

# *Cahiers* **DIALOG**

Cahier n° 2012-06. Research Report

## THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES TO THE TEST OF TIME (2007-2012)

Françoise Morin

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## **Cahiers DIALOG**

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DIALOG — Aboriginal Peoples Research and Knowledge Network — is a space for innovative discussion and exchange between First Peoples and academia. DIALOG is designed to enhance research, facilitate the co-production of knowledge and foster the development of just, egalitarian and equitable social relations. DIALOG is an interuniversity, inter-institutional and international network created in 2001 and based at Institut national de la recherche scientifique (an academic branch of Université du Québec), Québec, Canada. Funded by the Fonds québécois de recherche sur la société et la culture and the Social Sciences and Humanities Research Council of Canada, DIALOG brings together more than 150 people from various universities and Aboriginal organizations and communities. DIALOG works closely with many Aboriginal partners and universities.

DIALOG members come from a wide range of disciplinary backgrounds, pursue varied practices and research interests, and share the common objective of advancing knowledge in view of a more egalitarian society and the full recognition of the cultures, rights, values and visions of the world of the First Peoples. Through its scientific activities, its programs in support of collaborative and community-partnered research, training and publishing, its knowledge mobilization initiatives, its dissemination mechanisms and its interactive data banks, DIALOG is contributing to the democratization of knowledge relating to the Aboriginal world on both the national and international levels. In today's knowledge society, DIALOG is helping to promote cultural diversity and the recognition of such to encourage the harmonious living together of diverse peoples. DIALOG's mandate is fourfold:

- **Fostering** constructive, innovative and lasting dialogue between the academic milieu and Aboriginal organizations and communities in order to revitalize and promote interactive and collaborative research.
- **Contributing** to a better understanding of the historical and contemporary social, economic, cultural and political realities of Aboriginal peoples and the dynamics of their relations with non-Aboriginal people by emphasizing the co-production of knowledge and by helping to make research and public policies more responsive to Aboriginal needs, approaches and perspectives.
- **Supporting** university students' training, guidance and supervision, particularly for Aboriginal students, by associating them with the network's activities and achievements and offering them financial assistance programs and excellence grants.
- **Increasing** the scientific and social impact of research relating to Aboriginal peoples by developing new knowledge tools in order to promote and disseminate research findings in Québec, Canada and worldwide.



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## | Table of Contents |

<b>Introduction .....</b>	<b>1</b>
<b>Section 1: Building an Indigenous Globalization: From Local to Global .....</b>	<b>3</b>
1.1 Background .....	3
1.2 International Context of the 1960s .....	4
1.2.1 A Culture of Human Rights .....	4
1.2.2 Anthropologists Trained by Fredrik Barth .....	5
1.3 Actors of the 1970s.....	6
1.3.1 UN Experts .....	6
1.3.2 Members of International Civil Society .....	7
1.3.3 Representatives of Indigenous Organizations .....	8
<b>Section 2: After the Adoption of the Declaration?</b>	
<b>From the Global Back to the National Arena.....</b>	<b>11</b>
2.1 Turnarounds in a Number of Countries.....	11
2.2 Implementation of the Declaration .....	13
2.2.1 United Nations Permanent Forum on Indigenous Issues (UNPFII).....	13
2.2.2 Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous People .....	13
2.2.3 Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) .....	14
2.3 Implementation of the Declaration at the National Level .....	15
<b>References .....</b>	<b>19</b>
<b>Appendix: Additional documentation on the United Nation Declaration on the Right of Indigenous Peoples.....</b>	<b>21</b>

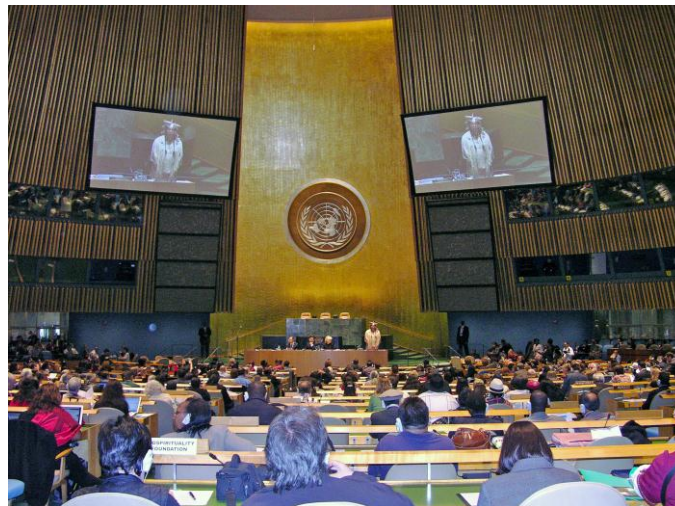




## Introduction

Five years ago, on September 13, 2007, the United Nations General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples. Of the 158 countries concerned, 143 voted in favour, 11 abstained, and 4 (Canada, the United States, Australia and New Zealand) voted against the Declaration. As we will see below, these four countries later changed their positions on the Declaration.

UN Secretary-General Ban Ki-moon stated in 2007 that the adoption of this Declaration was a “triumph for Indigenous peoples around the world.” He described it as a “historic moment when UN Member States and Indigenous peoples have reconciled with their painful histories and are resolved to move forward together on the path of human rights, justice and development for all.”<sup>1</sup> The adoption of this Declaration was indeed a great symbolic victory for Indigenous peoples, a victory that had been achieved after twenty-five years of mobilization and work within two United Nations bodies, the Working Group on Indigenous Populations (WGIP) set up in 1982, and the more specialized Working Group on the Draft Declaration (WGDD) created in 1995.



9<sup>th</sup> session of the United Nations Permanent Forum on Indigenous Issues' opening. Presentation by Toodadaho Sid Hill, Chief of the Onondaga Nation. UN, New York, April 19, 2010. © F. Morin and B. Saladin d'Anglure.



Dalee Sambo Dorough, expert member of the United Nations Permanent Forum on Indigenous Issues. New York, 2010. © F. Morin and B. Saladin d'Anglure.

A number of Indigenous jurists underlined the importance and particularity of this Declaration in a collective work entitled *Making the Declaration Work*, published in 2009 by the International Work Group for Indigenous Affairs (IWGIA). Notable among these Indigenous jurists is Dalee Sambo Dorough, Ph.D., a researcher in international law and a professor at the University of Fairbanks. This Inuk from Alaska had been working tirelessly since the 1970s on the drafting of the forty-six articles of this Declaration. In May 2010, she was elected as an expert member of the United Nations Permanent Forum on Indigenous Issues in New York. She sees the Declaration as important because it resulted from work with Indigenous representatives (unlike the UN's Declaration on Minorities, where the latter had been merely observers). Dalee

<sup>1</sup> Source: [www.aidh.org/autocht/ag-adoption.htm](http://www.aidh.org/autocht/ag-adoption.htm)



Sambo Dorough feels that Indigenous peoples have succeeded in redefining their rights by becoming active subjects and not simply the objects of international law (Sambo Dorough 2009, Bellier 2012).

This is also true for James Anaya, a Native American lawyer and law professor at the University of Arizona, a specialist on Indigenous rights and, since 2008, United Nations Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous People: he feels that by helping to draft this Declaration, Indigenous people have contributed to a new understanding of human rights and, especially, of the notion of collective rights. For years, many Indigenous leaders and elders came to United Nations bodies to explain the collective nature of their rights and, in particular, their collective rights to their lands and natural resources. Anaya stresses the importance of Article 3 of the Declaration, on self-determination: “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

This right does not imply the formation of a state for each people but, because of Article 3, Indigenous peoples are not considered as sub-peoples. They are instead political communities with the right of autonomy. Anaya believes that the Declaration has allowed us to advance our concepts of international law, in adopting a viewpoint that is less state-centred, and in replacing legal standards aimed at the assimilation of Indigenous peoples with those that respect Indigenous peoples’ cultures and collective identities (Anaya 2009).

