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## Implementing the Policy of the U.N. Declaration on the Rights of Indigenous Peoples

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## **Abstract**

On September 13, 2007, the United Nations General Assembly voted to adopt the Declaration on the Rights of Indigenous Peoples (UNDRIP). This was an historic event as work on UNDRIP had been ongoing for 30 years before its passage. Today, UNDRIP provides a framework for addressing human rights protections for Indigenous peoples globally. This article examines the significance of UNDRIP as a public policy tool for developing national policy to support future resource and land management consultations that are based on free, prior, and informed consent.

## **Keywords**

human rights, Idle No More, sacred lands, trust in governance, United Nations Declaration on the Rights of Indigenous Peoples

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## Implementing the Policy of the U.N. Declaration on the Rights of Indigenous Peoples

On September 13, 2007, news about the passage of the United Nations Declaration on the Rights of Indigenous Peoples (United Nations [UN], 2010) by the General Assembly began to spread, especially throughout global grassroots email listservs. This author learned of the news that day while preparing to teach an evening university class about public policy and the sacred lands of Indigenous peoples in the United States. Coincidentally, the students in the class had read the then draft UNDRIP during the previous week's assigned homework. What was particularly unique about the circumstances of the class was the fact that the author had actually worked on earlier versions of UNDRIP in an international collaboration with Indigenous peoples from around the globe.

The monumental news about UNDRIP's passing represented the culmination of over 30 years of work that had begun with a small group of Indigenous leaders in 1977. They had been invited to the United Nations to discuss discrimination against Indigenous peoples (Ornelas, 2007). That year was the first time that Indigenous peoples had been extended an invitation to visit the United Nations to discuss international policy regarding their populations. At the time, little did they know that first meeting would initiate what would result in decades of meetings and international debates on the topic of their human rights. From that point forward, dedicated individuals began to outline a set of formal resolutions and articles to address the human rights of Indigenous peoples on a global scale.

The passage of UNDRIP was a cause for celebration in the sacred lands class that evening. Pizza was ordered and the students talked about the potential of the document for addressing the human rights of Indigenous peoples. There was a great deal of excitement and hope for the future of public policy, especially for the Native American graduate students in the class.

Despite the excitement of the evening, the next day, local and national newspapers were devoid of any news regarding the passage of UNDRIP. The author found one short report in the New York Times on the inside of the front section on page 6. It simply read:

The General Assembly overwhelmingly passed a declaration on the human rights of the world's Indigenous people, but Australia, Canada, New Zealand and the United States voted no, saying it went too far in giving Indigenous peoples ownership of their traditional lands and veto rights over national legislation and local management of resources. The declaration, which had been debated for 20 years<sup>1</sup>, is nonbinding. Voting in favor were 143 nations, and 11 countries abstained. (Hoge, 2007)

There was virtually no reporting in newspapers or on national television news networks concerning "the Declaration." It was incredible to those who had worked on UNDRIP for 30 years that no one other than global Indigenous populations seemed to be acknowledging and celebrating its passage.

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<sup>1</sup> It took approximately 10 years for members of the 1977 work group and others to develop an initial draft set of articles to be submitted for review at the United Nations in the 1980s.

In the six years since the 2007 vote on UNDRIP, the four countries that originally opposed it, Australia, Canada, New Zealand, and the United States, have since announced that they will support it. The United States was the last of the four to proclaim its support on December 16, 2010 (United States Department of State [USDOS], 2013). The 46 articles included in the document cover a broad range of issues addressing the human rights of Indigenous peoples, including sovereignty, treaty rights, cultural preservation, education, freedom of religion, and the protection of sacred lands, to name a few (UN, 2010). This article will mainly highlight articles in UNDRIP that relate specifically to future intergovernmental processes that encourage “free, prior and informed consent” as vital elements to establishing effective and transparent intergovernmental consultations.

Recent uprisings in the United States and Canada by Indigenous populations have shed light on increasing tensions over forced and unwanted resource extraction development projects on Aboriginal lands. This article will discuss cases within the United States and Canada that are clear examples of how and why a lack of communication and transparency in dealings with tribes has reached a tipping point. Most importantly, the author will discuss the developing Idle No More movement by Indigenous peoples in both countries that has been organized in response to perceived human rights violations.

Ethnographic research methods have been employed in this project as a way to tell a story - a human story from the ground up. The author was in Canada at the beginning of the Idle No More movement and will describe firsthand accounts and observations to later address the topic of governance and policy development in both the United States and Canada. In doing so, this article will present a set of recommendations intended to begin the implementation of UNDRIP into national policy.

