Cultural Identity and Self-Determination as Key Concepts in Concurring Legal Frameworks for the International Protection of the Rights of Indigenous Peoples

Mariana Monteiro de Matos

Abstract This chapter analyzes the protection of the rights of indigenous peoples in light of both the United Nations Declaration on the Rights of Indigenous Peoples and the International Covenant on Civil and Political Rights. This analysis demonstrates that there are two key concepts in international human rights law that build the protection of indigenous peoples: cultural identity and self-determination. These concepts evoke respectively the cultural-identity-based framework and the self-determination-based framework. This chapter concludes that the relationship between both frameworks is inexplicit and very fragile. Additionally, the cultural-identity-based framework holds a more comprehensive protection for indigenous peoples and their lands than the self-determination-based framework.

1 Introduction

In 2007, the United Nations General Assembly adopted with an overwhelming majority of 144 states in favor the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIPS or the Declaration).[1] This document was the first international instrument with universal character to recognize specific rights for indigenous peoples.[2] Prior to UNDRIPS' adoption, international legal instruments recognizing specific rights to indigenous peoples referred to the ILO Conventions

[1]For the official record of adoption see United Nations Division for Social Policy and Development (2017).

[2]This paper uses the concepts of "indigenous peoples" and "indigenous communities" as interchangeable terms. An analysis about the differences between these concepts lays beyond the scope of this research.

M. M. de Matos (✉)
Institute of International and European Law, Georg-August University of Goettingen, Goettingen, Germany

E. Lagrange et al. (eds.), *Cultural Heritage and International Law*,
https://doi.org/10.1007/978-3-319-78789-3_13

107 and 169, which unfortunately received only a few ratifications.[3] By analyzing its provisions, it becomes clear that the UNDRIPS inaugurated a new path for the protection of the rights of indigenous peoples.

The UNDRIPS establishes a self-determination-based framework to protect indigenous peoples. The Declaration is the first international legal instrument to recognize a connection between the right to self-determination and indigenous communities. Article 3 UNDRIPS sets forth that indigenous peoples have the right to self-determination. This right has a special meaning in the context of indigenous issues whose different aspects appear throughout several provisions of the UNDRIPS.

The UNDRIPS' self-determination-based framework contrasts with the consolidated framework in international human rights law for the protection of indigenous peoples. Human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the American Convention on Human Rights lack any provision concerning indigenous peoples and their right to self-determination. Yet these instruments provide complaint procedure mechanisms that enable individuals to file a complaint against the violation of their rights before judicial and quasi-judicial human rights bodies. Due to the lack of specific legal remedies available for dealing with indigenous issues, members of indigenous communities have been using those complaint procedures to express grievances about violations of their rights.[4] Consequently, international human rights bodies developed a substantial jurisprudence on indigenous issues that is essential to fully grasp the rights of indigenous peoples.

This research addresses the question of how international human rights law protects the rights of indigenous peoples. It explains and contrasts the UNDRIPS' framework with the framework resulting from the jurisprudence of international human rights bodies. By canvassing a narrow approach, this chapter focuses on the jurisprudence of the ICCPR's individual complaint procedure.

The cases the Human Rights Committee (HRC) received, alleging violations of the rights set down in the ICCPR, have a significant value. First, they frame the struggle of indigenous peoples and their members all around the world. Second, the HRC's decisions entail a similar rationale to the one of other human rights bodies, e.g. the Inter-American Commission on Human Rights and the Inter-American

[3] As of May 2017, the ILO Convention 169 had 22 ratifications and the ILO Convention 107 had 27 ratifications. For more information see: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312314. Accessed 31 May 2017.

[4] Neither the UNDRIPS nor the ILO Conventions have monitoring bodies to receive complaints concerning the violation of their provisions in individual cases. A monitoring body is responsible for supervising the implementation of the ILO Conventions. Yet this body does not have the mandate to receive complaints by indigenous peoples and their organizations. For more information about the ILO supervisory system see: http://www.oit.org/global/about-the-ilo/how-the-ilo-works/ilo-supervisory-system-mechanism/lang--en/index.htm. Accessed 31 May 2017.

Court of Human Rights.[5] Therefore, the HRC's jurisprudence is a good example of how the jurisprudence of international human rights bodies work. Text limitations make an in-depth exploration of the jurisprudence of all these bodies infeasible for this paper.

This chapter is divided in two analytical parts. After the introduction, the first part fleshes out the key concepts in international human rights law for the protection of indigenous peoples in accordance with the UNDRIPS and the ICCPR. Each instrument evokes a framework of protection based on a different concept. For the sake of this analysis, these frameworks are called self-determination-based framework and cultural-identity-based framework. Next, the second part explores the relationship between these frameworks. It divides itself in two subparts that compare the similarities and differences between both frameworks regarding their normative contents of protection toward indigenous lands and natural resources therein. Lastly, final remarks summarize the main findings of this research.

2 Key Concepts for the Protection of the Rights of Indigenous Peoples in International Law

This part elucidates the main concepts in international law for the protection of indigenous peoples. Section one explains the concept of self-determination in accordance with the UNDRIPS. Section two enlightens the concept of cultural identity in the context of the ICCPR and the HRC's jurisprudence.

2.1 The Self-Determination-Based Framework: UNDRIPS

The official denomination of the UNDRIPS is Resolution 61/295 of 13 September 2007 adopted by the United Nations General Assembly (UNGA).[6] It represents a milestone for the rights of indigenous peoples. Notably, the UNDRIPS enjoys a high political significance that is a result of its long-standing negotiation process in which states and representatives of indigenous organizations actively engaged.[7] Besides its

[5] Among others see Inter-Am. Ct.H.R., Case of the Kichwa Indigenous People of Sarayaku against Ecuador, Merits and Reparations, Judgment of 27 Jun 2012, Series C No. 245; Inter-Am. Ct.H.R., Comunidad Moiwana against Suriname, Preliminary Exceptions, Merits, Reparations and Costs, Judgment of 15 Jun 2005, Series C No. 124; Inter-Am. C.H.R., Demanda de la Comisión Interamericana de Derechos Humanos presentada ante la Corte Interamericana de Derechos Humanos, Comunidad Indígena Mayagna (Sumo) Awas Tingni contra la República de Nicaragua, 4 Jun 1998.

