

# The United Nations Declaration on the Rights of Indigenous Peoples (2007)

Jonathan Crossen

The United Nations Declaration on the Rights of Indigenous Peoples, approved by the UN General Assembly in September 2007, was the result of at least a quarter century of work. Its drafting process involved an unprecedented type of collaboration between states and NGOs, and yielded a document intended to recognize and protect the rights of Indigenous peoples. Beyond that most immediate goal, the Declaration promotes an alternative vision of human rights; one which rejects the simple dichotomy between individual human rights and the sovereignty rights of independent states, in favour of a worldview which incorporates various collective human rights for peoples and self-determination without the requirement of independent statehood. Its power and significance remain a point of conflict as differing perspectives aim to limit or extend its legal reach.

## Genesis

Unlike many United Nations documents, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) has two direct sources. Naturally, United Nations bodies played an important role in developing the text, but so did Indigenous international organizations. Beginning with the former, one might trace UNDRIP's genesis back to the work of the ILO during the interwar period. The efforts of a "Committee of Experts on Native Labour," beginning in 1926, yielded numerous conventions directed at Indigenous workers, which became collectively known as the "Native Labour Code". These included conventions on forced labour (1930), the recruitment of workers (1936), contracts of employment (1939), and penal sanctions (1939).<sup>[1]</sup> Although one might expect to see these early native rights in the framework of interwar demands for minority rights, Mark Mazower argues that major powers never allowed that concept to be applied beyond Eastern Europe. The "Native Labour Code," by contrast, was applied universally to the treatment of the (usually majority) local populations in European colonies in Africa and elsewhere.<sup>[2]</sup> More important than these conventions of the interwar period was the ILO Convention 107, the "Indigenous and Tribal Populations Convention" of 1957, which affirmed various rights and responsibilities with regards to business, state governments, and indigenous peoples.

The effects of these efforts, however, were somewhat altered by the wave of decolonization that occurred in the late 1950s and early 1960s, particularly in Asia and Africa. That global process of decolonization helped to formalize a conceptual division between types of "natives" – a division based on their physical location vis-à-vis a colonizer. Interwar documents had focused on labour used in the "dependent" (imperial/colonial) territories of European member states, and the rapid decolonization process made most of these areas legally independent. The specific rights of colonized peoples were recognized in 1960 with UN General Assembly Resolution 1514, "Declaration on the Granting of Independence to Colonial Countries and Peoples." Although that declaration recognized the necessity to end

colonialism “in all its forms and manifestations,” it was quickly followed by General Resolution 1541, which specifically limited the definition of a colony to “a territory which is geographically separate...from the country administering it.”<sup>[3]</sup> This effectively excluded those territories where colonization had been so successful that the colonizers achieved independent statehood while the Indigenous peoples remained marginalized. Thus, weaker examples of colonization were sharply opposed, but effective colonization was exempt from future oversight. Those identified as colonized peoples were recognized to hold the inherent right of all peoples—arguably, the only recognized collective right—to self-determination. Those excluded had no collective right to self-determination, and therefore no collective rights at all.

The next major United Nations step in the genesis of UNDRIP was the publication of Study of the Problem of Discrimination Against Indigenous Populations, the so-called Martínez Cobo report, in the early 1980s. The document had been requested by ECOSOC’s Sub-Commission for the Prevention of Discrimination and Protection of Minorities in 1971 and was authored by Augusto Willemsen Diaz.<sup>[4]</sup> Among the many notable contributions of the report was an unwillingness to define Indigenous peoples as a numerical minority within their nation states, when in countries like Guatemala (Willemsen Diaz’s birthplace) and Bolivia, Indigenous peoples collectively made up a majority of the population. Willemsen Diaz was also struck by the lack of Indigenous representation at the United Nations, and he did his best to support the efforts of Indigenous activists both to find a place in the existing international arena and to form their own international organizations.

