October 9, 2009

Listening to Indigenous Voices: What the UN Declaration on the Rights of Indigenous Peoples Means for U.S. Tribes

Aliza G. Organick

Available at: https://works.bepress.com/aliza_organick/1/
Listening to Indigenous Voices: What the UN Declaration on the Rights of Indigenous Peoples Means for U.S. Tribes

Aliza Gail Organick
Associate Professor of Law
Washburn University School of Law

We the Indigenous Peoples walk to the future in the footprints of our ancestors, from the smallest to the largest living being, from the four directions, from the air, the land and the mountains. The Creator has placed us, the Indigenous Peoples, upon our mother the earth. The footprints of our ancestors are permanently etched upon the lands of our peoples. We the Indigenous Peoples maintain our inherent rights to self-determination. We have always had the right to decide our own forms of government, to use our own laws, to raise and educate our children, to our own cultural identity, without interference. We continue to maintain our rights as peoples despite the centuries of deprivation, assimilation, and genocide. We maintain our inalienable rights to our lands and our territories, to all our resources above and below, and to our waters we assert our ongoing responsibility to pass these on to the future generations. We cannot be removed from our lands. We the Indigenous peoples are connected by the circle of life to our lands and environment. We the Indigenous peoples walk to the future in the footprints of our ancestors.

1 *Associate Professor of Law, Washburn University School of Law, citizen Diné Nation, born to the Tséńįįjíkiní (Cliff Dweller) Clan. Professor Organick is the 2009 Chair-Elect, AALS Indian Nations and Indigenous Peoples Section. Special acknowledgement to Sean Scally, third-year law student Washburn University School of Law, who graciously agreed to commit time to this project, and for his endless patience. Versions of this paper were presented at the 2009 Socio-Legal Studies Association Conference, April 7-9, 2009, De Montfort University, Leicester, UK, and the Third Annual Indian Law Clinics and Externship Symposium, Pueblo of Isleta, June, 2009. Thanks in particular to Sarah Sargent, De Montfort University, Professors Barbara Creel, UNM School of Law and to my colleague, Tonya Kowalski, Washburn University School of Law.

Introduction

On September 13, 2007, the 61st session of the United Nations General Assembly voted to approve the Declaration on the Rights of Indigenous Peoples (The Declaration). In an historic turning point, the Declaration affirmed that the world’s Indigenous Peoples are “equal to all other peoples” and “that all people contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind”. While the Declaration is significant because it establishes a minimum standard of human rights for the world’s Indigenous Peoples, its further significance lies in the fact that it also recognizes a fundamental right to the survival, dignity, and well-being of the world’s most vulnerable populations. Furthermore, the Declaration addresses both individual and collective rights and further identifies the right of Indigenous people to maintain their cultural distinctiveness without being subject to discrimination by the world’s nation states. It also provides support and offers encouragement for the economic, social, and cultural development of Indigenous peoples worldwide. Although the Declaration was approved by an overwhelming majority, the United States, Canada, Australia, and New Zealand voted against it. Perhaps not surprisingly, these are also the countries that have the most significant Indigenous populations.

The Declaration is not legally binding on states. Nevertheless, it stands as a defining moment in the recognition of the critical importance not only of protecting Indigenous Peoples themselves, but also of recognizing their right to self-determination. The extraordinary role that Indigenous Peoples have played in contributing to the nearly two-and-a-half decade process that led to the creation and ultimate adoption of the Declaration is equally

---

4 See id. Preambular provisions of the Declaration.
5 See id.
6 See id.
7 See id.
8 Id. The Declaration was adopted by an overwhelming majority. One-hundred forty-four states voted in favor of it, four voted against it, and eleven nations, Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russia, Samoa, and Ukraine abstained.
significant. It is true that a number of other international instruments have specifically focused on Indigenous Peoples to one extent or another. Despite this, the Declaration remains unique due to the degree in which, from its inception, the voices of Indigenous Peoples were included in defining the existing problems that face them and also in framing solutions to those problems. The Declaration is also important to the Indigenous world community because it is a document that reflects and sets forth the principles, values, and aspirational goals of the recipients of those ideals. It is impossible to understate the importance of their contribution to its creation and its ultimate approval by 144 states in the United Nations. The participation of Indigenous Peoples and communities in the creation of the Declaration means that it is a document affecting Indigenous Peoples that is not wholly positive law and this, in and of itself, is extraordinary. Prior to the engagement of Indigenous Peoples in the work on the Declaration, it was clear that they had no seat:

11 Craig Mokhiber, Officer in Charge, New York Office of the High Commissioner for Human Rights, Declaration is a Historic Document, Out of a Historic Process, Panel Presentation, Indigenous Peoples Caucus, http://www.ipcaucus.net/Mokhiber.html (last visited Aug. 26, 2009). Mr. Mokhiber states that “the rights contained in the Declaration are not new. There are no new rights in the Declaration from our perspective. They are rights that have been codified by the member states of this organization in countless treaties and have existed for the entire life of this organization since the adoption of the universal declaration of HR. But they are rights that have been violated - if we are to be frank, with impunity - vis-a-vis Indigenous Peoples for as long as these rights have existed. So the Declaration does something that is very useful. It helps us to clarify what are the normative implications and the operational requirements of the existing catalogue of human rights standards that have been adopted by the UN over the years. This clarification occurs in a way that is ‘situation-specific’, explaining how these pre-existing rights apply to the very particular case of Indigenous peoples around the world.”
14 See id.
“Not only did Indigenous people not participate in the development of international legal norms, but international law is reflective and constitutive of norms which were imposed, typically by force, upon them… . International law is the product of states and as such reflects the core values and interests of states, rather than Indigenous peoples against whom it has been employed to effect their subordination.”

Few would disagree that the approval of the Declaration was a momentous change in the way the world community views the rights of Indigenous Peoples. However, there remain significant outstanding concerns, not the least of which is the continued failure of the United States, Canada, and New Zealand to support it. Despite the disappointing position taken by these states in voting against the Declaration, there has been some important movement in the two years since its adoption. In April, 2009, Australia’s government formally endorsed the Declaration. By reversing its original decision opposing the Declaration, Australia set the moral standard for the three existing no-vote states to follow.

Six days after Australia endorsed the Declaration, Canada’s parliament officially urged its government to endorse the Declaration as well. Unfortunately, the Canadian government still refuses to do so. The position of the Obama administration remains unclear. According to the spokesperson for the U.S. Mission to the U.N, the
position of the administration on whether to endorse the Declaration is that this is “under review.” It remains particularly disturbing that instead of setting an example for the treatment of Indigenous Peoples, these three nations continue to resist adoption of those minimal human rights standards articulated in the Declaration while holding themselves up as torchbearers of democratic ideals.

For Indian nations, there remains the question of what the Declaration means here in the United States. There has long been acknowledgement by the United States that it has a special and unique relationship with Indian tribes, as well as formal recognition that tribal governments and tribal people have inherent powers of self-government. Many First people of the U.S. had a critically important voice in the long and arduous process that culminated in the creation and adoption of the Declaration. It is clear that Indigenous Peoples in the U.S. have a stake in the Declaration’s ultimate endorsement by the U.S. government. The centuries of conflict, subjugation, forced assimilation, and genocide of tribal people in the United States requires that the human rights of the Indigenous peoples of this country are not only recognized, but implemented by the United States government.

However, in the absence of that recognition and implementation of the Declaration by the U.S. government, what can Tribes do to achieve support for its principles? Should they continue to work towards its endorsement and implementation here at home? Should they refocus their energy on the U.S. adoption of the Declaration on the Rights of Indigenous Peoples in the Organization of American States? Increasingly, there is recognition that it is more and more important for Tribes and State and local governments to work together to solve problems. Should tribes work with State and local governments in seeking to build a common language with respect to the rights of Tribes and First peoples of the U.S?

This article will attempt to explore some of those considerations. Part I of this article will provide a historical context for the Declaration by exploring the international recognition of the concept of “indigenous” rights and how that concept ultimately led to the adoption of the Declaration. Part II will discuss the critical role that Indigenous Peoples from around the world played in shaping and framing the context for the Declaration, as well as its ultimate adoption. Part III will focus on some considerations U.S. Tribes might explore in making the Declaration a living document for them in spite of the United States’ continued resistance to do so.

I. History of the Declaration - The Long and Winding Road

“But our essential message to the world is a basic call to consciousness. The destruction of the Native cultures and people is the same process which has destroyed and is destroying life on this planet. The technologies and social systems which have destroyed the animal and plant life are also destroying the Native people. And that process is Western Civilization.

We know that there are many people in the world who can quickly grasp the intent of our message. But experience has taught us that there are few who are willing to seek out a method for moving toward any real change. But, if there is to be a future for all beings on this planet, we must begin to seek the avenues of change.

