

*Expert Seminar in Support of the Work of the  
UN Expert Mechanism on the Rights of Indigenous Peoples  
Establishing effective monitoring mechanisms at the national and regional levels for the implementation of the  
UN Declaration on the Rights of Indigenous Peoples*



THE UNIVERSITY OF BRITISH COLUMBIA



UNITED NATIONS  
HUMAN RIGHTS  
OFFICE OF THE HIGH COMMISSIONER

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<b>Panelist</b>	Paul Joffe
<b>Panel</b>	Panel 4: Legal and academia
<b>Time</b>	9.00 – 10.35
<b>Date</b>	Friday 24 February 2023
<b>Location</b>	Robert H. Lee Alumni Centre University of British Columbia 6163 University Blvd Vancouver, BC

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Good morning, everyone.

It is a pleasure to join all of you today at this important Seminar.

The Concept Note for this Seminar potentially includes a broad range of issues - at both domestic and international levels – which serve to enrich the ongoing work on Indigenous issues. A key purpose of this Seminar is “to provide ... EMRIP with contextualized information, in achieving the ends of the Declaration through the establishment of monitoring mechanisms.”

This morning I would like to begin by briefly focusing on *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*,<sup>1</sup> which was enacted by the Parliament of Canada and entered into force on June 21, 2021.

This legislation is based on draft legislation initially tabled by then Cree Member of Parliament Romeo Saganash – who many of you from other countries may have met over the years at the United Nations in Geneva or in New York.

A central requirement in this federal Act is to ensure, without delay, the application of the *UN Declaration* in Canadian law. Section 2(3) of the Act makes clear:

Nothing in this Act is to be construed as delaying the application of the Declaration in Canadian law. Therefore, no person, corporation or Member of Parliament in Canada – no one – can interpret this federal Act so as to delay application of the *UN Declaration* in Canadian law.

Section 4(a) of the Act affirms that the “purposes of this Act” include affirming the *Declaration* “as a universal international instrument with application in Canadian law”. Section 4(b) of the Act refers to the national action plan that must be carried out under this federal Act.

In this whole context, it is worth underlining the legal significance of the *UN Declaration* – which to date has been reaffirmed by the UN General Assembly by consensus at least 15 times.<sup>2</sup> In addition, for the past six years, the UN

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<sup>1</sup> Statutes of Canada 2021, c. 14 (entered into force on June 21, 2021).

<sup>2</sup> General Assembly, *Rights of indigenous peoples*, UN Doc. A/RES/77/203 (15 December 2022) (adopted without vote), preamble; General Assembly, *Rights of indigenous peoples*, UN Doc. A/RES/76/148 (16 December 2021) (adopted without vote), preamble; General Assembly, *Human*



General Assembly has repeatedly “**recognized the importance of free, prior and informed consent, as outlined in the United Nations Declaration on the Rights of Indigenous Peoples**”<sup>3</sup>.

All of these elements that I have just mentioned are crucial to implementing an action plan – and are significant in reinforcing Indigenous Peoples’ right to self-determination and Indigenous Peoples’ free, prior and consent.

It is important to underline here that any proposed monitoring mechanisms that are being addressed in this Expert Seminar must take into consideration any other international human rights instrument that explicitly mentions and applies the *UN Declaration* in specified regions. In the *American Declaration on the Rights of Indigenous Peoples*, which includes North, South and Central America and the Caribbean and was adopted by consensus by the Organization of American States (OAS) General Assembly on 15 June 2016.<sup>4</sup> This, too, is relevant to the National Action Plan in Canada as well as other monitoring of the UN Declaration implementation throughout the Americas.

Indigenous Peoples in the Americas<sup>5</sup> now have two declarations that explicitly affirm and elaborate upon their human rights and related State obligations. The *American Declaration on the Rights of Indigenous Peoples* includes some provisions that fall below the *United Nations Declaration on the Rights of Indigenous Peoples*<sup>6</sup> and others that go beyond. In addition, both include provisions that the other does not have.

**In any specific situation, the minimum standard is the one that is *higher* in these two human rights instruments.** In this regard, I can provide this Expert Seminar with a brief analysis for your review.

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*rights and extreme poverty*, UN Doc. A/RES/75/175 (16 Dec 2020) (adopted without vote), preamble; General Assembly, *Intensification of efforts to prevent and eliminate all forms of violence against women and girls*, UN Doc. A/RES/75/158 (16 December 2020) (75-0-11); General Assembly, *Rights of indigenous peoples*, UN Doc. A/RES/75/168 (16 December 2020) (adopted without vote), preamble; General Assembly, *Rights of indigenous peoples*, UN Doc. A/RES/74/135 (18 December 2019) (adopted without vote), preamble; General Assembly, *Rights of indigenous peoples*, UN Doc. A/RES/73/156 (17 December 2018) (adopted without vote), preamble; General Assembly, *Human rights and extreme poverty*, UN Doc. A/RES/73/163 (17 December 2018) (adopted without vote); General Assembly, *Rights of the child*, UN Doc. A/RES/72/245 (24 December 2017) (vote 162-0-1 abstention (Palau)); General Assembly, *Rights of indigenous peoples*, UN Doc. A/RES/72/155 (19 December 2017) (adopted without vote), preamble; General Assembly, *Enhancing the Participation of Indigenous Peoples’ Representatives and Institutions in Meetings of Relevant United Nations Bodies on Issues Affecting Them*, UN Doc. A/RES/71/321 (8 September 2017) (adopted without vote), preamble; General Assembly, *Rights of indigenous peoples*, UN Doc. A/RES/71/178 (19 December 2016) (adopted without vote), preamble; General Assembly, *Rights of indigenous peoples*, UN Doc. A/RES/70/232 (23 December 2015) (adopted without vote), preamble; General Assembly, *Rights of indigenous peoples*, UN Doc. A/RES/69/159 (18 December 2014) (adopted without vote), preamble; General Assembly, *Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples*, UN Doc. A/RES/69/2 (22 September 2014) (adopted without vote), para. 3.