[6] United Nations Division for Social Policy and Development (2017).

[7] For details on the drafting process of the UNDRIPS see Ahrén (2009), pp. 206–209; Anaya (2009), p. 56; Charters (2009), pp. 285–287; Errico (2007), p. 743; Kingsbury (2017), paras 11–13; Xanthaki (2007), pp. 120–121.

political value, some authors claim that the UNDRIPS, or at least its provisions regarding land rights, represents customary international law or contains general principles of law.[8]

The UNDRIPS is not a legally binding instrument. Pursuant to Article 10, read in conjunction with Article 13 Charter of the United Nations, the UNGA has competence for making recommendations to the members of the United Nations (UN) on different matters, i.a. on promoting international cooperation. In other words, the UNGA lacks competence for creating binding international rules.[9] Since the UNGA adopted the UNDRIPS as a resolution, this document is not legally binding. The UNDRIPS is a so-called soft law document. Pursuant to Article 38(1) ICJ Statute, soft law documents are not a formal source of international law.

Despite its soft law nature, the UNDRIPS has a significant normative value. Such a value may be seen in its very denomination. The UNDRIPS is not an UNGA "recommendation" but a "declaration." While the UNGA adopts hundreds of recommendations every year, it reserves the term "declaration" to name a very few of them. According to the UN Office of Legal Affairs, declarations are a special category of recommendations that the UNGA adopted. Declarations have a unique importance because they reflect significant values that the international community recognizes as worthy of safeguarding. This was the case for the adoption of the Universal Declaration of Human Rights.[10] Additionally, the stakeholders within the UN fora, through a near-unanimous decision, crafted the text of the UNDRIPS, which displays legally binding language.[11] Those aspects demonstrate the normative value of the UNDRIPS.[12]

The UNDRIPS has been having a strong impact on international human rights law. Pursuant to Article 42 UNDRIPS, the UN shall promote respect for and full application of the Declaration. Accordingly, the Declaration has been an inspirational source to develop initiatives in the field of indigenous rights among UN bodies and specialized agencies.[13] This is the case of the Special Rapporteur on the Rights of Indigenous Peoples, the Food and Agriculture Organization, and the Committee on Economic, Social and Cultural Rights. Moreover, the UNDRIPS has influenced the development of legal instruments on the rights of indigenous peoples such as the American Declaration on the Rights of Indigenous Peoples.[14]

[8]Shortly after the adoption of the UNDRIPS there was a wide discussion in the literature about the normative value of the UNDRIPS. For details see Baldwin and Morel (2011), pp. 123–126; Charters (2010), p. 23; Lenzerini (2010a), p. 43; Wiessner (2008), p. 1162; Campbell and Anaya (2008), p. 398; Kingsbury (2017), para. 15.

[9]Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, 226, para. 70.

[10]For a similar argument see Barelli (2009), p. 972; Lenzerini (2010b), pp. 21–22.

[11]Barelli (2009), pp. 968–983.

[12]Cf. Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, 226, para. 70.

[13]Barelli (2016), pp. 43–68.

[14]Clavero (2016).

Regarding its content, the UNDRIPS is a landmark for the recognition of indigenous peoples as subjects entitled to the right to self-determination. Article 3 UNDRIPS sets down that indigenous peoples have the right to self-determination and that by virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development. This provision is the key aspect that distinguishes the UNDRIPS from other instruments dealing with indigenous peoples.[15] The provision places the Declaration in a human rights context by connecting UNDRIPS' provisions with other human rights instruments.[16]

The right to self-determination is the heart and soul of the Declaration whose different aspects are spread through UNDRIPS' provisions.[17] For instance, Article 4 UNDRIPS establishes that indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government. In addition, Article 5 UNDRIPS recognizes their right to participate fully in the political, economic, social, and cultural life of the state. Pursuant to Article 46.1 UNDRIPS, indigenous peoples should exercise the right to self-determination enshrined in the UNDRIPS within state's borders.[18] This restricted exercise gives this right a *sui generis* meaning different from the historical one.[19]

The right to self-determination pursuant to the UNDRIPS has two main aspects. First, the internal aspect refers to autonomy of indigenous communities for dealing with local affairs. In this context, states should respect and not interfere with indigenous self-government, including their distinct political, legal, economic, social, and cultural institutions. Second, the external aspect refers to the relationship between state and indigenous peoples. This relationship should be voluntary for indigenous peoples. Such external aspect entails their right to participate in all issues related to the state's life.

[15]Cf. Article 1.3 ILO Convention 169.

[16]Cf. Article 1.1 ICCPR and Article 1.1 International Covenant on Economic, Social and Cultural Rights.

[17]Anaya (2009), pp. 73–74; Crawford (2012), p. 650; Oeter (2012), p. 494; Thornberry (2002), pp. 382–385.

[18]The exercise of the right to self-determination by indigenous peoples within state's borders is a highly controversial issue in international human rights law. For a substantive comprehension on this topic see Castellino (2005).

[19]The right to self-determination dates back to the decolonization time and the related declarations of independence of former colonies. By that time, the UNGA adopted the recommendation 2625 of 24 Oct 1970 (U.N. Doc. A/Res/25/2625) which recognized the principle of self-determination of peoples. The adoption of the UNDRIPS by the UNGA gives a new meaning to the right to self-determination.

2.2 The Cultural-Identity-Based Framework: ICCPR

The ICCPR and its optional protocol are milestones for international human rights law. Among the distinguished features of these instruments, there is Article 28 ICCPR. The first part of this provision established a Human Rights Committee in order to monitor states' compliance with the ICCPR. With the aim of fulfilling its mandate, the HRC had to deal with issues related to indigenous peoples.

