The Role of the ILA in the Restatement and Evolution of International and National Law Relating to Indigenous Peoples

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Abstract The main goal of this chapter is to explore the International Law Association's (ILA's) role in the restatement and ongoing evolution of Indigenous rights in international and national law. It first examines the way in which the main instrument for Indigenous peoples from a global viewpoint came into being and what its basic content amounts to. The chapter then assesses the role played by the ILA during the period of the first ILA Committee's (Committee on the Rights of Indigenous Peoples) mandate in restating and influencing the evolution of international law as it relates to Indigenous peoples. It also examines the contribution made by the second ILA Committee (Committee on the Implementation of the Rights of Indigenous Peoples of the International Law Association) in ascertaining a possible implementation gap between international standards in respect of Indigenous peoples and the reality of certain cases on the ground, as well as the development of best practices to overcome it. Thereafter, this chapter draws conclusions on the ILA's role in the evolutionary process of the law relating to Indigenous peoples.

Section 1 has been written by Timo Koivurova; Section 2 has been written by Federico Lenzerini; Sections 3 and 4 have been written by Siegfried Wiessner; Section 5 has been written by Timo Koivurova.

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K. Karjalainen et al. (eds.), *International Actors and the Formation of Laws*,
https://doi.org/10.1007/978-3-030-98351-2_5

1 Introduction

It has been argued many times that international law develops in a rather glacial manner, given that it emerges out of the legally relevant conduct of some 200 states, with widely varying views on international policy. Against this background, it seems quite astonishing that the rights of Indigenous peoples have evolved so rapidly in view of how slowly public international law normally develops. It was only from the beginning of the 1980s that Indigenous rights became an issue of concern to the United Nations in a more comprehensive manner, even if there had been prior work on the topic by the International Labour Organization (ILO).[1] This intense normative and institutional development within the UN culminated with the establishment in 2000 of the UN Permanent Forum on Indigenous Issues and the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007.[2]

The Declaration has already had an impact on many domestic legal systems. Most provisions of the UNDRIP aim to influence how states conduct themselves internally towards Indigenous peoples living in their traditional territories. Indigenous international law is hence inherently at the interface of international and national law, as most rules grant rights to Indigenous peoples vis-à-vis states that currently happen to have sovereignty over areas that are also the ancestral lands and waters of Indigenous peoples.

There have been many agents of change, effectuating the rise of Indigenous rights in international law. The work of international organizations representing Indigenous peoples, such as the Inuit Circumpolar Council, worldwide has been the single biggest driver for this change. These organizations individually, but, more importantly, working collectively, have been able to push for changes in the attitudes of states. A good example is the negotiation process for the Declaration, which, with the innovative arrangements within the UN, was able to accommodate direct negotiations between the representatives of states and Indigenous peoples.

Yet there have been many other drivers of change, with varying roles in the process. In this chapter, we will explore the contributions of the International Law Association (ILA) that we consider as one of the most important international non-governmental organizations. Through its Committee on the Rights of Indigenous Peoples, composed of 30 experts from around the world, the ILA undertook a six-year study of pertinent state practice and *opinio juris*, as well as relevant treaties and the UN Declaration on the Rights of Indigenous Peoples (2006–2012). The

[1] There have been two conventions on Indigenous rights adopted within ILO, albeit with different policy bases: Indigenous and Tribal Populations Convention, 1957 (No. 107), at <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C107> accessed 11 March 2022 and Indigenous and Tribal Peoples Convention, 1989 (No. 169), at <www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169> accessed 11 March 2022.

[2] The declaration and related materials can be downloaded at <www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> accessed 11 March 2022.

Committee arrived at an interim and a final report and Resolution No. 5/2012, which found collective rights of Indigenous peoples to their traditional lands and resources, their cultural heritage and wide-ranging autonomy. The further realization of these rights has been surveyed, particularly in case studies on land rights, by the successor ILA Committee on the Implementation of the Rights of Indigenous Peoples, with the adoption of the Final Report at the virtual biennial ILA conference, originally scheduled for Kyoto, on 13 December 2020.[3]

The main goal of this chapter is to explore what has been the role of ILA in the restatement and ongoing evolution of Indigenous rights in international and national law. We will first examine how the main instrument for Indigenous peoples from a global viewpoint came to be and what its basic content is. Then we will study and assess what role the ILA played during the first Committee in influencing the evolution of Indigenous international law. Important is also to examine what has been the contribution of the second Committee in ascertaining a possible implementation gap between international standards of Indigenous peoples and the reality of certain cases on the ground, as well as the development of best practices to overcome it. Thereafter, we will draw conclusions on the role of ILA in the evolutionary process of the law relating to Indigenous peoples, emphasizing the distinctive role of the resolutions of this organization in providing evidence for the existence of rules of international law under Article 38(1)(d) of the Statute of the International Court of Justice (ICJ).

2 The UNDRIP: Genesis, Contents and Significance

Twenty-two years is a period of time unusually long for negotiations finalized to the adoption of a declaration of principles by the UN General Assembly. While declarations of principles relate to "matters of major and lasting importance where maximum compliance [by UN member states] is expected",[4] and in some cases already reflect or become *fons et origo* of customary international law, their rules are actually of a non-binding character. One would therefore expect that negotiations would not take too long. However, as far as the UNDRIP is concerned, from the drafting of the first set of (seven) principles prepared by the UN Working Group on Indigenous Populations in 1985[5] to the adoption of the Declaration by the General

[3] ILA, Kyoto Conference (2020), Implementation of the Rights of Indigenous Peoples, Final Report, and ILA Resolution No. 3/2020, Committee on the Implementation of the Rights of Indigenous Peoples, both available at (or "downloadable from") <https://www.ila-hq.org/index.php/committees> accessed 11 March 2022 (scroll down to "Index of Current Committees" and follow "Implementation of the Rights of Indigenous Peoples (2006-2012)", then select "Documents").

[4] UN Economic and Social Council, 'Report of the Commission on Human Rights' 18th Session (19 March–14 April 1962) E/3616/Rev. l para 105.

[5] UN Doc E/CN.4/Sub.2/1985/22 (27 August 1985), Annex II.

Assembly on 13 September 2007,[6] exactly 22 years of intense and, for most of its provisions, controversial negotiations proved to be necessary. This was mainly due to the active involvement in the negotiations of representatives of Indigenous peoples, side-by-side with (and sometimes confronting) state representatives.

