

INTERNATIONAL LAW ASSOCIATION
KYOTO CONFERENCE (2020)
IMPLEMENTATION OF THE RIGHTS OF INDIGENOUS PEOPLES

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1. Introduction*

The first ILA Committee on the Rights of Indigenous Peoples finished its work at the Sofia Biennial Conference (2012). In its interim and final reports, the Committee dealt with a range of issues, such as understanding the term Indigenous peoples, the right to self-determination, language rights, cultural heritage, land rights and the rights of Indigenous peoples under customary international law.¹ The primary focus was on the 2007 *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP) and on offering clarifications, elucidation and guidance in respect of the UNDRIP provisions, as well as on pertinent State practice and *opinio juris*.

The Sofia Conference, meeting from 26 to 30 August 2012, adopted a resolution consisting of ten conclusions and four recommendations.² This Resolution authoritatively found that indigenous peoples' collective rights to their traditional lands, territories and resources, to their cultural heritage, to self-determination and autonomy, as well as to reparation and redress for the wrongs they have suffered have reached the status of customary international law. The Resolution marks the end of the first ILA Committee on the Rights of Indigenous Peoples and the starting point of the Committee on the *Implementation* of the Rights of Indigenous Peoples.

Mandate and methodology

In the period ranging from 2012 to 2014 the mandate of the new Committee was framed. It was decided to focus on the actual implementation of the rights to lands, territories and resources, because of the centrality of the profound relationship that Indigenous peoples have with their environment and their reliance upon the same for diverse economic, social, cultural and spiritual elements of their distinct identity:

“[g]iven the inter-related, interconnected, indivisible and inter-dependent nature of Indigenous human rights, many violations have an economic dimension. And, all of these rights have a strong cultural dimension, the recognition of which is at the foundation of their very existence as Indigenous peoples. Often, the rights of Indigenous peoples to their lands, territories, and resources have not been secured, leaving them with little or no access to natural resources on their territories and to their traditional economies. In some cases, they are forcibly removed in order for others, including foreign investors and multinational companies, to exploit their resources. Through such (f)actors they are often denied the right to maintain a livelihood of their own choice, to determine their own priorities for development, or, even more important, to foster and transmit their cultural identity to future generations”.

It was also decided that the Committee would study these issues 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;
- applying an interdisciplinary analysis of such cases, taking full account of all relevant factors, on the basis of legal issues and approaches, ranging from Indigenous customs, practices, land tenure systems and law as well as national, regional, and international law with a view to identifying an effective resolution of the potential competing rights and interests concerning the lands, territories, and resources of the Indigenous peoples concerned;
- 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;
- paying attention to economic factors and actors, with a focus on State and third parties, including multinational companies.

Finally, a 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 evaluate how such practices could be applied to other areas, taking into account existing cultural and social differences, as well as regional differences.

* This Section has been written by Willem van Genugten, Co-Chair of the Committee.

¹ See Sofia Conference (2012), Rights of Indigenous Peoples, Final report, available at <<https://www.ila-hq.org/index.php/committees>> (accessed on 30 March 2020).

² See Resolution No. 5/2012, “Rights of Indigenous Peoples”, available at <<https://www.ila-hq.org/index.php/committees>> (accessed on 30 March 2020).

The Committee, formally established by the Executive Council of the ILA in November 2013, 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 meetings were used to sharpen the focus of the mandate, to invite and select additional members, to discuss the list of (possible) cases, and to divide work.

Content-wise, it was decided to work with 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 idea was to analyse cases not purely from a legal perspective, but from what is often referred to as “law in (its societal) context”.

The Committee presented an interim report at the Biennial ILA Conference in Johannesburg (2016),³ and used the Sydney Biennial Conference (2018)⁴ to discuss a number of remaining substantive issues, followed by an interim Committee meeting in Geneva, in July 2019.

As can be seen in the 2016 interim report, the Committee worked at some moment with a list of some fifty cases. It must be observed, however, that at the end only 36 case-studies have been conducted, 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.⁵ At the Geneva meeting, the Committee members were also invited to send in general reflections on the implementation of the rights of Indigenous peoples. Such reflections will be summarized *infra*, in Sections 3 and 4.

³ See Johannesburg Conference (2016), Implementation of the Rights of Indigenous Peoples, Interim report, available at <<https://www.ila-hq.org/index.php/committees>> (accessed on 30 March 2020).

⁴ 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 on 30 March 2020).

⁵ For more details, see *infra*, Section 2.

2. Themes, Approaches and Outcomes*

While drafting their case-studies, the Committee members have come forward with many themes, approaches, general reflections and outcomes. In line with the Committee mandate the focus of this part of the report is on: a) the (non-)recognition of the overarching right to self-determination and, linked to that the actual practicing of the concept of free, prior and informed consent; b) the use of legal instruments in solving conflicts; and c) the outcomes. A special section of the report (section 3) will be devoted to (aspects of) good practices.

Section 2 of the report does *not* use references to specific cases, for a variety of reasons: a range of topics are common to many cases, while in other cases it would be problematic to quote the case-studies, because they are about ongoing, unfinished disputes, meaning that approaches, argumentations and outcomes might change. And in again other cases, the authors have not been able to provide updates. The idea therefore is to look “through the eye hairs” at the case material, looking for elements that have played a role so far and will most likely play a role in future cases.

The right to self-determination, to autonomy and to free, prior and informed consent in practice

The right of Indigenous peoples to self-determination – in its “internal dimension” (taking the form of a right to autonomy over their internal affairs, not including a right to secession) – is a pre-requisite to 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 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. The problems as regards the right to self-determination – i.e., together with the right of preserving the integrity of their culture, the most fundamental right Indigenous peoples have, a right forming the basis of many other rights as well – popping up from the case-studies can be grouped as follows:

- some cases basically show a *denial* of the right to self-determination. This relates, on the most fundamental level, to the non-recognition that Indigenous peoples’ rights are rooted in Indigenous customary law, predating States, a phenomenon automatically accompanied by the fact that State organs claim the right to “grant” rights to Indigenous peoples. In practice, this occurs in the form of application of the doctrine of discovery (*terra nullius*), of practices of (ongoing) assimilation, of Indigenous rights being resisted by other local people. Other aspects of the same phenomenon are a lack of recognition in domestic law of the juridical personality of Indigenous peoples, relevant for instance for the right to collective property, and the lack of specific representation in nation-wide legislative bodies;
- in a series of cases it is unveiled that States still pay to a great extent *lip service* to the right to self-determination, recognizing the principles as enshrined in, e.g., Articles 3, 4, 19 and 32 of UNDRIP – all related to self-determination – but not taking follow-up steps by, for instance, adopting legislation or by integrating the rights or principles in administrative decision-making processes. It also is reported in a few case-studies that States make arrangements in, for instance, the domain of self-governance in the cultural domain first, while only later addressing land rights issues. This is because the latter are seen as more complex or involve competing interests. However, these States thus neglect the interdependency and interrelatedness of, for instance, culture and specific traditional economic ways of making a living;
- especially if it comes to policymaking on development projects with economic dimensions, including mining and large-scale tourist projects, free, prior and informed consent – one of the key practical translations of the right to self-determination – is regularly lacking. In practice this means that Indigenous rights are often subordinated to rights and concessions which are granted by States to, for instance, extractive companies, without clear insight into the balancing of different interests and benefit sharing and often because of compelling economic interest of the “States at large”.
- some cases make clear that projects are sometimes carried out without any consideration of UNDRIP and other Indigenous rights’ standards, and without any knowledge of such standards by the project management, at both the side of the State as well as the corporate actors. Nevertheless, such projects often have a huge adverse impact on Indigenous communities and it would be mandatory according to some of the case-studies to further delineate and aligning the scope of the rights and obligations of the

* This Section has been written by Willem van Genugten, Co-Chair of the Committee. It is based on the case-studies elaborated by the members of the Committee. Most of the case-studies mentioned in this Report are available on the web page of the Committee, at <<https://www.ila-hq.org/index.php/committees>> (accessed on 19 May 2020). The case-studies not available on such a web page are available on file with the officials of the Committee.

respective parties in the context of such projects, in the interest of the Indigenous Peoples concerned. This also relates to the asymmetry in bargaining power of large private corporations and (the representatives) of Indigenous peoples;

- in a range of case-studies it is observed that State organs are using light and often incorrect interpretations of the existing obligations. Sometimes Indigenous peoples are allowed to participate in decision-making and make their voices heard, without, however, the duty to seek their consent before the actual decision-making takes place. The same regularly goes for the “duty to consult”. In several case-studies, the question is raised what this does mean, if not followed by “free, prior and informed consent”. On a more practical level, examples are passing of consultations at a stage where projects already started, of fake consultations being too rushed and predetermined, of consultations in inaccessible languages or in a formal, legalistic language, of one-sided information meetings, of the absence of realistic time-frames, and of lack of special attention for those members of Indigenous communities who are most affected;
- problems are also reported on the scope of consultations: what is the context of the consultative question? How about cumulative impact assessment, looking at the full chain of possible consequences of projects? And how about conducting such assessments consecutive times, as a process, while also measuring progress and non-progress once projects are running? To illustrate, as reported in several case-studies, the refusal of (full) ownership and control rights over lands makes it impossible for the Indigenous peoples concerned to develop new, and ecologically more sustainable, economic activities, like the investment in ecotourism in their traditional habitat, or to enter into benefit-sharing agreements over the exploitation of their resources;
- finally, one can see in a range of case-studies that State organs are 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. They do so in line with Article 38 UNDRIP, stating that “States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration”. Some started doing so immediately after the year the UNDRIP was adopted (2007), while others are inactive or appear to be effectively stifling its implementation. In quite a number of cases one can observe some optimism on the prospects for such implementation steps, even if actual compliance still has to follow.

