Selective endorsement without intent to implement: indigenous rights and the Anglosphere

Sheryl R. Lightfoot*

University of British Columbia, New York University

In human rights commitment theory, state commitments to international regimes are generally interrogated as a binary calculation – either a state commits to a rights regime or it does not. This binary remains the dominant standard largely because existing scholarship focuses on state ratification of human rights treaties. However, when the analysis of state commitment is opened up to include human rights instruments other than treaties (e.g. human rights declarations), many more possibilities of nuanced state commitment behaviour can emerge in the grey zone between commitment and non-commitment. For example, if state commitments are defined more broadly to include public endorsements and expressions of support for human rights declarations, states exhibit a wider variety of commitment behaviour beyond the binary of ratification or non-ratification. This article aims to identify and discuss one such nuance of state commitment behaviour: the practice of selective endorsement, a pattern that lies at the intersection of rationalist and constructivist expectations on state commitment behaviour. The pattern of endorsements of the United Nations Declaration on the Rights of Indigenous Peoples by Anglosphere states demonstrates the practice of selective endorsement. By selectively endorsing Indigenous rights, the Anglosphere states: (1) removed concerns over the legitimacy of the process by which such rights norms emerged; (2) underscored the normative importance of this particular cluster of norms while simultaneously qualifying their status; and (3) strategically, collectively and unilaterally wrote down the content of the norms themselves so that they would align with the community’s current policies and practices thus assuring compliance without any intent of further implementation. Indigenous rights activists must continue to place substantial political and moral pressure on states, demanding effective domestic implementation of the original Indigenous rights norms, regardless of the Anglosphere’s selective endorsement of the Indigenous Rights Declaration.

Keywords: Indigenous peoples; human rights; activism; international law

*Email: Sheryl.lightfoot@ubc.ca
scholarship that opens up this dichotomy and interrogates beyond the binary of state commitment and non-commitment. Understanding of the variances in state commitment behaviour will be advanced when additional nuances of state commitments are considered. For example, if state commitments are defined more broadly to include public endorsements and expressions of support for human rights declarations, states exhibit a wider variety of commitment behaviour beyond the binary of ratification or non-ratification. This article aims to identify and discuss one such nuance of state commitment behaviour: the practice of selective endorsement.

Selective endorsement
While existing scholarship defines state commitment as 'each government's decision to ratify a particular treaty text', this article deliberately expands the definition of state commitment to include state endorsements and public expressions of support for human rights declarations. Unlike human rights treaties, declarations are not legally binding, and state commitments to human rights norms expressed in declarations are even less enforceable than their human rights treaty commitments. Yet, when a state endorses or expresses support for a human rights declaration, it is still making a public commitment to a cluster of human rights norms. While not enforceable international law, human rights declarations do serve a powerful function by holding states morally and politically accountable to human rights norms. So, a broader definition of state commitment behaviour is highly relevant to the study of human rights norm emergence.

Most often, a state's commitment to a cluster of rights matches its intended implementation, defined as domestic policy, legal and institutional changes to align with the norms. In practice, this means that if a state commits to a rights regime, it intends to follow that commitment toward implementation, making domestic changes as necessary to comply with the regime. Often, states commit to regimes that already align with their domestic practices, making no further implementation measures necessary and compliance with the regime easy. Beth Simmons (2009) identifies several other possibilities of commitment behaviour that she calls 'false positives' and 'false negatives'. 'False positives' are when ambivalent governments strategically ratify treaties in order to avoid international or domestic criticism. 'False negatives' occur when a state's ratification procedures prevent that government from committing to a treaty that is normatively already in alignment with its values and behaviour. For example, the United States stringent ratification procedures often prevent it from formally committing to many treaties that reflect American values and existing domestic practices.

In predicting state commitment, rationalists argue that states are strategically instrumental, choosing to commit only to norms and international regimes that align with their interests. Constructivists, on the other hand, argue for a process of norm socialisation where state commitments to human rights norms come to align with global norms over time, eventually resulting in implementation and compliance. For constructivists, such alignment occurs not only because states fear the consequences of nonalignment, but because a logic of appropriateness dictates that state commitment should match the international norm.

Yet, what type of commitment behaviour can occur when an international human rights regime emerges that directly conflicts with the interests of liberal, democratic, human rights-advocating states? In other words, implementation of the international rights regime in question would require significant, expensive and politically challenging alterations to the state's legal, economic and/or political institutions. In such cases, rationalist
theory would predict that states would be strategically instrumental and not commit to such a set of norms. Constructivist theory, on the other hand, would predict that norm socialisation would encourage such states to conform to the rights regime over time, not just because of negative consequences but because the state comes to align its identity and interests with the expressed norms. This article will present a third possibility that lies at the intersection of rationalist and constructivist predictions of state commitment behaviour. It will argue that when an international rights regime emerges that places liberal democratic states in a dilemma such that their interests directly compete with international human rights norms, they can resolve such a dilemma through a practice of ‘selective endorsement’.

With selective endorsement, states engage in strategic logic while also maintaining their position in a community of states where compliance with international human rights norms is constitutive of the identity of the community of states. Within this community of states, compliance with human rights norms matters, and states issue strong expressions of support for the regime, as constructivists would expect. Through the practice of selective endorsement, however, this community of states collectively and unilaterally ‘writes down’ the international norms in such a way that their compliance occurs automatically, thus making further efforts at implementation unnecessary. With selective endorsement, states effectively under-commit to international norms while, at the same time, avoiding the international and domestic political costs of under-commitment and preserving their identity as human rights supporting states.

The pattern of endorsements of the United Nations Declaration on the Rights of Indigenous Peoples by Anglosphere states demonstrates this pattern of state commitment behaviour. By engaging in ‘selective endorsement’ of Indigenous rights, the Anglosphere states have simultaneously maintained their position in the human rights-advocating, international community of states without any intent of implementing international Indigenous rights norms domestically. As the following case will demonstrate, the practice of selective endorsement is comprised of several elements. In selectively endorsing Indigenous rights, the Anglosphere states: (1) removed concerns over the legitimacy of the process by which such rights norms emerged; (2) underscored the normative importance of this particular cluster of norms while simultaneously qualifying their status; and (3) strategically, collectively and unilaterally wrote down the content of the norms themselves so that they would align with the community’s current policies and practices thus assuring compliance without any intent of further implementation.

**Indigenous rights and the Anglosphere**

The United Nations Declaration on the Rights of Indigenous Peoples (‘the Declaration’ or ‘the Indigenous Rights Declaration’) passed the General Assembly on 13 September 2007 with 144 member states voting for the declaration, and only four member states voting against: the United States, Canada, New Zealand and Australia – the four largest settler states in the Anglosphere. During the UN General Assembly vote on the Indigenous Rights Declaration, the Anglosphere clearly demonstrated its unity vis-à-vis Indigenous rights by voting as a bloc and standing notably apart from the rest of the world, which voted overwhelmingly in favour of the declaration. As Shestack observes, international human rights law has become so globalised in recent decades and carries such moral force that ‘nations who have not assented to (human rights) standards are compelled to explain their departure from the world view’. Since these countries stood alone in opposition to a global human rights standard, the four countries of the Anglosphere, usually known for their high level of human rights commitment and implementation, were compelled to explain their opposition.
Immediately following the General Assembly vote, each of the Anglosphere countries issued simultaneous public statements explaining their negative votes. The four complained that the declaration was incompatible with their constitutional democracies, each expressing similar misgivings about the language used in the declaration, the transparency of the process, incompatibility with their domestic laws and their commitment to the equality of all of their citizens. All four of them objected to the declaration's provisions on self-determination as well as land and resources rights. All four emphasised that the declaration would not be binding on them.\textsuperscript{10} In the months that followed the General Assembly vote, each of these states faced a combination of diplomatic criticism on the international level, as well as unhappy domestic Indigenous\textsuperscript{11} constituents, all dissatisfied with these states' negative official stance against the global consensus on Indigenous rights, as articulated in the declaration.

