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Indigenous peoples, world heritage, and human rights

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***I.J.C.P. 245 Abstract:** Indigenous peoples' emphasis on protecting their cultural heritage (including land) through a human rights-based approach reveals the synergies and conflicts between the World Heritage Convention and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). This article focuses on how their insistence on the right to participate effectively in decision-making and centrality of free, prior, and informed consent as defined in the UNDRIP exposes the limitations of existing United Nations Educational, Scientific and Cultural Organization and World Heritage Convention processes effecting Indigenous peoples, cultures, and territories and how these shortcomings can be addressed. By tracking the evolution of the UNDRIP and the World Heritage Convention from their drafting and adoption to their implementation, it examines how the realization of Indigenous peoples' right to self-determination concerning cultural heritage is challenging international law to become more internally consistent in its interpretation and application and international organizations to operate in accordance with their constitutive instruments.

Keywords: Indigenous peoples, human rights, world heritage, participation, international law, cultural heritage

INTRODUCTION

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP),¹ and Convention concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention),² have recalibrated their respective fields of international ***I.J.C.P. 246** law--namely, human rights and cultural heritage law. Adopted a decade ago and unanimously affirmed in 2014 by the UN General Assembly,³ the UNDRIP embodies the application and realization of international human rights norms to the needs and concerns of Indigenous peoples and individuals. While the World Heritage Convention, adopted 45 years ago, with its near universal uptake by states, is the flagship treaty for the protection of cultural heritage of the United Nations Educational, Scientific and Cultural Organization (UNESCO). Indigenous peoples' emphasis on protecting their cultural heritage (including land) through a human rights-based approach reveals the synergies and conflicts of these two instruments. The ensuing focus on the implementation of their right to participate effectively in decision-making and related centrality of free, prior, and informed consent (FPIC) is promoting a confluence of these two legal regimes. These efforts also represent a challenge to how states and state-dominated international organizations have engaged in the protection of cultural heritage and human rights at the national and international level and are most pronounced as such protection relates to land.

World heritage sites have become focal points for contestation over land between Indigenous peoples and states parties to the World Heritage Convention. Despite unsuccessful calls for an audit of the World Heritage List, it remains conspicuously silent concerning sites being inscribed that are on Indigenous peoples' territories.⁴ UNESCO and its instruments for the protection of cultural heritage, including the World Heritage Convention, are considered international norms and standards that "provide for the protection of Indigenous peoples."⁵ Indigenous representatives have repeatedly emphasized the need for the organization to fulfill its mandate on human rights as it relates to Indigenous peoples and their cultures. This critique has been particularly pronounced and sustained with respect to the World Heritage Convention and the workings of the World Heritage Committee (WHC).

One example is the wet tropical rainforests of northeast Australia that were inscribed on the World Heritage List in 1988 (Wet Tropic Rainforest site).⁶ The Australian government had from the outset referred to cultural heritage--that is, the "extant Aboriginal rainforest culture. Aboriginal occupation dates back at least 40,000 years" as a leading justification for designation as a world heritage site.⁷ The International Union for the Conservation of Nature's (IUCN) report to the WHC, as its advisory body, observed that Indigenous peoples in the area were "the oldest rainforest culture in the world."⁸ Yet this site was recognized to be of "outstanding universal importance" and inscribed on the World Heritage List because of its **I.J.C.P. 247* natural, rather than cultural, significance.⁹ The nomination predated changes to the World Heritage Convention's Guidelines for the Implementation of the World Heritage Convention (Operational Guidelines), which permitted the inclusion of cultural landscapes.¹⁰ Indigenous peoples have indicated that they "wish to have the property recognized as a living cultural landscape."¹¹ Yet, 25 years after its original inscription and despite early recognition of its similarity with other world heritage sites in Australia, like Uluru-Kata Tjuta National Park and Kakadu National Park, this world heritage site remains listed for its natural attributes alone.

The UNDRIP adopted by the UN General Assembly (UNGA) in 2007 reinforces that international human rights norms apply equally to Indigenous peoples. How this may be realized in the cultural field is outlined in the Declaration and unpacked by UN bodies charged with implementing it and promoting Indigenous concerns generally. They emphasize effective Indigenous participation in decision-making processes and the centrality of FPIC. Unsurprisingly, these efforts are a challenge to how states and state-dominated international organizations have engaged in the protection of cultural heritage and cultural human rights at the national and international level. At its most benign, Indigenous peoples reveal the limitations to the present-day promotion of diversity and pluralism; at its starkest, they highlight how the dynamics of colonialism (including assimilation and integration) have continued unabated for many Indigenous peoples. In 1988, the state of Queensland (where the Wet Tropic Rainforest site is located) listed the traditional lands of the Wik people as a national park to prevent their purchase of these lands from a private company.¹² In 2018, the UN Permanent Forum on Indigenous Issues (UNPFII) conveyed its concern that "conservation programs based on excluding human beings from the environment have had a negative consequences on the rights of indigenous peoples through forced evictions and other harms."¹³

This challenge from Indigenous peoples concerning the protection of culture and cultural heritage is most pronounced as it relates to land. The four member states that originally voted against the UNDRIP in 2007--namely, Australia, Canada, New Zealand, and the United States--were motivated by a fear of Indigenous land claims and the exercise of the right to self-determination as a call for secession.¹⁴ This trepidation extends beyond land to other "property" including intellectual and cultural property.¹⁵ With respect to the Wet Tropic Rainforest **I.J.C.P. 248* site, the Australian government acknowledged that 80 percent of the area was potentially claimable under the Native Title Act 1993, with 16 claims lodged with the national Native Title Tribunal covering 32 percent of the world heritage area in 2002.¹⁶ Despite its significance to Indigenous peoples, the IUCN noted that the local Indigenous communities' views or consent had not been sought or represented in regard to the nomination.¹⁷

It is therefore telling that another objection to the UNDRIP by all four states that voted against it was the creation of what they defined as a "special class" of citizens with respect to the Indigenous peoples being consulted in regard to the decision-making that impacts upon them.¹⁸ UN Special Rapporteur James Anaya noted that the Declaration does not bestow special rights, but he affirmed that the human rights instruments are also applicable to Indigenous peoples, thereby "repairing the ongoing consequences of the historical denial of the right to self-determination and other basic human rights."¹⁹ Indigenous peoples have always maintained that their nations have their own political, economic, social, and cultural structures and practice their own laws and customs. Their claims at the international level with respect to the protection of their cultural identity and heritage fundamentally challenge the dominant interpretation of colonialism and decolonization.

Through their emphasis on the significance of their identity, cultural heritage, and development, Indigenous peoples have exposed the ongoing impact of foreign occupation and assimilation and the incomplete nature of decolonization. For them, self-determination is not the assimilation of the formal criteria of statehood but, rather, the recognition of, and respect for, their existing modes and practices of organizations that predate colonial occupation and that have adapted since that time. This recognition and respect is vital for their survival as peoples and the promotion of diversity for the benefit of all humanity. As Vine Deloria Jr has noted, Indigenous sovereignty "consist[s] more of a continued cultural integrity than of political powers and to the degree that a nation loses its sense of

cultural integrity, to that degree it suffers a loss of sovereignty."²⁰

This article focuses on Indigenous peoples' decades-long campaign for effective participation in decision-making concerning the protection of their cultural heritage (and related human rights) at the international level and its transformational impact on international law and international institutions, with a particular emphasis on the World Heritage Convention. First, there is an overview of **I.J.C.P. 249* Indigenous peoples' interventions at the international level following World War II, which confronted the ongoing exclusion and silences typified by the negotiation and adoption of the World Heritage Convention. Next, there is an examination of the framing of cultural heritage protection through Indigenous peoples' efforts in the realization of the UNDRIP, the Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples (Draft Guidelines), and the proposed World Heritage Indigenous Peoples' Council of Experts (WHIPCOE).²¹ Finally, oversight of the implementation of the UNDRIP by the United Nations's (UN) three mechanisms on Indigenous peoples' rights and issues, particularly as they relate to cultural heritage and the workings of UNESCO and the WHC, is considered.

Much is made of the internalization of the colonizer's tropes when Indigenous peoples and others engage with international law and international organizations. However, while there is always this possibility, it is important to acknowledge and understand Indigenous peoples' agency and utilization of these key concepts and principles for their own ends and by pushing the existing boundaries and limitations of the discipline and its institutions. By pressing for their effective participation in the protection and control of their heritage, within states and internationally, Indigenous peoples are rendering international law's shortcomings manifest, pushing it to be more internally consistent in its interpretation and application, and challenging international organizations to operate in line with their stated objectives.

CONFRONTING EXCLUSION: EARLY INTERVENTIONS BEFORE THE UN AND UNESCO

The story of Indigenous peoples during the earliest years of the UN was one of deliberate exclusion and correlating silences in international law as it developed in this period. Nonetheless, Indigenous peoples' interventions highlighted their commitment to organize at the supranational level despite the state-centric nature of the new intergovernmental organization and its agencies, like UNESCO.²² They also set out core themes that resonant to date--namely, a human rights-based approach to the protection of cultural heritage and the centrality of the right to self-determination. While the UN Charter has limited formal membership to states, it has provided other modes of participation by non-state actors in its deliberative processes.²³ The Economic and Social Council (ECOSOC), the UN body responsible for the adoption of human rights instruments and establishing bodies for their oversight, provides consultative status to non-governmental **I.J.C.P. 250* organizations (NGO).²⁴ This avenue has been utilized by Indigenous organizations to articulate Indigenous peoples' claims with respect to the right to self-determination, human rights (especially cultural rights), and the protection of their cultural heritage before UN human rights bodies (and regional organizations).²⁵ This strategy proved vital in elaborating human rights treaty obligations and customary international law generally in regard to Indigenous peoples that would underpin the drafting of the UNDRIP.²⁶

By the 1970s, Indigenous peoples were increasingly asserting their international presence, transnational networks, and multilateral efforts through direct interventions before international and regional intergovernmental organizations and hosting their own international conferences.²⁷ Successive conferences laid out the tenets of Indigenous peoples' mode of articulating their claims during this era. The first International Conference of Indigenous Peoples was held in 1975 and approved the Charter of the World Council of Indigenous Peoples (WCIP), which had NGO status at the UN.²⁸ The Declaration of its Second Conference in 1977 covered recognition of Indigenous representation and participation and the right to maintain culture, language, and tradition. It called on the WCIP to become a UN member representing Indigenous peoples without interference from governments.²⁹

By articulating their claims in terms of human rights and fundamental freedoms, which is a primary objective contained in the UN Charter, Indigenous peoples gradually chipped away at the dominance of states and the lacunae they had created in international law to evade criticism of assimilationist and integrationist policies and practices towards Indigenous peoples within their borders.³⁰ Accordingly, the San Jose# Declaration, which was adopted in 1981 by a UNESCO meeting of experts on ethnocide and ethno-development, including Indigenous representatives, emphasized equal

enjoyment, individually and collectively, of all human rights and fundamental freedoms by Indigenous peoples.³¹ This Declaration included the right to self-determination by "strengthening the independent decision-making capacity of a culturally distinct society to direct its own development and exercise self-determination."³² It called on the UN, its agencies, and member states to implement the Declaration in full. These efforts laid out the **I.J.C.P. 251* tenets of the priorities of Indigenous peoples that would be pursued in subsequent codification efforts and realized in the UNDRIP, a quarter of a century later.

Drafted and negotiated during the late 1960s and early 1970s, the World Heritage Convention embodies two concerns of Indigenous peoples during this period. The Convention is designed to protect "world" heritage of universal importance to all humanity. UNESCO's Director-General Rene# Maheu observed prior to its adoption in 1972 that the draft convention was based on a principle that "the cultural and natural heritage *belongs to mankind as a whole*, which means that it lies outside the proprietorship of States while remaining within the framework of their sovereignty" and protected by "a form of international co-operation."³³ The *travaux preparatoires* reveal the fraught negotiations between various UN bodies (UNESCO and the UN Conference on the Human Environment), NGOs (IUCN), and countries (especially the United States) that were vying to promote the adoption of a multilateral instrument that would extend international protection, through international cooperation with the territorial state, to endangered cultural and natural sites.³⁴ While Indigenous peoples promote the recognition that their cultures "are part of the cultural heritage of mankind,"³⁵ they categorically reject the interpretation by some states that their cultural heritage (whether on the World Heritage List or not) forms part of the common heritage of mankind (or common domain)--that is, to be enjoyed and exploited by all humanity and, therefore, beyond the control of the relevant Indigenous peoples.³⁶ As Maheu has explained, the manner in which the term is used in the WHC is intended to invoke the responsibility of the international community, in addition to that of the relevant state party on whose territory the listed property is located, to ensure its protection. It is reminiscent of Indigenous peoples' strategy of invoking international human rights obligations, thereby seeking the protection of the international community, beyond the purview of the relevant state party.

