



**From *Indian* to *Indigenous*: Defining and
Recognizing Indigenous Peoples in International
Law and Practice**

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World Cup 2014 - Brazil





World Cup 2014 - Germany





World Cup 2018 - Germany





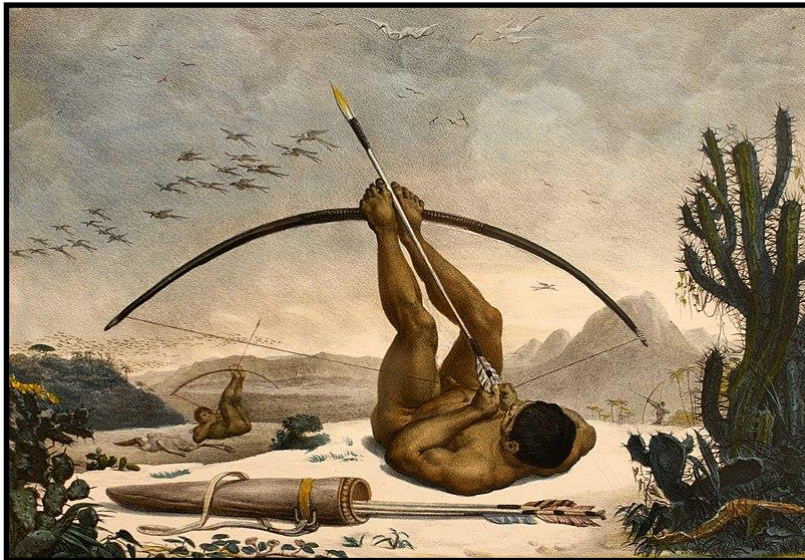
World Cup 2014 – Brazil x Croacia





Indigenous

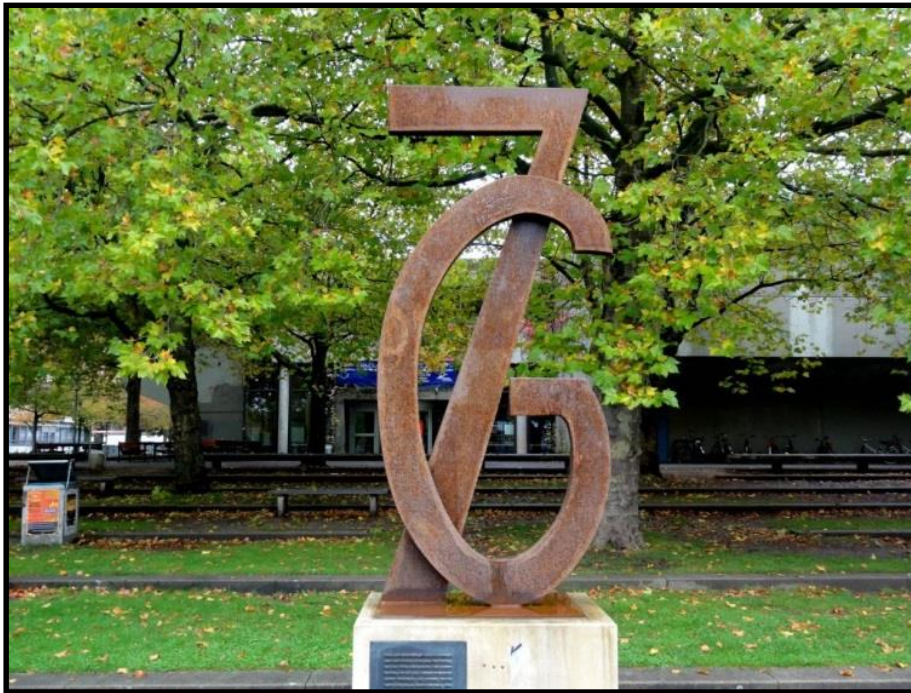
- Latin *Indigena*: Contraction of *indi* and *indu* („in“ preposition) and *gen-* (in passive „to be born“, together with *ous* (suffix). Literally, „indigenous“ means „in-born“ person.
- Someone (or something) belonging naturally to a region.





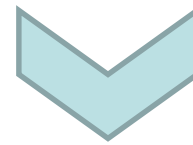
Indigenous – A Story of Three Tales

Once upon a time...