Indigenous negotiators never gave up with regard to the parts of the future declaration that they considered decisive for ensuring the appropriate protection of Indigenous peoples' rights. Notably significant, they never surrendered in conducting the so-called *battle of the "s"*, which "constituted a central site of discursive contest between state and Indigenous representatives".[7] Throughout the whole duration of the negotiations – from the draft adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1994[8] to the text approved by the Human Rights Council on 29 June 2006[9] to the adoption of the Declaration by the General Assembly—Indigenous peoples have always been referred to as people*s*, with the final "s", and, as such, are holders of the right to self-determination, expressed by Article 3 of the final text of the UNDRIP as the right by virtue of which Indigenous communities "freely determine their political status and freely pursue their economic, social and cultural development".

This provision is substantively counterbalanced by Article 46, para. 1, stating that "[n]othing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States". It was actually the inclusion of this particular paragraph that unlocked the impasse that had precluded the Declaration from being adopted for a number of years. However, the presence of this provision does not really prejudice the substance of the right of Indigenous peoples to self-determination, at least according to the way it is conceived by Indigenous peoples themselves. In fact, most Indigenous communities aspire to exercise it according to its "internal" dimension, i.e. within the state where they live, without claiming any right to political secession from the latter. The right to self-determination is intertwined with the right to autonomy, expressed by Article 4 as "autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions".

Another significant aspect addressed by the UNDRIP, which for reasons that are self-evident proved to be particularly controversial during the negotiations, is the one relating to land rights. In this respect, Article 25 of the approved text establishes that "Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold

[6] A/RES/61/295.

[7] See Morgan (2016).

[8] Res 1994/45 of 26 August 1994.

[9] Res No. 1/2 of 29 June 2006.

their responsibilities to future generations in this regard". According to Article 26(1), they even have the "right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired".

However, even more than with respect to this provision, a particularly fervent debate went through virtually the entirety of the negotiations about the provision of the Declaration recognizing the right of Indigenous peoples to seek redress for their traditional lands taken or occupied by others against their will. Indigenous representatives have never accepted a solution different from the one establishing that the primary form of redress for this violation of their land rights had to be the restitution of the lands concerned and that alternative forms of reparation could only be considered when restitution would be objectively impossible. This led several state delegations to express their deep concern, especially in light of "the possible retroactive application of compensation".[10]

In any event, despite the many attempts reiterated by state representatives to weaken the content and scope of the provision in point, Indigenous representatives were able to bring it, substantially unmodified, to the finish line. Consistently, Article 28, para. 1, UNDRIP, reads as follows: "Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent."

It is especially notable that this rule, according to its definitive text, in consideration of the way its text is formulated, has remained of retrospective applicability, covering in principle also the instances of deprivation of Indigenous peoples' ancestral lands occurring in the past. It was especially due to this provision (and, exactly, its applicability *ex tunc*) that, for instance, the government of New Zealand decided to vote against the adoption of the Declaration, as its articles on redress and compensation, particularly Article 28, were considered "unworkable in New Zealand despite the unparalleled and extensive processes that exist under New Zealand law in this regard [...] the entire country would appear to fall within the scope of the article [...] It is impossible for the State in New Zealand to uphold a right to redress and provide compensation for value for the entire country."[11] In reality, a situation like the one envisaged by the delegate of New Zealand is very unlikely to happen in practice in the real world; in fact, in order for Article 28 UNDRIP to be enforceable, it is necessary that an Indigenous community continues to retain—today—the cultural connection with the land of which it was deprived in the past. Furthermore, while the first option contemplated by the provision in point is restitution, in many cases the practical feasibility of the latter may be hindered by the fact that, for different reasons, it has become materially

[10] See the position of the delegate of Sweden, available in UN Doc. E/CN.4/1997/102 (10 December 1996) para 273.

[11] See UNGA General Assembly official records, 61st session: 107th plenary meeting (13 September 2007) A/61/PV.107.

impossible or may conflict with the essential interests of the national community as a whole, also protected by international law. This is exactly the reason why Article 28 accepts that, depending on the specific circumstances of each situation, restitution may not be possible, and, when this happens, it may be replaced by "just, fair and equitable compensation". That said, as a matter of law, the retroactive applicability of Article 28 UNDRIP is beyond doubtful, as confirmed by the fact that, as noted below in this section, New Zealand and other states that had originally voted against the adoption of the UNDRIP decided, within a very short span of time, to reverse their position and endorse the Declaration.

The aspect of reparations, restitution and redress for the wrongs suffered by Indigenous peoples is a central one in the context of the UNDRIP, as demonstrated by the many relevant provisions included in its text, establishing a right to redress for, *inter alia*, actions perpetrated with the aim or having the effect of depriving the communities concerned of their integrity as distinct peoples, or of their cultural values or ethnic identities, for instances of forced assimilation or integration of such communities within the dominant society (Article 8, para. 2), "with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs" (Article 11, para. 2) or for the deprivation of their means of subsistence (Article 20, para. 2).[12]

As a whole, the UNDRIP defines and protects the rights of Indigenous peoples in a quite comprehensive and evolutionary manner. In addition to the provisions referred to in the previous lines, other articles attaining special significance and, therefore, worth mentioning are, among others, the following:

- Article 5 (according to which "Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State")
- Article 8 (concerning the right of Indigenous peoples and individuals "not to be subjected to forced assimilation or destruction of their culture")
- Article 10 (right not to be forcibly removed from their lands or territories)
- Article 11 (right to practise and revitalize their cultural traditions and customs)
- Article 12 (right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; right to maintain, protect, and have access in privacy to their religious and cultural sites; right to the use and control of their ceremonial objects; right to the repatriation of their human remains)
- Article 13 (right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures)

[12] On this issue, see Lenzerini (2018), pp. 573–598.

