



# THE INTERNATIONALIZATION OF INDIGENOUS RIGHTS

UNDRIP in the Canadian Context

SPECIAL REPORT



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Cover photo: Chief Ovide Mercredi (in headdress) of the Assembly of First Nations speaking at a ceremony held in the General Assembly Hall marking the start of the International Year of the World's Indigenous People in 1992. UN Photo/Eskinder Debebe.

Back cover photo: Inukshuk in silhouette at sunset. iStock.



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# OUR WAYS WILL CONTINUE ON: INDIGENOUS APPROACHES TO SUSTAINABILITY

Jeffrey Corntassel

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## INTRODUCTION

As the 2015 deadline for achieving the Millennium Development Goals (MDGs) nears and with the Second International Decade of the World's Indigenous People coming to a close, indigenous peoples are reasserting their voices and visions for what a sustainable future entails. The MDGs are eight overarching goals designed to eradicate poverty and inequality worldwide, including ensuring sustainable development (Goal 7). However, MDG monitoring and implementation processes have largely excluded indigenous nations and peoples,<sup>1</sup> leading to profound misunderstandings regarding indigenous sustainable practices and place-based relationships. For example, in the area of inequality and sustainability, researchers noted the compartmentalization of the MDGs' sustainable development goals, which fail to "capture the causes and consequences of inequality for Indigenous peoples" (International Work Group on Indigenous Affairs [IWGIA] and Tebtebba 2014, 3).

Given the major shortcomings of the MDGs in promoting indigenous health, well-being and sustainability, it is clear that state-centric forums and a narrow rights-based approach have serious limitations in terms of recognizing and bolstering the self-determining authority of indigenous

nations. And the fact that over 80 percent of the world's biodiversity thrives on indigenous homelands is not a coincidence (United Nations Development Programme 2011, 54). When indigenous peoples exercise autonomy on their homelands, biodiversity tends to thrive; however, in states where a settler presence dominates indigenous homelands, resource extraction via deforestation, desertification, pollution and freshwater depletion are prevalent.

Increasingly, researchers recognize that the same forces that threaten biodiversity also threaten indigenous peoples' long-standing relationships with their homelands and the health and well-being of Native nations. However, amidst calls for a "green economy" and carbon trading schemes such as Reducing Emissions from Deforestation and Forest Degradation (REDD), it is evident that there are competing conceptions of what sustainability entails. For example, in 2013, the Vancouver-based mining company Goldcorp donated CDN\$500,000 to the University of Victoria's School of Business in order to fund the Centre for Social and Sustainable Innovation (Wilson 2013). Despite Goldcorp's claims of "sustainable prosperity," its mining operations in the Americas are well known for their extensive human rights abuses and environmental destruction. For example, operations at the Marlin Mine in Guatemala, have led to water contamination and there have been assassination attempts against Mayans who have protested the mine (Basu and Hu 2010; Paley and Saunders 2009). In 2011, Goldcorp was removed from the Dow Jones Sustainability Index because its "operations in Guatemala and Honduras are not sustainable for communities, the environment, nor

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<sup>1</sup> See, for example, UN Permanent Forum on Indigenous Issues (UNPFII) (2006) as well as subsequent desk reviews of *MDG Reports and Indigenous Peoples* available at <http://undesadspd.org/IndigenousPeoples/CrossThematicIssues/MDGs.aspx>. See also Vinding (2006).

ultimately for responsible investors” (Moore and Kistler 2011).

What, then, accounts for such divergent perspectives and practices when invoking the term sustainability? English scholar Leerom Medovoi (2010, 130) found that in addition to the often used 1987 Brundtland Report definition of sustainability as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs” (World Commission on Environment and Development 1987), there is a darker side to the term. Sustaining something may also mean “to endure or withstand it,” such as sustaining an injury (Medovoi 2010, 131). From this perspective, another meaning for sustainability is “tolerance,” which can serve to “gauge the kind and amount of life that must not be killed now so that the process of surplus value extraction can continue indefinitely into the future” (ibid., 142).