In the mid-1970s, two such organizations were formed quite independently. A handful of Indigenous representatives from around the world gathered in Georgetown, Guyana in April 1974. There they agreed to organize a global conference and propose the creation of a World Council of Indigenous Peoples (WCIP), which was founded in 1975. Almost simultaneously, the activists of the American Indian Movement (AIM) established the International Indian Treaty Council (IITC), an organization meant to serve as AIM’s international wing with the primary intention of bringing the Sioux Nation’s conflict with the United States to the United Nations. The American Indian Movement had long focused much of its attention on the Sioux Nation’s conflict with the United States government, perhaps because of the prominence of several Sioux members in the organization. It might also have seemed a good strategy for the IITC to focus on the Sioux Nation’s demands because they argued that the United States had contravened the 1868 Fort Laramie Treaty between the Sioux and the US government. By centring the breaking of treaty obligations, the IITC could frame the conflict not as one of mistreatment of a minority but as a breach of an international treaty, and thus, an issue worthy of international attention.<sup>[5]</sup> The IITC gained traction at the UN through its organization of the 1977 International NGO Conference on Discrimination Against Indigenous Populations in the Americas, which brought a great number of Indigenous representatives to the Palais des Nations in Geneva.

While individual Indigenous peoples had long made demands of colonial states, and, occasionally, even taken their complaints to the international arena, this was the first time that groups had formally organized on a global scale. Both the WCIP and IITC were inspired by the then prominent discourse of decolonization and the strength of Third World alliances in the UN General Assembly. Both organizations attempted to use these political

trends to secure space in the international arena for their own concerns. They asserted that those lands which had been most effectively colonized (e.g. the Americas) should not be exempt from the processes of decolonization, which had so successfully secured independence elsewhere, even if their desired result might not be the same. They received varying political support from the Third World and Non-Aligned Movement, the Socialist Bloc, and concerned members of international civil society. Seed funding and other support was supplied by Christian organizations like the World Council of Churches. Certain states with Indigenous peoples, primarily Canada and the Nordic countries, agreed to provide financial support for the WCIP.

Both countries funded the organization through their foreign affairs ministries and international development agencies (CIDA and NORAD), but domestic concerns may well have played a role in the decision to support an outward-looking perspective for Indigenous peoples. In 1980, Canada was negotiating the patriation of its constitution, which ultimately recognized and affirmed “existing” Aboriginal rights. Around the same time, plans for a hydroelectric power plant on the Alta-Kautokeino river produced Norway’s first major conflict with Sami peoples in over a hundred years. Certainly, both governments had reasons to support peaceful international efforts over more radical Indigenous groups active at the time. There is also some evidence that External Affairs Canada hoped to use its relatively harmonious relationship with Indigenous peoples to promote its vision of human rights in Latin America and elsewhere.<sup>[6]</sup> All this support ensured that both organizations were better able to make themselves heard at the international level.

The growing prominence of these organizations, together with Willemsen Diaz’s work on the Sub-Commission report, encouraged the United Nations Economic and Social Council (ECOSOC) to establish a Working Group on Indigenous Populations in May 1982. The five-member Working Group was created to meet annually and examine Indigenous issues, but it became immediately apparent that few Indigenous representatives could access such a body. As the first two Indigenous international NGOs, both the IITC and the WCIP had been recognized with status at ECOSOC, but few other Indigenous groups were organized enough to have attained this standing. The Working Group’s appointees, led initially by Norwegian human rights scholar Asbjørn Eide, agreed to allow organizations without accreditation to participate in the meetings, a step Willemsen Diaz describes as “extraordinary for a body at the level of a working group.” Indigenous groups made good use of this openness and the meetings eventually included nearly a thousand Indigenous participants.

The Working Group quickly began to focus its attention on the drafting of new standards for Indigenous rights. The foundation for the task lay in two documents provided by Indigenous organizations. In September 1984, extensive consultations at the Fourth General Assembly of the WCIP produced a list of 17 principles of Indigenous rights to be considered at the United Nations. A second text, produced through the cooperation of six national and international Indigenous NGOs including the IITC, was submitted to the Working Group in July 1985.

The timing was right as the Sub-Commission formally requested that the Working Group focus its attention on developing a draft declaration of standards related to Indigenous

peoples. State and indigenous representatives continued to work on these standards until 1993 (the UN's official International Year of the World's Indigenous People), when the Working Group submitted a complete draft for a Declaration on the Rights of Indigenous Peoples.

After approval by the Sub-Commission in 1994, the UN Commission on Human Rights established a new Working Group on the Draft Declaration (WGDD). This new body had more selective criteria for participation but continued to seek input from Indigenous organizations along with state representatives. There remained, however, a great deal of work to be done to reach an agreement, and the process was frequently contentious. When the new working group began, only three states were ready to approve the Draft Declaration.

