

THE FIRST PRINCIPLES PROJECT: 40 @ -40°

Summary of discussion



Credit: Derek Crowe

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This is a document for public discussion and education.

INTRODUCTION

A generation after the negotiation of the Yukon *Umbrella Final Agreement (UFA)*, few of the people employed in its implementation had any involvement in its negotiation. They may have no idea of the intentions of Yukon First Nations, Canada and Yukon and any sense of the history behind the agreement. This could be a problem.

Older Yukoners may remember how radical the agreement seemed at the time or that Yukon's Self-Government Agreements were the first of their kind in Canada. Thirty years later, parts of the *UFA* have in some ways been overtaken by both court decisions and public policy reforms. Nevertheless, the principles agreed to by Yukon First Nations, Canada and Yukon remain in force and deserve serious public attention.

This document is the product of those people who were involved in negotiation of the *UFA* and who participated in a two-day gathering to describe first principles of the *UFA*. What has been produced is neither an academic paper nor a legal document.

What are the *UFA*'s big ideas, core values and first principles underpinning this foundation document for Yukon in the 21st century? This document is a step to answering this question. It describes how the *UFA* recast the relationships between Yukon First Nations and non-First Nation people and their governments. It points to core elements of that agreement and what was achieved in the *UFA*, some two decades after Yukon First Nation Chiefs presented to the Prime Minister of Canada *Together Today for Our Children Tomorrow* – the case for beginning a modern-day treaty process in Yukon.

WHAT IS THE UMBRELLA FINAL AGREEMENT?

“All Yukoners are treaty people.”

The *Umbrella Final Agreement* is a touchstone supporting how Yukoners govern themselves, earn their livings and live their day-to-day lives. It is much more than the dry text of a legal deal. It was negotiated as a living document over many years by hundreds of Yukoners and Canadians. It sets out how a unique and dynamic partnership will work now and in the future between First Nation and non-First Nation Yukoners. It is a key part of the Yukon social contract. All Yukoners are affected by it and are partners in how it works - all Yukoners are treaty people.

The *UFA* touches almost every aspect of life in the North. The Land chapters set out Settlement Land for Yukon First Nations, while other chapters set up an ongoing partnership with all levels of government to manage land use, water, heritage, wildlife and natural resources cooperatively. It is important to remember that managing these Yukon assets is an ongoing activity, which is why hundreds of First Nation and non-First Nation Yukoners from all levels of government and private life work together in *UFA*-established committees and other bodies today. The Economic chapters set out measures to both correct past injustices as well as set up First Nation citizens and their governments to participate, thrive and achieve self-reliance in the modern economy.

For the future, perhaps the most important aspect of the *UFA* is how it sets up ongoing relationships between the governments of Yukon First Nations, Canada and Yukon. This allows us to adapt to the future for the mutual benefit of all Yukoners.

CONTEXT

This is a settlement between a ‘people of peace.’

We came together to build a new relationship so that we could speak to each other as equal partners. We came together because we could no longer turn away from the pain and suffering that the laws of the day had created for the Yukon First Nation peoples.

There were unique motivations driving each of us towards creating a settlement.

Yukon First Nations Motivations

Yukon First Nations could no longer accept the laws governments had imposed on their families and communities. These laws extinguished their rights, removed them from their lands and took away their children. They believed that life could be better for their children. But they knew that if this would be true, they had to create it.

Life in the Yukon for First Nations had always required innovation, cooperation and working with the tools available. These skills were essential for crafting a new story, a story that would come to recognize Yukon First Nations’ rights, responsibilities and relationships to their lands and each other.