„aller guten Dinge sind drei“

Denial



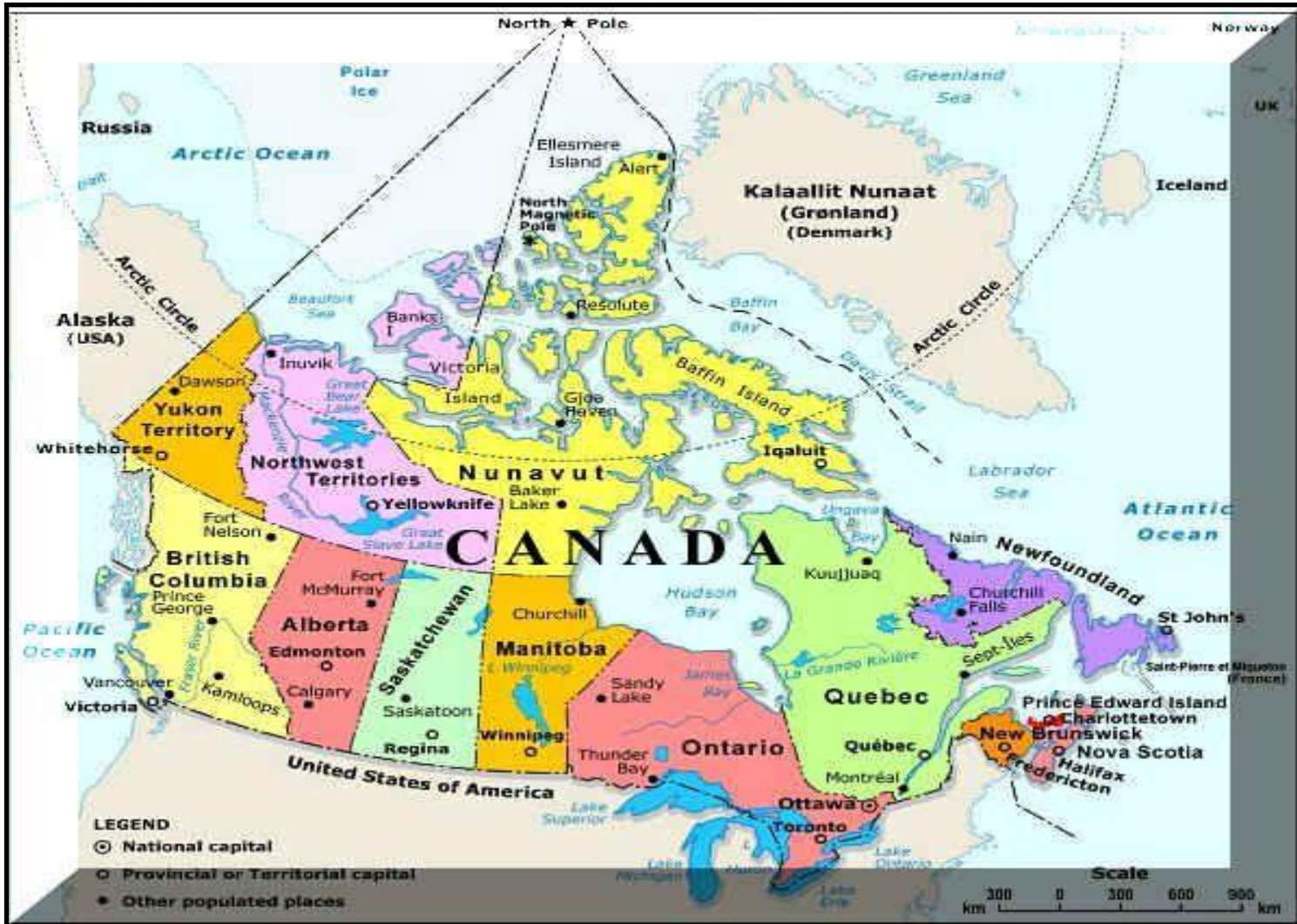
Struggle



Triumph



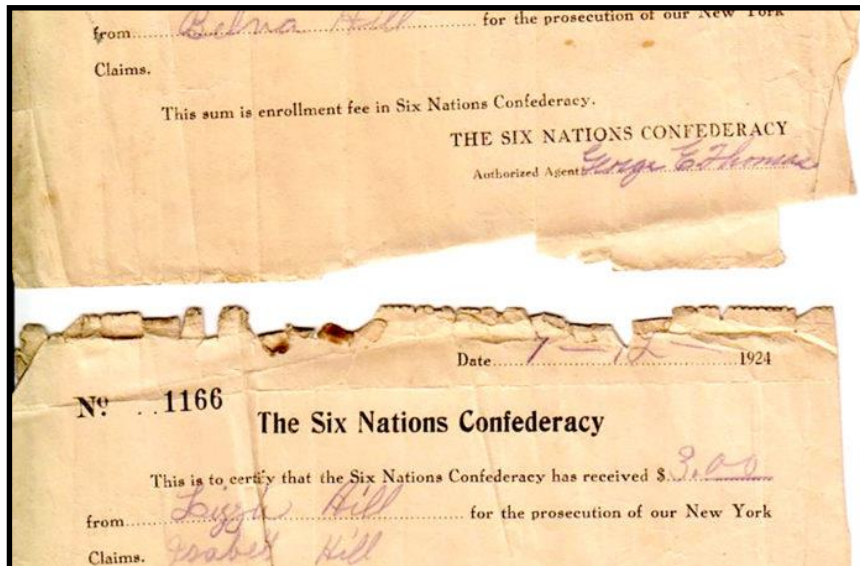
Denial – Canada – Geneva – 1920s





Denial (1923)

"Over in Ottawa, they call that policy "Indian Advancement". Over in Washington, they call it "Assimilation." We who would be the helpless victims say it is tyranny. If this must go on to the bitter end, we would rather that you come with your guns and poison gases and get rid of us that way. Do it openly and above board."





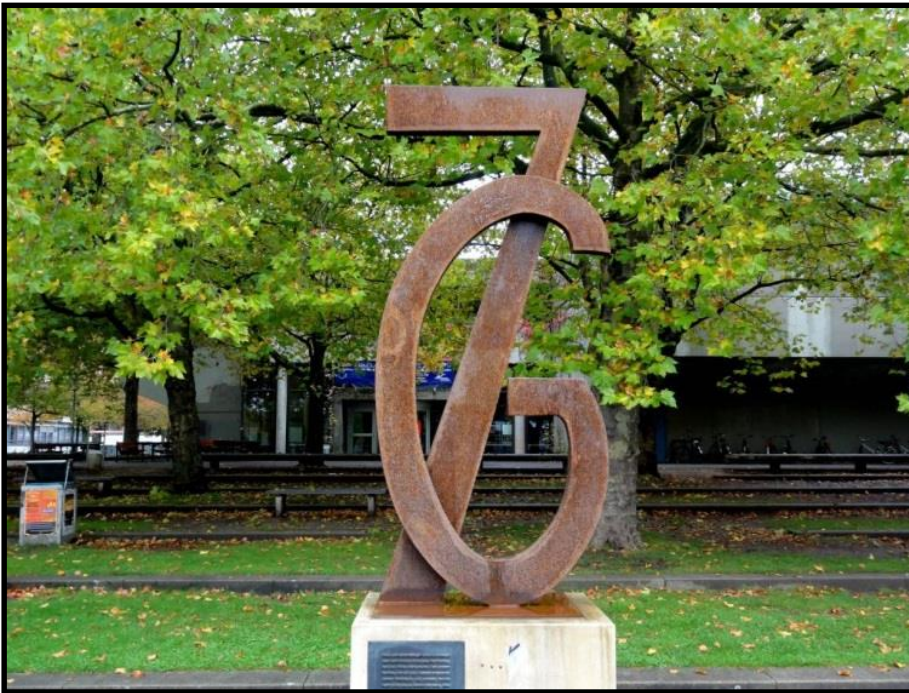
Chief Deskaheh of the Six Nations Canada (Levi General) in Geneva





Indigenous – A Story of Three Tales

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Denial



Struggle



Triumph



Struggle – Europe – 1970s





Sami – Norway - Lapland



Map of Sami Lapland, Sápmi or Finnmark. Credits: Hans Ragnar Mathisen



Nordic Sami Conference - 1953



- Legally stipulated differences between Saami and non-Saami were largely absent in Norway. Saami language had no official status.
- 1953: The Saami in the Nordic countries are a small minority with a distinct culture that has deep roots in Scandinavian nature and history.



