

the right to self-determination
and
the continuing quest for equality



DALEE SAMBO DOROUGH, PHD
CHAIR, INUIT CIRCUMPOLAR COUNCIL
AND
SENIOR SCHOLAR AND SPECIAL ADVISOR ON ARCTIC INDIGENOUS PEOPLES

Article 1

The Purposes of the United Nations are:

To maintain international peace and security, ...;

To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in **promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;** and

To be a centre for harmonizing

UNITED NATIONS CHARTER, JUNE 1945

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION 1965

PART I

Article 1

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1966

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

ICCPR

*...constitute a landmark in the development of international law and of relations among States, in promoting the rule of law among nations and particularly the **universal application of the principles** embodied in the Charter*


*Bearing in mind the importance of maintaining and strengthening international peace founded upon **freedom, equality, justice and respect for fundamental human rights** and of developing friendly relations among nations irrespective of their political, economic and social systems or the levels of their development,*

**DECLARATION ON PRINCIPLES OF INTERNATIONAL LAW
CONCERNING FRIENDLY RELATIONS AND CO-OPERATION
AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE
UNITED NATIONS, 1970**

Convinced that the **subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle** to the promotion of international peace and security,

Convinced that the **principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law**, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality,

Every State has the duty to refrain from any **forcible action which deprives peoples** referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence.

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The principle of equal rights and self-determination of peoples


By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, **all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.**

Every State has the duty to promote, through joint and separate action, realization of the **principle of equal rights and self-determination of peoples**, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

- To promote friendly relations and co-operation among States; and

- To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States **conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people** belonging to the territory without distinction as to race, creed or colour.

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ILO C169 - 1989 CONVENTION ON INDIGENOUS & TRIBAL PEOPLES

--Indigenous specific human rights norms are legally binding obligations under international law

Article 3(1) Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. This necessarily includes Indigenous peoples' right to self-determination.

Article 35 shall not adversely affect the rights and benefits of Indigenous peoples "pursuant to other ... international instruments, treaties, or national laws ... custom or agreements."

--Must now be read together with the *UN Declaration on the Rights of Indigenous Peoples*

AMERICAN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

Work began in 1989 and the Declaration was finalized on June 16, 2016

Must be read in context of other international human rights standards, including the *UN Declaration*



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

*Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights² and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action, **affirm the fundamental importance of the right to self-determination of all peoples**, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,*

*Bearing in mind that **nothing in this Declaration may be used to deny any peoples their right to self-determination**, exercised in conformity with international law,*

UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES, 2007

Article 2

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

*UN DECLARATION ON THE RIGHTS OF
INDIGENOUS PEOPLES, 2007*

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Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

*UN DECLARATION ON THE RIGHTS OF
INDIGENOUS PEOPLES, 2007*

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Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

*UN DECLARATION ON THE RIGHTS OF
INDIGENOUS PEOPLES, 2007*

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Article 46

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

*UN DECLARATION ON THE RIGHTS OF
INDIGENOUS PEOPLES, 2007*

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INTERNATIONAL LAW ASSOCIATION

Expert Commentary
on the
*UN DECLARATION ON THE
RIGHTS OF INDIGENOUS PEOPLES*

Diverse legal effects
Customary International Law



The **right to self-determination is a prerequisite** to the exercise and enjoyment of all other individual and collective human rights of Indigenous nations, peoples and communities.

It is **one whole right**.

It is **inherent, pre-existing**.

Equal application of the rule of law to protect against racial discrimination -- **a peremptory norm of international law** -- is a fundamental principle of international law that is accepted by the international community of states as a norm from which no derogation is permitted.

- ▶ Crimes against humanity
- ▶ War crimes
- ▶ Piracy
- ▶ Racial discrimination
- ▶ Genocide
- ▶ Apartheid
- ▶ Slavery
- ▶ Torture

FOUNDATIONAL ELEMENTS

States must comply with the obligation – consistent with customary and, where applicable, conventional international law – to recognize, respect, protect, fulfil and promote the right of indigenous peoples to self-determination, conceived as the right to decide their political status and to determine what their future will be, in compliance with relevant rules of international law and the **principle of equality and non-discrimination**.

ILA COMMITTEE REPORT SOFIA, 2012

The relevant areas of Indigenous peoples' rights with respect to which the discourse on customary international law arises are **self-determination, autonomy or self-government**, cultural rights and identity, land rights as well as reparation, redress and remedies.

ILA COMMITTEE REPORT THE HAGUE, 2010

Article 4

All elements affirming the right of self-determination cannot mean that Indigenous self-determination can only be exercised within the parameters of article 4. Illogical.

Article 46(2)

The principle of territorial integrity already exists in international law and cannot be validly expanded upon by the UN Declaration.

INACCURACIES

The right to free, prior and informed consent (FPIC)

FPIC is the principle that a community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy or otherwise use. FPIC is now a key right of Indigenous peoples in international law and jurisprudence.

Informed, non-coercive negotiations between investors, companies or governments and Indigenous peoples prior to development or other enterprises on their lands, territories and involving their resources. Those who wish to use the same must enter into dialogue and negotiations with them. The Indigenous peoples concerned have the right to decide whether they will agree to the project or not once they have a full and accurate understanding of the implications of the project on them and their LTRs.

Genuine measure of “control” and self-determination.

Right to determine identity and membership.

FOUNDATIONAL RIGHTS

- ▶ Indigenous peoples' rights to lands, territories and resources
- ▶ Inherent rights to LTRs
- ▶ Profound, multi-dimensional relationship to LTRs
- ▶ Economic, social, cultural, political and legal dimensions
- ▶ Customary international law nature of Indigenous land rights

FOUNDATIONAL RIGHTS

- ▶ International Whaling Commission, AEWC
- ▶ Handbooks by the Inter-Parliamentary Union, UNICEF
- ▶ UN Global Compact Business Reference Guide to the UN Declaration on the Rights of Indigenous Peoples
- ▶ UN Guiding Principles on Business and Human Rights

POSITIVE EXAMPLES

Tribal and Traditional Councils in Alaska

- self-government and self-determination

- over their members

- wedge between land and people

Comprehensive land claims agreements in Canada

- self-determination

- co-management of resources

Government of Greenland

- autonomy over affairs within and outside of Greenland

INUIT AND THE QUEST FOR EQUALITY



The CDC has reported that murder is the third-leading cause of death among American Indian and Alaska Native women and that rates of violence on reservations can be up to ten times higher than the national average.

Intimate partner violence

Institutional racism is the process of purposely discriminating against certain groups of people through the use of biased laws or practices. Often, institutional racism is subtle and manifests itself in seemingly innocuous ways, but its effects are anything but subtle.

MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS



Harrowing example of the urgent need for equality, respect and recognition of basic human rights

The *UN Declaration* has diverse legal effects and reflects rights already found in human rights treaties and customary international law as well as conventional international law.

Since US endorsement in 2010, the *UN Declaration* is a consensus international human rights instrument. It has been reaffirmed on numerous occasions by consensus by the General Assembly.

The *UN Declaration* is regarded as an authoritative source of guidance for diverse institutions, including parliaments, governments, courts, national human rights institutions and human rights treaty bodies. Yet, the quest for equality continues.

CONCLUSION



QUYANAQ
Thank you