The HRC consists of 18 members who are human rights experts. It has three main competences. First, the HRC may receive reports from States Parties about measures they have adopted to give effect to the rights recognized in the ICCPR (Article 40.1 ICCPR). Second, the HRC may publish general comments that help with the clarification of the content of specific provisions of the ICCPR (Article 40.4 ICCPR). Third, the HRC may receive and consider individual complaints alleging violation of rights laid down in the ICCPR (Article 1 Optional Protocol to the ICCPR).

There are a few special features regarding the individual complaint procedure that the HRC supervises. Notably, only States Parties to the Optional Protocol to the ICCPR (and not all States Parties to the ICCPR) recognize the competence of the HRC to receive complaints. After the HRC analyzes the complaints, it publicizes its conclusions as official UN documents with the title "views of the committee." The structure of these documents has similar characteristics to judicial decisions, and therefore scholars refer to them as "decisions." In contrast to proper judicial decisions, the HRC decisions are only persuasive recommendations, i.e. they are not legally binding. Yet states have the obligation to consider them in good faith.[20]

For the sake of dealing with indigenous issues, the HRC has developed a framework based on the concept of cultural identity in accordance with Article 27 ICCPR. Since the 1980s, the HRC has been receiving communications from indigenous communities alleging violation of their rights. The ICCPR lacks any provision addressing indigenous peoples or their rights. To fill this gap, the HRC began to answer their issues based on the individualistic framed right of members of minority groups to enjoy their own culture pursuant to Article 27 ICCPR.[21] Accordingly, the HRC stated that the scope of this right is to ensure the very survival and continued development of cultural, religious, and social identity of minorities.[22] Cultural identity is a comprehensive concept because culture has a broad meaning. According to the HRC, culture may relate to the development of a particular way of life and traditional economic activities as in the case of indigenous peoples.[23] Thus,

[20]HRC, General Comment Nr. 33: The obligations of State Parties under the Optional Protocol to the International Covenant on Civil and Political Rights, 05 Nov 2008, 94th Session, UN Doc. CCPR/C/GC/33, para. 15.

[21]The inclusion of indigenous communities in the category of minority groups is a highly controversial issue in international human rights law. For a good analysis on this topic see Kymlicka (2010).

[22]HRC, General Comment Nr. 23: The rights of minorities (Art. 27), 08 Apr 1994, 50th Session, UN Doc. CCPR/C/21/Rev.1/Add.5, para. 9.

[23]HRC, General Comment Nr. 23: The rights of minorities (Art. 27), 08 Apr 1994, 50th Session, UN Doc. CCPR/C/21/Rev.1/Add.5, para. 7.

the HRC uses the concept of cultural identity to tackle claims that indigenous peoples make under the complaint procedure.

3 Self-Determination-Based Framework and Cultural-Identity-Based Framework: A Hidden and Fragile Relationship

This part dives into the relationship between the self-determination-based framework and the cultural-identity-based framework. It focuses on the similarities and differences of a common topic in both frameworks, the protection of indigenous lands and natural resources therein. Conflicts related to indigenous territories are the most controversial issue touching upon the rights of indigenous peoples. The first section of this part looks at procedural issues, and the second section explores substantial issues concerning both frameworks.

3.1 Procedural Issues Regarding the Protection of Indigenous Lands and Natural Resources According to the Frameworks

The self-determination-based framework relates to Article 3 UNDRIPS, which entails a very similar wording to Article 1 ICCPR (right of self-determination). Such a similarity could be a way to make the UNDRIPS and the ICCPR work in a complementary manner by submitting complaints about the violation of indigenous land rights pursuant to Articles 27 and 1 ICCPR and articulating this alleged violation with reference to Article 3 UNDRIPS. Accordingly, the HRC could apply these provisions to analyze communications about the violation of indigenous land rights. Yet the jurisprudence of the HRC demonstrates that such an attempt would most probably fail. In practice, the HRC does not admit complaints pursuant to Article 1 ICCPR.[24] This inadmissibility constitutes the procedural block against a dialog between the self-determination-based model and the cultural-identity-based model. The rationale behind it deserves special attention.

[24]There is a long-standing jurisprudence confirming the inadmissibility of complaints pursuant to Article 1 ICCPR. Among them see HRC, Ivan Kitok against Sweden, 27 Jul 1988, UN Doc. CCPR/C/33/D/197/1985, para. 6.3; HRC, Lubicon Lake Band against Canada, 26 Mar 1990, UN Doc. CCPR/C/38/D/167/1984, para. 32.2; HRC, Apirana Mahuika et al. against New Zealand, 27 Oct 2000, UN Doc. CCPR/C/70/D/547/1993, para. 9.2; HRC, Marie-Helene Gillot against France, 15 Jul 2002, UN Doc. CCPR/C/75/D/932/2000, para. 13.4; HRC, Angela Poma Poma against Peru, 27 Mar 2009, UN Doc. CCPR/C/95/D/1457/2006, para. 6.3.

According to the HRC, the Optional Protocol to the ICCPR allows individuals to bring claims of alleged violations of individual rights pursuant to the ICCPR. These rights do not include Article 1 ICCPR. Rather, they refer to Articles 6 to 27 ICCPR. In the decision of Lubicon Lake Band against Canada, the HRC elucidated its understanding in this regard (emphasis added):

> The question has arisen of whether any claim under article 1 of the Covenant remains, the Committee's decision on admissibility notwithstanding. While all peoples have the right of self-determination and the right freely to determine their political status, pursue their economic, social and cultural development and dispose of their natural wealth and resources, as stipulated in article 1 of the Covenant, *the question whether the Lubicon Lake Band constitutes a "people" is not an issue for the Committee to address under the Optional Protocol to the Covenant. The Optional Protocol provides a procedure under which individuals can claim that their individual rights have been violated*. These rights are set out in part III of the Covenant, articles 6 to 27, inclusive. There is, however, no objection to a group of individuals, who claim to be similarly affected, collectively to submit a communication about alleged breaches of their rights.[25]