Some states that felt threatened by assertions of Indigenous rights insisted on using the terms "indigenous people" or "indigenous populations" rather than "indigenous peoples." Whereas people are only legally entitled to individual human rights, peoples may be entitled to specific collective rights, namely the right to self-determination. While neither "peoples" nor "self-determination" are clearly defined in international law, the Atlantic Charter (1941), the United Nations Charter (1945), and the two international covenants on human rights (1966) all reference a connection between "peoplehood" and self-determination. The covenants both suggest that, by virtue of their right to self-determination, all peoples may "freely determine their political status and freely pursue their economic, social and cultural development."<sup>[7]</sup> The "Declaration on the granting of independence to colonial countries and peoples" emphasized this point to justify decolonization, further stating that "all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory."<sup>[8]</sup> Thus, the objection to the word "peoples" was based on the fear that any acknowledgement of Indigenous peoplehood would automatically lead to secession and the creation of new independent states.<sup>[9]</sup> Numerous other states accepted the basic terminology, but requested that the document should include a clear definition of "indigenous peoples", with African and Asian states preferring a definition that excluded any populations within their borders. Conversely, many Indigenous representatives, conscious that they had already worked for a decade to produce the Draft Declaration, initially refused to consider any amendments at all.<sup>[10]</sup>

After several years of discussions, only two of the Declaration's articles had been adopted by the WGDD, both of which only reaffirmed existing human rights for Indigenous individuals.<sup>[11]</sup> Indigenous and state representatives began to make greater advances towards agreement in the early 2000s, but certain controversial yet key issues had been largely set aside over the decade of negotiations. Serious negotiations on rights related to land and territories were only conducted in earnest during the last week of the WGDD's final session in 2006.<sup>[12]</sup>

An amended version of the Declaration was finally approved in June 2006 and forwarded to the UN General Assembly. That November, the General Assembly's Third Committee (concerned with Social, Humanitarian & Cultural items) agreed to a proposal by Namibia, which deferred the vote on the General Assembly's vote on the Declaration, to allow more

time for analysis, particularly by African states. While African states had not been particularly involved during the previous twenty years of negotiations over UNDRIP, several now put forward a draft aide-mémoire with several major concerns about the Declaration. They worried especially about the definition of Indigenous and the asserted right to self-determination. In January, the Ordinary Session of the African Union agreed to a united position on UNDRIP, agreeing with most of the major concerns raised in the draft aide-mémoire. They privately circulated 35 proposed amendments to the Declaration.<sup>[13]</sup>

In March, a group of interested scholars put forward a point-by-point “Response Note” to the aide-mémoire, showcasing the ways in which African countries had already adopted the concept of Indigenous peoples. The note emphasized, as well, that Indigenous might mean something different in Africa than elsewhere, and still achieve important goals without threatening territorial integrity. This response note, together with the facilitation work of Philippine ambassador, Hilario Davide Jr. and the legal advice of Salamata Sawadogo, Chair of the African Commission on Human and Peoples' Rights, helped shift the opinion of African diplomats and heads of state. By August, negotiations between African states and UNDRIP's sponsoring states resulted in an agreement on nine amendments to the draft Declaration.<sup>[14]</sup>

Arguably, these last-minute amendments, made without the framework of the WGDD, effected a weakening of the document text and demonstrate the risk that Indigenous activists took in relying on the Global South for political support. The decolonization process and the prominent voice of the Third World during the 1970s and 1980s had helped to inspire the movement of Indigenous internationalism. Third-Worldist leaders could easily understand Indigenous rights as the rights of (decolonized) peoples, an alternative to the individual focus championed in the Universal Declaration of Human Rights. And since the Global South made up a dominant force within the UN General Assembly, they represented a real source of power in the international arena.<sup>[15]</sup> But the leaders of decolonized African states were deeply concerned about any limitations that might be placed on their own national sovereignty, and UNDRIP threatened to do just that.

In September 2007, the General Assembly adopted the UNDRIP with a vote of 143 in favour, 4 (Australia, Canada, New Zealand and the United States) against, and 11 abstentions. The potential implications of the declaration for the four countries that rejected it were larger than for most UN member states. The wealth and international prominence of these liberal countries meant they would face significant pressure to act on the declaration if they endorsed it, and their sizeable Indigenous populations clearly met any definition that might be applied. Nonetheless, countries like Norway and Sweden did support UNDRIP while acknowledging its applicability to their own Indigenous peoples. All four countries that opposed adoption have since publicly endorsed the document.