The processes of colonialism and imperialism which have affected the Hau de no sau nee are but a microcosm of the processes affecting the world. The system of reservations employed against our people is a microcosm of the system of exploitation used against the whole world. Since the time of
Marco Polo, the West has been refining a process that mystified the peoples of the Earth."²³

A. The International Indigenous Peoples’ Movement

As early as the 1920s, tribal people began to appeal to international forums for redress on issues affecting them.²⁴ These intermittent appeals to world organizations continued, with no appreciable response by the world community, right up to the establishment of the United Nations (UN) in 1945.²⁵ Although Indigenous Peoples were not heard directly by world organizations during this time period, the UN did consider the plight of Indigenous people under the broader umbrella of general human rights work.²⁶ Indeed, general concerns dealing with minority rights, such as “slavery, servitude and forced labour” did make their way into a number of human rights instruments over the course of several decades.²⁷ However, human rights issues affecting indigenous populations did not emerge as a particular focus in the UN until 1970 when the Sub-Commission on Prevention of Discrimination and

(Describing the efforts of Chief Deskaheh of the Iroquois Nation, and his attempt to be heard at the meeting of the League of Nations in Geneva in 1923, historian Lawrence Hauptman writes, “The enduring legacy of Deskaheh …[w]as not in what he did, but in the way he attempted to change non-Indians’ policy. His words, metaphors, and tactics are still emulated by Iroquois leadership in their determined effort to conserve and protect their existence. Iroquois delegates of the league in 1977 and after have retraced Deskaheh’s path to Geneva, Switzerland. Under Iroquois-issued passports, they have appealed to the United Nations on behalf of all native peoples, or have taken part in international convocations… in their activist determination to publicize their grievances against both the United States and Canadian governments.”).
²⁶ See id.
²⁷ See id.
Protection of Minorities (Sub-Commission) suggested that a study be conducted that specifically addressed the problem of discrimination against indigenous populations. The Sub-Commission ultimately appointed a Special Rapporteur, José R. Martinez Cobo, to study issues of discrimination against Indigenous Peoples. The report subsequently presented to the Sub-Commission by Special Rapporteur Cobo (the Cobo Report) is considered a “milestone” in the consideration of indigenous human rights issues by the UN. The Cobo Report took over a decade to compile and was submitted to the Sub-Commission over a period of three years from 1981-1984. It was his report that ultimately led to the creation of the Working Group on Indigenous Populations (the Working Group) in 1982.

Occurring nearly simultaneously with the authorization of the Cobo Report and the concern over the situation of Indigenous Peoples by the UN, was the emergence of indigenous political organizations such as the American Indian Movement (AIM). As a result of failed federal policies that had done much to diminish the condition of Tribal nations and Tribal people, AIM began to demand that the voice of Indian people be heard. In pursuit of this goal, AIM turned toward the international community and international law in order to find a place and means of redress for these issues. Shortly after the formation of AIM, other international Indigenous groups began to form and they also began to articulate their concerns to a

---

28 See id.
29 See id.
30 See id.
31 See id.
32 See id. The Working Group is a subsidiary organ of the Sub-Commission and was comprised of five members, representing each geographical world region. Mr. Martinez Cobo’s report was extremely significant in that it urged both national and international measures be taken to eliminate discrimination against the world’s Indigenous peoples and further address a host of issues critical to their survival. The Cobo Report addressed a penumbra of human rights pertaining to Indigenous peoples including, “a definition of Indigenous peoples, the role of intergovernmental and non-governmental organizations, the elimination of discrimination, and basic human rights principles, as well as special areas of action in fields such as health, housing, education, language, culture, social and legal institutions, employment, land, political rights, religious rights and practices, and equality in the administration of justice.”
33 Laura Waterman Wittstock and Elaine J. Salinas, A Brief History of the American Indian Movement, http://www.aimovement.org/ggc/history.html (last visited Sept. 25, 2009). The American Indian Movement was founded in an attempt to correct those federal policies that had done much to erode the “culture, language, and history” of Native Nations in the US.
34 Coulter, supra note 16, at 543.
35 Siegfried Wiessner, Indigenous Sovereignty: A Reassessment in Light of the UN Declaration on the Rights of Indigenous Peoples, 41 Vand. J. Transnat’l L. 1141,
wider world community. In 1982, with the establishment of the Working Group, Indigenous groups and non-governmental organizations (NGOs) were finally allowed to speak at the Working Group’s sessions in Geneva.\textsuperscript{36} At last, after nearly 500 years of being ignored in international forums, indigenous groups were finally making their voices heard and were being heard.

From its inception, the Working Group generated tremendous interest and as many as 700 representatives from government observers, Indigenous representatives, NGOs and academics attended the sessions regularly, making it “one of the largest United Nations forums in the field of human rights”.\textsuperscript{37} Although the Working Group was not authorized to hear specific allegations of human rights abuses, it was mandated to “facilitate dialogue between governments and indigenous peoples”.\textsuperscript{38} In addition, the Working Group was charged with two specific tasks: to “review national developments” that promoted the “human rights and fundamental freedoms of indigenous peoples; and to “develop international standards concerning the rights of indigenous peoples”.\textsuperscript{39} It was the standard-setting mandate that ultimately became the focal point for the Working Group.\textsuperscript{40} It provided indigenous representatives from all over the world, including U.S. Tribal representatives and Tribal citizens, the opportunity to advocate for issues that were important to their communities.\textsuperscript{41} The work on the draft Declaration (the Draft) began in the Working Group in 1985 and continued until 1993 when the Draft was submitted to the Sub-Commission, while continuing to incorporate the viewpoints of Indigenous Peoples including U.S. Tribes.\textsuperscript{42}

\textsuperscript{1153} The International Treaty Council is an organization of Indigenous people from North, Central, and South America (along with Caribbean and Pacific Islanders). Their goal is to work in international forums, such as the UN, toward the recognition and protection of sovereignty, self-determination and human rights for indigenous people.

\textsuperscript{36} Fact Sheet, supra note 25.
\textsuperscript{37} See id.
\textsuperscript{38} See id.
\textsuperscript{39} See id.
\textsuperscript{40} See id.
\textsuperscript{41} Coulter, supra note 16, at 577.
\textsuperscript{42} Fact Sheet, supra note 25.
The First Decade and Draft Declaration

B. The International Decade of the World’s Indigenous Peoples

“...a number of state governments still refuse to recognize our collective and individual rights as peoples. Our rights are inseparable from our cultures, way of life and our relationship to our lands and our territories. We are people with the same rights as all peoples. To deny this is to deny who we are. We are no longer merely objects of international law, we are subjects of international law.”

“...[W]e demand to be heard and to be taken into account, that our rights be included in the constitutions of countries, therefore we call to the General Assembly of the United Nations to reflect on the present consideration, that this will not be left as mere expectations. We need, rather, to take action. These are the wishes and feelings of Indigenous Peoples...”

Indigenous Peoples have called for recognition in international forums for decades in the hope of increasing the world’s awareness on issues concerning them. In 1990, the General Assembly finally heeded that call and proclaimed that 1993 would be the “International Year of the World’s Indigenous People” (the Year). The central focus of the Year was to develop new partnerships between Indigenous groups and states, as well as strengthening those partnerships that already existed. In a historic moment for Indigenous peoples and the world community, indigenous leaders spoke directly from the podium at the General Assembly for the first time. That same year, hundreds of indigenous representatives attended the World Second Conference on Human Rights in Vienna.

45 Fact Sheet, supra note 25.
46 See id.
47 See id.
and addressed the plenary session.\textsuperscript{48} It was there that the recommendation was made for an international decade of Indigenous Peoples and that a permanent forum for Indigenous Peoples be established as part of the UN system.\textsuperscript{49} Six months after the World Conference in Vienna, the General Assembly established the International Decade of the World’s Indigenous People (the First Decade).\textsuperscript{50} The First Decade on Indigenous People was notable for the engagement of Indigenous peoples worldwide in the process of expressing the urgent need for indigenous human rights protection.\textsuperscript{51}

The goal of the First Decade was to “strengthen international cooperation for the solution of problems faced by indigenous people” in a number of prescribed areas.\textsuperscript{52} The report of the General Assembly acknowledged that, on the cusp of the new millennium, the world’s Indigenous Peoples continued to be the poorest and most marginalized people on earth and, furthermore, that it was incumbent on the world community to establish a framework for addressing the most pressing areas of concern.\textsuperscript{53} Although a number of goals were identified by the Assembly as in need of attention, the principal objective for the Decade was to strengthen international collaboration in order find solutions to the myriad of problems that had been identified.\textsuperscript{54} The problems highlighted by the report and underscored as in need of immediate attention were human rights, the environment, health, culture, and education.\textsuperscript{55} A program of activities was adopted which outlined a number of objectives to be attained in that decade and also provided for a means to assess the outcomes of those objectives.\textsuperscript{56} A permanent forum was ultimately established in

\textsuperscript{48} Id. The second World Conference was held in Vienna in June, 1993. The Vienna conference called on the international community to make a commitment to the “economic, social and cultural well-being” of Indigenous people and, further, asked states to “take positive steps” to ensure that their country “ensure respect for all human rights and fundamental freedom of Indigenous people…”.

\textsuperscript{49} See id.

\textsuperscript{50} Id. The International Decade of the World’s Indigenous People (1995-2004) was established by UN resolution 48/163 on Dec. 21, 1993.


\textsuperscript{52} Fact Sheet, supra note 25.

\textsuperscript{53} Id. at 2.

\textsuperscript{54} See id.

\textsuperscript{55} See id.