- Article 14 (right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning)
- Article 16 (right to establish their own media in their own languages and to have access to all forms of non-Indigenous media without discrimination)
- Article 19 (right to be consulted by states, which should cooperate in good faith with them in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them)
- Article 24 (right to their traditional medicines and to maintain their health practices)
- Article 31 (right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions)
- Article 34 (right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and juridical systems or customs); and
- Article 40 ("right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights")

In terms of legal significance, the UNDRIP has gone much beyond an "ordinary" declaration of principles. As co-author of this contribution, Professor Siegfried Wiessner has commented that, with the UNDRIP, Indigenous peoples "have re-emerged empowered, with a strong voice looking forward to self-actualization as a group, steeped in their culture, but open to self-determined change, on their lands with which they share a strong, often spiritual bond. The success has not been on a straight upward trajectory; there have been ups and downs along the journey. That is why UNDRIP has been a milestone of re-empowerment."[13]

When the Declaration was adopted by the General Assembly in 2007, it received an affirmative vote from 143 states, a negative vote from only four countries—the United States, Canada, Australia and New Zealand—and 11 abstentions. Between 2009 and 2010, the four countries originally voting against, in addition to Colombia and Samoa (which in 2007 were among the abstaining states), officially endorsed the Declaration, affording it virtually universal support. Moreover, one of the very few states with significant populations of Indigenous peoples in their territories that so far have never expressed official support for the UNDRIP—Russia (which in 2007 was among the abstaining countries)—has argued that it already complies with the

[13] Siegfried Wiessner, 'Introduction, Methodology of Work, Background and Legal Status of UNDRIP', in ILA, The Hague Conference (2010), Rights of Indigenous Peoples, Interim Report, available at <http://www.ila-hq.org/index.php/committees> accessed 11 March 2022 (scroll down to "Index of Former Committees" and follow "Rights of Indigenous Peoples (2006-2012)", then select "Documents") 2. See also S. James Anaya and Siegfried Wiessner, 'The UN Declaration on the Rights of Indigenous Peoples: Towards Re-empowerment' *Jurist* (3 October 2007) <www.jurist.org/commentary/2007/10/un-declaration-on-rights-of-indigenous-2/> accessed 11 March 2022.

principles enshrined by the Declaration and that, therefore, there is no need to formally endorse it.[14]

Furthermore, the authoritative character of the UNDRIP has been affirmed by both domestic courts and international human rights bodies and other tribunals (including the Inter-American Court of Human Rights, the African Commission and Court on Human and Peoples' Rights, and the Caribbean Court of Justice),[15] producing a generally accepted *opinio juris*, which has brought its main principles to actually develop into rules of customary international law. These rules are, in particular, those establishing the right of Indigenous peoples to self-determination; their right to autonomy or self-government; their right to cultural identity and cultural heritage; their right to their traditional lands, territories and resources; as well as their right to reparation and redress for the wrongs they have suffered.[16]

3 The ILA Committee on the Rights of Indigenous Peoples (2006–2012)[17]

The International Law Association, at its 2006 Biennial Meeting in Toronto, established a Committee on the Rights of Indigenous Peoples. It was given the task of writing an authoritative commentary on Indigenous peoples' rights, including, as added later, the meaning of the 2007 UN Declaration. In its final composition, it featured no less than 30 expert members from all inhabited continents.[18] Its original chair was Professor S. James Anaya. In 2008, Professor Anaya was appointed UN Special Rapporteur on the Rights of Indigenous Peoples. He thus could no longer chair the Committee, and he asked Professor Siegfried Wiessner, with the agreement of the Committee members, to lead it.[19] At the 73rd ILA Biennial

[14] See Federica Prina and Alexandra Tomaselli, Case Study on 'Land and fishing rights of indigenous peoples in Russia. Main Findings', 2020, prepared for the ILA Committee on the Implementation of the Rights of Indigenous Peoples, available at <http://www.ila-hq.org/index.php/committees> accessed 11 March 2022 (scroll down to "Index of Current Committees" and follow "Implementation of the Rights of Indigenous Peoples (2006-2012)," then select "Documents") 2.

[15] See the discussion and references in Lenzerini (2019), pp. 51, 56–57 (notes 22–32).

[16] See International Law Association, Resolution No. 5/2012, 'Rights of Indigenous Peoples', see Appendix, *infra*.

[17] The following remarks on the work of the ILA Committee on the Rights of Indigenous Peoples draw heavily on the article by Wiessner (2013), pp. 1357–1368.

[18] For a list of all members, see <http://www.ila-hq.org/index.php/committees> accessed 11 March 2022 (scroll down to "Index of Former Committees" and follow "Rights of Indigenous Peoples (2006-2012)", then select "Members").

[19] ILA, Rio de Janeiro Conference (2008), Rights of Indigenous Peoples, First Report, available at <http://www.ila-hq.org/index.php/committees> accessed 11 March 2022 (scroll down to "Index of Former Committees" and follow "Rights of Indigenous Peoples (2006-2012)", then select "Documents") 3.

Meeting in Rio de Janeiro, Professor Wiessner was formally appointed chair, and the Committee established ten subcommittees dealing with distinct themes, such as the legal nature of the Declaration and its rights; the definition *vel non* of Indigenous peoples; the right to self-determination and autonomy; the rights to cultural identity, education and the media; the rights to traditional lands, including free, prior and informed consent; treaty rights; the right to development, to name a few.

The new Rapporteur of the Committee, co-author of this contribution, Professor Federico Lenzerini from the University of Siena, coordinated the process, integrating work done at an intersessional workshop at the European University Institute in Florence, Italy, and combined subcommittee reports in a 52-page interim report for the ILA's 74th Biennial Meeting in The Hague. After another intersessional meeting conducted at the University of Anchorage in Alaska in August 2011, at the invitation of Inuit Committee member Dalee Sambo Dorough, the final report of the Committee and a resolution for the ILA's 75th Biennial Meeting in Sofia was prepared. The final report supplemented the interim report of 2010. The package of both the interim and the final report, plus the resolution, were presented for discussion and adoption at the Open Session of the Committee on 28 August 2012. This session was open to all members of the ILA.

The session was chaired by Ralph Wilde (University College London) and was well attended. Upon the presentation of the report and resolution by the Chair and Rapporteur, interventions from the floor from among the Committee members present—Dalee Sambo Dorough, Mahulena Hofmann, Willem van Genugten, Rainer Hofmann, Ana Vrdolyak, Christina Binder and Katja Goecke—and comments and questions from non-Committee members of the ILA, all supportive and informative, the Chairman of the Session put the Committee's proposal to a vote. All ILA members voting in that room raised their hands emphatically in favour—save one formal abstention by a late arrival to the meeting, who did not feel knowledgeable enough about the subject to cast a substantive vote.

