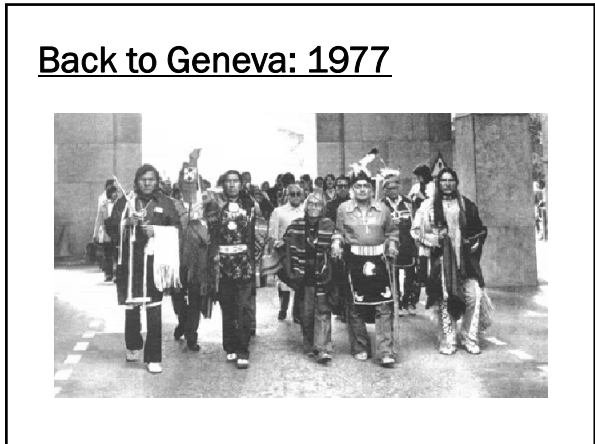


Crim429/INDG429

INDIGENOUS PEOPLES IN A RIGHTS-BASED ERA



- UN General Assembly**¶
 - (Currently 193 Member States)¶
- Economic and Social Council (ECOSOC)**¶
 - 54 member Governments elected by the General Assembly for overlapping three year terms¶
- Human Rights Council**¶
 - Formerly Commission on Human Rights (Changed in 2006)¶
 - (47 Member States)¶

- Sub-Commission on the Promotion and Protection of Human Rights**¶
 - Previously Sub-Commission on Prevention of Discrimination and Protection of Minorities (Changed in 1999; last year of existence was 2006; recommended they be replaced by an advisory panel)¶
 - 26 Members: seven experts from African states, five from Asia, five from Latin America, three from Eastern Europe and six from Western Europe and other States¶
- Working Group on Indigenous Populations/Peoples**¶
 - 5 members – one from each geographic region¶
 - Met in Geneva for 1-2 weeks each July¶

- ## The Working Group
- ◎ Five members; sought the advice, participation and consent of Indigenous representatives at each step (sort of)
 - ◎ Two major “standard-setting” projects:
 - Draft Declaration on the Rights of Indigenous Peoples – completed 1994
 - Study of “Treaties, Agreements, and Other Constructive Arrangements” – completed 1999
 - ◎ Recent developments

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

Creation of Structures


- ◎ Establishment by the UN of the *Permanent Forum on Indigenous Issues* in 2000 (which meets in New York each May)

Permanent Forum on Indigenous Issues: 2023-2025
Delegates Chosen by Indigenous Peoples' Organizations

 Hilda Damas Brulin Mourou (Chad)	 Akuki Kotarik Inuit (Canada)	 Hannah McGlade Noongar Advocate (Australia)	 Dario José Mejía Montalvo Zúñiga (Colombia)
 Naw El El Min (Myanmar)	 Hanish Moghani (Iran)	 Geoffrey Roth Sioux (USA)	 Valentina Vyacheslavovna Sivkina Sami (Russia)

Creation of Structures

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



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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 languishing at CHR
- CHR forces the issue in 2005. Passes. Leapfrogs to General Assembly 2006

Article 46 added

Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

UN Declaration on the Rights of Indigenous Peoples

- Passed at the Working Group in 1994
- Passed at the Sub-Commission in 1994
- Passed at the UN Commission on Human Rights in 2006
- Went to UN General Assembly in 2006, but no vote
- Final vote held in the General Assembly on 13 September 2010

The Vote: 13 September 2007



Canada & the Declaration

- Canada one of four nations to vote against (others are USA, NZ, Oz)
- Ostensibly because it violates the Canadian constitution
 - No balance with other interests
 - Undermines fabric of Canada
- Canada says Declaration will not apply

Reaction to the Vote



Canada 'moving away' from its commitment to human rights

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

BY DAVID LEUNGCHEN

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 human rights leader, UN High Commissioner for Human Rights Navi Pillay has said.

Pillay said Canada had voted against the declaration, which she said was particularly troubling because Canada had voted in favour of a similar UN declaration of rights for indigenous peoples last month.