Time immemorial	Autonomous and cooperative Indigenous communities surviving and thriving in Yukon pre-contact
1867	<i>Constitution Act</i> : Introduction of legislative powers over Indigenous peoples’ lives and lands
1880s	Increasing fur trade in Yukon
1897	Start of Klondike Gold Rush
1941-43	Construction of Alaska Highway and increasing presence of US military
1966	Yukon First Nations Chiefs meet to discuss land claims
1968	Yukon Native Brotherhood forms
1969	<i>White Paper</i> is introduced by Canada
1970	Yukon First Nations begin fundraising for land claims
1971	<i>Alaska Native Claims Settlement Act</i> passed by US government
1973	Delegation of Yukon First Nation leaders presents “ <i>Together Today for our Children Tomorrow</i> ” to Prime Minister Pierre Trudeau
1984	Land claims negotiations break down
1985	Yukon First Nations, Canada and Yukon return to the table to negotiate land claims and First Nation self-government
1993	<i>Umbrella Final Agreement</i> signed by Council for Yukon Indians, Canada and Yukon

Increasing government authority over Indigenous peoples’ lives

Decreasing Indigenous rights over Indigenous peoples’ lives

Increasing access and exploitation of Indigenous lands and resources

Decreasing access to lands and resources for Indigenous peoples

Canada Motivations

The approach of the federal government to Indigenous issues evolved significantly in the decades leading up to the signing of the *UFA*. Several major trends contributed to this. Canadians and their policymakers became increasingly aware of the injustices of pre- *UFA* federal policies and the need to address them. The economic opportunities in the North, and economic challenges in southern Canada, drove northern economic development up the national agenda. And international developments such as Alaska's 1971 *Native Land Claims Settlement Act* and subsequent oil development intensified pressure on Canada to find its own approach. The *Berger Inquiry* into the proposed Mackenzie Valley pipeline made it clear that Canada would need an approach significantly different from the earlier Alaskan approach.

At the same time, there was increasing understanding in Canada that the federal government could not manage these pressures in Yukon except in partnership with Yukoners, especially First Nations. Policymakers became convinced that a modern treaty such as the *UFA* was much better than ongoing disagreement, litigation and uncertainty.

Yukon Motivations

In 1985, Yukon committed to supporting the Council for Yukon Indians' (CYI) vision with respect to future negotiation and actively engaged as a full party. This included support for First Nation self-government to be included in the *UFA*. This meant that CYI and Yukon now worked together collaboratively as equal partners in negotiations. This was to help ensure a shared vision of First Nations and non-First Nation people living and working together.

The wealth of Yukon people - all Yukoners - is our land, people and relationships. The *UFA* sets out a path for us to understand each other and create a place that minimizes these injustices for all.

We are all treaty people.

PRINCIPLES

Governance

“Mapping and steering --- self-governing into the future.”

Yukon First Nation culture and relationships, both among First Nation people and with others, are founded on a fundamental respect for all, including the gifts of nature, all living beings and all relationships. Supporting, encouraging and sustaining respect is the foundation of all that First Nation people believe and all of the relationships they have. This includes a deep commitment to and attachment to traditional lands, the water and all of the other resources that are integrally associated with land and water. The values, spiritual beliefs and traditional and modern knowledge embraced by Yukon First Nations include acknowledgement of a right and a responsibility for self determination on the parts of all of nature and peoples, including First Nations as organized Indigenous societies that have existed since time immemorial exercising the responsibilities and authorities fundamental to self determination.

Self-government is critical to self determination. Yukon First Nations have throughout history understood, asserted and exercised their rights and responsibilities to govern their land and resources as well as to maintain and support all of the internal and external relationships and affairs essential to sustaining these elements. This is now recognized as an inherent right by the governments of Canada and Yukon as well as in the *United Nations Declaration on the Rights of Indigenous People*. Self-government is inseparable from all of the other parts of land claims settlements. Self-government is essential to successfully implement land and resource rights, to undertake land stewardship, ownership and management, and to implement virtually all parts of a land claims settlement. This is recognized, supported and set out in the *UFA*, the individual Yukon First Nation land claim agreements and the self-government agreements..

The people who negotiated *the Umbrella Final Agreement* agreed on some very big questions. Who has a voice in making decisions? How are decisions made? And, who is accountable for the outcome of those decisions?

Many of these questions were answered in *UFA* Chapters on Land Use Planning, Heritage, Water Management, Fish and Wildlife, Forest Resources, Non-Renewable Resources, Special Management Areas, and a special Yukon Fish and Wildlife Enhancement Trust.

These agreements are tools for Yukoners to come together and shape a common future for those who are committed to a society respectful of all people that will sustain this place for generations to come. Negotiators for Yukon's Indigenous people through their Elders had a goal in mind: Protect the land, water, and wildlife which together are the heart of their culture and language. Practically, this meant having an influence over the future through control over land, water, and resources.