As Medovoi points out, the term sustainability is rife with contradictions and, ultimately, indigenous languages are better suited to describing these complex community relationships. According to a conversation with Cherokee Elder Benny Smith, a Cherokee word that relates to sustainability is *nigayaiso’i*: “Even though we lose someone, the way that we live will continue on; these ways will continue on; the nation will persist.” Without respectful relationships to the land, water and natural world; resilience; systems of reciprocity; and humility, Indigenous lifeways cannot flourish.

Given the multiple meanings of sustainability, how has this term been operationalized within international legal instruments and indigenous forums? This paper will examine how sustainability has been portrayed by international legal instruments, such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and compare that with how sustainability has been conceptualized and practiced by indigenous nations, leaders and scholars.

## INDIGENOUS SUSTAINABILITY IN INTERNATIONAL LAW

The most comprehensive indigenous rights instrument in effect today is UNDRIP, which was drafted by indigenous activists, scholars and state representatives over three decades. In 2007, the declaration was adopted by the United Nations General Assembly with the support of a majority of member states (143 in favour and four against). Although Canada initially voted against the declaration (along with Australia, New Zealand and the United States), it has since reversed its position and formally endorsed

the declaration on November 12, 2010.<sup>2</sup> When endorsing the declaration, Canada stated unequivocally that it was “a non-legally binding document that does not reflect customary international law nor change Canadian laws” (Cultural Survival 2010). Several would disagree with the accuracy of Canada’s lukewarm endorsement of the declaration, including legal scholar S. James Anaya, who contends that the principles outlined in the declaration still have political and legal force as they “are simply derived from human rights principles of equality and self-determination that are deemed of universal application” (Anaya 2009, 184). In his role as UN Special Rapporteur on the Rights of Indigenous Peoples, Anaya (2014, 20) observed the following about Canada’s relationship to indigenous nations and peoples:

Canada faces a continuing crisis when it comes to the situation of indigenous peoples of the country. The well-being gap between aboriginal and non-aboriginal people in Canada has not narrowed over the last several years, treaty and aboriginal claims remain persistently unresolved, indigenous women and girls remain vulnerable to abuse, and overall there appear to be high levels of distrust among indigenous peoples towards government at both the federal and provincial levels.

Based on Anaya’s report, it is clear that questions of indigenous self-determination cannot be meaningfully discussed without also addressing the health, well-being and sustainability of community relationships. The above-mentioned “high levels of distrust” became more pronounced in September 2014 when the government of Canada was the only member state to object to the wording of the World Conference on Indigenous Peoples’ Outcome Document, stating that “Free, prior and informed consent, as it is considered in paragraphs 3 and 20 of the WCIP Outcome Document, could be interpreted as providing a veto to Aboriginal groups and in that regard, cannot be reconciled with Canadian law, as it exists.” (Permanent Mission of Canada to the United Nations, 2014). Given Canada’s unwillingness to support the declaration and the WCIP Outcome Document, indigenous leaders have questioned Canada’s commitment to deeper questions of indigenous self-determination and sustainability. Given the urgent need to address the health and well-being of indigenous nations, how has the declaration offered protections and enhancements of indigenous sustainable practices?

<sup>2</sup> For a full transcript of Canada’s formal endorsement, see Cultural Survival (2010). Australia, New Zealand and the United States have also since reversed their 2007 votes against UNDRIP and formally endorsed the document.



A wide view of the General Assembly Hall, as Secretary-General Ban Ki-moon addresses the opening of the high-level plenary meeting of the assembly known as the WCIP on September 22, 2014. UN Photo/Cia Pak.

While the declaration briefly mentions sustainability in the preamble — “Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment” (paragraph 11) — article 20 outlines some clearer guidelines relating to an indigenous right to subsistence:

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress. (ibid.)