After this decision, the ILA Steering Committee put its finishing touches on the resolution, without changing the substance of the Committee's proposal. A question was asked as to why the resolution did not include a definition of the term "Indigenous peoples". The Committee Chair responded that the Committee as a whole, in particular its Indigenous members, was unwilling to present a formal definition as this was seen, inter alia, as another attempt at colonization. Still, in the final report, a section had been included to clarify the understanding of the term. Two essential elements of that multi-factorial description of Indigenous peoples were self-identification as such and Indigenous peoples' special, often spiritual relationship with their ancestral lands.[20] The Steering Committee was satisfied with this response.

[20] ILA, Sofia Conference (2012), Rights of Indigenous Peoples, Final Report, available at <www.ila-hq.org/index.php/committees> accessed 11 March 2022 (scroll down to "Index of Former Committees" and follow "Rights of Indigenous Peoples (2006-2012)," then select "Documents"), 2–3.

At the closing plenary session of 30 August 2012 in the Aula of the University of Sofia, the Chairman of the ILA Executive Council, The Rt Hon the Lord Mance, Justice of the United Kingdom Supreme Court, and Open Session Chairman Wilde introduced Resolution No. 5/2012. Dr. Wilde stated:

> This resolution represents the culmination of six years of very hard work on this important and cutting-edge topic. Its conclusions and recommendations are based on a wide-ranging and rigorous study of state practice in this area, as reflected in the Committee's two lengthy reports. The resolution and those reports are clearly destined to play a major role in influencing the understanding and development of international law in this field.

And then he commended the adoption of the Resolution—to the rousing applause of the audience. As with the prior resolutions, Lord Mance, after waiting for objections, which did not come, declared the resolution properly offered, seconded and passed.

This resolution of the ILA is historic. Not only does it recognize collective human rights;[21] it also specifies a number of rights that have become part and parcel of customary international law. These include the following:

(A) The right to *self-determination* to the extent it is recognized under international law.[22] Using the template of the distinction between external and internal self-determination,[23] the interim report, as integrated into the final report and resolution, made clear that Indigenous peoples would have a right to secede only if such a right, under any condition, were to be recognized by the international community with respect to any other people as well.[24] Indigenous peoples would have the same rights as other peoples in this respect, no less.[25]

(B) More content filled is the right to *autonomy*, the right to internal and local self-government, as laid down in Article 4 of the Declaration.[26] It includes, inter alia, the right of an Indigenous people to continue its structures of leadership and

[21] ILA Resolution No. 5/2012, Appendix, Conclusion No. 1.

[22] *Id*., Conclusion No. 4.

[23] Drawing on the Canadian Supreme Court's conceptualization in its advisory opinion on the status of Québec, "external" self-determination has been defined as the "right of peoples to freely determine their international status, including the option of political independence", while "internal" self-determination denotes the "right to determine freely their form of government and their individual participation in the processes of power" within a particular nation-state. Wiessner (1999), p. 57, 116. The ILA Committee on the Implementation of the Rights of Indigenous Peoples also refers to the "internal dimension" of the right to self-determination in its Final Report, 2020, *n* 5, 4.

[24] In the extra-colonial context, legal affirmations of such a right have been few and far between. The Canadian Supreme Court in its advisory opinion on the status of Québec referred to a potential right of all peoples to "external self-determination [. . .] where a definable group is denied meaningful access to government to pursue their political, economic, social and cultural development". *Re: Secession of Quebec,* [1998] 2 S.C.R. 217, Supreme Court of Canada, 37 *ILM* 1340, 1373, para. 138.

[25] Jon Van Dyke, 'Self-Determination', in ILA, The Hague Conference (2010), Rights of Indigenous Peoples, Interim Report, *n* 16.

[26] ILA Resolution No. 5/2012, Conclusion No. 5.

traditions, commonly designated as their customary law.[27] In its generality and global reach, this specific right of Indigenous peoples under international law is unprecedented.[28] This autonomy can take many forms; as every provision in the Declaration and the general law of Indigenous peoples, it has to be interpreted from its *telos*, i.e. the safeguarding and flourishing of Indigenous peoples' cultures and traditions.[29] As against the rights of individual members, limits to this self-rule of the group are the customary international law of individual human rights as well as rights under treaties that the state, on whose territory the Indigenous peoples reside, has accepted.[30]

(C) Indigenous peoples' rights to their *cultural identity* have to be recognized, respected, protected and fulfilled by the state.[31] The customary international law obligation here does not translate into a general positive right.[32] Rather, it is to be seen as a right not to be denied the right to speak and teach their own language, the evermore threatened anchor of their culture.[33] They also have the right to establish schools and media of their own.[34]

(D) The key right of Indigenous peoples under customary international law translates into a state obligation to "recognize, respect, safeguard, promote and fulfil the rights of Indigenous peoples to their *traditional lands, territories and resources*",[35] which includes, in the first place, the demarcation, titling and equivalent forms of legal recognition of these resources. This right recognizes the conceptually indispensable link of the peoples to the areas with which they

[27] It helps here to understand the law, in line with policy-oriented jurisprudence, as a process of authoritative and controlling decisions within any community, be it territorial or personal. Michael Reisman et al. (2007), p. 575, 587–588, 591–592; Wiessner (2010), p. 45, 47–49.

[28] There have been a number of minority rights arrangements under specific treaty regimes, especially after World War I, but no such general legal right of a group under international law has been recognized before. Domestic law, on the other hand, knows of many such arrangements, which created, inter alia, the basis for the customary international law conclusion. For details, see Eckart Klein, *Minderheitenschutz im Völkerrecht*, Schriftenreihe Kirche und Gesellschaft Nr. 123 (1994); id., 'Minderheiten', 'Minderheitenrechte', 'Minderheitenschutz', in *Evangelisches Soziallexikon* (2001) Sp. 1083–1088.

[29] Wiessner (2011), p. 121, 129.

[30] ILA, Sofia Conference (2012), Rights of Indigenous Peoples, Final Report, *n* 23, at 3.

[31] ILA Resolution No. 5/2012, Conclusion No. 6.

[32] ILA, Sofia Conference (2012), Rights of Indigenous Peoples, Final Report, *n* 23, at 15: "At the moment, ... the legal evolution occurred in this respect has probably not yet reached the point of leading to the existence of a rule of customary international law dictating a *positive* State obligation to take all possible measures in order to allow indigenous peoples to preserve their languages and transmit them to future generation. At the same time, it is reasonably indubitable that such an obligation actually exists in *negative* terms, in the sense that States are bound not to create any obstacles to the efforts and activities carried out by indigenous peoples in order to preserve their own languages as an element of their cultural identity."

[33] Dussias (2008), p. 5; as to the importance of language, see Klein (1998), p. 59.