\textsuperscript{56} Id. Annex III Fact Sheet No. 9. In addition to the main objective that a draft declaration be adopted by the UN, other principal objectives were outlined for the First Decade were: specialization of agencies within the UN that were to ensure activities designed to benefit indigenous communities were developed; the
1995 and participants included both governmental and indigenous representatives, as well as independent experts.\textsuperscript{57}

In an attempt to address the areas of concern highlighted by the report, the Assembly designed a “programme of activities for the Decade” which included developing mandates for existing agencies within the United Nations, as well as other international communities and groups, to develop activities that would benefit Indigenous Peoples.\textsuperscript{58} The Assembly’s list of program objectives included the development of programs designed to educate indigenous and non-indigenous people in the areas of human rights protections and other initiatives in conjunction with the United Nations Decade for Human Rights Education.\textsuperscript{59} Additional core objectives that were identified included providing protection and support for Indigenous Peoples, and endeavoring to strengthen cultural identities, values and traditions.\textsuperscript{60} This was to be done while working within existing political State organizations, and implementing earlier recommendations made by the World Conference on Human Rights that would establish a permanent forum in the United Nations for Indigenous people.\textsuperscript{61}

As important a step forward as these events were toward furthering an indigenous human rights platform, it has invited fair criticism that indigenous representatives were given a mere “three to five” minutes to express specific concerns affecting their respective communities.\textsuperscript{62} The very short time period allotted to indigenous representatives is in stark contrast the ten to fifteen minutes allotted to State representatives speaking in “state-centered” forums.\textsuperscript{63} In spite of this obvious inequity, Indigenous organizations used the development of an educational program highlighting cultural and aspirational goals of indigenous communities geared toward both indigenous and non-indigenous communities; the promotion and protection of indigenous rights; and, the furtherance of recommendations made regarding indigenous rights at high-level meetings and conferences.

\textsuperscript{57} See id.
\textsuperscript{58} See id.
\textsuperscript{59} See id.
\textsuperscript{60} See id.
\textsuperscript{61} See id.
\textsuperscript{63} See id.
forums to interact with their colleagues and to develop strategies. Nevertheless, some progress advancing the interests of Indigenous Peoples was made during the First Decade. However, it is telling that while two-thirds of the indigenous representatives believed that there was positive progress made as a result of the work done in that ten year period, forty-four percent indicated they saw no local improvements in that same time period.

The Draft Declaration

Work on the Draft Declaration (the Draft) began shortly after the establishment of the Working Group in 1982 and the first draft was sent to the Sub-Commission six years later in 1988. However, it took an additional six years and numerous revisions before the Draft was finally adopted by the UN Commission on Human Rights (the Commission) in 1994. Its adoption by the Commission coincided with the announcement of the International Decade of the World’s Indigenous Peoples by the General Assembly. The Draft itself is considered a “remarkable feat of international legal drafting” as it involved both governments and Indigenous Peoples in the drafting process. It is estimated that more than 400 Indigenous delegations from all over the world made “important and substantive contributions” to the text during the entirety of the drafting process. Dr. Erica-Irene A. Daes, Chairperson and Rapporteur of the United Nations Working Group on Indigenous Populations, described the efforts made by the Working Group to arrange for a number of support mechanisms that facilitated Indigenous participation in the process. The ultimate result was a

---

64 See id.
65 Id. at 160. Professor Corntassel (citing a survey conducted by the UN Office of the High Commissioner on Human Rights).
67 See id.
69 Id. at 392.
70 Corntassel, supra note 59, at 150.
71 Dr. Erica-Irene A. Daes, Equality of Indigenous Peoples Under the Auspices of the United Nations Draft Declaration on the Rights of Indigenous Peoples, 7 St. Thomas L. Rev. 493, 494 (1999). Throughout the drafting process, the Working group arranged for meetings of indigenous representatives and further assisted by ensuring translations services were available so that indigenous groups could meet, consult and engage in consensus building on draft provision.
72 See id.
process that supported and encouraged an open “democratic procedure” with “broad and unified Indigenous input.” According to Dr. Daes, no other human rights document ever created included the depth of input from “its intended beneficiaries” as the Draft declaration.

The Commission on Human Rights began its work on the Draft in 1994, and over the next twelve years worked on revisions of the text until finally submitting it to the Human Rights Council which finally adopted it in 2006. The Draft was comprised of nineteen preambular provisions and forty-five articles which reflect the “fundamental principles of equality and non-discrimination” and unambiguously recognize the right of Indigenous people to self-determination and to a cultural and collective identity. In addition, the Draft provides specific responsibilities of states and the international community for implementation of the rights articulated in the Draft.

While there is no doubt that the Draft was a remarkable achievement, it was not without its opponents. Its strongest critics opposed key language in the text that defined Indigenous Peoples as “peoples” who were entitled to all the rights associated with “self-determination” and were concerned that the use of those terms might entitle them to a right of secession. Other criticism focused on the recognition, for the first time, of the collective rights of Indigenous Peoples to “land, culture, education, language, and institutions of government.” In particular, Article 3 in particular states that Indigenous Peoples have a right to self-determination and by virtue of that right they may freely determine their political status and their economic, social, and cultural development.

73 See id.
74 See id.
75 Beidelschies, supra note 63, at 482.
76 Daes, supra note 68, at 495.
77 See id.
78 Graham, supra note 65, at 393. As Professor Graham explains, critics of this language cite to these provisions in spite of the fact that nothing in the Draft either authorizes or encourages such action.
79 See id.
80 See id.
Lessons Learned from the First Decade and Developing Strategies for the Second

The Second International Decade of the World’s Indigenous Peoples (Second Decade) was adopted by the Assembly in December 2004. The resolution for a Second Decade articulated, as one of its principal goals, the need to continue to develop problem solving mechanisms for international cooperation that specifically address the on-going issues facing Indigenous peoples. The framework developed by the UN at the start of the first Decade brought with it the hope, by Indigenous Peoples, that their governments would embrace the core principles espoused by the resolution which promised a new partnership between Indigenous Peoples and their States.

However, it did not take long to learn that, in spite of the principles and programs articulated in the goals set forth in the first Decade, there continued to be reluctance on the part of both regional and national governments to translate those goals into any meaningful commitments on the ground. Nevertheless, while only a few States made any concerted efforts to implement the action plan, the first Decade can be seen as having had a positive outcome in two critical respects. First, Indigenous Peoples gained invaluable experience making statements highlighting on-going human rights violations on their own behalf and using UN mechanisms to do so. As a result, Indigenous peoples became “experts in standard-setting” and promoting their human rights within the UN framework. Second, and perhaps most importantly, the UN Permanent Forum on Indigenous Issues (the Permanent Forum) was established early in the first Decade.


82 See id.

83 IWGIA, *supra* note 50.

84 See id.

85 Id. at 2.

86 See id. In reviewing the outcomes of the first Decade, IWGIA’s report on strategies for the second Decade found that as Indigenous peoples found their voice in the UN systems, they simultaneously began to build Indigenous networks which in turn began to create strategies for developing expertise and bringing important issues to the fore in UN as well as at other international events.

87 See id.
The establishment and subsequent work done in the Permanent Forum became the key focus of Indigenous peoples through the remainder of the first Decade and a number of insights were gained by learning how to move issues through the forum process.\textsuperscript{88} Prior to the establishment of the Permanent Forum on Indigenous Issues, the primary mechanism for UN activities with a focus on Indigenous Peoples was the Working Group on Indigenous Populations (WGIP).\textsuperscript{89} WGIP was established in 1982 as a Sub-Commission of the Promotion and Protection of Human Rights (the Human Rights Sub-Commission).\textsuperscript{90} WGIP’s mandate was to support and encourage dialogue between governments and Indigenous peoples.\textsuperscript{91} Additionally, WGIP was charged with reviewing issues that arose with respect to human rights and fundamental freedoms of Indigenous people and to analyze these issues and then report to the Sub-Commission.\textsuperscript{92} It was also charged with keeping abreast of any changes in international human rights standards pertaining to Indigenous peoples.\textsuperscript{93}

The Indigenous Working Group for Indigenous Affairs (IGWA)\textsuperscript{94} outlined its aims for the Second Decade of Indigenous Peoples by highlighting the strategies of the first Decade that either failed outright or fell short of its goals.\textsuperscript{95} For instance, one of the major objectives of the Assembly was to produce a declaration on the rights of Indigenous Peoples, yet this objective was not met in the first Decade. NGO’s like the IWGIA reaffirmed this as a primary goal moving into the Second Decade. As such, IWGIA developed a set of strategies and activities that supported that goal.\textsuperscript{96} IWGIA’s stated objective was to ensure that the document that was eventually adopted by the UN was one that would continue to be relevant to

\textsuperscript{89} See id.
\textsuperscript{90} See id.
\textsuperscript{91} See id.
\textsuperscript{92} See id.
\textsuperscript{93} Id. at 3.
\textsuperscript{94} The Indigenous working group for Indigenous Affairs is an indigenous organization that works to promote indigenous peoples’ right to self-determination, cultural integrity and right to development. IWGIA works within a wide range of areas including publication, human rights, lobbying, advocacy, and research.
\textsuperscript{95} Id. at 5.
\textsuperscript{96} See id. IWGIA established additional goals for the Second Decade focused on the relationships between Indigenous peoples and the states and developing more concrete agreements between the parties, using the Second Decade to concentrate on issues of land, political, and cultural rights, and to address the issue of the landless Indigenous poor in urban areas in developing nations.
Indigenous Peoples around the world.\textsuperscript{97} This would be accomplished through continual consideration of the diversity of Indigenous Peoples and their unique social, political, and economic needs.\textsuperscript{98} In addition, IWGIA recognized that some indigenous populations had either constitutional or legal rights to be represented in legislative bodies either at the local or national level.\textsuperscript{99} However, not all Indigenous populations were taking advantage of the structures already in place that would give them a voice at the table.\textsuperscript{100} The legal right to be a part of state structures on the legislative level was seen as being a critical part of the process. Therefore, an additional stated goal was to take advantage of the opportunity to participate in the process where this right was already recognized, and further to create strategies and policies that ensured the creation of this type of representation where it did not already exist.\textsuperscript{101}

\textbf{The Declaration}

"...the important and historic standard-setting process that started in the period following the first session of the Commission was still continuing, and it remained an unfinished task for the Indigenous peoples of the world and for the United Nations, as they still did not have the legal instruments needed to protect their basic rights and freedoms. A strong declaration was urgently needed to protect the health and well-being of the world's Indigenous peoples. Correcting the wrongs of the past and securing justice for Indigenous peoples could be achieved if a strong declaration was achieved soon."

