Background on the UN Declaration on the Rights of Indigenous Peoples

Brenda Gunn
Academic and Research Director
TRC & UN Declaration

- We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation.

- Call upon federation of law societies & law schools, public servants to provide/receive training on the UN Declaration

- Call on all levels of government to adopt and implement the UN Declaration

- Call upon the Government of Canada to develop a national action plan, strategies, and other concrete measures to achieve the goals of the Declaration

- Ensure Canadian institutions (including legal system) complies with UN Declaration

- As well as calling on corporate Canada to formally adopt and comply with the principles, norms, and standards
Why a declaration on the rights of Indigenous peoples?

- **Affirming** that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

- **Concerned** that indigenous peoples have suffered from historic injustices as a result of 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

- **Convinced** that the recognition of the rights of indigenous peoples in this declaration will enhance harmonious and cooperative relations between the state and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith

- **Solemnly proclaims** the following UN Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect
Road to the UN Declaration

General Assembly

- Third Committee
- Side Negotiations
- Working Group on Draft Declaration

Human Rights Council

- Commission on Human Rights
- Sub Com’n on Prevention of Discrimination
- Working Group on Indigenous Populations

NGO Conference

HLP: World Conference on Indigenous Peoples
Background to the UN Declaration

- Resolution adopted by GA Sept 13, 2007
- Declarations do not need to be ratified
- Not technically binding, but has solemn, legal effects
- Some provisions reflect other human rights (treaties) and customary int'l law
- UN Charter requires all members to fulfill all their obligations in good faith
- Recognizes that the rights are inherent and grounded in Indigenous peoples’ own customs, laws and traditions
- Sets out minimum standards – floors not ceilings
- Recognizes both individual and collective rights
- Does not define Indigenous peoples
Relevant International Instruments and Bodies

- International Labour Organization Convention 169
- Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic and Social Rights (ICESCR)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention on the Rights of the Child (CRC)
- Universal Declaration of Human Rights
- American Declaration on the Rights and Duties of Man

International Bodies

- UN Expert Mechanism on the Rights of Indigenous Peoples
- UN Permanent Forum on Indigenous Issues
- UN Human Rights Council (Universal Periodic Review)
- UN Special Rapporteur on the Rights of Indigenous Peoples
- Inter-American Commission (and Court) of Human Rights
I am here to announce on behalf of Canada, that we are now a full supporter of the Declaration, without qualification. We intend nothing less than to adopt and implement the Declaration in accordance with the Canadian Constitution. ... By adopting and implementing the Declaration, we are breathing life into section 35 and recognizing it as full box of rights for Indigenous peoples. Canada believes that our constitutional obligations serve to fulfill all the principles of the Declaration, including "free, prior and informed consent."

Minister Bennett, UN PFII May 2016
PART I
FOUNDATIONAL RIGHTS

ARTICLE 1
UNIVERSAL RIGHTS
Indigenous peoples have the right to the full enjoyment, through a collective or as individuals, of all human rights and fundamental freedoms, as recognized in the Charter of the United Nations Declaration on the Rights of Indigenous Peoples.

ARTICLE 2
EQUALITY
Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination on the basis of their rights, in particular based on their indigenous origin or identity.

ARTICLE 3
SELF-DETERMINATION
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.

ARTICLE 4
LEGAL PERSONALITY
Every indigenous individual has the right to a nationality.

PART II
LIFE & SECURITY

ARTICLE 7
INTEGRITY OF PERSONS & PEOPLES
1. Indigenous individuals have the right to life, physical and mental integrity, liberty and security of person.

ARTICLE 8
RIGHT TO COMMUNITY OR NATION
Indigenous peoples and individuals have the right to determine their political, economic, social and cultural development and to maintain and strengthen their own economies, institutions, cultural and human development.
UN Declaration Act

- clarifies that the UN Declaration applies in Canada.
- requires the government to take action to ensure the laws of Canada are consistent with the UN Declaration.
- requires the government to develop and implement a national action plan to achieve the ends of the UN Declaration (June 2023).
- requires Canada to report regularly to Parliament on the implementation of the national action plan and the measures taken to ensure consistency of Canadian laws with the UN Declaration.
- This Act is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the Constitution Act, 1982, and not as abrogating or derogating from them.
National Centre for Truth and Reconciliation
UNIVERSITY OF MANITOBA

Centre national pour la vérité et la réconciliation
UNIVERSITÉ DU MANITOBA