This Declaration today concerns more than 370 million Indigenous people in 77 countries and representing more than 5,000 cultures, over half of which are in Asia.



James Anaya, United Nations Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous Peoples. New York, 2010.  
© F. Morin and B. Saladin d'Anglure.





## Section 1: Building an Indigenous Globalization: From Local to Global

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### 1.1 Background

The process of Indigenous mobilization that led to the 2007 adoption of the Declaration on the Rights of Indigenous Peoples worldwide was based on a local-level mobilization that began in North America over fifty years ago. This local mobilization involved Indian groups in the United States and Canada that, during the 1960s, influenced by the Black civil rights movement, were the first to identify themselves as “Indigenous peoples” or “First Nations.” They came from countries that had planned for their “disappearance.”

The American government had in 1953 opted for a “Termination Policy” designed to eradicate tribes’ specific territorial status and to transfer the authority that had until then been exercised by the federal government to individual states, while putting an end to the status of “American Indians,” considered as wards of the government. This policy’s intention was to eliminate the prevailing situation of differentiation between Indians and the rest of the population and to hasten their assimilation.

The Canadian government, on the other hand, faced with the failure of its more than century-old Indian policies, proposed in a 1969 White Paper that Indians become full-fledged Canadian citizens. This would mean elimination of the 1876 *Indian Act* and the disappearance of Indian reserves. In citing a desire for justice and to end discrimination against Indians, the White Paper was in fact calling for their assimilation, while clearly omitting any mention of the question of territorial rights.

These two policies triggered a very strong reaction among Indians, who began to organize against these government policies. In Canada, one important event was the 1968 creation of the National Indian Brotherhood (which became the Assembly of First Nations in 1982) by George Manuel, Chief of the Shuswap tribe of British Columbia. Scattered across the Canadian Arctic, the Inuit were also trying to unite in a single association, and in 1971 created the Inuit Tapirisat of Canada, which in 2011 became Inuit Tapiriit Kanatami, in order to defend their rights vis-à-vis the government in Ottawa.

During the same period, in the United States, the American Indian Movement was set up (1968) with the primary objectives of defending tribal sovereignty and self-determination, and in targeting the struggle toward violent actions with the occupations of Alcatraz in 1969, the Bureau of Indian Affairs in 1972, and Wounded Knee in 1973. But, faced with the failure of these occupations, the movement turned toward legal actions, and one segment of the American Indian Movement’s militants began to take the international route.

American and Canadian Indigenous organizations (and especially George Manuel) had understood the need for an intertribal and even continental approach to their problems. George Manuel remembered the approach that Chief Deskaheh had taken with the League of Nations in 1923, in claiming the Iroquois Six Nations Confederacy’s right to self-determination and in denouncing Canada’s assimilationist policy. But his appeal was not heard since it was

considered a domestic matter. In 1974, on the Standing Rock Sioux reservation, Indian leaders held the first international Indian treaty conference, which brought together some 4,000 delegates from 98 North American and Latin American Indian nations.

Indeed, the same kind of awareness had been growing in the southern hemisphere, where, over the past ten years, the Shuar Federation had been active in Ecuador, as had the Regional Indigenous Council of Cauca (CRIC) in Colombia (since 1969). Moreover, the First Indian Parliament of South America, which met in Paraguay in 1974, claimed lands that Indians had had control over for thousands of years; and this is not to mention the various groups that had arisen at the local and regional levels in most Latin American countries.

During this first meeting between Indians of the two Americas at Standing Rock, an International Indian Treaty Council (IITC) was set up. Its two primary objectives were to put pressure on governments to honour treaties signed with “sovereign Indigenous nations,” and to establish contacts with the UN. IITC played a key role in the whole approach at the UN, especially for the adoption of the Declaration.

## 1.2 International Context of the 1960s

To properly understand Indigenous peoples’ desire to develop an international strategy focusing on the UN in order to have their peoples’ rights recognized, we need to consider the international context of the 1960s.

### 1.2.1 A Culture of Human Rights

There was a strong culture of human rights at the UN at this time. The 1948 Universal Declaration of Human Rights was accompanied in the 1960s by the adoption of two covenants, one on civil and political rights, and the other on economic, social and cultural rights.

Article 1 of the International Covenant on Civil and Political Rights states: “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” At that time, this was seen as mainly concerning colonized countries that would be negotiating their independence. The UN was far from recognizing that it also concerned Indigenous peoples. But Norwegian jurist and UN expert Asbjorn Eide felt that the two cases were similar, as Indigenous peoples were denouncing the internal colonialism that they were suffering.

Article 27 of the same Covenant concerns minorities: “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.”

The Sub-Commission on the Prevention of Discrimination and Protection of Minorities, under the UN Commission on Human Rights, started to draft a series of reports on various aspects of the discrimination experienced by these minorities, which would lead to the United Nations’ First Decade for Action to Combat Racism and Racial Discrimination (1973-1982).

These reports were prepared by experts, and one of them, the Guatemalan Augusto Willemssen Diaz, began to focus on Indigenous issues. He gathered information and met with Indigenous leaders such as George Manuel. The latter was trying to have the Indigenous voice heard at the

UN. At that time, only NGOs with consultative status were allowed to participate in sessions of the various UN meetings. George Manuel, convinced that the international approach would bring solutions to Indigenous problems, was working to achieve this.

### 1.2.2 Anthropologists Trained by Fredrik Barth



Founding members of the NGO International Work Group for Indigenous Affairs. Amongst them, Helge Kleivan (3<sup>rd</sup> from the left). Stuttgart, 1968. © IWGIA.

At the same time, anthropologists would play a major role in this building of an international Indigenous consciousness. This was the case especially with Scandinavian anthropologists that had been students of Fredrik Barth and had participated in the 1967 symposium that Barth had organized in Bergen to better analyze the situation of ethnic groups and the management of their boundaries. Until then, anthropology had only studied ethnic groups as “discontinuous cultural isolates,” without considering their relationships with their surrounding social, economic and political environment. It had also neglected the way that these peoples saw themselves and how they were seen by their neighbours. Fredrik Barth suggested that the point of view be reversed by defining ethnic groups as forms of social organization resulting from interactions between the group and its

environment. So one needed to look at the boundaries by which groups defined their identities and the boundaries that the groups’ neighbours ascribed to them.

This meant studying the historical, economic and political context in which these ethnic identities had arisen. One had to analyze the processes by which ethnic boundaries were constructed and maintained and disappeared, since these boundaries were not fixed but could undergo substantial variations over time. It was essential to inventory the symbolic markers that individuals used to outline the boundary between their ethnic group and others, and to study the role of ethnic entrepreneurs in their group’s political mobilization (Barth 1969). In short, all the theoretical conditions were in place for Indigenous political development to be validated as a focus of research and action (Morin and Saladin d’Anglure 1995).

Some of these anthropologists trained by Fredrik Barth were working in South America, and took part in the 38th International Congress of Americanists in Stuttgart in August 1968. They spoke of the dramatic situation of Indians in several South American countries and denounced the genocide and ethnocide these peoples were suffering. That same year (1968), they decided to create an NGO, the International Work Group for Indigenous Affairs (IWGIA), in Copenhagen. Its mandate was to provide information on the situation of Indigenous peoples in the Americas and to help these Indigenous groups to organize to protect their lands and culture.<sup>2</sup>

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<sup>2</sup> For the past forty years, IWGIA has supported Indigenous peoples’ mobilizations and struggle for the recognition of their rights. This NGO has developed actions in various parts of the world where Indigenous peoples are found. Former director Jens Dahl has written a book on the history of IWGIA’s activities and engagement since 1968 (Dahl 2009).