At the same time, all parties had to consider the inevitable change that had taken place over the previous decades that brought settlers, along with those who would land here only briefly to take whatever they could get.

The negotiators from all parties agreed on many principles to guide them towards agreements that would serve Yukoners who wanted to make this a place where people were united in common goals.

A number of principles are key in what they came up with:

- There must be local decision-making and influence
- Resources must be shared and managed jointly
- All people must have a voice
- Common interest must be found
- Relationships must be built on trust
- The land, water and way of life must be sustained
- Consultation must be central to making the agreements work.

Sections from the *UFA* have common threads running through them. Many parts of the *UFA* have objectives that clarify these principles.

- To recognize and promote the cultural values of Yukon Indian People;
- To ensure conservation of wildlife resources and their habitats
- To preserve and enhance the renewable resource economy

- To guarantee the rights of Yukon First Nation People to harvest, and the rights of Yukon First Nations to manage Yukon First Nation Settlement Land including renewable resources
- To integrate the relevant knowledge and experience both of Yukon Indian People and of the scientific community.

Land

“Yukon First Nation people are *‘Part of the Land, Part of the Water.’*”

For thousands of years Yukon First Nations have used and occupied the lands and waters of Yukon. In 1867 Canada claimed Yukon lands and in 1898 the Territory started to ‘manage’ them. At Ottawa in 1973, Yukon chiefs filed their own claims of ownership to lands that predated colonization and ownership and asserted their rights to Indigenous title within their territory including ownership over lands and resources within it.

Yukon First Nation people view themselves as inseparable from land and water. Without land as a key component of the *UFA*, the agreement would never have been achieved. YFNs embrace land stewardship. Land in the *UFA* carries an enormous emotional and spiritual attachment that is recognized in the values and principles that underlie the *UFA*. This differed from ownership and is predicated on a fundamental respect for all living things. The *UFA* ensured that for future generations Yukon First Nations would always have the essence of belonging to the land and attachment to “place.”

Certainty and clarity of land ownership and use is a key principle of the *UFA*. To this end, the *UFA* was intended to outline what lands belonged to whom and who would manage them, and how.

Principles

- The amount of land held by Yukon First Nations is sufficient to support self reliance and self-government
- Clarity and certainty of land ownership is established for all Yukoners
- Categories of land ownership and tenure are established for surface, subsurface and harvesting rights
- Respectful public access to Undeveloped Settlement Land is established
- First Nations retain rights to use Non-Settlement Land
- Third party property rights are respected
- A fair process for the resolution of disputes regarding access to and across First Nation Settlement Land is established
- New institutions for the management of resources on Settlement Land and Non-Settlement Land are founded on fairness, respect for local and First Nation traditional knowledge and the participation of First Nations and all other Yukoners as equal partners.

Economy

“The economy exists to serve Yukoners, not the other way around.”

The economy is an important part of the *UFA* vision, in which First Nations join all others in actively participating and benefiting from economic opportunity. This is critical in order to both compensate First Nations for impacts and losses earlier in the Yukon’s history and ensure resources are available for First Nation governments to operate, and to contribute to the fundamental fairness of society and

opportunity for both First Nation governments and citizens individually. The *UFA*'s key economic principles are:

- Provide fair opportunities for Yukon First Nations to participate in the Yukon economy
- Contribute to the economic self-reliance of Yukon First Nation people
- Make sure Yukon First Nation people get a share of the economic benefits coming out of the *UFA*.

Participating in the economy takes place in many ways, involving individual Yukon First Nations people, businesses they own, and Yukon First Nation governments and their Development Corporations as well. Some of the most underlying principles are:

- Building up Yukon First Nations businesses, both those owned by Development Corporations and individual Yukon First Nation citizens
- Sharing revenue from Yukon resource projects such as mining
- Building Yukon First Nation government revenues from many sources, including taxes
- Shaping the future economy and its impacts by participating in development assessment processes and decisions
- Sharing the benefits of federal and territorial government contracts, training programs and private sector resource and infrastructure projects
- Building capacity of Yukon First Nation people to participate in the modern economy
- Building a public service representative of the Yukon First Nations population.