The use of legal instruments in solving conflicts: the problems

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 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, truth and reconciliation commissions.

In a range of case-studies it has been reported 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. Elements of that will come back in the section on “General Aspects of Good Practices”.

First, this report enumerates a number of barriers and problems, dealt with in cases (and also to be seen as some sort of checklist for future cases). Issues mentioned at least once, listed here in key words and rephrased, sometimes combined, are the following:

- judges, attorneys, civil servants tend to have limited knowledge of the rights specifically belonging to Indigenous peoples, resulting in inconsistent application and enforcement;
- while UNDRIP is clear, the Indigenous customs it has to protect cannot easily be “looked up”. It requires the legal profession and the civil service to be open to learn more about it, once it comes to cases;
- UNDRIP is sometimes evoked as “a general instrument” instead of a set of sophisticated agreements on specific points and specific norms;
- sometimes advocates and civil society representatives bring up sources of Indigenous law, while courts do not accept them;
- regularly a deep divide exists between international legal standards, on the one hand, and the implementation on national level, on the other;
- as so many others, the legal profession has to deal with negative assumptions regarding the way of life of Indigenous peoples;

- fair verdicts are often confined to cases that do not touch upon the key interests of powerful individuals and institutions;
- if it comes to solving problems by arbitration, difficulties arise due the specific mandates of the respective bodies and their treatment of the absent third party as an “externality” to the proceedings. Furthermore, arbitral tribunals usually decide a case on the basis of what is put forward in the pleadings of the parties to the dispute; often, neither the investors nor the States involved bring forward Indigenous rights;
- arbitration leaves room for large discretion as regards the focus of the dispute and the applicable rules, not necessarily taking into consideration “the public good” and the rights of Indigenous peoples;
- the nature of investment law proceedings does not offer any preventive protection to non-parties;
- lack of financial resources as well as of accessible or free legal aid is a serious barrier, if it comes to “the equality of arms” in the context of whatever procedure;
- NGOs regularly have the right to send in *amicus curiae* letters, but have in many cases no *jus standi*. Changing that would make their position much stronger;
- civil society organisations whose priorities are not closely aligned with the government’s policies are often publicly discredited;
- advocating for the rights of Indigenous peoples often comes with threatening the Indigenous voices – and those of supporting NGOs – with reprisals, harassment and sometimes even calls to actively persecute them;
- parties to conflicts are attempting to bribe spokespersons of Indigenous peoples in order to get support for their reading of the outcome.

The use of legal instruments in solving conflicts: the outcomes

The disputes in the cases at hand deal with a range of topics very central to the lives of Indigenous peoples all-over the world. *Substantively* the outcomes relate to, among others:

- recognizing FPIC prior to the issuing of documents on fishing grounds used for industrial fishing, or the adoption of extractive industry concessions;
- reaffirming the right to communal property, not only with regard to registered properties, but also to those lands traditionally used by Indigenous peoples;
- recognition of concerns as regards Indigenous rights arising in the context of large-scale development projects with clashing economic interests;
- upholding “the exception clause” enabling Indigenous peoples to fish without permits, when fishing is carried out to satisfy subsistence needs and follows traditional practices;
- clarification of Indigenous identity, its distinctiveness compared to other identities/cultures and rights attached to that;
- recognition of an ancestral right to water of and for Indigenous peoples.

Other outcomes, mentioned at least once:

- affirmative action, creating a temporary preferred position for Indigenous peoples in order to repair injustice done to them, in the past or presently;
- adoption of interim measures, halting ongoing or immediate violations of the rights of Indigenous peoples;
- apologies for past or present injustices;
- repatriation of ancestral remains;
- awarding grants for tourism and other industry promotion projects and culture preservation projects;
- offering technical expertise to help implementing judgements.

Overall concerns, mentioned regularly:

- limited political will to implement the outcome of court cases once the outcome does not satisfy governmental interests and expectations;
- lack of effective mechanisms to accompany the implementation process of court decisions;
- limited data gathering on the aftermath of judgements, leading to unclarity whether or not rulings are fully executed.

Taken together, one can call that “the “implementation gap”. It refers to all obstacles and problems that hinder the application of Indigenous rights, from the legislation actually in force to the daily reality at grass-roots level.

3. General Aspects of Good Practices*

A few case presenters see their case as “a best practice”, however regularly followed by remarks on context-specificity and side-elements that make the outcome not “a best practice in full”. The transferability between different contexts is an issue indeed: 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 addition, what qualifies as “best” – or rather “good” – is partly subjective and is anyhow determined by the perspective used to look at the cases. What follows are some key aspects, selected from the case-studies, that, taken together, could qualify as (aspects of) good practices, seen from the perspective of Indigenous peoples, their representatives, and those who come up for their cause, including the present Committee. The issue of good (and bad) practices is also taken up in Section 4, including further reflections.

Some of the aspects are the mirror image of the problems mentioned above, such as the lack of knowledge of Indigenous rights. Further to that, the case material provides for a number of aspects of court cases (already practiced or practicable and advisable in the view of the present Committee), sometimes illustrated here with quotes taken from the case-studies:

- applying the existing Indigenous rights in a correct and non-minimalistic way, thus playing an active role in applying these provisions, sometimes leading to judicial activism, contrary to the wishes and interests of governments;
- recognizing that the basis for the right to, inter alia, self-determination and for instance collective property does not come from recognition by States, but is grounded on the customary practices of Indigenous communities;
- re-interpreting national customary law consistent with the international standards for Indigenous peoples’ rights, such as those contained in the UNDRIP, in ILO Convention 169, the *American Declaration on the Rights of Indigenous Peoples*,⁶ relevant rules of customary international law and basically any international legal (or quasi-legal) instrument that might be relevant in specific cases, such as UN and regional human rights treaties. For instance, as noted by Felipe Gómez Isa,

“[t]he American Court of Human Rights in the Case of the Awas Tingni Community against Nicaragua (August 2001) has set a very promising precedent for the evolution of the right of indigenous peoples to their lands and natural resources in the international legal landscape. The interpretation given by the Court of the right to property in this landmark case has been a real challenge to the traditional concept of property rights contained in the most relevant international human rights instruments. In addition, this innovative and courageous jurisprudence has been followed and furthered by the Inter-American Court in other cases where indigenous communities were also involved in the defence of their ancestral territories”;⁷

- working with the interaction of norms, nationally and internationally, as a multilayered legal framework, a system of “co-operative legal pluralism”, and of permeation which attempts to coexist, on the same level of equality and consideration, with official law. In this respect, for example, Laurent Sermet holds that

“[t]he [Kanak] charter is the foundation of a customary law system that can coexist, with bridges, with the civil law system. [...] The charter is a political act of indigenous law which aims to develop and further judicial custom, as previously mentioned, and customary practices as legal sources of law. The charter intends to lead to a new legal system called “co-operative legal pluralism”, which attempts to coexist, on the same level of equality and consideration, with official law”.⁸

To a similar extent, Alexandra Tomaselli, Rainer Hofmann and Federico Lenzerini argue that

* This Section has been written by Willem van Genugten, Co-Chair of the Committee.

⁶ *American Declaration on the Rights of Indigenous Peoples*, AG/RES. 2888 (XLVI-O/16), adopted without vote by Organization of American States, General Assembly, 46th sess., 15 June 2016.

⁷ See case-study on “The Decision by the Inter-American Court of Human Rights on the *Awas Tingni vs. Nicaragua Case* (2001): The Implementation Gap”, p. 25.

⁸ See case-study on “Kanak case of New Caledonia”, p. 12.

