

# Other — The Treaty and Indigenous Peoples' Rights in the 21st century

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## Edwina Hughes

Edwina Hughes is the Coordinator of Peace Movement Aotearoa, the national networking peace organisation, which works on peace, social justice and human rights issues. One of Peace Movement Aotearoa main focuses is providing information, education and resources on the Treaty and human rights from a Pākehā perspective.

Until comparatively recently, the legal ideology developed by European nations more than five hundred years ago, to justify the occupation and exploitation of lands that were not theirs, continued to determine the position of indigenous peoples and their rights in international law. While a better concept of indigenous peoples' rights was tentatively beginning to enter the international arena in the twentieth century, it was not until after the establishment of the United Nations (UN) that progress finally began to be made - painfully slowly at first, but with increased impetus over the past twenty five or so years.

The presentation started with an overview of how indigenous peoples' rights have been viewed by others from the time of Columbus's 'discovery' of the 'new world', and then focused on recent developments. There has been a long history of engagement in international law by indigenous peoples - on the one hand, through their own mechanisms and contacts with other peoples and nations; and on the other, in European concepts of international law which is largely where international human rights law as it is now understood came from. The original unfortunate notion in European law - that while indigenous peoples did have some rights which could be recognised by 'civilised' nations, they would be inferior rights because indigenous peoples were considered to be inferior beings - has been used to justify gross human rights violations for the past five centuries, including genocide and the total extinction of some indigenous communities. The concept of lesser human rights for people somehow considered to be less human has proved to be remarkably persistent, and its echoes remain today - as seen, for example, in the NZ government's vote against the UN Declaration on the Rights of Indigenous Peoples.

While some indigenous peoples, including Maori, sent representatives to the League of Nations (1919 to 1939) to demand recognition of their rights, little progress was made there. With the establishment of the UN in 1945, more possibilities were available - after all, the UN Charter speaks of "respect for the principle of equal rights and self-determination of peoples" and "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction". So why, indigenous peoples asked, did these fine words apparently not apply to them?

Similarly, the shared Article 1 of both international human rights Covenants adopted by the UN General Assembly in 1966 states: "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."

Following this introductory section, the presentation covered the two main types of UN bodies which have a particular role in human rights promotion, protection and standard setting - the Charter bodies and the human rights treaty monitoring bodies. The role of the General Assembly, ECOSOC and the Permanent Forum on Indigenous Issues, the Human Rights Council and its Special Procedures (including the Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People), the Expert Mechanism on the Rights of Indigenous Peoples, and processes such as the Universal Periodic Review were outlined, along with the different types of human rights instruments. A summary of the mandates and jurisprudence of the UN human rights treaty monitoring bodies and regional human rights institutions relevant to indigenous peoples' rights was reviewed. The presentation then moved on to a timeline of the development of the UN Declaration on the Rights of Indigenous Peoples (the UN Declaration), and a précis of its contents and status in international law.

The presentation concluded with an outline of how all of the above relate to the Treaty of Waitangi (the Treaty), along with some recent examples of how international law relating to indigenous peoples' rights has been used in Treaty work and education by Peace

Movement Aotearoa, a mainly Pakeha organisation, working with Maori organisations to intentionally provide information from our different perspectives; and some suggestions about how other organisations might integrate international human rights law into their Treaty work.

The discussion which followed focused in part on the summary of the UN treaty monitoring bodies jurisprudence relating to indigenous peoples and their rights, and the standards which have emerged, for example: it is not acceptable to provide certainty for the majority at the expense of an indigenous minority; decisions relating to indigenous peoples rights and interests should not be taken without their free, prior and informed consent; current developments must be considered in the context of historical inequities; and that cultural values and belief systems are as defined by those in a particular culture, not by others.

The other focus of discussion was the UN Declaration on the Rights of Indigenous Peoples, and the NZ government's unjust and unjustifiable opposition to it.

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Notes by Joan Macdonald