

Crim429/FNST429

INDIGENOUS PEOPLES IN A RIGHTS-BASED ERA

WWII as a Turning Point

- ◎ World War II influential in several respects
 - Fighting discrimination/genocide in Germany was hypocritical unless we took care of our own back yard, too
 - Realization that colonization was neither right nor just
 - Universal Declaration on Human Rights
 - Article 73 and “non self-governing” territories

ILO Conventions

- ◎ ILO (International Labour Organization), an NGO, encouraging a “new approach” that emphasized the need to welcome Aboriginal people into dominant structures
- ◎ First effort was ILO Convention #107 (1957)

ILO Convention #107 (1957)

- ◎ Article 1
- ◎ 1. This Convention applies to--
- ◎ (a) members of tribal or semi-tribal populations in independent countries whose social and economic conditions are at a less advanced stage than the stage reached by the other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

ILO Convention #107 (1957)

- ◎ Article 2
- ◎ 1. Governments shall have the primary responsibility for developing co-ordinated and systematic action for the protection of the populations concerned and their progressive integration into the life of their respective countries.

ILO Convention #107 (1957)

- ◎ 2. Such action shall include measures for--
- ◎ (a) enabling the said populations to benefit on an equal footing from the rights and opportunities which national laws or regulations grant to the other elements of the population;
- ...
- ◎ (c) creating possibilities of national integration to the exclusion of measures tending towards the artificial assimilation of these populations.

ILO Convention #107 (1957)

- ◎ Article 7
- ◎ 1. In defining the rights and duties of the populations concerned regard shall be had to their customary laws.
- ◎ 2. These populations shall be allowed to retain their own customs and institutions where these are not incompatible with the national legal system or the objectives of integration programmes.

ILO Convention #107 (1957)

- ◎ Article 12
- ◎ 1. The populations concerned shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development or of the health of the said populations.
- ◎ 2. When in such cases removal of these populations is necessary as an exceptional measure, they shall be provided with lands of quality at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development.

UN Charter – Article 73

CHAPTER XI: DECLARATION REGARDING NON-SELF-GOVERNING TERRITORIES

Article 73

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

- ⦿ to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;
- ⦿ to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;

UN Resolution 1514 (1960)

- ⦿ The UN “solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations,” and to this end proclaims that:
 - 1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.

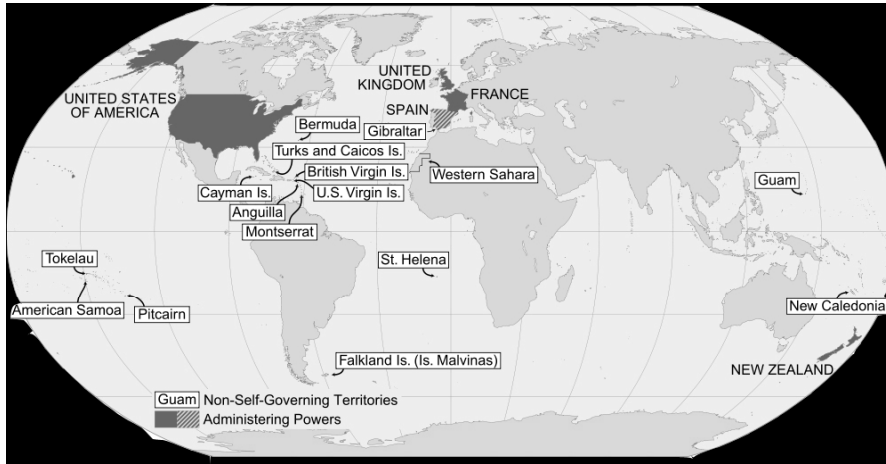
UN Resolution 1514 (1960)

- 2. All 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.
- 3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.

UN Resolution 1541 (1960)

- ◎ “Blue water” caveat
 - *Principle IV: Prima facie* there is an obligation to transmit information in respect of a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it.
- ◎ Choices:
 - *Principle VI: A Non-Self-Governing Territory* can be said to have reached a full measure of self-government by:
 - (a) Emergence as a sovereign independent State;
 - (b) Free association with an independent State; or
 - (c) Integration with an independent State.

Non-Self Governing Territories



George Manuel (1921-1989)

- ◉ President of UBCIC and Native Indian Brotherhood
- ◉ Organized Constitutional Express
- ◉ Co-founder and first President of the World Council of Indigenous Peoples; co-founder of Center for World Indigenous Studies



Indigenous Diplomacy

- ◉ George Manuel and Indigenous NGOs
- ◉ Wilton Littlechild and the new ILO convention (#169)
- ◉ Sharon Venne, Willie Littlechild and the Working Group on Indigenous Populations
- ◉ Ted Moses, Saul Terry, Judy Sayers, Sakej Henderson, Kenneth Deer

ILO Convention #169 (1989)

- ◉ Developed with the assistance of Indigenous people like Wilton Littlechild (Cree, Canada). Time for change:
 - Considering that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards, and

New Structures

(Partial) UN Organizational Chart (1980s)
UN General Assembly
Economic and Social Council (ECOSOC)
Commission on Human Rights
Sub-Commission on Prevention of Discrimination and Protection of Minorities
Working Group on Indigenous Populations – 1982 –