“it appears that in Chile there is a *permeation* of international standards regarding Indigenous water and land rights and their connotation and content by the domestic courts. Vice versa, [...] it may be also argued here that Chilean case law may potentially and positively influence an international standardization of the application of Indigenous water and land rights. In other words, if the adoption of international instruments by the international community, their ratification (in the case of ILO Convention 169) or their support (in the case of the UNDRIP), and the extensive debates in the international arena and in academia have and will certainly continue to have an impact on Chilean domestic case law, then such evolving jurisprudence could also contribute to the fine-tuning of the content and the application of Indigenous water and land rights in other parts of the world [...] this suggested *permeation* of international standards within the judicial understanding of, and, thus, ruling over, Indigenous water and land rights started after the long awaited (and demanded) ratification of the ILO Convention 169. This may further indicate that this official act (and the following international obligation) sustained a political momentum for Indigenous Peoples and their rights in the country, probably linked also to the electoral promises of the then [Chilean] President Michelle Bachelet. This may ultimately suggest that international standards and obligations may enhance an existing demand for a fair application of Indigenous rights *if* local actors (in this case, the domestic courts) have reached a mature understanding of such standards”;⁹

- bringing cases to supreme courts, constitutional courts, regional courts and commissions, in order to get judgements by the highest legal authorities available, and next to that, a trickling down and cascade effect, towards lower courts and policy instances. For example, Ebum Abolarin and Alexandra Tomaselli emphasize that

“the Endorois case remains an emblematic and pivotal case for a variety of reasons, few of which are valuable also beyond the African context. First, it constitutes a turning point in the jurisprudence of the African Commission, and it sets a milestone both for the regional and the international protection of indigenous peoples’ right to land”.¹⁰

Similarly, Cathal M. Doyle notes that

“[t]he Subanon experience, as one small component of this larger struggle, suggests that through sustained dialogue with the Government, and guided by indigenous peoples and the UNDRIP, international human rights bodies such as CERD continue to have a constructive role to play in helping to shape a social and political context that is more conducive to the empowerment of indigenous peoples. Ultimately, this mutually reinforcing combination of sustained international dialogue by human rights bodies with indigenous peoples and States and these proactive rights-asserting practices of indigenous peoples is an important and concrete step towards the realization of indigenous peoples’ right to self-determination [...]”;¹¹

- in the context of the multi-layered legal framework, and its manifold practitioners, also space is provided for arbitration, especially if it comes to economic investment issues. Such forms of dispute settlement come with aspects of good practices as well, both in terms of understanding and applying the existing rules in, minimally, a correct way and equally to what courts should do, as well in terms of procedural aspects. A good example of the latter is provided for by Christina Binder and contributor Jane Hofbauer:

“[i]f [arbitral] tribunals (...) restrict their inquiry to the subject-matter *sensu stricto* of the dispute, i.e. investment law, the largest impact indigenous peoples can exercise relates to the procedural process. For example, specifics of the Glamis Gold proceedings related to the public access to oral hearings. As requested by the Quechan tribe, the public was invited to follow the proceedings in a separate room via closed circuit television. The Quechan tribe was, however, allowed to view the proceedings from a different location with a separate video feed which was not

⁹ See case-study on “Land and water rights in Chile. Summary & Further Reflections”, p. 6.

¹⁰ See case-study on “*Centre for Minority Rights Development (Kenya) and Minority Rights Group (on Behalf of Endorois Welfare Council) v Kenya*”, p. 23.

¹¹ See case-study on “From Declaration to Implementation: The experience of the Subanon in the Philippines with the Operationalization of the UN Declaration on the Rights of Indigenous Peoples”, pp. 26-27.

interrupted when the otherwise restricted discussion on the cultural sites and artefacts was taking place”.¹²

- putting the distinction between “legally binding” and “non legally-binding” into perspective, accepting and emphasizing that, for instance, UNDRIP, being a Declaration and thus not legally binding as a whole, should be fully respected as a general international guideline for Indigenous policies and in law suits. Contextually, declaring that specific norms contained in the Declaration are to be seen as customary international law. In this regard, Rainer Hofmann illustrates that

“[a]ttention should be drawn also to some *obiter dicta* of the Court [judging the Swedish *Girjas Sameby* case] which might have quite a potential for the Court’s future jurisprudence. This applies in particular to the statement that the underlying principles of ILO Convention 169 - although not being ratified by Sweden - and of Articles 26 UNDRIP and 27 ICCPR may be considered as international law principles constituting customary international law and as such being applicable in Sweden in issues of land rights of indigenous peoples (...). While there is, of course, a need for considerable restraint when speculating about the impact judgements of national courts might have beyond the limits of their jurisdiction, it might well be that this decision will have an influence on legal developments in the neighbouring countries Finland and Norway where concepts similar to *urminnes hävd* [title or claim since times immemorial] can be found. But it might also be that this judgement, or rather its underlying *rationale* that in the case of rights of indigenous peoples ‘traditional legal titles’ might prevail over modern statutory provisions, will make a relevant contribution to the global discussion on the actual impact of the principles enshrined in UNDRIP”.¹³

The same aspect is highlighted by Anna Meijknecht, Bas Rombouts and Jacintha Asarfi:

“[i]n the *Saramaka* case, for example, the Court refers to elements of the UNDRIP as having gained the status of international custom, thereby contributing to shaping and interpreting international legal norms”,¹⁴

- applying the “living instrument doctrine”, by which judges and others confirm that provisions are not static and that their scope may change over time. This approach is emphasized, among others, by Felipe Gomez Isa:

“The Court followed what it called an ‘evolutionary’ interpretation method, opening the door to the use of regulatory developments on human rights produced in other contexts outside that of the Inter-American System. This enabled the Court to overcome purely formalistic criteria in its interpretation of the meaning, nature and scope of the right of indigenous peoples to the ownership of their lands and natural resources”,¹⁵

- paying on-site visits at the site of the events under dispute;
- looking for links between specific legal disputes and contextual economic and political complexity. This approach is valorized, among others, by Maria Sapignoli, Robert K. Hitchcock, René Kuppe and Alexandra Tomaselli:

“Justice Dow developed a much more sensitive way to evaluate the relocation circumstances: In remarkable words, Dow stated: ‘I am not convinced, on the evidence, that the decision to terminate services and relocate the Applicants and what to offer them once they have been relocated, took into consideration such relevant considerations as the potential disruptions of their culture and the threat to their very survival as a people. I note the Respondent’s position that it does not

¹² See case-study on “Glamis Gold Ltd. (Claimant) v United States of America (Respondent), NAFTA/UNCITRAL Award, 8 June 2009”, p. 9.

¹³ See 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”, p. 8.

¹⁴ See case-study on “The Implementation of IACtHR Judgments concerning Land Rights in Suriname: *Saramaka People v. Suriname* and Subsequent Cases. Main Findings and Reflections”, p. 14.

¹⁵ See case-study on “The Decision by the Inter-American Court of Human Rights on the *Awás Tingni vs. Nicaragua Case* (2001): The Implementation Gap”, cit., p. 25.

discriminate on ethnic lines, but equal treatment of un-equals can amount to discrimination.’ She criticized the hierarchical character of the compensation process; as an example, she pointed to the fact that the San people had not been informed about how the amount of compensation had been calculated, and she referred in general to the powerless position of the Applicants because of their low literacy levels and their marginalized political and economic situation”,¹⁶

- setting up task forces and procedures dedicated to the implementation of rulings. While the previous section ended with an observation on “the implementation gap”, such steps can be seen as key elements of, instead, “closing the gap”.

¹⁶ See case-study on “San and Bakgalagadi peoples’ land rights and the cases of the Central Kalahari Game Reserve in Botswana”, p. 19.

4. Reflections and the Way Forward^{***}

Implementation of the Rights of Indigenous Peoples: An Already-Seen Story in the Context of International Human Rights Law

Rights of Indigenous Peoples: The UNDRIP and Its Legal Value

In consideration of the fact that ILO Convention No. 169 of 1989¹⁷ has so far been ratified by 23 States only, 15 of which are from Latin America,¹⁸ it is indisputable that the world's most significant and influential standard-setting instrument in determining the evolution of the rights of Indigenous peoples in international law is the 2007 *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).¹⁹ The UNDRIP is indeed the main legal basis on which this Committee has based its work since its inception, and its primary role in the definition and development of indigenous peoples' rights has been confirmed by the 36 case-studies elaborated in the context of the activity of the Committee, considered as a whole.

