



General Assembly Third Committee
Topic 2: Protecting the Rights of Indigenous Peoples¹

17 September 2014

More than 370 million indigenous people live in 90 countries worldwide. According to the International Working Group for Indigenous Affairs, the definition of “Indigenous Peoples” (IPs) involves three criteria. First, a group of people is considered to be indigenous if its members are descendants of people who lived in a particular place before colonization or the arrival of a different ethnic group. Second, the group is socially, politically, and economically distinct from other groups. Third, people in the group think of themselves as part of the group. In addition, they may occupy ancestral and/or share a common language, religion, or belief structure.²

For centuries, states have denied indigenous persons and groups the opportunity to participate in the governments of the countries in which they reside. In addition, other groups have denied them the right to self-determination or self-government. To remedy this situation, in 2007, the UN General Assembly passed the Declaration on the Rights of Indigenous Peoples (UNDRIP).³ In doing so, the GA recognized IPs as members of the international system distinct from the states in which they reside and asserted that IPs are entitled to the same human rights as all people, as well as some rights unique to their indigenous status.

Despite UNDRIP, IPs continue to experience human rights challenges. There are three main challenges. The first challenge is whether to treat indigenous persons as members of groups with distinct rights or as individuals with the rights held by all people worldwide. This issue arises because many IPs consider themselves as members of groups, not as individuals, but international human rights law has historically applied to individuals.

Second, is to decide whether to treat indigenous groups like other groups within the UN Member States in which indigenous groups reside, or as groups with their own sovereignty and right to “self-determination.” Currently, only states – governments that can use their political, military, and economic capabilities to enforce the law in a particular land – have the right to vote in international organizations such as the UN. Because it has historically been governments that have deprived indigenous groups of their rights, many states have been reluctant to confer self-government or participation in international organizations to IPs.

According to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), social and cultural groups or “peoples” have a right to “freely determine their political status and freely pursue their economic, social and cultural development,”⁴ but “peoples” is not clearly defined in either text. As a result, states have largely chosen to not interpret the provision as referring to IPs due to fears of secession.⁵ This tension is reflected in the text of the UNDRIP. While some articles

¹ This document was written by Samantha Stephens and Karen Ruth Adams, faculty advisor, with contributions from Nicholas Potratz (2014). Copyright 2014 by Samantha Stephens and Karen Ruth Adams.

² IWGIA, “Indigenous People—Who are Indigenous Peoples?” available at <http://www.iwgia.org/culture-and-identity/identification-of-indigenous-peoples>, accessed 14 August 2014.

³ United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 13 September 2007, available at <http://undesadspd.org/IndigenousPeoples/DeclarationontheRightsofIndigenousPeoples.aspx>.

⁴ United Nations, International Covenant on Civil and Political Rights, 1966, available at <http://www.hrweb.org/legal/cpr.html>; United Nations, International Covenant on Economic, Social and Cultural Rights, 1966, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/cescr.aspx>.

⁵ “Study Guide: The Rights of Indigenous Peoples,” University of Minnesota Human Rights Center, 2003, available at <http://www1.umn.edu/humanrts/edumat/studyguides/indigenous.html>.

refer to the self-determination or self-government of IPs, others assert that Member States have the final authority over their own territory and the IPs within that territory.

The final challenge of indigenous rights is to determine when actors are violating those rights in particular times and places, as well as what states or the UN should do when violations occur. These challenges point to a need for the GA-3 to clarify, as much as possible, what rights IPs have and how to enforce those rights. This is especially important now, with just one year remaining in the Second Decade of the World's Indigenous People.

History and Current Events

During European colonization and conquest, invading great powers such as the UK, France, Spain, Portugal, and Belgium viewed indigenous groups in newly conquered territory as “savages” and inferior. Moreover, they considered the land to be “unoccupied” and “newly discovered,” completely ignoring what they viewed as the current “non-human” occupants.⁶ Most indigenous groups lost large numbers of people to war and disease. Some colonizers wiped out indigenous groups entirely, while others relocated IPs and forced indigenous groups from their historical lands.