The journey to the eventual adoption of the Declaration in September 2007 began sixty years earlier with the ratification of the Universal Declaration on Human Rights. That extraordinary document set forth in its principals the “inherent dignity and equality

\textsuperscript{97} See id.
\textsuperscript{98} See id.
\textsuperscript{99} See id.
\textsuperscript{100} Id. at 7
\textsuperscript{101} See id.
of all human beings”.  

It is recognized as the first international instrument to articulate a set of individual rights applicable to all human beings on earth including Indigenous peoples. It did not, however, recognize a set of collective rights such as rights to land or rights to culture. It is those very collective rights that have since been recognized by the world community as being critical to the survival of many of the world’s Indigenous Peoples. Nonetheless, it was an important first step and ultimately paved the way for protection of those rights as later instruments were created.

The Declaration is significant in that it is regarded as a reflection of the principles and foundations of existing international human rights law and affirms those rights specifically for Indigenous Peoples. Before the passage of the Declaration, there existed international human rights standards that both affirmed and promoted the rights of Indigenous Peoples, but none were created specifically for Indigenous Peoples. Essentially, all international human rights laws are to be interpreted and applied equally to all people throughout the world, including Indigenous People. However, the Declaration restates unequivocally that “indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter

103 Secretary-General Ban Ki-moon, on the occasion of the 60th Anniversary of The Declaration of Human Rights, http://www.un.org/events/humanrights/udhr60/ (last visited June 27, 2009).


105 See id.


108 Id. Anaya, since the 1980’s there has been an emerging body of international law that has paid particular attention to Indigenous Peoples. Specifically, the International Covenant on Civil and Political Rights (ICCPR), which creates a right to cultural integrity and the right to land and resources for Indigenous Peoples. The Committee on the elimination of Racial Discrimination (CERD) adopted specific recommendations and obligations with regard to the protection of indigenous cultural identity, language, and economic and social development……..).
of the United Nations, the Universal Declaration of Human Rights and international law.”\textsuperscript{109}

Since the Declaration has been adopted, most agree that the challenge now is for its implementation by the member states.\textsuperscript{110} However, recently arguments have been made that, even without formal implementation, it is already becoming international customary law.\textsuperscript{111} For instance, in its October 18, 2007 decision in\textit{Maya Villages of Santa Cruz and Conejo v. the Attorney General of Belize}, the Supreme Court of Belize affirmed the traditional land and resource rights of the Maya and reasoned that the Government of Belize could not disregard these rights, particularly in light of the fact that Belize voted for the adoption of the Declaration.\textsuperscript{112} Certainly there are those who reject the notion that customary international can be used by Tribal Nations in the U.S.. Nevertheless, the body of law that is beginning to emerge makes a clear statement to the no-vote states and provides a standard for the administration of justice in cases where Indigenous Peoples’ rights are at stake.

II. The Declaration and No Vote States

A. Australia and the Declaration

“\textit{Some may question the practicality of the decision by the Australian government today in supporting the Declaration. The fact of the existence of human rights standards is not the source of Indigenous disadvantage. Human rights do not dispossess Indigenous peoples, they do not marginalise them, they do not cause their poverty, and they do not cause the gaps in life expectancy and life outcomes. It is the denial of rights that is a large contributor to these things. The value of human rights is not in their existence; it is in their implementation. That is the challenge for the world with this

\begin{itemize}
  \itemDeclaration, \textit{supra} note 2.
  \itemSee \textit{id}.
\end{itemize}
Declaration. The standards are set. It is up to us to meet them”.\textsuperscript{113}

“As Aboriginal and Torres Strait Islander people we have to learn what that means and how to act as ‘peoples’ and not individuals. The national representative body now assumes a new importance and its establishment and operations will be put to the test by communities who have struggled long and hard to survive to get to this stage. Over the coming weeks and months we are going to hear a lot being said about relations between government and communities. It is a time to listen, learn and contribute.”\textsuperscript{114}

When the 61st General Assembly of the United Nations convened on the September 13, 2007 to vote on the Declaration, there was recognition that its final adoption was the culmination of nearly 25 years of “contentious negotiations”.\textsuperscript{115} Perhaps the most hotly contested negotiations centered on those rights that provided for the protection of land and resources of Indigenous populations.\textsuperscript{116} Prior to the vote, permanent representatives of Australia, New Zealand, Canada and the United States were given an opportunity to provide the Assembly with their stated positions as to why they would not support the text of the Declaration.\textsuperscript{117}

In explaining Australia’s no vote, Ambassador Robert Hill expressed disappointment that Australia, along with other states, had called for but were not allowed an opportunity to negotiate on the final draft of the Declaration.\textsuperscript{118} He therefore felt that the resulting draft fell short of a workable standard.\textsuperscript{119} In supporting Australia’s


\textsuperscript{115} General Assembly, GA/10612, supra note 3, at page 1.

\textsuperscript{116} See id.

\textsuperscript{117} Id. at 5.

\textsuperscript{118} Explanation of vote by the Hon. Robert Hill Ambassador and Permanent Representative of Australia to the United Nations. http://www.australiaun.org/unny/GA_070913.html. Ambassador Hill contended that had they had an opportunity to meet with the UN Membership that this would have resulted in an improved document and one that would have resulted in consensus.

\textsuperscript{119} Id.
position, he underscored concern with key provisions and references in the text. In particular, he pointed to references that allowed for self-determination of Indigenous populations, to provisions that dealt with land and resources, and to language in the text that called for free, prior, and informed consent.\(^{120}\) With respect to Australia’s opposition, it is not surprising that their objections closely mirrored those made by New Zealand and Canada. These states, along with the U.S., shared similar colonial histories and structures and seemed to fear that they had the most to lose through adoption of the Declaration.

In spite of Australia’s original opposition, along with a new government came a change in position on the Declaration.\(^{121}\) In April 2009, Australia reversed its earlier decision to oppose the Declaration\(^{122}\) in a remarkable statement made to the House of Parliament (the Statement) by Jenny Macklin, MP, and Minister for Families, Housing, Community Services and Indigenous Affairs.\(^{123}\) In its statement, the Australian government acknowledged the importance of the Declaration and its affirmation that it represents the aspirations of all Indigenous peoples.\(^{124}\) The Statement underscored the importance of the Declaration by acknowledging the effort made by governments and Indigenous Peoples to work together in order to create a document that “recognises the legitimate entitlement of Indigenous people to all human rights – based on principles of equality, partnership, good faith and mutual benefit.”\(^{125}\)

Australia’s endorsement of the Declaration was welcomed by the UN and described as being of “crucial importance” in strengthening international consensus on Indigenous Peoples’ rights

\(^{120}\) *Id.* Additional objections were made to the provision in the Declaration that dealt with intellectual property, third-party rights, and customary law. With respect to intellectual property rights, which New Zealand also noted as objectionable but chose not to elaborate on, Australia’s position was that: “...it “[d]oes not support the inclusion in the text of intellectual property rights for Indigenous peoples. Australia extends protection to Indigenous cultural heritage, traditional knowledge and traditional cultural expressions to the extent that it is consistent with Australian and international intellectual property law. However, Australia will not provide sui generis intellectual property rights for Indigenous communities as envisaged in this Declaration.”

\(^{121}\) Prime Minister John Howard (Mar. 1996- Dec. 2007) replaced by Prime Minister Kevin Rudd (Dec. 2007-present).

\(^{122}\) *See id.*

\(^{123}\) *See id.*

\(^{124}\) *See id.*

\(^{125}\) *See id.*
Equally as important is the Australian government’s commitment to find more ways to work in the international area to strengthen and promote human rights vis-à-vis Indigenous Peoples. The Australian government also made a commitment to honor and celebrate the contributions made by Indigenous Australians and to work with and to support Indigenous leadership and representation in Australian national affairs. The Australian Human Rights Commission heralded their national government’s change of position, recognizing that “[w]hile substantial challenges remain for Aboriginal and Torres Strait Islander Peoples in Australia, support for the Declaration can unleash Australia’s potential to be a world leader on how it engages with its Indigenous peoples.”