### **Envisioning International Human Rights**

It is necessary to review past successes at the United Nations with regard to human rights before focusing on the present implications of UNDRIP. Toward the end of World War II, details about horrific atrocities and alleged war crimes against humanity were being revealed. Liberating allied troops who marched into prisoner of war camps found emaciated and severely tortured prisoners who had been confined under the worst possible conditions. In particular, the discovery of dying prisoners and the dead bodies of mostly Jewish prisoners were found in and around concentration camps throughout Europe and the findings shocked the world (Kondoyanidi, 2010; Levinson, 2011; Sedgwick, 2011; Spielberg, 1999; Weingartner, 2011). The reorganization of war torn countries, and the revelation of crimes that were committed, led the international community to establish the United Nations from existing allied countries (Donnelly, 2003; Ornelas, 2007). In response to the crimes, the United Nations appointed a special committee to draft an international agreement for all nations to adhere to in order to address the human rights and dignity of all global citizens into the future.

Upon the establishment of the United Nations, President Harry S. Truman appointed several delegates to represent the United States at the newly formed United Nations General Assembly. Among the delegates was former First Lady Eleanor Roosevelt. In 1946, soon after her appointment, Mrs. Roosevelt was chosen as the first Chairperson to head up the United Nations Human Rights Commission (Black, 2007; Glendon, 2001). She was charged to lead a committee of international members from allied countries to draft what would eventually become the United Nations Universal Declaration of Human

Rights (UNDHR). When the committee submitted their final draft to the General Assembly for a vote by its member countries, delegates voted in favor of it on December 10, 1948 (United Nations, 1948).

The UNDHR includes a set of 30 articles aimed at protecting human rights in the hope that crimes such as those that were perpetrated during World War II should never happen again. The overall intention of the document is encapsulated in the Preamble. It states that the UNDHR is the:

[C]ommon standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction. (United Nations, 1948, Preamble, para. 8)

This standard of the UNDHR outlines a strategy for all countries to aspire to in order to address the ethical treatment and protection of human rights for all peoples. And it is from these historic beginnings that the hope of UNDRIP was first envisioned and later developed.

### **Perils to Progress**

With the UNDHR as its historic guide, the passage of UNDRIP provided the framework for moving forward. The vision for the future was outlined from the outset as demonstrated in the language of the very first Article, which states:

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 of the United Nations, the Universal Declaration of Human Rights and international human rights law. (UN, 2010, p. 4)

After 30 years of meetings and planning, Indigenous peoples were convinced that they could now begin working in their various countries and communities to start implementing the articles to address their life circumstances and to resist the continuing violations of their human rights. Even though the hopeful beginning in 2007 was celebrated around the world by Aboriginal communities, the past six years have shown the difficulty of implementing UNDRIP into national policy. It is clear that it is more problematic to achieve in practice what took 30 years to define. In the meantime, the wheels of governmental bureaucracy continue to turn without UNDRIP and with continuing violations of human rights.

While the United States and Canada did agree to publically support UNDRIP, their national policies and actions toward their populations of Indigenous peoples continue to prove otherwise. For example, in the United States, the ongoing struggle to protect the sacred lands of Native communities continues despite ongoing protests. In South Dakota, the sacred mountain Bear Butte “Mato Paha” is being encroached upon by motorcycle bars and gas and oil interests (Ornelas, 2011). Even after the State of South Dakota decided to limit gas and oil permits around Mato Paha, the local Meade County Commissioners objected and threatened to sue the state’s Board of Minerals and Environment (Montgomery, 2011). The Board later ruled that the county had no legal standing in the matter because they were not parties in the original permit request (South Dakota Board of Minerals and Environment [SDBME], 2011). The historic significance of Bear Butte was recognized in the summer of 2011 when

the National Trust for Historic Preservation (NTHP) listed it first in its annual list of “11 Most Endangered Historic Places” (NTHP, 2013). In their description of the historic site, the NTHP wrote that Bear Butte is a location, “Believed to be the spot where the creator communicates with his people through vision and prayer” (NTHP, 2013). For the numerous tribes living in the region, this designation helped to draw attention to the site’s cultural and historic significance in support of continuing efforts to protect it from further development.