Between April 2009 and December 2010, each of these four countries, in turn, officially changed position on the declaration, issuing formal statements of 'support' or 'endorsement' for the declaration. Australia was the first, in April 2009, when Indigenous Affairs Minister Jenny Macklin gave a speech announcing the official change in Australia's position on the declaration to one of 'support'.\textsuperscript{12} A year later, on 19 April 2010, during the opening ceremony of the United Nations Permanent Forum on Indigenous Issues, New Zealand's minister of Maori affairs, the Honourable Dr Pita Sharples, surprised the world with his announcement that New Zealand would also now be supporting the declaration.\textsuperscript{13} Canada took a less public approach, releasing, without fanfare, a statement on the website of Indian and Northern Affairs Canada on 12 November 2010 that it would now be formally endorsing the declaration.\textsuperscript{14} The Obama administration in the United States, after an extended review and tribal consultation process, announced its change of position on 16 December 2010 during presidential remarks at the White House Tribal Nations Conference. Near the end of his remarks, Obama briefly announced that the United States would be 'lending its support' to the declaration.\textsuperscript{15}

After the Anglosphere states voted against the Declaration on the Rights of Indigenous Peoples in 2007, they became the subjects of an international moral persuasion campaign, intended to publicise their opposition to Indigenous rights, embarrass them and pressure them to change their positions. Between 2007 and 2009/2010, the four Anglosphere countries were diplomatically chastised by a number of international human rights bodies for their opposition to the declaration.\textsuperscript{16} Additionally, the special rapporteur on the rights of Indigenous peoples, in both his annual reports and country reports, consistently called upon the four Anglosphere states to change their positions on the declaration and move toward implementation of the rights expressed therein. Furthermore, each year at the United Nations Permanent Forum on Indigenous Issues, the four states were subjected to a virtual barrage of public statements criticising them for their stance against the declaration. At the same time, Indigenous and non-Indigenous NGOs the world over began a letter-writing campaign to the president of the United States and the prime ministers of the other three states, calling on them to support Indigenous rights as articulated in the declaration. Letter writing occurred not only to the host governments of these NGOs, but NGOs also wrote repeated letters to the leaders of the other three governments as well.

This international moral persuasion campaign successfully exposed an unresolved colonial ambivalence in the four Anglosphere countries. These countries are normally held up as global human rights champions but, at the same time, they had each opposed the international standard of Indigenous rights and desired to maintain their legal and institutional status quo regarding Indigenous issues. Such exposure then created a certain level of embarrassment and discomfort in these states that were unaccustomed to being chastised for their
human rights failures. It is highly likely that these four states sought relief from this exposure.

Neither the text nor the content of the declaration on Indigenous rights changed between 2007 and 2009/2010. Even considering the possibility of a highly successful and rapid moral persuasion campaign by transnational activists, if the declaration stood as such a fundamental contradiction to the democratic institutions of the Anglosphere, as each stated in 2007, why did these four countries change their position to support of the declaration within such a short period of time? On a more theoretical level, what does the pattern of Anglosphere state endorsements of the declaration tell us about the nuances of state commitments to human rights norms?

First, a brief overview will be provided of the Declaration on the Rights of Indigenous Peoples, the rights it articulates, and what implementation of Indigenous rights means for states. As Harold D. Lasswell so famously articulated in the 1930s, a fundamental question in the study of politics is to decipher “Who says what, to whom, why, to what extent, and to what effect?” Because the states of the Anglosphere demonstrated such a rapid shift in official position on a document that they initially deemed ‘fundamentally incompatible with their democratic institutions’, a content analysis of their statements will be conducted to assess where and how the shift of position occurred. These states’ 2007 public statements of explanation to the United Nations following their ‘no-votes’ on the declaration will be compared to their later statements of support in an effort to describe and categorise particular trends in these communications. This content analysis will identify the particular practice of ‘selective endorsement’ of human rights declarations. Finally, some implications of selective endorsement, both for human rights commitment theory and for Indigenous political movements on the ground, will be discussed.

The indigenous rights declaration and its expectations for states

With its adoption by the United Nations General Assembly, the Declaration on the Rights of Indigenous Peoples came to represent the international consensus on the minimum standard of Indigenous peoples’ rights that states and international organisations are obligated to respect and protect.

Les Malezer, chairperson of the Global Indigenous Caucus, pointed out in a public statement that ‘the Declaration on the Rights of Indigenous Peoples contains no new provisions of human rights. It affirms many rights already contained in international human rights treaties, but rights which have been denied to the Indigenous Peoples’. The declaration emphasises Indigenous peoples’ right to maintain and strengthen their cultures, traditions and institutions. It prohibits discrimination against Indigenous individuals, while simultaneously asserting the collective rights of Indigenous peoples to remain distinct from their surrounding societies, to pursue their own visions of development, and to promote their full and effective participation in decision-making processes on issues that may affect them.

The Indigenous Rights Declaration is a United Nations human rights declaration and not an international treaty or convention, so it is technically not a legally binding instrument under international law. While not legally binding, it does join the ranks of other important human rights declarations, such as the United Nations Charter and the Universal Declaration of Human Rights, in articulating a global standard on inherent human rights that states are morally and politically obligated to respect and promote. As stated by the United Nations Permanent Forum on Indigenous Issues, all human rights declarations are ‘not generally legally binding; however, they represent the dynamic development of international
legal norms and reflect the commitment of states to move in certain directions, abiding by certain principles. The Indigenous Rights Declaration now forms part of this international human rights consensus, operating as a significant moral and political document and representing a bare minimum standard on Indigenous peoples' rights. According to a UN press release, it represents 'a major step forward towards the promotion and protection of human rights and fundamental freedoms for all...(through)...the General Assembly's important role in setting international standards'. In a separate press release, the UN special rapporteur on Indigenous issues, Rodolfo Stavenhagen, also highlighted the significance of adding Indigenous peoples' rights to the international human rights consensus, when he stated that 'the Declaration reflects a growing international consensus concerning the rights of indigenous peoples'. Furthermore, as the current United Nations special rapporteur on the rights of Indigenous peoples, Dr James Anaya, has stated, it is not the technical legal significance of the document that should be its focus but rather, its normative legitimacy:

Whatever its legal significance, the Declaration has a significant normative weight grounded in its high degree of legitimacy. This legitimacy is a function not only of the fact that it has been formally endorsed by an overwhelming majority of United Nations member States, but also the fact that it is the product of years of advocacy and struggle by Indigenous peoples themselves.