Clearly, by supporting the Declaration, the government of Australia has made an important step toward improving the lives of its Indigenous peoples. Nevertheless, it has also been recently noted that more can and should be done in moving human rights forward there. Following his visit there in August 2009, Special Rapporteur, James Anaya made a number of important observations and recommendations to the Australian government. In particular, he recommended that existing programs implemented by the government to “close the gap” in areas of social and economic disadvantage should be strengthened and perhaps more importantly should be coordinated to support already existing indigenous programs. Additionally, Mr. Anaya raised concerns about the infringement of basic rights of Indigenous Peoples as a result of the Northern Territory Emergency Response. In Mr. Anaya’s view, this program should be reformed so that it comes into compliance with already existing UN conventions to which Australia is already a party, in addition to its being incompatible with the Declaration.

---

127 See *id.*
131 A program meant to address the high incidents of child sexual abuse...definition.
He proposed that the government work more closely with and in “real partnership” with the Indigenous peoples of Australia to create more “culturally appropriate” mechanisms for addressing the most difficult issues facing indigenous populations.

With Australia’s change of position on the Declaration came renewed hope by supporters that the remaining hold-out states, New Zealand, Canada, and the United States, would eventually reconsider their initial opposition. While this has not happened yet, it is important to consider the positions of these countries in the two years following adoption of the Declaration by the United Nations. Equally as important is to assess what Indigenous Peoples and other supporters of the Declaration are doing to bring pressure upon their governments to change their respective positions.

B. New Zealand and the Declaration

“New Zealand was one of only four states that voted against the Declaration on the Rights of Indigenous Peoples in September 2007. 143 voted for and 11 abstained. At the same time, walk into the Ministry of Foreign Affairs and Trade and you will be struck by the Maori art on the walls and that the only book on the coffee table celebrates Maori carving. And, the brochure for New Zealand’s candidature for the Human Rights Council includes a nice photo of an old koro in a cloak, and the comment that Indigenous rights are integral to the New Zealand identity. The hypocrisy jars.”

While a shift in the Australian position on the Declaration was welcomed by the international community and indigenous people worldwide, no such change of position has been made in New Zealand. When New Zealand made its statement to the UN General Assembly to explain its no vote on the Declaration, they asserted not only that they believed that the rights of Indigenous Peoples were of “profound importance” but also that they had, in fact, already implemented a majority of the standards articulated in the

---

132 See generally, Anaya, supra note, 107.
133 See id.
Declaration.135 Specifically, New Zealand pointed to the Treaty of Waitangi136 as the “founding document” of its country and described its importance as a significant component of New Zealand’s legal and constitutional arrangements.137 In spite of New Zealand’s stated support for indigenous rights, their reasons for rejecting the Declaration rested on the language of several specific articles.138 In particular, they addressed Articles 26 (right to lands and resources), Article 28 (right to redress for lands already taken), Article 19 (right to informed consent), and Article 32 (right of veto).139

Preambular provisions of the Declaration provide guidance on the principles and purpose of the fulfillment of obligations of States in accordance with the UN Charter.140 These provisions set the tone for the substantive articles of the Declaration.141 Specifically, the preambular paragraphs express recognition and concern over the historic dispossession of lands and territories of Indigenous peoples and that their control of developments that affect their lands, territories, and resources will strengthen their cultures and traditions.142

Article 26 of the Declaration states that:

137 Banks, supra note 137.
138 See id.
139 See id. Their representative noted other provisions in the text that they had trouble reconciling with but chose not to include them in their remarks to the General Assembly on the day.
140 See General Assembly Resolution 61/295 Citing specific preambular paragraphs concerning land rights: [C]oncerned that Indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests;
Recognizing the urgent need to respect and promote the inherent rights of Indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources.
142 Declaration, supra note 3.
1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the Indigenous peoples concerned.

New Zealand’s position as to Article 26 has been that it would be impossible to implement because essentially the entire country would fall under its scope. They contend that Article 26 requires the state to formally recognize that lands that were now owned and occupied by “other citizens” and, further, that it did not actually comport with the traditional land use of the Indigenous Peoples themselves. Additionally, they expressed concern that Article 26 essentially provided the indigenous population of New Zealand with extra rights not conferred on other citizens of the state.

New Zealand’s complaint with respect to Article 28 was that it too was “unworkable” and that there is an existing domestic framework for resolving issues of compensation. Article 28 addresses issues of redress and just compensation for lands traditionally held by Indigenous peoples, and specifically that:

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have

143 Banks, supra note 137.
144 See id. Those “other citizens” were described as both Indigenous and non-Indigenous.
145 See id.
146 See id.
traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.\textsuperscript{147}

New Zealand’s argument not only addresses the text explicitly, but also expresses concern that the Declaration does not take into account the land that is now “legitimately” owned by others and the possibility of numerous and perhaps “overlapping” claims by Indigenous peoples.\textsuperscript{148} Additionally, they argue that there is no way to compensate their Indigenous population essentially for the “entire country”.\textsuperscript{149} Lastly, New Zealand argues that Articles 19 and 32(2) essentially create a “different class of citizenship” by allowing that Indigenous peoples have a “right of veto” that other citizens of the state do not have. Article 19 provides that:

1. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 32(2) specifically states:

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the

\textsuperscript{147} See id.
\textsuperscript{148} See id. This argument is much the same as their opposition to the text of Article 26.
\textsuperscript{149} See id.
development, utilization or exploitation of mineral, water or other resources.

New Zealand’s interpretation of these articles is that they would, in effect, trump already-existing democratic legislative processes in which Maori are already fully and actively participating. The government was also careful to point out that pursuant to the principles of the Treaty of Waitangi, institutional safeguards for consultation were already made a part of the state’s resource management law.

Critics of New Zealand’s position on the Declaration emphasize that, contrary to the government’s stated position of longtime support for Indigenous peoples’ rights, they have in fact consistently opposed them. Supporters of the Declaration point to specific instances where the New Zealand government spoke out against the Declaration when it was still in the draft stage and made a number of attempts to change the language of the text prior to it going to the General Assembly. Critics of the government’s position have also argued that the assertion regarding the principal articles of “central concern” as being “discriminatory in the New Zealand context” reveals New Zealand’s refusal to consider the Declaration as a whole. In support of that argument, supporters refer to Article 46 of the Declaration which, rather than conferring special rights on a few, actually protects the rights of all and that New Zealand’s interpretation of specific articles taken out of context is a “misrepresentation of the Declaration as a whole.”

150 See id.
151 See id.
153 See id.
154 See id.
155 See id. The language of Article 46 states:
1. 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.
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are
New Zealand’s underlying political impetus for opposing the Declaration is grounded in undermining the broader international indigenous rights movement in order to move that international law closer to its own domestic laws and policy.\(^{156}\)

With Australia’s change of position on the Declaration there has been increased momentum on the part of indigenous groups and human rights advocates to encourage New Zealand, as well as Canada and the United States, to do the same. A number of human rights advocates and indigenous representatives have continued to keep up the pressure on the New Zealand government to follow Australia’s lead and have been calling for the government to support the Declaration. In April 2009, Peace Movement Aotearoa,\(^{157}\) sent a petition to the New Zealand Foreign Affairs, Defence and Trade Select Committee calling on the government to support the Declaration. In May 2009, the UN Human Rights Council recommended that New Zealand move forward to come into compliance with its international legal obligations.\(^{159}\) Among the recommendations were that New Zealand support the Declaration and also ratify ILO Convention 169, which recognizes Indigenous Peoples’ right to lands and territories.\(^{160}\) It is clearly time for New Zealand to take its human rights obligations and purported commitment to the rights of Indigenous Peoples worldwide seriously and to support the Declaration in its entirety or risk losing its credibility on this issue.

\(^{156}\) Charters, supra note 143, at 337.

\(^{157}\) Peace Movement Aotearoa is a New Zealand’s national networking organization for people interested in peace and related issues.


\(^{160}\) See id.
C. Canada and the Declaration

“On behalf of Indigenous Peoples of the world, we are writing to ask your Government to assist in the vital objective of adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the UN General Assembly before the end of the year, as recommended by the Human Rights Council. We respectfully urge you to vote in favour of the adoption of the Declaration when it arises at the General Assembly.”

An affirmative vote by your government would be consistent with the solemn commitment of the UN and member States of promoting human rights, as one of the three pillars of the international order. Furthermore, as nation state members of the UN, your Government's recognition of the rights of Indigenous peoples advances the Human Rights Council's work to promote and encourage respect for human rights and fundamental freedoms for all, including the world's Indigenous peoples.”  

Canada, through its Constitution Act of 1982 (the Act), recognizes three separate and distinct cultural and political Indigenous groups. They are identified in the Act as the First Nations, referred to as “Indians,” the Metis, persons of mixed Aboriginal and European descent and who self-identify as such; and the Inuit. Recent census figures report that more than one million, one-hundred thousand Canadians refer to themselves as Indigenous. The updated census figures came to light mere weeks after the Declaration was approved by the UN. In spite of the fact that Canada has such a significant indigenous population, it too voted

---

161 Open Letter to all UN Permanent Missions, Union of British Columbia Indian Chiefs, Oct. 30, 2006. The Union of British Columbia Indian Chiefs is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.
164 Id. citing DIAND'S 2005-2006 Report on Plans and Priorities. There are 52 First Nations registered in Canada and live in over 610 separate communities in both urban and rural setting. The Inuit live primarily in Arctic Canada.
against the passage of the Declaration. Immediately after the UN vote, the Assembly of First Nations (the Assembly) responded to the no vote by urging Canada to honor its commitments made as a member of the UN Human Rights Council, and urged the Canadian government to support the Declaration. The Assembly contends that not only should the Indigenous Peoples of Canada assert their rights under existing treaties, but that they should act on those rights with respect to citizenship, land and resources, and other priority areas.

