

ON WHOSE AUTHORITY: THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES AND LAND USE IN CANADA

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ABSTRACT

Industrial development on their traditional lands is a historic point of conflict between Indigenous people and the Canadian state. The UN Declaration of the Rights of Indigenous Peoples guarantees Indigenous people rights to “determine...use of their lands.” UNDRIP adoption does not affect the basic character of Indigenous-State relations in settler-colonial contexts such as Canada. States may recognize expanded civil and cultural rights but cannot recognize rights to determine land use, a fundamental aspect of political sovereignty.

BACKGROUND

- ❑ UNDRIP Article 32: Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
- ❑ Canada supported UNDRIP, but did not sign into law, on May 10, 2016.
- ❑ British Columbia passed UNDRIP legislation on October 25, 2019.



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Members of Sheshatshiu Innu First Nation protest Muskrat Falls hydro project.
Justin Brake / TheIndependent.ca

METHODOLOGY

I compare two cases of Indigenous protest against development in an interpretive case study to find effects of UNDRIP adoption on Canadian state response.

Muskrat Falls,
Labrador
2013-2017

- Inuit, Innu, and Nunat-Kavummiut opposed hydro dam project. Would disrupt traditional hunting, fishing, impact on health. Pre-UNDRIP.

Coastal Gas
Link, B.C.
2019-2020

- Wet'suwet'en hereditary Chiefs opposed gas pipeline supported by Band Council Chiefs. Post-UNDRIP.

FINDINGS

The Muskrat Falls protests resulted in an agreement with the government of Newfoundland to hold an independent environmental and human impact assessment and creation of an independent oversight body with Indigenous governments, provincial and federal government and industry representation. The project went ahead.

The Wet'suwet'en protests ended after Coastal Gas Link won a Court-ordered injunction to continue work on the project. The protests led to a Memorandum of Understanding between Canada and the hereditary Chiefs setting up a process to recognize hereditary governance in new negotiations. The project has not been halted.

DISCUSSION

UNDRIP adoption does not appear to result in Canadian state acceptance of Indigenous refusal of development on their traditional lands. Expanded rights to consultation and respect for cultural practices may be respected. UNDRIP may not address Indigenous peoples right to 'freely determine their political status and freely pursue their economic, social and cultural development,' up to and including the right to assert sovereign dominion over their lands. UNDRIP ultimately recognizes only the authority of the settler-colonial state.

References:

United Nations. "United Nations Declaration on the Rights of Indigenous Peoples,"