IPs protested this treatment in many ways and, as a result, have long asserted and sought their rights. After World War I, individuals representing indigenous groups took a new approach and appealed to the League of Nations, which was established to prevent interstate wars and which espoused the doctrine of “self-determination” for (some) ethnic groups. For example, the Maori religious leader T.W. Ratana traveled to Europe in 1925 to lodge a complaint about the 1840 Treaty of Waitangi between the Maori people of New Zealand and the British government with the British King and the League of Nations. But Ratana was not allowed to meet with them. Similarly –denied requests to other religious leaders inspired IPs to assert their rights and organize to protect them.⁷

After WWII, the indigenous rights movement accelerated. It was inspired by the fact that Europe and America—the alleged “civilized” nations—had engaged in incredible violence and barbarianism. Further, the War weakened the European empires and they began to lose hold of their colonies and overseas possessions, resulting in a global movement towards self-determination and autonomy for former colonies. Although decolonization brought rights and freedoms to once-dominated peoples, they generally did not extend to IPs who lived in the newly free nations.⁸ The borders of the new countries generally corresponded to those drawn by the European empires, which lumped many different groups into a single state and divided the land of other groups across many states. Modern ethnic and religious groups often ran the new governments, which often excluded older indigenous groups

Political Rights

Many indigenous groups had their own governments and political systems prior to conquest. Ergo, it can be difficult to reconcile traditional political values and practices with the rules of modern states. One of the most contentious portions of the UNDRIP agreement is the call for self-determination for indigenous groups. Articles 3, 4, 5, 6, and 20 all make references to self-determination or call for states to provide for self-government for IPs within their borders. To help guarantee these rights, Article 5 calls for a right to fully participate in the political, economic and social life of the state in which an indigenous group resides.⁹ Article 33 grants indigenous persons the right to their own identity and membership in indigenous organizations and also states that they cannot be denied citizenship in the state in which they reside. The fact that the rights of indigenous groups may be contrary to the rights of states to control their territory, however, complicates the situation. With regard to individual rights, human rights and state rights appear more compatible. Article 46(1) of UNDRIP states:

⁶ Anup Shah, “Rights of Indigenous People,” *Global Issues*, October 16, 2010, available at <http://www.globalissues.org/article/693/rights-of-indigenous-people>.

⁷ United Nations Permanent Forum on Indigenous Issues.

⁸ Shah, “Rights of Indigenous People.”

⁹ UNDRIP, Article 5.

Nothing in this declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.¹⁰

Though this provision is limited to the Declaration's final article, it affects the viability of the document as a whole.

Given this tension, UN Member States have primarily given IPs individual political rights (e.g. the right to vote and run for office) as opposed to group rights. For example, in Bolivia indigenous groups were long excluded from politics. Now indigenous people can participate in the political system. In fact, Evo Morales, a member of the Aymara indigenous group has served as President of Bolivia since 2006. In 2009, Morales introduced an additional charter to the Bolivian constitution to grant IPs distinct rights and to protect Bolivia's natural resources, upon which IPs depended for their livelihoods.¹¹ Although a number of indigenous leaders criticized the charter for making too many concessions, according to Eugenio Rojoas, the leader of the radical Aymaran group the Red Ponchos: "We are indigenous people that for the first time in history are in power. We will fight to keep this constitution, we will fight hard to make it work and be respected."¹² This reveals the possibility that indigenous rights and state rights can complement one another. By giving IPs political rights, it may bolster their support for the country they inhabit.

The Rights of Indigenous Peoples versus National Security

States' efforts to assure national security and territorial integrity can exacerbate violence that results from IPs frustration with poor treatment by states and desire for self-governance. For instance, in China, some members of the Uighur indigenous group, which faces economic coercion and discrimination by the majority Han Chinese and which sees China as a foreign occupier, have attacked the majority population. States such as China have responded by referring to them as "terrorists," separatists, or insurgents, and begun initiatives to fight against the groups.¹³ This exemplifies the tension between the right to self-determination for indigenous groups, and the need for states to protect their economies, people, and internationally recognized territories. This also creates problems for the UN ideal of pursuing indigenous rights without violence, as noted in UNDRIP. While UNDRIP emphasizes non-violent means, the violence that occurs often results from states' initial poor treatment of indigenous groups.

The war on terrorism since 9/11 offers another example how national security and the rights of indigenous groups are often at odds. According to Hocine Ait Ahmed, the head of a major Berber rights group in Algeria, the war on terror has given some states the justification they needed to continue to deny any autonomy for indigenous groups.¹⁴ In Libya, many Amazigh people were involved in the revolution against Gaddafi's former government. Under Gaddafi, the Amazigh fought for years to maintain their cultural rights and heritage as a distinct indigenous group. For years many Berber regions within Libya lacked government support for education and infrastructure and Qaddafi went as far as to ban the naming of children Berber names and treat the group as terrorists.¹⁵

Social and Cultural Rights

¹⁰ UNDRIP, Article 46(1).

