

Indigenous

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Canada led efforts to weaken original UN Indigenous rights declaration

Canada and Australia crafted government-friendly UNDRIP substitute in 2002-03, documents show



[Brett Forester](#) · CBC News · Posted: Jan 15, 2024 1:00 AM PST | Last Updated: January 15



On Sept. 23, 2003, Prime Minister Jean Chrétien addresses the United Nations General Assembly in New York City. At the time, his government was quietly working with Australia on a substitute draft Declaration on the Rights of Indigenous Peoples. (Andrew Vaughan/Canadian Press)

Canada led efforts to weaken the draft Declaration on the Rights of Indigenous Peoples at the United Nations, working secretly with Australia to develop a watered-down substitute in the early 2000s, newly released Australian cabinet records show.

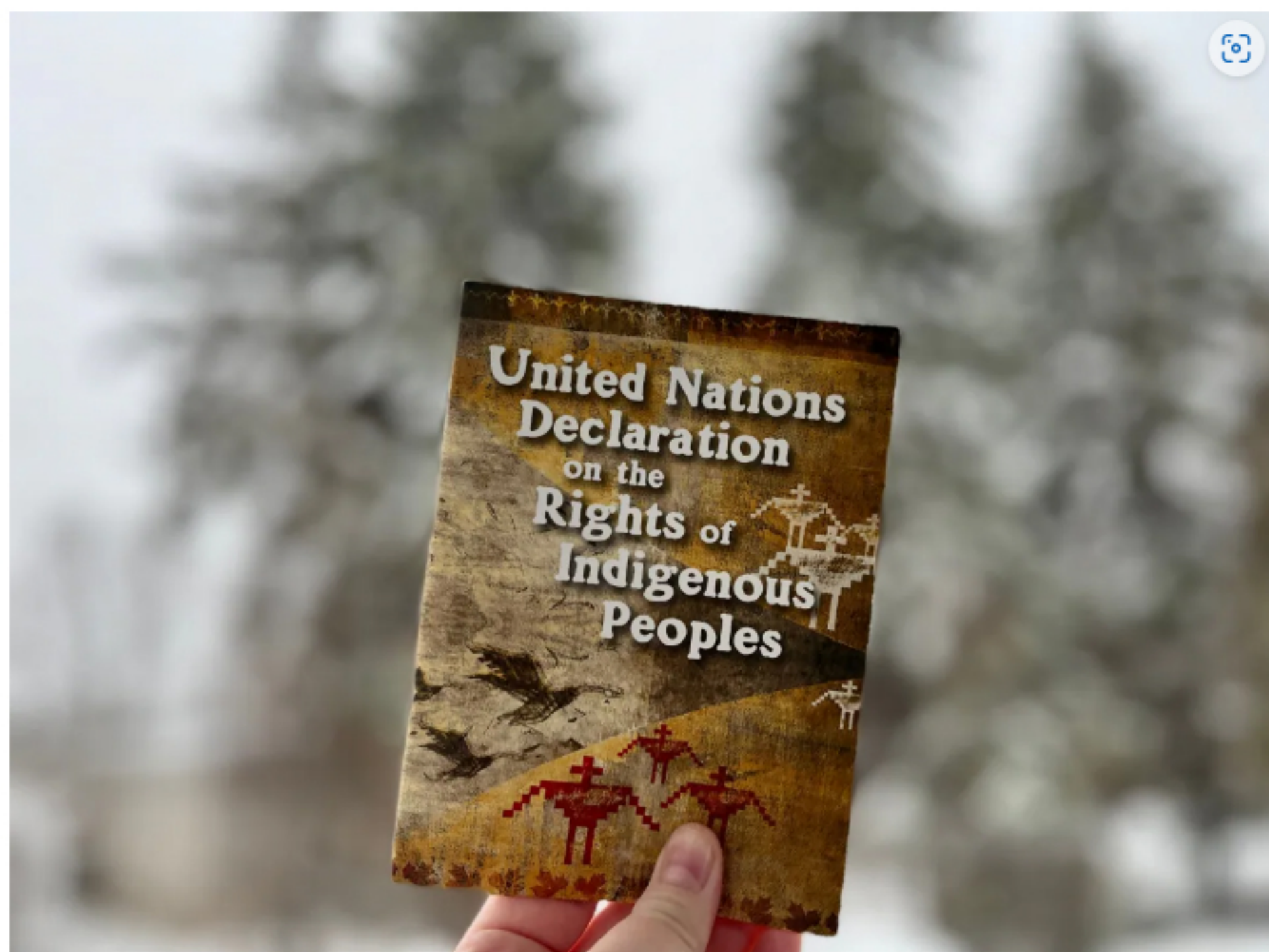
Crafting the state-friendly alternative was the Chrétien Liberal government's idea, but one Australia backed as a pressure tactic against Indigenous leaders who wouldn't alter their 1993 original draft, the records say.