## Content

The Declaration has a 24-paragraph preamble which makes several references to existing international law and international instruments. Mentioned by name are the Charter of the United Nations; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; and the Vienna Declaration and

Programme of Action. Additionally, UN Declaration on the Rights of the Child is alluded to and the International Convention on the Elimination of All Forms of Racial Discrimination is paraphrased. Three preambulatory paragraphs refer to existing Indigenous–state treaties. Three paragraphs also refer to human rights generally, while one makes particular note that Indigenous peoples possess collective rights as peoples as well.

The preamble begins by affirming the legal status of Indigenous peoples as legal peoples under international law, and as such, deserving of all associated collective rights of peoples, including the right to self-determination, which it mentions twice. Indeed, it roots all inherent rights of Indigenous peoples in “their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies.” As these characteristics provide an effective definition of peoplehood, the Declaration’s long list of rights are owed to Indigenous peoples precisely because it considers them peoples.

At no point does the document attempt to explicitly define “Indigenous peoples.” The preamble does, however, note that Indigenous peoples “have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests...” This historical commonality—of having been denied their due rights as peoples—serves to implicitly define Indigenous peoples.

Finally, the last stanza of the preamble recognizes that the Declaration should not result in a uniform or monolithic response, but that “the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration.” This phrasing reflects the understanding, achieved through the dialogue with African diplomats at the UN General Assembly, that “Indigenous peoples” may have a different meaning in Africa than elsewhere, but that it can still be applied globally.

The Declaration’s 46 articles cover a wide range of topics, but the vast majority of them focus on collective rights. Only two articles (#6 and #44) focus exclusively on individual rights, with the former guaranteeing the right of all indigenous individuals to a nationality and the latter simply affirming that all recognized rights are “equally guaranteed to male and female indigenous individuals.” Eight articles explicitly assert rights for both indigenous peoples and indigenous individuals. With few exceptions, the Declaration’s remaining rights are designated as collective rights for Indigenous peoples.

The Declaration is also notable for the large number of “positive rights” (those requiring affirmative action by states) alongside “negative rights” (those simply proscribing certain actions by states). For instance, article 12 not only declares the right for Indigenous peoples to use and control their ceremonial objects and the right to the repatriation of their human remains, but also asserts that states “shall seek to enable [such access and repatriation] through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.” Nineteen of the 46 articles clearly indicate government responsibilities for positive actions, and an additional two indicate United Nations responsibilities. Additional articles entitle Indigenous peoples to redress (#20 and #28), or to participation in decision making (#18 and #23), which also implies some requirement of

positive action from states.

The articles do not always lend themselves easily to precise groupings, but they are frequently connected by logical threads. Articles 1-5 address the collective rights of Indigenous peoples to rights of self-determination, including political autonomy and distinct institutions. Articles 7-10 address both personal security and freedom from genocide, explicitly including forced assimilation or cultural destruction. Articles 11 through 16 might be said to focus on cultural rights, whereas articles 18-20 address specific rights related to political institutions. Articles 21 and 23 focus on economic and social development rights, whereas articles 25-28 focus on rights to lands, territories and resources. Articles 38-42 address the means to achieve the goals of the Declaration, including state and UN support, and articles 43-46 describe the reach of the Declaration.

The Declaration references rights related to land and territories in nine articles. Of these, Mattias Ahrén emphasizes the importance of articles 26 and 28. These acknowledge Indigenous peoples' rights to "lands, territories and resources" (LTRs) on the basis of past use rather than just stationary occupation, which eliminates a traditional legal bias against nomadic peoples in favour of sedentary ones. More importantly, these articles specifically grant the right to ownership of such LTRs. This not only grants Indigenous people the right to use these lands for the purpose of cultural continuity or as a necessary means to personal livelihood, but it also as grants them property rights on the basis of initial occupation, consistent with most domestic law.<sup>[16]</sup>

The undermining effect of the amendments made in the General Assembly by the African group of states needs to be qualified. Early conceptions of "Indigenous" that relied entirely on a single historical connection of colonization are difficult to apply in Africa and Asia. The participation of African and Asian Indigenous delegates made such a definition untenable, and the inclusion of an article insisting on differing definitions only recognized this formally.<sup>[17]</sup> These countries could have simply rejected the document entirely or denied that any Indigenous peoples lived within their borders. The changes they made served to emphasize the extensive potential reach of the document. They also eased any concern that the rights of Indigenous peoples to self-determination would inevitably lead to the physical secession and dismemberment of states. With these fears allayed, UNDRIP could be supported by an overwhelming number of states in the General Assembly. No African states voted against its adoption and only three (Burundi, Kenya and Nigeria) abstained. The amended form of the declaration made the refusal of countries like Canada and the United States to support it stand out, and may have contributed to its ultimate universal acceptance.