These anthropologists adhered to a new anthropological ethics; IWGIA's first leader, Helge Kleivan, a specialist on the Inuit, was convinced of the need to forge connections between Indigenous peoples and bring them together in international associations so that they could become a political force.

### 1.3 Actors of the 1970s

#### 1.3.1 UN Experts

UN experts interested in "Indigenous populations" recommended that an official study be undertaken on them. In 1971, the Commission on Human Rights decided to launch a study on the "problem of discrimination faced by Indigenous peoples." Ecuadoran ambassador José Martínez Cobo assumed political responsibility for the study. But it was actually the Guatemalan expert Díaz who would accomplish this mission (Minde 2008). The research would help to internationalize the Indigenous question by examining its various aspects worldwide (apart from Africa). The report (known as the Cobo Report) was only published in 1986, but, in the meantime, annual reports to the Sub-Commission on the Prevention of Discrimination and Protection of Minorities underscored the inadequacy of the international standards then in effect. In the face of the diversity of Indigenous situations, the need to create a specific working group for Indigenous peoples became evident. And the Cobo Report suggested criteria for defining the notion of "Indigenous people":

- *The criterion of ancestry:* This criterion makes it possible to identify the current descendants of peoples whose territory was invaded by other peoples from other parts of the world, who then dominated them. Although easily applicable to Indigenous peoples of the two Americas, Australia and New Zealand, who moreover define themselves, in Canada and the United States, as "First Nations," the criterion is more difficult to apply to Indigenous peoples of Asia and Africa, which are more often marginalized groups that have been the victims of state neo-colonialism.
- *The criterion of cultural specificity:* This criterion refers to the distinctive cultural characteristics of Indigenous peoples within the dominant society, such as language, religion, customs, social organization, or way of life.
- *The criterion of self-identification:* Indigenous peoples place a great deal of importance on the principle of self-identification. They do not want the states that dominate them to have the sole power to determine whether or not they are Indigenous, as is the case in several countries such as Canada where the *Indian Act* (1876) defines who is Indian and what lands are reserved for Indians. The Cobo Report emphasizes the importance of group consciousness, and of the recognition of an Indigenous individual by his or her group (Cobo 1986).

Also during this period, the UN Economic and Social Council (ECOSOC) accredited the National Indian Brotherhood in 1974 as a non-governmental organization with consultative status. It was quite exceptional for this Canadian national organization to have obtained this status, defined in Article 71 of the Charter of the United Nations and generally granted to an international organization. The group had gained this status on the condition that they transfer it to an international Indigenous NGO as soon as such an organization had been created. Accrediting the National Indian Brotherhood was a symbolic opening of the door to the UN to Indigenous peoples.

### 1.3.2 Members of International Civil Society

Many groups working to support Indigenous mobilization were created from the 1970s onwards. Their main objectives were to publicize Indigenous peoples' situation, and to act as intermediaries for them with governments and United Nations bodies. IWGIA (as well as Survival International, Cultural Survival and other groups) published numerous works to increase political authorities' awareness of the Indigenous question. Helge Kleivan would be a key figure in this respect.

He played a crucial role in Indigenous mobilization by facilitating meetings between Indigenous peoples that focused on their potential strength. He was actively involved in organizing the first Arctic Peoples' Conference in 1973, which brought together organizations representing the Inuit of Canada and Greenland, the Sami of Norway, Sweden and Finland, and Indians from the Yukon and Northwest Territories in Canada.

Kleivan also offered all his expertise to George Manuel to organize the first International Conference of Indigenous Peoples in Port Alberni, British Columbia, in 1975. This conference was funded by four governments (Canada, Guyana, Norway and Denmark) and several organizations, including IWGIA and the World Council of Churches. Approximately 35 million Indigenous people were represented at the conference. Their 52 leaders, including Sami, Inuit, Maori, Aborigines from Australia and Indians from the two Americas, now had the opportunity to share their experiences for the first time. They came from countries with widely contrasting Indigenous policies. On the one hand, the Sami, Indians of North America, Inuit, Maori and Australian Aborigines came from democratic countries that had, in varying degrees, helped them to organize.

On the other hand, the Latin American Indians had no government support and even risked being arrested and tortured for coming to Port Alberni. But this confrontation of two political worlds faded before the discovery of their same Indigenous rootedness and their will to protect it. Out of this meeting came the creation of the World Council of Indigenous Peoples, to which was transferred the status of an NGO accredited by ECOSOC, which had been obtained in 1974 by the National Indian Brotherhood of Canada.



### 1.3.3 Representatives of Indigenous Organizations



Ted Moses, representing the Grand Council of the Crees, at the WGIP. Geneva, 1989. © F. Morin and B. Saladin d'Anglure.

Through their organizations, Indigenous representatives were able to lobby to differentiate themselves from minorities<sup>3</sup> and to reject the notion of “Indigenous population.” They wanted to be recognized as **Indigenous people**. To Ted Moses, Chief of the Grand Council of the Crees of Québec, the term “population” is degrading and insulting because it is generally used to describe animal species.

Indigenous peoples wanted to replace this with the concept of “people,” but representatives of governments were for a long time reluctant to agree because, according to the Charter of the United Nations, this term implies the right of self-determination, which could lead to secession.

While there is no official definition of the expression “Indigenous people,” several UN agencies such as the Office of the UN High Commissioner for Human Rights, the International Labour Organization and the World Bank have proposed such a definition in the course of their work.

While the experts worked together on this legal particularity, Indigenous organizations wanted to speak on this issue within the official confines of the UN so that their voices could be heard by representatives of governments of the various countries (Niezen 2003). This dialogue was launched with the 1977 international NGO conference in Geneva on “discrimination against Indigenous populations of the Americas.” For the first time ever, approximately a hundred Indians, representing more than sixty Indigenous “nations” of the two Americas, were invited to speak about their problems at the Palais des Nations. Dressed in their traditional costumes and accompanied by their elders, Indigenous leaders were now able to freely express themselves within the confines of the UN. They presented themselves as representatives of “Indigenous peoples” with specific ties to the land and proposed a “Declaration of Principles for the Defense of the Indigenous Nations and Peoples of the Western Hemisphere.” This text was a foreshadowing of the debates of the next thirty years, as it broached all the major issues that would be discussed during those years.

In 1978, a second conference studied ways “to combat racism and racial discrimination.” And a final 1981 conference focusing on “Indigenous peoples and the land” brought together Indigenous representatives not only from the two Americas but also from Australia and Norway. These three UN conferences involving Indigenous people from a number of world regions helped to foster the emergence of a transnational Indigenous identity that would develop and gradually extend to other parts of the world over the next twenty-five years (Brysk 2000).

<sup>3</sup> In 1971, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities had created a working group on the rights of minorities chaired by Francesco Capotorti. This group of experts studied the problems of minority-group individuals, hence the title of the Declaration adopted by the UN General Assembly in 1992: *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*. This approach, centred on individuals, did not satisfy Indigenous peoples who were emphasizing their collective issues in presenting themselves as peoples.

The conferences also highlighted the lack of legal instruments to defend Indigenous peoples' rights, while supporting the Cobo Report's recommendation to create a working group to deal with this issue.

Combined pressure from Indigenous organizations with consultative status with ECOSOC, NGOs supporting the Indigenous cause, and some governments, such as those of some northern countries, Canada and Australia, succeeded in convincing the Economic and Social Council of the need to set up such a working group. The Working Group on Indigenous Populations (WGIP) was created in 1982. Most government delegates at ECOSOC were still far from agreeing on the notion of "Indigenous people," but Indigenous representatives had in five years been able to take their place at the UN as new political actors that had to be reckoned with (Barsh 1994).

From 1982 to 1993, the WGIP was key to the development of an Indigenous consciousness and identity, which spread beyond the boundaries of the two Americas to become a global identity. The working group in fact welcomed over a thousand Indigenous representatives from five continents every year (Morin 2005).