[34] ILA Resolution No. 5/2012, Conclusion No. 8.

[35] ILA Resolution No. 5/2012, Conclusion No. 7.

have a special, often spiritual connection. It also recognizes the special role Indigenous peoples have played in the preservation of these lands, making them their trusted guardians. Their use typically was oriented not at the exploitation of the resource to the point of exhaustion but at the preservation of those lands for future generations, making them a model for modern environmental law's quest for sustainability. Maybe this right is the most consequential one as it may collide with the interests of other actors in the use of these very lands, sometimes with the national interest.[36] The Indigenous peoples' right to their traditional lands and resources, inter alia, with respect to Mayan lands, has been recognized by Belize's Supreme Court as part of "general international law"[37] and, as to a Sami community's exclusive right to confer the rights to reindeer herding, small game hunting and fishing they hold in their lands, by the Supreme Court of Sweden in the *Girjas Sameby* case,[38] as part of their rights under customary international law to use their traditional lands and resources, referencing, inter alia, Article 26 UNDRIP.[39]

(E) The right to *free, prior and informed consent* to governmental measures affecting Indigenous peoples leads usually only to the right of the affected communities to be consulted. This consultation, however, must include the active participation of Indigenous peoples in the planning of such projects. If a project significantly endangers the very essence of an Indigenous people's culture, then consent is required under customary international law.[40] It, however, ought not to be arbitrarily denied.

(F) *Reparations and redress* for wrongs are also addressed, with due regard for their proper format, adequacy and effectiveness.[41] This redress must be established in conjunction with the peoples concerned, "available and accessible in favour of Indigenous peoples", and, "according to the perspective of the Indigenous

[36] For a good analysis, see Vadi (2011), p. 797.

[37] See Federico Lenzerini and Siegfried Wiessner, Case Study on 'The Maya Communities in Belize', in ILA, Johannesburg Conference (2016), Implementation of the Rights of Indigenous Peoples, Interim Report, available at <http://www.ila-hq.org/index.php/committees> accessed 11 March 2022 (scroll down to "Index of Current Committees" and follow "Implementation of the Rights of Indigenous Peoples (2006-2012)", then select "Documents") 12–14.

[38] See Rainer Hofmann, Case Study on 'Swedish Supreme Court (Högsta Domstolen), Girjas Sameby, Case No T 853-18 (23 January 2020). Recognition of Sami Indigenous People's Exclusive Right to Confer Hunting and Fishing Rights in Girjas Sameby Area', in ILA, Kyoto Conference (2020), Implementation of the Rights of Indigenous Peoples, Final Report, *n* 5, 9.

[39] See ILA, Kyoto Conference (2020), Implementation of the Rights of Indigenous Peoples, Final Report, *n* 5 12–13.

[40] "When the essence of their cultural integrity is at significant risk, obtaining the free, prior and informed consent of the indigenous peoples concerned becomes mandatory." ILA, Sofia Conference (2012), Rights of Indigenous Peoples, Final Report, *n* 23 10.

[41] ILA Resolution No. 5/2012, Conclusion No. 10. For different ways to effectuate reparations, see Lenzerini (2009).

communities concerned, actually capable of repairing the wrongs they have suffered".[42]

4 The Legal Effect of ILA Resolution No. 5/2012

UN Special Rapporteur James Anaya, in his enthusiastic endorsement of the report and resolution, wrote that the resolution is "highly authoritative" and may, as intended, assist him and other decision-makers in their work of interpreting, applying and implementing Indigenous peoples' rights.[43] Earlier, in 2011, the International Centre for Settlement of Investment Disputes (ICSID) Arbitral Tribunal in the *Grand River Case* had referred to the work of the Committee and its interim report in finding that there "may well be [...] a principle of customary international law requiring governmental authorities to consult Indigenous peoples on governmental policies or actions significantly affecting them".[44]

Generally, the resolutions of the International Law Association, just as those of the International Law Commission, have been recognized as evidence of international law. The *Third Restatement of Foreign Relations Law of the United States* affirms this characterization,[45] as does the leading textbook of international law in Germany. As Graf Vitzthum stated there, the global resolutions of a body as qualified and diverse as the International Law Association are stating a rare consensus among, at times, radically different cultures and value traditions and thus should be especially appreciated and valued.[46] This is particularly true when, as in this case, they pass not only uncontested, but with emphatic support.

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[42] *Id.*

[43] S. James Anaya, 'Statement of Endorsement of Committee Final Report and Resolution', in ILA, Sofia Conference (2012), Rights of Indigenous Peoples, Final Report, *n* 23, 31, 32:

The committee's work before you reflects the highest standards of our profession. ... Given the thorough research undertaken by the committee, the conclusions as formulated in its final report and resolution are highly authoritative. I am confident that, as intended, this expert commentary will reduce confusion and contention over the content and normative status of the provisions of the UN Declaration and of indigenous peoples' rights in general. It will help me in my work as Special Rapporteur as I endeavor to guide states toward ever close compliance with the new regime of indigenous peoples' human rights.

The commentary will be available to practitioners and advocates, governments, courts and tribunals, academics and indigenous organizations, to draw on and refer to in dealing with the important issues that concern indigenous peoples. Accordingly, it will be a hallmark of the work of the International Law Association in the new environment of the values-based international law of the 21st century.

[44] *Grand River Enterprises Six Nations, Ltd., et al. v. United States of America*, 12 January 2011, <https://2009-2017.state.gov/s/l/c11935.htm> accessed 11 March 2022, para 210.

[45] American Law Institute, *Third Restatement of the Foreign Relations Law of the United States,* § 103 Reporters' Notes *n* 1 (1987).

[46] Graf Vitzthum (2004), p. 72, para 147.

The arguably most authoritative source on the content of international law, the International Law Commission (ILC) of the United Nations,[47] has accorded such evidentiary status to its own proceedings and those of the ILA in the context of the identification of the rules of customary international law. For the determination of the "teachings of the most highly qualified publicists of the various nations" under Article 38(1)(d) of the ICJ Statute, the ILC refers not only to individual scholars but also to the collective authority of a diverse and highly qualified community of scholars in the *Institut de Droit International* and the International Law Association.[48]

On such firm ground, ILA Resolution No. 5/2012 transcends the writings of individual scholars, no matter how well researched and persuasive their work is. It has come about to help complete the circle of protection for the most vulnerable and precious peoples on the face of the Earth.