Struggle – Alta Affair - Norway



Elva Skal Leve!

- Norway to dam the Alta River and to flood Masi, homeland to the Sami
- Civil disobedience = riots?
- Petition to the pope





Rock Carvings Discovery - 1973



Similarities of motifs to those of the Sami lifestyle

- From ethnic minorities to indigenous peoples
- Attachment to the land. Original inhabitants.





Alta Hydroelectric Dam

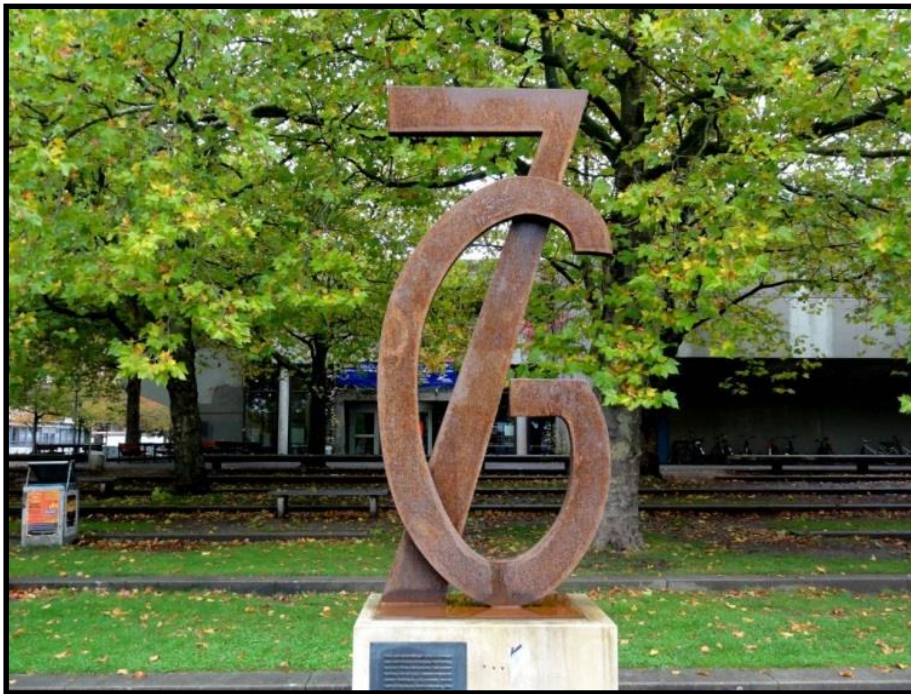


- Construction began in 1982
- Final project: to cause less displacement of Sami residents and less disruption for reindeer migration and fishing
- State recognition of the Sami as IP
- Stronger Articulation of the Sami People
- Environmental matters and IP
- International Public Support



Indigenous – A Story of Three Tales

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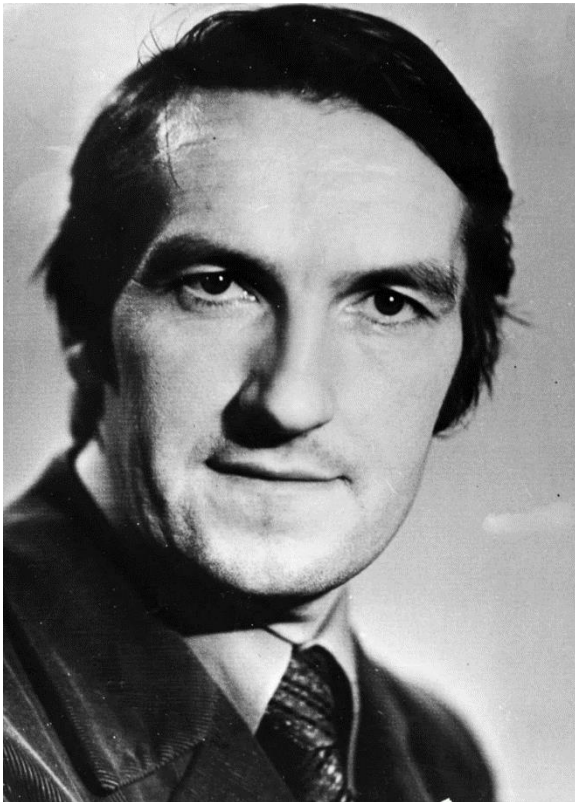
Struggle