When analyzing the language of the declaration and comparing it with previous drafts, Oglala Sioux Nation scholar Charmaine White Face (2013, 68) finds that part 2 of article 20 has been rewritten to seemingly deny “all the past actions that have deprived Indigenous Peoples ‘of their means of subsistence and development.’” The implications of these word changes are significant, as she points out: “In most cases, Indigenous Peoples have a bond with our means of subsistence in far more than the physical sense. When Indigenous Peoples are denied that bond, we cease to be who we were created to be” (ibid.) Subsistence, which entails spiritual, social and economic forms of everyday living on the land, is a fundamental aspect of sustainability. According to the late Seneca scholar John Mohawk (2006, 26), subsistence living is a “cultural, spiritual, social exchange that’s intended to go on for generations.” The language of article 20 overlooks

the spiritual aspects of indigenous relationships to the land and natural world, while also imposing narrow conceptions of history and place. Sustainability entails having an expanded world view and timeline premised on resilience and reciprocity.

Article 19 of the declaration, which focuses on the promotion of free, prior and informed consent when setting policies that may affect indigenous peoples, is also an important element of indigenous sustainability as indigenous peoples seek to represent themselves on their own terms in order to promote subsistence economies that strengthen communities first and foremost. However, as White Face (2013, 66) observes, the original language of this article allowed indigenous peoples to “participate fully, if they so choose, through procedures determined by them, in devising legislative or administrative measures that may affect them.” The current language in article 19 takes away the right of indigenous peoples to devise their own legislation and cedes that authority to the state. This is reminiscent of Medovoi’s examination of sustainability as “tolerance” rather than promoting reciprocal relationships.

Article 25 further expounds on the right of indigenous peoples to “maintain and strengthen their distinctive spiritual (and material) relationship with the lands, territories, waters and coastal seas and other resources” (ibid.). Unfortunately, the words “and material” were deleted from the final version of the declaration, which not only “shows the total lack of understanding of indigenous spirituality” but also greatly diminishes the right “with the removal of this word” (ibid., 75).

Finally, article 29 deals with the right to the conservation (restoration) and protection of the environment. White Face finds that the deletion of the word “restoration” from the original text actually takes away accountability by states and other actors for their responsibilities to indigenous nations (ibid., 82). Additionally, the European language of conservation doesn’t necessarily line up with indigenous community notions of sustainability and ongoing relationships with the natural world (Altamirano-Jiménez 2013, 27, 215-16; Nadasdy 2005). While the declaration offers some important protections, there needs to be accountability and meaningful restoration for the ongoing environmental destruction that jeopardizes the sustainable relationships indigenous nations have practised for thousands of years, including land-based and water-based cultural practices such as gathering medicines, hunting, fishing and farming. This is one reason why an optional protocol for the declaration has been researched in order to address the need for a mechanism to implement the provisions of the declaration (UNPFII 2014).

Treaties in force have also begun to address the issue of indigenous sustainability. For example, International Labour Organization (ILO) Convention 169 describes dimensions of indigenous subsistence in article 23:



1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted.

2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development. (ILO 1989)

However, the mandated powers in the above article are centred on the state (i.e., “tolerance”) rather than providing more community-centred tools for promoting indigenous sustainability. Furthermore, indigenous sustainability entails more than “traditional activities” — these are ever-changing and evolving spiritual relationships and reciprocal practices that are continuously renewed. Also, the process of free, prior and informed consent (article 19) is outlined much more clearly and forcefully in the declaration compared to ILO Convention 169. Finally, there are only 22 countries that have ratified the convention,<sup>3</sup> which limits its applicability and further justifies a need for putting an optional protocol in place (Canada, for example, has not ratified it).