It is well-known that, being a declaration of principles, the UNDRIP is not in itself a binding legal instrument, although "in United Nations practice, a 'declaration [of principles]' is a solemn instrument resorted to only in very rare cases relating to matters of major and lasting importance where maximum compliance is expected",²⁰ especially when it is explicitly linked to the UN Charter, as the UNDRIP actually is.²¹ Throughout the history of the United Nations, the impact determined by the declarations of principles so far adopted by the General Assembly in the subsequent developments of international law has been very heterogeneous. Indeed, some of them (e.g. the *Universal Declaration of Human Rights* of 1948) have played a decisive role in the formation of binding rules in the context of the legal field they were concerned with, while others have remained virtually disregarded. There is no doubt that the UNDRIP is to be included among the former, not only in consideration of the virtually universal acceptance by which it has been characterized, but also (and especially) in light of the significance attributed to it in the context of international human rights law, as resulting especially from the practice of both international human rights monitoring bodies and domestic courts.²² According to the prevailing view, also endorsed by this Committee, the rights expressed by certain provisions included in the UNDRIP have already achieved the status of rules of customary international law. These rules relate to, in particular, the rights of Indigenous peoples to self-determination, to autonomy or self-government, to their

^{***} This Section has been written by Federico Lenzerini, Co-Rapporteur of the Committee. The author gratefully acknowledges Professor Siegfried Wiessner, St. Thomas University School of Law (Miami), Chair of the ILA Committee on the Rights of Indigenous Peoples (2008-2012), Member of the ILA Committee on the Implementation of the Rights of Indigenous Peoples, and, most of all, a very good friend, not only for his excellent comments on an earlier draft of this writing, but also for the work done together on the rights of indigenous peoples, in the context of the ILA, since 2008. The author also gratefully acknowledges the two chairs of the ILA Committee on the Implementation of the Rights of Indigenous Peoples, Dalee Sambo Dorough and Willem van Genugten, as well as Alexandra Tomaselli, Rainer Hofmann and Sandy Lamalle, for the very useful comments concerning earlier drafts of this Section. An acknowledgement is also for the other co-rapporteur of the Committee, Timo Koivurova, for the work done together in the past six years.

¹⁷ *Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries*, 27 June 1989, available at <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169> (accessed on 24 March 2020).

¹⁸ See <https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314> (accessed on 24 March 2020). It is to be noted that Article 35 of ILO Convention No. 169 of 1989 establishes that "[t]he application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements", therefore implicitly recognizing the authority of the UNDRIP. In this respect, see International Labour Organization, "Permanent Forum on Indigenous Issues, 12th Session, May 2013. ILO Contribution", available at <https://www.un.org/esa/socdev/unpfi/documents/2013/agencies/2013_ILO.pdf> (accessed on 9 April 2020), p. 11, stating that "[t]he ILO considers the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and its Convention No. 169 as mutually reinforcing instruments that need to be jointly promoted". See also Dalee Sambo Dorough (2019): Perspective on Convention 169, its significance to Inuit and some troubling developments, *The International Journal of Human Rights*, at <<https://doi.org/10.1080/13642987.2019.1677620>>, pp 293-296.

¹⁹ GA Res. 61/295 of 13 September 2007.

²⁰ See UN Economic and Social Council, Report of the Commission on Human Rights (E/3616/Rev. 1), 18th Session, 19 March–14 April 1962, para. 105.

²¹ See the first preambular paragraph of the UNDRIP, affirming that, in adopting the Declaration, the General Assembly was "[g]uided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter" (emphasis added). The use of the term "obligations", in the sentence just reproduced, indicates that, while the UNDRIP is not in itself binding, respect for its provisions represents an essential condition to ensure compliance by States with compulsory rules included in the UN Charter.

²² For a more comprehensive assessment of this practice, see Federico Lenzerini, "Implementation of the UNDRIP around the world: achievements and future perspectives. The outcome of the work of the ILA Committee on the Implementation of the Rights of Indigenous Peoples", (2019) *The International Journal of Human Rights*, at <<https://doi.org/10.1080/13642987.2019.1568993>>, pp. 6-8.

cultural heritage and identity, to their traditional lands, territories and resources, as well as to reparation and redress for the wrongs they have suffered.²³ The UNDRIP is therefore the key standard-setting instrument incorporating the parameters for the identification of the rights of Indigenous peoples actually existing in the framework of contemporary international law.

International Obligations in the Field of Indigenous Peoples' Rights

As noted above, today it may be safely assumed that *actual international legal obligations* exist in the field of Indigenous peoples' rights. In addition to the obligations established by ILO Convention No. 169 of 1989 and to other obligations that may be drawn from certain provisions included in human rights treaties,²⁴ which are obviously binding only for the States that have ratified such treaties, the above rules of customary international law have recently evolved and crystallized. By their very nature, such rules are binding for all countries in the world, including those not ratifying the relevant treaties, which are therefore legally bound to comply with them. As a consequence, one might reasonably and legitimately expect that the existence of the said rules would actually be accompanied by effective *compliance* by States in their practice.

Case-Studies and International Practice

In its six years of activity, the Committee on the Implementation of the Rights of Indigenous Peoples has produced 36 case-studies, taking different forms,²⁵ each of them relating to the situation of specific Indigenous communities, living in all continents. Taken together, these studies offer a complex portrait which, while not totally comprehensive, draws a snapshot of the level of implementation of the rights of Indigenous peoples in the world.

One of the most significant aspects of the said case-studies rests in the identification of certain good practices which, whether and to the extent that would be imitated in countries and areas different from those where they have developed (of course through adapting them to the specific peculiarities of each concrete situation),²⁶ may be of great help in advancing the level of implementation of the rights of Indigenous peoples. Aspects of such good practices have already been dealt with in the previous section of this Report, and this issue does not need to be further elaborated.

The case-studies have also afforded identification of the practical problems that make the actual implementation of the rights of Indigenous peoples difficult. Through specifically addressing these problems (which differ from case to case, as their peculiarities are defined by the individual characteristics of each concrete case), it will certainly be possible to make significant steps towards the effective exercise and enjoyment by Indigenous peoples of their internationally- and domestically-recognized rights.

More in general, the case-studies produced by the Committee during its activity epitomize the general trend characterizing the implementation of the rights of Indigenous peoples around the world. Indeed, a global assessment of such studies reveals both successful cases, also disclosing good practices that should be followed, as previously noted, where possible and appropriate – on the one hand – and negative instances, in the context of which the rights of Indigenous peoples are partially or totally disregarded – on the other hand. To mention an example with a positive outcome, one may refer to the case of the Maya Communities in Belize,²⁷ concerning logging concessions and oil exploration licences granted by the national government in the mid-1990s over parts of the Maya ancestral lands in the Toledo District, without carrying out any consultation with the representatives of the community. In reacting against this situation, since 2004 the Maya Communities achieved a series of judicial victories in front of the Inter-American Commission on Human Rights and of various national and regional courts, including the Supreme Court of Belize (referring to general international law as the basis for indigenous land rights) and the Caribbean Court of Justice (CCJ).²⁸ The latter, in particular, held that the

²³ See ILA Resolution No. 5/2012, "Rights of Indigenous Peoples", *supra* note 2, paragraphs 4, 5, 6, 7 and 10. On the legal effect of ILA Resolution No. 5/2012 as evidence of international law under Article 38(1)(d) of the ICJ Statute, see Siegfried Wiessner, "The State and Indigenous Peoples: The Historic Significance of ILA Resolution No. 5/2012", in *Der Staat im Recht. Festschrift für Eckart Klein zum 70. Geburtstag* 1357-1368 (M. Breuer et al. eds, Duncker & Humblot, Berlin, 2013).

²⁴ See, e.g., Article 27 of the 1966 *International Covenant on Civil and Political Rights*, 999 UNTS 171.

²⁵ See Section 1 (Introduction) for a description of the variety of the materials presented.

²⁶ For Arctic-specific examples of good practices, see Dalee Sambo Dorrough and Siegfried Wiessner, "Indigenous Peoples and Cultural Heritage", in *The Oxford Handbook of International Cultural Heritage Law* 427 (F. Francioni & A.F. Vrdoljak eds., Oxford University Press, Oxford, 2020).

²⁷ See the Johannesburg Conference (2016) Report of the Committee (Interim Report), *supra*, note 3, pp. 11-12.