This HRC's understanding evokes several criticisms in the scholarship that argues for more flexible admissibility requirements. Accordingly, the complaint procedure should enable a comprehensive protection of human rights. The first criticism regarding this HRC's understanding relates to the requirement of alleging violations of individual rights laid down in the ICCPR. This HRC's interpretation restricts the *ratione materiae* of the complaints to individual rights of the ICCPR. In contrast, Article 1 Optional Protocol to the ICCPR lacks any distinction between the rights set forth in the ICCPR that petitioners may invoke under the complaint procedure. It uses the wording "any rights set forth in the Covenant." Thus, a literal interpretation of the Optional Protocol to the ICCPR would enable the admission of complaints alleging violations of both individual and group rights.[26]

The second criticism refers to the HRC's interpretation that the issue whether a group constitutes a people is not under the HRC's competence to decide. In response, one may argue that the HRC may admit a complaint without ruling on this topic by referring to international legal instruments that recognize a specific group as people. This argument is applicable to the case of indigenous peoples because both Article 3 UNDRIPS and Article 3 American Declaration on the Rights of Indigenous Peoples recognize them as peoples. Hence, the HRC may easily admit complaints by indigenous peoples with reference to these legal instruments adopted by states.

The third criticism relates to the HRC's understanding that individuals lack legal standing to claim group rights. As a consequence, since the right to self-determination is a group right, individuals cannot claim to be victims of a violation

[25]HRC, Lubicon Lake Band against Canada, 26 Mar 1990, UN Doc. CCPR/C/38/D/167/1984, para. 32.1.

[26]For a similar understanding see Tyagi (2011), pp. 598–599; Nowak (2005), p. 19.

in this regard.[27] While the collective nature of the right to self-determination is undeniable, it is arguable that an individual or a group of individuals on behalf of a people may claim a violation of the right of self-determination. The representation of a people by individuals is in accordance with the text of the ICCPR and its systematic interpretation.[28] However, the HRC has been reluctant to admit such a complaint in its jurisprudence.

In spite of all the above-explained criticisms regarding the HRC's admissibility criteria, it is very unlikely that the HRC will adopt significant changes in this regard. As demonstrated, the HRC's admissibility requirements raise controversial issues that could be easily solved for the sake of a comprehensive protection of human rights, including the right of indigenous peoples to self-determination. To that end, the HRC needs to expand its jurisdiction *ratione materiae* and recognize the legal standing of individuals on behalf of a group (or people) under the complaint procedure. Yet considering that the HRC has been adopting more rigid admissibility criteria since the 1990s, a change of requirements seems very improbable.

To sum up, it is important to remark that the self-determination-based framework and the cultural-identity-based framework do not engage in a direct dialog. The reason behind it is the HRC's admissibility criteria in the complaint procedure that do not admit complaints alleging the violation of the right to self-determination.

3.2 Substantial Issues Regarding the Protection of Indigenous Lands and Natural Resources According to the Frameworks

This part analyzes whether the protection regarding indigenous lands and natural resources therein contained in the self-determination-based framework and in the cultural-identity-based framework has similarities or differences that affect a dialog between both frameworks. To that end, this section takes a closer look first at (1) the scope of protection of indigenous lands and then at (2) the criteria to solve conflicts over the exploitation of natural resources in indigenous lands.

[27]Group rights have no universal definition in international law. As a working definition, with group rights this paper refers to the rights, which the right holder is the group itself. For a discussion in this regard see Buchanan (1993), pp. 93–95; Pogge (1997), pp. 191–193; Wenzel (2008), pp. 19–27.

[28]For a more detailed explanation of this argument see Nowak (2005), pp. 829–831; Cassese (1995), pp. 144–145.

3.2.1 Scope of Protection of Indigenous Lands and Natural Resources: Development of Cultural Activities and the Issue of Mineral Resources

Self-Determination-Based Framework: Indigenous Territory and Surface Resources Article 26.2 UNDRIPS is the main provision for the protection of indigenous lands in the self-determination-based framework. The scope of protection refers to the ownership, use, development, and control of lands and resources that indigenous peoples have already acquired or currently possess. Such indigenous current possession must fulfill additional requirements. Indigenous current possession must be a consequence of (1) traditional ownership or (2) traditional occupation or use. Hence, the UNDRIPS protects not only the geographical space where indigenous communal life flourishes but also the entire territory that is necessary for developing indigenous religion, cultural, and economic activities.

Regarding natural resources in indigenous lands, the scope of protection in the self-determination-based framework is less clear. Different from other legal instruments concerning the rights of indigenous peoples, the UNDRIPS does not specify to which type of resources indigenous peoples have rights.[29] The text of the UNDRIPS differentiates between "resources" (Article 26 UNDRIPS) and "other resources" (Article 32 UNDRIPS) without explaining where the difference lays. This is a problem because domestic laws in many countries restrict the ownership of mineral resources to states.

In accordance with the general rules of treaty interpretation (Article 31 Vienna Convention on the Law of Treaties), the interpretation of obscure provisions in the UNDRIPS should observe UNDRIPS' objective and purpose. This refers to the guarantee of the right to self-determination in accordance with UNDRIPS' provisions.[30] In that sense, the right to self-determination should guide the interpretation of the provisions on natural resources within indigenous lands.

In light of the right to self-determination, the scope of protection entails all natural resources found in indigenous lands. Articles 26–27 UNDRIPS establish that states shall give legal recognition and protection for natural resources in indigenous lands in accordance with indigenous peoples' laws, traditions, customs, and land tenure systems. As a result, these provisions request states to interpret indigenous land rights according to indigenous customary law. Indigenous customary law lacks a differentiation between types of natural resources because indigenous peoples understand their territory in a holistic way.[31] Hence, indigenous property is an all-encompassing concept referring to lands and natural resources therein.

Nevertheless, an interpretation of the scope of protection of natural resources in indigenous lands as an all-encompassing concept raises controversial issues. First,

[29]Cf. Art. 15.2 ILO Convention 169 and Art. 28-29 American Declaration on the Rights of Indigenous Peoples.

[30]See above Sect. 2.1.