¹¹ Rory Carroll and Andres Schipani, "Bolivia set to adopt new constitution empowering indigenous majority," *The Guardian*, 23 January 2009, available at <http://www.guardian.co.uk/world/2009/jan/23/bolivia-indigenous-charter>.

¹² Carroll and Schipani, "Bolivia set to adopt new constitution empowering indigenous majority."

¹³ Andrew Jacobs, "In China, Myths of Social Cohesion," *New York Times*, 18 August 2014, <http://www.nytimes.com/2014/08/19/world/asia/in-china-myths-of-social-cohesion.html>. Chris Buckley, "China Says 8 Executed in Western Region; Charges Stem from Separatist Attacks," 24 August 2014, *New York Times*, <http://www.nytimes.com/2014/08/25/world/asia/8-people-executed-in-xinjiang-on-terrorism-charges-china-says.html>.

¹⁴ Bruce Maddy-Weitzman, "Ethno-politics and globalization in North Africa: The Berber Culture Movement," *The Journal of North African Studies*; 11:1; [journal on-line]; <http://dx.doi.org/10.1080/13629380500409917>.

¹⁵ Scott Sayare, "Berber Rebels in Libya's West Face Long Odds Against Qaddafi," *New York Times*, 24 April 2011, available at http://www.nytimes.com/2011/04/25/world/africa/25western.html?_r=1&scp=1&sq=Berber&st=nyt.

Article 8 of UNDRIP provides indigenous persons protection from forced assimilation or any state practices that would be destructive of their culture. This provision includes protections for such things as ethnic identity and traditional territories, as well as preventing forced relocation or integration. These practices, however, continue today. For instance, Chinese provinces have offered financial incentives for Han Chinese to intermarry with minorities (such as the indigenous Uighur group) to encourage their assimilation into Chinese society.¹⁶

In addition, Articles 11 and 12 call for protection of cultural and spiritual customs, and Article 24 provides protections for traditional medicines and indigenous health practices.¹⁷ According to the WIPO, traditional medicine is “the sum total of the knowledge, skills and practices based on the theories, beliefs and experiences indigenous to different cultures.” In both developing and developed states, many people have used or regularly use traditional medicine, even for primary healthcare. Further, many modern drugs and vaccines derive from traditional knowledge and practices.¹⁸ The ability of indigenous groups to patent or protect their medicinal practices remains difficult.¹⁹

A major “gap” in the application of human rights standards to IPs is the lack of access to traditional lands where IPs often have spiritual ties. Additionally, a number of groups seek to reclaim sacred objects and historical artifacts that are in the possession of national governments.²⁰ The collective nature of the knowledge makes the protection of indigenous intellectual property difficult. Often it is not just individuals that have a historical right to the knowledge passed down through the group, rather the knowledge belongs to the group as a whole. Thus, a new conception of collective rights may be necessary to protect indigenous peoples and traditional knowledge.²¹

Language Rights

Article 13 of UNDRIP states that IPs “have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.”²² Of the 7,000 some languages recognized today, indigenous peoples speak 4,000. By the end of the next century, language experts predict 90% of those languages will be extinct.²³ An indigenous language is broadly defined as one that is “native” to any geographic area.²⁴

¹⁶ Edward Wong, “To Temper Unrest in Western China, Officials Offer Money for Intermarriage,” *New York Times*, 2 September 2014, available at <http://www.nytimes.com/2014/09/03/world/asia/to-temper-unrest-china-pushes-interethnic-marriage-between-han-and-minorities.html>.

¹⁷ UNDRIP, Article 8, 11, 12, and 24.

¹⁸ WIPO, “Intellectual Property and Traditional Medical Knowledge,” Background Brief No. 6, available at http://www.wipo.int/export/sites/www/tk/en/resources/pdf/tk_brief6.pdf, accessed 10 September 2014.

¹⁹ UN Economic and Social Affairs, “State of the world’s Indigenous Peoples,” 2009, p. 69, available at http://www.un.org/esa/socdev/unpfii/documents/SOWIP_web.pdf.

²⁰ Siegfried Wiessner, “United Nations Declaration on the Rights of Indigenous Peoples: General Assembly Resolution 61/295,” 13 September 2013, UN Audiovisual Library of International Law, available at http://legal.un.org/avl/ha/ga_61-295/ga_61-295.html.