In the Province of New Brunswick in Canada, at the time of this writing in late November 2013, First Nations and national allies are united in their efforts to block attempts to expand hydraulic fracturing, or “fracking,” of shale by the Southwestern Energy Company (SWN) on treaty lands there. Many citizens from surrounding communities have joined in protest by blocking SWN trucks and supplies from moving into the area since the beginning of summer (CBC News, 2013a). SWN sought and received an injunction on October 3<sup>rd</sup> against the protestors, now being referred to as “protectors” by many community members, to force them to allow SWN to conduct seismic testing in the area. However, on October 17<sup>th</sup>, events took a critical turn when heavily armed officers from the Royal Canadian Mounted Police (RCMP) fueled an already tense situation by bringing in snipers, armed officers in camouflage gear, and police dogs to force protectors off the blockades in an attempt to enforce the injunction (“The Last 48 Hours”, 2013). A heated confrontation ensued resulting in 40 people being arrested and RCMP vehicles being burned. Conflicting reports on social media at the time included everything from claims that the RCMP set the vehicles on fire themselves to assertions of outside agitators being hired by SWN to incite a riot. Several people were injured and tear-gassed, including Elsipogtog Chief Aaron Sock and his entire council were arrested (CBC News, 2013a). Chief John Levi had been arrested for protesting during the summer and later released with restrictions being placed on his ability to protest in public (CBC News, 2013b; Howe, 2013). On October 21<sup>st</sup>, the Queen’s Bench denied a request by SWN to extend their original October 3<sup>rd</sup> injunction (Global News, 2013). This decision led to the release of several protectors while others remain jailed for related offenses.

At the center of such protests as those described above is a core belief in the sacredness of the lands that are being encroached upon. The Earth is a living entity to be protected and honored. For the various groups of Indigenous peoples trying to block development and extraction efforts on their lands, their battles are often complicated by their isolated geographic locations. Because of news media blackouts in the United States, which this author has witnessed firsthand, many people have no idea what conflicts are taking place in their own country, let alone outside of it. Is this lack of reporting due to general disinterest in the affairs of Indigenous peoples? Or is it an intentional disregard to report on the current human rights violations being committed by Canada and the United States against their Indigenous populations? With thousands of miles of open acreage, it is difficult for tribal governments to focus limited resources and personnel to halt attempts by their national governments to bypass and ignore treaty agreements and put forward claims of human rights violations, much like those now being reported out of the Red Lake Indian Reservation in Minnesota (Cornelius, 2013). There, the reservation is attempting to halt Enbridge Energy from laying pipeline across their tribal lands in order to connect to the XL Keystone Tar Sands pipeline project in Alberta, Canada. The following examples demonstrate other similar conflicts and perils to progress and why it is time to implement UNDRIP into national policy.

## Being in Place as Method

The ethnographic field research that was conducted for this project provided this author with first person accounts of many of the events reported on throughout the paper. Over the fall of 2012 into the New Year 2013, the Idle No More movement originated in Canada with an eruption of updates and reporting over social media sites. More will be discussed about the movement in a later section. In addition to the developing movement, hunger strikes were declared by Attawapiskat Chief Theresa Spence and Grand Elder Raymond Robinson on December 11<sup>th</sup> to protest the government's mistreatment of First Nations peoples and its apparent manoeuvrings to overstep their treaty rights and sovereignty. Chief Spence hoped that the hunger strike would help draw attention to her demand to meet with Canada's Prime Minister Stephen Harper. After learning of Prime Minister Harper's refusal to meet with Chief Spence, I decided that a trip to Ottawa was required in order to observe and report back to people living in the United States, as there was effectively a media blackout at the border about the protests and nonviolent civil disobedience actions that were taking place throughout Canada at the time.

It is important at this point to provide a bit of historical background as to what motivated the hunger strikes. Chief Spence was moved to take action to draw attention to the fact that the government had failed to address the concerns she had raised in 2011 about the substandard housing and deteriorating health conditions for First Nations at her Attawapiskat Reserve, located on the shores of James Bay in Northern Ontario, Canada (Angus, 2011a; Fletcher, 2011; Strapagiel, 2011). In October 2011, Chief Spence officially declared a state of emergency at the reserve but her plea for assistance from the government essentially went unanswered (Angus, 2011a). In a video that was posted on YouTube on November 2011, the realities of the housing crisis were shockingly revealed (Angus, 2011b). The film was recorded during a site visit by Member of Parliament (MP) Charlie Angus, Network for Patriotism and Progress (MPP) member Gilles Bisson, Mushkegowuk Grand Chief Stan Loutit, Deputy Grand Chief Leo Friday, and Dr. John Waddell. Even after MP Angus revealed the dilapidated and unhealthy conditions that were depicted in the film, by December 2012, no financial assistance or other forms of aid had been received from the federal government. The Government of Canada has constitutional responsibilities and longstanding treaty agreements with First Nations to respond to these types of health and human rights requests (Flanagan, Alcantara, & Le Dressay, 2010). Furthermore, the government's alleged support for UNDRIP had already been given (Dearing, 2010). In desperation, Chief Spence commenced her hunger strike with the support Grand Elder Robinson and, eventually, the entire Idle No More movement.