[31]Among others see Descola (2000), pp. 15–103; Viveiros de Castro (2013), pp. 317–400.

this interpretation goes against domestic laws of many countries that recognize states as legitimate owners of subsurface resources. Second, it undermines a systematic interpretation of the UNDRIPS because the Declaration clearly points out to a differentiation between natural resources found in indigenous lands.[32] Third, it contradicts the historical background of the UNDRIPS. Notably, the UNDRIPS' draft text made explicit reference to the resources included within the scope of indigenous natural resources, i.e. air, water, sea coasts, flora, and fauna. Yet states did not accept such exhaustive provision and successfully achieved its removal from the text.[33] In other words, states did not agree to recognize the ownership of indigenous peoples over all natural resources in their lands. For all these reasons, such an interpretation based only on the right to self-determination is unreasonable.

A solid interpretation of the scope of protection of natural resources in accordance with the UNDRIPS refers only to surface resources. In order to clarify the meaning of an unreasonable interpretation, pursuant to Article 32 Vienna Convention on the Law of Treaties, one should consider the preparatory work of the treaty and the circumstances of its conclusion. As stated above, the *travaux préparatoires* of the UNDRIPS demonstrate that states strongly opposed the recognition of indigenous peoples' ownership over all natural resources found in indigenous lands. Moreover, during the adoption of the UNDRIPS, some states such as Japan, Mexico, and Namibia remarked that the interpretation of provisions concerning indigenous land rights have limits in domestic laws.[34] Since these laws often restrict the ownership of indigenous peoples to surface resources, the UNDRIPS has to be interpreted accordingly. Hence, the scope of protection of natural resources in indigenous lands restricts itself to surface resources.

To sum up, the self-determination-based framework pursuant to the UNDRIPS establishes limits to the scope of protection of lands and natural resources therein. Regarding lands, the scope of protection refers to lands that indigenous peoples have already acquired or currently possess and that are necessary for developing indigenous religion, cultural, and economic activities. Regarding natural resources, the scope of protection relates to surface resources.

Cultural-Identity-Based Framework: Economic Activities, Indigenous Lands and Culture The ICCPR lacks any provision addressing indigenous peoples. Despite that, in its jurisprudence, the HRC has been consistent in recognizing criteria to evaluate the scope of protection of indigenous lands and natural resources therein.[35] The HRC applies those criteria on a case-by-case basis in order to analyze alleged violations of Article 27 ICCPR touching upon the use and exploitation of indigenous lands and natural resources. Those criteria refer to the existence of a "distinctive culture" that is a result of the "development of economic activities."

[32]Cf. Article 26 and 32 UNDRIPS.

[33]For more details on this issue see Errico (2011), pp. 340–341; Xanthaki (2007), pp. 117–118.

[34]United Nations Division for Social Policy and Development (2017).

[35]Scheinin (2005), pp. 3–8.

In that sense, the HRC recognizes that the scope of protection of Article 27 ICCPR comprises indigenous lands and natural resources therein that are necessary for the development of a distinctive culture. The most important aspect in this regard refers to the relationship between economic activities, lands, and culture. While the burden of proof is not clear, sufficient pieces of evidence are usually found in decisions dealing with damages to the natural environment that impact on the cultural life of the group.[36] In the decision of the case Angela Poma Poma against Peru, the HRC explained (emphasis added):

> In previous cases, the Committee has recognized that the rights protected by article 27 include the right of persons, in community with others, *to engage in economic and social activities which are part of the culture of the community to which they belong*. In the present case, it is undisputed that the author is a member of an ethnic minority and that raising llamas is an essential element of the culture of the Aymara community, since it is a form of subsistence and an ancestral tradition handed down from parent to child. The author herself is engaged in this activity.[37]

Self-Determination-Based Framework and Cultural-Identity-Based Framework: Similarities, Differences and an Unspoken Connection Regarding the Scope of Protection of Indigenous Lands and Natural Resources Based on the foregoing analysis, it is necessary to conclude that the scope of protection of indigenous lands in both frameworks is very similar. Accordingly, indigenous lands that are necessary for communities to develop their economic and cultural activities are protected. Despite the common scope of protection between both frameworks, the HRC has never referred to the UNDRIPS in its decisions. Hence, there is an unspoken dialog between both frameworks related to the protection of cultural aspects of indigenous groups.

The difference between both frameworks lays on the scope of protection of natural resources in indigenous lands. While the protection contained in the UNDRIPS refers only to surface resources, the HRC may extend the scope of protection to subsurface resources in some cases. To that end, an indigenous community would have to prove that its distinctive culture depends on the development of economic activities related to the exploitation of mineral resources. Such a complaint has never appeared before the HRC, but there is no doubt that its criteria are applicable to such cases.

By looking at the similarities and differences, there are compelling reasons to recognize that the cultural-identity-based approach entails a more far-reaching scope of protection of indigenous lands and natural resources therein than the self-determination-based approach. Since the HRC adopts the decisions on an individual basis, it may adequate the scope of protection in view of the actual needs of the community. The cultural-identity-based framework offers therefore flexibility and

[36]HRC, J.G.A. Diergaard et al. against Namibia, 25 Jul 2000, UN Doc. CCPR/C/69/D/760/1997, Individual Opinion of Elizabeth Evatt and Cecilia Medina Quiroga. Similarly see Thornberry (2002), pp. 160.

[37]HRC, Angela Poma Poma against Peru, 27 Mar 2009, UN Doc. CCPR/C/95/D/1457/2006, para. 7.3.

involve the protection of the use of mineral resources by indigenous communities. The self-determination-based framework does not entail such a comprehensive protection. It has a scope of protection that does not consider concrete situations.

3.2.2 Conflict of Interests Between States and Indigenous Peoples Regarding Indigenous Lands and Natural Resources: Participation of Indigenous Peoples in State Decisions and Beyond

The jurisprudence on international human rights law indicates the existence of a standard conflict of interests between states and indigenous peoples. The survival and development of indigenous peoples is attached to their possessed lands and natural resources therein. Yet they do not have the title of ownership of these lands or they lack effective control over it. Conversely, states have the interest of exploiting directly or indirectly the natural resources within indigenous lands. This section evaluates the solutions contained in the self-determination-based framework and in the cultural-identity-based framework to deal with such conflict.