Triumph



Triumph – 1980s – United Nations - WGIP



Asbjorn Eide
WGIP First Chairman



First session of the WGIP in Geneva (1982)



„ (...) to fulfil the mandate to review developments concerning indigenous populations and to work towards the development of corresponding standards, there would be a need to have the *best possible experts present, and the best experts would be the indigenous representatives themselves.*“



United Nations Decade on Indigenous Peoples (1994-2004)



Dr. Erica-Irene Daes
2nd WGIP Chairperson

- Revision of the ILO Convention 107
- Participation of IP in Environmental Conferences . E.g. Rio 92.
- UN Decade on IP (1994-2004)
- Consolidation of IP presence on the UN level
- Creation of UN bodies on IP
- Promotion of Self-determination of IP



UN Declaration on the Rights of IP (UNDRIPS)

- Resolution adopted by the UNGA on 13 September 2007
- First universal international legal Instrument on the special rights of IP. Standard setting. High political significance.
- Rights of Indigenous Peoples as Human Rights. Article 1 UNDRIPS.
- Overwhelming acceptance by UN state members
- Definition of IP. Article 33 UNDRIPS. „IP have the right to determine their own identity or membership in accordance with their customs and traditions“. No set of criteria
- Set of rights, including land rights and cultural rights.
- Most important. Right to self-determination. Article 3: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.



Regional Differences of Indigenous Peoples



Latin America – Land Rights

- Organisation of American States – Inter-American Indian Institute (1940)
- Inter-American Commission: Resolution No. 12/85 – Yanomami
- Inter-American Court: Aloeboetoe et al. v. Suriname (1993), Awas Tingni v. Nicaragua (2001)
- American Declaration on the Rights of IP (2016)
- Identification of IP. Self-elaborated criteria: Self-identification, self-organization, socio-cultural institutions, special relationship to the territory
- Evidences, Legal Anthropological Expertise





Africa – Indigenusness in Africa?



- „Indigenous peoples“ is highly contested. Prime Minister of Namibia: „as Africans we are all black, we are all indigenous“.
- African Commission. Main features of IP in Africa: 1) Different compared to the rest of the society; 2) Attachment to the land; 3) Discrimination; 4) Geographically isolated and marginalisation; 5) Domination; 6) Natural Resources based economy.
- African Court – The Ogiek Case (2017). Eviction without consultation. Violation of the following rights: right to non-discrimination, culture, religion, property, natural resources, and development



Final Remarks



Final Remarks

- The contemporary meaning of the word „indigenous peoples“ has historical roots that dates back to the 1920s
- There is no universal definition of IP or their rights.
- Set of definition criteria are unique, but similar. Common Aspect: Self-identification.

Denial



Struggle



Triumph



Thank you! Merci!





Some References

- Eide, Asbjorn. Rights of Indigenous Peoples – Achievements in International Law During the Last Quarter of a Century. Netherlands Yearbook of International Law (2006).
- United Nations. Indigenous Peoples. Available at: <https://www.un.org/development/desa/indigenouspeoples/>. Last access: 05/23/2019.
- Minde, H. The Making of an International Movement of Indigenous Peoples. Scand. J. History 21.
- Nelson, Jimmy. Before they pass away. Available at: <https://www.jimmynelson.com/journey/kenya-tanzania>. Last access: 05/23/2019.
- Thornberry, Patrick. Indigenous Peoples and Human Rights. Manchester University Press. 2002.
- Salgado, Sebastiao. Available at: <http://www.apiwtxa.org.br/acervo/fotos/sebastiao-salgado/>. Last access: 05/23/2019.



Cultural Appropriation





Asia - Japan

- Ainu people of Hokkaido
- Officially recognized by the state in 2019