Upon arrival to Victoria Island in the province of Ontario, one could see the numerous tents and tipis of supporters camped out in support of Chief Spence that December. There was a prayerful and solemn atmosphere to the encampment as supporters were gravely concerned about the health of Chief Spence and Grand Elder Robinson who were now several weeks into their hunger strikes from that location. A steady stream of visitors came and went throughout the days to offer their support by sitting together around the sacred fire or by bringing food and supplies. They did this even though many of the supporters were not able to visit with either of the leaders, due to their fragile health conditions.

Being near the center of national government was, in itself, another way to view the goings on from behind Parliament Hill on Victoria Island. The island is under the control of First Nations and it is located on the Ottawa River within the city limits of Ottawa. From that location, there is no escaping the

offensive view of the rear of the Parliament building. It is constructed in the shape of an enormous tipi. As one Indigenous young man mused bitterly as we stood looking at the structure on the morning of New Year's Day, he told me that he had grown up being told a story about how the design was intentional so that First Nations would always know that the biggest tipi on the Ottawa River belonged to "the Great White Father" (personal communication, January 1, 2013).

Sharing stories about encounters such as the one told above is part of an experience that would not be available if one were to simply observe from a distance. The peeling away at layers through storytelling is an important part of teaching and learning about Indigenous peoples and their oral traditions. As Kovac (2009) has written, "Stories remind us of who we are and of our belonging. Stories hold within them knowledges while simultaneously signifying relationships" (p. 94). The stories that were told around the sacred fire and the songs that were sung at the encampment on Victoria Island demonstrated the depth of meaning and fellowship the gatherings had for those in attendance, for this was a life and death matter. The weight of this knowledge was borne by not only the supporters, but by the nation itself. Both Chief Spence and Grand Elder Robinson were willing to die for their cause.

Based on my two personal meetings with Chief Spence throughout my time in Ottawa, I can relay with certainty that I know what bravery looks like while standing on the edge of life. I saw unwavering determination and courage in Chief Spence's face while she held to her conviction in calling for changes to the government's apparent arrogance and mistreatment of First Nations. When she spoke with me on New Year's Day, I was able to offer my commitment to tell of her plight through my scholarly work and teaching (personal communication, January 1, 2013). Not only was I going to take my research experience back home with me, I was able to offer her reciprocity by circumventing the media blackout by telling what news I could outside of her country. It was important enough for me to tell this to Chief Spence that I drove thousands of miles from the Midwest in the United States in the middle of winter to meet with her. It was the least I could do to witness Chief Spence's fight for human rights and to experience the beginning of the Idle No More movement and to report back on what I had observed.

It is a slippery slope in terms of one's own positionality to function within an activist-scholar paradigm in research. Teachings during graduate school advised that the "ideal" research was a detached rationalist approach to a subject. I was perplexed because the reason for my research was that I wanted to transform governance and raise awareness about exclusionary practices and policies of governments when it came to working relationships with their Indigenous populations. After working on several federal and state projects that went awry because of the marginalization of Indigenous peoples and their exclusion during the public participation process, I saw the negative costs in terms of the added years to projects that had lacked input from tribal governments, as required by law. Back to the drawing board they went as meetings had to be organized to allow for the testimony of all parties involved, whether the governments considered the evidence or not in their final decisions.

My work over the years has been in direct response to this type oversight. As an Indigenous identified scholar, I know what that exclusion looks like on many levels. So, how does one change and transform governments? As Ladson-Billings & Donnor (2008) have noted, "All scholars of color must know the intellectual antecedents of their cultural, ethnic, or racial group. This is important for combating persistent ideology of White supremacy that denigrates the intellectual contributions of others" (p. 74). By putting myself in place, not only am I frequently seen as "the Other" attempting to break down



historic barriers while involved in these activities, I can still report back as a witness with a knowledge that frames my understanding based on observed experiences and exchanges in the “real world.” I want to know what the most pressing issues are for Indigenous peoples today when trying to broach seemingly unresponsive governmental structures. Transforming anachronistic governmental paradigms requires one to be involved, to be present, and to push back against unyielding injustice.