Self-Determination-Based Framework: Consultation with Specific Procedural Requirements The UNDRIPS establishes a criterion to deal with the situation of conflicts of interests between the state and indigenous peoples. The Declaration contains provisions that recognize so-called participatory rights in favor of indigenous peoples and evoke several state's obligations.

Article 32 UNDRIPS sets forth the state's obligation to consult and to cooperate in good faith with indigenous peoples in case of the development of a state's project affecting their lands or resources therein. The fulfillment of this obligation is the key to strike a balance between the interests of indigenous peoples and the state. To that end, the state has to engage in a process of consultation with indigenous peoples that requires a specific type of conduct toward the achievement of a certain result.

Article 32 UNDRIPS lays down additional requirements for the state's conduct, whose meaning is not as straightforward. In this regard, ILO Convention 169 may be helpful to interpret those requirements. ILO Convention 169 is applicable to situations that the UNDRIPS addresses, and many of the Convention's provisions have a wording similar to the UNDRIPS. The concepts contained in Article 32 UNDRIPS such as "good faith" and "indigenous peoples concerned" are akin to those of the ILO Convention 169, e.g. Articles 2, 6 and 15. There is no focused literature exploring the requirements of Article 32 UNDRIPS, yet there is a substantial scholarship regarding ILO Convention 169. States may look at this scholarship to understand the meaning of the requirements set down in the UNDRIPS and to find the adequate conduct for due compliance.

Regarding the achievement of a result following the process of consultation with indigenous peoples, Article 32 UNDRIPS evokes two different lines of interpretation. First, that the state has the obligation to obtain the consent of indigenous peoples before developing any project in their lands. As a result, this provision

would entail a veto power of indigenous peoples.[38] Accordingly, the state's obligation would be to obtain the consent of indigenous peoples for the development of activities in their territory. Second, one can interpret this provision as seeking consent for the purpose of consultation.[39] The state would consult with the aim of obtaining consent to fulfill its obligation under Article 32 UNDRIPS. In this case, even if the state does not obtain the consent of indigenous peoples, it may proceed with the development of its project in indigenous lands.

Pursuant to Article 31 Vienna Convention on the Law of the Treaties, the right to self-determination, as described in the UNDRIPS, should guide the interpretation of Article 32 UNDRIPS. Accordingly, indigenous peoples may freely pursue their economic, social, and cultural development. Such development relates to the use and control of indigenous peoples' territory and natural resources therein. Therefore, one could raise the argument that the obtention of consent of indigenous peoples would be a necessary requirement to guarantee the right to self-determination. Some scholars claim that the link between the right to self-determination and the veto power of indigenous peoples finds support in international law.[40]

Nevertheless, such an understanding of Article 32 UNDRIPS as encompassing a veto power of indigenous peoples is a very controversial issue. The bottom of this controversy touches upon the permanent sovereignty over natural resources. States have been historically exercising the free use and exploitation of their natural resources. As a result, they are very reluctant to any attempt to modify this role, i.a. the inclusion of new obligations such as to obtain indigenous peoples' consent.[41] Furthermore, the recognition of indigenous peoples' right to consent raises questions about the existence of related obligations in this regard. For instance, it is controversial whether indigenous peoples' consent has to observe the sustainable use of natural resources. May indigenous peoples withhold their consent in case the suggested modifications to a state's project affecting their territory go against environmental laws? Scholarship has barely explored the issue of the existence of binding obligations to indigenous peoples.[42]

The preparatory work of the UNDRIPS offers a clearer explanation to the interpretation of Article 32 UNDRIPS. The draft version of Article 32 UNDRIPS entailed an explicit recognition of the state's obligation to obtain the consent of indigenous peoples in case of any project affecting their lands, including a veto power of indigenous communities.[43] Yet states involved in the drafting process did

[38]For this interpretation see, among others, Barelli (2016), pp. 37–40; Errico (2007), p. 753; Gilbert (2007), p. 223.

[39]For this argument see, among others, Barelli (2012), p. 11; Engle (2011), p. 157; Pentassuglia (2011), pp. 179–180.

[40]For a detailed explanation see Gilbert and Doyle (2011), pp. 304–320.

[41]A comprehensive analysis on the issue of permanent sovereignty over natural resources refers to Schrijver (1997).

[42]An unparalleled substantial analysis regarding the existence of binding obligations for indigenous peoples refers to Wenzel (2008), pp. 404–460.

[43]For this particular aspect of Article 32 UNDRIPS see Barelli (2012), p. 10.

not accept such a text and demanded its modification. States suggested replacing the wording "obtain consent" for "seek the consent." Indigenous peoples did not agree with this states' proposal because they considered the veto power essential. At the end, all involved parties agreed with the chairperson's proposal, which contained the wording "to obtain the ... consent."[44] This wording reflects the final version of Article 32 UNDRIPS.

In light of the drafting history of the UNDRIPS, it is compelling to recognize that states have the obligation to carry out a consultation and cooperation with indigenous peoples in order to obtain their consent. While Article 32 UNDRIPS does not recognize a veto power, its threshold goes beyond a mere consultation. States must truly aim to obtain the consent of indigenous peoples. This aim should reflect in the states' conduct that must follow established requirements in Article 32 UNDRIPS. For instance, the state must engage in the process with the representative institutions of indigenous peoples and not with any member of the group. In addition, there is the state's obligation to fulfill the requirements set down in Article 32 UNDRIPS before authorizing third parties to develop projects impacting on indigenous lands.

Besides that, states must redress and mitigate adverse impacts on indigenous territories resulting from the development of projects affecting their lands. This obligation appears in Article 32 UNDRIPS in a broad way and without specific criteria for its fulfillment. The state has the obligation to issue a "just and fair redress" and to take "appropriate measures" for mitigation of impact. Since the concepts of "fair" and "appropriate" are relational concepts, the state must assert them on an individual basis.