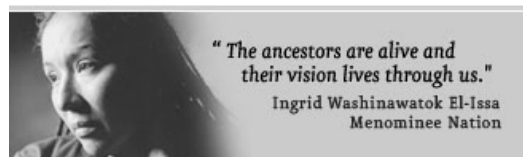
The Working Group

- ◎ Five members, all non-Indigenous, though always sought the advice, participation and consent of Indigenous representatives at every turn
- ◎ Two major “standard-setting” projects:
 - Draft Declaration on the Rights of Indigenous Peoples (Mme Erica Daes) – completed 1994
 - Study of “Treaties, Agreements, and Other Constructive Arrangements” (Miguel Alfonso Martinez) – completed 1999

The Contemporary UN

- ◎ Decade of World's Indigenous Peoples began in 1994; by 2004 ...
- ◎ Aspiration was to
 - Pass the *Declaration on the Rights of Indigenous Peoples* in the General Assembly by 2005. Whoops.
 - Create more structures that would bring Indigenous peoples into the UN structure

Creation of Structures



- ◎ Permanent Forum on Indigenous Issues established by the UN in 2000
- ◎ Both Indigenous (8) and State members (8)



Creation of Structures

- ◎ Appointment in 2001 of a *Special Rapporteur* to deal with human rights and fundamental freedoms of Indigenous peoples



Where's the Declaration?

- ◎ Emphasis in Working Group was on getting it right
- ◎ Passes from WG to SubCommission to Council on Human Rights in weeks
- ◎ 10 years later, still languishes at CHR
- ◎ CHR forces the issue in 2005. Passes. Leapfrogs to General Assembly 2006

Canada & the Declaration

- ◉ Canada one of four nations to vote against (others are USA, NZ, Oz)
- ◉ Ostensibly because it violated the Canadian constitution
 - No balance with other interests
 - Undermines fabric of Canada
- ◉ Canada says Declaration will not apply
- ◉ Since 2007, Australia, NZ, US and Canada have all reversed their positions and endorsed the Declaration



Canada's Louise Arbour, UN high commissioner for human rights

VAN SUN TUES 23 OCT 07 P4A

Canada 'moving away' from its commitment to human rights

UN human rights commissioner slams vote against indigenous people's rights declaration

BY DAVID LJUNGGREN

OTTAWA — Canada's commitment to human rights is slipping and the country must work hard to regain the position it once held as an international honest broker, a top United Nations official said Monday.

UN High Commissioner for Human Rights Louise Arbour, who is Canadian, said she was particularly unhappy that Canada had voted against a non-binding UN declaration of rights for indigenous peoples last month.

Her comments were aimed at the Conservative government, which has shown less interest in multilateral diplomacy than its Liberal predecessor.

Arbour said Canada had historically been perceived as an unbiased nation whose judgment was widely sought and which did not serve narrow interests.

"I am very worried that this very romantic view that we have of ourselves is not being sufficiently nourished and preserved to allow us to continue to occupy a place much larger than the one that our single voice among 192

member states of the United Nations would otherwise allow for," she said.

"I hope that we ... will collectively work very hard to reclaim that privileged space," she told an Ottawa conference on human rights.

Critics complain that the Conservatives are too close to Washington, where U.S. President George W. Bush's record on human rights is regularly attacked.

Federal Justice Minister Rob Nicholson, who was in the audience, declined to comment when asked by reporters for his reaction.

Foreign Minister Maxime Bernier would not be available for comment, a spokesman said.

Arbour is a former judge with the Supreme Court of Canada who was appointed to that job by the Liberals.

She is also a former UN war crimes prosecutor. She took up her current position with the United Nations in 2004.

She said she had to "register my profound disappointment that Canada did not see fit

to support the declaration" on indigenous rights. Ottawa said the document clashed with Canadian laws.

NDP Leader Jack Layton said "people are wondering what happened to Canada" as its international reputation slipped.

"We seem to be a pale echo of what comes out of the White House ... our government has drifted away from some core values that Canadians share," he told reporters.

Arbour later told reporters she was surprised by the Canadian vote on indigenous rights and questioned whether Ottawa was still able to portray itself as an honest broker.

"I think there is a sense that Canada is moving away from its total commitment to multilateralism and is now I think advancing other forms of either national or regional alignment," she said.

"Canadians still have an image of themselves that is now pretty dated, that is not reflective of the contemporary position and role Canada can and should play in my view internationally."

Reuters

Creation of Structures

- ◎ Working Group disbanded in 2007 and replaced by “Expert Mechanism on the Rights of Indigenous Peoples”
- ◎ “Preference” for Indigenous members
 - Ms. Catherine Odimba Kombe (Congo)
 - Ms. Jannie Lasimbang (Malaysia)
 - Mr. John Bernhard Henriksen (Norway)
 - Mr. José Carlos Morales Morales (Costa Rica)
 - Mr. José Mencio Molintas (Philippines)
- ◎ Expert Mechanism web site

Once Again Subjects of Law

- ◎ At the UN, unlike in Canada, structures are being created that make Indigenous peoples a permanent presence
 - Reconciling the maps of nations states and of peoples
- ◎ Documents such as the *Declaration* are powerful statements of Indigenous rights, e.g., to self-determination
- ◎ Returning as “subjects” of law