In explaining its no vote to the General Assembly, Canada explained its position in terms remarkably similar to those of Australia and New Zealand. Canada asserted that in spite of its long-standing commitment to human rights, and to indigenous human rights in particular, it could not support the text of the Declaration in its final form. Just as in the case of Australia and New Zealand, who addressed the General Assembly immediately before them, Canada’s decision to oppose the Declaration was centered on the provisions of the text addressing land and resources, informed consent, and intellectual property.

With respect to the lands and resources provision, Canada’s position was that the text was “overly broad” and impossible to interpret concisely. The government’s position was that Canada’s constitution already did much to protect existing treaty rights and that they were working domestically to improve the process for addressing aboriginal land claims in an effective manner. Their argument, with respect to the provision on “free, prior and informed consent,” was that it was completely incompatible with their existing rights.

---

166 Declaration, supra note 3.
170 See id. Although Canada focused its comments on Articles 26, 19 and 32(2) they also referred to additional concerns over military issues and the need to balance the rights and obligations of Indigenous peoples with those of third parties.
171 See id.
172 See id.
parliamentary system. They interpreted the text of the informed consent provisions to mean that no state could act on legislation pertaining to Indigenous Peoples without first obtaining their consent. However, just as has been argued in the case of New Zealand, the informed consent provisions require “good faith consultation” and not a “right of veto over the State.”

While Canada’s no vote on the Declaration was disappointing, it was not a surprise to its First Nations and other supporters. With the election of a conservative government in 2006, Canada had positioned itself early on with the three other no-vote states in its opposition to the Declaration. The Canadian government took this position in spite of the fact that the Standing Committee on the Rights of Indigenous Affairs and Northern Development, as well as the House Committee on Aboriginal Affairs had voted in favor of its adoption and had urged the government to change its position. Although the new government ultimately disclosed the list of articles it wanted rewritten, supporters argued that there was never any explanation for the government’s major reversal of policy on the Declaration in the first place.

Furthermore, there was intense criticism of the conservative government’s unwillingness to work or consult with Indigenous Peoples on resolving the outstanding issues. Some blame the reversal of Canada’s position, at least in part, on lobbying efforts

173 See id.
174 See id.
177 Press Release, Indigenous Peoples Caucus, Canada’s Parliamentary Committee Supports Adoption of Declaration, http://www.ipcaucus.net/Canada_parl.html (last visited June 17, 2009). In a vote of seven for and three against, the committees resolution stated: “That the Standing Committee of Aboriginal Affairs and Northern Development adopt the resolution that the Conservative Government should immediately pledge their support for the United Nations Declaration on the Rights of Indigenous Peoples; that this be adopted as a report of this committee, that chair present the report to the house”.
179 See id.
made by former Australian Prime Minister John Howard. In fact, the government of Australia admitted that, through its Office of Indigenous Policy, it was involved in urging both New Zealand and Canada to “join forces” in opposition to the Declaration.

Canada’s explanation for the reversal was that, although they previously supported the Declaration in principle and had worked for a number of years alongside other supporters on the text, the Declaration in its final form did not meet the objectives they had worked so hard to promote. Specifically, they contended that their goal was to create a document that would “promote and protect the rights and freedoms of every Indigenous person, as well as recognize the collective rights of Indigenous peoples around the world.” In their view, however, the final draft did not meet those goals because the language with regard to the recognition of lands, territories and resources, were “overly broad, unclear, and open to interpretation.” The Canadian government construed those provisions as supporting indigenous land claims that the government claimed had already been resolved “lawfully in the past.”

Immediately following Canada’s no vote came strong reaction from indigenous groups in Canada and around the world. Many of these groups reiterated Canada’s obligation under the UN Charter to uphold human rights for all people. The International Service for Human Rights condemned Canada’s rejection of the Declaration and said Canada’s “domestic political agendas had taken precedence over the protection of human rights.” An equally strong response came from over 100 Canadian legal scholars, barristers, and solicitors who stated that “misleading claims” were

---

181 See id.
183 See id.
184 See id. The Canadian opposition was specifically to the text in Article 26.
185 See id.
187 See id.
made by the government to support and justify its position on the Declaration. They further commented that “[N]o credible legal rationale has been provided to substantiate these extraordinary claims” made by the government that asserted the Declaration is “incompatible with Canada’s Constitution and the Canadian Charter of Rights and Freedoms.” The letter also recognizes that the Declaration provides “some of the most comprehensive balancing provision that exist in any international human rights instrument” and that “[t]he Declaration provides a principled framework that promotes a vision of Justice and Reconciliation.”

In April 2008, the Canadian Parliament endorsed the Declaration and strongly urged the government of Canada to implement those human rights standards affirmed in the Declaration. During the debate over the resolution, the Conservative government clung to its position that somehow the Declaration would undermine existing Canadian treaties with its Indigenous peoples, regardless of language in the Declaration to the contrary. In February 2009, Canada was criticized in a report issued by the Human Rights Council’s Universal Periodic Review. Their report reviewed the human rights obligations of Canada and the members and observers “raised a number of issues pertaining to the human rights situation in the country.” Although the working group praised Canada for taking some legislative measures to protect its Aboriginal population, a number of delegates made specific recommendations that Canada “re-consider its position” on the


190 See id.

191 See id.


193 See id.


195 See id. The Universal period review working Group reviewing Canada for this report consisted of 45 council members and observers.
Declaration and endorse it. Additionally, they called upon Canada to do more to settle indigenous land claims and to protect the rights of Indigenous Peoples, particularly in the areas of economic development, reconciliation, and self-governance. They also called upon Canada to address the issues of discrimination in particular with regard to Indigenous women. In response to the UN Summary of the 50 submissions it received, Alex Neve of Amnesty International Canada called the Canadian record for dealing with its Indigenous Peoples “a real disgrace” and a “source of national shame.”

C. The U.S. and the Declaration

“[T]his historic vote was more than 30 years in the making and is the result of many long, and at times difficult, years of negotiations between Indigenous Peoples and states. The passage of the Declaration today acknowledges the individual and collective human rights of the world’s Indigenous Peoples. It gives us hope that the dark days of colonization and forced assimilation are behind us.”

“I am disappointed that the United States did not step forward today to be a leader in the international movement to affirm the rights of Indigenous Peoples. The self-governance, cultural and spiritual rights of Native Americans are recognized in hundreds of treaties, the U.S. Constitution, and countless federal laws. The document passed today reinforces those rights and I believe the United States will come to see the wisdom of the Declaration in time.”

196 See id. Other issues raised by the working group called on Canada to ratify ILO 169 and not limit the development of Indigenous rights.
197 See id.
198 See id. The working group made specific recommendation to consider specific legislation with respect to domestic violence broadly but also to “properly investigate cases of death of Indigenous women.
The same year that the General Assembly voted to adopt the
Declaration, the U.S. Census Bureau reported that over two million
people in the U.S. (excluding Alaska) identified themselves as Native
American.\footnote{Indigenous Work Group for International Affairs, The Indigenous World
Yearbook-2008, Downloaded Publication, 66, \url{http://www.iwgia.org/sw162.asp}
(last visited Apr. 14, 2009).} An additional four million people identified themselves
as Native American and another ethnic background.\footnote{See id.} The
percentage of Indigenous Peoples in the U.S. currently stands at 1.4%
of the total population.\footnote{See id.} Just as important as the total percentage
of people who self-identify as Native American is the number of Tribal
Nations recognized by the federal government, which currently
stands at 564.\footnote{U.S. Department of Interior (DOI), Bureau of Indian Affairs (BIA), Overview,
\url{http://www.doi.gov/bia} (last visited Oct. 3, 2009). According to the most recent
update by the U.S. Department of Interior, there are currently 564 federally
recognized tribes. Federally recognized tribes have “a unique legal and political
relationship with Indian tribes and Alaska Native entities as provided by the
Constitution of the United States, treaties, court decisions and Federal statutes.”
The DOI describes their “service population” as 1.9 million American Indian and
Alaska Natives which differs from the U.S. Census Bureau figures from 2007. The
2008 Federal Register still refers to 562 “Indian Entities Recognized and Eligible”
to receive services from the federal government. Although the Bureau of Indian
Affairs’ role has changed in the last thirty years with an increase focus on “Indian
self-governance and self-determination”, the BIA continues to provide assistance to
Tribes for a broad range of services.} At the same time that federal courts have
become less and less supportive of Tribes, both Congress and the
Executive Branch have also become less responsive to their needs.\footnote{Coulter, supra note 16, at 573.} As a result, Robert Coulter contends:

“…[T]ribes have begun to look increasingly in the International
work by Indian nations and tribes can be an important part of a
total, multi-faceted, long-term strategy for protecting Indian
governments and Indian lands and resources. It is often observed
that international law is rarely enforceable in the courts of the
United States, and it is true that we cannot usually expect to win
domestic court decisions by relying only on international law.
The politics of international law, however, have palpable force
that is meaningful to governments, and the normative moral value
of international human rights law can be a major building block in the emerging jurisprudence of indigenous peoples' rights.”