There is no evidence on the face of the *travaux* or the final text of the World Heritage Convention that Indigenous peoples participated in its drafting and negotiation, either as part of the state delegations, experts, or NGOs. This is reflected in the definition of heritage to be considered for protection. While the earliest drafts of the Convention covered mixed properties--that is, "the combined work of nature and man," it ended up deferring to their scientific importance ("outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view").³⁷ This designation is distinguishable from the term "landscape," which **I.J.C.P. 252* was dropped from the final text.³⁸ The term "landscape" re-emerged three decades later with the amendment of the Operational Guidelines, which enabled "cultural landscapes" to be inscribed on the World Heritage List. This dissolution of the division between natural and cultural elements of a site more closely aligned with Indigenous peoples' ways of understanding cultural heritage and facilitated their engagement with the Convention. While the *travaux* reveal that there was a clear understanding of the importance of ensuring the participation of local authorities in the protection of a site, this concern does not appear in the final text of the World Heritage Convention. Instead, as explained below, Indigenous representatives continue to campaign for active participation in the nomination, listing, and management of world heritage sites.³⁹

TOWARDS CODIFICATION: THE UNDRIP, THE DRAFT GUIDELINES, AND WHIPCOE

The UN gradually addressed the exclusion of Indigenous peoples through its mandates on human rights and racial discrimination. The Working Group on Indigenous Populations (WGIP), which was established by ECOSOC in 1982, became Indigenous peoples' locus within the international organization.⁴⁰ ECOSOC facilitated unprecedented participation by Indigenous representatives and representative organizations in the WGIP's work.⁴¹ From the outset, the Working Group flagged two priorities: defining the rights of Indigenous peoples and developing a set of principles and guidelines that would cover the protection of Indigenous heritage. There was significant cross-fertilization between the two initiatives. Several provisions contained in the Declaration specifically cover cultural heritage and participation in decision-making. Conversely, the Draft Guidelines, which are yet to be adopted, have elaborated the related provisions in the UNDRIP by distilling state practice and existing human rights jurisprudence. As they worked for a dedicated human rights instrument, Indigenous peoples began to press for effective representation before the WHC and participation in the nomination and management of properties on the World Heritage List.

UNDRIP

Despite its lengthy and tortuous gestation until its adoption by the UNGA in 2007, the UNDRIP reaffirms the application of existing human rights norms to Indigenous peoples and individuals and extrapolates them to better address their issues and concerns. Although it is non-binding on its face, it is important to note that human ***I.J.C.P. 253** rights tribunals and academics have pointed out that a number of the Declaration's provisions covering cultural rights and cultural heritage reflect customary international law and therefore are binding.⁴² The right to self-determination is viewed as the foundational right,⁴³ which defines and informs all other rights contained in the UNDRIP, including cultural rights.⁴⁴ The operationalization of this right as it relates to Indigenous peoples' enjoyment of cultural rights and the protection of their cultural heritage has been defined to include the right to control (Article 31), to consultation and participation in decision-making that affects Indigenous peoples (Article 18), and to FPIC (Article 19).⁴⁵ The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),⁴⁶ and Article 27 of the International Covenant on Civil and Political Rights (ICCPR),⁴⁷ have been important vehicles for Indigenous peoples' efforts to protect their collective identities and cultural heritage. Consequently, the resulting jurisprudence is significant for interpreting relevant UNDRIP provisions.⁴⁸ The Human Rights Committee has stated that Article 27 of the ICCPR gives rise to specific positive obligations on states parties to ensure the "survival and continued development of the cultural, religious and social identity" of the group and "thus enrich[es] the fabric of the society as a whole."⁴⁹ It has indicated that these positive measures include "the effective participation of members" of the group "in decisions which affect them" and includes their FPIC.⁵⁰ Likewise, the Committee on the Elimination of Racial Discrimination's General Recommendation no. XXIII (1997) provides similar guidance when distilling its own jurisprudence and referencing the draft UNDRIP.⁵¹ However, certain settler states have viewed these obligations as an interference with third party property rights.⁵² Special Rapporteur Anaya has rejected any characterization of FPIC as a "veto" mechanism,⁵³ noting that it is contrary to the "spirit or ***I.J.C.P. 254** character of the principles of consultation and consent" developed in international human rights law and reflected in the Declaration.⁵⁴

Draft Guidelines

Indigenous representatives had consistently emphasized the importance and urgency of protecting their cultural heritage before the WGIP.⁵⁵ The Working Group's efforts on the Draft Guidelines proceeded simultaneously with the drafting of the UNDRIP. Erica-Irene Daes, charged with drafting them, rejected the argument that this initiative should be suspended until after the Declaration's adoption.⁵⁶ She observed that the Declaration's provisions on cultural heritage were "very general" and maintained that the Draft Guidelines would enable the implementation of the fundamental right of Indigenous peoples to protect their cultural heritage.⁵⁷ She also noted that pursuant to existing instruments, states were already required to facilitate Indigenous peoples' participation at the national and international levels in this regard.⁵⁸

Indeed, the WGIP's work reflected contemporaneous declarations adopted by Indigenous peoples that reaffirmed the nexus between international human rights law and the effective protection of cultural heritage and the centrality of the right to self-determination.⁵⁹ These declarations noted that cultural loss that had been quarantined as "internal, domestic problem within national states" had to be addressed by the UN,⁶⁰ which, in turn, needed to strengthen Indigenous peoples' participation in its fora so that "their views are fairly represented."⁶¹ These themes were also reflected in the multilateral hard and soft law initiatives that were developed by international organizations, with the involvement of Indigenous representatives.⁶² Accordingly, Agenda 21 of the 1992 UN Conference on Environment and Development urged states to adopt and strengthen legal instruments for the protection of Indigenous heritage and urged international organizations to seek the ***I.J.C.P. 255** "active participation" of Indigenous peoples by developing procedures to incorporate Indigenous viewpoints and strategies in the formulation and implementation of policies and programs.⁶³

The Draft Guidelines were presented to the Commission on Human Rights in 1995.⁶⁴ They reaffirm that the protection of Indigenous peoples' heritage can only be effective if it is based on the principle of self-determination and that they are the "primary guardians and interpreters" of their cultures.⁶⁵ In addition, they stated that there must be international recognition that Indigenous peoples' ownership and custodianship of their heritage is "collective, permanent and inalienable" and that transmission can only occur according to their own laws and customs.⁶⁶ Effective consultation and participation of Indigenous peoples in decision-making that affects their cultural heritage underpins this principle. Where there is a dispute over the custody or use of Indigenous peoples' heritage, courts and tribunals

should follow the advice of the elders recognized by the relevant community or those with knowledge of its laws and customs.⁶⁷ The response of governments and UN agencies to the Draft Guidelines questioned the reversibility of consent and retroactivity, mirroring concern about third party rights raised with respect to the UNDRIP.⁶⁸ In reply, Daes emphasized that the Draft Guidelines focused scrutiny on consent and established a "presumption against the extinguishing the rights of Indigenous peoples."⁶⁹

The Draft Guidelines remained in abeyance for a decade, until the WGIP requested a review be prepared by Yozo Yokoto and the Saami Council.⁷⁰ They found that there had been an elevated level of activity in regard to the protection of Indigenous peoples' cultural heritage, with a proliferation, rather than a streamlining, of approaches by the UN and its agencies.⁷¹ They recommended that, until the guidelines were adopted, the UN should collaborate with Indigenous **I.J.C.P. 256* representatives to coordinate the work of its agencies and relevant treaty bodies.⁷² Their subsequent Draft Guidelines called on existing international instruments on cultural and natural heritage to be "supplemented" by such a human rights-based approach. They expanded upon the right to self-determination in the protection of cultural heritage and provided guidance on its application.⁷³ Importantly, they provide that where domestic laws affect the culture of the Indigenous peoples, FPIC must be obtained of those persons authorized to represent them under their customary law.⁷⁴ Indigenous representatives pressed for the finalization and adoption of the guidelines on cultural heritage,⁷⁵ but this has not occurred to date.

The Draft Guidelines were one of the last activities of the WGIP. With the dissolution of the Commission on Human Rights and its replacement with the Human Rights Council, the Working Group established under its auspices was eventually replaced by the Expert Mechanism on Rights of Indigenous Peoples (EMRIP) and the UNPFII. Their work in the field of protection of cultural heritage of Indigenous peoples is discussed below.⁷⁶

UNESCO, the WHC, and WHIPCOE

UNESCO, as the UN's culture agency, became a focus of Indigenous peoples' concerns in the late twentieth century. Prior to the adoption of the UNDRIP, the UNGA had urged the UNESCO to establish mechanisms to allow Indigenous peoples to participate effectively in its work, including the nomination of world heritage sites and other programs relevant to their people.⁷⁷ Article 41 of the UNDRIP calls on UN bodies and specialized agencies, like UNESCO, to develop ways and means of ensuring the participation of Indigenous peoples in decisions that affect them.⁷⁸ Director-General Koi#chiro Matsuura had welcomed the adoption of the Declaration as a "milestone" for Indigenous peoples, saying it would be an important "reference point" for UNESCO "in designing and implementing programmes with and for Indigenous people."⁷⁹

In responding to the Draft Guidelines, Indigenous representatives argued that the UNESCO conventions covering cultural heritage--in particular, the World Heritage Convention--be referenced as "part of the human rights standards."⁸⁰ However, an international expert workshop held to mark the fortieth anniversary of the Convention expressed concern about "chronic, persistent human rights violations" suffered **I.J.C.P. 257* by Indigenous peoples with "the establishment and management of protected areas," including those on the World Heritage List.⁸¹ UNESCO made no formal response. However, its General Conference has repeatedly reaffirmed the objective contained in UNESCO's Constitution of protecting and promoting human rights and its commitment to implementing it across its programs and activities. While the World Heritage framework is closely entwined with UNESCO, with a Secretariat provided by the organization, it is important to recall that it is an autonomous treaty-based regime. Nonetheless, the implementation of this commitment remains stalled, including with respect to the World Heritage Convention.

The revision of the WHC's Operational Guidelines to encompass "cultural landscapes" and "living traditions" in the selection criteria served as a means of acknowledging the relationship between Indigenous peoples and sites on the World Heritage List.⁸² It became an important avenue for raising Indigenous peoples' concerns relating to human rights and access to cultural heritage--in particular, land. It aided the Mirarr people in challenging the Australian federal government's approved expansion of a uranium mine in the World Heritage-listed Kakadu National Park. Their actions exposed the limitations of the World Heritage Convention in regard to the requirements on states parties to consult Indigenous (and local) communities and their participation in decision-making processes. A report prepared by the WHC chair, Francesco Francioni, observed that the world heritage site occupied lands owned or claimed by the Mirarr.⁸³ It outlined that since the adoption of

the World Heritage Convention in 1972, international law had developed to recognize human rights including self-determination, minority protection, and prohibition against racial discrimination; the right of Indigenous peoples to participate in decisions that affect them and the need for their FPIC; and the special relationship of Indigenous peoples to their traditional lands.⁸⁴ Consistent with the views expressed by the WGIP and reflecting the draft UNDRIP, the report concluded that Indigenous peoples were "entitled to certain rights vis-a-vis the State where they are located," including "respect [for] their collective identity and living culture." It found that these rights must be taken into account when interpreting the Convention and its Operational Guidelines.⁸⁵ The WHC accepted the findings and recommendations and emphasized "the fundamental importance *I.J.C.P. 258 of ensuring thorough and continuing participation, negotiation and communication with Aboriginal traditional owners, custodians and managers" in the conservation of the site.⁸⁶

The Mirarr's efforts fueled the World Heritage Indigenous Peoples' Forum, which lobbied the WHC to establish WHIPCOE as a new consultative body.⁸⁷ The initiative was precipitated by the "lack of involvement of Indigenous peoples in the development and implementation of laws, policies and plans, for the protection of their holistic knowledge, traditions and cultural values, which appl[ie]d to their ancestral lands" and formed part of world heritage sites.⁸⁸ WHIPCOE was intended to "add value rather than displace" the existing advisory bodies by providing a mechanism by which Indigenous experts could advise on the implementation of the World Heritage Convention.⁸⁹ Referencing major international human rights and international environmental law treaties, including the draft UNDRIP, the WHIPCOE proposal flagged that it was designed as a "means of giving Indigenous people greater responsibility for their own affairs and an effective voice in decisions on matters which affect them."⁹⁰ It was to have been made up of representatives from world heritage sites listed as "cultural landscapes" or "'mixed" cultural/natural properties" that "hold Indigenous values."⁹¹ The proposal did not gain the support of the majority of the WHC's members or the states parties, particularly those from Africa and Asia.⁹²

In 2007, when Tumu Te Heuheu, paramount chief of the Ngati Tuwharetoa in New Zealand, was chair of the WHC--the first Indigenous person to hold this position--the Committee adopted a strategic objective aimed at enhancing the role of communities in the World Heritage Convention's implementation.⁹³ When putting forward the proposed amendment, New Zealand had indicated that communities "may range from groupings of peoples as Indigenous, traditional and/or local peoples" who possess "a direct connection" with the site that has "endured over time."⁹⁴ It noted that recent developments in international environmental law had emphasized the importance of the local community's participation in conservation efforts, and this was recognized in the cultural realm by UNESCO's director-general.⁹⁵ It reiterated that Article 5(a) of the WHC's Operational Guidelines provides that states parties shall "adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community." Recalling the WHIPCOE *I.J.C.P. 259 proposal, it urged the WHC to "recognise indigeneity as an important platform for both identifying and sustaining properties of outstanding universal value."⁹⁶ This development proved an important building block in the following decade.