### **Idle No More**

One of the most pressing concerns for many Indigenous communities is the fact that they are often left out of land management decisions that may negatively impact them until it is almost too late to respond before an action is taken. By law and by treaty agreement, tribal governments are required to be included in intergovernmental consultation processes, especially in matters relating to potential harmful impacts on the environment. This point is considered so important that it is described in UNDRIP in several places. In the United Nations General Assembly’s affirmations at the beginning of the Declaration, they describe their covenant by:

*Recognizing* [italics in original] that respect for Indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment. (UN, 2010, p. 2)

In the example of the New Brunswick incident described previously, and in numerous other actions taking place by Indigenous peoples throughout North America, there are concerns regarding the protection of sacred lands and water resources (Dadigan, 2013; Levi & Sock, 2013; Mother Earth Water Walk [MEWW], 2013; Seventh Generation Fund [SGF], 2013; Sinnema, 2013). In Canada, the standoff between First Nations and the government of Prime Minister Harper reached a new level of intensity with the passage of Omnibus Bill C-45 on December 14, 2012 (Jobs and Growth Act, 2012). The bill demonstrated another breakdown in transparency as it made changes to agreements outlined in the Indian Act of 1876. It changed fundamental protections under the Indian Act, the Navigable Waters Protection Act (now renamed the Navigation Protection Act), and the Environmental Assessment Act (CBC News, 2013c; Indian Country Today Media Network, 2012). All of these legislative changes were made without the free, prior, and informed consent of First Nations. Their response to other alleged violations and the impending passage of the Bill led to the beginning of the Idle No More movement and the escalating rallying cry for justice.

In the fall of 2012, four activist Canadian women were communicating with each other about the negative impact that the passage of Bill C-45 would have on Indigenous rights and sovereignty. The women were from Saskatchewan – Jessica Gordon, Sheelah McLean, Sylvia McAdams, and Nina Wilsonfeld (CBC News, 2013c). In November 2012, they started a Facebook page in order “to share information in regards to the legislation the Harper government is attempting to pass and impose on First Nations across Canada. Plus any other information relevant to First Nations across Canada” (Facebook: Idle No More, 2013). They also maintain a website with more information and opportunities for individuals to connect with other social media networks, such as Twitter (Idle No More, 2013a). The Idle No More mission statement on their Facebook page states their goals as:

- To support and encourage grassroots to create their own forums to learn more about Indigenous rights and our responsibilities to our Nationhood via teach-ins, rallies, and social media.
- Build relationships and create understanding with allies across Canada.
- Take steps to contribute to building relationships with international agencies such as the UN to raise awareness to the conditions Indigenous people have been subjected to and assert our sovereignty in the international arena.
- Acknowledge and honor the hard work of all grassroots people who have worked, and continue to work towards these goals – you are our inspiration. (Facebook: Idle No More, 2013)

By December 2012, through social media and by word of mouth, a call to mobilize for a National Day of Action on December 10<sup>th</sup> spread throughout Canada and, eventually, around the world (Idle No More, 2013b). Indigenous peoples began organizing for the action in protest of the upcoming vote by the government on Bill C-45.

One of the key elements later spurring the growth of the Idle No More movement was the hunger strike that was begun by Chief Spence and Grand Elder Robinson (Ball, 2012; Bogado, 2013; Hopper, 2013). The combination of the hunger strike and the growing Idle No More movement led to the mobilization of a global response network. As it was discussed previously, this author met with Chief Spence on Victoria Island in December 2012 through January 2013 and can attest to a diverse array of supporters. Social media networks were buzzing with daily reports and updates about protests taking place throughout Canada, the United States, and internationally. Visitors to Victoria Island included Indigenous peoples, but there were also “settler” supporters who objected to the changes being made to national laws that threatened to weaken protections for waterways throughout Canada. This author also met with several international supporters from countries like Japan, New Zealand, and Norway, in addition to the many Canadian citizens from all walks of life who came over their winter holiday to lend their support.

After 43 days, and at the urging of supporters, Chief Theresa Spence and Elder Ray Robinson agreed to end their hunger strike after a 13 point declaration of commitment “First Nations: Working for Fundamental Change” was developed by the Assembly of First Nations (AFN) leadership (AFN, 2013; Canadian, 2013; CBC News, 2013d). The plan is designed to begin a positive dialogue with the Canadian government to create change in governance matters with First Nations over the next five years. The plan sets forth a vision for intergovernmental cooperation by stating:

In the true spirit of commitment to initiate dialogue to discuss both Treaty and non-Treaty Indigenous issues on behalf of our First Nations Peoples of Canada, Chief Theresa Spence of Attawapiskat First Nation and Mr. Raymond Robinson of Cross Lake, Manitoba will continue their Hunger Strike, pending outcome of this written Declaration. We also like to acknowledge Mr. Jean Sock of Elsipogtog, New Brunswick and all other Fasters who have shown their deep dedication and courage in support of protecting and honouring both Treaty and non-Treaty

obligations as written, entered into or understood by all Peoples, with the Federal Government of Canada including each Provincial/Territorial signatory.

