

WHOSE LAND IS IT ANYWAY?



A Manual for Decolonization

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"I wish you a wonderful experience decolonizing yourself"
– Arthur Manuel –

Going international to decolonize

Nicole Schabus



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I came to the Indigenous territories of North America from Europe, from Austria, a country with a terrible history of racism even worse, during the Second World War, the Holocaust happened in that land. I can assure you that this history affects future generations; it makes you doubt your own ability and that of your people to love. It made me question from early on whether I would have just been one of the followers or whether I would have stood up against our society totally dehumanizing another people and, in the process, ourselves.

No one has taught me more about resistance to oppression than Indigenous peoples, including some of my Aborigine friends I studied with in Australia and Indigenous peoples I worked with in Latin America. I had the privilege of working and living alongside Secwepemc leader Arthur Manuel, a leading advocate for Indigenous land rights. If we are serious about decolonization, the starting point has to be that this land is Indigenous land. This is also recognized at the international level, where international human right bodies understand Canada's colonial past and present and call for the recognition of Indigenous land rights. I have attended international lobbying efforts where Indigenous peoples get treated as owners of their land, including by representatives of other nation states. It is only inside of Canada that the government makes Indigenous peoples feel like they are landless in their own territories.

This is one reason why it is so important to go international. Only by asserting their position internationally and interacting with other nations can Indigenous Peoples assert their nationhood. Arthur Manuel said: "You have to quit crying on the shoulder of the guy that stole your land!" He would tell his people that there is no point going to Ottawa. Instead he took the message to Washington, DC, in the context of the softwood lumber dispute, the UN in New York City and Geneva, and many other international fora. I worked with him at all of those fora and heard him make his impassioned pleas, but nowhere did I see him speak with more love and caring than at Neskonlith Band hall, in his community, where his children and grandchildren live. He would always go home and report back to his family, his Elders, his people. They understood the importance of the work at the international level.

The main reason Arthur Manuel went international was to keep his people, especially the land and water defenders, safe. When we came back from one of our first international campaigns, the Secwepemc women and Elders had set up a camp at Skwelkwek'welt against the expansion of Sun Peaks ski resort.

As a real leader, he stood behind his people, especially the women, and backed them up. We brought in international human rights monitors and took the land issue international.

Nobody understood better than Arthur Manuel that Indigenous rights have an economic, social, cultural, and environmental dimension. We lobbied the World Trade Organization and NAFTA and had submissions accepted by both arguing that the non-recognition of Aboriginal title is a trade subsidy, because due to government laws and policies, corporations do not have to pay the Indigenous owners of the resource. He made it clear to the non-Indigenous people he spoke to that Indigenous rights are ancestral rights, deeply rooted in their territories, and that this deep connection, the underlying or radical title of Indigenous peoples to their land, has to be recognized. He also made it clear to them that this is a much more solid foundation to base Canada on than the colonial doctrines of discovery and the claim that Crown title is the underlying title in Canada. The latter is pure colonialism, and yet those are the doctrines and laws that the Government of Canada and the courts have upheld.

The international remedy against colonialism is the right to self-determination. And there can no longer be any debate that Indigenous peoples have the right to self-determination. For decades Canada tried to deny that Indigenous peoples have that right, that they are not “peoples” with their right to self-determination protected under the International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (ICESCR), jointly known as the decolonization treaties. They wrote into international law the decolonization process that had been embarked on in Africa and Asia. Canada is a signatory to these international human rights treaties and bound by its obligations. Yet as a settler colonial state, Canada wanted to deny that Indigenous peoples have standing as peoples in international law.

This is why it is so important to always refer to Indigenous peoples with an s, unless you are just referring to a specific nation or person.

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) became the longest negotiated international human rights instrument in history, in part due to the strong opposition of settler colonial states, first and foremost Canada, the US, Australia and New Zealand, especially in regard to the Indigenous right to self-determination.

This is now enshrined in Article 3 of UNDRIP, which replicates Article 1(1) of ICCPR and ICESCR and makes it clear that this right applies to Indigenous peoples. Since even those four colonial musketeers have now changed their position on UNDRIP, there is international consensus that this right applies to Indigenous peoples and it can no longer be denied. Rather I would argue that it now constitutes a binding principle of international law, and on top of it, Canada is bound by international treaties like ICCPR and ICESCR that enshrine the right. The right to self-determination is the overarching umbrella right; much of its essence is then spelled out further in UNDRIP, in regard to land rights, governance and Indigenous prior informed consent (PIC). The latter principle is also increasingly enshrined in multilateral environmental agreements that recognize Indigenous PIC and therefore Indigenous decision-making power regarding access to their lands and resources; and if such access is to be granted, it has to be subject to remuneration or benefit-sharing.

It is clear that including Indigenous peoples as decision-makers and respecting their knowledge, which is the most long-term knowledge regarding the respective territories, will ensure more economically, culturally and environmentally sustainable development. It means the transition from the 0.2% of Canada's land base that currently make up Indian reserves enshrining economic marginalization and poverty, to decision-making over the remaining 99.8% or really Indigenous territorial authority over their lands and resources.

Arthur always circled back to the human rights dimension of Indigenous rights because he wanted settler Canadians to understand that this process of decolonization is also deeply connected to their rights.

He said to settlers: “If you recognize our collective right to our lands and territories and decision-making over it, we will recognize your human right to stay here in our territories.”

He would joke, in his endearing manner that breaks down barriers, that he knows that “they do not want you back where you came from. You have been here too long. You have a right to stay here as long as you recognize that it is our land and that we have a say over it.”

The message that resonated from his last talks was that by non-Indigenous people working together with Indigenous peoples, it will mean a better future for future generations, because it is the best way to relate and connect to the land that we are all living on and to save the land that we all depend on from further destruction and alienation.

Nicole Schabus is an assistant law professor at Thompson Rivers University. She has worked for Indigenous peoples in Latin America and across Canada, especially in the Interior of British Columbia. Nicole has been practising law in British Columbia in the fields of constitutional, criminal, Aboriginal and environmental law. She also reports on and analyzes international environmental negotiations, mainly under the Convention on Biological Diversity. She has assisted with the preparation of submissions to numerous UN human rights bodies for organizations with consultative status before the United Nations. She drafted amicus curiae submissions for Indigenous peoples that were accepted by with World Trade Organization and NAFTA international trade tribunals.