neutral international body be called upon to resolve all unsettled disputes between States and indigenous peoples.⁵⁵ LÂM imagines the ideal international body, "the Commission,"⁵⁶ as she terms it, an independent dispute resolution entity affiliated with the Permanent Forum. "The Commission" would develop its own criteria to guide its decision making process.⁵⁷ LÂM suggests that it ask two very specific questions when a complaint has been lodged; "it [The Commission] would indeed need to develop criteria to guide it in answering two questions that must be posed when a claim is lodged: is the particular claimant a people for purposes of self-determination; if yes, what conditions apply to its exercise of self-determination under the facts of the case?" The use of this method contradicts the limiting desires that States pursue (a permanent solution, the notion that self-determination means secession from the State and positivism).⁵⁸ In casting aside these self-contained themes, the international community equips itself to judge fairly.

Although *At the Edge of the State* lays out certain proposals that will promote the recognition of indigenous peoples in the international community, it does not condone a weaker State. Indeed, underlying LÂM's proposals is the belief that a stable nation is necessary to protect the general welfare of all peoples within its borders. Further, she contends that nations should take proactive measures to empower indigenous peoples who seek political recognition.

Tony Jundt, in his article "*Is there a Belgium?*," illustrates the first point.⁵⁹ In his depiction of Belgium, a country unable to protect its own citizenry from crime and injustice, Jundt argues that the key to the preservation of a group's identity lies within the countries whose "government guarantees protection."⁶⁰ Successful preservation is contingent upon a country's ability to gather

⁵⁴ *Id.*

⁵⁵ LÂM, *supra* note 1, at 196.

⁵⁶ LÂM, *supra* note 1, at 196.

⁵⁷ LÂM, *supra* note 1, at 197.

⁵⁸ LÂM, *supra* note 1, at 199-200.

⁵⁹ Tony Jundt, *Is there a Belgium?*, THE NEW YORK REVIEW OF BOOKS, Dec. 2, 1999, at 49, 53.

⁶⁰ *Id.*

their citizenry under a "common purpose compatible with the preservation of civil and political liberties."⁶¹ As Belgium's circumstances connote, a balance is required between an overly powerful state and one that is essentially divided among various groups. Thus, exemplifying that often all citizens can be better served through a unified stable state.⁶² Belgians live in a practically "stateless society with a self governing, bilingual capital city" that services a "host of transnational agencies and companies."⁶³

Alternatively, the United States and the Federated States of Micronesia provide an example of how a stable nation can help in supplying indigenous peoples the tools to exercise their self-determination.⁶⁴ While there are several considerations for the United States to have taken an interest in Micronesia, the fundamentals can be applied generally.⁶⁵ In this instance, during the formative years, the United States funded training for the Micronesians to participate in government affairs and encouraged educational advancement.⁶⁶ By doing so, the Micronesians were able to effectively communicate during the negotiation process and come away with an association with the United States that benefited both parties.⁶⁷ Education, training in government and inclusion with the State's political process are positive efforts that States can pursue in order to create a relationship that promotes its citizen's rights and deters injustice.

At the Edge of the State is an innovative tool for advocates of indigenous rights. Maivân Clech Lâm offers a thoughtful and compelling look into the exciting and kaleidoscopic field of international law that will continue to change future relationships within the international community. Lâm suggests empowering strategies that will enable advocates to meet the needs of indigenous peoples, and at the same time, begin to place indigenous peoples on equal footing with the established powers that historically have acted to marginalize them.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ See generally Naomi Hirayasu, *The Process of Self Determination and Micronesia's Future Political Status Under International Law*, 9 U. HAW. L. REV. 487 (1987).

⁶⁵ See generally Hirayasu, *supra* note 64. (These islands served to benefit the U.S. as a military outpost).

⁶⁶ See generally Hirayasu, *supra* note 64.

⁶⁷ See generally Hirayasu, *supra* note 64.