"It is a contradiction, which has shown less interest in multilateral diplomacy than its former government, which has shown less interest in indigenous peoples' rights," she said.

"I am very worried that this very remarkable vote that we have of ourselves is not being sufficiently monitored and governed to allow us to continue to occupy a place much larger than the one that our single voice among 190

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

"I hope that we will collectively work very hard to reclaim that position of global rights leader," she said.

Chief Justice of the Supreme Court of Canada, Justices LeBel and Deschamps, who were in the audience, declined to comment when asked by reporters for his views on the declaration.

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

Ashour 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 UN in 2004.

She said she had "regretful and profound disappointment that Canada did not see fit

to support the declaration" on indigenous rights. Ottawa said the declaration violated Canada's constitution.

UN High Commissioner Navi Pillay said "people are wondering what happened in Canada" in its vote against the declaration.

"We cannot be a part of that corner out of the White House... our government has drifted away from some of our values that Canadians share," he said.

Ashour said reporters who were surprised by the Canadian vote on indigenous rights and questioned whether Canada is still a human rights leader.

"I think there is a sense that Canada is still a human rights leader, but it is not clear in multilateral and in some I think adopting other forms of either national or regional alignment," she said.

"Canadians will have an image of themselves that is now pretty dark, that is not reflective of the contemporary position and that Canada can and should play a role in new internationality."

Canada throws support behind UN document on aboriginal rights

BY AMY MINSKY

OTTAWA — The federal government did a U-turn Friday and threw its support behind a United Nations declaration outlining the rights of the world's estimated 370 million indigenous people — an action the Assembly of First Nations has urged since the declaration was adopted in 2007.

The endorsement represents a new stage in the relations between the government and Canada's aboriginal population, said National Chief Shawn Aheewah.

"By endorsing the declaration,

it offers an opportunity to really hit the reset button in the relationship and get on with specific areas of reform," he said.

"And we need to get on now with developing specific plans to get that work done."

The United Nations Declaration on the Rights of Indigenous Peoples outlines the individual and collective rights of indigenous people to their culture, health, education and employment. It also outlaws discrimination against them.

Canada was one of four nations that originally voted against the declaration, which was adopted by the General Assembly in September 2007 after more than

20 years of debate. Since then, Australia and New Zealand also have officially endorsed it. The United States is the only country that has yet to change its position.

At the time Canada voted against it, the government said the document was "fundamentally incompatible with Canada's constitutional framework."

"Our intent was always to approach the declaration in a careful and principled manner," Margot Geduld, a spokeswoman for the department of Indian and Northern Affairs, said Friday.

Postmedia News

Canada drops objection to UN declaration

Previous government worried requirements could be interpreted as a veto over decisions made in the public interest

GLENDA GALLAGHER OTTAWA

"We will be changing our position here at the UN and removing our status as permanent objector to the declaration," said P. Bennett told reporters on Monday.

The declaration, she said, tells governments, corporations and all Canadians that "one must begin by meaningful engagement with indigenous people, and be able to understand the culture that they hold, as they begin to think of a project or policy that affects indigenous people."

Cathy McLeod, the Conservative MP for Yukon, said she was pleased to see the declaration when it was first proposed by the United Nations.

Three years later, this country withdrew its status, arguing the declaration violated the rights of indigenous people, she said.

The declaration of the objection status to the declaration she said was "not legally binding document that does not reflect necessary international

terms of what changes will need to be made and what the implications are."

The declaration, known as the UN Declaration on the Rights of Indigenous Peoples, is a landmark document that sets out the rights of indigenous peoples, with special emphasis on their right to practice their own culture and customs and to develop their own economic, social and cultural institutions.

Canada, under the previous Conservative government, and three other countries — the United States, Australia and New Zealand — voted against the declaration when it was first proposed by the United Nations.

They years later, this country withdrew its status, arguing the declaration violated the rights of indigenous people, she said.

The declaration of the objection status to the declaration she said was "not legally binding document that does not reflect necessary international

law nor change Canadian law."

By now, she said, other developing countries had reversed their position and Canada was being left out at a meeting of the World Conference of Indigenous Peoples in Hong Kong, she said.