Since normative change in international human rights can be expected to eventually alter human rights practices by states in particular directions, it is incumbent to understand what the implementation expectations are for states under the emerging Indigenous rights regime. As Victoria Tauli-Corpuz, chairperson of the United Nations Permanent Forum on Indigenous Issues (UNPFII), described, 'the Declaration will become the major foundation and reference' for UN agencies but will also serve 'as the main framework to guide States'. Tauli-Corpuz also noted that the declaration is intended to serve as a 'key instrument and tool for raising awareness on and monitoring progress of indigenous peoples' situations and the protection, respect and fulfilment of indigenous peoples rights'.

As a standard-setting tool, the 46 articles of the declaration is a holistic document and is intended to guide state action toward relationships with Indigenous peoples that are based on justice, and also to serve as a framework for mutual recognition and mutual respect. Because of the comprehensiveness of the articles, many states have expressed confusion and/or misgivings about how they are expected to implement the declaration in practice. Special rapporteur Anaya has offered the following concrete suggestions for states on how they can take initial steps towards implementation:

First, State officials as well as indigenous leaders should receive training on the Declaration on the related international instruments, and on practical measures to implement the Declaration.

Additionally, States should engage in comprehensive reviews of their existing legislation and administrative programmes to identify where they may be incompatible with the Declaration. This would include a review of all laws and programmes touching upon indigenous peoples' rights and interests, including those related to natural resource development, land, education, administration of justice and other areas. On the basis of such a review, the necessary legal and programmatic reforms should be developed and implemented in consultation with Indigenous peoples.

States should be committed to devoting significant human and financial resources to the measure required to implement the Declaration. These resources will typically be required for the demarcation or return of indigenous lands, the development of culturally appropriate
educational programmes, support for indigenous self-governance institutions and the many other measures contemplated by the Declaration.

The United Nations system and the international community should develop and implement programmes to provide technical and financial assistance to States and indigenous peoples to move forward with these and related steps to implement the Declaration, as a matter of utmost priority.27

Clearly, these expectations are high for any state, but for the Anglosphere, which were founded and settled on the basis of a legalised dispossession of Indigenous peoples’ lands and resources, the expectations are extraordinarily high. In fact, the Indigenous Rights Declaration calls on these states to begin a process of resetting the entire framework of their relationship with Indigenous peoples, away from a colonial model and toward a new relationship based on mutual respect, compensation for lost lands and resources, and Indigenous self-determination, including self-governance and control over their own lands and resources.28 Therefore, since the declaration ultimately demands significant changes to the Anglosphere’s political and legal status quo, a certain degree of resistance to the declaration would be expected, and the fact that these four states voted against the declaration on the floor of the General Assembly in 2007 is not particularly surprising. The rapid shifts, however, among each of the four states to positions of ‘support’ or ‘endorsement’ of the declaration within two to three years is surprising, given that the document itself, and its expectations on states, did not undergo any changes or diminishments. In order to explain why these four states changed their positions so rapidly, I will next perform a content analysis of the statements of explanation that each state released following their ‘no votes’ in 2007, and then compare these statements with the statements of support or endorsement issued by each state during 2009 and 2010.

A content analysis of Anglosphere states’ statements on the declaration

My comparative content-analytic approach will describe the contents of each document and the dominant trends, in an effort to make inferences about the characteristics of these official communications and their intended consequences. I will proceed in the order in which the countries changed positions on the declaration: Australia, New Zealand, Canada and, then, the United States.

Australia

Explanation of opposition to the declaration

The explanation of Australia’s 2007 ‘no’ vote on the declaration was issued by the Honourable Robert Hill, ambassador and permanent representative of Australia to the United Nations.29 In this statement, Australia articulated its view about the status of the document and expressed concerns over its content, as well as the negotiations process. Australia began by noting that it had been actively involved in the declaration process and had hoped that the document would be ‘universally accepted, observed and upheld’ but observed that this text, in its present form, ‘fails to meet this high standard’.30 Australia then expressed disappointment over the lack of opportunity for states to participate in the final stage of negotiations on the text.

Next, Australia made a series of statements on the declaration’s lack of legal status. First, Australia stated unequivocally that ‘it was the clear intention of all states that it be an inspirational declaration with political and moral force, but not legal force’ and
'not in itself legally binding nor reflective of international law' (emphasis added). Furthermore, because it does not conform to current state practice, and states do not consider themselves legally obligated to act in accordance with the declaration, it also does not 'provide a basis for legal actions, complaints, or other claims in any international, domestic, or other proceedings'.

Australia then described a series of objections to particular rights expressed in the declaration. First, Australia objected to self-determination, noting that 'self-determination applies to situations of de-colonisation and the break-up of states into smaller states with clearly defined population groups'. In an effort to distance itself from responsibility for de-colonisation as well as attempting to pull Indigenous issues back into domestic politics, Australia further noted that it:

... supports and encourages the full and free engagement of Indigenous peoples in the democratic decision-making processes in their country, but it does not support a concept that could be construed as encouraging action that would impair, even in part, the territorial and political integrity of a state with a system of democratic representative government.

Next, Australia indicated its objection to the provisions on lands and resources because 'they could be read to require recognition of Indigenous rights to lands without regard to other legal rights existing in land, both indigenous and non-indigenous'. Again, Australia made a rhetorical move to domesticate land and resources issues, stressing that 'any right to traditional lands must be subject to national laws' and that 'Australia will read the lands and resources provisions... in line with its existing domestic laws'. Australia also noted that the rights to Indigenous lands and resources, as articulated in the declaration, would simply be 'impossible to implement'.

Australia then stated its objection to the principle of free, prior and informed consent, which requires that states obtain the free, prior and informed consent of Indigenous peoples before implementing certain policies and measures that may affect them. Australia complained that the scope of this right is overly broad and therefore 'unworkable' on a practical level because it would give a sub-set of the population a veto power over the 'legitimate decisions of a democratic and representative government'.

Misgivings were then also expressed over intellectual property rights and the rights of third parties in different ownership arrangements. Concerns over the status of the declaration as customary law were expressed, as Australia again moved to domesticate Indigenous issues and exert the superiority of its national laws by stating that Indigenous customary law 'should never override national laws and should not be used selectively to permit the exercise of practices by certain Indigenous communities which would be unacceptable in the rest of the community'.

Finally, Australia wrapped up its statement with a reminder that the declaration is merely an aspirational document. Therefore, due to concerns over content, status and process, Australia could not support it and 'the Declaration will not be binding on Australia'.

Statement of support for the declaration

On 3 April 2009, Honourable Jenny Macklin, Australian minister for families, housing, community services and Indigenous affairs, made a public statement at Parliament House in Canberra that Australia would now give its 'support' to the declaration in an effort to 're-set the relationship between Indigenous and non-Indigenous Australians and moving forward towards a new future'. In fact, the entire speech reflected the theme that
Australia’s flawed Indigenous policies lie in the past and that this announcement was part of a new policy, new efforts to ‘close the gap’, ‘build trust’ and to ‘re-set relations’ between Indigenous and non-Indigenous Australians.\(^{40}\)

Far from expressing any critique of the process of negotiating the declaration, Macklin was highly complementary of the decades of hard work on the part of Indigenous peoples, which culminated in passage of this ‘landmark document’. Macklin even highlighted the contributions of five prominent Indigenous Australians whose ‘leadership and efforts were central to the development of the Declaration’.