²⁸ See Federico Lenzerini and Siegfried Wiessner, case study on "The Maya Communities in Belize", in Johannesburg Conference (2016), Implementation of the Rights of Indigenous Peoples, Interim report, *supra*, note 3, pp. 12-14.

community right to protection of the law was breached, on account of the failure by the Government of Belize to recognize and protect Maya customary land tenure rights. This case is particularly significant also for the reason that the CCJ noted that, while the UNDRIP is not binding in itself, it is relevant to the interpretation of the Constitution of Belize, which in its preamble explicitly recognizes that State policies must protect the culture and identity of its Indigenous peoples and must promote respect for international law and treaty obligations. The case of the Maya in Belize represents a positive example of implementation of the rights of Indigenous peoples in general, and of the UNDRIP in particular, because it envisages two different but connected *operations of judicial interpretation*: a) recognition of the value and applicability of Indigenous peoples' customary law; b) recognition and enforcement of the UNDRIP as international authority imposing – directly or indirectly – actual obligations on States. However, an approach of this kind is only possible within a legal context in which two *conditions* are met: a) existence of judicial remedies, at the domestic and/or regional level, that may be actually used by Indigenous peoples to vindicate their own rights; b) sensitivity of the courts to recognize the rights of Indigenous peoples, which must be adjudicated through the lens of their cultural specificities and needs. In other words, in order for such a “happy ending” to be achieved, it is necessary that judicial mechanisms actually exist at the disposal of Indigenous peoples which are *available, effective and sufficient*, i.e. which are effectively open to their specific instances and in the context of which they have reasonable chances that their reasons are heard and fairly enforced, consistent with Article 40 UNDRIP.²⁹

Another positive example of implementation of the rights of Indigenous peoples is represented by the very recent judgment of the Supreme Court of Sweden in the *Girjas Sameby* case,³⁰ holding that the members of *Girjas Sameby*, a reindeer-herding Sami community, have the exclusive right to confer the rights to reindeer herding, small game hunting and fishing they hold in their lands to persons who are not community members, without being obliged to obtain the consent of the State. The Court based its decision on the title of the community to use its traditional lands, a title which is grounded on such use since time immemorial. It is especially notable that in the judgment in point the Supreme Court of Sweden has recognized the existence of rules of customary international law protecting the rights of Indigenous peoples, particularly the rule expressed by Article 8, para. 1, of ILO Convention No. 169 of 1989,³¹ as well as the one enshrined by Article 26 UNDRIP.³² As noted by Reiner Hofmann, “this judgement clearly is a milestone in the fight of the Sami as an indigenous people for increased respect for their land-related rights (and claims) [...] [and] will make a relevant contribution to the global discussion on the actual impact of the principles enshrined in UNDRIP”.³³

In general, in many countries of the world there is a growing tendency to recognize the legal significance of the UNDRIP. The most virtuous example is represented by Bolivia, which transposed the UNDRIP into domestic law approximately a month and a half following its adoption by UN General Assembly, through Law No. 3760 of 7 November 2007. Other countries have also devoted increasing attention to the UNDRIP. Interestingly, for example, Claire Charters clarifies that the Declaration “is [increasingly] cited in support of Māori interests and rights especially by New Zealand’s highest court, the New Zealand Supreme Court”.³⁴

To a similar extent, in 2016, the Canadian Human Rights Tribunal considered the UNDRIP as a source of “international obligations” for Canada, as well as a legal tool for the interpretation of the *Canadian Human Rights Act*.³⁵ An encouraging position was also held by another Canadian Court – the Ontario Court of Justice –

²⁹ According to Article 40 UNDRIP, “Indigenous peoples have the 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. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights”.

³⁰ 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”, cit.

³¹ According to this provision, “[i]n applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws”.

³² Article 26 UNDRIP states that “1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned”.

³³ 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”, cit., p. 8.

³⁴ See “Case studies from Aotearoa/New Zealand involving land, 1 May 2018”, p. 1.

³⁵ See Brenda L. Gunn, case-study on “*First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2”, p. 10.

in 2017, which it used the UNDRIP to address over-incarceration of members of Indigenous communities, “and advance[d] the cultural rights of Indigenous peoples by sentencing an offender in a forum of their choice and utilizing an alternative to imprisonment”.³⁶ Still with regard to Canada, the judgment of the Supreme Court in the case of *First Nation of Nacho Nyak Dun v. Yukon*, released in 2017,³⁷ is definitely worth mentioning. In this case the Supreme Court recognized that “modern treaties [with First Nations] enshrine constitutional rights that courts must safeguard [...] provid[ing] a reminder to federal, provincial, and territorial governments that treaties are constitutionally protected documents to which the standards of the honour of the Crown apply”.³⁸ In particular, “[a]s expressions of partnership between nations, modern treaties play a critical role in fostering reconciliation [...] Negotiating modern treaties, and living by the mutual rights and responsibilities they set out, has the potential [and the intention] to forge a renewed relationship between the Crown and Indigenous peoples [...] to one of equal partnership”.³⁹ The judgments just summarily described represent expressions of a positive evolution in the implementation of the rights of Indigenous peoples that in recent years has characterized the Canadian State. This evolution started in November 2010 with the official endorsement of the UNDRIP by the government, and culminated in May 2016, when “the Minister of Indigenous and Northern Affairs announced [that] Canada was a full supporter, without qualification, of the Declaration”,⁴⁰ and in September 2017, when the ongoing review “of laws and policies, as well as other collaborative initiatives and actions, with regard to UNDRIP” was officially confirmed by Prime Minister Trudeau.⁴¹ The establishment and the work of the Truth and Reconciliation Commission has represented one important step in the context of the said evolution, especially for the reason that the work of such a Commission has opened “a space for Indigenous approaches, principles, medicine and law”,⁴² and its reports have, *inter alia*, “re-situate[d] ‘justice’ from an Indigenous perspective”, and included “a list of ‘10 Principles of Reconciliation’, the first being the ‘adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as a framework for reconciliation’”, as well as “a roadmap in 94 Calls to action to remove oppressive frameworks in social, political, economical and legal fields, fostering concrete Indigenous autonomy, self-determination and participation in decision-making”.⁴³

Last but not least, the jurisprudence of Chilean domestic courts concerning land and water rights of Indigenous peoples “can surely be framed as a good practice”,⁴⁴ and “it appears that in Chile there is a *permeation* of international standards regarding Indigenous water and land rights [including the relevant UNDRIP provisions] and their connotation and content by the domestic courts”.⁴⁵

Conversely, other case-studies developed within the framework of the Committee have disclosed opposite realities. For instance, the study on the case of the Maya community in Mexico has shown an evident violation of indigenous peoples’ rights, for the reason that genetically modified organisms were implanted in Indigenous lands without due consultation and without obtaining the free, prior and informed consent of the community concerned.⁴⁶

A similar outcome characterized the case of the Naga People in India,⁴⁷ concerning the construction of a large highway in the middle of the lands traditionally belonging to such people, leading the rights and cultural integrity of local Indigenous communities to be seriously threatened and violated. The execution of the so-called “Nagaland Road Project” was considered by local political leaders as a notable improvement in the social conditions of the communities of Nagaland, since it was held that poor roads had kept the entire Naga territories in backward conditions, and that road development was to be considered the primary route to the subsistence of the Naga people. Consequently, the implementation of the project was defined by the Chief Minister of Nagaland as a historic moment, bringing benefits for the Naga people and the North East of India as a whole. However,

³⁶ See Brenda L. Gunn, case-study on “*R. v. Francis-Simms*, 2017 ONCJ 402”, p. 9.

³⁷ 2017 SCC 58.

³⁸ See Sandy Lamalle, “Note on the Supreme Court Decision *First Nation of Nacho Nyak Dun v. Yukon*, 2017”, p. 1.

³⁹ See *First Nation of Nacho Nyak Dun v. Yukon*, cit., paras. 1 and 33.

⁴⁰ See Sandy Lamalle, “Note for the drafting of the Final Report of the Committee from the *Report on the Implementation of Call to Action of the Truth and Reconciliation Commission in Canada (TRC)*”, p. 1.

⁴¹ *Ibid.*

⁴² *Ibid.*, p. 3.

⁴³ *Ibid.*

⁴⁴ See Alexandra Tomaselli, Rainer Hofmann and Federico Lenzerini, case-study on “Land and water rights in Chile. Summary & Further Reflections”, cit., p. 5.

⁴⁵ *Ibid.*, p. 6.

⁴⁶ See Manuel May Castillo, Nora Salomé Tzec Caamal and Álvaro Mena Fuentes, “Maya Peoples vs Mexico-Monsanto. A case study on the effects of transnational corporatism in the implementation of the UNDRIP”.

⁴⁷ See Federico Lenzerini, Barbara Katz and Phutoli Shikhu Chingmak, case-study on “The Naga People, India”.

acquisition of the lands necessary for the construction of the highway was mainly carried out through expropriation of territories belonging to members of Naga tribes, and in most cases such expropriation took place according to modalities that were totally disrespectful of the rights of the above tribes as Indigenous communities, as well as of the individual rights of their members. While consultations of land owners and community leaders were actually carried out, in most cases such consultations were merely formal and the will of those people was not adequately considered. Furthermore, the compensation paid for the expropriated territories was generally absolutely inadequate in comparison to their effective value. Last but not least, no environmental impact assessment was carried out before planning and executing the Nagaland Road Project. It follows that the execution of this project engendered multiple violations of the rights recognized by international law in favour of the Naga tribes as Indigenous communities, including breaches of their rights to self-determination, to lands, territories, and resources, as well as of the requirement that the free, prior and informed consent of the Indigenous communities concerned be obtained before carrying out exploitation projects potentially threatening the integrity of their traditional territories.