PROMOTING IMPLEMENTATION: OVERSIGHT BY UN MECHANISMS ON INDIGENOUS PEOPLES

Participation in the processes and decision-making of UNESCO, and the WHC, increasingly came under the spotlight in the twenty-first century as Indigenous peoples sought to implement rights articulated in the UNDRIP. Article 42 of the UNDRIP requires that the UN, specialized agencies, and states promote the full application of the Declaration and follow up on its effectiveness.⁹⁷ While the adoption of the Draft Guidelines and the establishment of a dedicated Indigenous advisory body to the WHC remain elusive goals, newly formed UN bodies with significant Indigenous representation continue to press for effective Indigenous participation and the realization of these initiatives.

Three specialist UN mechanisms covering Indigenous issues have been tasked with ensuring the effective implementation of the UNDRIP: the UNPFII, the EMRIP, and the Special Rapporteur on the rights of Indigenous peoples (Special Rapporteur). These mechanisms have overlapping, yet distinct, roles in regard to the advancement of the rights of Indigenous peoples.⁹⁸ Special Rapporteur Anaya found that although they were "not necessarily designed with a complementary purpose," the mechanisms were united by a common aim--namely, monitoring the UNDRIP's implementation.⁹⁹

The protection of cultural property--in particular, the role of UNESCO--and Indigenous participation in the World Heritage framework remained important foci, and each mechanism has emphasized the

importance of aligning the operation of the World Heritage Convention with the UNDRIP. The UNPFII has taken the lead concerning Indigenous peoples' effective participation in the World Heritage framework while continuing to advocate for a specialist Indigenous body along the lines of WHIPCOE.¹⁰⁰

UNPFII

The UNPFII was formed in 2000 as an advisory body to ECOSOC on Indigenous issues in the areas within the Council's mandate--namely, economic and social ***I.J.C.P. 260** development, culture, the environment, education, health, and human rights.¹⁰¹ It provides expert advice and recommendations to UN agencies and programs and promotes respect for, and monitors, the implementation of the UNDRIP. It is composed of 16 individual experts (eight nominated Indigenous, and eight elected country, representatives), who meet annually. The UNPFII has actively cooperated with the other two specialist Indigenous mechanisms and has reiterated their concerns with respect to the work of specialist UN agencies, including UNESCO, and treaty-based regimes, like the World Heritage framework.

Following the defeat of WHIPCOE's proposal before the WHC, the Mirarr people approached the UNPFII at its inaugural session in 2002 to undertake an independent study of the effectiveness of the World Heritage Convention's regime in protecting Indigenous peoples' sacred sites and living traditions, its impact on Indigenous peoples living on world heritage sites, and their participation in the WHC's decision-making.¹⁰² The UNPFII recommended that UNESCO's national commissions work with Indigenous experts and representatives to "increase the participation of Indigenous peoples" in the organization's work.¹⁰³ It urged the organization to establish an international network of Indigenous experts and specialists.¹⁰⁴

The UNPFII did not mention the World Heritage framework directly in its subsequent report on FPIC, but it did note its relevance in regard to Indigenous lands and territories, including sacred sites.¹⁰⁵ In 2011, a joint statement by Indigenous organizations was presented to the UNPFII and the WHC concerning the "continuous and ongoing disrespect of the principle of free, prior and informed consent" by the Committee when inscribing sites on Indigenous peoples' territories onto the World Heritage List.¹⁰⁶ It listed specific sites proposed for inscription on the World Heritage List without Indigenous consultation, including the Kenya Lake System in the Great Rift Valley nomination and those sites located on the territory of the Endorois people.

The Kenya Lake System world heritage site serves as an important case study concerning the adverse impact of "conservation" designation by national and international authorities on the rights of Indigenous peoples and the interplay between the World Heritage framework and human rights. The Endorois had been removed from their ancestral lands by Kenyan authorities to establish a game reserve in 1970s. The Endorois Welfare Council, a representative organization, had brought an action before the Africa Commission on Human and Peoples' Rights in response. In 2009, the Commission found that the acts of the respondent state had ***I.J.C.P. 261** violated the right to religious freedom and access to sacred sites to practice religion and culture; the right to communal property (including natural resources); cultural rights (traditional ways of life), including access to cultural sites; and the right to development through a failure to consult with the complainant or obtain their FPIC.¹⁰⁷ It recommended that Kenya recognize and restore the ownership rights of the Endorois over their ancestral lands, ensure that they have unrestricted access to Lake Bogoria and other sites of religious and cultural importance, pay adequate compensation for the harm suffered by the community, register the Endorois Welfare Council as a representative of the community, and "engage in dialogue" with them on the effective implementation of the recommendations.

The African Commission on Human and Peoples' Rights's (ACHPR) stance on the right to participate in decision-making that impacts upon cultural heritage mirrors other human rights bodies during this period. The Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment no. 21 emphasized the importance of its collective aspect for Indigenous peoples.¹⁰⁸ Referencing the UNDRIP in support, it provides that "States Parties should respect the principle of free, prior and informed consent of Indigenous peoples in all matters covered by their specific rights."¹⁰⁹ The Independent Expert in the field of cultural rights, Farida Shaheed, in her 2011 report on access to cultural heritage, encouraged states to ratify international and regional instruments for the protection of cultural heritage and their implementation at the national level using a human rights-based approach.¹¹⁰ She recommended that no inscription on UNESCO's lists or national registers of cultural heritage should be requested or granted, or any other measures adopted concerning Indigenous

heritage, without the FPIC of the concerned Indigenous peoples, in accordance with the UNDRIP.¹¹¹ She makes clear that this obligation covers the entire process from "identification, selection, classification, interpretation, preservation/safeguard, stewardship [to] development" of cultural heritage.¹¹² The report notes that the states' duty extends to the acts of third parties.¹¹³ Related to this, states are encouraged to undertake cultural impact assessments, in cooperation with concerned groups, in regard to planning and development projects.¹¹⁴

Despite being advised that the Endorois had not been consulted or their FPIC obtained,¹¹⁵ the WHC inscribed the Kenya Lake System (which included the **I.J.C.P. 262* territories of the Endorois) on the World Heritage List in 2011 because of its "natural" outstanding universal value.¹¹⁶ In its report recommending the inscription, the relevant advisory body, the IUCN, made no mention of the Endorois community.¹¹⁷ The ACHPR expressed its deep concern to the WHC that the nomination had been approved even though the Endorois Welfare Council had requested it be deferred.¹¹⁸ Referencing the UNESCO Constitution, the UNDRIP, and Advice no. 2(2011) of the EMRIP, the ACHPR stated that the inscription violated its 2010 decision. It called on the Kenyan government, the WHC, and UNESCO to ensure the "full and effective participation" of the Endorois, through their own representative institutions, in the decision-making concerning the listed site.

In a subsequent decision following a review of the state of conservation of the world heritage site,¹¹⁹ the WHC recognized the Endorois's rights to the site. It requested the state party address the ACHPR's decision and "ensure full and effective participation of the Endorois in the management and decision-making of the property, and in particular the Lake Bogoria component, through their own representative institutions."¹²⁰ Facilitated by the increased attention of UNESCO and the IUCN, the Endorois Welfare Council and Kenyan government representatives signed the Kabarnet Declaration, which recognized the site as a national reserve, world heritage site, and "part of the Endorois Community ancestral land."¹²¹ It also formally acknowledged the Endorois people as a community, the Endorois Welfare Council as their "officially recognized organization," and that "any decision making concerning them must have free, prior and informed consent (FPIC)."¹²² Further, it affirmed that the Endorois would continue to be able to access sacred sites within the reserve. The WHC welcomed this progress but again urged the state party to implement the ACHPR's decision and report back on its progress.¹²³

A representative of the UNPFII had attended the WHC meeting in 2011 to "encourage a review of existing procedures with regard to rights-related mechanisms, norms and standards in the preparation and processing of world heritage nominations by States Parties."¹²⁴ The UNPFII noted with approval that UNESCO and **I.J.C.P. 263* the WHC's advisory bodies were reviewing their own procedures.¹²⁵ Subsequently, the UNPFII made a number of recommendations to the Committee, which were reiterated by the EMRIP and the Special Rapporteur.¹²⁶ It emphasized that the UNDRIP (and the UN Development Group's [UNDG] Guidelines on Indigenous Peoples Issues [UNDG Guidelines]) should be used as a framework for the nomination and managing of sites on Indigenous territories.¹²⁷ It called on the WHC to ensure that consultation with, and the participation of, Indigenous peoples and their FPIC be obtained when their territories are nominated for inscription, that their "involuntary displacement or relocation" from world heritage sites be ceased, and that "subsistence economic activities" of Indigenous peoples on such sites not be impeded.¹²⁸ The UNPFII recommended that Indigenous experts be included on missions evaluating world heritage sites on Indigenous territories, that WHIPCOE's proposal be reconsidered, and that a UNPFII representative be invited to future WHC sessions.¹²⁹ In addition, the EMRIP and Special Rapporteur Anaya also urged transparency in the nomination and implementation processes, safeguarding the land and resource rights on Indigenous peoples during the nomination processes, the need for benefit-sharing arrangements, the safeguarding of Indigenous cultures against misuse or misrepresentation, and redress for violations of Indigenous peoples' rights resulting from inscription.¹³⁰ The Special Rapporteur advised the WHC Secretariat he would monitor the reform process's progress.

In a decision taken at its 2011 session, the WHC "*encouraged*" states parties to "respect the rights of Indigenous peoples when nominating, managing and reporting on World Heritage sites in Indigenous peoples' territories" and to "involve" them in related "decision making, monitoring and evaluation" concerning conservation, their outstanding universal value, and to "link the direct community benefits to protection outcomes."¹³¹

EMRIP

The EMRIP obtained its mandate from the Human Rights Council in 2007 and has thematic expertise

on the rights of Indigenous peoples.¹³² It is made up of five individual experts who have met annually since October 2008 to prepare studies **I.J.C.P. 264* and provide research-based advice. Following the requests by the Human Rights Council, the EMRIP's reports have covered Indigenous participation and the protection of cultural heritage in depth. The EMRIP undertook a study of Indigenous peoples' right to participate in decision-making, which was delivered in 2011.¹³³ In its Advice no. 2(2011), the EMRIP observed that "decision-making rights" and the participation of Indigenous peoples in those decisions that impact upon their lives and lands is well established in international law.¹³⁴ Pursuant to the right of self-determination under the UNDRIP, the right to participation is aligned with Indigenous peoples' right to develop and maintain their own governance structures that form part of their capacity to maintain their identities, languages, cultures, and religions.¹³⁵ It notes that Indigenous peoples increasingly have demanded that they not only participate, but also "actually control the outcomes of such processes."¹³⁶ It reiterated this observation in its 2015 report on Indigenous cultural heritage and its protection, which concluded that Indigenous peoples were "often the victims of both cultural and natural heritage protection policies that fail to take their rights and perspectives into consideration."¹³⁷ In Advice no. 2(2011), the EMRIP called on UNESCO to "enable and ensure effective representation and participation of Indigenous peoples in its decision-making," especially with respect to its specialist treaties like the World Heritage Convention.¹³⁸

Of the three UN mechanisms that are working on Indigenous issues, the EMRIP has most directly taken up the work undertaken by the WGIP on heritage and Indigenous peoples. In its Advice no. 3(2012) on languages and cultures, the EMRIP confirmed that Indigenous peoples have the right to cultural self-determination, which covers cultural autonomy, and to advance their cultures within mainstream society.¹³⁹ It notes that states have a duty to obtain Indigenous peoples' FPIC when enacting and implementing laws and policies concerning their languages and cultures.¹⁴⁰ Simultaneously, it encouraged Indigenous peoples to establish modes and structures to enable the "consent-seeking process."¹⁴¹

EMRIP's Advice no. 8(2015) on the promotion and protection of the rights of Indigenous peoples with respect to their cultural heritage picks up the initiative of the WGIP's Draft Guidelines and replicates many of its central tenets.¹⁴² It reaffirms that culture is an "underlying pillar" of the UNDRIP and restates that there is a "close relationship between the cultural rights of Indigenous peoples and their **I.J.C.P. 265* right to self-determination."¹⁴³ Accordingly, it stresses that Indigenous peoples are the "primary keepers of their cultural heritage" and, therefore, that they should have "an active role to play in its preservation, transmission and revitalization."¹⁴⁴ It reiterates that all multilateral instruments that impact Indigenous peoples' cultural heritage must be interpreted consistently with the UNDRIP, which is "the most specific, representative and comprehensive instrument on Indigenous cultural heritage."¹⁴⁵ Like the WGIP's Draft Guidelines discussed above, Advice no. 8(2015) embraces a holistic understanding of cultural heritage, with its emphasis on the importance of land, territory, and resources, which is protected and promoted by the laws and customs of Indigenous peoples. It emphasizes the significance of custodianship for its protection and promotion for the people collectively, across generations. The EMRIP makes clear that it does not view its advice as a replacement for the WGIP's project. Instead, it calls on states to revive efforts to finalize and adopt the Draft Guidelines.