<sup>3</sup> General Assembly, *Rights of indigenous peoples*, UN Doc. A/RES/77/203 (16 December 2022) (adopted without vote), preamble; General Assembly, *Rights of indigenous peoples*, UN Doc. A/RES/76/148 (16 December 2021) (adopted without vote), preamble; General Assembly, *Rights of indigenous peoples*, UN Doc. A/RES/74/135 (18 December 2020) (adopted without vote), preamble; General Assembly, *Rights of indigenous peoples*, UN Doc. A/RES/74/135 (18 December 2019) (adopted without vote), preamble; General Assembly, *Rights of indigenous peoples*, UN Doc. A/RES/73/156 (17 December 2018) (adopted without vote), preamble; General Assembly, *Rights of indigenous peoples*, UN Doc. A/RES/72/155 (19 December 2017) (adopted without vote), preamble (emphasis added).

<sup>4</sup> *American Declaration on the Rights of Indigenous Peoples*, AG/RES. 2888 (XLVI-O/16), adopted without vote by Organization of American States, General Assembly, 46<sup>th</sup> sess., Santo Domingo, Dominican Republic, 15 June 2016.

<sup>5</sup> In this context, the Americas refers to North, South and Central America and the Caribbean.

<sup>6</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res. 61/295 (13 September 2007), Annex.



In analyzing the *American Declaration* or the *UN Declaration*, no specific provision should be interpreted in isolation. Rather each provision should be interpreted in the context of the whole instrument and other regional and international human rights law.

Article XLI of the *American Declaration* provides: “The rights recognized in this Declaration and the United Nations Declaration on the Rights of Indigenous Peoples constitute the minimum standards for the survival, dignity, and well-being of the indigenous peoples of the Americas.”

The *American Declaration*, article XL affirms: “Nothing in this Declaration shall be construed as diminishing or extinguishing rights that **indigenous peoples now have** or may acquire in the future.” Thus, for example, in any given situation, if the *UN Declaration* has a higher standard than that in the *American Declaration*, the standard in the *UN Declaration* would apply.

### ***American Declaration and UN Declaration: Minimum Standards***

1. The *American Declaration on the Rights of Indigenous Peoples* was adopted by consensus by the Organization of American States (OAS) General Assembly on 15 June 2016.<sup>7</sup> This was a significant development, with potentially far-reaching positive implications for Indigenous Peoples.<sup>8</sup>
2. Indigenous Peoples in the Americas<sup>9</sup> now have two declarations that explicitly affirm and elaborate upon their human rights and related State obligations. The *American Declaration on the Rights of Indigenous Peoples* includes some provisions that fall below the *United Nations Declaration on the Rights of Indigenous Peoples*<sup>10</sup> and others that go beyond. In addition, both include provisions that the other does not have.
3. **As concluded in this analysis, in any specific situation, the minimum standard is the one that is *higher* in these two human rights instruments.**

<sup>7</sup> *American Declaration on the Rights of Indigenous Peoples*, AG/RES. 2888 (XLVI-O/16), adopted without vote by Organization of American States, General Assembly, 46<sup>th</sup> sess., Santo Domingo, Dominican Republic, 15 June 2016.

<sup>8</sup> Both the UN General Assembly and the UN Human Rights Council are now officially using the term “Indigenous Peoples” in their resolutions. (not “Indigenous peoples” or “indigenous peoples” as in the past). See General Assembly, *Rights of Indigenous Peoples*, UN Doc. A/RES/77/203 (15 December 2022) (without a vote); and Human Rights Council, *Rights of Indigenous Peoples*, UN Doc. A/HRC/RES/51/18 (12 October 2022) (without a vote).

In light of this latest international standard, it would be important to use the term “Indigenous Peoples”. This is consistent with the progressive development of international law. However, when quoting earlier instruments, one would reproduce the exact wording used at that time.

<sup>9</sup> In this context, the Americas refers to North, South and Central America and the Caribbean.

<sup>10</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res. 61/295 (13 September 2007), Annex.



4. In analyzing the *American Declaration* or the *UN Declaration*, no specific provision should be interpreted in isolation. Rather each provision should be interpreted in the context of the whole instrument and other regional and international human rights law.
5. Article XLI of the *American Declaration* provides: “The rights recognized in this Declaration and the United Nations Declaration on the Rights of Indigenous Peoples constitute the minimum standards for the survival, dignity, and well-being of the indigenous peoples of the Americas.”
6. The *American Declaration*, article XL affirms: “Nothing in this Declaration shall be construed as diminishing or extinguishing rights that **indigenous peoples now have** or may acquire in the future.” Thus, in any given situation, if the *UN Declaration* has a higher standard than that in the *American Declaration*, the standard in the *UN Declaration* would apply.
7. Article 43 of the *UN Declaration* affirms: “The rights recognized herein constitute the minimum standards for the survival, dignity, and well-being of the indigenous peoples of the world.”
8. Article 45 of the *UN Declaration* further affirms: “Nothing in this Declaration may be construed as diminishing or extinguishing the rights that indigenous peoples have now or **may acquire in the future.**”
9. While the *American Declaration* reaffirms some rights of Indigenous Peoples in the Americas in exactly the same wording as in the *UN Declaration*, other rights are elaborated differently. Should such rights include a **higher** standard than what is in the *UN Declaration*, they would constitute new minimum standards in both the *UN Declaration* and the *American Declaration*.