Even worse, the study on the *Nuba people* in Sudan⁴⁸ has revealed a situation characterized by an absolute disrespect of Indigenous peoples' rights – including land rights – accompanied by massive violations of the human rights of their members.

Another disappointing case is the one concerning the Cordillera del Cóndor in Peru, in the context of which the Peruvian government has “arbitrarily dispose[d] of [such territory] to promote the exploitation of gold precisely in its most vulnerable parts, threatening to disappear the most valuable of the Awajún and Wampis peoples of the Cenepa basin: their ancestral territories and natural resources and with them their culture, history and identity”.⁴⁹ As a consequence, the “Peruvian nation-state continues to breach its obligations assumed by signing and ratifying international laws – binding and non-binding ones – aimed at the protection, promotion and defense of the rights of indigenous peoples and their members”.⁵⁰

Even in Bolivia, the case concerning the construction of a highway crossing in the middle the Indigenous territory and natural park of the *Territorio Indígena y Parque Nacional Isiboro-Secure* (TIPNIS) “may be seen as one of the clearest misapplication of indigenous peoples' right to consultation and to land in ‘the’ one country that apparently has (or should have) the best legal framework for protecting these specific and other rights. In other words, this is a case in which all the legal guarantees were in place, but they were neither implemented nor respected”.⁵¹

While keeping the foregoing in mind, it is to be emphasized that a “black or white approach” does not fit with a notable portion of the case-studies produced by the Committee. Indeed, in life there are many shades of grey as well. In other words, certain cases cannot be defined “positive” or “negative” *tout court*, as they entail positive and negative aspects at the same time. In this respect we may refer, for instance, to the 2014 judgment of the Supreme Court of Canada in *Tsilhqot'in Nation v. British Columbia*, which for the first time applied in practice the *Aboriginal Title* – over approximately 2,000 square kilometres of land in favour of the Tsilhqot'in Nation – a title which in previous judgments had been recognized by the Court only in theory. With regard to this important decision, Joshua Nichols and Sarah Morales emphasize that, while the “popular understanding of the case has colored it as a clear victory in the struggle for the rights of Indigenous peoples”,⁵² in reality, “despite the many strengths of the Supreme Court's decision [...] there are also many weaknesses [...] [especially those] stem[ming] from the fact that the decision still upholds the doctrine of discovery”.⁵³ It is to be noted that, four years later, in the *Mikisew Cree* case, the Supreme Court of Canada denied that “Canadian legislative bodies had to engage in consultation with Indigenous rights-bearing communities prior to adopting legislation that could affect them”.⁵⁴ This was a case “largely unsuccessful due to domestic legal instruments, notably the statute

⁴⁸ See the Johannesburg Conference (2016) Report of the Committee (Interim Report), available at <<http://www.ila-hq.org/index.php/committees>> (accessed on 24 March 2020), p. 23.

⁴⁹ See Gloria Huamán Rodríguez, case-study on “Gold in the Cordillera del Cóndor: A threat to the territorial integrity of the Awajún and Wampis peoples of the Cenepa in Peru”.

⁵⁰ See Gloria Huamán Rodríguez, Reflections on the case-study on “Gold in the Cordillera del Cóndor: A threat to the territorial integrity of the Awajún and Wampis peoples of the Cenepa in Peru”, p. 1.

⁵¹ See Alexandra Tomaselli, Rainer Hofmann and Eburn Abolarin, case-study on “The Indigenous Territory and Natural Park TIPNIS in Bolivia. Summary & Further Reflections”, p. 5.

⁵² See Joshua Nichols and Sarah Morales, case-study on “*Tsilhqot'in Nation v. British Columbia*, [2014] 2 SCR 257”, p. 6.

⁵³ *Ibid.*, p. 13.

⁵⁴ See Dwight Newman, case-study on “Canada: Consultation on Government Legislation (*Mikisew Cree* 2018 Case)”, p. 1.

defining jurisdiction of Canada’s Federal Court system as well as legal principles on separation of powers”,⁵⁵ while, “[i]n respect of international legal instruments, the case continued a pattern present in the Supreme Court of Canada in which the UNDRIP has been cited to the Court by advocates but the Court itself has not cited to it”.⁵⁶

Sometimes, even in cases that are used to be celebrated as landmark victories for Indigenous peoples, a dark side exists, which in most instances rests exactly in the aspect of the implementation. For instance, with respect to Suriname, Anna Meijknecht, Bas Rombouts and Jacintha Asarfi observe that “[m]ore than 13 years have passed since the *Saramaka Judgment*^[57] – and four years since the *Kaliña and Lokono*^[58] Judgment – and the Government of Suriname has still not managed to fully implement any of the substantive parts of the ruling. Among other things, it has been unable to provide the legislative basis for recognising and securing Indigenous and tribal rights in Suriname”.⁵⁹ To an equivalent extent, with reference to the much-celebrated decision of the African Commission on Human and Peoples’ Rights in the *Endorois* case,⁶⁰ Egun Abolarin and Alexandra Tomaselli remark that “from the perspective of the victim, the Endorois, without implementation of the recommendations, there was no justice and still no justice”.⁶¹

Other cases elaborated in the framework of the Committee’s activity suggest that, on the one hand, many States are clearly improving their domestic law towards the actual recognition and implementation of the rights of Indigenous peoples; on the other hand, however, for different reasons these improvements often prove to be inadequate in terms of effective realization of such rights, as affirmed by the UNDRIP. It is the case, for instance, of the Japanese *Ainu Policy Promotion Act*, entered into force in May 2019. Yuko Osakada notes that “it is difficult to conclude that the *Ainu Policy Promotion Act* gives due consideration to [the UNDRIP]”; consequently, while “the legal recognition of the indigenous status of the Ainu [...] could be evaluated positively”, at the same time, “as many Ainu people say, this is not enough”.⁶² To a similar extent, Leena Heinämäki points out that “Sámi people’s fundamental and human rights to their culture, land and traditional territories do not actualize in Finland, although there have been several attempts in the governmental level to settle these issues”.⁶³ In the neighbouring Russia, the “legislative framework vis-à-vis indigenous rights is rather comprehensive, and indigenous peoples and their organisations have used district, regional and federal courts to defend their rights. In some cases indigenous rights have been upheld through the courts”.⁶⁴ On the other hand, however, “over the years the relevant legislation has been frequently amended, reducing the legal guarantees to indigenous peoples’ rights [...] problems lie in the actual implementation of the laws and their frequent amendment”.⁶⁵

The preceding analysis is based on a significant part of the 36 studies produced by the Committee, revealing different (sometimes opposite) outcomes. As previously noted, they epitomize a global reality characterized by very heterogeneous levels of implementation of the rights of Indigenous peoples, a reality which may legitimately be perceived as disappointing. Indeed, under an “idealistic” (and “effectivity-based”) perspective driven by a sympathy for Indigenous peoples’ rights, it is definitely disappointing, or at least

⁵⁵ See Dwight Newman, “Supplement to My Prior Report on the Canadian *Mikisew Cree* (2018) Case concerning Consultation/Consent Requirements on Legislative Action”, p. 1.

⁵⁶ *Ibid.*

⁵⁷ Inter-American Court of Human Rights, *Case of the Saramaka People v. Suriname*, Series C No. 172, Preliminary Objections, Merits, Reparations and Costs, Judgment of 28 November 2007. For a thorough analysis of the jurisprudence of the Inter-American Commission and Court of Human Rights see Mariana Monteiro de Matos, *Indigenous Land Rights in the Inter-American System. Substantive and Procedural Law* (Brill Nijhoff, Leiden, 2020).

⁵⁸ Inter-American Court of Human Rights, *Case of the Kaliña and Lokono Peoples v. Suriname*, Series C No. 309, Merits, Reparations and Costs, Judgment of 25 November 2015.

⁵⁹ See case-study on “The Implementation of IACtHR Judgments concerning Land Rights in Suriname: *Saramaka People v. Suriname* and Subsequent Cases. Main Findings and Reflections”, cit., p. 6.

⁶⁰ Communication 276/2003, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, 4 February 2010, available at <<https://www.refworld.org/cases,ACHPR,4b8275a12.html>> (accessed on 24 March 2020).

⁶¹ See case-study on “*Centre for Minority Rights Development (Kenya) and Minority Rights Group (on Behalf of Endorois Welfare Council) v Kenya*”, cit., p. 21.

⁶² See Yuko Osakada, case-study on “The Unexpected Role of the UN Declaration of the Rights of Indigenous Peoples in Justifying the *Ainu Policy Promotion Act* of Japan: Giving Governments an Excuse for Non-Reference?”, p. 21.

⁶³ See case-study on “Attempts to Settle the Land Rights of the Sámi in Finland: Impacts of International Law on Domestic Legal Developments and Current Challenges”, p. 7.