## Impact

The legal impact of the Declaration varies according to interpretation. At the simplest level, a Declaration is not legally binding, and there is no clear mechanism for enforcing UNDRIP. This stands in contrast to a document like the International Labour Organization's Indigenous and Tribal Peoples Convention (No. 169), though this latter document has seen far fewer adhesions.<sup>[18]</sup> Several governments, usually those most critical of UNDRIP, have stressed its "aspirational" nature in public pronouncements. When the Declaration came to

a vote in September 2007, not only did some of its supporters (like the United Kingdom) stress its “non-binding” status, but so did Australia, which voted against it. The Government of Canada, which also voted against the Declaration, further insisted that despite its widespread support, its provisions should not be considered to represent customary international law. Because Canada had spent a great deal of time and money in supporting the work of the WGDD, it was perhaps a surprising turnaround. The government, however, had recently changed hands to the Conservative Party and Prime Minister Stephen Harper, which may partly explain the change in position. Moreover, Canadian support for the process of drafting a declaration had never meant consistent support for the contents of the draft.<sup>[19]</sup>

Other legal scholars, however, have suggested the Declaration nonetheless carries a great deal of weight. A prominent view is that, as Mattias Ahrén puts it, much of UNDRIP simply “clarifies and confirms rights that are already formally legally binding and applicable to indigenous peoples.”<sup>[20]</sup> That is to say, the Declaration is in many ways a re-assemblage of rights previously agreed to by the international community in other binding legal instruments, such as the United Nations Charter; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and the International Convention on the Elimination of All Forms of Racial Discrimination. UNDRIP collects these existing rights together and stresses that they also apply to Indigenous peoples.

James Anaya suggests that the Declaration emphasizes the collective nature of human rights, when previously, these rights were often “misinterpreted” as being only individual in nature. Existing protections on the right to speak one’s language or practice one’s faith in the International Covenant on Civil and Political Rights already acknowledge the concept of collective rights, because the rights are to be used “in community with the other members of [a] group.” Indeed, asks Anaya, what possible purpose could be attached to a right to speak one’s language without anyone to speak to?<sup>[21]</sup>

Anaya describes article 3 (“Indigenous peoples have the right to self-determination”) as a “centrepiece” of the Declaration. This might be framed as a simple repetition of all peoples’ rights to self-determination, as expressed in numerous other international legal documents; however, its meaning gains greater significance in view of the rest of the Declaration. Previously, the universal right of all peoples to self-determination had largely been equated with a right to sovereign independent statehood. Article 46 insists that no part of UNDRIP authorizes any action which would “dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.” If Indigenous people’s exercise of self-determination is narrowly interpreted as political secession into a sovereign state, article 3 (guaranteeing that right to self-determination) would clearly stand in contradiction to article 46. Moreover, since article 2 insists that Indigenous peoples are “equal to all other peoples,” there can be no sanctioned discrimination against Indigenous peoples compared to other peoples, and this contradiction would extend to all peoples. On the other hand, if a people exercising its right to self-determination will not necessarily result in political secession, there must be alternate ways to achieve self-determination.

This latter interpretation signals a shift away from what had been seen, during the process



of decolonization in Asia and Africa, as a direct link between self-determination and national independence. This is not to say that UNDRIP destroys the connection, but rather it emphasizes the variety of means to self-determination, among which independent statehood is just one. Self-determination can be achieved so long as peoples remain “full and equal participants at all levels in the construction and functioning of the governing institutions under which they live.”<sup>[22]</sup>

In a general analysis of UNDRIP, Duane Champagne suggests that the document is an important achievement but ultimately accepts state governments as the primary actor in world politics. The document’s reliance on existing international rights means no truly “special rights” are given to Indigenous peoples, who are expected to participate as citizens in a multicultural states.<sup>[23]</sup> Indeed, as Siegfried Wiessner implies, there is little in the document to ensure Indigenous nations and cultures will experience the kind of resurgence urged by Indigenous scholars like Taiaiake Alfred.<sup>[24]</sup> UNDRIP will be most successful at restricting negative interference by states, while the maintenance and resurgence of Indigenous cultures must be led from within.<sup>[25]</sup>