The U.S. had minimal involvement with the text of the Draft Declaration when it was in the Working Group but did submit comments after it had gone to the Human Rights Council Working Group in 1996. In its Preliminary Statement, the United States made specific reference to several articles in the Draft, citing that it had “fundamental issues” with key provisions in the text, including the reference to the term “Indigenous peoples” and the implied collective rights that are recognized as a result. It was the issue of collective rights, coupled with the right to self-determination and, as some argued, the right of independent statehood, that troubled the U.S. However, as Dean Suagee noted, this view is contradictory to the U.S.’s own historical relationship with Tribal nations which had long recognized Tribes as “distinct, self-governing communities” and, furthermore, conveyed “a backing away from a concept already recognized in U.S. federal-Indian law.”

In June, 2006, the Human Rights Council met for the very first time and ultimately voted to adopt the Draft Declaration. The vote was 30 in favor and 2 opposed and subsequently recommended that the General Assembly adopt the Draft Declaration. Although the U.S., Australia and New Zealand were not members of the Human rights Council, they continued to oppose its adoption and this raised concerns by supporters that they would put pressure on other countries to vote no after it was sent to the General Assembly. Canada, which had supported the Draft and had actively participated in the negotiation process, changed its position on the Draft after the election of the Harper government. It ultimately voted against it, along with the Russian Federation. The U.S., Australia, and New Zealand issued a joint statement following the vote saying that the

207 See id. at 573-574.
209 See id. at 377-379.
210 See id.
211 See id. at 380-381.
214 See id.
215 See id.
Indigenous demand for self-determination was “inconsistent with international law” and that those demands “ignore the contemporary realities . . . by appearing to require the recognition of rights to lands now lawfully owned by other citizens.”

It is clear that the U.S. positioned itself in opposition to the Declaration from early in the process and its final vote on September 13, 2007 was no surprise. In explanation of its no-vote on the Declaration, the United States, which had been critical of the earlier drafts, renewed their opposition on the grounds that they, along with other states, were left out of the negotiations on the final draft. The U.S. position was that the final draft of the Declaration lacked transparency and was ultimately confusing, thereby risking conflicting interpretations. As a result, it was their contention that the provisions of the Declaration were incapable of being implemented. Although the U.S. voted against the Declaration, it took pains to underscore its position that it would continue to promote the rights of its Indigenous people domestically.

In addition to the general concerns that the text was fundamentally flawed and unworkable, the U.S. specifically cited to the provisions addressing self-determination, lands and resources, redress, and collective rights. Not surprisingly, the U.S. cited to the same text expressed as being unworkable by the other no-vote states.

Fundamentally, the U.S. rejected any possibility that the Declaration could “become international law” and expressed its

---

218 U.S.UN Press Release #204(07), AS DELIVERED Office of Press and Public Diplomacy United States Mission to the United Nations 140 East 45th Street, New York, NY 1007, Explanation of vote by Robert Hagen, U.S., Advisor, on the Declaration on the Rights of Indigenous Peoples, to the UN General Assembly, Sept. 13, 2007. The U.S. also complained that, although they had worked on the Declaration for eleven years that the final draft was adopted in a fractured vote because the Human Rights Council failed to convene the parties to work on the language of the final draft.
219 See id.
220 See id.
221 See id.
222 See id. While the U.S. made specific mention of this provision, they also expressed written concern regarding the purported ambiguity in the provision regarding the repatriation of human remains.
223 See Generally, comments made to the General Assembly, Sept. 13, 2007 in advance of the vote, made by Australia, New Zealand and Canada.
contention that the Declaration “does not provide a basis for legal actions, complaints, or other claims in any international, domestic, or other proceeding.” In its statement of opposition, the U.S. cited to Articles 3 and 26 as being particularly problematic. In particular, Article 3 states:

Indigenous 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;

Here the U.S. took issue with the fact that that language of Article 3 of the Declaration is a reproduction of the language of Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The U.S. contends that under the legal obligations of Article 1 of those instruments, Indigenous people do not have the right to independence or self-government within the nation-state. According to the U.S., the mandate of the Working Group was to come up with a new definition of “self-government” within a nation-state and the use of the exact language and intent espoused in Article 1, could cause instability and confusion. With respect to Article 26, the U.S. argues essentially the exact same points as New Zealand and Canada, that is, that Article 26 requires “recognition of indigenous rights to lands without regard to other legal rights” that currently exist and would, therefore, be impossible to implement. With regard to the provision on collective rights, this was another sticking point for the U.S. which raised concerns that this provides human rights by one group that is denied to others. Almost immediately after the Declaration was adopted, a number of Indian rights organizations applauded its passage in spite of the fact that the U.S. voted against it. In November, 2008, at its 65th Annual Conference, The National Congress of American Indians (NCAI) endorsed the Declaration and subsequently passed its own resolution supporting it. NCAI’s resolution recognizes the

224 See id. U.S.UN Press Release #204(07).
225 See id.
226 See id.
227 See id.
228 See id.
229 See id.
Declaration, underscores its principles, and recognizes that it "reinforces the respect and protection of full self-determination rights by and on behalf of the U.S. Tribal Nations as well as the protection of tribal lands and treaties as a matter of international law and policy and is therefore in the vital interest of all U.S. Tribal Nations."\textsuperscript{231} NCAI further called upon the United States government, Congress, and state governments to endorse the Declaration and resolved to send its resolution to the governors of all 50 states and state legislatures for their endorsement.\textsuperscript{232} NCAI urged state and local governments to support, through their legislation, memorials supporting the Declaration and to send those endorsements to the Congress of the United States.\textsuperscript{233}

There has been hope among Indian Nations and other supporters of the Declaration that with the election of President Barack Obama, the U.S. might change its position and endorse the Declaration. With the Declaration having reached its second anniversary in September, 2009, no such endorsement has been forthcoming. A number of indigenous organizations have called for its adoption without further delay, citing "critical situations" facing Indigenous people in the U.S. and around the world.\textsuperscript{234} The International Indian Treaty Council expressed its concern with the "implementation gap" of those countries that endorsed the Declaration, citing specifically the "massacre" of Indigenous Peoples in Peru.\textsuperscript{235}

In addition to the calls from international organizations urging endorsement by the U.S. government, Tribal Nations in the U.S. are also strongly seeking support for the Declaration. A recent resolution

\textsuperscript{231} See id.
\textsuperscript{232} See id.
\textsuperscript{233} See id.
\textsuperscript{235} See id.
of the Navajo Nation Council, formally called on the Obama Administration to “sign on to the Declaration without delay” and to “stand firm with its commitment” to protect and preserve holy and sacred sites of Indigenous Peoples of the United States. This was in response to the federal government’s approval of “clearing, grading, and the use of reclaimed sewer water to make snow” on one of the four sacred mountains of the Navajo people. Clearly, in spite of the fact that the U.S. asserts that they support the rights of its Indigenous peoples domestically, federal court decisions like this do much to undermine its credibility on this issue.

To date, the state of Maine and the cities of Phoenix and Berkeley have shown their support and solidarity with Indigenous Peoples by endorsing the Declaration. Maine set the precedent for other states to follow when, on April 15, 2009, its General Assembly passed a resolution in support of the Declaration. The resolution, which was passed unanimously by both houses, affirmed those “standards needed to protect Indigenous Peoples” and further, asserted the rights of Indigenous Peoples “to remain distinct and to pursue their own visions of economic and social development.” Maine’s resolution was submitted to the house by Donna Loring, the Penobscot Indian Nation’s Tribal representative to the Maine legislature and was co-sponsored by Donald Soctomah, Passamaquoddy Tribal representative.

In advance of the meeting of the U.N. Permanent Forum on Indigenous Issues which was to be held in May, 2009, the Berkeley City Council voted to send a letter to Susan Rice, Ambassador to the United Nations, recognizing and endorsing the Declaration.

---

236 Resolution of the Navajo Council-Third Year, 2009, An Action Relating to An Emergency; Affirming the Navajo Nation’s opposition to the desecration of Dook’o’oosliid and urging the participation of the administration of President Obama to fulfill President Obama’s commitments and the United States’ obligation to the Navajo Nation and First Americans.

237 See id.


239 See id.

240 See id.

241 Recommendation to the Honorable Mayor and Members of the City Council, City of Berkeley from Councilmember, Kriss Worthington calling for the recognition and endorsement of the United Nations Declaration on the Rights of Indigenous Peoples and to send a letter to the US Ambassador to the UN, Susan Rice. May 19, 2009. Letter to the Honorable Susan Rice, was dated May 28, 2009.
City of Phoenix also endorsed it in a similar resolution.\textsuperscript{242} In addition to recent support of the Declaration by state and local government, NGOs like the International Indian Treaty Council have called on other indigenous organizations, Tribes, and national organizations to continue to adopt the language of the Declaration in tribal codes, position statements, and court decisions.\textsuperscript{243} Taking affirmative steps to put the principles and language of the Declaration into existing Tribal legal systems is an important move forward in creating a “groundswell” of support for its ultimate endorsement by the U.S. and the other no-vote states.\textsuperscript{244}

**The American Declaration**

“President Obama has an opportunity to send the world a message about American justice.