The economic chapters of the *UFA* are not meant to be one-time deals. They see an ongoing and permanent collaboration to ensure First Nation people are full participants in the Yukon economy. This is important since the economic and financial losses suffered by Yukon First Nation people in the century before the *UFA* have negative impacts that last generations. It includes, for example, a collaborative review of the economic chapter every five years.

Relationships

“It is the spirit of this relationship that grounds the agreements’ implementation as all Yukoners strive toward achieving the *UFA*'s vision for the future.”

Central to the success of the *UFA* negotiations and forging a social contract were trust, laughter and strong relationships that were created at the community level.

The Yukon should be regarded as a three-legged stool - each leg is one of the three orders of government: Yukon First Nations, Yukon and Canada. If one leg collapses, it tips the balance. Agreement had to be one made in the Yukon. Some feel we have lost our greatest asset: the level of trust we had among the parties.

A fundamental aspect of the relationship is the self-government agreements which are essential to the implementation of the *UFA*. All parties to this agreement must recognize that they will be held equally accountable for implementing these agreements. The vision of self-government is that Yukon people will work together for the best interests of each other.

When negotiations resumed after 1984, there was a recognition they had to be made community-based and that everyone should strive to learn together.

“Consultation” with Yukon First Nations is established in the *UFA* as an essential element of the Yukon First Nations/Canada/Yukon partnership. The *UFA* was ground-breaking and forward-looking in this regard.

Good relationships reduce the prospects of taking disputes to the courts. First Nations envisioned a dispute resolution process that respected traditional ways of resolving issues in harmony, not just the adversarial process built into the court system. This method accommodates the ability of everyone to participate, even at the village level. Since this chapter was developed, however, it has almost never been used.

We have to stress the importance of alternative dispute resolution mechanisms in the mindsets of all three orders of government. It would be unwise to regard all court cases as a failure in the process, though, for some have set important precedents that have favoured First Nations’ rights.

In summary, when the agreements were signed, some felt the Yukon and Canada governments of the day viewed them as a one-time divorce settlement, with no further action required. Others believed the governments viewed the agreements as virtual marriage settlements, which was the perspective of the Yukon First Nations.

Like a good marriage, the agreements were not a matter of coming to an understanding at the beginning, with no additional discussion necessary. They have to be worked at in good faith every day with effective, disciplined communication.

Going forward, we need to acknowledge that we will continue to evolve as we strengthen our relationships.

WORKING TOGETHER GOING FORWARD

The *Umbrella Final Agreement* is about relationships. The first Yukon relationship was of Yukon First Nations’ people with the land and water. As new peoples arrived, relationships diminished. The land claims process was intended to provide security for all Yukoners by affirming expectations and obligations of the relationship between people and of people with the land. It began a transformational journey for those involved in the negotiations that birthed the spirit of the *UFA*, one where people worked together in respect, humour, and commitment. The road was mountainous with deep challenges and peak aspirations. Negotiating was hard. But the outcome could not have been achieved without the struggle to overcome conflict and create a shared vision of inspiration and possibility.

More than 25 years after finalization, much of the implementation work has been done and the Yukon is transformed for the better. First Nations are key economic entities. They are revitalizing language and culture and innovating stewardship-based management approaches. Children have more choice and opportunity.

Yet, the work has only begun. Implementation needs to continue into the future. Conflict, misunderstanding and marginalization persist. Climate uncertainty challenges our economy, our environment and their shared management by the governments of Yukon First Nations, Canada and

Yukon. We must stay vigilant and continuously check our progress against the principles of the *UFA*. The *UFA* was intended to create new partnerships and processes to meet the challenges of the future.

It is critical for Yukoners and Yukon partners to know our spirit and principles, for only then can our relationship continue to mature and succeed. The *Umbrella Final Agreement* is an ever-evolving intergenerational vision where each successive generation creates more opportunity for the next as we strive toward a society with multiple languages, cultures and approaches to living as '*Part of the Land, Part of the Water*'. The work continues as we create a Yukon where all Yukon children may thrive in peace, prosperity and possibility.

A WORK IN PROGRESS