Further, we agree the self-sacrifice and the spiritual courage of Chief Theresa Spence, along with Elder Raymond Robinson and all other fasters have made clear the need for fundamental change in the relationship of First Nations and the Crown. We fully commit to carry forward the urgent and coordinated action required until concrete and tangible results are achieved in order to allow First Nations to forge their own destiny.

Therefore, we solemnly commit to undertake political, spiritual and all other advocacy efforts to implement a renewed First Nations – Crown relationship where inherent Treaty and non-Treaty Rights are recognized, honoured and fully implemented as they should be, within the next five years, (AFN, 2013)

Now, it is only a matter of time and true commitment whether or not this declaration will result in a force for change into the future.

### **The Problematics of Omnibus Bill C-45**

While Bill C-45 (Jobs and Growth Act, 2012) made significant legal alterations, there are three changes that impact First Nations the most. C-45 removes important management oversight and decision-making protections to control access to their territories and natural resources that were previously safeguarded under the Indian Act. Changes to the Navigable Waters Protection Act are thought to further reduce enforcement and regulation of oil pipeline and power line projects and lessen protections for a majority of fishable waters, rivers, lakes, and streams (Flegg, 2013; Gotz, 2012; McGregor, 2012; UnionBC, 2012). Key objections to the legal changes included the following:

**Indian Act:** First Nations communities can now lease designated reserve lands if a majority attending a meeting called for that purpose vote to do so, regardless of how many people show up. Previously, approval required the support of a majority of eligible vote. The Minister of Aboriginal Affairs can call the meeting to consider surrendering band territory. The minister can choose to ignore a resolution from the band council that's in opposition to a decision at the meeting. Idle No More says these changes allow "for easier opening of treaty lands and territory" (CBC News, 2013c).

**Navigation Protection Act:** Under the act, major pipeline and power line project advocates are not required to prove their project won't damage or destroy a navigable waterway it crosses, unless the waterway is on a list prepared by the transportation minister. Idle No More claims the amendments remove that protection for 99.9 per cent of lakes and rivers in Canada.

**Environmental Assessment Act:** The first omnibus budget bill had already overhauled the assessment process and the second one reduces further the number of projects that would require assessment under the old provisions. Idle No More objects to the faster approval process (CBC News, 2013c).

Many of the water systems of concern are within First Nations' territories. The modifications to environmental assessment will lessen requirements for oversight by allowing development projects to move forward without regulatory control that would have been required assessment under the previous provisions (Levitz, 2012). The Idle No More constituencies continue to object to the faster approval process and reduced environmental protections.

### **Trust and Transparency in Governance**

There are several articles in UNDRIP that describe the necessity for free, prior, and informed consent in consultation. With regard to the issue of transparency in governance, Article 19 of UNDRIP clearly establishes the requirement. The article describes that:

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. (UN, 2010, p. 8)

This requirement has been repeatedly ignored during the development of C-45, despite the fact that Canada did agree to endorse UNDRIP in 2010 to support better relations with its First Nations. At that time, John Duncan, the Minister of Indian and Northern Affairs, stated that: "Canada strongly supports these principles and believes that they are consistent with the Government's approach to working with Aboriginal peoples" (Dearing, 2010, para. 5). To this day, continuing complaints from First Nations regarding the lack of consultation remains a mobilizing cause for protest and resistance.

Based on recent events, trust relationships that had been in place before the passage of C-45 have been severely damaged. Canada, the United States, as well as other developed nations, can work on restoring trust relationships with their populations of Indigenous peoples in the way they conduct government-to-government interactions. It is purely a matter of seriously beginning to work within the framework of UNDRIP to build open and transparent avenues for better communication.