5 The Committee on the Implementation of the Rights of Indigenous Peoples (2014–2020)

Resolution No. 5/2012 finalized the mandate of the first ILA Committee on the Rights of Indigenous Peoples. In the following months, the idea of continuing its work was advanced, and at the end of 2013, the new Committee was finally established, deciding that it should focus in general on how Indigenous rights are realized in practice. Ultimately, it was decided that the focus should be on the actual implementation of the rights to lands, territories and resources, given the centrality of the profound relationship that Indigenous peoples have with their environment and their reliance upon the same for the diverse economic, social, cultural and spiritual elements of their distinct identity.

The Committee on the Implementation of the Rights of Indigenous Peoples was formally established by the Executive Council of the ILA in November 2013 and had its first meetings in April 2014, in the context of the Biennial ILA Conference in Washington, DC, and on 20–21 February 2015 in The Hague. Both of these meetings were used to sharpen the focus of the mandate, to invite and select additional members and to divide work. The chairs of this Committee were Professor Willem M. Genugten and the chair of the Inuit Circumpolar Council, Dalee Sambo

[47] The International Law Commission was established by the General Assembly, in 1947, to undertake the mandate of the Assembly, under article 13 (1) (a) of the Charter of the United Nations to "initiate studies and make recommendations for the purpose of . . . encouraging the progressive development of international law and its codification".

[48] International Law Commission, *Identification of customary international law: Ways and means for making the evidence of customary international law more readily available*, Memorandum by the Secretariat, 12 January 2018, U.N. Doc. A/CN.4/710, para72 and 73. *See also* Paragraph (5) of the commentary to draft conclusion 14, Official Records of the General Assembly, Seventy-first Session, Supplement No. 10 (A/71/10), para 63.

Dorough, together with rapporteurs Professor Federico Lenzerini and Professor Timo Koivurova.

The second Committee chose to approach the topic by selecting key cases in the domain of the rights to lands and to the natural resources located therein, from different regions of the world. The Committee decided to apply an interdisciplinary analysis of such cases, taking full account of all relevant factors but mainly focusing on legal issues and approaches, ranging from Indigenous customs, practices, land tenure systems and law as well as national, regional and international law. The goal was to identify an effective resolution of the potentially competing rights and interests concerning the lands, territories and resources of the Indigenous peoples concerned: (1) paying particular attention to the cultural elements as well as to the cultural implications arising from violations of the land rights of Indigenous peoples, culture being the cornerstone of the very identity and existence of those peoples, and (2) paying attention to economic factors and actors, with a focus on state and third parties, including multinational companies.

Hence, the idea was to analyze cases not purely from a legal perspective but from what is often referred to as "law in (its societal) context". It was also decided that special focus would be devoted to the identification and selection of "best practices", or rather "good practices", of countries that have or are attempting to implement the UNDRIP standards and to the evaluation of how such practices could be applied to other areas, taking note of existing cultural and social differences, as well as regional differences.

The plan was to focus on a number of "leading questions" while leaving the authors of respective case studies the space to handle the analysis their own way, as long as they were addressing the following core questions: *does "the law of Indigenous peoples" (customary, national and/or international) play a role in analyzing and solving the conflict at hand? If so, are there any interactions or direct linkages between these three layers? If Indigenous peoples law plays a role, what judicial and/or non-judicial procedures have been used? To what extent are the relevant Indigenous peoples given the space to act autonomously and/or to participate directly in decision-making by national governments? Is the right to self-determination fully recognized and respected? Is the right of Indigenous peoples to free, prior and informed consent operationalized in the context of resolving contentious issues and/or affirming their rights to lands, territories, and resources? Did the outcome, if any, do justice to the victims? If yes, in what way (reparation, compensation, etc.)? From the perspective of the Indigenous peoples concerned, was the outcome fair and equitable? Was it arrived at in a fashion consistent with the norms established by the UNDRIP? What form did the agreement or outcome take, e.g., land rights affirmed in law, policy or legislation, was it demarcated, did full implementation of all rights and interests result, etc.? If full implementation was not realized, what were the barriers or road blocks? What best practices or lessons have been learnt? What could be learned for the future?*

The Committee presented an interim report at the Biennial ILA Conference in Johannesburg (2016)[49] and used the Sydney Biennial Conference (2018)[50] to discuss a number of remaining substantive issues, followed by an interim Committee meeting in Geneva, in July 2019. While the Committee worked at some moment with a list of some 50 cases, it must be observed, however, that at the end, only 36 case studies have been finalized, varying from real case studies, including responses to the questions central to the mandate, to short case notes, supplemented with some, partly case-oriented, articles. At the Geneva meeting, it was therefore decided to limit "the empirical ambitions" the Committee had in mind. At the same meeting, the Committee members were also invited to send in general reflections on the implementation of the rights of Indigenous peoples. The final report was submitted to and approved at the virtual Kyoto Biennial Conference on 13 December 2020.

5.1 The Final Report

The final report of the second Committee consists of the following elements.[51] In the introduction, the mandate and methodology of the Committee's work are outlined. Section 2 takes up the many themes, approaches, general reflections and outcomes the Committee members have advanced via their case studies. The focus of Sect. 2 is on the recognition of the overarching right to self-determination in its "internal dimension", which remains not fully realized in many countries. Indeed, the case studies show a series of problems as regards the right in point, as some cases basically show that it is totally denied, while in other cases self-determination is recognized in principle, but no real follow-up measures are taken. It is evident that the right to self-determination is underlying the exercise of all other interrelated rights and, as such, is linked to concepts such as "autonomous decision-making", "self-government" and "free prior and informed consent" (FPIC). They are the core elements of the law of Indigenous peoples, and it will come as no surprise that the concepts arose in nearly each and every case. In many cases, it was observed that free, prior and informed consent—one of the key practical translations of the right to self-determination—is regularly lacking when it comes to policymaking on development projects with economic dimensions. In addition, in many of these cases, Indigenous rights standards are not known or misinterpreted by state organs and the corporate actors, which is extremely unfortunate, given the huge adverse impact

[49] See ILA, Johannesburg Conference (2016), Implementation of the Rights of Indigenous Peoples, Interim Report.

[50] See Implementation of the Rights of Indigenous Peoples, Working Session, Tuesday, 21 August 2018, 3.30 pm, available at <https://www.ila-hq.org/index.php/committees> accessed 11 March 2022.