"Australia has aimed to negotiate with Canada a strong and complete alternative text to counter the status of the existing draft and prevent it from attaining the status of customary international law," two Australian ministers wrote in [a now-public May 2003 cabinet submission](#).

Canada saw Australia "as its most promising partner" in drafting the new text and was prepared to devote "significant resources" to it, [a 2002 Australian departmental memo](#) to cabinet says.

It goes on to say, "Canada and Australia are likely to be criticized by hardline Indigenous groups, including some Australian Indigenous advocates, for developing alternative text and for doing so in a non-transparent, bilateral manner."

Today, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) is considered a legally non-binding human rights instrument. The original draft was eventually amended before its adoption by the UN in 2007.



The United Nations Declaration on the Rights of Indigenous Peoples affirms the inherent and pre-existing collective rights and human rights of Indigenous Peoples. (Ka'nehsí:io Deer/CBC)

The revelations come [via Australia's national archives](#), which releases cabinet records after 20 years, and were first reported on by [The Guardian](#). Similar Canadian records are legally accessible after 20 years but in this case aren't public.

The two Commonwealth governments understood the sensitivities around their backroom tactics, the records suggest, going around the official UN working group and keeping their talks, beginning in June 2002, quiet for at least a year.

"The fact that we have been discussing an alternative text with Canada has not yet been made known publicly," the Australian ministers continued in 2003.

"Our approach has been to only discuss the alternative text with those key states that appear to share our views and concerns."

Kenneth Deer, who is Kanien'kehá:ka (Mohawk) from Kahnawà:ke just south of Montreal and was involved in developing the declaration from 1987 to 2007, wasn't surprised by the files.

"Canada tried to have a nice public face, but in the background they were stabbing us in the back," said Deer.

"I'm not surprised. Disappointed, but not surprised."

Self-determination controversial

Australia was increasingly isolated in opposition to the Indigenous right of self-determination at the time, fearing it may encompass secession, the records show. It wanted the term deleted and replaced with "self-management."

Canada accepted the term self-determination, conditional on it being expressed through negotiation and "agreement with government."



Kenneth Deer, who was involved in developing the declaration from 1987 to 2007, says he isn't surprised by the content of the Australian cabinet documents. (Ka'nhehsí:io Deer/CBC)

The governments jointly proposed deleting references to demilitarization, restitution of land, armed conflict and cultural genocide, while adding language affirming the territorial and political integrity of sovereign states, ultimately yielding mixed results.

A line affirming states' political and territorial integrity was eventually added, for instance.

But an article banning the forcible removal of Indigenous peoples from their lands — which the governments wanted changed because, in Australia's view, "there are circumstances where removal is legitimate (eg. for child welfare purposes)" — was left unchanged.

At the time, the Indigenous caucus had an absolute "no changes" stance, Deer said. Australia hoped the substitute would compel "moderate" factions to break ranks with "hardline" leaders, the records show.

Australia saw promise in a 1999 Canadian proposal to develop "states-only" text on certain "easier" articles.

"Divisions are beginning to appear in the Indigenous caucus between hardline adherents to the original [declaration] and those Indigenous representatives who are prepared to contemplate negotiated compromises," the 2002 memo says.

'Exit strategies' to kill talks

Even so, Australia was also mulling "exit strategies," including potentially trying to kill the talks.

"Refusal by hardline Indigenous groups to discuss a substitute text prepared by Australia and Canada may necessitate the activation of strategies to wind up the working group," the memo says.

They eventually made their text public in September 2003, with First Nations leaders in Canada reacting with disgust.

Amid such pressures, some Indigenous leaders did begin proposing amendments, opening the gates for negotiation, said Deer. Post-2003, the original was overhauled — talks Deer recalled as horrible — though it wasn't totally gutted like Canada and Australia wanted.

Canada, Australia, New Zealand and the U.S. were the only four countries to vote against the declaration in 2007 when it was adopted by the UN.

Deer said Canada's government stance softened after Paul Martin became Liberal prime minister in 2003, and hardened with the election of Stephen Harper's Conservatives in 2006. But regardless of who was in power, the country's bureaucracy was resistant to Indigenous rights, he said.

The documents cast some doubt on statements Martin made in 2007 that the Liberals had long supported the declaration, accusing Harper of flip-flopping on it, a statement the Conservatives charged was false.

A spokesperson with the Martin Family Initiative, a charity founded by Martin that focuses on the wellbeing of Indigenous children, said they would stand by what's on the record in Canada, noting Martin left cabinet in June 2002 and wasn't sworn in as prime minister until December 2003.

Chrétien-era Indigenous and foreign affairs ministers could not be reached for comment.

The Harper government eventually endorsed the declaration as an "aspirational document" in 2010. Prime Minister Justin Trudeau's Liberals passed legislation in 2021 to align federal laws with the declaration. An implementation [action plan](#) was released last year.

Australia endorsed the declaration in 2009 but has not yet taken legal steps to implement it, amid [calls by one Australian lawmaker](#) to pass legislation similar to Canada's.

ABOUT THE AUTHOR



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