Macklin addressed the status of the declaration, using exactly the same terminology as in the 2007 statement, but she did not cluster the issue of status into one cohesive section of the 2009 statement. Rather, the speech is peppered with indicators of Australia’s consistent assertion of the limited status of the declaration. In the two and a half page statement, the declaration is described as ‘aspirational’ a total of five times, in contrast to the United Nations’ position that the declaration represents a minimum standard on Indigenous rights that all states are obligated to recognise and protect. During a repeated expression in the middle of the speech that Australia was separating itself from the ‘flawed policies of the past’, Macklin notes that the declaration is, of course, ‘non-binding’ and thus ‘does not affect existing Australian law’.\(^{41}\)

Macklin also addressed the content concerns that were expressed in Australia’s 2007 statement, speaking to the issues of self-determination, lands and resources, and the principle of free, prior and informed consent. On self-determination, Macklin stated that ‘the Declaration recognises the entitlement of Indigenous peoples to have control over their destiny and to be treated respectfully’ while quickly adding that nothing in the declaration should be ‘used to impair Australia’s territorial integrity or political unity’.\(^{42}\) In another effort to domesticate Indigenous issues, Macklin said that ‘we want Indigenous peoples to participate fully in Australia’s democracy’\(^{43}\) while managing their own affairs and maintaining their identity and culture.

Concerning lands and resources, Macklin again moves to domesticate Indigenous issues while also pushing them into a frame of cultural heritage. Land rights disputes, she stated, should be resolved through the Australian courts, or preferably through mediation, adding that no Australian laws concerning land rights and title will be altered by Australia’s support of the declaration. She also framed land and resources rights as cultural heritage matters, noting the ‘distinctive spiritual relationship’ Indigenous peoples have ‘with land and waters’ and the fact that the Indigenous Land Fund will continue to purchase freehold land ‘to further the social, cultural and economic aims of Indigenous peoples’.\(^{44}\)

On the issue of free, prior and informed consent, Macklin carefully maintained the Australian argument that all of its citizens – Indigenous and non-Indigenous – always have equal rights and that, in order to ‘close the gap’, Indigenous Australians must have an equal right to the ‘building blocks of economic and social prosperity – healthy living, a decent house, the skills and training to get a job’.\(^{45}\) After spending several paragraphs articulating the importance of citizen equality of rights and opportunities, she then noted that ‘free, prior and informed consent’ means that Indigenous peoples have a right to a voice in domestic political decision making. Presumably, Macklin was reiterating the earlier 2007 concern that free, prior and informed consent should not allow any group a right of veto, even over matters that directly concern them.

In sum, the differences between the 2007 statement of opposition and the 2009 statement of support are minor. Objections to process legitimacy have disappeared entirely, while Australia’s assertions about the qualified status of the declaration remained notably consistent between 2007 and 2009. The main differences lie in the framing of issues over content.
Rather than asserting that the declaration's provisions for self-determination, land and resources rights and the principle of free, prior and informed consent were so objectionable as to justify opposition to the document as a whole, the 2009 statement makes important rhetorical moves to shift these issues into the realm of domestic politics and attempts to frame them as cultural heritage issues, which can be accommodated within the existing domestic institutional and legal framework in Australia. With this carefully crafted statement of support, therefore, Australia concurrently expressed support for Indigenous rights generally while carefully qualifying their legal status, and effectively wrote down the content of international Indigenous rights norms to fit their domestic status quo.

New Zealand

Explanation of Opposition to the Declaration

Like Australia, New Zealand’s Mission to the United Nations was compelled to offer an explanation for its 2007 opposition to the Declaration on the Rights of Indigenous Peoples, which was delivered by HE Ms Rosemary Banks, New Zealand’s permanent representative to the United Nations. New Zealand opposed the document due to objections about process and the legal status of the declaration. New Zealand also had issues with particular portions of the document’s content, areas it deemed to be ‘fundamentally incompatible with New Zealand’s constitutional and legal arrangements’. 47

The 2007 statement of explanation opened with an assertion of the importance of Indigenous rights to New Zealand, noting that ‘New Zealand has an unparalleled system for redress’ and that Indigenous rights ‘are integral to our identity as a nation State and as a people’. 48 Furthermore, ‘New Zealand is one of the few countries that from the start supported the elaboration of a declaration that promoted and protected the rights of indigenous peoples’. 49 New Zealand forcefully articulated its objections to the declaration’s process of negotiation, stating: ‘Lest there be any doubt, we place on record our firm view that the history of the negotiations on the Declaration and the divided manner in which it has been adopted’ 50 are problematic and were not conducted in accordance with New Zealand’s tradition of ‘constructive and harmonious’ relations between Indigenous and non-Indigenous New Zealanders. 51

New Zealand clarified the status of the declaration in international law and its applicability to New Zealand. New Zealand emphasised the mere aspirational and non-binding character of the declaration, while also emphasising that it ‘fully supports the principles and aspirations of the Declaration’. Several times in the text of this statement, New Zealand commented on the high status of Maori and the highly evolved institutions and structures in New Zealand that separate them from so many other countries of the world, where ‘indigenous peoples continue to be deprived of basic rights’. 52

New Zealand raised strong objections to several areas of the declaration’s content: lands and resources, redress, and a right of veto. Objections were also raised about the intellectual property provisions, but those were deemed less central than the above. In terms of land and resources, New Zealand commented that the declaration’s provisions simply cannot be practically implemented, and it would produce inequality between Maori and other citizens. On redress and compensation, New Zealand also asserted that the declaration’s provisions were ‘unworkable’, especially in light of the ‘unparalleled and extensive processes that exist under New Zealand law in this regard’. 53 Concerning the principle of informed consent as an alleged ‘right of veto’ by Indigenous citizens over a democratic legislature, New Zealand insisted that Maori are actually well represented in government institutions,
including parliament, and that the declaration text would create ‘different classes of citizenship, where indigenous have a right of veto that other groups or individuals do not have’.54

New Zealand’s statement of support for the declaration
In April 2010, during the Opening Ceremony of the United Nations Permanent Forum on Indigenous Issues, New Zealand’s minister of Maori affairs, Honourable Dr Pita Sharples was called upon to address the forum. He approached the microphone and began to speak in Maori, working through the usual protocols of acknowledgement that Maori culture requires – acknowledging the land, the people of that land, the spirits, the peoples in the room, as well as the mountains, rivers and the lands of the ancestors of those present. He said that he ‘came with a humble heart to celebrate the Declaration on the Rights of Indigenous Peoples’.55 The New Zealand government, he proclaimed, ‘has recently decided to support it’.56 He then repeated all of the above, in English.

New Zealand’s 2010 statement of support, delivered by Sharples, spoke positively about the process of negotiating the declaration, noting that it was an ‘historic achievement: the result of many years of discussions – 22 years in fact – and of hard work and perseverance by many people’,57 apparently indicating a complete reversal of opinion since 2007 on the issue of process legitimacy. Most of Sharples’ statement, however, focused on the issues of status and content. As with Australia, New Zealand made a particular set of rhetorical moves that seemed to domesticate Indigenous rights, frame them as issues of cultural heritage and, of course, maintain the institutional status quo within New Zealand.