²¹ Simon Brascoupe and Karin Endemann, “Intellectual Property and Aboriginal People: A Working Paper,” Indian and Northern Affairs Canada, Fall 1999, http://www.wipo.int/export/sites/www/tk/en/databases/creative_heritage/docs/ip_aboriginal_people.pdf.

²² UNDRIP, Article 13.

²³ UN Economic and Social Affairs, “State of the world’s Indigenous Peoples,” p. 1.

²⁴ Michael Walsh, “Will Indigenous Languages Survive?” *Annual Review of Anthropology*, 2005, p. 294; [journal on-line]; available at <http://www.annualreviews.org/doi/abs/10.1146/annurev.anthro.34.081804.120629>.

According to experts, preserving indigenous languages is not just important for group cohesion but will also make it easier for communities to work together and achieve higher levels of development.²⁵ Thus, the primary argument for revitalizing indigenous languages is the role a shared language can play in strengthening collective identity, furthering self-determination, and assisting IPs in developing and escaping poverty. For example, the Zapara is the smallest indigenous group in Ecuador, and the Zapara language has become a major symbol of Zapara identity. The Zapara people believe it is the cultural trait that most sets them apart from the other indigenous groups of Ecuador. Recently, the UN Educational, Scientific, and Cultural Organization (UNESCO) offered to fund revitalization and documentation efforts of the Zapara language based on its contribution to the Zapara identity.²⁶

Language revitalization and protection take many forms. Most programs use language education in school systems. Article 14 of UNDRIP states that IPs “have the right to establish and control their educational systems and institutions providing education in their own language.”²⁷ However, this does not make national governments responsible for cultivating languages or providing classes in national school systems. Provided classes often receive criticism for failing to achieve high levels of comprehension. Revitalization also suffers from a shortage of native-speakers and a lack of language resources (e.g. dictionaries). Many states have written indigenous language protections into their constitutions. Article 32(2) of the Indonesian Constitution reads: “The state shall respect and preserve local languages as national cultural treasures.”²⁸ Malawi has a provision to provide those involved in criminal proceedings with an understanding of “the reason for [their] detention” in their own language.²⁹

Economic and Land Rights

Although indigenous peoples only account for 5% of the world’s population, they constitute 15% of the world’s poor.³⁰ In many nations, indigenous persons often rank the lowest for certain development indicators, such as literacy, employment and overall standard of living. Indigenous persons also often face discrimination in the job market and in the national education system, further reducing their ability to succeed economically.³¹ Articles 23 and 32 of the UNDRIP grant indigenous groups the right to determine their own development. However, such development is difficult without help or supporting infrastructure from the state in which they reside.

One of the major issues regarding indigenous rights is that of land ownership and occupation. Indigenous groups face increasing difficulty in establishing ownership over or access to traditionally occupied lands. This difficulty is complicated by the contradiction between individual and collective rights. The growing trend towards individual land ownership makes land that has historically been used by indigenous groups available for sale to individuals and corporations for residences, industries, farming, forestry, and mining.³² According to indigenous rights groups, privatization of land is major threat to the survival and development of indigenous cultures worldwide. Traditionally occupied lands are also often taken by governments and used for national development projects such as dams, as well as for protected areas such as national parks.

²⁵ Gerry Abbott, “The Importance of Activating Indigenous Languages in the Drive for Development,” *Information Development* Vol. 18:4; December 2002; available through JSTOR; [data-base online], p. 229.

²⁶ Maximilian Via tori and Gloria Ushigua, “Speaking Sovereignty: Indigenous Languages and Self-Determination” *Wicazo Sa Review*; Vo. 22:2; Fall 2007; available through JSTOR; [data-base online]; p. 10.

²⁷ UNDRIP, Article 14.

²⁸ Republic of Indonesia, Constitution, Article 32(2), available at <http://confinder.richmond.edu/>.

²⁹ Republic of Malawi, Constitution, Article 42(1)(a), available at <http://confinder.richmond.edu/>.

³⁰ United Nations Permanent Forum on Indigenous Issues, “State of the World’s Indigenous Peoples.”

³¹ “Study Guide,” University of Minnesota: Human Rights Library.

³² International Working Group on Indigenous Affairs, “Indigenous Peoples and Land Rights,” available at <http://www.iwgia.org/sw231.asp>, accessed 25 May 2011.