The WGIP was the only UN structure where the people for whom this group was working for actively participated in the discussions and made their contribution to the production of the Declaration. The discussion of the articles of this Declaration started from a draft written by five North American Indigenous organizations—including the International Indian Treaty Council (IITC) and the Inuit Circumpolar Conference (ICC)—which served as the basis for the WGIP's work. This included aspects such as the principle of self-determination, which would spark numerous discussions with government representatives. Erica-Irene Daes, WGIP chairperson from 1984 to 2001, played a crucial role in the writing of this Declaration (Daes 2008).

Over and above the definitions and wording set down Indigenous peoples made a place for themselves at the UN (Muehlebach 2001) by ensuring that the WGIP would be not only a space for discussion with experts and representatives of governments, or a forum where they could present their "grievances" (Sanders 1989), but also a political tool for the creation of Indigenous identity (Morin 2006).





Aboriginal delegates arrival at the UN for the 3<sup>rd</sup> NGO conference on Land and Indigenous Peoples. UN. 1981. © Espen Waehle.



Erica Daes, chairperson of the Working Group on Indigenous Populations. UN, Geneva, 1991.  
© F. Morin and B. Saladin d'Anglure.



## Section 2: After the Adoption of the Declaration? From the Global Back to the National Arena



Rodolfo Stavenhagen, First Special Rapporteur on the situation of the Human Rights and Fundamental Freedoms of Indigenous Peoples. Geneva, 2005.  
© F. Morin and B. Saladin d'Anglure.

As Rodolfo Stavenhagen, Mexican sociologist and the first United Nations Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous People, stated: “The adoption of the Declaration marks the closing of a cycle of great historical significance, even as it opens, at the same time, a new cycle relating to its implementation.” Stavenhagen emphasizes that this new cycle must now start from the global, and go back to the national, and ultimately, the local level (Stavenhagen 2009).

Since the Declaration’s adoption, a debate has arisen on its value and the conditions of its implementation. Some governments do not see the Declaration as legally binding because it is not accompanied by a convention that requires ratification. It is considered a “soft law” that can be easily ignored as it does not include enforcement mechanisms. So there is said to be an urgent need to work on a convention, as was done with the 1948 Universal Declaration on Human Rights, which was followed by two covenants twenty years later, in 1966. Some Indigenous organizations favour this route. But others are very skeptical and feel that this process would take far too long, and might ultimately fail.

A number of Indigenous representatives recall the case of International Labour Organization (ILO) Convention No. 169 on Indigenous and tribal peoples, adopted in 1989: only 22 states had ratified it by 2010. Seeking another strategy, they note that the Declaration was endorsed by 143 countries from every part of the world, and feel that it could become a legal instrument that could gradually be supported by regional, national and international jurisprudence.

### 2.1 Turnarounds in a Number of Countries



Statement of the Australian representative endorsing the United Nations Declaration on the Rights of Indigenous Peoples. New York, April 3, 2009.  
© F. Morin and B. Saladin d'Anglure.

Since 2009, pressure from Indigenous organizations and changes in government majorities in some countries have led to several states changing their positions on the Declaration.

- On April 3, 2009, Australia endorsed the United Nations Declaration on the Rights of Indigenous Peoples.
- On April 21, 2010, during the 9th session of the Permanent Forum on Indigenous Issues, New Zealand’s Minister of Maori Affairs, Pita Sharples, declared: “Today, New Zealand changes its position: we are pleased to express our support for the Declaration.”



- That same day, the American delegation asked to speak. U.S. ambassador to the United Nations Susan Rice announced her country's decision to re-examine its position on the Declaration on the Rights of Indigenous Peoples. On December 16, 2010, President Obama announced his country's official endorsement of the Declaration during the national White House Tribal Conference.
- Canada, the fourth country to have voted against the Declaration in 2007, finally endorsed the Declaration on November 12, 2010. But according to Indian and Northern Affairs Minister John Duncan, because the Declaration is not legally binding, it does not alter Canadian laws and is not an expression of international law. One can then ask why it took Canada so long to endorse the Declaration.



The U.S. ambassador to the United Nations Susan Rice, announcing United States' decision to re-examine its position on the Declaration. UN, New York, April 21, 2010.  
© F. Morin and B. Saladin d'Anglure.



Canadian delegations's statement announcing a re-examination of its position. New York, 2010. © F. Morin and B. Saladin d'Anglure.

## 2.2 Implementation of the Declaration

On September 13, 2012, Indigenous organizations celebrated the fifth anniversary of the United Nations General Assembly's adoption of the Declaration on the Rights of Indigenous Peoples. Three UN bodies are responsible for promoting the implementation of the Declaration:

### 2.2.1 United Nations Permanent Forum on Indigenous Issues (UNPFII)

Created in 2000, the Forum is an advisory body to the Economic and Social Council. Its mandate is to: 1) provide expert advice and recommendations on Indigenous issues to the Council, as well as to programmes, funds and agencies of the United Nations, through the Council; 2) raise awareness and promote the integration and coordination of activities related to Indigenous issues within the UN system.

The Permanent Forum on Indigenous Issues holds annual two-week sessions in New York in April and May. Its sixteen experts include eight Indigenous experts, representatives of governments, members of UN agencies, NGOs from civil society and more than a thousand Indigenous representatives from around the world who are involved in discussing the items on the agenda.

Every year, the Permanent Forum chooses a particular topic of study related to the articles of the Declaration. In May 2012, it chose "The Doctrine of Discovery: its enduring impact on indigenous peoples and the right to redress for past conquests." In the view of Indigenous representatives, the Doctrine of Discovery produced a context of domination, which was used as an argument to justify the expropriation of their lands and the abrogation of their rights.

Indigenous organizations have insisted on the current effects of the Doctrine, the repercussions of which are being experienced in many areas, especially health, and which have led to the denial of Indigenous peoples' rights to their lands and resources (particularly by extractive industries). Based on Articles 3, 28 and 37 of the Declaration, they have asked states to rectify the wrongs caused by this Doctrine (E/C.19/2012/L.2).

### 2.2.2 Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous People

This position was created in 2001 by the Commission on Human Rights. The role of the Special Rapporteur is to:

- 1) examine ways and means of overcoming existing obstacles to the full and effective protection of the human rights and fundamental freedoms of Indigenous people;
- 2) gather, request, receive and exchange information and communications from all relevant sources, including Governments, Indigenous people and their communities and organizations, on alleged violations of their human rights and fundamental freedoms;
- 3) and, since 2007, the Special Rapporteur must promote the implementation of the Declaration.

After Mexican sociologist Rodolfo Stavenhagen, the first Special Rapporteur from 2001 to 2007, Indigenous jurist James Anaya was chosen to perform this role.

Anaya's various tasks have included making visits to a dozen or so countries where the situation of Indigenous peoples required his expertise. Some of these countries include Ecuador, which he visited in 2008 in order to present his observations on the new constitution then being developed; the Republic of Congo in 2010 to evaluate the situation of the Pygmies; and New Caledonia in 2011 for the implementation of the Noumea Accord with France. He also went to Argentina where the situation of Indigenous peoples is very much a concern and to Brazil where, during a meeting with government and Indigenous leaders, he stressed the need to increasingly enable Indigenous peoples to determine their development priorities. He also cited the procedures for consulting Indigenous peoples on legislative and administrative decisions that affect them, especially in regard to development projects promoted by extractive industries.

When the various participants at these meetings are able to conduct a dialogue based on the principles underlying the Special Rapporteur's recommendations, these visits can lead to solutions and help to develop new state policies and legislation.