Substantial energy was devoted to asserting that the declaration is only an aspirational and non-legally binding document that is consistent with New Zealand’s already strong record on Indigenous rights. Immediately after announcing New Zealand’s change in position, Sharples said, ‘In keeping with our strong commitment to human rights, and indigenous rights in particular, New Zealand now adds its support to the Declaration both as an affirmation of fundamental rights and in its expression of new and widely supported aspirations’.58 Sharples then described the centrality of the Treaty of Waitangi to New Zealand’s constitutional arrangements, noting that the ‘Treaty establishes a foundation of partnership, mutual respect, co-operation and good faith between Maori and the Crown’. Far from being ‘fundamentally incompatible with New Zealand’s constitutional and legal arrangements’, as was the case in 2007, the declaration was now described as containing ‘principles that are consistent with the duties and principles inherent in the Treaty, such as operating in the spirit of partnership and mutual respect’. At the same time, Sharples stated that the declaration ‘acknowledges the distinctive and important status of indigenous peoples, their common historical experiences and the universal spirit that underpins its text’.59 But, the New Zealand statement noted, while the declaration ‘is an affirmation of accepted international human rights’, it ‘also expresses new, and non-binding, aspirations’.60 Due to the purported aspirational and non-binding nature of the declaration, New Zealand can affirm the rights contained therein without creating conflict within the ‘legal and constitutional frameworks that underpin New Zealand’s legal system’.61 In his five-minute statement of support, Sharples used some form of the word ‘aspirational’ a total of six times. Again, the United Nations considers this document not as a merely aspirational one but as a set of minimum standards.

The statement of support also addressed the issues of content concern that had been listed in the 2007 statement of explanation. First, on land and resources, the 2010 statement of support made clear that New Zealand will determine land and resources rights and restitution ‘through its well-established processes for resolving Treaty claims’ and has
"developed its own distinct approach". Furthermore, New Zealand 'maintains, and will continue to maintain, the existing legal regimes for the ownership and management of land and natural resources."

Concerning the issue of redress, 'New Zealand acknowledges and understands the historic injustices suffered by Maori in relation to their land and resources and is committed to addressing these through the established Treaty settlement process'. In a nod to the importance of practicality and maintaining equality, New Zealand then indicated that 'redress offered in Treaty settlements is, however, constrained by the need to be fair to everyone and by what the country can afford to pay'.

On the issue of Indigenous involvement in decision making, New Zealand again deferred to its already existing domestic institutional structures and practices. New Zealand, it said, 'has developed, and will continue to rely upon, its own distinct processes and institutions that afford opportunities for Maori for such involvement'.

The statement ends with a gesture to 'acknowledge and restate the special cultural and historical position of Maori as the original inhabitants - the tangata whenua - of New Zealand' along with several proclamations of moving along 'possible paths forward' and 'encouragement and inspiration for the future'.

Just like in Australia, New Zealand's 2010 statement of support is remarkably different from the 2007 explanation of vote only in terms of process legitimacy and the framing of the highlighted content concerns. In 2007, New Zealand strongly voiced concerns over process legitimacy, while in 2010, it took a celebratory tone. In 2007, New Zealand noted, in no uncertain terms, that New Zealand viewed the declaration as aspirational and non-binding. This stance did not change at all by 2010. What did notably change, however, was how New Zealand framed the content issues of concern. While in 2007, issues of land and resources, redress and Indigenous decision making articulated in the declaration were 'fundamentally incompatible with New Zealand's constitutional and legal arrangements', by 2010, New Zealand pronounced that since the declaration was merely aspirational and non-binding, these issues could be interpreted within a domestic, cultural heritage framework. As with Australia, New Zealand dropped its concerns over process legitimacy of international Indigenous rights norms and emphasised the normative importance of Indigenous rights, all the while qualifying the legal status of Indigenous rights and writing down the norms themselves so that they aligned with existing domestic policy and institutions.

**Canada**

*Explanation of opposition to the declaration*

Canada's 2007 explanation of opposition to the Declaration on the Rights of Indigenous Peoples was delivered by Ambassador John McNee, the permanent representative to the United Nations, on 13 September, the date of the General Assembly vote. Like Australia and New Zealand, the Canadian ambassador noted particular problems with the process and content of the declaration, while maintaining its aspirational and non-binding legal status. Also like the other two countries examined thus far, Canada attempted to highlight the strength of its existing domestic institutions for resolving disputes with Indigenous peoples and aimed to separate itself from other countries that may not be so advanced in Indigenous rights.

McNee began by noting how Canada 'has long demonstrated our commitment to actively advancing indigenous rights at home and internationally', recognising that 'the situation of indigenous peoples around the world warrants concerted and concrete international action'. Despite the fact that Canada has supported all international initiatives
related to Indigenous peoples, and ‘continues to make further progress at home’, Canada expressed great ‘disappointment that we find ourselves having to vote against the adoption of this Declaration as drafted’.59

Canada expressed dissatisfaction with the process of negotiating the declaration, indicating that it ‘had long been a proponent of a strong and effective text that would promote and protect the human rights and fundamental freedoms of every indigenous person without discrimination and recognise the collective rights of indigenous peoples around the world’.70 The text, however ‘did not meet such expectations and did not address some of our concerns’. While Canada sought a document that would be strong and provide practical guidance to all states, ‘such a process had not taken place’ and that:

... the few modifications presented at the last minute to this Assembly, prepared by a limited number of delegations, do not arise from an open, inclusive or transparent process, and do not address key areas of concern of a number of delegations, including Canada.71

Like the other Anglosphere states, Canada was extremely clear that the declaration was merely aspirational, non-binding and does not represent an evolution of customary law. In order to reinforce this point, Canada ended its statement to the General Assembly noting that:

For clarity, we also underline our understanding that this Declaration is not a legally binding instrument. It has no legal effect in Canada, and its provisions do not represent customary international law.72

In terms of content, Canada had similar objections as Australia and New Zealand. Canada rejected the declaration’s provisions on lands and resources on the grounds that these provisions are ‘overly broad, unclear, and capable of a wide variety of interpretations’.73 Crucially, however, the statement noted that Canada is extremely proud of its existing recognition of Indigenous rights to lands, territories and resources, noting that the declaration may possibly put ‘into question matters that have been settled by treaty’.74

Canada also noted that the provisions requiring ‘free, prior and informed consent are unduly restrictive’.75 Again, Canada expressed concern that the declaration’s provisions enabled the ‘establishment of a complete veto power over legislative and administrative action for a particular group’, which would be ‘fundamentally incompatible with Canada’s parliamentary system’.76 Like Australia and New Zealand, Canada asserted that existing rights and its domestic processes were far superior to provisions for Indigenous rights as articulated in the declaration.