Article 25 of UNDRIP states that IPs “have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources.” Article 26 emphasizes this, adding that Member States have a responsibility to “give legal recognition and protection to these land, territories and resources...with due respect to the customs, traditions and land tenure systems of the [IPs] concerned.” UNDRIP also calls on States to provide assistance to any IPs that implement environmental protections or conservation efforts on their land. UNDRIP not only extends protections to land currently occupied by IPs, it also calls for retroactive restitution for land that once belonged to indigenous groups that was “confiscated, taken, occupied, used or damaged without their free, prior and informed consent.” This compensation would take the form of “lands, territories and resources equal in quality, size and legal status or of monetary compensation.”³³

Although still tentative, land rights for indigenous peoples have begun to take hold. In 2010, the African Commission on Human Rights issued a landmark decision condemning Kenya’s expulsion of the Endorois people from land near Lake Borogio in central Kenya in the 1970s to make way for a national reserve and tourist facilities. It ruled that Kenya had to compensate the Endorois for the act. The decision was groundbreaking as it represents the first ruling by the Commission to recognize an indigenous group and their right to traditionally occupied land.³⁴

Although some recent cases demonstrate a positive shift towards indigenous land rights around the world, many indigenous groups still face challenges of maintaining ownership of or access to traditional lands. The Arctic is one of the primary regional areas where land and natural resource use represent contentious issues. The Arctic is home to 4 million people in 30 ethnic groups living on more than 30 million square km, claimed by Members states. On May 19, 2009, the Danish Parliament passed a self-rule (“selvystre”) arrangement for Greenland that signaled the beginning of cooperation between at least one Arctic state and the indigenous peoples of the Arctic.³⁵ In many cases, however, states’ interests conflict with or have increasing potential conflict with those of IPs. Because the livelihoods of indigenous peoples in the Arctic depend on animal life in the sea and on the ice sheets, global climate change has become a pressing topic that has strained many relationships between Arctic states and indigenous occupants. It is estimated that 25 percent of the world’s remaining oil and gas reserves are under the Arctic ice. As temperatures continue to rise, competition by states for indigenous land will increase.³⁶

Examples of the Treatment of Indigenous Peoples

The Berbers, also known as the Imazighen (or Amazigh), are one of the indigenous peoples of North Africa. Berbers are found in Libya, Tunisia, Egypt, Mali, Niger, Burkina Faso, and Mauritania and make up an estimated 25 percent of the Algerian population and 45 percent of the Moroccan population.³⁷

Treatment of the Berber people by North African governments has varied greatly over time. When Morocco became independent and wrote its constitution in 1962, it made no mention of the Berber language or culture. In fact, it declared Arabic the national language and defined the state as Muslim.³⁸ However, on March 9,

³³ UNDRIP, Articles 25, 26, 28.

³⁴ “Kenya: Landmark Ruling on Indigenous Land Rights,” Human Rights Watch, February 4, 2010; available at <http://www.hrw.org/en/news/2010/02/04/kenya-landmark-ruling-indigenous-land-rights>.

³⁵ Nikolaj Petersen, “The Arctic as a New Arena for Danish Foreign Policy: The Ilulissat Initiative and its Implications,” *Danish Foreign Policy Yearbook 2009*, 2009, p. 36; available at <http://www.arcticgovernance.org>.

³⁶ UN Permanent Forum on Indigenous Issues, “Report on the eighth session (18-29 May 2009),” Economic and Social Council, Official Records, Supp. No. 23, 2009, <http://www.un.org/esa/socdev/unpfi/en/indicators.html>.

³⁷ Abderrahman el Aissati, “A Socio-Historical Perspective on the Amazigh (Berber) Cultural Movement in North Africa,” *Afrika Focus*, 2005; Vol. 18; p. 60.

³⁸ Aissati, “A Socio-Historical Perspective on the Amazigh (Berber) Cultural Movement in North Africa,” p. 62.

