

Indigenous Peoples, Biodiversity and their Interrelated Nature

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First, I would like to thank the organizers of this Congress for the invitation to deliver a keynote presentation. When invited, I indicated that I would like to briefly address the background on the Convention on Biological Diversity, the implementation of the SDGs in the Arctic, and the importance of Inuit human rights. Before I begin, I want to reach back in time and share two quotes related to important international developments that have everything to do with Inuit as Indigenous peoples, biodiversity, and their interrelated nature. The first is from the late Eben Hospon, recognized as the founder of the Inuit Circumpolar Council. On June 13th, 1977 in Utqiagvik, Alaska Hopson welcomed Inuit delegates to the organizing meeting of the ICC and he stated,

Our language contains the memory of four thousand years of human survival through the conservation and good managing of our Arctic wealth...Our language contains the intricate knowledge of the ice that we have seen no others demonstrate. Without our central involvement, there can be no safe and responsible Arctic resource development.

This quote is not merely a few sentences in English. These are powerful words and a powerful message. Hopson was speaking volumes about Inuit status, knowledge, intellectual property, land and territory, sustainable development, and above all our need to play a central role in Arctic policy.

The term “our” speaks to the distinct culture of the Inuit. The Inuit language, a universe in and of itself, developed over time reflects not only human relations, but more important, our relationship to our terrestrial and marine environment.

Intricate knowledge, a highly developed, highly sophisticated and detailed understanding of Arctic conditions based upon a profound and intimate relationship with the environment, observations, an understanding of other living creatures and their relationship to the environment. Hopson's specific reference to sea ice reflects an understanding of the cold, foreboding, harsh conditions that many non-Inuit are still working to understand in the face of dramatic, adverse changes.

Hopson's ultimate observation, a reality since first contact, reflects comprehension and perspectives "That we've seen no others demonstrate". Indeed, today we have hundreds of scientists still trying to figure out climate change and resource development impacts on sea ice and the Arctic Ocean and coastal seas generally.

I also want to conjure up the quote of Charles Etok Edwardsen. At the same ICC organizing meeting in 1977, Etok, urging support for a resolution defending the right of Inuit to maintain their cultural integrity and explicitly their relationship with the whale stated

...the people who have called themselves conservationists have chosen not to conserve the Eskimos. We are further compelled to tell the world who we are...the total depth of our environment, and our association with the whale...is dependent upon the survival of both communities: the whale as a specie and Inuit as a specie.

Therefore, when we speak of biodiversity, it is imperative to keep the distinct status, rights and world perspectives of Inuit, as Arctic Indigenous peoples, at the forefront of all considerations. "The total depth of our environment," as Etok exclaimed, is what we are addressing in the context of Arctic biodiversity.

Later in 1992, during the World Conference on Environment and Development, commonly referred to the Earth Summit, the Inuit in attendance did all that they could to leave their mark and ensure that the world community knew of our existence. The resulting documents of the Earth Summit include Agenda 21, the Rio Declaration on Environment and Development,

the Statement of Forest Principles, the United Nations Framework Convention on Climate Change, and the United Nations Convention on Biological Diversity. The antecedents of these instruments remain a central focus for the world community today. However, in this regard I want to assure you that article 8(j) of the Convention on Biological Diversity¹ did not emerge from the good will of UN member states, but rather is based on the insistence of Indigenous peoples from the Arctic and elsewhere that we have a place on earth and that our relationship with our environment is significant. [One important footnote includes the fact that Maurice Strong of Canada was the conference Secretary General and the ICC was led by Mary Simon, an Inuk as well as Canada's former Ambassador for Circumpolar Affairs]. An important, pivotal backdrop was the ongoing heated negotiation and drafting of the *UN Declaration on the Rights of Indigenous Peoples*.

Human rights violations, both past and present, have compelled Indigenous peoples to seek effective remedies and justice outside the States in which they live. Yet, it was only in 1982 that the UN created the Working Group on Indigenous Populations (WGIP)² to devise standards³ relating to Indigenous peoples' rights. Within a few years, the WGIP began working on a "draft

¹ Convention on Biological Diversity, ratified by 7 of the 8 Arctic Council member states [Canada, Denmark, Norway, Sweden, Iceland, Russian Federation, and Finland].

² The creation of the Working Group on Indigenous Populations was proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 2 (XXXIV) of 8 September 1981. The establishment of WGIP was endorsed by the Commission on Human Rights in its resolution 1982/19 of 10 March 1982 and authorized by the Economic and Social Council in its resolution 1982/34 of 7 May 1982.