Statement of endorsement of the declaration

Canada’s 2010 statement of endorsement of the declaration stands apart from the other Anglosphere states in several respects. Unlike the other Anglosphere states, Canada’s official change of position on the declaration was handled in a relatively quiet manner. There was no large public event where a formal announcement was made. Rather, on the morning of 12 November 2010, Canada’s ambassador to the United Nations, John McNee (the same ambassador that had delivered Canada’s statement of opposition just three years earlier), met with the president of the United Nations General Assembly, Joseph Deiss, to inform him that Canada had decided to officially endorse the declaration.77 Later that afternoon, a press release appeared on the website of Indian and Northern Affairs Canada (INAC), stating that Canada was now endorsing the declaration.78 This did follow a more public,
but very brief, announcement in March 2010 by Governor-General Michaëlle Jean, during her speech from the throne, that Canada was reconsidering its position on the declaration. 26

Canada’s announcement of endorsement consisted of only six, very short paragraphs and was, by far, also the shortest and least detailed of the Anglosphere states. While there was now a complete absence of any comment on the process of negotiating the declaration, Canada’s statement made clear its position on legal status. The statement said that Canada ‘formally endorsed the United Nations Declaration on the Rights of Indigenous Peoples in a manner fully consistent with Canada’s Constitution and laws’. 27 It also noted, in paragraph four, that ‘while the Declaration is not legally binding, endorsing it as an important aspirational document is a significant step forward in strengthening relations with Aboriginal peoples’. 28 So, while the press release was short, it made Canada’s view very clear: the declaration is merely aspirational, non-binding and will be interpreted in a manner ‘fully consistent with Canada’s Constitution and laws’. 29

Unlike the other Anglosphere states, Canada’s statement of endorsement did not run down the list of content complaints present in their 2007 explanation of opposition, and then try to rectify those complaints with the present statement of endorsement by reframing those issues as domestic, cultural heritage concerns. Rather, Canada simply declared that the Indigenous Rights Declaration ‘sets out a number of principles that should guide harmonious and cooperative relationships between Indigenous peoples and States, such as equality, partnership, good faith and mutual respect’. 30 Canada, it said, ‘strongly supports these principles and believes that they are consistent with the Government’s approach to working with Aboriginal peoples’. 31 In a background statement also appearing on the INAC website, Canada indicated that while concerns over the issues of land, resources and the principle of free, prior and informed consent remained, ‘we have endorsed this document because it has the potential to contribute positively to the advancement of Indigenous rights around the world’. 32 So, in similar fashion as the other Anglosphere states, Canada asserted that it was endorsing the declaration because it could now comfortably interpret it in line with its existing domestic practices and was doing so because Indigenous peoples in other parts of the world needed their host states to recognise and respect the principles of the declaration. It is a diplomatic and rhetorical move on multiple levels, seemingly intended to reduce the significance of the declaration for Canada, domesticate Indigenous issues, maintain the status quo in terms of policy, law and institutional structures, and separate Canada from other countries ‘around the world’ where Indigenous peoples do not enjoy the benefits of Canada’s approach to Aboriginal issues, especially since Canada was aiming to ‘further reconcile and strengthen our relationship with Aboriginal peoples’. 33

United States of America

Explanation of opposition to the declaration

The 2007 explanation of opposition by the United States to the declaration was issued by Robert Hagen, US Advisor, while a second document, ‘Observations of the United States with Respect to the Declaration on the Rights of Indigenous Peoples’ circulated publicly immediately following the General Assembly vote. Hagen’s short statement concentrated on the objections of the United States to the process of negotiating the declaration and mentioned briefly a list of US objections to content, while the ‘Observations’ document elaborated more fully US positions on the status of the declaration as well as its objections to particular matters of content.

The United States, like the other Anglosphere states, raised objections to the process of negotiating the declaration, claiming that the US ‘had worked hard for 11 years in Geneva
for a consensus declaration, but the document before us is a text that was prepared and submitted after the negotiations had concluded.87 The declaration's process, it stated, 'was unfortunate and extraordinary' and 'sets a poor precedent with respect to UN practice'. The text, according to the US, is 'confusing', 'risks endless conflicting interpretations and debate about its application', and it is therefore not 'capable of implementation'.88

While the statement of explanation was silent on the status of the declaration, the United States made its position abundantly clear in the 'Observations' document and followed the overall trend of the Anglosphere. The US described the declaration as 'aspirational' with 'political and moral, rather than legal, force'.89 The document is an expression of recommendations and 'is not in itself legally binding nor reflective of international law'.90 The US also rejected the possibility that the declaration was or could become customary international law. Furthermore, the US noted, the document 'does not provide a proper basis for legal actions, complaints, or other claims in any international, domestic or other proceedings'.91

The content objections of the United States also followed the dominant Anglosphere trends, although the US 'Objections' document, which was the longest and most detailed of the Anglosphere states, made a few additional content objections that were not present in the other three explanations. Like the other three Anglosphere states, the US objected to the declaration's provisions on self-determination, lands and resources, redress, and the principle of free, prior and informed consent. Like Australia, the US noted that Indigenous self-determination was intended only to mean self-government or autonomy within a nation state, but the terminology of self-determination was confusing because that term is typically reserved for situations where a sub-national group is seeking independent statehood. Like the other three states, the US was also concerned that the declaration's provisions on lands, resources and redress are 'overly broad and inconsistent' while also 'impossible to implement'.92 The US followed the Anglosphere pattern of objecting to the principle of free, prior and informed consent because it could be interpreted to 'confer upon a sub-national group a power of veto over the laws of a democratic legislature'.93

The US added two particular objections to content that were not present in the other three states' explanations. First, the US expressed its opposition to the recognition of collective rights as part of the human rights consensus. The US expressed concerns that, if collective rights are recognised as human rights, individuals within those groups become vulnerable to potential violations of their individual human rights by the collective. Furthermore, if both individuals and collectives hold human rights, these two sets of rights may sometimes be in conflict. Second, the United States stated its objection to an absence of definition of 'indigenous peoples' in the declaration, noting that 'this obvious shortcoming will subject application of the declaration to endless debate, especially if entities not properly entitled to such status seek to enjoy the special benefits and rights contained in the declaration'.

Statement of endorsement of the declaration

In early 2010, a few days after New Zealand's surprise announcement of support for the declaration at the opening ceremony of the United Nations Permanent Forum on Indigenous Issues, the United States ambassador to the United Nations, Susan Rice, announced that the United States was launching a full review of its position on the declaration.94 The review included three tribal consultation meetings held over the summer and early autumn of 2010. On 16 December 2010, near the end of his remarks to the White House Tribal Nations Conference, President Obama briefly announced that the United States had decided to 'lend its support' to the declaration.95 As it had in 2007, the United States released a more detailed statement after the public announcement.
The detailed statement contained a more complete explanation of US support for the declaration, along with a full specification of qualifiers and exemptions. While Obama's very brief remarks mentioned that the declaration affirmed a set of Indigenous aspirations, the follow-up statement was much more detailed on the issue of status. The declaration, it said, 'which—while not legally binding or a statement of current international law—has both moral and political force'. The statement also emphasised the mere aspirational character of the declaration, as well as the US intent to interpret it within the bounds of the US Constitution:

It expresses both the aspirations of indigenous peoples around the world and those of States in seeking to improve their relations with indigenous peoples. Most importantly, it expresses aspirations of the United States, aspirations that this country seeks to achieve within the structure of the US Constitution, laws, and international obligations, while also seeking, where appropriate, to improve our laws and policies.