The EMRIP singled out the World Heritage Convention's nomination process for special attention in Advice no. 8(2015) because of the number of complaints and concerns raised by Indigenous peoples worldwide.¹⁴⁶ Mirroring the recommendations of the UNPFII and the Special Rapporteur, it called on the WHC to ensure that its framework does not adversely affect Indigenous peoples' access to their lands, territories, and resources and their right to protect and develop their cultural heritage and expressions. It also urged that the World Heritage Convention be implemented consistently with the UNDRIP and that the criteria for "outstanding universal value" be reviewed and revised to ensure that they are able to fully and consistently recognize values assigned to sites by Indigenous peoples.

Special Rapporteur on the Rights of Indigenous Peoples

The Special Rapporteur's mandate was first adopted by the Commission on Human Rights in 2001 and subsequently renewed by its successor, the Human Rights Council, in 2004 and most recently in 2007.¹⁴⁷ The remit covers the promotion of good practices, country visits and reports, communications, and thematic reports. In 2009, Special Rapporteur James Anaya made clear that specific human rights violations and country visits to assess human rights conditions of Indigenous peoples were priorities for the mandate.¹⁴⁸ Anaya notes that the duty of states to consult Indigenous

peoples concerning decisions that affect them arises from human ***I.J.C.P. 266** rights law, including specialist instruments like the UNDRIP, the International Labour Organization's Convention no. 169 of 1989 (ILO Convention no. 169), generalist instruments like the ICERD and the ICCPR, and regional instruments like the American Convention on Human Rights.¹⁴⁹ Yet he observes that he was repeatedly confronted with a lack of adequate consultation with Indigenous peoples on issues that impact on their lives and land.¹⁵⁰ He explains that states had a duty to consult "through special, differentiated procedures ... with the objective of obtaining their free, prior and informed consent."¹⁵¹ When formulating these procedures, consideration needs to be given to Indigenous peoples' "relative marginalization and disadvantaged condition in regard to normal democratic processes."¹⁵² The requirements of consultation are dependent on "the nature of the proposed measures, the scope of its impact on Indigenous peoples, and the nature of the Indigenous peoples interests or rights at stake," with the aim of obtaining their consent or agreement, preferably in the initial phases so that they are involved in relevant decision-making.¹⁵³ The state's duty extends to the conduct on non-state actors, including private companies.¹⁵⁴ Anaya notes that there is a continuing obligation to ensure their active involvement in the development of international norms that impact them.

In 2011, UNESCO officials met with the Special Rapporteur, the EMRIP's chair, and the UNPFII's chair in regard to UNESCO's proposed policy on Indigenous peoples. Representatives of the three UN mechanisms emphasized UNESCO's need to meet international standards that went beyond avoiding harm and needing to actively support Indigenous peoples' rights.¹⁵⁵ Special Rapporteur Anaya noted that such a policy would enable UNESCO to reflect and evaluate its existing programs, assist it in planning future programs to ensure that Indigenous peoples' rights are protected, and provide it with practical guidelines in consulting with Indigenous peoples in relation to its programs and initiatives.¹⁵⁶ Four years later, the EMRIP again emphasized the need for UNESCO to integrate and respect the rights contained in the UNDRIP.¹⁵⁷ With respect to UNESCO and the World Heritage Convention, in particular, the EMRIP noted that there was a need for UN agencies to coordinate and collaborate on matters concerning cultural heritage and human rights to "increase coherence and avoid duplication of work," ***I.J.C.P. 267** as envisaged in the outcome document of the World Conference on Indigenous Peoples in 2014, which is discussed below.¹⁵⁸

Since the adoption of the UNDRIP, a number of UN agencies have developed organization-wide policies on Indigenous peoples and prepared manuals on FPIC.¹⁵⁹ The UN system-wide action plan, developed by the Inter-Agency Support Group on the Rights of Indigenous Peoples in 2015, likewise encourages the adoption of "consultative mechanisms, funds and tools for seeking free, prior and informed consent and other means for facilitating full and effective participation of Indigenous peoples."¹⁶⁰ UNESCO's Policy on Engaging with Indigenous Peoples (UNESCO Policy) was adopted by the organization's Executive Board in 2017 and reflects the language and ethos of the UN system-wide plan.¹⁶¹ The objectives of the Policy are to "position [UNESCO] appropriately" "in respect to the new institutional landscape that is emerging since the adoption of the UNDRIP" and to foster awareness and provide guidance to its staff and committees in respect of the effective implementation of the UNDRIP in its work.¹⁶²

The UNESCO Policy reaffirms UNESCO's commitment to the UNGD Guidelines and references rights articulated in the UNDRIP--in particular, non-discrimination, the right to self-determination, cultural rights (including land rights), and the right to participation in the decision-making that affects them, including FPIC.¹⁶³ With respect to cultural heritage specifically, it states that Indigenous peoples "must therefore be considered stakeholders and rights-holders in social, human and cultural development."¹⁶⁴ The final text of the UNESCO Policy drops reference to the UNDRIP and ILO Convention no. 169 as reflecting a "new international consensus on the scope and meaning" of cultural rights that should guide the organization's work in regard to the "rights and aspirations of Indigenous peoples."¹⁶⁵ However, the Policy does state that provisions in UNESCO's declarations, conventions, and recommendations covering human rights and participation do apply to Indigenous peoples, even if they are not explicitly mentioned. It therefore called on the governing bodies and states parties of UNESCO's culture conventions to develop and implement mechanisms for the "full and effective participation and inclusion of Indigenous peoples in their processes to ensure their as ***I.J.C.P. 268** their right to "maintain, control, protect and develop their cultural heritage."¹⁶⁶ While the final text of the UNESCO Policy links self-determination, participation, and FPIC and reiterates the obligations on UN agencies including UNESCO and states under the UNDRIP, it does not elaborate upon this further.¹⁶⁷ However, the Policy reaffirms recent changes to the WHC's Operational Guidelines. It explicitly reiterates that the conservation and management of cultural and natural heritage sites "should ... ensure *adequate* consultations, the free, prior and informed consent and equitable and effective participation of indigenous peoples where nomination, management and policy measures of

international designations affect their territories, lands, resources and ways of life."¹⁶⁸ The Policy starkly records that the WHC's Operational Guidelines only "encourage" states parties to obtain FPIC, whereas it is a "mandatory requirement" under the Convention for the Safeguarding of Intangible Cultural Heritage's (2003 UNESCO Convention) operational directives.¹⁶⁹ Indeed, it also runs contrary to the requirement for FPIC in regard to the designation and management of Indigenous peoples' traditional lands for conservation with respect to related treaty regimes and human rights practice.¹⁷⁰

In assessing the duty to facilitate effective Indigenous participation in the cultural field, successive UN Special Rapporteurs have focused on the "recurring issue" of the impact on Indigenous peoples of world heritage sites.¹⁷¹ James Anaya notes that it was unclear how many sites are affected because no audit has ever been undertaken, and states parties were not required to provide information about Indigenous peoples or local communities during the nomination, designation, or review of impact processes.¹⁷² In 2013, he wrote to the World Heritage Centre's director recalling the 2011 UNPFII recommendation that UNESCO modify its processes to "ensure that Indigenous peoples' rights and worldviews are fully valued and respected in all current and future World Heritage site designations as well as in the overall implementation of the World Heritage Convention."¹⁷³ The director replied ***I.J.C.P. 269** that an international expert workshop had been held that proposed revisions to the Operational Guidelines to address the question of Indigenous peoples' FPIC and human rights.¹⁷⁴ They recommended that the WHC establish a process for the revision of the Operational Guidelines to ensure the World Heritage Convention is consistent with the UNDRIP; to adopt procedures to ensure Indigenous peoples' FPIC; to improve transparency and access to information by allowing public access to nomination and management files; and to provide avenues of redress for past injustices and violations of Indigenous peoples' rights in world heritage sites.¹⁷⁵ He also noted that the IUCN had begun a review of its evaluation processes to incorporate "rights-based approaches in the nomination processes."¹⁷⁶

Despite extensive revisions to the Operational Guidelines proposed by the 2012 international expert meeting to align the nomination processes of the World Heritage Convention with the UNDRIP (and with the established processes under the 2003 UNESCO Convention),¹⁷⁷ the amendments adopted by the WHC at its 2015 meeting were much narrower. The ability of Indigenous representatives, even those from UN mechanisms, to participate in WHC meetings is significantly limited as compared with other UN bodies.¹⁷⁸ The current Operational Guidelines recognize that the "partnership approach to nomination, management and monitoring provides a significant contribution to the protection of World Heritage properties and implementation of the Convention."¹⁷⁹ Referencing the UNDRIP, it lists Indigenous peoples as partners in the conservation and management of a world heritage property.¹⁸⁰ It acknowledges that their participation, with other "stakeholders," in the nomination process is "essential to enable them to have shared responsibility with the State Party in the maintenance of the property."¹⁸¹ It adds:

States Parties are *encouraged* to prepare nominations with the widest possible participation of stakeholders and to demonstrate, as appropriate, that the free, prior and informed consent of Indigenous peoples has been obtained, through inter alia making nominations publicly available in appropriate languages and public consultations and hearings.¹⁸²

***I.J.C.P. 270** In the annexed summary of the IUCN's evaluation process, it is noted that it "may receive comments from local NGOs, communities, Indigenous peoples and other interested parties in the nomination."¹⁸³

The UNPFII welcomed that Indigenous peoples were referenced in the Operational Guidelines.¹⁸⁴ However, it advised the WHC that by referring to Indigenous peoples as "stakeholders," rather than "rights-holders," the revisions are "insufficient" as they fail to recognize the obligations of states.¹⁸⁵ It reiterated that simply "encouraging" states parties to obtain Indigenous peoples' FPIC was likewise inadequate. Rather, the WHC had to establish a "robust procedure" that ensures that Indigenous peoples' rights under international law were respected, that they were fully and effectively involved in the nomination and management of sites, and that their FPIC is obtained prior to inscription on the World Heritage List and when management plans are formulated and implemented.¹⁸⁶ The WHC had also rejected attempts to ensure that nomination documentation be made available to Indigenous peoples and the general public.¹⁸⁷ This approach runs contrary to the right to participate in decision-making, particularly as it relates to environmental and cultural issues.¹⁸⁸

It is also in contrast to the Policy Document for the Integration of a Sustainable Development Perspective into the Processes of the World Heritage Convention (Sustainable Development Policy), which was adopted by the General Assembly of States Parties in 2015.¹⁸⁹ While largely replicating the

Operational Guidelines, the Sustainable Development Policy does refer to Indigenous peoples as "right holders" and to the need to fully involve them "in line with international standards [UNDRIP]."¹⁹⁰ The UNPFII has emphasized that the effectiveness of the sustainable development policy "will depend on the introduction of specific operational procedures that not only encourage but actually require States Parties to comply with international standards regarding the rights of Indigenous peoples."¹⁹¹ By referencing the Sustainable Development Policy broadly for the policies and practices covering the conservation and management of cultural and natural heritage sites, **I.J.C.P. 271* the UNESCO Policy appears to bring this clearer rights-based language into the operation of the World Heritage Convention as it relates to Indigenous peoples.

