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UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES
Universal Standards and the Relationship to the International Regime
on Access and Benefit-Sharing
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UN Declaration on the Rights of Indigenous Peoples: Legal Concerns with Canada's
Opposing Positions

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1. It is of critical importance for States and Indigenous peoples to work together to achieve progress on biodiversity issues.
 - The **principle of international cooperation** is central to the purposes and principles of the UN – particularly crucial in addressing issues such as biodiversity and human rights in an interdependent world

2. CBD process cannot be separated from Indigenous peoples' human rights and the *UN Declaration*.
 - *Declaration* provides an **essential context** in addressing Indigenous peoples rights and related State obligations – this has been repeatedly affirmed by James Anaya, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people
 - Increasingly, the *Declaration* is being referred to and used by UN treaty bodies to interpret existing treaties when Indigenous peoples' rights are concerned – *e.g.* Committee on the Elimination of Racial Discrimination, Committee on the Rights of the Child, Committee on Economic, Social and Cultural Rights

3. Positive international initiatives on Indigenous peoples' rights and *UN Declaration* are impeded by obstructionist strategies and positions of Canada
 - Canada has an ongoing international and domestic strategy to oppose the use of the *UN Declaration* in all relevant forums

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- The vote by Canada against the *Declaration* does not mean it can prevent other States and the United Nations from using this human rights instrument as a **universal international standard** – especially since States voted overwhelmingly in favour of the *Declaration* at the General Assembly in September 2007
- If every State had such a veto capacity (which they do not), the United Nations would not be able to function – its work would be brought to a halt
- Canada continues to use extreme and exaggerated arguments that are misleading or false
 - e.g.* - There are **no individual rights** in the *Declaration* – only collective rights [actually, 17 provisions in the *Declaration* address individual rights]
 - There is **no balancing of individual and collective rights** [article 46(3) includes one of the most comprehensive balancing provisions in any international human rights instrument – the previous government of Canada played a leading role in drafting and promoting the article with other States]
 - *Declaration* has **no relevance whatsoever to climate change** [this view is contradicted by the Office of the High Commissioner for Human Rights and a wide range of other sources – the *Declaration* includes many rights that are likely to be impacted by climate change, such as rights to protection and conservation of the environment; subsistence; culture; lands, territories and resources; and treaty rights]
- Canada's actions are inconsistent with both Canadian constitutional law and international law – such actions have repeatedly violated the rule of law since 2006
- According to the purposes and principles of the *UN Charter*, Canada has a **duty to promote and encourage respect for human rights** and not undermine them.
- As a member of the Human Rights Council (June 2006-June 2009), Canada was required to “**uphold the highest standards** in the promotion and protection of human rights” – Canada pursued the lowest standards of any member of the Western European group of States – this **weakens the international system** as a whole
- In all its dealings with Indigenous peoples, Canada must **uphold the honour of the Crown** – which gives rise to a constitutional **duty to consult and accommodate** Indigenous peoples which was never fulfilled since 2006

4. Conservative government of Canada is a minority government and its arguments against the *Declaration* have been repeatedly rejected.

- Canada's Parliament adopted a **Motion** in April 2008 calling on Parliament and the government of Canada to "fully implement" the standards in *Declaration*
- An **Open Letter** of May 2008, signed by more than 100 experts and scholars refuted the government's claims – the letter underlined that Canada's claims do "a grave disservice to the cause of human rights and to the promotion of harmonious and cooperative relations"
- The **Committee on the Elimination of Racial Discrimination** did not accept Canada's opposing arguments and recommended that the government "support the immediate adoption" of the *UN Declaration*
- At the **Organization of American States**, Canada tried a similar strategy of obstruction in relation to the *UN Declaration* – however, Latin American States and Indigenous peoples rejected Canada's illegitimate positions and agreed that the *Declaration* would be "the baseline for negotiations and ... a minimum standard" for the negotiations on a draft American Declaration on the Rights of Indigenous Peoples

5. It is essential within the CBD process to make explicit reference to Indigenous peoples' rights and to use *UN Declaration* as a **minimum international standard** in all aspects of its current work.

- See especially preambular para. 11 (respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment); and articles 31 (right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources) and 43 (rights in *Declaration* constitute minimum standards for their survival, dignity and well-being)
- As highlighted by Koïchiro Matsuura, Director-General of UNESCO on the occasion of the International Day of the World's Indigenous People", 9 August 2007:

Indigenous knowledge systems represent an invaluable and irreplaceable resource and a critical component of sustainable development. The worldviews of most indigenous peoples ... recognize the inextricable links between culture and nature ...