In terms of addressing issues of content, the detailed statement began with the concept of self-determination, noting that the declaration had initiated 'a new and distinct international concept of self-determination specific to indigenous peoples', a concept that is different from the international law understanding. The US pointed out that the new Indigenous understanding of self-determination translated into self-government arrangements within nation states. Tribal nations within the US already enjoy such a government-to-government relationship with the US federal government, so there was no need for the US to make any changes in this structural relationship.

On the principle of free, prior and informed consent, the US again noted that it already had such 'a process of meaningful consultation with tribal leaders', but also noted that the principle of free, prior and informed consent did not require the US to get the 'agreement of those leaders, before the actions addressed in those consultations are taken'. The US also, in this section, implicitly resolved the lack of Indigenous definition issue by noting that it intended to 'consult and cooperate in good faith with federally recognized tribes and, as applicable, Native Hawaiians, on policies that directly and substantially affect them'.

Concerning land, resources and redress, the US was clear that these provisions pertained to 'full legal recognition of the lands, territories, and natural resources Indigenous peoples currently possess by reason of traditional ownership, occupation, or use as well as those that they have otherwise acquired' (emphasis added). The US also articulated that states should recognize, 'as appropriate, additional interests of Indigenous peoples in traditional lands, territories, and natural resources'. Again, the US asserted that its existing framework of laws was more than adequate in this context.

One substantial change of content that occurred with this US change of position on the declaration was official recognition by the United States of the existence of collective human rights. The US 'is committed to serving as a model in the international community in promoting and protecting the collective rights of Indigenous peoples as well as the human rights of all individuals'. It stated directly that 'Indigenous peoples possess certain . . . collective rights' in addition to the individual human rights possessed by every individual. The US understands the declaration 'in light of this understanding of human rights and collective rights'. Although it seemed to draw a distinction between 'human rights', which presumably adhere to individuals, and 'collective rights', which it admits Indigenous peoples possess, the mere US acknowledgement of the existence of collective rights was notably historic.
Findings: selective endorsement

Table 1 summarises the findings of the above content analysis. Several trends are evident from this analysis, which reveal the architecture of ‘selective endorsement’ of Indigenous rights by the Anglosphere. First, the Anglosphere dropped its concerns over process legitimacy and Indigenous rights. In 2007, all four Anglosphere states criticised the declaration’s negotiations process, while by 2009 and 2010 they either refrained from comment on the process altogether, or they had changed their rhetoric to a much more positive and complimentary description of the process. But, not one of the four states highlighted process as a problem in their 2009/2010 statements of support.

Second, the Anglosphere underscored the normative importance of Indigenous rights norms while simultaneously qualifying their legal status. For all four, the issue of the declaration’s status remained remarkably consistent between 2007 and 2009/2010. While each state had noted in 2007 that the declaration was merely aspirational, non-binding and would not affect their existing laws or policies, each of the four states was exceedingly careful to reiterate these same arguments in their later statements of support. In the area of the declaration’s status, there was no change in any of the four between 2007 and 2009/2010. At the same time, all four states emphasised the normative importance of Indigenous rights generally, and each also highlighted their high global status as Indigenous rights supporters.

Third, in the area of content, three of the four states (Australia, New Zealand and the United States) carefully ticked down the list of content objections that they had commonly noted in 2007 (self-determination, land and resources, redress, and the principle of free, prior and informed consent) and then readdressed them in a new light. For these three states, their new descriptions were clear that, as long as these provisions were interpreted within existing domestic laws and structures, they were not problematic. Only Canada refrained from a full description of how the declaration’s provisions would be reinterpreted within the confines of existing domestic law and policy. Outside of the US shift on collective rights, there was no substantive change in these four states’ commitment to Indigenous rights between 2007 and 2009/2010. In fact, their commitments, qualifications and exclusions related to Indigenous rights remained remarkably consistent whether they were opposing or supporting the declaration. With their qualifications and exclusions, all four states strategically, collectively and unilaterally wrote down the content of international Indigenous rights norms so that they were already in alignment with the legal and institutional status quo in the Anglosphere, making further implementation efforts unnecessary.

Conclusions and implications of selective endorsement

As the above analysis has shown, multiple possibilities of state commitment behaviour exist beyond the binary of ratification and non-ratification. The practice of selective endorsement is a new finding of state commitment behaviour that contributes to a deeper understanding of the nuances of state commitment, compliance and implementation of human rights norms.

Selective endorsement lies at the intersection of rationalist and constructivist expectations on state commitment behaviour vis-à-vis human rights norms. When emerging international rights norms directly conflict with state interests and demand substantial changes to the status quo, states respond in some ways like rationalists would expect. They strategically and selectively endorse only those norms that align with their interests. Yet, because the identities of liberal democratic states are co-constitutive of human rights, states also demonstrate behaviour that adheres more closely to what constructivists would expect. States proclaim the normative importance of the rights in question and make great
Table 1. Content analysis results

<table>
<thead>
<tr>
<th>Change on DRIP</th>
<th>How announced</th>
<th>2007 statements</th>
<th>2009/2010 statements</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Australia</strong></td>
<td>‘Support’</td>
<td>Public event, speech to parliament</td>
<td><strong>Process:</strong> Objects</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Status:</strong> Aspirational</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Non-binding</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Not reflective of existing law</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Not customary law</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Content:</strong> Problems with:</td>
<td><strong>Content:</strong> Clarifies:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Self-determination</td>
<td>- Self-determination</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Lands and resources</td>
<td>- Land and resources</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Free, prior and informed consent</td>
<td>- Free, prior and informed consent</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Intellectual property</td>
<td>Frames as domestic issues where Indigenous and non-Indigenous citizens must be equal</td>
</tr>
<tr>
<td><strong>New Zealand</strong></td>
<td>‘Support’</td>
<td>Public event, opening ceremony of UN PFII</td>
<td><strong>Process:</strong> Objects</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Status:</strong> Aspirational</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Non-binding</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Fundamentally incompatible with domestic law and institutions</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Content:</strong> Problems with:</td>
<td><strong>Content:</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Lands and resources</td>
<td>Lands and resources, and redress issues will continue to be handled through highly sophisticated domestic processes, Indigenous peoples to participate in domestic politics</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Redress</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Indigenous involvement in decision making</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Intellectual property</td>
<td></td>
</tr>
<tr>
<td>Change on DRIP</td>
<td>How announced</td>
<td>2007 statements</td>
<td>2009/2010 statements</td>
</tr>
<tr>
<td>---------------</td>
<td>---------------</td>
<td>-----------------</td>
<td>----------------------</td>
</tr>
<tr>
<td><strong>Canada</strong></td>
<td>‘Endorse’</td>
<td>Process:</td>
<td>Process:</td>
</tr>
<tr>
<td></td>
<td>No public event, released on ministry website</td>
<td>Disappointment</td>
<td>Absence of comment</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Status: Aspirational</td>
<td>Status: Aspirational</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Non-binding</td>
<td>Non-legally binding</td>
</tr>
<tr>
<td></td>
<td></td>
<td>No legal effect in Canada</td>
<td>Endorsed in a manner fully consistent with the</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Not customary international law</td>
<td>constitution and laws</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Content: Problems with:</td>
<td>Content: Supports the principles of the declaration</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Lands and resources</td>
<td>Declaration’s principles are already consistent with</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Free, prior and informed consent</td>
<td>Canada’s approach to Aboriginal issues</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Fundamentally incompatible with parliamentary system</td>
<td></td>
</tr>
<tr>
<td><strong>US</strong></td>
<td>‘Support’</td>
<td>Process:</td>
<td>Process:</td>
</tr>
<tr>
<td></td>
<td>Public event, presidential remarks at Tribal Nations Conference</td>
<td>Flawed</td>
<td>Absence of comment</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Status: Aspirational</td>
<td>Status: Aspirational</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Non-binding</td>
<td>Non-binding</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Not reflective of international customary law</td>
<td>To be interpreted within the context of existing law and policy</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Content: Problems with:</td>
<td>Content: New understanding of self-determination is not</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Self-determination</td>
<td>inconsistent with existing US practice</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Lands and resources</td>
<td>Lands, resources and right to redress apply only to</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Redress</td>
<td>lands currently possessed and occupied</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Free, prior and informed consent</td>
<td>Consultation does not mean agreement</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Collective rights</td>
<td>Define as federally recognised tribes and Native Hawaiians</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Absence of definition</td>
<td>Acknowledges Indigenous collective rights</td>
</tr>
</tbody>
</table>
efforts to show how they comply. However, selective endorsement demonstrates a curious intersection between rationalism and constructivism: states strategically, collectively and unilaterally write down international norms so that those rewritten norms align with state interests as well as the legal and institutional status quo, all the while securing their standing in the community of states that support the norms, without any intent of moving toward further implementation.