⁶⁴ See Federica Prina and Alexandra Tomaselli, case-study on “Land and fishing rights of indigenous peoples in Russia” (Main findings, February 2020), p. 1.

⁶⁵ *Ibid.*

preoccupying (despite the encouraging and significant developments progressively occurring in several countries). However, evaluated under a more *realistic* perspective, the current level of implementation of the rights of Indigenous peoples in the world appears not very different from the average degree of implementation which characterizes human rights in general (leaving aside any consideration on whether Indigenous peoples' rights may actually be "reduced" to a "simple" category of human rights). Even fundamental human rights which today are uniformly considered as being protected by rules of *jus cogens* – e.g. freedom from torture or from slavery – are the object of recurring and massive violations all over the world on a daily basis. Human trafficking, extraordinary renditions, the worst forms of child labour, sexual slavery, female genital mutilations, and many other intolerable abuses of the dignity of the human being are occurring daily in many parts of the world, making the level of implementation of international human rights standards very far from what should ideally be, to a similar extent of what happens with regard to the rights of Indigenous peoples. It is true that in some areas of the world (especially in Europe) the level of *justiciability* (hence the effectiveness) of "traditional" human rights is much higher than the one characterizing the rights of Indigenous peoples (a situation which, however, does not pertain to other regional contexts, particularly the Inter-American system, which protects Indigenous and other human rights to an equal extent). But, apart from this aspect, the situation characterizing the latter is not very much different from that connoting the former. And it cannot be denied that in the past few decades also the degree of justiciability of Indigenous peoples' rights has notably and significantly increased (although, in most cases, this has happened thanks to an extensive and evolutive application of human rights standards of "general" character).

Also a comparison between the "barriers and problems" – listed *supra* in Section 2 – and the aspects of good practices, elaborated in Section 3, discloses a reality which is not that far from that characterizing human rights generally speaking. In particular, some of such "barriers and problems" are indeed common to the dynamics characterizing the latter; in this respect, one may think about the gap existing between international legal standards and their actual implementation at the domestic level, the negative influence in the adjudication of rights played by key interests of powerful individuals and institutions, the lack of free or accessible legal aid, the lack of *jus standi* for NGOs, or the bad influence of corruption, among others.

In any event, the reality just described – i.e. that, in the face of many encouraging situations, in many others the rights of Indigenous peoples are totally or partially violated on a daily basis, or at least are not comprehensively or properly implemented – cannot cast any shadow on the existence of the rules and State obligations previously referred to in this writing. As is well known,

"for a rule to be established as customary, the corresponding practice must [not] be in absolute rigorous conformity with the rule. In order to deduce the existence of customary rules, [...] it [is] sufficient that the conduct of States should, in general, be consistent with such rules, and that instances of State conduct inconsistent with a given rule should generally have been treated as breaches of that rule [...] If a State acts in a way *prima facie* incompatible with a recognized rule, but defends its conduct by appealing to exceptions or justifications [...] then whether or not the State's conduct is in fact justifiable on that basis, the significance of that attitude is to confirm rather than to weaken the rule".⁶⁶

Hence, two elements must in particular be considered. First, the recurrence of breaches actually confirms the existence of an obligation, provided that a breach is treated as such. It seems that, with respect to the rights of Indigenous peoples that we have assumed as being recognized by rules of customary international law, this condition is actually fulfilled in virtually the totality of cases examined by the Committee. In fact, it is very unusual that, when a violation of the rights of Indigenous peoples is perpetrated, the responsible government claims that no violation took place because no right in favour of the peoples concerned existed. Rather, the argument which is usually raised is that the behaviour of the State was justified as a matter of exception or because of the existence of a justification. This is actually the second element, arising from the position of the International Court of Justice reproduced right above, which is of particular significance for the present inquiry. In fact, the circumstance of relying on presumed justifications or exceptions is another factor confirming the existence and binding character of a rule of customary international law.⁶⁷

⁶⁶ See International Court of Justice, *Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. USA)*, Judgment of 27 June 1986, *I.C.J. Reports* 1986, p. 14, para. 186.

⁶⁷ For a more comprehensive elaboration of this aspect see Federico Lenzerini, "Implementation of the UNDRIP around the world: achievements and future perspectives. The outcome of the work of the ILA Committee on the Implementation of the Rights of Indigenous Peoples", *cit.*, pp. 3-4.

In sum, the study of current situation concerning the implementation of the rights of Indigenous peoples in the world has disclosed two fundamental aspects. The first is represented by the fact that the existence and mandatory nature of the relevant international rules is definitely confirmed and can in no way be challenged. The second aspect is that the level of implementation of Indigenous peoples' rights in the various countries of the world is characterized by a clear dichotomy between positive and negative cases, together with many situations in which positive and negative facets are contextually present. Now, the matter is whether we want to consider the glass as half empty or half full. Under one perspective, the conclusion according to which the level of implementation of the rights of Indigenous peoples is, grossly speaking, equivalent to that characterizing human rights generally speaking may appear encouraging, because in international law concern for Indigenous peoples is a phenomenon that is much more recent than the development of human rights, and so governments have had less time to accept and *digest* the new rules. Then, under this point of view, the glass could be seen as half full. However, under a different, ideologically-driven perspective, this is indeed a quite unsatisfactory conclusion, which cannot satisfy persons who are in favour of the advancement of the rights of Indigenous peoples. This is a reality of which we need to be well aware, and it is necessary to depart from it if we really want to improve the level of implementation of the rights of Indigenous peoples all around the world.

Future Steps

As scholars concerned with human rights in general, and with the rights of Indigenous peoples in particular, we can in no way be happy about the current level of implementation of the said rights around the world. The awareness that the degree of implementation of the rights of Indigenous peoples is more or less the same as with human rights generally speaking is no real consolation. Hence, the struggle has just started, and it should build on the favourable approach manifested in principle by most States in advancing the rights of Indigenous peoples. We have to take advantage of the lessons learnt and try to translate them into positive developments. The next steps to be pursued – which should be taken in *cooperation and collaboration with the indigenous peoples concerned* – should include, among others, the following:

- continuously promote and advance the interrelated standards endorsed and affirmed by the UNDRIP, primarily those concerning land rights and free, prior and informed consent;
- enhance national legislations in the field of Indigenous peoples' rights,⁶⁸ and foster a better implementation of the rights of Indigenous peoples already recognized at the domestic level;
- promote international and domestic consciousness and awareness-raising on the rights of Indigenous peoples, to be conceived as an integral part of existing human rights standards, not only among State officials and members of the judiciary, but also among the general public, including all sectors of the civil society;
- remove all social, cultural and structural obstacles hindering the actual realization of Indigenous peoples' rights;
- increase activism and pressure on States in order to persuade them to comply more effectively with their obligations and duties towards Indigenous peoples;
- intensify academic work in the field, so as to spread information and knowledge, of a multidisciplinary character, within the academic community and beyond;
- sensitize and inform judges, administrators and other competent State officials with regard to the rights of Indigenous peoples, with particular attention for the necessity to properly understand the specific features, needs and peculiarities characterizing each single Indigenous community (i.e. the differences existing among Indigenous groups);
- utilize Indigenous peoples' customary law in the framework of domestic legislation, as a source of law to be appropriately interpreted and enforced in the context of the implementation and adjudication of Indigenous peoples' rights;
- promote and enhance appreciation for cultural diversity in the context of adjudication and enforcement of Indigenous peoples' rights (at both the domestic and international level), following the example of the Inter-American Court of Human Rights and of the African Commission and Court on Human and Peoples' Rights;
- amplify the voices of Indigenous peoples through supporting and enhancing their capacity to advocate their rights and to participate in the management of public affairs;
- promote a social and cultural environment characterized by respect, understanding and appreciation for the richness of cultural diversity – in particular for the worth of Indigenous peoples and their cultures, life-views,

⁶⁸ On this issue see, for instance, Gloria Huamán Rodríguez, case-study on “Indigenous Peoples in a New Peruvian Constitution”.

values and interests – with no room for whatever form of racial or cultural discrimination, as well as for the positive role which may be played by Indigenous peoples to further sustainable life in the world;

- increase dialogue with Indigenous communities, in order to better understand their own perspectives and needs;

- disseminate and increase knowledge of the UNDRIP within government and within the civil society at the international and national levels.

In synthesis, we must work to get reality as close as possible to what would ideally be a satisfactory level of implementation of the rights of Indigenous peoples across all nations, cultures and legal systems of this planet.