2011, King Mohammed VI announced the drafting of a new constitution. In addition to ceding half of his power to a prime minister, he called for the Berber mother tongue to become the second official language of the state.³⁹

By contrast, the case of the Kabyle berbers exemplifies continued poor treatment of indigenous groups. When Algeria became independent in 1962, the Kabyle people sought improved status for the Berber people within Algeria. When the Algerian government denied rights for the Berbers as a distinct indigenous group, this led to a rebellion from 1963 to 1965. In 1980, an incident known as the “Berber Spring” occurred when students took to the street protesting when a writer was denied access to a major Berber town where he was to give a lecture on ancient Berber poetry. This incident, as well as a number of others, has largely focused on the fight to have the Berber language become an official language of North African states. In the 2001 “Citizens’ Movement” that sparked riots all over the region, inclusion of the Berber language into national governments was one of primary demands.⁴⁰

Problems with discrimination and a lack of governmental recognition are not exclusive to developing states, however; IPs experiences these problems in developed states, such as Japan, as well. The Ainu are the original occupants of the northern region and islands of Japan.⁴¹ The Ainu fell under Japanese rule in 1869, and by 1872 their lands were nationalized and they began to fall into poverty. Unlike many indigenous groups around the world, the Ainu were not incorporated into the Japanese state by treaty (or mutual agreement); rather the Ainu were forced to join the Japanese state.⁴² Although Japan experienced substantial economic growth in the 1950s, 1960s, and 1970s, the Ainu benefitted little relative to the majority Japanese population. For example, in the 1970s, overall Japanese employment stood at 5%, while it stood at 11% for the Ainu, primarily attributable to discrimination.⁴³

In 1980, when Japan issued its first periodic report to the UN International Covenant on Civil and Political Rights, it stated that ethnic minorities “did not exist in Japan.” In 1997, the government passed the Ainu Cultural Promotion Act (CPA). Although recognized for its attempt to protect Ainu culture, it provides no collective rights for the Ainu group as a separate political entity.⁴⁴ In June 2008, Japan issued its first formal recognition of the Ainu people as a distinct cultural group of Northern Japan. The resolution from Japan’s parliament states that Japan is not an ethnically homogenous country and that the Ainu have “a distinct language, religion and culture.”⁴⁵ However, the Japanese government has thus far refused to recognize the Ainu as an “indigenous” group.⁴⁶

Previous Committee Work on This Topic

Although numerous declarations and conventions assert specific rights to the entire world population, many of these rights have been continually denied to IPs. In 1948, the GA adopted the Universal Declaration of Human Rights, recognizing that all person are “equal in dignity and rights,” and entitling everyone to these rights regardless of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other

³⁹ Ahmed Charai, “Bahrain Could Learn From Morocco’s Model,” *Wall Street Journal*, 16 March 2011, available at <http://online.wsj.com/articles/SB10001424052748703908304576201000083096940>.

⁴⁰ “Q & A: The Berbers,” *BBC News Online*.

⁴¹ Mizuno Takaaki, “Ainu, The Invisible Minority,” *Japanese Quarterly* Vol. 34:2; April-June 1987.

⁴² Richard Siddle, “The Limits of Citizenship in Japan: Multiculturalism, Indigenous Rights and the Ainu,” *Citizenship Studies* Vol. 7:4, 2003; [journal on-line]; <http://dx.doi.org/10.1080/1362102032000134976>, p. 452, 456.

⁴³ “Ainu Rights,” *Japanese Quarterly* Vol. 21:3; July-September 1974.

⁴⁴ Siddle, “The Limits of Citizenship in Japan,” pp. 448-450.

⁴⁵ United Nations Permanent Forum on Indigenous Issues, “Advances in the Recognition of Indigenous Rights Since the Adoption of the UN Declaration.”

⁴⁶ IWGIA, “Country Profile: Japan,” 2008; [publication on-line]; available at <http://www.iwgia.org/sw35277.asp>.

status.”⁴⁷ This was reaffirmed in the 1969 Convention on the Elimination of All Forms of Racial Discrimination.⁴⁸ In 1951, the GA also passed the Convention on the Prevention and Punishment of the Crime of Genocide, protecting national, ethnical, racial or religious groups from intentional destruction by any state.⁴⁹ In 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were both adopted by the GA and opened for signature and ratification by UN member states. The ICCPR grants special rights to minority groups, while the ICESCR recognizes collective rights.⁵⁰

In 1989, the International Labor Organization established the Convention Concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) ensuring indigenous rights to ownership and possession of the land they occupy and use. The basic principles of the Convention include: identification of indigenous and tribal peoples, non-discrimination, recognition of and special measures to be taken to safeguard indigenous culture, participatory roles of indigenous peoples and nation states, and the “right to decide priorities for development.” As of August 2014, just 20 of the UN’s 193 member states have ratified this Convention.⁵¹