Reflecting the entwining of UNESCO and the WHC, the WHC has indicated that it would revisit the EMRIP's recommendations after the adoption of the UNESCO Policy.¹⁹² However, at its 2017 and 2018 meetings, the WHC left the Operational Guidelines unchanged and noted the establishment of the International Indigenous Peoples Forum on World Heritage (IIPFWH), an NGO, in the context of its earlier decision to reconsider the recommendations concerning Indigenous peoples' participation in the identification, conservation, and management of world heritage sites.¹⁹³ It is important to note that the IIPFWH is a non-governmental organization and not an advisory body to the WHC, a distinction that is vital in the context of its decision-making processes and proceedings. The WHC's decision concerning WHPCOE or its equivalent effectively remains perpetually deferred almost two decades after the initial proposal for the establishment of a specialist Indigenous consultative body and a decade after the adoption of the UNDRIP.

CONCLUSION

Indigenous peoples' resistance to their exclusion from international organizations and international instruments occurred during colonization and decolonization and continues to occur to the present day. Their initiatives have repeatedly emphasized that their peoples, nations, and its members have retained their cultures, languages, customs, and laws, despite the invidious and relentless nature of assimilationist and integrationist policies of settler states. The protection of cultural integrity through the application (and extension) of international human rights norms, including effective participation in decision-making processes that affect their cultural heritage (including land), has been central to their claims.

Adopted by the UNESCO General Conference almost half a century ago, the World Heritage Convention's perceived success can come at significant cost for Indigenous peoples whose territories are located on sites inscribed on the World Heritage List. Much like the UN and the International Bill of Rights, UNESCO, the WHC, and its Operational Guidelines have privileged the role of states. In recent decades, Indigenous peoples have challenged the silences of its text and operational guidelines and their exclusion from the organizational structure and decision-making processes. Despite advocacy by Indigenous representatives, including the three UN mechanisms, much more work needs to be done to ensure effective Indigenous participation in the decision-making that affects their peoples, lands, **I.J.C.P. 272* and cultures and that UNESCO and the intergovernmental framework established under the World Heritage Convention to "contribute to the full realization" of the UNDRIP (Article 41).

Indigenous peoples' participation before international organizations whose decision-making affects them has moved from exclusion to ever-increasing access. In turn, this is having a transformational influence on the work and workings of the UN and its agencies. The Alta Outcome Document, which was prepared by Indigenous representatives in the lead-up to the UN World Conference on Indigenous Peoples recommended a range of measures that the UN adopt "at a minimum" to enable the fulfillment of the UNDRIP and Article 41, in particular.¹⁹⁴ The Alta Outcome Document, which was adopted by the UNGA at the conclusion of the high-level plenary meeting in 2014, reaffirmed its commitment to "consult and cooperate in good faith with Indigenous peoples concerned through their own representative institutions in order to obtain their FPIC before adopting and implementing legislative or administrative measures that may affect them" in accordance with the UNDRIP.¹⁹⁵ It committed to considering ways of enabling such Indigenous participation at meetings of UN bodies.¹⁹⁶ The UNGA's resolution adopted at the UNDRIP's tenth anniversary approved an increase in the UN Voluntary Fund but failed to establish a new category for Indigenous peoples' participation in UN meetings affecting them.¹⁹⁷ The report accompanying the text resolution recorded that many of those consulted raised the need for guaranteed participation not only before the UN and its agencies but also in the conferences of states parties to the UN treaties.¹⁹⁸ However, they noted that the UNGA does not have the authority to require such participation.¹⁹⁹

In a similar vein, it is important to note that the UNESCO Policy recognizes the organization's obligation to the "full realization" of the UNDRIP.²⁰⁰ It also states that achieving its objectives in the culture sector "requires the effective involvement of all actors and stakeholders concerned and, in particular, indigenous peoples who are recognized as *stewards* of a significant part of the world's biological, cultural and linguistic diversity."²⁰¹ Given the significance of UNESCO's cultural heritage treaties--in particular, the World Heritage Convention--to its work, it is vital that this commitment be extended to the work of its Secretariat ***I.J.C.P. 273** (the World Heritage Centre) and its intergovernmental framework (WHC). The Operational Guidelines in their present form provide very limited support for the rights contained in the UNDRIP. When the World Heritage Committee revisits its procedures and processes now that UNESCO has adopted the UNESCO Policy, it must heed the recommendations of various UN and regional human rights bodies, the 2012 international expert workshop, and the Alta Outcome Document concerning revisions to the Operational Guidelines and the adoption of WHIPCOE's proposal.²⁰² These reforms have consistently been recognized as important avenues for enabling effective Indigenous participation in the nomination and management of world heritage sites on their territories.

The UNDRIP, and the yet-to-be adopted Draft Guidelines, are the embodiment of decades-long campaigns by Indigenous peoples before international and regional organizations and their specialist human rights bodies and national courts to emphasize the importance of human rights norms, including self-determination for Indigenous peoples' claims for the protection and promotion of their cultures and heritage. This human rights-based approach to heritage protection, advocated by Indigenous peoples and accepted by international human rights bodies, is considered part of customary international law. It is having a transformational impact on international cultural heritage law by moving away from its state-centric focus and emphasis on cultural "property." Central to this approach is the right of Indigenous peoples to participate effectively in the decision-making processes that affect them and the centrality of FPIC. UNESCO, as the specialist UN agency in the field of culture, must work closely with Indigenous representatives, including the UN mechanisms, to facilitate the finalization and adoption of these guidelines.

If and when they are adopted, the Draft Guidelines have the potential to be an influential interpretative tool for existing and future UNESCO cultural heritage conventions, including the World Heritage Convention, the workings of their intergovernmental bodies, and UNESCO generally. It could have a similar function to what the Framework Convention on the Value of Cultural Heritage for Society (Faro Convention) has on existing and future European treaties for the protection of cultural heritage.²⁰³ The Faro Convention translates the ethos of the Aarhus Convention concerning participatory rights in decision-making to the field of cultural heritage. It provides a rights-based approach to heritage protection by elaborating and extending rights and obligations under existing instruments to a range of non-state actors and is having a knock-on effect on the Council of Europe's policies and practices in the field of cultural heritage generally.²⁰⁴ In 2018, the UNPFII once again urged the UN bodies and related NGOs (particularly the IUCN) to engage in conservation efforts to audit protected areas to ensure that ***I.J.C.P. 274** they comply with the UNDRIP and to adopt a human rights-based approach in their work.²⁰⁵

However, there is currently no set pathway or timetable for the adoption of the Draft Guidelines. Therefore, in the interim, the strategies utilized by Indigenous peoples to define, extend, and apply international law norms, including human rights, for the protection of cultural heritage remain essential.²⁰⁶ The jurisprudence arising from these actions before international, regional, and national human rights bodies underpin the drafting and adoption of the UNDRIP, the Draft Guidelines, and the development of customary international law in this area. To this end, the proposed optional protocol to the UNDRIP to oversee its implementation would further refine and enable consistency in the operationalization of rights contained in the Declaration. Following on from the Alta Outcome Document's recommendation,²⁰⁷ the UNPFII has prepared a study on a voluntary mechanism to function as an international complaints procedure.²⁰⁸ While the proposed optional protocol is intended to initially cover only land, territory, and resource claims, the study emphasizes that, as always, the rights under the UNDRIP must be understood as interrelated, interdependent, indivisible, and interconnected.²⁰⁹ There is no reason that it would not cover disputes concerning world heritage sites. Conscious of the limitations of existing human rights oversight bodies and the proliferation of specialist Indigenous mechanisms,²¹⁰ it emphasizes that procedure could become an important means of "monitor[ing] and consolidat[ing] the content and weight of ... rights," including the right to self-determination, the right to land, territories, and resources, and the right to FPIC.²¹¹

Much work remains to be done to overcome the gap between the rights of Indigenous peoples as

articulated in the UNDRIP and the lived reality on the ground today. However, the effect of the very definition and affirmation of these rights by the international community after decades of exclusion and silence cannot be belittled. Atrocities, abuses, and systemic discrimination can be named, denounced, and addressed. Indigenous peoples' concerted participation before international organizations perpetually challenges them to abide more faithfully to their constitutive instruments by representing all peoples and ensuring that human rights are enjoyed by all. It has been of significance not only for Indigenous peoples and individuals, but also for humanity as a whole, by fostering the confluence of international human rights norms and the legal protection of cultural heritage, in particular, in world heritage sites and other protected areas.

***I.J.C.P. 275 BIBLIOGRAPHY**

Abraham, K. Sing'Oei. 2014. "Ignoring Indigenous Peoples' Rights: The Case of Lake Bogoria's Designation as a UNESCO World Heritage Site." In *World Heritage Sites and Indigenous Peoples' Rights*, edited by Stefan Disko and Helen Tugendhat, 163-188. Copenhagen: International Work Group for Indigenous Affairs (IWGIA).

ACPHR. 2009. "Centre for Minority Rights Development and Minority Rights Group (on behalf of Endorois Welfare Council v. Kenya." Communication no. 276/03, 25 November.

Anaya, James S. 1996. *Indigenous Peoples in International Law*. Oxford: Oxford University Press.

Anaya, James S. 2004. *Indigenous Peoples in International Law*. 2nd ed. Oxford: Oxford University Press.

Anaya, James S. 2009. "The Right of Indigenous Peoples to Self-Determination in the Post-Declaration Era." In *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples*, edited by Claire Charters and Rodolf Stavenhagen, 184-99. Copenhagen: IWGIA.

Australia. 2002. "Australian National Periodic Report. Section II: Report on the State of Conservation of the Wet Tropics of Queensland," <http://whc.unesco.org/archive/periodicreporting/APA/cycle01/section2/486.pdf> (accessed 23 June 2016).

Australia. 2009. "Statement on the UNDRIP," 3 April, http://www.un.org/esa/socdev/unpfii/documents/Australia_official_statement_endorsement_UNDRIP.pdf (accessed 22 August 2016).

Barsh, Russell L. 1986. "Indigenous Peoples: An Emergent Object of International Law" *American Journal of International Law* 80: 369-385.

Cameron, Christina, and Mechtild Roßsler. 2013. *Many Voices, One Vision: The Early Years of the World Heritage Convention*. Farnham, UK: Ashgate.

CERD. 1997. "General Recommendation no. 23 on the Rights of Indigenous Peoples," UN Doc. A/52/18, Annex V.

CESCR. 2009. "General Comment no. 21 Right of Everyone to Take Part in Cultural Life (art.15 para 1(a) ICESCR)," UN Doc. E/C.12/GC/21, 21 December.

Clavero, B. "Cultural Supremacy, Domestic Constitutions, and the Declaration on the Rights of Indigenous Peoples." In Charters and Stavenhagen, *Making the Declaration Work*, 344-51.

Council of Europe. N.d. "Explanatory Report to the Council of Europe Framework Convention on the Value of Cultural Heritage for Society--CETS 199--Value of Cultural Heritage for Society," <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d3814> (accessed 15 November 2016).

Deloria Jr, Vine. 1999. "Self-Determination and the Concept of Sovereignty." In *Native American Sovereignty*, edited by John R. Wunder, 107-115. London: Routledge.

Disko, Stefan. 2016. "The 39 th Session of the World Heritage Committee." In *The Indigenous World*, edited by IWGIA, 524 Copenhagen: IWGIA. p.524.

Disko, Stefan, and Helen Tugendhat. 2013. *International Expert Workshop on the World Heritage Convention and Indigenous Peoples: Report*. Copenhagen: IWGIA.

***I.J.C.P. 276** Disko, Stefan, Helen Tugendhat, and Lola Garcia-Alix. 2014. "World Heritage Sites and Indigenous Peoples' Rights: An Introduction." In *World Heritage Sites and Indigenous Peoples' Rights*, edited by Stefan Disko and Helen Tugendhat, 3. Copenhagen: IWGIA.

ECOSOC. 1981. "Study of Problem of Discrimination against Indigenous Populations: Final Report (First Part) submitted by the Special Rapporteur, J. R. Martinez Cobo, Chapter IV: Other International Action," UN Doc. E/CN.4/Sub.2/476/Add.5, 17 June.