5. Recommendations**

The ILA Committee on the Implementation of the Rights of Indigenous Peoples, at the conclusion of its mandate, gratefully acknowledges all Committee members and other experts who have participated in its works for the invaluable contribution they have provided in pursuing the Committee's purposes. The work, commonly undertaken, leads to the following recommendations:

- the international community, in all its components, ought to increasingly respect and recognize the rights of Indigenous peoples, especially through promoting and advancing the interrelated standards endorsed and affirmed by the UNDRIP, primarily those concerning self-determination,⁶⁹ autonomy,⁷⁰ cultural heritage,⁷¹ land rights⁷² and free, prior and informed consent;⁷³
- the competent bodies, specialized agencies and mechanisms of the United Nations system – including the treaty bodies, 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 activities, 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 relevant rules of international law, as identified in ILA Resolution No. 5/2012, and the minimum standards of human rights established by the UNDRIP;⁷⁴
- States ought to enhance their domestic legislation in the field of Indigenous peoples' rights, so as to ensure that, within their respective territories, human rights of Indigenous peoples are fully realized, and that the rules and standards established by UNDRIP are fully implemented;⁷⁵
- States ought to establish effective mechanisms for the demarcation, legal recognition and titling of Indigenous traditional lands, in accordance with the customary laws of the Indigenous peoples concerned and with their traditional use of the relevant territories, as well as to put such mechanisms in practice through formally establishing for such peoples property rights recognized pursuant to domestic law and enforceable in domestic courts in the event of competing claims over the lands concerned;⁷⁶
- States ought to adopt appropriate legislation explicitly recognizing the right of Indigenous peoples to autonomy or self-government in matters relating to their internal and local affairs and to the ways and means for financing their autonomous functions;⁷⁷
- States ought to establish effective mechanisms in view of guaranteeing that Indigenous peoples are properly consulted before any kind of project of exploitation or use of their traditional lands, territories and resources is started, as well as that their prior, free and informed consent is obtained before any activity which may have a significant impact on their rights and ways of life is carried out;⁷⁸
- States ought to establish effective mechanisms aimed at ensuring the participation of the Indigenous peoples concerned in decision-making concerning matters which would affect their rights, at all levels of the political and administrative organization of the State, through representatives chosen by themselves in accordance with their own procedures and customary laws;⁷⁹

** These recommendations are the result of the work and reflections developed within the Committee during its six years of activity, as resulting from the case-studies, the Johannesburg Conference (2016) Report of the Committee (Interim Report, *supra*, note 3), and the other documents produced by the Committee, either public or confidential.

⁶⁹ See Article 3 UNDRIP.

⁷⁰ See Article 4 UNDRIP.

⁷¹ See Article 31 UNDRIP.

⁷² See, in particular, Articles 10, 25, 26, 27, 28 and 29 UNDRIP.

⁷³ See, in particular, Articles 10, 11(2), 19, 28, 29(2) and 32(2) UNDRIP.

⁷⁴ See, consistently, Article 42 UNDRIP. See also ILA Resolution No. 5/2012, "Rights of Indigenous Peoples", *supra* note 2, para. 14.

⁷⁵ See, consistently, ILA Resolution No. 5/2012, "Rights of Indigenous Peoples", *supra* note 2, para. 11.

⁷⁶ See, e.g., Inter-American Court of Human Rights (IACtHR), *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Series C No. 79, Judgment of 31 August 2001 (Merits, Reparations and Costs), para. 164.

⁷⁷ See Article 4 UNDRIP.

⁷⁸ See, consistently, ILA Resolution No. 5/2012, "Rights of Indigenous Peoples", *supra* note 2, para. 5.

⁷⁹ See Article 18 UNDRIP.

- States ought to utilize and be informed by Indigenous peoples' customary law in the framework of their own domestic legislation, as a source of law to be appropriately interpreted and enforced in the context of the implementation and adjudication of Indigenous peoples' rights;⁸⁰
- States ought to remove from their territories all social, cultural, structural and institutional obstacles hindering the actual realization of Indigenous peoples' rights;
- the role of Indigenous peoples in setting, interpreting and understanding the legal standards concerning the protection of their own rights, particularly those enshrined by the UNDRIP, should be promoted and broadened to the maximum extent possible;
- Indigenous peoples should be guaranteed a primary role in monitoring the steps towards the actual execution and implementation of judgments, administrative acts, and other decisions concerning them;
- Indigenous peoples are encouraged to cooperate actively and in good faith with States, and with all other relevant actors, to facilitate the implementation of States' international obligations related to indigenous peoples' rights, consistently with the rules and standards established by the UNDRIP;⁸¹
- Indigenous peoples are bound to respect the fundamental human rights of others and the individual rights of their members, consistently with internationally recognised human rights standards;⁸²
- all relevant actors, at the international, regional and domestic level, ought to promote consciousness and awareness-raising on the rights of Indigenous peoples,⁸³ to be conceived as an integral part of existing human rights standards, not only among State officials and members of the judiciary, but also among the general public, including all sectors of the civil society;⁸⁴
- all relevant actors should increase dialogue with Indigenous communities, in order to better understand their perspectives and needs;
- judges, administrators and other competent State officials should be instructed and sensitized with regard to the rights of Indigenous peoples, especially those affirmed by the Indigenous specific international human rights instruments, with particular attention for the necessity to properly understand the specific features, needs and peculiarities characterizing each single Indigenous community;⁸⁵
- valorisation of cultural diversity should be an integral element of adjudication and enforcement of Indigenous peoples' rights (at the domestic, regional and international level), following the example of, in particular, the Inter-American Court of Human Rights, as well as the African Commission and Court on Human and Peoples' Rights;⁸⁶
- all NGOs and individuals concerned ought to increase activism and pressure on States in order to persuade them to comply more effectively with their obligations and duties towards Indigenous peoples;⁸⁷
- foreign investors ought to refrain from investing in projects that might violate the rights of indigenous peoples, as well as to exercise their influence on host States to offer Indigenous people(s) access to legal protection in case economic projects have a negative impact upon their rights;

⁸⁰ The importance of complying with indigenous peoples' customary law has been particularly emphasized by the IACtHR; see, among others, *Case of the Yakye Axa Indigenous Community v. Paraguay*, Series C No. 125, Judgment of 17 June 2005 (Merits, Reparations and Costs), paras. 151 and 154; *Case of the Saramaka People v. Suriname*, Series C No. 172, Judgment of 28 November 2007 (Preliminary Objections, Merits, Reparations, and Costs), para. 178.

⁸¹ See, consistently, ILA Resolution No. 5/2012, "Rights of Indigenous Peoples", supra note 2, para. 12.

⁸² Ibid.

⁸³ The importance of awareness-raising is confirmed by the fact that it represents one of the main purposes pursued by the UN Permanent Forum on Indigenous Issues; see <<https://www.un.org/development/desa/indigenouspeoples/unpfii-sessions-2.html>> (accessed on 23 October 2020).

⁸⁴ On the role of the civil society see ILA Resolution No. 5/2012, "Rights of Indigenous Peoples", supra note 2, para. 13.

⁸⁵ In this respect, the approach of the IACtHR should be used as the main guidance.

⁸⁶ Consistently, see, e.g., the Joint Separate Opinion of Judges A.A. Cançado Trindade, M. Pacheco Gómez and A. Abreu Burelli to the IACtHR's judgment in the *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, supra note 76, stressing that "the attention due to the cultural diversity seems to us to constitute an essential requisite to secure the efficacy of the norms of protection of human rights, at national and international levels" (para. 14).

⁸⁷ The importance of the role of NGOs in furthering the rights of indigenous peoples has been highlighted by scholars since at least three decades; see, for instance, Theo van Boven, "The Role of Non-Governmental Organizations in International Human Rights Standard-Setting: A Prerequisite of Democracy", 20 *California Western International Law Journal* (1990) 207, pp. 216-7.

- all relevant actors ought to contribute to the amplification of the voices of Indigenous peoples, through promoting and enhancing their capacity to advocate their rights and to participate in the management of public affairs;
- all relevant actors,⁸⁸ including the business sector, ought to contribute to promoting a social and cultural environment characterized by full respect, understanding and appreciation for the richness of cultural diversity – in particular for the worth of Indigenous peoples and their cultures, worldviews, ways of life, values and interests – with no room for whatever form of racial or cultural discrimination, as well as for the positive role which may be played by Indigenous peoples to further sustainable life in the world;⁸⁹
- scholars and other actors concerned are encouraged to increase interdisciplinary research on the causes, consequences, and solutions regarding the deficits of implementation of national and international standards concerning Indigenous land rights and other Indigenous peoples' rights.

⁸⁸ The “relevant actors” include the civil society; see supra note 84.

⁸⁹ On the importance of the role played by indigenous peoples in pursuing the goals of sustainable development see “No Sustainable Development Without Indigenous Peoples”, 8 August 2019, available at <<https://sdg.iisd.org/commentary/guest-articles/no-sustainable-development-without-indigenous-peoples/>> (accessed on 23 October 2020). See also ILA Resolution No. 5/2012, “Rights of Indigenous Peoples”, supra note 2, para. 13.