³ In its resolution 1982/34 of 7 May 1982, the Economic and Social Council authorized the Sub-Commission to establish annually a Working Group to meet in order to:

(a) Review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually from Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status, particularly those of indigenous peoples, to analyse such materials, and to submit its conclusions and recommendations to the Sub-Commission, bearing in mind *inter alia* the conclusions and recommendations contained in the report of the Special Rapporteur of the Sub-Commission, Mr. José R. Martínez Cobo, entitled "Study of the problem of discrimination against indigenous populations" (U.N. Doc. E/CN.4/Sub.2/1986/7 and Add.1-5);

(b) Give special attention to the evolution of standards concerning the rights of indigenous populations, taking into account both the similarities and the differences in the situations and aspirations of indigenous populations throughout the world.

declaration on indigenous rights”.⁴ This led to a period of over 20 years, involving different UN bodies, before the *UN Declaration* was finally approved by the UN General Assembly on September 13, 2007.

The vote in the UNGA was 144 in favour, 4 against, and 11 abstentions. The four opposing States – Canada, Australia, New Zealand and United States – have all since reversed their positions. Canada declared in its November 2010 endorsement: “We are now confident that Canada can interpret the principles expressed in the Declaration in a manner that is consistent with our Constitution and legal framework.”⁵ On December 16, 2010, the last objecting State – the United States – reversed its position.⁶ Thus, the *UN Declaration* is now a consensus international human rights instrument.

The *UN Declaration* is the longest discussed and negotiated human rights instrument in UN history. It also was the first time that the *subjects* of the instrument – in this case, Indigenous peoples – participated extensively along with States in its formulation. This process set an important benchmark for Indigenous peoples’ democratic participation in UN standard-setting.

⁴ See UN Doc. E/CN.4/Sub.2/1985/2, Ann. II.

⁵ Canada, “Canada’s Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples”, 12 November 2010, <http://www.aadnc-aandc.gc.ca/eng/1309374239861>.

⁶ United States (Barack Obama), “Remarks by the President at the White House Tribal Nations Conference”, The White House, Office of the Press Secretary, Washington, D.C., 16 December 2010, online: <http://www.whitehouse.gov/the-press-office/2010/12/16/remarks-president-white-house-tribal-nations-conference>: “in April, we announced that we were reviewing our position on the U.N. Declaration on the Rights of Indigenous Peoples. And today I can announce that the United States is lending its support to this declaration.”

The *UN Declaration* continues to grow in significance. Regional⁷ and domestic⁸ courts and commissions are increasingly relying on the *Declaration*. Also, a “system-wide action plan”⁹ has recently been devised within the UN with international and national dimensions. The action plan has the goal of implementing, with the effective participation of Indigenous peoples, the *Declaration* at all levels. Again, there is an important intersection between the CBD and the UN Declaration.

As many are aware, setting aside the subjective language, article 8(j) of the CBD provides

Each contracting Party shall...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

⁷ In the Inter-American human rights system, see, e.g., *Case of the Kaliña and Lokono Peoples v. Suriname (Merits, Reparations and Costs)*, I/A Court H.R., Series C No. 309 (Judgment) November 25, 2015, para. 122; *Case of the Community Garifuna Triunfo de la Cruz & its members v. Honduras (Merits, Reparations and Costs)*, I/A Court H.R., Series C No. 305 (Judgment) 8 October 2015, para. 51; *Case of the Kuna Indigenous People of Madungandi and the Emberá Indigenous People of Bayano and their Members v. Panama*, I/A Court H.R. Series C No. 284, Preliminary objections, merits, reparations and costs (Judgment) 14 October 2014, para. 118. In Africa, see, e.g., *African Commission on Human and Peoples' Rights v. Republic of Kenya*, Application No. 006/2012, African Court on Human and Peoples' Rights, Judgment, 26 May 2017, paras. 131, 181, n. 53, and 209; *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, African Commission on Human and Peoples' Rights, Communication No. 276/2003, Twenty-Seventh Activity Report, 2009, Annex 5, para. 204.

⁸ In Belize, see *Cal et al. v. Attorney General of Belize and Minister of Natural Resources and Environment*, Claim No. 171, and *Coy et al. v. Attorney General of Belize and Minister of Natural Resources and Environment*, Claim No. 172, Consolidated Claims, Supreme Court of Belize, judgment rendered on 18 October 2007 by the Hon. Abdulai Conteh, Chief Justice. Affirmed on appeal in *Attorney-General of Belize et al. v. Maya Leaders Alliance et al.*, Belize Court of Appeal, Civil Appeal No. 27 of 2010, judgment rendered on 25 July 2013. See also *Sarstoon Temash Institute for Indigenous Management [SATIIM] v. Attorney General of Belize*, Claim No. 394 of 2013, Supreme Court of Belize, decision rendered by the Hon. Michelle Arana, 3 April 2014. In New Zealand, see *Paki and other v. Attorney-General*, [2014] NZSC 118; *Takamore v. Clarke*, [2011] NZCA 587, per Glazebrook and Wild JJ, (appeal denied [2012] NZSC 116), para. 250, n. 259. In Australia, see *Aurukun Shire Council & Anor v. CEO Office of Liquor Gaming and Racing in the Department of Treasury*, [2010] QCA 37, Supreme Ct. Queensland, paras. 33-35.