ECOSOC. 2005. "Report of the International Workshop on Methodologies Regarding Free, Prior and Informed Consent and Indigenous Peoples," UN Doc. E/C.19/2005/3, 17 February.

Eide, Asbjørn. 2006. "Rights of Indigenous Peoples: Achievements in International Law during the Last Quarter of a Century." *Netherlands Yearbook of International Law* 37: 155

Endorois Welfare Council et al. 2011. "Joint Statement on Continuous Violations of the Principle of Free, Prior and Informed Consent in the Context of UNESCO's World Heritage Convention," 17 May, <http://aippnet.org/joint-statement-on-continuous-violations-of-the-principle-of-free-prior-and-informed-consent-in-the-co> (accessed 18 October 2016).

Endorois Welfare Council, Saami Council, and IWGIA. 2015. "Joint Statement on the Continued Lack of Protection of the Rights of Indigenous Peoples with Respect to Their Cultural Heritage in the Context of UNESCO's World Heritage Convention, 8th Session," 22 July, http://www.iwgia.org/iwgia_files_news_files/1234_EM RIP_2015_Statement_of_IGIA_Endorois_elfare_Council_and_Sa (accessed 20 June 2016).

Engle, Karen. 2010. *The Elusive Promise of Indigenous Development: Rights, Culture, Strategy*. Durham, NC: Duke University Press.

EMRIP. 2011. "Advice No 2(2011): Indigenous Peoples and the Right to Participate in Decision-Making," UN Doc. A/HRC/18/42 Annex, 17 August.

EMRIP. 2012. "Advice No 3 (2012): Indigenous Peoples' Languages and Cultures," UN Doc. A/HRC/21/53 Annex, 16 August.

EMRIP. 2015. "Advice No 8 (2015): Promotion and Protection of the Rights of Indigenous Peoples with Respect to their Cultural Heritage," UN Doc. A/HRC/30/53 Annex, 19 August.

Food and Agriculture Organization (FAO). 2010. "Policy on Indigenous and Tribal Peoples," <http://www.fao.org/docrep/013/i1857e/i1857e00.pdf> (accessed November 6, 2016).

FAO. 2016. "Free Prior and Informed Consent: An Indigenous Peoples' Right and a Good Practice for Local Communities: Manual for Project Practitioners," <http://www.fao.org/3/a-i6190e.pdf> (accessed November 6, 2016).

Gilbert, Jeanette, and Cathal Doyle. 2011. "New Dawn over the Land: Shedding Light on Collective Ownership and Consent." In *Reflections on the UN Declaration on the Rights of Indigenous Peoples*, edited by Stephen Allen and Alexandra Xanthaki. Oxford: Hart Publishing.

Henderson, James Youngblood. 2008. *Indigenous Diplomacy and the Rights of Peoples: Achieving UN Recognition*. Saskatoon: Purich Publishing.

International Fund for Agricultural Development. 2015. "How to Do: Seeking Free, Prior and Informed Consent in IFAD Investment Projects," <https://www.ifad.org/documents/10180/beec86e1-270d-45a1-8786-4b749c9db733> (accessed November 6, 2016).

***I.J.C.P. 277** IUCN. 1988. "World Heritage Nomination: IUCN Summary. Wet Tropical Rainforests (North-East Australia), March, http://whc.unesco.org/archive/advisory_body_evaluation/486.pdf (accessed 24 June 2016).

Joffe, Paul. 2015. "'Veto' or 'Consent': Significant Differences," 31 July, http://www.afn.ca/uploads/files/2015_usb_documents/veto-and-consent-significant-differences-joffe-final-july-31-15.pdf (accessed March 3, 2017).

Land, Lorraine. 2016. "Who's Afraid of the Big, Bad FPIC? The Evolving Integration of UNDRIP into Canadian Law and Policy." *Northern Public Affairs*, May.

Logan, William. 2013. "Australia, Indigenous Peoples and World Heritage from Kakadu to Cape York: State Party Behavior under the World Heritage Convention." *Journal of Social Archaeology* 2: 153-176.

Lydon, Jane. 2009. "Young and Free: The Australian Past in a Global Future." In *Cosmopolitan Archaeologies*, edited by Lynn Meskell, 28. Durham, NC: Duke University Press.

Meskell, Lynn. 2013. "UNESCO and the Fate of the World Heritage Indigenous Peoples' Council of Experts (WHIPCOE)." *International Journal of Cultural Property* 20: 155-74.

Mirarr People. 2002. "Submission to UN Permanent Forum on Indigenous Issues," 13-24 May, http://www.docip.org/gsd/collect/cendocdo/index/assoc/HASHec32/1edbc0bf.dir/D_29.pdf (accessed 25 February 2015).

New Zealand. 2010. "Mihi to UNPFII," 20 April, <https://www.beehive.govt.nz/release/supportingun-declaration-restores-nz039s-mana> (accessed 24 August 2016).

Rodriguez-Pinero, Luis. 2009. "'Where Appropriate': Monitoring/Implementing of Indigenous Peoples' Rights under the Declaration." In Charters and Stavenhagen, *Making the Declaration Work*, 314-43.

Sanders, Douglas, E. 1977. *The Formation of the World Council of Indigenous Peoples*. Copenhagen: IWGIA.

Thornberry, Patrick. 2002. *Indigenous Peoples and Human Rights*. Manchester: Manchester University Press.

UN. 1972. "Note of the General Secretariat of the Conference on the Human Environment," UNESCO Doc. SHC/72-CONF.37/3.

UN. 1996a. "Report of the Working Group on the Elaboration of the Draft United Nations Declaration on the Rights of Indigenous Peoples," UN Doc. E/CN.4/1996/84, 4 January.

UN. 1996b. "Review of the Existing Mechanisms, Procedures and Programmes within the United Nations Concerning Indigenous Peoples: Report of the Secretary-General," UN Doc. A/51/493, 14 October.

UN. 2005. "Draft Programme of Action for the Second International Decade of the World's Indigenous Peoples (2005-2014), Report of the Secretary-General," UN Doc. A/60/270, 16 December.

UN. 2007. "General Assembly, 61 st Session, 107 th Plenary Meeting, O.R. Agenda Item 68: Report of the Human Rights Council, Draft Resolution Entitled United Nations Declaration on the Rights of Indigenous Peoples," UN Doc. A/61/PV.107, 13 September.

UN. 2010. "Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples: Note by the Secretary-General," UN Doc. A/65/264, 9 August.

UN. 2012a. "Rights of Indigenous Peoples: Note by the Secretary-General," UN Doc. A/67/301, 13 August.

***I.J.C.P. 278** UN. 2012b. "Ways and Means of Promoting Participation at the United Nations of Indigenous Peoples' Representatives on Issues Affecting Them, Report of Secretary-General," UN Doc. A/HRC/21/24, 2 July.

UN. 2013. "Global Indigenous Preparatory Conference for the UN High Level Plenary Meeting of the General Assembly," UN Doc. A/HRC/EMRIP/2013/CRP.2, 4 July.

UN. 2014a. "Report on the Achievement of the Goal and Objectives of the Second International Decade of the World's Indigenous Peoples (2005-2014): Questionnaire Response, UNESCO," <http://www.un.org/esa/socdev/unpfii/documents/2014/unesco.pdf> (accessed 21 November 2016).

UN. 2014b. "Outcome Document of the High Level Plenary Meeting of the General Assembly (World Conference on Indigenous Peoples)," UNGA Resolution 69/2, 22 September.

UN. 2014c. "Study of an Optional Protocol to the UNDRIP Focusing on a Voluntary Mechanism, Note by the Secretariat," UN Doc. E/C.19/2014/7, 4 March.

UN. 2015. "Dialogue on an Optional Protocol to the UN Declaration on the Rights of Indigenous Peoples: Paper Prepared by J. S. Anaya," UN Doc. PFII/2015/EGM.

UN. 2016a. "Rights of Indigenous Peoples: Note by the Secretary-General," UN Doc. A/71/229, 29 July.

UN. 2016b. "Complication of Views on Possible Measures Necessary of the Participation of Indigenous Peoples' Representatives and Institutions in Relevant UN Meetings, Note of the President of the General Assembly," UN Doc. A/70/990, 25 July.

UN. 2017. "Enhancing the Participation of Indigenous Peoples' Representatives and Institutions in Meetings of Relevant United Nations Bodies on Issues Affecting Them," UNGA Resolution 71/321, 21 September.

UNCHR. 1993. "Study on the Protection of the Cultural and Intellectual Property of Indigenous Peoples," UN Doc. E/CN.4/Sub.2.1993/28, 28 July.

UNCHR. 1994. "General Comment No 23 Article 27 (Rights of Minorities)," UN Doc. CCPR/C/21/Rev.1/Add.5.

UNCHR. 1995a. "Protection of the Heritage of Indigenous Peoples: Final Report," UN Doc. E/CN.4/Sub.2/1995/26, 21 June.

UNCHR. 1995b. "Note on the Future Role of the Working Group by the Chairperson-Rapporteur, E-I Daes," UN Doc. E/CN.4/Sub.2/AC.4/1995/6, 22 June.

UNCHR. 1996. "Protection of the Heritage of Indigenous People: Supplementary Report of the Special Rapporteur," UN Doc. E/CN.4/Sub.2/1996/22, 24 June.

UNCHR. 2000. "Report of the Seminar on the Draft Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples," UN Doc. E/CN.4/Sub.2/2000/26 19 June.

UNCHR. 2004. "Guideline for the Review of the Draft Principles and Guidelines on the Heritage of Indigenous Peoples: Working Paper by Y. Yokoto and the Saami Council," UN Doc. E/CN.4/Sub.2/AC.4/2004/5, 17 June.

UNCHR. 2005. "Report of the Working Group on Indigenous Populations on Its 23 rd Session," UN Doc. E/CN.4/Sub.2/2005/26, 12 August.

***I.J.C.P. 279** UNDG. 2008. *Guidelines on Indigenous Peoples Issues*. New York: UN, 2008.

United Nations Environment Programme. 2012. "UNEP and Indigenous Peoples: A Partnership in Caring for the Environment, Policy Guidance," http://www.unep.org/civil-society/Portals/24105/documents/Guidelines/UNEP_Indigenous_Peoples_Policy_Guidance_ (accessed 11 October 2018).

UNESCO. 1968. "Meeting of Experts, Conclusions," UNESCO Doc. SHC/CS/27/7.

UNESCO. 1969. "Meeting of Experts to Establish an International System for the Protection of Monuments, Groups of Buildings and Sites of Universal Interest, Final Report," UNESCO Doc. SHC/MD/4.

UNESCO. 1972a. "Address of R. Maheu, UNESCO Director-General," UNESCO Doc. DG/72/4.

UNESCO. 1972b. "Revised Draft Convention for the Protection of the World Cultural and Natural Heritage," UNESCO Doc. 17C/106.

UNESCO. 2007. "Message from K. Matsuura, Director-General of UNESCO, on the Occasion of the Approval of the UN Declaration on the Rights of Indigenous Peoples by the General Assembly" at http://portal.unesco.org/culture/en/ev.php-URL_ID=37094&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed 18 October 2016).

UNESCO. 2017. "Policy on Engaging with Indigenous Peoples," UNESCO Doc. 202 EX/9, 9 August.

UNHRC. 2008. "Report of the Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples, S. James Anaya," UN Doc. A/HRC/9/9, 11 August.

UNHRC. 2009a. "Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples," UN Doc. A/HRC/12/34, 15 July.

UNHRC. 2009b. "Conclusions and Recommendations of the International Expert Seminar on the Role of United Nations Mechanism with a Specific Mandate Regarding the Rights of Indigenous Peoples," UN Doc. A/HRC/12/34/Add.7.

UNHRC. 2011a. "Final Report of the Study on Indigenous Peoples and the Right to Participate in Decision-Making: Report of the EMRIP," UN Doc. A/HRC/18/42, 17 August.

UNHRC. 2011b. "Report of the Independent Expert in the Field of Cultural Rights," UN Doc. A/HRC/17/38, 21 March.

UNHRC. 2013. "Final Summary of Responses to the Questionnaire Seeking the Views of States and Indigenous peoples on Best Practices Regarding Possible Appropriate Measures and Implementation Strategies to Attain the Goals of the UNDRIP: Report of the EMRIP," UN Doc. A/HRC/24/51.

UNHRC. 2014. "Communications Report of Special Procedures," UN Doc. A/HRC/25/74, 24 February.

UNHRC. 2016. "System-wide Action Plan Ensuring a Coherent Approach to Achieving the Ends of the United Nations Declaration on the Rights of Indigenous Peoples," UN Doc. E/C.19/2016/5, 19 February.