Every year, the Special Rapporteur reports on his different activities to the Human Rights Council. In his report of July 6, 2012, Anaya emphasized that "natural resource extraction and development on or near indigenous territories had become one of the foremost concerns of Indigenous peoples worldwide, and possibly also the most pervasive source of the challenges to the full exercise of their rights." He therefore highlighted this as a priority in his workplan for the rest of his mandate, with the objective of helping to clarify and make operational the relevant international standards (A/HRC/21/47).

Finally, the Special Rapporteur presents an annual report that summarizes his activities to the members of the United Nations General Assembly. In his latest report, dated August 13, 2012, he stressed the need to harmonize the myriad activities within the United Nations system that affect Indigenous peoples. While noting that UN agencies have done a great deal to promote the rights of Indigenous peoples, he indicated that there is still much work to be done to orient the programmes and staff within the United Nations system to respond effectively to the concerns of Indigenous peoples, in accordance with their internationally recognized rights. The Special Rapporteur stated that some organizations should foster Indigenous peoples' increased participation in the development of their programmes. He cited, for example, UNESCO, which has no specific policy to ensure that Indigenous peoples can participate in the nomination and management of World Heritage sites that are within or near their traditional territories; WIPO (World Intellectual Property Organization), where Indigenous peoples have observer status, whereby they can make proposals only if these are endorsed by at least one Member State; and the World Bank, many of whose projects have negative impacts on Indigenous peoples, particularly in the areas of energy and mining (A/67/301).

### **2.2.3 Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)**

Set up in 2007 by the Human Rights Council, EMRIP's mandate is to provide the Human Rights Council with thematic expertise on the rights of Indigenous peoples. This advice is based on studies and research.

During its fifth session in Geneva in July 2012, EMRIP's main theme of study was "the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples." The report on the session showed the close relationship between Indigenous peoples' cultural rights, rights related to their lands, territories and resources, and the right to self-

determination, and considered that Indigenous peoples could use language as a tool in the process of their decolonization, while it recognized the challenges involved in the promotion and protection of Indigenous languages and cultural rights (A/HRC/EMRIP/2012/3).



Chief Wilton Littlechild at the closing of the 4<sup>th</sup> session of the Permanent Forum on Indigenous Issues. New York, 2005. © F. Morin and B. Saladin d'Anglure.

EMRIP Chairperson Chief Wilton Littlechild praised the high level of coordination between the three UN bodies on Indigenous issues, that is, EMRIP, the Permanent Forum headed by Grand Chief Edward John, and Special Rapporteur James Anaya. At the EMRIP opening session, the latter two individuals presented a report on the progress of their work and underlined their primary objective of implementation of the Declaration.

EMRIP also presented the results of a study on this subject performed at the request of the Human Rights Council. A questionnaire had been sent out in 2011 to all states to learn what strategies and specific measures they had adopted at the national level in

view of implementation of the Declaration. Only twelve countries replied. EMRIP has asked the Human Rights Council to extend the timeframe for the consultation to enable other countries to respond. Overall, the countries that did respond emphasized the good practices that they had implemented in specific areas without situating this in the context of a global vision of Indigenous peoples' rights, which would have shown the problems that states have had in implementing this Declaration.

In the case of Peru, for example, the government focused on the laws passed in the area of intercultural bilingual education, but did not mention the hotly contested aspects of rights related to Indigenous lands, territories and resources, which have been at the centre of nearly 250 ongoing conflicts, more than half of which are environmentally related. Peru did mention that a law on prior consultation for Indigenous Peoples was passed in September 2011 and that a regulation in this area was being developed. But it did not indicate that Indigenous organizations have criticized the vagueness of the law, which confuses consultation and consent and does not stipulate when this free, prior and informed consent should be obtained. Because of these shortcomings, Indigenous organizations asked for the law to be amended before the regulation was discussed. Not having obtained satisfaction in this regard, most refused to participate in the debates. On April 3, 2012, a regulation was nonetheless adopted, the content of which has been very strongly criticized by both Indigenous representatives and human rights specialists.

## 2.3 Implementation of the Declaration at the National Level

While many governments lack the political will to bridge the gap between the Declaration on the Rights of Indigenous Peoples that they endorsed on September 13, 2007 and its implementation at the national level, there have been some significant advances in the past five years.

First, on the legal and legislative level:

- In October 2007, the Chief Justice of the Supreme Court of Belize referred to the Declaration in ruling that lands confiscated by the state should be returned to the Maya



people. The judge noted that Belize had signed the Declaration, and the Court cited Article 26 in regard to Indigenous peoples' rights to lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

- In November 2007, the Inter-American Court of Human Rights (IACHR) referred to the Declaration in rendering a judgment in favour of the Saramaka of Surinam, in a matter of forestry operations. The Court cited Article 32, which affirms Indigenous peoples' right "to determine and develop priorities and strategies for the development or use of their lands."
- At the same time, Bolivia passed Law No. 3760, which incorporated the text of the Declaration on the Rights of Indigenous Peoples into national legislation.
- In June 2008, the Japanese government officially recognized that the Ainu are an Indigenous people in the northern part of Japan. The resolution adopted by the Japanese parliament declared that the Ainu have a distinct language, culture and religion.
- In 2009, Greenland negotiated with Denmark for greater governmental autonomy, which its prime minister called a "de facto implementation of the Declaration." On June 21, 2009, the *Act on Greenland Self-Government* was passed, replacing the *Greenland Home Rule Act* of 1978.
- In 2011, the Congolese state passed Law No. 5-2011 for the promotion and protection of the rights of Indigenous peoples. Without specifically referring to the Declaration, the law reiterated its key principles, and, in particular, the protection of traditional institutions, intellectual property relating to knowledge, the protection of sacred sites, and collective and individual property rights. Paragraph 2 of the first article of this law prohibits use of the term "pygmy" in the Republic of Congo due to its pejorative connotations.
- In July 2012, the Inter-American Court of Human Rights gave its ruling in the matter that had opposed the Kichwa people of Sarayaku and the Ecuadoran state since 2003. The latter was held responsible for violating the Kichwa community of Sarayaku's rights to collective property. The Ecuadoran government had signed a contract for an Argentinian oil company (CGC) to explore for oil on the community's territory without respecting the right of prior consultation.

And, on the constitutional level:

- In September 2008, following a referendum, Ecuador adopted a new constitution that recognizes the existence of a plurinational and intercultural state. Many of the constitution's articles are inspired by the values of the Indigenous "nationalities" that make up this state and recognize their collective rights, especially in regard to the affirmation of their cultural identity and the ownership and self-management of their ancestral territories. A new vision of the world, expressed in the Kichwa philosophical concept of *sumak kawsay*, or "good life," which is inscribed in the Constitution, is at the root of a new conception of development and of relations with nature, or *Pachamama*. For the first time, a country's constitution has guaranteed rights to "nature."
- In 2009, Bolivia gained a new constitution that created a plurinational state. This new constitution gives Indigenous peoples greater political representation and more



participation in local and national responsibilities. It takes into account all of the rights recognized in the Declaration on the Rights of Indigenous Peoples and sets up a regime of Indigenous autonomy for some territorial entities. New laws and socioeconomic programmes under the National Development Plan entitled *A dignified, sovereign, productive and democratic Bolivia, to live well* are in keeping with the objectives of the Second International Decade of the World's Indigenous Peoples (2005-2014).

- In 2011, Morocco adopted a new constitution that officially recognizes the Amazigh identity and language.

It should be noted that the two new constitutions of Ecuador and the Plurinational State of Bolivia—which mark veritable cultural revolutions—would not have come about without the Indigenous mobilization of the past forty years on both the national and international levels. The September 13, 2007 adoption of the Declaration on the Rights of Indigenous Peoples at the UN by 143 countries has provided international recognition and official answers to the “Indigenous question” of the 1970s. The adoption of the Declaration has helped to promote the value of Indigenous peoples’ worldviews, which are at the basis of the new constitutional texts.