Over the years since the 1977 meeting at the United Nations, a lot of the ground was covered by those individuals who toiled on developing the articles in UNDRIP. As Article 27 advises, "States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process" (UN, 2010, p. 9). Not only does this scenario create an atmosphere of openness, it opens the door to building trust in governance. In 2003, Nobel Prize award recipient Eleanor Ostrom (2003) asked:

How do communities of individuals sustain agreements that counteract individual temptations to select short-term, hedonistic actions when all parties would be better off if each party selected actions leading to higher group and individual returns? In other words, how do groups gain trust? (p. 19)

As an economist who spent a lifetime engaged in research on the subject of Hardin's (1968) concept of "the tragedy of the commons," Ostrom examined ways in which groups could improve upon methods of managing the environment "common-pool-resources" for the higher group over individual gain. Key practices for improving trust and transparency requires cooperation and open communication. Ostrom

(2003) wrote further, “Thus understanding how trust, reciprocity, and reputation feed one another (or how their lack generates a cascade of negative effects) helps to explain why repeated face-to-face communication can have a major effect” (p. 53). By not including Indigenous peoples at the decision making table, actions like those of Chief Spence and Idle No More continue to be motivated by their exclusion and desire to be listened to and heard.

In addition to open exchange, there must be an understanding about Indigenous ways of viewing the world, especially with regard to their sacred places and spirituality. As Anishinaabeg environmental justice activist Winona LaDuke has been quoted:

I think that there is a lot of beauty in the other ways that people talk to the Creator. What I would say is that our worldview is based on our spirit, our heart, and our physical being. All those aspects, which are our way of life, are reflected in our spiritual practice. (Smith, 2006, p. 42)

Also, renowned Indigenous legal scholar, Vine Deloria, Jr. (1994), wrote almost 20 years ago that:

Sacred places are the foundation of all other beliefs and practices because they represent the presence of the sacred in our lives. They properly inform us that we are not larger than nature and that we have responsibilities to the rest of the natural world that transcend our own personal desires and wishes. This lesson must be learned by each generation; unfortunately the technology of industrial society always leads us in the other direction. Yet it is certain that as we permanently foul our planetary nest, we shall have to learn a most bitter lesson. There probably is not sufficient time for the non-Indian population to understand the meaning of sacred lands and incorporate the idea into their lives and practices. We can hope that some protection can be afforded these sacred places before the world becomes wholly secular and is destroyed. (pp. 281 - 282)

Article 34 in UNDRIP speaks directly to this topic. It declares that:

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, judicial systems or customs, in accordance with international human rights standards. (UN, 2010, p. 12)

With increasing pressures for access to natural resources growing every day, many countries continue to ignore or stumble over UNDRIP since its adoption. Whether development efforts are advocating for the damming of rivers, or for the expansion of mining and other resource extraction efforts, nations can now begin to transform their governance structures by listening to what over 30 years of struggle and determination can bring to the table by including Indigenous peoples in consultation that is based on free, prior, and informed consent. It is important to include their perspective and land ethic to the process because it means so much more than the land. The belief in the sacredness of places is also tied to the preservation of their culture and heritage. Article 38 in UNDRIP clearly advises that, “States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration” (UN, 2010, p. 13). If countries like Canada

and the United States took the step to openly proclaim their support of UNDRIP, how, indeed, do bills like C-45 get passed without any consultation with their populations of Indigenous peoples? This is the question for the future that must be broached if there is going to be the successful implementation of UNDRIP into national policy.

### **UNDRIP in the Future**

As leaders among developed nations, Canada and the United States now have an opportunity to lead the way by modeling the spirit and intention of UNDRIP. Both countries include some of the largest populations of Indigenous peoples in the world. There are already numerous tribal governments that have begun to reference UNDRIP as a mechanism for protecting their human rights, sovereignty, and territories. However, tribal governments are stymied at every turn since there is no real enforcement mechanism in place to enforce UNDRIP on national or international levels. This fact needs to change if transparent and collaborative progress in governance is going to be achieved.

Many of the growing protests that are ongoing in Canada and the United States, and that are most recently inspired by the Idle No More movement, have been emboldened by the various protections that are highlighted under UNDRIP. It is no longer business as usual in terms of the historic marginalization and mistreatment of Indigenous peoples. The continuance of policies that promote and perpetuate racism against their populations is at the center of many debates, no matter how loudly governments deny this fact. One need only to ask any of those persons who are presently involved in protecting against the expansion of fracking in New Brunswick or those attempting to hold annual sacred ceremonies at Mato Tipula if their human rights are being addressed and protected. For now, no one appears to be listening as Indigenous peoples and their quest for human rights continue to be ignored.

If tribal governments are continuing to go on record in protest of improper actions by their national, state, and local governments, it only makes sense that the missing piece to the puzzle is that those non-compliant governments are unwilling to relinquish their positions of power. As Ostrom (2003) advised, in order to build trust relationships and an atmosphere of reciprocity, all parties must work together for the higher good while eschewing independent gains. But will societies continue to “foul our planetary nest,” as Deloria (1994) foretold, by forcing technologies upon the rest of us that are not sustainable in favor of short term gains and corporate profit? This is the question that we all need to be asking ourselves. Are the rising voices of Indigenous peoples around the globe the proverbial canary in the coal mine when it comes to applying environmental protections?