She said she had "regretful and profound disappointment that Canada did not see fit to support the declaration" on indigenous rights. Ottawa said the declaration violated Canada's constitution.

UN High Commissioner Navi Pillay said "people are wondering what happened in Canada" in its vote against the declaration.

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"Canadians will have an image of themselves that is now pretty dark, that is not reflective of the contemporary position and that Canada can and should play a role in new internationality."

Liberal government backs bill that demands full implementation of UN Indigenous rights declaration
 Justice minister supports NDP bill to fully implement UNDRIP, something activists have long demanded
By 2015 Paul Taylor, CBC News. Posted Nov 21, 2017 12:53 PM EST | Last updated Nov 21, 2017 4:04 PM EST



Liberals Introduce/Pass Bill C-15

Federal UNDRIP Bill C-15 is an attack on Indigenous sovereignty and self-determination: Opinion
By Mark Oshroff, Post on 11/20/2020



- Introduced in December 2020
- Passed by Liberals in May 2021
- Passed in Senate and Received Royal Assent in June 2021

Victoria has to move beyond 'duty to consult' on Indigenous issues
Unless the provincial government implements the groundbreaking UN Declaration on the Rights of Indigenous People, B.C. will be mired in the past and unable to move forward on reconciliation, according to a new report
 KEVIN GRIFFIN Updated November 27, 2018




"Indigenous Rights are human rights. We call on federal, provincial and municipal governments to truly commit to the true spirit and intent of the UN Declaration as a fundamental international human rights instrument to advance human rights for Indigenous peoples as a framework for justice and reconciliation. It is crucially important that our Inherent Title, Rights and Treaty Rights are recognized and affirmed in all processes Canada and BC engages in with Indigenous peoples. When our inherent Title, Rights and Treaty Rights are entirely disregarded or domestically diluted, governments are liable."¹

— Grand Chief Stewart Phillip

"[The BC government] fully recognizes that the [UN Declaration] is essential to the future of Indigenous peoples here in British Columbia.... It is a pivotal moment in our province and in our country... Our government understands the enormous responsibility we have to Indigenous peoples, in the face of historical wrongs that have never been made right and in the wake of inaction by government after government."²

— Premier John Horgan

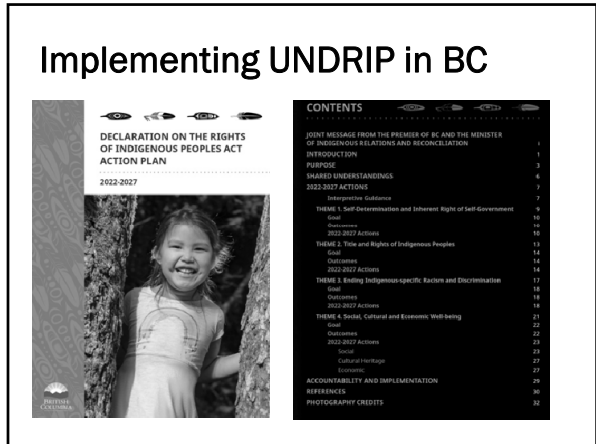
True, Lasting Reconciliation
 Implementing the *United Nations Declaration on the Rights of Indigenous Peoples* in British Columbia law, policy and practices



Declaration Act: What will it do?

- Confirms that UNDRIP has full application to the laws of BC**
Addresses Article 38: "States in consultation and cooperation with Indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration."
- Confirms that recognition and respect for Indigenous rights is foundation for shift in relationship and implementation must be made by a public, coherent and transparent process where all play their role.**
First Nations recognized as government, representing inherent title and rights holders and not simply based entities, corporations or charitable societies or organizations, under federal/provincial laws
- Supports predictability and range of reconciliation (social, economic, etc.)**
Get out of the adversarial circumstances that perpetuate conflict.
- Sets a new course for public and transparent action plan, as well as government accountability to implement UNDRIP.**
Provincial-led foundation for BC to work with First Nations to align law with UNDRIP. Support implementation of existing reconciliation agreements.

Implementing UNDRIP in BC



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 rather than “objects” of law