⁹ Permanent Forum on Indigenous Issues, “System-wide action plan for ensuring a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples”, UN Doc. E/C.19/2016/5 (19 February 2016).

This is groundbreaking language. Language that even the pharmaceutical companies had no idea of its full import. The critical importance of Indigenous knowledge, the intricate knowledge that Eben Hopson spoke of in 1977, is underscored in such a way that it creates a solemn commitment on the part of States. States shall respect, preserve and maintain knowledge, innovations and practices of Indigenous peoples and promote their wider application with the *approval and involvement* of the holders of such knowledge – this language is unequivocal.

However, I want to point out that the phrase “indigenous and local communities” was chosen because of the political and legal milieu of 1992. Again, that specific milieu was the ongoing debate on the right of self-determination as understood in international law and its affirmation and equal application to Indigenous peoples within the *UN Declaration*. More important is the fact that this debate was settled 15 years later in 2007 when the *UN Declaration* was adopted by the General Assembly, wherein the use of the term “peoples” in relation to the Indigenous right to self-determination was resolved and explicitly affirmed in Article 3.

Therefore, the language of article 8(j) must now be read in the overarching context of recognition of the status of *Indigenous peoples*, as peoples, with the collective right to self-determination and should not be in any way limited by the insistence of states to refer to “indigenous and local communities”. We argue now, as we argued then, we are peoples with the inherent right to self-determination. Therefore, all dialogue, documents, and any related actions concerning Indigenous peoples in the Arctic or elsewhere should be consistent with international legal usage. The use of the term “local communities” must be dispensed with in all matters concerning Indigenous peoples specifically.

And, the commitments and obligations of governments, both Arctic and non-Arctic, must be adhered to on the basis of recognition of and respect for the rights of Indigenous peoples. The

efforts of the CBD and its signatories to alter or diminish the solemn understanding of the term “Indigenous peoples” only reflects shameful, self-serving objectives that are wholly inconsistent with their obligations and commitments to the minimum standards for the “survival, dignity and well-being of the indigenous peoples of the world” including Inuit as Arctic Indigenous peoples.

Turning to the importance of the 2030 Agenda for Sustainable Development and the interrelated Sustainable Development Goals and their implementation in the Arctic, I want to stress that they can ultimately be achieved through government adherence to the rights affirmed in the *UN Declaration*.

In its most elementary expression the term “sustainable” means something “able to be maintained at a certain rate or level” or in the context of the environment “Conserving an ecological balance by avoiding depletion of natural resources”.

Indigenous peoples have understood and lived by the concept of “sustainable development” long before the term was coined by the World Commission on Environment and Development [1987] and its first use in international law in the *Rio Declaration on Environment and Development*.

Indigenous knowledge has sustained our communities for centuries. Many of the standards, guidelines, protocols and values, ranging from so-called “management” of our resources to seasonal interactions to our spirituality pivot upon concepts of sustainable development and they are embedded in our language.

Like human rights, the elements of sustainable development are interrelated, interdependent and indivisible from Inuit and who we are on the land, which is manifested through our profound relationship with our environment. As Etok stated in 1977, we are a specie, like the whale is a specie

To achieve Inuit cultural integrity and our overall security as distinct peoples, with the right to be different and to be respected as such, the actual “indicators” of our well-being were established with the 2007 adoption of the *UN Declaration*. The norms affirmed in the *UN Declaration* were influenced and informed by the firsthand expressions and stories of Indigenous peoples at the international level, including Inuit from throughout the circumpolar region. In addition to the *UN Declaration*, other Indigenous specific human rights standards are articulated in ILO Convention No. 169 and the OAS *American Declaration on Rights of Indigenous Peoples*.

If we are to achieve the “objectives” of Agenda 2030, it must be understood that Inuit life ways are inextricably linked with what are now referred to as the sustainable development goals. Indeed, it is largely due to lack of respect for and recognition of Indigenous human rights that our cultural integrity is threatened by the values of the non-Indigenous or western world. Indeed, *the future we want* and specifically paragraph 49 states

We stress the importance of the participation of indigenous peoples in the achievement of sustainable development. We also recognize the importance of the United Nations Declaration on the Rights of Indigenous Peoples in the context of global, regional, national and subnational implementation of sustainable development strategies.¹⁰

In conclusion, for Inuit, distinct peoples that inhabit approximately 40% of the Arctic circumpolar region, our involvement and our knowledge of Arctic flora and fauna is essential. In my view, respect for and recognition of Indigenous human rights lies at the core of sustainable development and maintenance of biodiversity within our Arctic homeland. Indeed, the outcome document from the 2012 Rio Conference, entitled *The Future We Want*, states clearly the importance of participation of Indigenous peoples in efforts to achieve sustainability. More important, collectively, we must all work to ensure that the individual Inuk in Paulatuk or

¹⁰ A/RES/66/288* The future we want, Resolution adopted by the General Assembly on 27 July 2012.

Upernavik or Gjoa Haven or Kaktovik or Uelen can live and maintain their way of life, every day, for decades to come. Quyanaq.