But how to weigh assertions that there is “nothing new” in UNDRIP against the anxiety its articles caused among many states and its outright rejection by four prominent national governments? If all the rights contained are already internationally recognized as universally applicable, why do some scholars and diplomats describe it as non-binding and merely aspirational? Anaya may be correct that the collective rights enshrined in the Declaration were implicit in some existing international documents, but UNDRIP reframes them as explicitly collective in nature. Their combination in a single document only emphasizes this contestation of the previous assumption that international human rights are purely individual rights. Such a provocation is, on its own, sufficient to explain some international opposition to the Declaration. The complimentary assumption, that the only collective right was that of sovereignty held only by states, is also effectively questioned. The amended Declaration may insist that it does not present a formal challenge to the UN Charter or allow any action that would impair the political unity of sovereign independent states, but the emphasis on collective rights of Indigenous peoples and the associated disruption of state sovereignty does indicate a shift in understanding. Overall, this perspective provides an alternative to the Westphalian model of dividing humanity into either state or individual, and rights into sovereignty rights and individual human rights. It suggests a human experience is made up of “multiple, overlapping spheres of community, authority and interdependency.”<sup>[26]</sup>

Nevertheless, any suggestion that UNDRIP represents a real coup within the global human rights order is surely overstated. Karen Engel has outlined the ways in which the final Declaration represents a substantial shift away from the primacy of collective rights and sovereignty demanded by early Indigenous internationalists.<sup>[27]</sup> The degree to which the right to self-determination is undermined by the caveat about territorial integrity in Article 46 is perhaps debatable, but there is little doubt that individual human rights have not been threatened by the declaration. While collective rights remain a primary focus of UNDRIP, clauses 34 and especially 46 emphasize that Indigenous rights must be interpreted in accordance with human rights. Because the reverse is nowhere guaranteed, this qualification implicitly suggests the continued supremacy of individual human rights.

Furthermore, articles from previous drafts of the declaration, which were held to be in clear conflict with individual human rights, were greatly softened or dropped completely from the final version.<sup>[28]</sup> At best, UNDRIP represents a broadening vision of human rights, which recognizes the collective nature contained within those rights.

Following the election of Evo Morales as the first president coming from the indigenous population in 2007, Bolivia became the first country to adopt UNDRIP as binding domestic legislation. This led to a revised constitution, which renamed the country the Plurinational State of Bolivia, and recognized the multiple cultural, political and legal systems at work within the country.<sup>[29]</sup> The new constitution also recognized 36 Indigenous languages as official, affirmed Indigenous peoples' right to self-determination, and established particular forms of autonomy for Indigenous peoples.<sup>[30]</sup> Together, these elements would seem to suggest not only new safeguards for Indigenous peoples, but also the attempted incorporation of an altogether new conception of statehood shaped through the self-determination of its peoples. Nevertheless, conflict between Indigenous peoples and the government of Bolivia have continued on some issues, most notably the construction of a highway through the Isiboro-Sécure Indigenous Territory and National Park (TIPNIS).

Even before UNDRIP was finalized, the Draft Declaration was cited in a Supreme Court of Canada decision in 2001 (*Mitchell v Minister of National Review*, 2001) which argued it provided "international support for special recognition of the plight of indigenous peoples."<sup>[31]</sup> A 2007 decision by the Supreme Court of Belize (*Cal v. Attorney General*) noted that while General Assembly resolutions are not binding on member states, when "these resolutions or Declarations contain principles of general international law, states are not expected to disregard them." It further noted that UNDRIP's article 26 reflects "the growing consensus and the general principles of international law on indigenous peoples and their lands and resources."<sup>[32]</sup> If UNDRIP continues to be cited by courts in such a way, it will undoubtedly come to be seen as representing customary international law, despite the aforementioned objections by the Canadian government. And Canada's position may well reverse if the government passes Bill C-262 in 2018, obligating itself to fully implementing the articles of UNDRIP at the federal level.<sup>[33]</sup>

## Annotated Bibliography

Charters, Claire, and Rodolfo Stavenhagen (eds.): *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples*. Copenhagen 2009.

