

TESTIMONY BEFORE
THE SENATE COMMITTEE ON INDIAN AFFAIRS

Hearing on “Setting the Standard: Domestic Policy Implications of the UN Declaration
on the Rights of Indigenous Peoples”

James Anaya
unsr.jamesanaya.org

June 9, 2011

Mr. Chairman, members of the Committee, my name is James Anaya. I am a professor at the University of Arizona James E. Rogers College of Law in Tucson. Earlier this year I was reappointed by the United Nations Human Rights Council as its Special Rapporteur on the Rights of Indigenous Peoples. My mandate from the Council, whose membership includes the United States, is to address the human rights conditions of indigenous peoples worldwide through various means, including by promoting the Declaration on the Rights of Indigenous Peoples.

I would like to begin my testimony by stressing that the Declaration is an expression of a global consensus about the rights of indigenous peoples that has developed over decades, upon a foundation of widely accepted international human rights principles. The Declaration makes clear that indigenous peoples are subjects of international concern, something that was understood by the founders of this country and in early Supreme Court jurisprudence but was lost to subsequent generations of political actors.

The various provisions of the Declaration build upon core principles of self-determination and equality, within a model of social cohesion that values diverse cultures and peoples. In fundamental respects the Declaration is a remedial instrument, aimed at addressing patterns of social exclusion, discrimination, cultural suffocation, and even

physical extermination that indigenous peoples have experienced in ways not felt by others. The Declaration itself calls upon States and the international community as a whole to take affirmative measures to bring the actual conditions of indigenous peoples into conformity with the rights that are articulated in this instrument.

The endorsement of the Declaration by the Obama administration on behalf of the United States is a welcomed signal to the world that the United States joins in both the global consensus about the rights of indigenous peoples and in the concerted call for action to make those rights a reality. Although the Declaration is not itself a treaty, it is a strongly authoritative statement that builds upon the provisions of multilateral human rights treaties to which the United States is bound as a party, within the broader obligation of the United States to advance human rights under the United Nations Charter.

The Declaration is meant to serve as a frame of reference for reflecting upon the existing conditions of indigenous peoples and the laws and policies that affect them, as well as a standard for developing needed reforms and programmatic action both within domestic settings and at the international level. Legislative bodies, such as this one, should look to the Declaration to help guide its priorities and action, and I'm hopeful this hearing will be an important step toward that end. The Declaration has bearing as well for executive agencies whose actions and responsibilities touch upon the interests of Native Americans. I am encouraged to hear that, already, a number of executive agencies are learning about the Declaration and considering how to use it in decision making. Additionally, the courts should take account of the Declaration in appropriate cases concerning indigenous peoples, just as federal courts, including the Supreme Court, have

referred to other international sources to interpret statutes, constitutional norms, and legal doctrines in a number of cases.

Finally, I would like to point out that the United States has important role to play in promoting the Declaration both at home and abroad. In addition to guiding action concerning Native Nations within the United States, it should also help guide the federal government's foreign aid, which in many places across the globe touches upon the lives of indigenous peoples.

And the Declaration should be an important focal point of the United States' cooperation to advance human rights in multilateral settings. In my role as United Nations Special Rapporteur on the Rights of Indigenous Peoples, I look forward to pursuing discussions with the United States Government and tribal leaders through appropriate channels on how the Declaration can help catalyze action to address the aspirations of indigenous peoples in the country and to fulfill unfulfilled promises. I believe that the United States' cooperation with the international system in this and other ways will not only help to advance the Declaration's objectives in this country, but will also contribute to greater cooperation within the United Nations and worldwide to advance the rights of indigenous peoples in keeping with the Declaration.

The United States was a principal leader in the UN's adoption in 1948 of the Universal Declaration of Human Rights and has since been a leader in pursuing implementation of that Declaration. The United States can and should now play that leadership role again.

Thank you Mr. Chairman, and members of the Committee, for your kind attention.