[51] See *n* 5.

their activities have on Indigenous communities. But there are also good signs emerging from the case studies. In some cases, state organs are clearly aware of the need to take steps and are involved in processes of recognizing the need to pay specific attention to the rights of Indigenous peoples, including the decision-making rights, in accordance with Article 38 UNDRIP.

The use of legal instruments in solving conflicts is also addressed in Sect. 2. A first and relatively negative observation would be that Indigenous peoples face many difficulties in bringing their cases to courts, which means that many violations of their rights go unreported. This reluctance might, as the cases demonstrate, relate to the complexity of judicial procedures, the lack of trust in possible outcomes, the lack of financial means and possible retaliation but also to the availability of out-of-court means to solve problems, for instance mediation, round tables and truth and reconciliation commissions. Yet it is also important to note that many cases show that courts have applied UNDRIP, ILO Convention 169 and other Indigenous rights' standards to solve problems tabled before them. And many case studies show that the judiciary can indeed be an important mechanism in the process of interpreting and defending Indigenous rights.

Section 3 is devoted to good practices, aspects of which stem from the case studies. Many cases indeed demonstrate good or best practices, even if the case presenters note that context specificity and side elements make the outcome not "a best practice in full". The transferability between different contexts is an issue. Nations and Indigenous peoples do have specific histories linked to, often at least partly, different problems and varying legal as well as quasi-legal systems. In the report, some key aspects are drawn from a selected number of case studies. These can be seen as good practices, especially from the perspective of Indigenous peoples and their supporters.

One important aspect of good practices is that some cases have been solved through a resort to the customary law and practices of Indigenous communities. Of much importance is also re-interpreting national customary law consistent with the international standards for Indigenous peoples' rights, such as those contained in the UNDRIP, ILO Convention 169, the American Declaration on the Rights of Indigenous Peoples as well as several UN and regional human rights treaties. Another important aspect is that bringing cases to supreme courts, constitutional courts, regional courts and commissions can well advance the situation of Indigenous peoples since judgments by the highest legal authorities have trickled down to lower courts and policy instances. It comes out also from a couple of cases that, even if the UNDRIP is not per se legally binding as a whole, it should be fully respected as a general international guideline for Indigenous policies domestically and in litigation. Similarly, in some cases, it has been declared that specific norms contained in the Declaration, conceived as a "living instrument", are to be seen as customary international law.

Section 4 concentrates on reflections and the way forward. Through relying, again, on the outcomes arising from case studies, it is noted that they show a reality not dissimilar from what usually happens with human rights generally speaking. Such outcomes range from those "totally positive" to those "totally negative", while

the majority of them are "partially positive". While, generally speaking, the level of implementation of the rights of Indigenous peoples resulting from the case studies is quite heterogeneous, the global reality that they disclose is that the existence of the relevant legal standards, including under customary international law, is never seriously disputed by states and that it is generally recognized by the international community as a whole. At the same time, many violations take place—as happens with respect to human rights and legal norms generally speaking—but in most cases, they are actually treated as violations, confirming, again, the actual existence of the relevant standards. The way forward should therefore mainly consist in the reinforcement of such standards and the improvement of their level of implementation in the various regions of the world.

Finally, in Sect. 5, recommendations are provided, which involve states, international organs and institutions, Indigenous peoples themselves, non-governmental organizations (NGOs), investors, scholars and the civil society, whose efforts should all converge towards the actual further realization of Indigenous peoples' rights.

6 Conclusions

Overall, the activity of the two ILA Committees dedicated to Indigenous peoples has lasted for 14 years, from 2006 to 2020. The two Committees may be considered complementary and successive to each other, in terms of the mission accomplished and, especially, of the continuity of the work carried out. While the main role of the Committee on the Rights of Indigenous Peoples was to delineate the international legal standards in force in the field after the adoption of the UNDRIP, as well as to clarify their content and scope—at a time when such an issue was still quite controversial among scholars—the Committee on the Implementation of the Rights of Indigenous Peoples pursued the goal of ascertaining the extent to which the above legal standards find their actual realization in various contexts at the domestic level. Of course, in terms of influence in the development of international law on Indigenous peoples, the most significant outcome arising from the work of the two Committees is represented by Resolution No. 5/2012, which, as emphasized in Sect. 4 above, is to be considered as an expression of the "teachings of the most highly qualified publicists of the various nations", pursuant to Article 38(1)(d) of the ICJ Statute. Indeed, the highly authoritative significance of the Resolution is beyond any doubt, and it may be reasonably inferred that it has already played a significant role in the process leading to the concrete affirmation of the rules of customary international law in the field of Indigenous peoples' rights. Overall, the Committee on the Rights of Indigenous Peoples has carried out a thorough work of research and evaluation, which has already had a significant impact on the subsequent developments of international law on Indigenous peoples. One example of this impact is the influence of the research developed within the Committee on the determination of an

important ICSID arbitration case, as described above at the beginning of Sect. 4.[52] More generally, the main merit of the Committee on the Rights of Indigenous Peoples has been to provide an authoritative and detailed explanation of the meaning of UNDRIP and of the specific implications arising from it, leading, in the light of thoroughly researched state practice and *opinio juris*, to the finding of some of its main principles as existing rules of customary international law. This work has been positively received and reaffirmed by many scholars, who, in their turn, may well influence the future developments of international (and domestic) law in the field of Indigenous peoples' rights.

As far as the work of the Committee on the Implementation of the Rights of Indigenous Peoples is concerned, at the time of this writing, it is probably still too early to evaluate the influence that it may be playing in the development of the said international standards in terms of domestic implementation. At least, however, this Committee has shed light on both the good practices and the main shortcomings characterizing the current state of implementation of Indigenous peoples' rights by governments, and the fact of making them more internationally visible is likely to contribute to the improved and more effective realization of such rights throughout the world.

In the last two decades, an increasing number of scholars, practitioners and activists have dedicated their time and efforts to the advancement of Indigenous peoples' rights, with each of them providing important contributions to the building of the edifice of such rights in the framework of the international legal order. In particular, the experts gathered by the ILA to serve on the two pertinent Committees have played a significant role in clarifying and advancing the rights of Indigenous peoples. They were sowing seeds that have already started to produce fruits towards building an inclusive public order respecting their individual and collective dignity, with the prospect of many more to come.