But there is still much to be done for the objectives of the UN Declaration to become a reality. The implementation of all these laws and constitutional provisions is encountering numerous obstacles in the field. This is especially true in regard to the governance of natural resources, which are still controlled by the state.

The state conception of development based on growth is opposed to that of Indigenous peoples, who place value, especially in Latin America, on the idea of *buen vivir*, or “living well.” This concept, a real alternative to development, proposes a more community-oriented approach to development, centred around a harmonious coexistence with nature. Nature is no longer seen as an object that one can appropriate and exploit, but rather as a subject with rights that must be respected (Gudynas 2011). This conception therefore urges us to re-examine our ideas about development. States are increasingly dependent on mining and oil multinationals, which are investing on previously unheard-of scales. This is prompting them to emphasize growth at the expense of Indigenous peoples’ rights. The most important of these rights is that of free, prior and informed consent to any project affecting Indigenous peoples’ lands or territories (Article 32 of the Declaration). In order for this fundamental right to be respected, Indigenous peoples must participate in decision-making on projects that concern them. Articles 18 and 19 of the Declaration stress this right and call upon states to consult and cooperate with Indigenous peoples through their own representative institutions before adopting such projects. But Indigenous peoples are very often shut out of the sphere of state decision-making, which can then more easily ignore their rights.

During its third session in July 2010, EMRIP presented a report on “indigenous peoples and the right to participate in decision-making.” It highlighted the fundamental importance of this right:

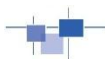
[...] indigenous participation in decision-making on the full spectrum of matters that affect their lives forms the fundamental basis for the enjoyment of the full range of human rights. This principle is a corollary of a myriad of universally accepted human rights, and at its core enables indigenous peoples to be freely in control of their own destinies in conditions of equality. [...] the right of consultation as generally established by the Declaration on the Rights of Indigenous Peoples requires “effective” participation, not pro forma consultations, the goal of which is to obtain the free, prior and informed consent of indigenous peoples. (A/HRC/EMRIP/2010/2)

This helps us to understand the clear relationship between this principle of participation in decision-making and Indigenous peoples’ right to self-determination. Indigenous peoples’ rights to autonomy or self-government and to be consulted on matters that may affect them, based on the principle of free, prior and informed consent, are steps that lead Indigenous peoples toward self-determination.

Promoting this full and effective participation of Indigenous peoples in decisions which directly or indirectly affect their lifestyles, traditional lands and territories, and their cultural integrity, is one of the five objectives of the programme of action for the Second International Decade of the World’s Indigenous Peoples, which ends in 2014.

The end of this decade will be marked by the plenary meeting of the United Nations General Assembly, to be called the World Conference on Indigenous Peoples, which will be held in 2014. It will bring states and representatives of Indigenous peoples together to examine the achievements and shortcomings in the implementation of the standards of the Declaration. Indigenous peoples are expecting a great deal from this very high-level UN Conference in terms of the promotion of measures at the national and local levels to ensure the fulfillment of their rights.

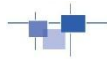
In the face of these hopes, we need to remember the reservations expressed by some authors on the capacity of UN bodies to bridge the gap between the international standards of the Declaration and practical realities. Stephen Allen (2011), for example, questions the effectiveness of measures taken at the international level and advocates Indigenous peoples’ political engagement at the national level in order to shake up the ingrown cultural habits of politics and administration and propose strategies to generate the political will that will alone enable implementation of the standards of the Declaration at the local level.



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## **Appendix**

### **Additional documentation on the United Nation Declaration on the Right of Indigenous Peoples**



## **DECLARACIÓN SOBRE LOS DERECHOS DE LOS PUEBLOS INDÍGENAS. HACIA UN MUNDO INTERCULTURAL Y SOSTENIBLE**

**N. Álvarez Molinero, J.D. Oliva Martínez  
y N. Zúñiga García-Falcés (eds.)**

**Madrid: Los libros de la Catarata 2009, 390 p.**

Desde que la Asamblea General de las Naciones Unidas aprobó la Declaración sobre los Derechos de los Pueblos Indígenas en septiembre de 2007, han sido numerosos los debates sobre su aplicabilidad y su validez jurídica. Sin lugar a dudas se puede afirmar que la Declaración ha supuesto un hito muy importante en la lucha por el reconocimiento de los derechos de los pueblos indígenas en el ámbito nacional e internacional. Sin embargo, los interrogantes sobre este documento son numerosos. Este libro pretende ahondar en el conocimiento y aplicación de este documento internacional, así como en los aspectos más prácticos del mismo relacionados con su implementación en casos concretos.

Source: <http://www.catarata.org/libro/mostrar/id/529>



## **EMERGING ISSUES IN INDIGENOUS RIGHTS: TRANSFORMATIVE EFFECTS OF THE RECOGNITION OF INDIGENOUS PEOPLES**

**I. Bellier and M. Préaud**

***The International Journal of Human Rights* 16(3): 474-488, 2012**

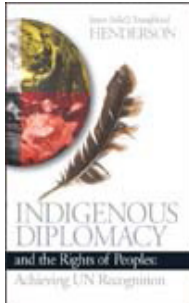
The UN Declaration on the Rights of Indigenous Peoples (2007) marks a significant shift in the relations whereby indigenous peoples define themselves and their claims. They are now faced with the challenge of implementing international standards within national spaces. By adopting a global comparative perspective, our article aims to explore how this movement unfolds in a variety of local issues and strategies, building transnational links and differences. We first examine the acceptance of indigenous peoples' status across the globe before exploring the transformative effects of recognition around two major themes, indigenous rights to education and to land and natural resources. We argue that the recognition of indigenous peoples as subjects of international law has far-ranging implications for the global system as a whole, implicating other global or transnational agents, and potentially affecting the balance between economic and political powers.

Source: <http://www.tandfonline.com/doi/pdf/10.1080/13642987.2011.574616>

## INDIGENOUS DIPLOMACY AND THE RIGHTS OF PEOPLES: ACHIEVING UN RECOGNITION

(Sa'ke'j) J.Y. Henderson

Saskatoon: Purish Publishing 2008, 240 p.



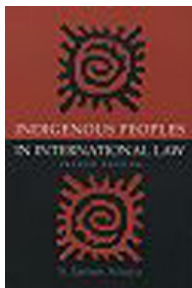
Despite centuries of sustained attacks against their collective existence, Indigenous peoples represent over 5,000 languages and cultures in more than 70 nations on six continents. Most have retained social, cultural, economic, and political characteristics distinct from other segments of national populations. Yet recognition of their humanity and rights has been a struggle to achieve. Based on personal experience, James (Sa'ke'j) Youngblood Henderson documents the generation-long struggle that led ultimately to the adoption of the Declaration of the Rights of Indigenous Peoples by the United Nations General Assembly. Henderson puts the Declaration and the struggles of Indigenous peoples in a wider context, outlining the rise of international law and how it was shaped by European ideas, the rise of the United Nations, and post-World War II agreements focusing on human rights. Henderson analyzes the provisions of the Declaration and comments on the impact of other international agreements on Indigenous peoples. He concludes with his view of what must be done to give the Declaration its full force for Indigenous peoples around the world, and what it means for Canada. The full text of the Declaration and selected excerpts of other key international agreements are included.

Source: [http://www.purichpublishing.com/?module=swecommerce&page=product\\_detail&categoryID=1&productID=61](http://www.purichpublishing.com/?module=swecommerce&page=product_detail&categoryID=1&productID=61)

## INDIGENOUS PEOPLES IN INTERNATIONAL LAW

S. J. Anaya

Oxford: Oxford University Press 2004, 408p.