United States. 2011. "United States, Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples," 12 January, <https://2009-2017.state.gov/s/srgia/154553.htm> (accessed 24 August 2016).

***I.J.C.P. 280** UNPFII. 2003. "Report of the Second Session," UN Doc. E/2003/43-E/C.19/2003/22, May.

UNPFII. 2010. "Statement of the UNPFII at the Session of the UNESCO World Heritage Committee," 4 August.

UNPFII. 2011. "Report on the Tenth Session," UN Doc. E/2011/43-E/C.19/2011/14, May.

UNPFII. 2015. "Statement of O. Lorde on Behalf of the UNPFII at the World Heritage Committee," 39th Session, 29 June.

UNPFII. 2018a. "Report of the Seventeenth Session," UN Doc. E/2018/43-E/C.19/2018/11, April.

UNPFII. 2018b. "Study to Examine Conservation and Indigenous Peoples' Human Rights: Note by the Secretariat," by B. Keane and Elifuraha Laltaika, UN Doc. E/C.19/2018/9, 8 March.

UNPFII. 2018c. "Compilation of Information Received from United Nations System Entities and Other Intergovernmental Bodies on Progress in the Implementation of the Recommendation of the Permanent Forum," UN Doc. E/C.19/2018/3, 5 February.

Venne, S. 1990. "The New Language of Assimilation: A Brief Analysis of ILO Convention 169." *Without Prejudice* 2, no. 2: 53-

Watson, Irene. 2015. *Aboriginal Peoples, Colonialism and International Law: Raw Law*. London: Routledge.

Willemssen-Diaz, A. 2009. "How Indigenous Peoples' Rights Reached the UN." In *Charters and Stavenhagen, Making the Declaration Work*, 16-31.

WHC. 1981. "Inscription of Kakadu National Park (Australia)," Decision 5 COM VIII.15.

WHC. 1982. "Report of the Rapporteur, WHC Doc. CC-81/CONF/003/6, 5 January.

WHC. 1987. "Extension of the Inscription of Kakadu National Park (Australia)," Decision 11 COM.VIIA.

- WHC. 1988a. "Inscription of Wet Tropics of Queensland (Australia)," Decision 12 COM XIVA.
- WHC. 1988b. "World Heritage Nomination--IUCN Summary: Wet Tropical Rainforests (North-East Australia)," March, http://whc.unesco.org/archive/advisory_body_evaluation/486.pdf (accessed 24 June 2016).
- WHC. 1988c. "Report of the World Heritage Committee," Doc. SC-88/CONF.001/9, 11 October.
- WHC. 1989. "Report of the World Heritage Committee," WHC Doc. SC-89/CONF.004/12, 22 December.
- WHC. 1992. "Extension of the Inscription of Kakadu National Park (Australia)," Decision CONF.002 X.C.
- WHC. 1994. "Guidelines for the Implementation of the World Heritage Convention," Doc. WHC/2 Rev.
- WHC. 1998a. "Report on the Mission to Kakadu National Park, Australia. Chair: Francesco Francioni," Doc. WHC-98/CONF.203/INF.185, 29 November.
- WHC. 1998b. "State of Conservation: Kakadu National Park (Australia)," Decision CONF 203 VII.28.
- *I.J.C.P. 281** WHC. 2000. "Supporting Paper to the Submission of the Indigenous Peoples Forum Presented to the 24th Session of the World Heritage Committee," Doc. WHC-2001/CONF.205/WEB.3 Annex 1, 28 November.
- WHC. 2001a. "Report on the Proposed World Heritage Indigenous Peoples Council of Experts," Doc. WHC-2001/CONF.205/WEB.3, 14 June.
- WHC. 2001b. "Responses to Circular Letter 9 (August 2001), Concerning Proposal to Establish a World Heritage Indigenous Peoples Council of Experts (WHIPCOE)," <http://whc.unesco.org/en/activities/496/> (accessed 28 February 2015).
- WHC. 2002. "Report of Twenty-Fifth Session," Doc. WHC-01/CONF.208/24, 8 February.
- WHC. 2007. "Proposal for a 'Fifth C' to Be Added to the Strategic Objectives," Doc. WHC-07/31.COM/13B, 23 May.
- WHC. 2011a. "35th Session, 19-29 June 2011, Summary Record," Doc. WHC-11/35.COM.INF.20.
- WHC. 2011b. "Inscription of Kenya Lake System in the Great Rift Valley (Kenya)," Decision 35 COM 8B.6.
- WHC. 2011c. "World Heritage Nomination: IUCN Technical Evaluation--Kenya Lake System in the Great Rift Valley (Kenya)," Doc. 1060 rev, <http://whc.unesco.org/en/list/1060/documents/> (accessed 21 October 2016).
- WHC. 2011d. "Global State of Conservation Challenges of World Heritage Properties," Decision 35 COM 12E.
- WHC. 2013. "Retrospective Statement of Outstanding Universal Value," Decision 37COM 8E.
- WHC. 2014a. "State of Conservation of World Heritage Properties," Doc. WHC-14/38.COM/7B. Add, 16 May.
- WHC. 2014b. "SOC Kenya Lake System in the Great Rift Valley (Kenya)," Decision 38 COM.7B.91.
- WHC. 2015a. "Kenya Lake System in the Great Rift Valley (Kenya)," Decision 39 CO 7B.5.
- WHC. 2015b. "Operational Guidelines for the Implementation of the World Heritage Convention," Doc. WHC/15/01, 8 July.
- WHC. 2015c. "Working Methods of the Evaluation and Decision-Making Process of Nomination: Report of Ad-Hoc Working Group," Doc. WHC-15/39.COM/13, 29 May.
- WHC. 2015d. "Policy Document for the Integration of a Sustainable Development Perspective into the Processes of the *World Heritage Convention*, adopted by the General Assembly of States Parties," 20th Session, <http://whc.unesco.org/en/sessions/20ga/> (accessed 7 November 2016).

WHC. 2015e. "Revision of Operational Guidelines," Decision 39 COM 11.

WHC. 2017a. "State of Conservation of the Properties Inscribed on the World Heritage List," Decision 41 COM 17.

WHC. 2017b. "Operational Guidelines for the Implementation of the World Heritage Convention," Doc. WHC.17/01, 12 July.

World Bank. 2005. "Operational Manual OP 4.10: Indigenous Peoples," July, <https://policies.worldbank.org/sites/ppf3/PPFDocuments/090224b0822f89d5.pdf> (accessed 6 November 2016).

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1. United Nations General Assembly (UNGA) Resolution 61/295, UN GAOR, UN Doc. A/RES/61/295, 13 September 2007 (UNDRIP).
 2. 23 November 1972, 1037 UNTS 151 (World Heritage Convention).
 3. UNGA Resolution 69/2, 22 September 2014.
 4. See Disko and Tugendhat 2013.
 5. United Nations Development Group (UNDG) 2008.
 6. World Heritage Committee (WHC) 1988a, 1989.
 7. WHC 1988b.
 8. WHC 1988b.
 9. WHC 1988c. The Bureau, while recommending that the WHC inscribe the property on the World Heritage List, requested further information and clarification from Australia in regard to "land ownership by Aboriginal peoples."
 10. WHC 1994, paras. 35-42.
 11. Australia 2002, 8-9.
 12. I am grateful to Matthew Walsh for this information concerning the aftermath of the case of *Koowarta v. Bjelke-Petersen*, (1982) 153 CLR 168.
 13. United Nations Permanent Forum on Indigenous Issues (UNPFII) 2018a, 7-8.
 14. See United Nations (UN) 2007, 10.
 15. See UN 2007, 11 (Australia), 12 (Canada).
 16. Australia 2002, 17-18; Native Title Act 1993 (Cth).
 17. International Union for the Conservation of Nature (IUCN) 1988, 11. In its conclusion, the IUCN recommended that the nomination be approved and that these "secondary issue" of Indigenous land claims be addressed post-inscription as part of a detailed management planning process (13).
 18. UN 2007, 11 (Australia), 12-13 (Canada), 14 (New Zealand), 15 (United States); see also 21-22 (United Kingdom).
 19. United Nations Human Rights Council (UNHRC) 2008, 12.
 20. Deloria Jr 1996, 123.
 21. UNCHR 1995a.
 22. Willemsen-Diaz 2009, 16-31.

23. Charter of the United Nations, 26 June 1945, 1 UNTS 16 (UN Charter).
24. UN Charter, Art. 71.
25. Willemsen-Diaz 2009, 20.
26. Anaya 2004, 60-62.
27. See Barsh 1986; Anaya 2004, 49-72; Henderson 2008.
28. Economic and Social Council (ECOSOC) 1981, 18-19; see also Sanders 1977; Willemsen-Diaz 2009, 20.
29. ECOSOC 1981, 25-26.
30. Venne 1990; Engle 2010; Watson 2015.
31. "UNESCO and the Struggle against Ethnocide," UNESCO Doc. FS 82/WF.32, 11 December 1981, para. 5 (Declaration of San Jose#). See "Declaration of Principles," adopted by the General Assembly of World Council of Indigenous Peoples, 1984, reprinted in Anaya 2004, 296 (WCIP Declaration).
32. Declaration of San Jose#, para. 3.
33. United Nations Educational, Scientific and Cultural Organization (UNESCO) 1972a (emphasis in original); compare WCIP Declaration, para. 4.
34. UN 1972; UNESCO 1972b. IUCN draft, October 1971, Annex 1 (copy on file with author); US draft, UNESCO Doc. SHC/MD/18 Add.1, 1972.
35. WCIP Declaration, Principle 3.
36. UNESCO 1969, 6.
37. World Heritage Convention, Art. 1; UNESCO 1968, 2.
38. UNESCO 1969, 11, 29.
39. UNESCO 1968, 3-6.
40. UNHRC Resolution 1982/19, 10 March 1982; ECOSOC Resolution 1982/34, 7 May 1982.
41. Anaya 1996, 62.
42. "Rights of Indigenous Peoples Committee Conclusions and Recommendations," ILA Resolution 5/2012, 2012, paras. 2, 3, <http://www.ila-hq.org/en/committees/index.cfm/cid/1024> (accessed 10 September 2018).
43. Anaya 2009, 184-99; UNHRC 2009a, 14.
44. UN 1996a, 12. States that had voted against the UNDRIP and subsequently endorsed it affirmed the application of the right to self-determination to collective identity, culture, and cultural heritage. Australia 2009; New Zealand 2010; United States 2011, 13.
45. Free, prior, and informed consent is a right with respect to the enjoyment of culture (UNDRIP, Art. 11) and land, territories, and resources (UNDRIP, Arts. 10, 28, 29, 32). See Gilbert and Doyle 2011, 289.
46. 21 December 1965, 660 UNTS 195.
47. 6 December 1966, 999 UNTS 171.
48. See Thornberry 2002; Anaya 2004, 49-72; Eide 2006, 169-71.
49. UNCHR 1994, 4; "Poma Poma v. Peru," Communication no. 1457/2006, UN Doc. CCPR/C/95/D/1457/2006, 27 March 2009, paras. 7.2, 7.6.
50. UNCHR 1994, 3.
51. Committee on the Elimination of Racial Discrimination 1997, 1.
52. UN 2007, 11-12 (Australia), 12-13 (Canada), 14 (New Zealand).
53. UN 2007, 13.
54. UNHRC 2009a, 17; Joffe 2015; Land 2016, 42; Tsilhqot'in Nation v British Columbia, 2014 SCC 44.