Cultural-Identity-Based Framework: Effective Participation with Guarantee of Sustainability of Indigenous Peoples' Economic Activities Exploitation of indigenous lands by states lays in the heart of indigenous peoples' complaints. In view of the lack of provisions in the ICCPR to deal with such issue, the HRC has elaborated criteria in its jurisprudence. It asserts on a case-by-case basis whether the development of states' projects that affect indigenous lands may amount to a violation of Article 27 ICCPR. These criteria refer to two obligations that states' must comply with in order to develop activities within indigenous lands.

The first state obligation refers to the sustainability of indigenous peoples' economic activities. The HRC recognizes that only state measures with a limited impact on the way of life and livelihood of persons belonging to indigenous communities are compatible with Article 27 ICCPR. In this regard, the HRC's threshold of analysis refers to the guarantee of survival of the indigenous community and its members. The HRC requires that state measures do not affect the community in a way that exhausts the possibility for the community to benefit from their traditional economy. The HRC requires thus that states guarantee the permanent sustainable development of indigenous communities' economic activities.

[44] In order to take an insider look on the drafting process of the UNDRIPS see Chávez (2009).

The first obligation refers in an implicit way to the subsistence of indigenous communities. The HRC does not use the word "subsistence." Instead, it mentions "survival." While both words are very similar, there is an important difference between them. According to Black Law's dictionary, the word "survival" relates to "remaining alive," whereas "subsistence" concerns "means of support."[45] The word "subsistence" holds hence the idea of the material support for own existence. This idea appears to be behind the HRC's assessment in cases related to alleged violations of Article 27 ICCPR.

A deep analysis of the HRC's jurisprudence points out to the relationship between the state's first obligation and the subsistence of indigenous communities. Notably, the Spanish version of the HRC's decision in the case of Poma Poma against Peru uses the word "subsistencia," which corresponds to the English "subsistence."[46] However, the English version of this decision applies the word "survival." "Survival" corresponds to the Spanish "supervivencia." There is no explanation for this translation's inconsistency regarding the use of "survival" rather than "subsistence," yet there can be no doubt that they are interrelated. Futhermore, the HRC's examination of violations of Article 27 ICCPR undoubtedly contains a material component.[47] The HRC stated in a decision *expressis verbis* (emphasis added):

> Moreover, the State did not require studies to be undertaken by a competent independent body in order to determine the impact that the construction of the wells would have on traditional economic activity, nor did it take measures to minimize the negative consequences and repair the harm done. The Committee also observes that the author has been unable to continue benefiting from her *traditional economic activity owing to the drying out of the land and loss of her livestock*.[48]

The second state obligation concerns the effective participation of indigenous peoples in any state decision about measures affecting their territories and natural resources therein. In its early jurisprudence, the HRC analyzed states' compliance with this obligation by looking at evidence (or its absence) regarding consultation with affected indigenous communities. In the decision of the case Poma Poma against Peru, the HRC changed the threshold of analysis and clarified that to avoid a violation of Article 27 ICCPR, states must obtain the free, prior, and informed consent of indigenous communities before adopting measures that may affect their territories.[49]

The HRC's interpretation of effective participation of indigenous peoples evokes a veto power of these peoples that boosts their protection. This veto power enables indigenous peoples to be in effective control of their lands, and it is an adequate way

[45]Garner (2014), pp. 1656; 1675.

[46]HRC, Angela Poma Poma against Peru, 27 Mar 2009, UN Doc. CCPR/C/95/D/1457/2006, para. 7.6.

[47]HRC, Ilmari Lansman et al. against Finland, 26 Oct 1994, UN Doc. CCPR/C/52/D/511/1992, paras 9.4–9.5.

[48]HRC, Angela Poma Poma against Peru, 27 Mar 2009, UN Doc. CCPR/C/95/D/1457/2006, para. 7.7.

[49]HRC, Angela Poma Poma against Peru, 27 Mar 2009, UN Doc. CCPR/C/95/D/1457/2006, para. 7.6.

to promote their self-determination.[50] Yet the HRC does not mention the concept of "self-determination" in its analysis. HRC's high threshold of analysis requires efforts by states to comply with Article 27 ICCPR. While the requirement of consent appeared for the first time in a decision of 2009, the HRC expressed it prior to this decision in the comments on the reports that States Parties submitted.[51]

Finally, states' obligations to guarantee the sustainability of indigenous peoples' economic activities and the effective participation in states' decisions are cumulative requirements. In case states fail to comply with one of them, the HRC may assert a violation of Article 27 ICCPR. These obligations are necessary measures to safeguard the right of members of minorities to cultural identity as in the case of members of indigenous communities.

Self-Determination-Based Framework and Cultural-Identity-Based Framework: Together and Apart Regarding Conflict of Interests Between States and Indigenous Peoples From the foregoing analysis, it follows that both frameworks establish states' obligation to negotiate with indigenous peoples before developing or authorizing third parties to develop any project affecting indigenous peoples' lands. The difference between both frameworks lays on the degree of the required negotiation. As explained above, on the one hand, the UNDRIPS sets forth some procedural requirements by requiring states to consult in order to obtain the consent of indigenous peoples. On the other hand, Article 27 ICCPR evokes a more demanding negotiation with indigenous communities. The cultural-identity-based framework requires that states effectively obtain the free, prior, and informed consent of indigenous peoples.

The cultural-identity-based framework displays a higher degree of protection for indigenous peoples. The requirement of consent enables indigenous peoples to be in effective control of their lands and resources and to determine their priorities. In this regard, scholars claim that this requirement of consent promotes the self-determination of indigenous peoples. This is the reason why the framework of cultural identity offers a far-reaching protection for indigenous lands and natural resources therein. The self-determination-based framework lacks such a requirement of consent.

States' obligation concerning the sustainability of indigenous peoples' economic activities contained in the cultural-identity-based framework connects to the self-

[50]For a detailed explanation on the relationship between the effective control of lands by indigenous peoples and self-determination see Ludescher (2004), pp. 363–398.