In this thoroughly revised and updated edition of the first book-length treatment of the subject, S. James Anaya incorporates references to all the latest treaties and recent developments in the international law of indigenous peoples. Anaya demonstrates that, while historical trends in international law largely facilitated colonization of indigenous peoples and their lands, modern international law's human rights program has been modestly responsive to indigenous peoples' aspirations to survive as distinct communities in control of their own destinies. This book provides a theoretically grounded and practically oriented synthesis of the historical, contemporary and emerging international law related to indigenous peoples. It will be of great interest to scholars and lawyers in international law and human rights, as well as to those interested in the dynamics of indigenous and ethnic identity.

Source: <http://www.oup.com/us/catalog/general/subject/Law/IndigenousNativeAmericanLaw/?view=usa&ci=9780195173505#>



## INDIGENOUS SOVEREIGNTY: A REASSESSMENT IN LIGHT OF THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

**S. Wiessner**

***Vanderbilt Journal of Transnational Law* 41: 1141-1176, 2008**



This Article explores the concept of “indigenous sovereignty” against the backdrop of the resurgence of indigenous peoples as actors in international and domestic law and policy. The Author starts with the traditional Western notion of sovereignty and its dynamization via the principle of self-determination, cabined by the exclusionary concepts of terra nullius and uti possidetis. The next Part delineates the global indigenous renaissance occurring since the 1970s and the resulting state practice that has led to treaties and to the development of customary international law in the field. The Article proceeds to analyze the scope and legal effect of the 2007 UN Declaration on the Rights of Indigenous Peoples. It lays out various understandings of indigenous self-government under the rubric of self-determination; and ultimately, based on an assessment of the authentic aspirations of indigenous peoples, their “inner worlds,” it suggests a functional redefinition of the legal scope and the limits of indigenous sovereignty.

Source: [http://www.vanderbilt.edu/jotl/manage/wp-content/uploads/Wiessner\\_final\\_7.pdf](http://www.vanderbilt.edu/jotl/manage/wp-content/uploads/Wiessner_final_7.pdf)

## L'ANTHROPOLOGIE ET LA QUESTION DES DROITS DES PEUPLES AUTOCHTONES

**I. Bellier**

***Inditerra* (3): 1-17, 2011**



Comment la dynamique internationale, qui se fonde sur la reconnaissance de droits collectifs pour les « peuples autochtones » (convention 169 de l'OIT, Déclaration des Nations Unies sur les droits des peuples autochtones), modifie-t-elle la position des peuples autochtones dans le système mondial? À partir de cette situation induite par le global-politique, les anthropologues sont amenés à adapter leur projet, leur pensée théorique et leurs manières de travailler, au moment où les autorités politiques et les médias continuent de s'appuyer sur des catégories obsolètes de l'ethnologie pour réguler les changements introduits dans les champs du social, de l'économie et du politique par les luttes autochtones.

Source: <http://www.reseaudialog.ca/Docs/01INDITERRA032011BELLIER.pdf>



## LE MALAISE DES ANTHROPOLOGUES FACE À LA GLOBALISATION DE L'AUTOCHTONIE

F. Morin

*Inditerra* (3), 2011

Le processus de mondialisation a intensifié les relations sociales au niveau planétaire et favorisé la circulation d'informations entre groupes autochtones. L'ouverture des portes de l'ONU à leurs représentants en 1982 avec la création d'un Groupe de travail sur les populations autochtones favorisa la rencontre entre Autochtones du monde entier. Après plus de 25 ans de mobilisations, ils ont réussi à faire voter par l'ONU, en septembre 2007, une Déclaration des droits des peuples autochtones. Alors que de nombreux juristes ont participé activement à ce processus onusien, les anthropologues, en particulier les africanistes, ont critiqué le concept même de « peuple autochtone » en mettant en question sa validité. Cet article cherche à comprendre cette difficulté des anthropologues à penser la globalisation du fait autochtone et à le conceptualiser.

Source: <http://www.reseaudialog.ca/Docs/10INDITERRA032011MORIN.pdf>

## LES PEUPLES AUTOCHTONES AUX NATIONS UNIES : UN NOUVEL ACTEUR DANS LA FABRIQUE DES NORMES INTERNATIONALES

I. Bellier

*Critique internationale* (54): 61-80, 2012



Cet article montre comment les représentants des peuples autochtones construisent les principes d'une reconnaissance comme sujets collectifs de droits, depuis la scène des Nations unies et sur la base d'un mouvement international dans 90 pays. Faiblement structuré mais efficace en termes d'alliances stratégiques, ce mouvement a obtenu en 2007 que la communauté internationale se dote d'un instrument juridique : la Déclaration des Droits des Peuples Autochtones. Pour être morales, et parce qu'elles peuvent avoir des conséquences politiques, financières et légales, ses dispositions sont susceptibles d'induire des transformations significatives dans le champ du politique, de la gouvernance et de l'autonomie. L'impératif de la participation aux activités des Nations unies a permis la formation d'un " nous, peuples autochtones ", structuré un espace de revendications qui déborde l'institution, relié la scène des droits de l'homme aux autres domaines de politiques publiques. En contribuant à la fabrique des normes, cet acteur politique multicéphale s'est doté sur la scène internationale d'une voix collective, capable de résoudre les tensions inhérentes à la dispersion spatiale, à la fragmentation linguistique, à l'atomisation politique. Cette formation internationale interroge, au regard des décalages observés localement dans les modes d'identifications et de classement étatiques comme dans les expériences politiques et économiques.

Source: <http://www.sogip.ehess.fr/spip.php?article413>

## LOS DERECHOS DE LOS PUEBLOS INDIGENAS EXPLICADOS PARA TODAS Y PARA TODOS

UNICEF

2008



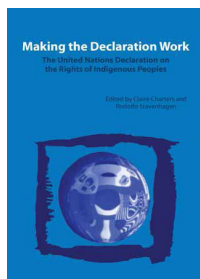
La población infantil indígena en la Argentina representa la mitad de la población indígena nacional (...) UNICEF contribuye con este documento a la difusión de la Declaración de las Naciones Unidas sobre los derechos de los pueblos indígenas, en la convicción de que ésta es una de las formas de promover los derechos de los niños y las niñas indígenas. Queremos que sea una herramienta de información y guía para los operadores del derecho: jueces, abogados, defensores del pueblo e integrantes de los poderes Legislativo y Ejecutivo. Esperamos que todos los funcionarios de la administración pública inspirados en los contenidos de la Declaración colaboren con su implementación en las diferentes áreas mediante políticas públicas, decisiones judiciales y leyes, entre otras acciones necesarias para revertir la injusta y discriminatoria situación que viven hoy los pueblos indígenas, particularmente sus niños, niñas y adolescentes, y lograr una mejora sustantiva.

Source: [http://www.unicef.org/argentina/spanish/derechos\\_indigenas.pdf](http://www.unicef.org/argentina/spanish/derechos_indigenas.pdf)

## MAKING THE DECLARATION WORK: THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

C. Charters and R. Stavenhagen

Copenhagen: Transaction Publisher Central Books 2010, 390 p.



*Making the Declaration Work* tells the inside story of making the UN Declaration on the Rights of Indigenous Peoples detailing its history, negotiations, and content and reflects about its broader significance and the future challenges of making it work. Contributions come from around the world ranging from indigenous activists to members of the Human Rights Council and its various working groups and mechanisms, as well as UN and governmental officials who engineered the process from beginning to end.

Source: <http://www.internationalfund.org/documents/MakingtheDeclarationWork.pdf>

## REALIZING THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

J. Hartley, P. Joffe and J. Preston

Saskatoon: Purish Publishing 2010, 288 p.