The challenge for overcoming the fits and starts of UNDRIP requires focused and ongoing collaboration and communication with tribal governments. In other words, to improve on damaged relationships, all governments must adhere to the critical requirement of free, prior and informed consent. The following are recommendations for initial steps to begin developing the future policy of UNDRIP based on personal and practical firsthand experience working on intergovernmental affairs with Indigenous populations. They are listed as follows:

1. National governments that sign to support and recognize the human rights initiatives set forth in the articles of UNDRIP must develop a statutory and regulatory mechanism for

- implementation and enforcement within five years of acknowledgment of formalized support.
2. The articles of UNDRIP will function as foundational principles for all public and private entities governing or interacting in any way with populations of Indigenous peoples.
  3. All national governments must put in place a UNDRIP working group to develop a permanent agency or sub agency within the United States Department of State or the Aboriginal Affairs and Northern Development Canada, or a comparable level of government, within three years of formalized support.
  4. The UNDRIP agency or sub agency shall receive an annual operating budget as part of the appointed branch of government.
  5. A permanent liaison from the developed agency or sub agency shall be appointed by that entity and be headquartered within the offices of the United States Department of State or the Aboriginal Affairs and Northern Development Canada, or a comparable level of government.
  6. A regional UNDRIP representative shall be appointed to coordinate, communicate, and facilitate all human rights matters under consideration within the region.
  7. No development or resource extraction projects within the reservations or territories of Indigenous peoples can begin without a public consultation process that is based on free, prior, and informed consent.
  8. No development or resource extraction projects within the reservations or territories of Indigenous peoples, or outside of those land borders that are deemed to hold cultural, historic, ceremonial, or sacred importance, can move forward in any way upon notification of such significance without conducting further review that is based on free, prior, and informed consent.
  9. The UNDRIP agency or sub agency and its respective representative shall hold regional annual meetings within the reservations or territories of their constituencies for progress reports and public input.

These basic recommendations are more than what are in place in either the United States or Canada at this time. There must be more transparency and action coming from the national government instead of the gratuitous proclamations of support that were offered in 2010. So far, efforts at getting UNDRIP integrated into national policy have been moving at a snail's pace. It is time for a different vision for the future recognition of human rights for Indigenous peoples around the world.

### **Conclusion**

On June 19, 2013, the Canadian government passed the Safe Drinking Water for First Nations Act (Aboriginal Affairs and Northern Development Canada [AANDC], 2013). Is this a panacea for the

irreversible environmental damage that has already taken place in the waterways located within the land holdings of First Nations? Or, is it a distraction from the sweeping changes that were made to the Navigable Waters Protection Act under Omnibus Bill C-45? One way or the other, concerns have been raised by First Nations and they are continuing to be ignored (Parliament of Canada, 2012; Uechi, 2012).

On March 5, 2013, the United States Department of Interior announced its “Action Plan to Implement the Memorandum of Understanding (MOU) Regarding Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites” (United States Department of Interior [USDOI], 2013). The plan includes the following outline of its Guiding Principles as follows:

The participating agencies are committed to interagency coordination and collaboration to enhance the protection of and tribal access to Indian sacred sites. The participating agencies:

- Will consult with Indian tribes, as appropriate, in developing and implementing the actions outlined in this plan;
- Recognize that consistency in policies and processes can be developed and applied, as long as such policies and processes remain adaptable to local situations and mission requirements; and
- Recognize that tribal input is essential to ensure that tribal perspectives are incorporated into the actions undertaken pursuant to the MOU and to ensure the development of meaningful strategies for sacred sites protection. (USDOI, 2013, p. 2)

The plan will review previous Acts or Executive Orders that might relate to sacred lands. Unfortunately, none of these Acts or Executive Orders has been seriously adhered to in dealings with tribes up to now. This plan is a perfect opportunity for the United States Department of Interior to begin the integration of UNDRIP as a framework for future consultations and negotiations with Indigenous peoples for the protection of their sacred lands.

The winds of change appear to be blowing in both the Canada and the United States. Their populations of Indigenous peoples are organizing and asserting their rights and challenging their governments in new ways, as the recent rise in protests and grassroots actions indicate. Successful governance in the future will have to be built upon trust and transparency. The tools are there to do it. The UNDRIP toolkit needs to be opened and justly supported through action and consultations that are based on free, prior, and informed consent. Only then will the door be opened to begin developing the policy potential of UNDRIP. The time is now.



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