These findings suggest that, in practice, the Anglosphere may be attempting to shift the Indigenous rights conversation away from the legitimacy concerns of the international human rights discourse, in favour of domesticating Indigenous issues and preserving a (neo-)liberal framework. Rather than substantively changing their positions on international Indigenous rights, these states seem to engage in an active process of self-exemption, developing and utilising a discourse of exceptionalism for the Anglosphere vis-à-vis Indigenous rights. But, self-exemption is not the only behaviour exhibited through the practice of selective endorsement. With selective endorsement, the Anglosphere has collectively and unilaterally rewritten international Indigenous rights norms so that they represent diminished content with qualified status. I conclude that, for settler states of the Anglosphere, selective endorsement of Indigenous rights seems to serve as a pre-emptive political move against implementation, preserving these states’ legal and policy status quo while offering relief from transnational and domestic political pressure, and allowing these states to plausibly profess the normative value of and their commitment to Indigenous rights.

In practice, the Anglosphere states maneuvered themselves out of an Indigenous rights dilemma where they stood alone internationally in their expressed opposition to international Indigenous rights. With selective endorsement, the Anglosphere was attempting to maintain the domestic legal and institutional status quo while simultaneously supporting the normative value of Indigenous rights. Between 2007 and 2009/2010, Indigenous rights movements were able to use the Anglosphere’s negative votes as moral persuasive tools for political gain, exposing the colonial ambivalence of the Anglosphere states and shaming them both domestically and internationally. When these states’ unresolved colonial ambivalence on Indigenous rights was exposed, human rights organisations could easily launch legitimacy complaints at the Anglosphere states, subjecting them to a certain degree of embarrassment, shame, and moral and political pressure.

With selective endorsement of Indigenous rights, the Anglosphere states cleverly retook the political upper hand and shifted the burden back to Indigenous rights movements. Indigenous rights activists now find themselves with fewer moral and political tools to leverage against the Anglosphere states. In order to advance Indigenous rights in practice, the moral and political campaign should look beyond issues of state endorsement and concentrate squarely on the status of state implementation of Indigenous rights norms as articulated in the United Nations Declaration on the Rights of Indigenous Peoples, which represents the original global consensus on the minimum standard of Indigenous rights. Indigenous rights activists must continue to place substantial political and moral pressure on states, demanding effective domestic implementation of the original consensus on Indigenous rights norms, regardless of the Anglosphere’s selective endorsement of the Indigenous Rights Declaration.

Notes

2. Simmons, Mobilizing for Human Rights, 58.


4. 'Compliance' is defined as state conformity with a rule, following Raustiala and Slaughter's definition, 'International Law', 539.

5. Simmons Mobilizing for Human Rights, 58.


8. The 'Anglosphere', a term and concept that is enjoying increased prominence in social and political discourse, implies much more than use of a common English language. As James Bennett noted in 'America and the West: The Emerging Anglosphere', *Orbis* 46 (2002): 11, membership in the Anglosphere also 'requires adherence to the fundamental customs and values that form the core of English-speaking countries'.


11. The debate over whether or not to capitalise the word 'indigenous' is far from resolved. This author prefers to capitalise, although many others do not. Quotations will be reproduced in their original form, capitalised or not.


16. The United Nations Committee on the Elimination of Racial Discrimination reviewed the United States in 2008 and Australia in 2010. The Human Rights Council's Universal Periodic Review included Canada and New Zealand in 2009 and the United States in 2010. All of these United Nations human rights reports mentioned these countries' opposition to the Indigenous Rights Declaration and recommended that they change their positions.


The International Journal of Human Rights


26. Ibid.

27. Anaya, 'Statement'.


30. Ibid.

31. Ibid.

32. Ibid.

33. Ibid.

34. Ibid.

35. Ibid.

36. Ibid.

37. Ibid.

38. Ibid.


40. Ibid.

41. Ibid.

42. Ibid.

43. Ibid.

44. Ibid.

45. Ibid.


47. Ibid.

48. Ibid.

49. Ibid.

50. Ibid.

51. Ibid.

52. Ibid.

53. Ibid.

54. Ibid.

55. Sharples, 'UNPFII Opening Ceremony'.

56. Ibid.

57. Ibid.

58. Ibid.

59. Ibid.

60. Ibid.

61. Ibid.

62. Ibid.

63. Ibid.

64. Ibid.

65. Ibid.

66. Ibid.

67. Banks, 'Declaration on the Rights of Indigenous Peoples'.


69. Ibid.

70. Ibid.

71. Ibid.
72. Ibid.
73. Ibid.
74. Ibid.
75. Ibid.
76. Ibid.
78. Indian and Northern Affairs Canada, 'Canada Endorses the United Nations Declaration'.
80. Indian and Northern Affairs Canada, 'Canada Endorses the United Nations Declaration'.
81. Ibid.
82. Ibid.
83. Ibid.
84. Ibid.
86. Ibid.
88. Ibid.
90. Ibid.
91. Ibid.
92. Ibid.
93. Ibid.
95. Obama, 'Remarks at the Tribal Nations Conference'.
97. Ibid.
98. Ibid.
99. Ibid.
100. Ibid.
101. Ibid.
102. Ibid.
103. Ibid.
104. Ibid.

Notes on contributor

Sheryl Lightfoot is assistant professor in both the First Nations Studies Program and the Political Science Department at the University of British Columbia in Vancouver, Canada. Dr Lightfoot's research interests include global indigenous peoples' politics, indigenous diplomacy, indigenous social movements, and critical international relations. She has published articles in American Indian Quarterly and in the international relations journals Alternatives and Political Science. She was the recipient of the 2010 Best Dissertation Award in Race and Ethnic Politics by the American Political Science Association for her work titled 'Indigenous Global Politics'. Dr Lightfoot is Anishinaabe, an enrolled citizen of the Lake Superior Band of Ojibwe.