

Ten Years After:

Has Anything Changed During the Decade of the World's Indigenous Peoples?¹

Ted Palys
Simon Fraser University

Observing Change

- I have three sons. Because I am with them every day it's sometimes hard to notice the change because the change happens so slowly.
- My family – and others -- deal with this by creating notches on a door frame; doing a new notch every birthday or Xmas or whatever helps make us aware of just how much our children have grown.
- Change in the realm of Aboriginal justice seems to move similarly slowly, both in terms of:
 - “Big-J” justice, i.e., Aboriginal/non-Aboriginal relations; and
 - “Small-j” justice, i.e., community trouble and its resolution
- We need something like the notches on the door frame to help us keep track of whether and how things are moving

A Decade Ago

- One place to look for that sort of measuring stick is in the international realm
- In 1994, a decade ago, I had the honour of attending the UN Working Group on Indigenous Peoples in Geneva
- It was a year of tremendous optimism
 - What had been a very positive UN "*Year of Indigenous Peoples*" was about to become the first year of a "*Decade of Indigenous Peoples*."
 - Also, the draft *Declaration on the Rights of Indigenous Peoples* was passed by the members of the Working Group and the Indigenous delegations present
 - Within a month it also had been passed by its parent group, now known as the Sub-Commission for the Promotion and Protection of Human Rights

The Draft Declaration

- The hope was that it would work its way all the through to the UN General Assembly by the end of the decade

¹ Invited paper presented at the Stó:Lō Nation Justice Conference held in Mission, BC, March 22-24, 2004.

- The following articles give you some sense of the *Declaration*

Article 3:

- *Indigenous 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.*

Article 4:

- *Indigenous peoples have the right to maintain and strengthen their distinct political, economic, social and cultural characteristics, as well as their legal systems, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.*

Article 33:

- *Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive juridical customs, traditions, procedures and practices, in accordance with internationally recognized human rights standards.*

Ten Years After

- These provide a measuring stick -- the equivalent of the markings on the door frame
- What's happened to these hopes and promises?
- In my view, the message is a mixed one. Both internationally and in Canada, there have been both positives and negatives

International Positives

- The UN *Working Group on Indigenous Peoples* continues its work and participation continues to grow every year
- Establishment by the UN of the *Permanent Forum on Indigenous Issues* in 2000 (which meets each May, thus far in New York)
- Appointment in 2001 of a *Special Rapporteur* (Rodolfo Stavenhagen of Mexico) to deal with human rights and fundamental freedoms of Indigenous people

International Negatives

- The draft *Declaration* stalled when it left the Sub-Commission and crossed into the "political" realm of the Commission on Human Rights
- Some have expressed scepticism about the extent to which Nation States continue to keep a finger in what are properly Indigenous issues (e.g., by having final power of appointments of the Indigenous representatives to the Permanent Forum)

International Observations

- It is clear that resistance to Indigenous perspectives still exists among Nation States at the UN
 - Overt – denying Indigenous rights
 - Covert –subverting Indigenous rights and participation
- However, structures are being created that make Indigenous peoples a permanent presence for a de-colonized future

Canada Positives

- There are programmes happening now that were beyond governmental (but not FN) imagination a decade ago
- There has been a proliferation of “Aboriginal justice” programming
- Both reserve-based and urban programmes are proliferating
- Community referrals show community involvement and open new possibilities

Canada Negatives

- The Government of Canada’s “Aboriginal Justice Strategy” funds community-based programmes according to priorities established in the absence of adequate consultation with Indigenous leaders (e.g., “justice of the peace” programme)
- 15 years ago, there may have been some excuse, but there isn’t one now.
- Funding remains fragile and unpredictable, making long-term planning difficult:
 - Although federal government funding has been relatively consistent, additional involvement of provincial governments inserts a wild card when funding is 50-50
 - Imposed mainstream constraints on cases Indigenous communities can deal with creates funding catch-22s. E.g., In BC, Provincial government protocol requires that only minor cases can be referred; subsequent funding cuts were then justified on the basis of the fact that “only” less serious cases were being considered, so that little would be lost.

Conclusion

- Aboriginal communities in Canada have done an amazing job with limited resources, and their dreams and sense of purpose have pulled federal and provincial sources along with them to a far different place that we were in a decade ago
- Where Canada falls behind International standards is in the creation of structures that give Aboriginal people/s *real* control over justice and take it away from Dept of Justice priorities and the caprice of particular personalities