One of the clearest and most forceful treaties on indigenous sustainability is likely the 1992 UN Convention on Biological Diversity (CBD), which addresses the protection of indigenous peoples’ cultural heritage (and was ratified by Canada). According to article 8(j) of the CBD:

Each contracting Party shall, as far as possible and as appropriate: Subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity

and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices. (United Nations 1992)

Despite problematic wording, such as “traditional lifestyles,” which can relegate indigenous peoples’ sustainability practices to the past, the CBD obliges some 194 ratifying countries to respect indigenous land-based and water-based cultural practices, such as hunting, fishing and medicine gathering. Article 10 of the CBD addresses the protection and restoration of indigenous communities and sustainable use:

(c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;

(d) Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced. (ibid.)

The CBD is significant in that it acknowledges the central role indigenous peoples play in the discourse on subsistence and sustainability. Other declarations, such as the 1992 Rio Declaration on Environment and Development, have further reaffirmed the critical role indigenous peoples play in the sustainability discourse:

Principle 22: Indigenous people...have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development. (UN Conference on Environment and Development 1992)

In 2012, more than 500 indigenous peoples issued a follow-up to the 1992 Kari-Oca Declaration and the Indigenous

<sup>3</sup> The 22 countries that have ratified ILO Convention 169 are: Argentina (2000), Bolivia (1991), Brazil (2002), Central African Republic (2010), Chile (2008), Colombia (1991), Costa Rica (1993), Denmark (1996), Dominica (2002), Ecuador (1998), Fiji (1998), Guatemala (1996), Honduras (1995), Mexico (1990), Nepal (2007), the Netherlands (1998), Nicaragua (2010), Norway (1990), Paraguay (1993), Peru (1994), Spain (2007) and Venezuela (2002).



Peoples Earth Charter at the Rio+20 conference.<sup>4</sup> In the Kari-Oca II Declaration, indigenous peoples critiqued the destructive impacts of market-driven approaches to sustainability embodied by the so-called “green economies”:

We reject the false promises of sustainable development and solutions to climate change that only serve the dominant economic order. We reject REDD, REDD+ and other market-based solutions that focus on our forests, to continue the violation of our inherent rights to self-determination and right to our lands, territories, waters, and natural resources, and the Earth’s right to create and sustain life. (Indigenous Peoples Global Conference on Rio+20 and Mother Earth 2012)

Indigenous delegates at Kari-Oca also outlined a broader vision for sustainability:

We continue to inhabit and maintain the last remaining sustainable ecosystems and biodiversity hotspots in the world. We can contribute substantially to sustainable development but we believe that a holistic ecosystem framework for sustainable development should be promoted. This includes the integration of the human-rights based approach, ecosystem approach and culturally sensitive and knowledge-based approaches. (ibid.)

From the perspective of the indigenous participants of the Rio+20 conference, little progress has been made within the state system to promote indigenous sustainability practices. Instead, the language of sustainability as “tolerance” and “green-washing” have prevailed among state and corporate actors. Given the serious shortcomings of the MDGs, intergovernmental treaties and UNDRIP, it is important to consider some indigenous conceptualizations on sustainability that can be used to build a more “holistic ecosystem framework.”

4 Other indigenous declarations of note are the 2002 Kimberley Declaration ([www.iwgia.org/environment-and-development/sustainable-development/the-kimberley-declaration/424](http://www.iwgia.org/environment-and-development/sustainable-development/the-kimberley-declaration/424)), the 2003 Indigenous Peoples Kyoto Water Declaration ([www.waterculture.org/uploads/IPKyotoWaterDeclarationFINAL.pdf](http://www.waterculture.org/uploads/IPKyotoWaterDeclarationFINAL.pdf)), the 2011 *Manaus Declaration* ([www.iwgia.org/images/stories/sections/envir-and-devel/sust-development/docs/finalmanausdeclaration\\_eng%202.pdf](http://www.iwgia.org/images/stories/sections/envir-and-devel/sust-development/docs/finalmanausdeclaration_eng%202.pdf)) and the 2012 Declaration of Indigenous Peoples on Self-determination and Sustainability ([www.iwgia.org/images/stories/sections/envir-and-devel/sust-development/docs/final\\_declaration\\_on\\_selfdetermination\\_and\\_sustainability.pdf](http://www.iwgia.org/images/stories/sections/envir-and-devel/sust-development/docs/final_declaration_on_selfdetermination_and_sustainability.pdf)). Given the brevity of this paper, it was not possible to discuss these important documents.