Charters and Stavenhagen produced this diverse edited collection not long after UNDRIP's approval. It includes theoretical arguments about the nature of Indigenous rights described in the document as well as the personal reminiscences by some of the key actors about the process of drafting and passing the Declaration. Additional commentary related to regional perspectives from Asia, Africa and Greenland are also included. Rodolfo Stavenhagen served as UN Special Rapporteur on the Rights of Indigenous People between 2001 and 2018.

Anaya, S. James: *Indigenous peoples in International Law*. Oxford 2004.

Anaya provides a legal history of Indigenous rights and lays out his understanding of the right to self-determination as espoused by Indigenous peoples and organizations. While not uncritical of international human rights law, Anaya feels it offers hope for Indigenous peoples if interpreted in such a way that collective rights are properly acknowledged. Originally published in 1996, it was updated in a second edition in 2004. Anaya later served as UN Special Rapporteur on the Rights of Indigenous People between 2008 and 2014.

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## Fußnoten

1. Tomaselli: Indigenous Peoples, 40.
2. Mazower: The Strange Triumph, 382.
3. “Declaration on the Granting of Independence to Colonial Countries and Peoples,” General Assembly resolution 1514 (XV) of 14 December 1960; and “General Assembly Resolution defining the three options for self-determination,” General Assembly Resolution 1541 (XV) of 15 December 1960.
4. Diaz had written a chapter on the topic for the 1967 Special Study of Racial Discrimination in the Political, Economic, Social and Cultural Spheres (Diaz: Indigenous Peoples’ Rights).
5. Crossen: Another Wave
6. Crossen: Decolonization.
7. UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, 171; UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, 3.
8. UN General Assembly, Declaration on the Granting of Independence to Colonial Countries and Peoples, 14 December 1960, A/RES/1514(XV).
9. Bellier: Declaration, 230; Champagne: UNDRIP, 17.
10. Henricksen: UN Declaration; Carmen: International Indian Treaty.
11. Henricksen: UN Declaration, 82.
12. Ahrén: Provisions, 206.
13. Barume: Responding, 170-173.
14. Ibid., 173-181.
15. A strategy of relying on the Third World as a source of strength was explicitly made, at least within the IITC (Crossen: Another Wave, 551).
16. Ahrén: Provisions, 202-203 and 209-210.
17. Champagne and Wiessner both critique the lack of a clear definition as a weakening factor for UNDRIP (Champagne, UNDRIP, 17; Wiessner: Indigenous Sovereignty, 1163).
18. In 1986, the ILO agreed to revise Convention 107 (1957), primarily due to its emphasis on cultural assimilation, a principle it denounced as “destructive.” With some input from Indigenous organizations, the organization produced a revised Convention 169, which was approved in 1989. As of 2017, it has been ratified by 22 states (Swepston: New Step).
19. “General Assembly, Sixty-first session, 107th plenary meeting, 13 September 2007,” A/61/PV.107;

Rodríguez-Piñero: "Where Appropriate," 315.

20. Ahrén: Provisions, 212
21. Anaya: Indigenous Peoples, 100.
22. Anaya: Right of Indigenous Peoples, 188.
23. Champagne: UNDRIP, 19-20.
24. Wasáse: Indigenous Pathways.
25. Wiessner: Indigenous Sovereignty, 1173-1174.
26. Anaya: Indigenous Peoples, 78.
27. Engel, paraphrasing Harald Laski, calls UNDRIP "an uneasy compromise between irreconcilable principles of social action" (Engel: Fragile Architecture, 163).
28. Engel: Fragile Architecture, 148-150, 157n56.
29. Rice: UNDRIP, 60.
30. Tomaselli: Indigenous Peoples, 26-27.
31. Mitchell v. M.N.R., [2001] 1 S.C.R. 911, 2001 SCC 33; ILO Convention 169 has been considered and applied in a far greater court cases in numerous countries than has UNDRIP, but predates the Declaration by nearly two decades. International Labour Office, Application of Convention No. 169 by Domestic and International Courts in Latin America.
32. Aurelio Cal, et al. v. Attorney General of Belize, Supreme Court of Belize (Claims No. 171 and 172 of 2007, 18.10.2007).
33. Bill C-262: An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). "Liberal government backs bill that demands full implementation of UN Indigenous rights declaration," CBC News, 21.11.2017.

## Zitation

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