*He can add America’s name to the Declaration on the Rights of Indigenous Peoples before the Organization of American States. This is a historic effort by all countries in the Americas to recognize and declare that human rights belong to indigenous peoples, both as individuals and as communities, nations, or tribes. Negotiations over the draft American Declaration in the Organization of American States have reached a critical point. All the countries of the Americas must now exert the political will to finalize and adopt the American Declaration. Last year, the United States refused to actively negotiate. This must change, and each of us can help make that happen.*

*We live in an era of self-determination, yet Congress still claims the power to do what it wants – confiscate our native lands in violation of the Constitution, strip our jurisdiction, exploit our natural resources and refuse to honor its treaty obligations. Many of our nations and communities face a daunting set of social and economic challenges, as well as violation of treaty and human rights on a daily basis. Our northern tribes and Native Alaska villages see their very existence threatened as climate change undermines their subsistence lifestyles.*

\textsuperscript{242} See id. Press Release, Andrea Carmen, Executive Director-International Treaty Council.
\textsuperscript{243} See id.
\textsuperscript{244} See id.
[T]he adoption of a strong American Declaration would be a tremendous step toward ending the appalling treaty and human rights violations that are so often inflicted on our Indian and Alaska Native tribes and communities. The declaration states the commitment by these countries to the rights of Indian peoples — our right to exist as distinct cultures, our right to govern our own affairs, our right to own and use our lands, and our right to be free from discrimination.”

Although the U.S. and Canada continue to oppose the Declaration, there are some indigenous rights groups that believe it is more likely that these two no-vote states could be convinced to support the Draft American Declaration on the Rights of Indigenous Peoples (American Declaration). The American Declaration was proposed by in 1989 when the Organization of American States (OAS) resolved to develop an instrument that would consider the issues of Indigenous rights in the Americas. The proposed draft instrument was originally supposed to be adopted by the OAS General Assembly in 1992, in order to coincide with “500 year anniversary of the conquest of America”. Remarkably, from its inception, the drafting process was structured so that it ignored any consultation with Indigenous communities. OAS member states chose instead to consult with social science experts, such as anthropologists, cutting out indigenous input from the process altogether. The OAS kept up its strong resistance to indigenous participation in spite of pressure to include indigenous voices. Indigenous organizations and NGOs were finally allowed to participate in the process but only after years of contentious negotiations on this issue. Importantly, the U.S. and Canada did work in tandem with Antigua and Barbados, agreeing to provide several seats in their respective delegations to Indigenous representatives in OAS member meetings on the draft American


247 See id.

248 See id.

249 See id.
Declaration. It was not until 2003 that full participation of indigenous representatives, as well as NGOs, was finally allowed marking the “first time in history” that OAS allowed participation by those other than member states.

Currently, the draft American Declaration is in the third stage of drafting final revisions to the text. In June 2008, the General Assembly reaffirmed that the adoption of the American Declaration remained a priority and renewed the mandate to continue to hold meetings negotiating the text. In its current form, the American Declaration contains 39 articles and applies to all the Indigenous Peoples of the Americas. It is divided into six sections and establishes fundamental human rights, recognizing critically important collective rights, rights to cultural identity, rights organize and to participate in the political process of the state, as well as social, economic and cultural rights. The draft American Declaration also recognizes indigenous forms of organization and furthermore acknowledges indigenous knowledge systems and indigenous spirituality. The American Declaration is important because it has been drafted to meet the needs of Indigenous Peoples of the Americas, whereas Declaration makes a much broader statement of rights.

Leonardo Crippa, a staff attorney at the Indian Law Resource Center, believes that the American Declaration has the

250 See id.
251 See id.
252 The General Assembly, Draft American Declaration on the Rights of Indigenous Peoples, AG/RES. 2368(XXXVIII-0/08.
254 See id.
255 Draft American Declaration Articles 9 and 13. Article 9 requires: “The States shall recognize fully the juridical personality of the indigenous peoples, respecting indigenous forms of organization and promoting the full exercise of the rights recognized in this Declaration.” Article 13(1) states: “Indigenous peoples have the right to preserve, use, develop, revitalize, and transmit to future generations their own histories, languages, oral traditions, philosophies, systems of knowledge, writing, and literature; and to designate and maintain their own names for their communities, individuals, and places.”
potential of being “more effective on the ground” than the
Declaration because it provides “standards for the administration of
justice” and the OAS will provide the international forum for cases to
be heard.\textsuperscript{257}

The final step in the process is for the OAS Working Group to
submit the draft to the OAS General Assembly so that it can vote on
its adoption by the American Member States. There is optimism that
this can be accomplished sometime in 2010 but at the date of this
writing no date has been set for a final vote.\textsuperscript{258}

\textbf{Conclusion}

For the 370 million Indigenous Peoples of this earth, there is
no question that the Declaration signifies that their struggle to be
heard was worth the effort. The fact that the Declaration is an
aspirational document and does not carry with it the force of
international law should not undermine its importance as a moral
framework for indigenous human rights.

The ultimate value of the Declaration lies in its
implementation.\textsuperscript{259} The rewards of effective implementation of the
Declaration does more than just affect Indigenous Peoples, it
positively affects the entire world community. The Declaration is a
framework through which two parties, whose relations have long
been characterized by misunderstanding and injustice, can begin to
engage in a meaningful and fruitful dialogue that can be beneficial to
both parties. In order to move from entrenched and mutually
exclusive views on the nature of the issues dividing Indigenous
Peoples and the states in which they live, a common ground must
first be found from which to move forward.

The Indigenous Peoples of the world suffer under no illusion
that this is a process by which all of their former lands or resources
will be returned. We have gone too far down the road for that to
happen. In fact, monetary compensation is often not even the main
goal of Indigenous Peoples or their representatives when dealing with
their colonizer states. The protection of and respect for their cultural,
spiritual, and social norms and beliefs is of much more value than
any monetary compensation could provide. A simple recognition that

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{257} See id. The Indian Law Resource Center has been participated in the
development of the American Declaration since 1989.
\item \textsuperscript{258} See id.
\item \textsuperscript{259} Message of Victoria Tauli-Corpuz, Chairperson of the UN Permanent Forum on
Indigenous Issues, On the Occasion of the Adoption by the General Assembly of
the Declaration on the Rights of Indigenous Peoples, UN Press Release, New York,
\end{itemize}
\end{footnotesize}
a great injustice was done, along with a real commitment to respect Indigenous Peoples, their cultures and their sacred sites, would go a long way towards finally starting to heal the wounds of hundreds of years of colonization and exploitation. By supporting the Declaration’s adoption, member states begin the process of engaging in constructive dialogue with Indigenous Peoples. Hopefully, this will lead to significantly better relationships between parties which embrace differing cultural worldviews.

The fact that New Zealand, Canada and the U.S. voted against the adoption of the Declaration, and in the time since have not moved from that position, should not diminish or undermine the historic commitment the world community has made to its indigenous citizens. The specious arguments made by the no-vote states probably say more about the states in question and their historic and often shameful relations with their indigenous inhabitants than they are willing to admit. Their arguments against adoption are a repetition of the same old rhetoric designed to camouflage the fact they actually fear the implications of true reconciliation. These implications go to the very heart of these countries’ foundation myths, and perhaps adoption of the Declaration by the no-vote states is perceived by them as admission of guilt of past wrongdoing. The statements of opposition of the no-vote states are remarkably similar, and point to the fact that they worked in tandem to construct an argument against the Declaration’s adoption. This is despite—or perhaps because—all three have the highest percentages of indigenous inhabitants living within their borders. What is needed is paradigm shift. As they are the nations with the greatest percentage of indigenous inhabitants, surely they have the most to gain, and not the most to lose through the adoption of a declaration designed to protect these citizens and move relations between the stakeholders in a positive direction.

The position of the U.S. that they will work domestically to address the human rights issues is undermined by the realities on the ground. U.S. Tribes continue to be the poorest and most marginalized communities in the country. They suffer the highest rates of unemployment, have the most citizens living under the poverty line, have the highest rates of teen suicide, and the

---


261 See id.

highest rate of infant mortality of any population in the U.S. Native American women are more likely to be murdered or subject to sexual assault by a stranger than any other ethnic group in the United States. These daily infringements of basic human rights and human dignity speak louder than the attestations of the U.S. government that it intends to work domestically to address inequalities in the treatment of its indigenous population. Just as telling is the fact that most Americans are unaware of these statistics and their human costs. Inequality toward First Peoples in the U.S. remains largely invisible to most Americans. Despite promises made during election campaigns and General Assembly speeches, the national conversation that needs to take place on these issues has not been initiated, and the U.S. missed an opportunity to do so when it voted against the Declaration. A first step toward remedying this would be a change in position on the part of the U.S. government. Although the U.S. asserted at the General Assembly in September, 2007 that they would resolve these issues domestically, it is fair to ask what exactly has been done by the United States to begin the process of eradicating these historic inequalities. Has there been any of improvement for Tribal Nations and Tribal citizens since the U.S. spoke at the General Assembly two years ago?

Given these facts, it is clear that the no-vote states should endorse the Declaration as a concrete statement of intent that points to a way forward. In the absence of this event, however, Tribes should not stand still and wait for the U.S. to prove its intent. Tribal nations should consider how they might incorporate the language of the Declaration into their Tribal constitutions and Tribal codes, and strengthen their positions by holding the principals espoused in the Declaration as the minimum threshold when dealing federal, state, and local governments when these issues arise.

The adoption of the Declaration by 144 nations was a remarkable expression by the world community that, 500 years after first contact, the Indigenous Peoples of the world still need protection from colonizers. They not only need that protection, they are entitled to it as citizens of this Earth.