55. UNCHR 1993, 1.
56. UNCHR 1996, 4.
57. UNCHR 1996, 4 (emphasis added).
58. UNCHR 1995a, 8.
59. See Kari-Oca Declaration and Indigenous Peoples' Earth Charter, adopted by the World Conference of Indigenous Peoples on Territory, Environment and Development, 1992, http://www.lacult.unesco.org/lacult_en/docc/Kari-Oca_1992.doc (accessed 10 September 2018) (Kari-Ora Declaration); Mataatua Declaration, adopted by the First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples, 1993, <http://www.https://www.ngatiawa.iwi.nz/cms/CMSFiles/File/Associations/mataatua#eclaration.pdf> (accessed 10 September 2018).
60. Kari-Ora Declaration, para. 86.
61. Maatataua Declaration, para. 3.1.
62. See International Labour Organization (ILO) Convention no. 169 Concerning Indigenous and Tribal Peoples in Independent Countries, 27 June 1989, 28 ILM 1382 (1989) (ILO Convention 169).
63. UN Conference on Environment and Development UNCED, "Agenda 21," 3-14 June 1992, Art. 26(5), <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf> (accessed 10 September 2018).
64. UNCHR 1995a, 8.
65. UNCHR 1995a, Annex, Principle 3.
66. UNCHR 1995a, Principles 4, 5.
67. UNCHR 1995a, Guideline 15.
68. UNCHR 2000, 7.
69. UNCHR 1996, 5.
70. UNCHR 2004, 1.
71. See the United Nations Conference on Trade and Development's Workshop on National *Sui Generis* Systems Concerning Traditional Knowledge and Practices and Options for an International Framework; the Convention on Biological Diversity, 5 June 1992, 1760 UNTS 79 (CBD), and its Working Group on Article 8(j); UNESCO and its Convention for the Safeguarding of Intangible Cultural Heritage, 17 October 2003, 2368 UNTS 1 (2003 UNESCO Convention); the World Intellectual Property Organization and its Intergovernmental Committee on Intellectual Property, Generic Resources, Traditional Knowledge and Folklore; and ILO Convention 169, which has provisions for the protection of Indigenous peoples' heritage.
72. UNCHR 2004, 5, 8.
73. UNCHR 2005, 12.
74. UNCHR 2005, 13.
75. UNCHR 2005, 12.
76. UNCHR 1995b.
77. UN 2005, 15.
78. UN 1996b, 12.
79. UNESCO 2007.
80. UNCHR 2005, 13.
81. Disko and Tugendhat 2013; Meskell 2013; Disko, Tugendhat, and Garcia-Alix 2014, 17. With respect to the impact of conservation process on Indigenous peoples generally, see UNPFII 2018a.
82. WHC 1994, para. 35-42. The Kakadu National Park (Australia) was originally inscribed on the World Heritage List in 1981 (WHC 1981, 1982); it was re-nominated and area extended in 1987 recognizing that it is "is a living cultural landscape with exceptional natural and cultural values ... home to Aboriginal people for more than 50,000 years" (WHC 1987); and, in 1992, Decisions CONF.002 X.C and WHC-92/CONF.002/07.Rev were made (WHC 1992); and it was recognized as a "living cultural landscape" in 2013 (WHC 2013).

83. WHC 1998a.
84. WHC 1998a, 5-6.
85. WHC 1998a, 6.
86. WHC 1998b; see also Logan 2013, 157.
87. World Heritage Convention, Art. 10(3); WHC 2000, 11; 2001a; see also Lydon 2009, 28.
88. WHC 2000, 2.
89. WHC 2000, 3.
90. WHC 2000, 12.
91. WHC 2001a, 7.
92. WHC 2001b, 2002.
93. WHC 2007, 1.
94. WHC 2007, 1.
95. WHC 2007, 2.
96. WHC 2007, 12.
97. UNHRC 2013, 17.
98. UNHRC 2009b.
99. UNHRC 2009a, 1, 2.
100. See D Sambo Dorough, qtd. in Disko and Tugendhat 2013, 18-19, 29; Disko, Tugendhat, and Garcia-Alix 2014.
101. ECOSOC Resolution 2000/22, "Establishment of a Permanent Forum on Indigenous Issues" of 28 July 2000.
102. Mirarr People 2002.
103. UNPFII 2003, 18.
104. UNPFII. 2003, 18.
105. ECOSOC 2005, 11, 15.
106. Endorois Welfare Council 2011.
107. African Commission on Peoples and Human Rights 2009. African Charter on Human and Peoples' Rights, 27 June 1981, 21 ILM 58 (1982), Arts. 8, 14, 17, 21, 22.
108. Committee on Economic, Social and Cultural Rights (CESCR) 2009, 9.
109. CESCR 2009, 9, 14.
110. UNCHR 2011b, 21.
111. UNCHR 2011b, 20.
112. UNCHR 2011b, 20.
113. UNCHR 2011b, 20.
114. UNCHR 2011b, 20.
115. WHC 2011a, 150.
116. WHC 2011b.
117. WHC 2011c.
118. "Protection of Indigenous Peoples" Rights in the Context of the World Heritage Convention and the Designation of Lake Bogoria as a World Heritage Site," ACHPR Resolution 197, 5 November 2011. The African Commission on Peoples

and Human Rights urged the WHC and UNESCO to review the Operational Guidelines, in cooperation with the UNPFII, so that the Convention is implemented in conformity with the UNDRIP. It also endorsed the creation of a mechanism that enabled Indigenous peoples to advise the WHC and participate effectively in its deliberations.

- [119.](#) WHC 2014a, 111-12.
- [120.](#) WHC 2014b.
- [121.](#) Abraham 2014, 185. Kabarnet Declaration.
- [122.](#) Abraham 2014, 185.
- [123.](#) WHC 2015a.
- [124.](#) UNPFII 2011, 8.
- [125.](#) UNPFII 2011, 8.
- [126.](#) UNPFII 2011, 8.
- [127.](#) UNDG 2008, 27.
- [128.](#) UNPFII 2010.
- [129.](#) UNPFII 2011.
- [130.](#) Expert Mechanism on Rights of Indigenous Peoples (EMRIP) 2015, 10; UNHRC 2014, 126; Letter from J.S. Anaya, Special Rapporteur on Rights of Indigenous Peoples, to K. Rao, Director, World Heritage Centre, 18 November 2013.
- [131.](#) WHC 2011d, 1 (emphasis added).
- [132.](#) HRC Resolution 6/36 "Expert Mechanism on the Rights of Indigenous Peoples" of December 14, 2007, Art. 1(a).
- [133.](#) UNHRC 2011a.
- [134.](#) EMRIP 2011, 2.
- [135.](#) EMRIP 2011, 5.
- [136.](#) EMRIP 2011, 2.
- [137.](#) EMRIP 2015, 10.
- [138.](#) EMRIP 2011, 11.
- [139.](#) EMRIP 2012, 4.
- [140.](#) EMRIP 2012, 4.
- [141.](#) EMRIP 2012, 7.
- [142.](#) EMRIP 2015.
- [143.](#) EMRIP 2015, 21.
- [144.](#) EMRIP 2015, 23.
- [145.](#) EMRIP 2015, 20.
- [146.](#) EMRIP 2015, 22.
- [147.](#) UNCHR Resolution 2001/57, 24 April 2001; UNCHR Resolution 2005/51, 20 April 2005; UNHRC Resolution 6/12, 28 September 2007; UNHRC Resolution 15/14, 6 October 2010.
- [148.](#) UNHRC 2009a, 4, 5.
- [149.](#) ILO Convention 169; American Convention on Human Rights, 21 November 1969, 1144 UNTS 123.
- [150.](#) UNHRC 2009a, 21-22.
- [151.](#) UNHRC 2009a, 21.
- [152.](#) UNHRC 2009a, 21.

- [153.](#) UNHRC 2009a, 22; UN 2010, 9.
- [154.](#) UNHRC 2009a, 23.
- [155.](#) UN 2012a, 11.
- [156.](#) UN 2012a, 11.
- [157.](#) EMRIP 2015, 22.
- [158.](#) EMRIP 2015, 22.
- [159.](#) See World Bank 2005; UNDG 2008; Food and Agriculture Organization 2010, 2016; United Nations Environment Programme 2012; International Fund for Agricultural Development 2015.
- [160.](#) UNHRC 2016, 9. This is reflected in the final document of the plan, which defines the UNDRIP as "enshrining the rights to self-determination and development with culture and identity." UNHRC 2016, 3.
- [161.](#) UNESCO 2017.
- [162.](#) UN 2014a.
- [163.](#) UNESCO 2017, 1-3.
- [164.](#) UNESCO 2017, 12.
- [165.](#) UNESCO Policy on Engaging with Indigenous Peoples, draft text (copy on file with author) (UNESCO Policy), lines 544-45.
- [166.](#) UNESCO 2017, 12. UNDRIP, Art. 31.
- [167.](#) UNESCO 2017, 2. The draft Policy acknowledged that it is "an on-going process that respects indigenous peoples' institutions, including their mechanisms for representation, decision-taking processes and conflict resolution." UNESCO Policy, lines 68-70.
- [168.](#) UNESCO 2017, 14 (emphasis added).
- [169.](#) UNESCO 2017, 3. 2003 UNESCO Convention. See "Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage," adopted by General Assembly of States Parties, 2008, as amended at 2016, https://ich.unesco.org/doc/src/ICH-Operational_Directives-6.GA-PDF-EN.pdf (accessed 10 September 2018).
- [170.](#) See, e.g., Mo'otz Kuxtal Voluntary Guidelines for the Mechanisms, Legislation or Other Appropriate Initiatives to Ensure Free, Prior and Informed Consent of Indigenous Peoples and Local Communities, Doc. CBD/COP/DEC/XIII/18, 17 December 2016; Inter-American Court of Human Rights, *Kalin#a and Lokono Peoples v. Suriname*, Merits, Reparations and Costs, Ser. C, No. 309, 25 November 2015; HRC Resolution 33/23, 5 October 2016.
- [171.](#) UN 2012a, 9; UN 2016a, 21.
- [172.](#) UN 2012a, 10.
- [173.](#) UN 2014, 126.
- [174.](#) UN 2014, 126.
- [175.](#) Disko and Tugendhat 2013.
- [176.](#) Rao, qtd. in UNHRC 2014, 126. See Decision 4.048, adopted at 4th session in 2008, IUCN World Conservation Congress (reprinted in UNPFII 2011, 8), and "Implementation of the UNDRIP in the Context of the UNESCO World Heritage Convention," IUCN Resolution WCC-2012-Res-047 (15 September 2012). The UNPFII has recently urged the IUCN to collaborate with Indigenous peoples in the review of protected areas. UNPFII 2018a, 2018b.
- [177.](#) Disko and Tugendhat 2013, Annex 3.
- [178.](#) See UN 2012b; Cameron and Ro#ssler 2013, 217; Disko 2016, 524.
- [179.](#) WHC 2011d, 2015b, 8.
- [180.](#) WHC 2015b, 9.
- [181.](#) WHC 2015b, 24.
- [182.](#) WHC 2015b, 24 (emphasis added).

- [183.](#) WHC 2015b, 100.
- [184.](#) Some states (e.g., France and Senegal) that had endorsed the UNDRIP nonetheless challenged the concept of "Indigenous peoples" during the deliberations. See Endorois Welfare Council, Saami Council, and IWGIA 2015.
- [185.](#) UNPFII 2015.
- [186.](#) UNPFII 2015.
- [187.](#) Endorois Welfare Council 2015; WHC 2015c, 6; Disko 2016, 319.
- [188.](#) See UNDRIP, Arts. 10, 28, 29; Rio Declaration on the Environment and Development, UN Doc. A/Conf.151/5/Rev.1, 1992, Principle 10; Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 25 June 1998, 2161 UNTS 447 (Aarhus Convention); Framework Convention on the Value of Cultural Heritage for Society, 27 October 2005, CETS no.199 (Faro Convention).
- [189.](#) WHC 2015d.
- [190.](#) WHC 2015d, 3.
- [191.](#) Disko 2016.
- [192.](#) WHC 2015e, para. 10.
- [193.](#) WHC 2017a, para. 40; WHC 2017b; UNPFII 2018c, 11. The International Indigenous Peoples Forum on World Heritage is established along similar lines to non-governmental organizations attached to the CBD and the UN Framework Convention on Climate Change, 9 May 1992, 1771 UNTS 107, and has the Indigenous Peoples of Africa Coordinating Committee as its Secretariat.
- [194.](#) UN 2013, 6-7.
- [195.](#) UN 2014b, 1.
- [196.](#) UN 2014b, 5.
- [197.](#) UN 2017, 2.
- [198.](#) UN 2016b, 6 (emphasis added); UN 2016b.
- [199.](#) UN 2016b.
- [200.](#) UNESCO 2017, 2. The draft text had provided further elaboration that the "ways and means for full and effective participation and inclusion will be developed at all levels of the Organization, including the decision-making and strategic levels, and at all stages" and will include "continued and direct dialogue and interaction with indigenous peoples." UNESCO Policy, lines 57-62.
- [201.](#) UNESCO 2017, 11 (emphasis added).
- [202.](#) UN 2013, 7.
- [203.](#) Faro Convention.
- [204.](#) Council of Europe n.d. Aarhus Convention.
- [205.](#) UNPFII 2018a, 9.
- [206.](#) Clavero 2009; Rodriguez-Pinero 2009.
- [207.](#) UN 2013, para. 20.
- [208.](#) UN 2014c.
- [209.](#) UN 2014c, 13.
- [210.](#) UN 2015.
- [211.](#) UN 2014c, 7.