In 1992, the General Assembly passed the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. This declaration outlines both the responsibilities that states owe minority groups as well as the specific rights of minority groups.⁵² Also in 1992, two documents arising out of the Rio de Janeiro Earth Summit emphasized the importance of indigenous rights in context of environmental management and development. First, Principle 22 of the Rio Declaration acknowledges the vital role traditional practices play in environmental management and development.⁵³ Second, Agenda 21 recommends that indigenous people be given increased control over their land and have full participation in decisions affecting them.⁵⁴ The notion of indigenous rights is also present in a number of other UN environmental treaties. For example, Article 8(j) of the Convention on Biological Diversity asks nations to “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities” and to encourage the spread of these ideas.⁵⁵

In 2000, the GA created the UN Permanent Forum on Indigenous issues to discuss indigenous issues relating to economic and social development, culture, the environment, education, health, and human rights. It includes eight indigenous experts, and was the first international body in the UN to have IPs as members.⁵⁶

⁴⁷ UN Universal Declaration of Human Rights, Articles 1 and 2, 1948, <http://www.un.org/en/documents/udhr/>.

⁴⁸ UN International Convention on the Elimination of All Forms of Racial Discrimination, Article 1, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>, accessed September 12, 2014.

⁴⁹ Convention on the Prevention and Punishment of the Crime of Genocide, Articles 1 and 2, available at <http://www.hrweb.org/legal/genocide.html>, accessed May 15, 2011.

⁵⁰ UN ICCPR, Article 27; UN ICESCR.

⁵¹ International Labor Organization, *Convention No. 169*, available at <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>, accessed 14 August 2014.

⁵² UN, Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, 1992, available at <http://www.un-documents.net/a47r135.htm>, accessed September 12, 2014.

⁵³ UN Conference on Environment and Development, Rio Declaration on Environment and Development, Principle 22, June 3-14, 1992, available at <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>.

⁵⁴ UN Economic and Social Development, Division for Sustainable Development, Agenda 21, Earth Summit, Rio de Janeiro, 1992, available at <http://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>.

⁵⁵ UN Convention on Biological Diversity, Article 8(j), <http://www.cbd.int/convention/articles/?a=cbd-08>.

⁵⁶ “Study Guide,” University of Minnesota: Human Rights Library.

In 2005, GA Resolution 59/174 launched the Second Decade of the World's Indigenous People. The First Decade ran from 1995-2004 and followed the International Year of the World's Indigenous People in 1993. During the First Decade, the UN and indigenous rights groups designed and implemented projects to promote the health, education, employment, and development to further the interests, customs and practices of IPs. In 2004, although the Decade had helped IPs effectively use the UN as a discussion forum for raising awareness, it had little impact on the policies of the UN or states.⁵⁷ Thus the purpose of the Second Decade is to promote "non-discrimination and inclusion of indigenous peoples" in various aspects of national and international politics.⁵⁸

In 2007, the GA adopted UNDRIP with affirmative votes from 143 states. Eleven states abstained. UNDRIP is said to provide IPs with unprecedented collective rights. Although not legally binding, UNDRIP has already been referred to in a number of international law cases regarding indigenous rights. For instance, in 2007, the Inter-American Court of Human Rights referred to UNDRIP the case of *Saramaka People v. Suriname*, referring to clauses on prior consent rights for resource management on indigenous lands.⁵⁹ In addition, each year the Office of the High Commissioner for Human Rights reviews UN member states' implementation of UNDRIP principles in its annual report. Since its inception, UNDRIP has influenced a number of UN member states to amend their constitutions to provide legal protections for indigenous groups. Some countries have also begun to integrate the concept of "interculturality" into domestic legal systems.

Yet UNDRIP continues to face opposition from a number of UN member states. When it was adopted in 2007, the US, Australia and New Zealand, all of which voted against UNDRIP, issued a joint statement in opposition, stating, "No government can accept the notion of creating different classes of citizens." A number of states also disagreed with the land provisions under UNDRIP, arguing that many of the traditional lands that would fall under the declaration already legally belong to other people. The debate over traditional lands is complicated by the fact that some indigenous groups were nomadic at the time of European settlement, making it uncertain what land they occupied.⁶⁰ This is why the question of restitution, discussed above, is often raised.