Appendix

RESOLUTION No. 5/2012

RIGHTS OF INDIGENOUS PEOPLES

The 75th Conference of the International Law Association held in Sofia, Bulgaria, 26 to 30 August 2012:

HAVING CONSIDERED The Hague Conference Report and the Sofia Conference Report of the Committee on the Rights of Indigenous Peoples;

RECOGNISING the need for guidance for States, competent international bodies, civil society and indigenous peoples to ascertain the contents of international

[52] See text corresponding to *n* 47.

law applicable to indigenous peoples as well as further to enhance the safeguarding of indigenous peoples' human rights;

THANKS the Chair, the Rapporteur and the members of the Committee on the Rights of Indigenous Peoples for their work;

ADOPTS the Conclusions and Recommendations annexed to this Resolution;

REQUESTS the Secretary-General of the International Law Association to forward a copy of the Hague Conference Report and the Sofia Conference Report of the Committee on the Rights of Indigenous Peoples, as well as a copy of the present Resolution, to the Secretary-General of the United Nations, appropriate international and regional organizations, the United Nations Human Rights Council, the United Nations Permanent Forum on Indigenous Issues, the United Nations Expert Mechanism on the Rights of Indigenous Peoples, the United Nations Special Rapporteur on the Rights of Indigenous Peoples and the President of the International Court of Justice;

RECOMMENDS to the Executive Council that the Committee on the Rights of Indigenous Peoples, having accomplished its mandate, be dissolved.

CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE ON THE RIGHTS OF INDIGENOUS PEOPLES

I. Conclusions

1. Indigenous peoples are holders of collective human rights aimed at ensuring the preservation and transmission to future generations of their cultural identity and distinctiveness. Members of indigenous peoples are entitled to the enjoyment of all internationally recognised human rights—including those specific to their indigenous identity—in a condition of full equality with all other human beings.
2. The 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as a whole cannot yet be considered as a statement of existing customary international law. However it includes several key provisions which correspond to existing State obligations under customary international law.
3. The provisions included in UNDRIP which do not yet correspond to customary international law nevertheless express the aspirations of the world's indigenous peoples, as well as of States, in their move to improve existing standards for the safeguarding of indigenous peoples' human rights. States recognised them in a "declaration" subsumed "within the framework of the obligations established by the Charter of the United Nations to promote and protect human rights on a non-discriminatory basis" and passed with overwhelming support by the United Nations General Assembly. This genesis leads to an expectation of maximum compliance by States and the other relevant actors. The provisions included in UNDRIP represent the parameters of reference for States to define the scope and content of their existing obligations—pursuant to customary and conventional international law—towards indigenous peoples.

4. States must comply with the obligation—consistently with customary and applicable conventional international law—to recognise, respect, protect, fulfil and promote the right of indigenous peoples to self-determination, conceived as the right to decide their political status and to determine what their future will be, in compliance with relevant rules of international law and the principles of equality and non-discrimination.
5. States must also comply—according to customary and applicable conventional international law—with the obligation to recognise and promote the right of indigenous peoples to autonomy or self-government, which translates into a number of prerogatives necessary in order to secure the preservation and transmission to future generations of their cultural identity and distinctiveness. These prerogatives include, inter alia, the right to participate in national decision-making with respect to decisions that may affect them, the right to be consulted with respect to any project that may affect them and the related right that projects significantly impacting their rights and ways of life are not carried out without their prior, free and informed consent, as well as the right to regulate autonomously their internal affairs according to their own customary laws and to establish, maintain and develop their own legal and political institutions.
6. States are bound to recognise, respect, protect and fulfil indigenous peoples' cultural identity (in all its elements, including cultural heritage) and to cooperate with them in good faith—through all possible means—in order to ensure its preservation and transmission to future generations. Cultural rights are the core of indigenous cosmology, ways of life and identity, and must therefore be safeguarded in a way that is consistent with the perspectives, needs and expectations of the specific indigenous peoples.
7. States must comply—pursuant to customary and applicable conventional international law—with the obligation to recognise, respect, safeguard, promote and fulfil the rights of indigenous peoples to their traditional lands, territories and resources, which include the right to restitution of the ancestral lands, territories and resources of which they have been deprived in the past. Indigenous peoples' land rights must be secured in order to preserve the spiritual relationship of the community concerned with its ancestral lands, which is an essential prerequisite to allow such a community to retain its cultural identity, practices, customs and institutions.
8. States must recognise the right of indigenous peoples to establish their own educational institutions and media, as well as to provide education to indigenous children in their traditional languages and according to their own traditions. States have the obligation not to interfere with the exercise of these rights.
9. States must cooperate in good faith with indigenous peoples in order to give full recognition and execution to treaties and agreements concluded with indigenous peoples in a manner respecting the spirit and intent of the understanding of the indigenous negotiators as well as the living nature of the solemn undertakings made by all parties.
10. States must comply with their obligations—under customary and applicable conventional international law—to recognise and fulfil the rights of indigenous

peoples to reparation and redress for wrongs they have suffered, including rights relating to lands taken or damaged without their free, prior and informed consent. Effective mechanisms for redress – established in conjunction with the peoples concerned—must be available and accessible in favour of indigenous peoples. Reparation must be adequate and effective, and, according to the perspective of the indigenous communities concerned, actually capable of repairing the wrongs they have suffered.

II. Recommendations

11. States ought to restructure their domestic law with a view to adopting all necessary measures—including constitutional amendments, institutional and legislative reforms, judicial action, administrative rules, special policies, reparations procedures and awareness-raising activities—in order to make the full realization of indigenous peoples' human rights possible within their territories, consistently with the rules and standards established by UNDRIP.
12. Indigenous peoples are encouraged to cooperate actively and in good faith with States, to facilitate the implementation of States' international obligations related to indigenous peoples' rights, consistently with the rules and standards established by UNDRIP. Indigenous peoples are obligated to respect the fundamental human rights of others and the individual rights of their members, consistently with internationally recognised human rights standards.
13. Civil society, in all its components, ought to promote a favourable environment for the affirmation of indigenous peoples' rights, especially by nurturing a positive understanding within society as a whole of the value of indigenous cultures as well as of the positive role which may be played by indigenous peoples to further sustainable life in the world.
14. The competent bodies, specialized agencies and mechanisms of the United Nations system—including the Human Rights Council, the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the Rights of Indigenous Peoples—are encouraged to continue and strengthen their activity, in cooperation with States and indigenous peoples, in order to ensure further protection, promotion and improvement of indigenous peoples' rights throughout the world, consistently with the rules and minimum standards of human rights established by the UNDRIP.

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