Breakout 2C: International Relations

Chair: Richard Mundy

Speaker 1: Jane Hooker

Presentation: Indigenous Engagement in International Agreements and International Indigenous Collaboration: The New Zealand Context.

New Zealand government has a (2001) Strategy for engagement with Maori on international treaties, as well as a general strategy on engagement with Maori. This is the case not only because there is a duty to consult, but also because the Maori are significant players in the New Zealand economy.

When negotiating international trade agreements, New Zealand negotiates inclusion of a clause enabling New Zealand to take measures to fulfil its treaty obligations (e.g. preferential treatment for Maori).

New Zealand plays a supporting role in Maori international collaboration with other indigenous people. E.g. Chinese Taipei, Japan (Ainu people), Malaysia (Sabah people).

Speaker 2: Risa Schwartz

"Indigenous people have always been international"

Duty to consult and accommodate has so far been narrowly focused on projects, rather than on broader public policy and international agreements. Some modern treaties include a clause requiring consultation prior to Canada entering into an international agreement that could impact indigenous rights. Some agreements reference participation, rather than consultation. Several specific UNDRIP articles support participation of indigenous people. Declaration of aboriginal title raises questions about ownership of resources being traded.

Canada is supporting the inclusion of an indigenous chapter in current NAFTA renegotiations. The chapter could include topics such as: rights recognition, participation of indigenous peoples, and promotion of economic opportunities, trade, investment, and traditional knowledge. Indigenous people would also be referenced in other chapters. Similar measures in the CFTA – the recent national Canada Free Trade Agreement. Side-agreements under the Trans Pacific Partnership may be another forum for indigenous participation.

Speaker 3: Kris Statnyk

The Vuntut Gwich'in First Nation (VGFN) has been implementing their treaty for 20. The Gwitchin nation long predates international borders. The Yukon/Alaska border was only surveyed through VGFN territory in 1889. Gwitchin homelands mirror the range of the porcupine river caribou herd. Gwitchin do not recognize the border any more than do the caribou.

Gwitchin have been engaged in diplomacy for decades in order to maintain protection of “The sacred place where life begins”, the calving grounds of the porcupine caribou in the arctic national wildlife refuge. Gwitchin have averted 40 attempts over the years to pass bills in the US congress that would removed protection. Currently this battle is repeating itself again, with support from the Canadian embassy.

Speaker 4: Craig Benjamin

Indigenous peoples are international actors. Indigenous peoples have a right to participate whenever their rights may be affected. The honour of the Crown is at stake in how Canada engages.

UNDRIP was the first case where indigenous representatives were at the table at the UN, although UN still only formally recognizes nation states. UNDRIP specifies not only rights of indigenous peoples, but corresponding responsibilities of states. UNDRIP consistently refers to “consultation and cooperation” with indigenous peoples and never to consultation alone.

Q&A

Under the more recent modern treaties, there is a reciprocal obligation on both parties to consult the other regarding international measures. Risa’s paper on to potential contents of an indigenous chapter in NAFTA is available online.

The Gwitchin have other international legal tools that they will use if needed to protect their rights if congress removes protections on ANWR.

The concept of territorial integrity of states is rooted in the right to self-determination.