In its 68th (2013-2014) Session, the GA passed only one resolution (A/RES/68/149) on indigenous rights. The resolution calls for states to agree to and implement measures in the ILO No. 169 agreement and the Declaration on Indigenous Rights. It further requests, inter alia, that the UN and Member States take steps at the national, regional, and international levels to protect and promote the rights of IPs and incorporate the rights of indigenous peoples into the post-2015 sustainable development agenda.⁶¹

Conclusion

The tension between the rights of indigenous groups and the rights of UN Member States remains a major obstacle to the realization of collective rights for indigenous groups around the world. How can the GA-3 improve the treatment of particular indigenous persons and groups worldwide?

As you research your country's position on this topic, consider the following questions:

- How many indigenous groups does your country have within its borders? How many does it recognize and/or not recognize? What are the issues and challenges faced by IPs and groups in your country?

⁵⁷ United Nations General Assembly, Report of the Secretary-General, "Midterm assessment of the progress made in the achievement of the goal and objectives of the Second International Decade of the World's Indigenous People," 23 July 2010, available at <http://www.un.org/esa/socdev/unpfii/en/second.html>, p. 3.

⁵⁸ United Nations Permanent Forum on Indigenous Issues, "Second International Decade of the World's Indigenous People," available at <http://www.un.org/esa/socdev/unpfii/en/second.html>; accessed 30 January 2011.

⁵⁹ Wiessner, "United Nations Declaration on the Rights of Indigenous Peoples."

⁶⁰ Shah, "Rights of Indigenous People."

⁶¹ United Nations Resolution 68/149 (A/RES/68/149), available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/149.

- Are there any indigenous persons in leadership positions within your country?
- What is the history of the indigenous rights movement in your country? Has your country been the target of criticism for its treatment of indigenous people?
- What is your country's record of support for indigenous people worldwide? Are there particular indigenous groups beyond your country's borders that it is especially interested in or involved with?
- Did your country pass the UNDRIP Resolution? Has it ratified the treaties mentioned above? Does it participate in the UN's Permanent Forum on Indigenous Rights?
- What can and should the GA do to publicize, expand, and/or enforce indigenous rights in the last year of the Second Decade of the World's Indigenous People? What strategies, if any, has your state used?

Recommended Reading

First Peoples Worldwide. Available at <http://www.firstpeoples.org/>.

This website features an indigenous risk report, detailing oil, gas, and mining activities that threaten indigenous land. Also see the links under the *Who Are Indigenous Peoples* tab for more information on indigenous peoples, the challenges experienced by IPs, and the "indigenous movement."

Human Rights Watch. Available at <http://www.hrw.org/>.

HRW is an NGO that promotes human rights and publicizes human rights abuses worldwide. To find out about indigenous rights issues in your country, search on your country's name and the word "indigenous."

Minority Rights Group International. Available at <http://www.minorityrights.org/>.

Minority Rights Group International is an NGO that tracks and advocates for the rights of minorities and IPs worldwide. From this site (as well as the UN High Commissioner for Refugees, <http://www.unhcr.org/reword/publisher/MRGI.html>) you can access a variety of reports on your country, other countries, and policy options. Be sure to look at the publications page for reports on the state of minorities and IPs.

"Study Guide: The Rights of Indigenous Peoples." University of Minnesota Human Rights Center. 2003. Available at <http://www1.umn.edu/humanrts/edumat/studyguides/indigenous.html>.

This website provides a good source of introductory information regarding the history of the rights of IPs as well as a description of a number of key terms that are used in the debate regarding indigenous rights.

Survival International: The Movement for Tribal Peoples. Available at <http://www.survivalinternational.org/>.

This website provides a wide selection of information regarding the history of the indigenous rights movement as well as information on specific indigenous groups, campaigns, and recent events. Click *About Us* to see the sites' annual report.

UN Permanent Forum on Indigenous Issues. Available at <http://www.un.org/esa/socdev/unpfii/en/history.html>.

This website provides a historical perspective of the indigenous rights movement as well as information regarding contemporary projects and issues in this area. This site also includes the text for most of the major indigenous rights conventions, country assessments, and the two Decades on indigenous rights.

Wiessner, Siegfried. "United Nations Declaration on the Rights of Indigenous Peoples: General Assembly resolution 61/295," Audiovisual Library of International Law. Available at http://legal.un.org/avl/ha/ga_61-295/ga_61-295.html.

This article includes a timeline of the development of international conventions regarding indigenous rights as well as a breakdown of some of the more important articles in UNDRIP and how they have affected international legal and political decisions.