## INDIGENOUS SUSTAINABILITY

Economist Ron Trosper, who is a citizen of the Confederated Salish and Kootenai Tribes, conducted research on the sustainable practices of the Nisga’a Nation along with other First Nations of the northwest coastal region. He found that several values, principles and practices undergird sustainable indigenous systems that have been thriving for over 2,000 years, such as proprietorship and governance systems that establish roles and responsibilities to the land/water, complex systems of reciprocity that were enforced publicly and resilience that can “withstand large shocks” (Trosper 2009, 14–23, 154–155).

Evaluations of sustainable practices should have a longer time frame in mind, such as a seven-generations model of planning and assessment (Wildcat 2009, 124). According to Euchee scholar Dan Wildcat (ibid., 124–125), we should base our understandings of sustainability on direct, experiential knowledge, and what he calls relationships in complex harmony.

There is also a spiritual aspect to sustainability that is overlooked in most policy-making discussions. Mohawk describes it as the “renewable quality — the sacredness of every living thing that connects human beings to the place they inhabit — is the single most liberating aspect of our environment” (Barreiro 2010, 58). These everyday acts of renewal are both an individual and community-driven process where “evolving indigenous livelihoods, food security, community governance, relationships to homelands and the natural world, and ceremonial life can be practiced today locally and regionally, thus enabling the transmission of these traditions and practices to future generations” (Corntassel 2008, 119; 2012). It ultimately is a process of giving back more than you take, which embodies an ethic of generosity and humility.

Finally, David Hall, a psychology scholar conducted interviews with 13 indigenous leaders from the “salmon nation” bioregions to assess their concepts and practices around sustainability. The results were published online, and revealed several dimensions to indigenous models of sustainability, including notions of home, humility, spirituality, cultural sustainability, reciprocity and respect. As Okanagan educator and activist Jeannette Armstrong, described it, “sustainability on one level means to be able to maintain and sustain the fullness of health that needs to be there for us to thrive, and for everything else to thrive” (quoted in Hall 2008).

How can indigenous conceptions of sustainability be translated into policy? Some possible future directions are offered in the next section.

## CONCLUSIONS

If we are to take sustainability seriously, more holistic models of restoration and environmental governance need to be adopted under the direction of indigenous nations and peoples. Related to this, the compartmentalization of sustainability in most international legal documents strips it of its full complexity and power. After all, culture is a key dimension of sustainability and needs to be recognized as such. This is why concepts such as “sustainable self-determination” can be useful ways to expand the discourse. Ultimately, indigenous sustainability is about nurturing and honoring the relationships that promote the health and well-being of communities and individuals.

Also, understanding more localized and regional indigenous approaches to sustainable practices, such as Trosper’s study of Nisga’a or Hall’s study on Salmon Nations, can yield more nuanced, gendered understandings of how reciprocity and resilience operate at ground level for indigenous women, men and youth. Indigenous-led gatherings, such as the Indigenous Peoples Global Conference on Rio+20 and Mother Earth (2012), can hold states and other global actors accountable while representing indigenous peoples on their own terms. There is also promise around accountability mechanisms within international legal instruments, such as the CBD, which is now being charged to further the 17 Sustainable Development Goals developed by the Open Working Group on Sustainable Development Goals within the UN General Assembly (Secretariat of the Convention on Biological Diversity 2014). Creative solutions, such as the Optional Protocol for the Declaration, can enhance the implementation mechanism of this comprehensive document.

The question becomes whose visions of sustainability will set the agenda post 2015 — those emphasizing “tolerance” or those advocating meaningful environmental sustainability grounded in reciprocity, respect and resilience? One thing is certain: our ways as indigenous peoples and nations will continue on.

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