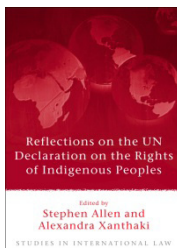
Adopted by the UN General Assembly on 13 September 2007, the United Nations Declaration on the Rights of Indigenous Peoples affirms the “minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.” The Declaration responds to past and ongoing injustices suffered by Indigenous peoples worldwide. It provides a strong foundation for improved relationships with states, and for the full recognition of the inherent rights of Indigenous peoples. Despite this, Canada is one of the few countries to oppose the Declaration. The contributors to this collection analyze the development of the Declaration, recall the triumph of its adoption, and illustrate the hopes and actions for its implementation. The discussion moves beyond Canadian orders to the international stage, providing accessible information and guidance on the Declaration and how it can be used to advance human rights. Policy makers, Indigenous communities, politicians, academics, lawyers, human rights advocates, NGOs, and anyone interested in the significance of the Declaration will find this to be a valuable resource.

Source: [www.purichpublishing.com/?module=swm\\_ecommerce&ecomCategoryID=1](http://www.purichpublishing.com/?module=swm_ecommerce&ecomCategoryID=1)

## REFLECTIONS ON THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

S. ALLEN ET A. XANTHAKI

Oxford: Hart Publishing 2011, 620 p.



The adoption of the Declaration on the Rights of Indigenous Peoples by the United Nations General Assembly on 13 September 2007 was acclaimed as a major success for the United Nations system given the extent to which it consolidates and develops the international corpus of indigenous rights. This is the first in-depth academic analysis of this far-reaching instrument. Indigenous representatives have argued that the rights contained in the Declaration, and the processes by which it was formulated, obligate affected States to accept the validity of its provisions and its interpretation of contested concepts (such as ‘culture’, ‘land’, ‘ownership’ and ‘self-determination’). This edited collection contains essays written by the main protagonists in the development of the Declaration; indigenous representatives; and field-leading academics. It offers a comprehensive institutional, thematic and regional analysis of the Declaration. In particular, it explores the Declaration’s normative resonance for international law and considers the ways in which this international instrument could catalyse institutional action and influence the development of national laws and policies on indigenous issues.

Source: <http://www.amazon.com/Reflections-Declaration-Indigenous-Peoples-International/dp/1841138789>

## THE DRAFT UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: WHAT IS IT? WHAT DOES IT MEAN?

R. T. Coulter

*Idaho Law Review* 45(3): 539-554, 2009



The draft UN Declaration on the Rights of Indigenous Peoples, now before the UN Commission on Human Rights, is a far-reaching and innovative document that has resulted from more than 10 years of debate, lobbying and drafting by indigenous representatives, human rights experts and members of the UN Sub-Commission's Working Group on Indigenous Populations. The level and nature of indigenous participation in this elaboration of human rights standards has been unprecedented. The Draft Declaration sets forth basic human rights that flow from long-established principles of international law and widely accepted concepts of human rights. The detailed provisions of the draft Declaration would reach out to protect indigenous communities as well as indigenous individuals from the discrimination, the deprivations and the abuses that they so often endure. The author praises the draft for its thoroughness and adherence to principle. The article summarizes and analyses the provisions of the draft Declaration and calls for others to provide further commentary and analysis.

Source: <http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/nethqr28&div=20&id=&page=>

## THE ROLE OF SOFT LAW IN THE INTERNATIONAL LEGAL SYSTEM: THE CASE OF THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

M. Barelli

*International and Comparative Law Quarterly* 58 (4): 957-983, 2009



The 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) represents the culmination of an extraordinary process which has fundamentally transformed the status of indigenous peoples under international law. However, whereas the historic and symbolic importance of the instrument is indisputable, its overall value remains controversial. More precisely, since the UNDRIP does not per se create legally binding obligations, some doubts exist with regard to its legal significance and capacity to affect State behaviour. This article discusses these two intertwined issues in conjunction with an analysis of the evolving indigenous rights regime at the international level, with a view to establishing the overall potential impact of the UNDRIP. It argues that, given the specific context and circumstances, the non-binding nature of the instrument does not fundamentally undermine its value. By contrast, a number of factors suggest that the UNDRIP can generate reasonable expectations of conforming behaviour.

Source: <http://journals.cambridge.org/action/displayFulltext?type=1&pdfType=1&fid=6390768&jid=ILQ&volumel=58&issuel=04&aid=6390760>

## THE INDIAN REORGANIZATION ACT, THE DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES, AND A PROPOSED CARCIERI 'FIX': UPDATING THE TRUST LAND ACQUISITION PROCESS

G.W. Rice

*Idaho Law Review* 45(3): 375 - 620, 2009



The Wheeler-Howard Indian Reorganization Act was enacted, in principal part, to stop the loss of then existing Indian lands, to reduce or eliminate fractionated heirship of individually owned Indian allotments, and to secure additional land for Indian peoples. Comparing the substance of that legislation with the standards relating to Indian (Indigenous) lands set down in the Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly of the United Nations in 2007, suggests some conceptual methodology which could be instructive in a legislative “fix” for the U.S. Supreme Court’s recent decision restricting the authority of the Secretary of the Interior to acquire lands for Indians to those Indian Tribes which were recognized and subject to federal jurisdiction in 1934.

Source: [http://papers.ssrn.com/sol3/Delivery.cfm/SSRN\\_ID1635436\\_code625219.pdf?abstractid=1635436&mirid=1](http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1635436_code625219.pdf?abstractid=1635436&mirid=1)

## UN DECLARATION ON THE RIGHTS OF PEOPLES: CANADIAN GOVERNMENT POSITIONS INCOMPATIBLE WITH GENUINE RECONCILIATION

P. Joffe

*National Journal of Constitutional Law* 26(2): 121-229 2010

### UN Declaration on the Rights of Indigenous Peoples: Canadian Government Positions Incompatible with Genuine Reconciliation

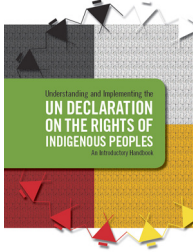
*Paul Joffe*  
The UN Declaration on the Rights of Indigenous Peoples constitutes a major step towards addressing the persistent human rights violations against Indigenous peoples worldwide. It is the most comprehensive universal international human rights instrument explicitly addressing the rights of Indigenous peoples. The Declaration provides a principled and normative legal framework for achieving reconciliation between Indigenous and non-Indigenous peoples around the world. In 2006, the newly-elected Conservative government of Canada opposed the Declaration at home and abroad, motivated by ideology rather than justice and international law. As a minority government, it has undemocratically ignored a Motion adopted by Parliament — calling for the Parliament and government of Canada to fully implement the standards in the Declaration. This article underlines the importance of adopting a human rights-based approach. It highlights the significance of the Declaration in achieving reconciliation with Indigenous peoples in Canada. A central conclusion of this article is that the positions of the Canadian government are untenable and incompatible with constitutional and international obligations. Its adherence to unprincipled positions is undermining the international human rights system.

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Source: <http://www.afn.ca/uploads/files/education2/undripcanadiangovernments.pdf>

## UNDERSTANDING AND IMPLEMENTING THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES AN INTRODUCTORY HANDBOOK

**Indigenous Bar Association  
2011**



*This handbook provides an introductory overview of the UN Declaration. As such, the handbook does not provide a comprehensive or exhaustive explanation of all rights contained in the UN Declaration, nor does it fully encompass all nuances. There is much more that can be said about the UN Declaration and its relevance in Canada. We have tried to provide enough information for people to learn the basics of the UN Declaration and inspire people to use the UN Declaration in their own work. Any omissions in the discussions should not be read to limit the rights contained in the UN Declaration, nor does it reflect the importance of those rights or their applicability in Canada.*

Source: [http://tesla.cc.umanitoba.ca/robsonhall/images/stories/UNDRIP\\_Handbook\\_WEB.pdf](http://tesla.cc.umanitoba.ca/robsonhall/images/stories/UNDRIP_Handbook_WEB.pdf)