[51]See the HRC on this issue: Examen de los informes presentados por los Estados partes en virtud del articulo 40 del Pacto, Observaciones finales del Comite de Derechos Humanos, UN Doc. CCPR/C/COL/CO/6, 2010, para. 25; Consideration of reports submitted by States parties under Article 40 of the Covenant, Concluding observations of the HRC, UN Doc. CCPR/C/SLV/CO/6, 2010, para. 18; Consideration of reports submitted by States parties under Article 40 of the Covenant, Concluding observations of the HRC, UN Doc. CCPR/C/TGO/CO/4, 2011, para. 21; Consideration of reports submitted by States parties under Article 40 of the Covenant, Concluding observations of the HRC, UN Doc. CCPR/C/KEN/CO/3, 2012, para. 24; Concluding observations on Belize in the absence of a report, UN Doc. CCPR/C/BLZ/CO/1, 2013, para. 25; Concluding observations on the fourth periodic report of the United States of America, UN Doc. CCPR/C/USA/CO/4, 2014, para. 25.

determination-based framework. The UNDRIPS does not contain this state obligation. However, as explained above, while the HRC does not state it explicitly, this obligation relates to the guarantee of subsistence of indigenous communities. The important point regarding "subsistence" is its direct link with the right to self-determination according to Article 1 ICCPR and Article 3 UNDRIPS.

Finally, it is possible to conclude that both frameworks use similar concepts without referring to each other. The frameworks request the participation of indigenous peoples in state decisions affecting their lands and natural resources therein. Moreover, they relate to the right of self-determination pursuant to Article 1 ICCPR. Yet the HRC does not explicitly mention "self-determination" that is hidden behind the protection of indigenous lands in accordance with the right of members of minorities to cultural identity.

4 Final Remarks

The analysis of UNDRIPS' provisions and the HRC's jurisprudence of the ICCPR demonstrated that these legal instruments evoke different frameworks for the protection of indigenous peoples in international human rights law. As demonstrated in the second part, the UNDRIPS raised a framework based on the right to self-determination. The HRC created a framework based on the right of members of minorities to cultural identity in accordance with the ICCPR. It is thus compelling to recognize that there are two different frameworks: the self-determination-based framework and the cultural-identity-based framework.

Both frameworks do not engage in a direct dialog due to procedural issues. Yet they have similar substantial issues that flag a hidden relationship between them. Since the HRC does not admit complaints pursuant to the right of self-determination, both frameworks do not explicitly work in a related way. However, as demonstrated in the third part, the self-determination-based framework and the cultural-identity-based framework come close to each other. The reason behind this is that they entail a similar content regarding the protection of indigenous lands and natural resources therein. Both frameworks protect indigenous lands that are necessary for the development of indigenous cultural and economic activities. In addition, they raise an obligation to guarantee the participation of indigenous peoples in state decisions affecting indigenous lands. Despite similarities, the HRC has never referred to the UNDRIPS in any of its decisions. Both frameworks develop in a concurring way in relation to one another.

The cultural-identity-based framework entails a more comprehensive protection for indigenous peoples and their lands than the self-determination-based framework. As demonstrated in the third part of this analysis, the criteria that the HRC developed enable indigenous peoples to control directly their lands and natural resources in a way that may include the control over mineral resources. Indeed, indigenous peoples and their members may complain about their land issues in accordance with the cultural-identity-based framework. The UNDRIPS' obscure provisions evoke a less degree of protection as part of the self-determination-based framework.

Accordingly, this framework relates only to surface resources found in indigenous lands and indigenous peoples' indirect control in this regard.

References

Ahrén M (2009) The provisions on lands, territories and natural resources in the UN Declaration on the Rights of Indigenous Peoples: an introduction. In: Charters C, Stavenhagen R (eds) Making the declaration work: the United Nations Declaration on the Rights of Indigenous Peoples. International Work Group for Indigenous Affairs, Copenhagen, pp 200–215

Anaya SJ (2009) International human rights and indigenous peoples. Elective series. Wolters Kluwer Law & Business, Austin

Baldwin C, Morel C (2011) Using the United Nations Declaration on the Rights of Indigenous Peoples in litigation. In: Allen S, Xanthaki A (eds) Reflections on the UN Declaration on the Rights of Indigenous Peoples. Hart Publishing, Oxford, pp 121–143

Barelli M (2009) The role of soft law in the international legal system: the case of the United Nations Declaration on the Rights of Indigenous Peoples. Int Comp Law Q 58:957–983

Barelli M (2012) Free, prior and informed consent in the aftermath of the UN Declaration on the Rights of Indigenous Peoples: developments and challenges ahead. Int J Hum Rights 16(1): 1–24

Barelli M (2016) Seeking justice in international law: the significance and implications of the UN Declaration on the Rights of Indigenous Peoples. Routledge Research in International Law. Routledge, Abingdon

Buchanan A (1993) The role of collective rights in the theory of indigenous peoples' rights. Transnat Law Contemp Probl 3:89–108

Campbell MS, Anaya SJ (2008) The case of the Maya villages of Belize: reversing the trend of government neglect to secure indigenous land rights. Hum Rights Law Rev 8:377–399

Cassese A (1995) Self-determination of peoples: a legal reappraisal. Cambridge University Press, Cambridge

Castellino J (2005) The "Right" to land, international law & indigenous peoples. In: Castellino J, Walsh N (eds) International law and indigenous peoples. Martinus Nijhoff, Leiden, pp 89–116

Charters C (2009) The legitimacy of the UN Declaration on the Rights of Indigenous Peoples. In: Charters C, Stavenhagen R (eds) Making the declaration work: the United Nations Declaration on the Rights of Indigenous Peoples. International Work Group for Indigenous Affairs, Copenhagen, pp 280–303

Charters CWN (2010) Land rights. In: International Law Association (ed) Rights of indigenous peoples. Wellington, pp 20–25

Chávez LE (2009) The declaration on the rights of indigenous peoples breaking the impasse: the middle ground. In: Charters C, Stavenhagen R (eds) Making the declaration work: the United Nations Declaration on the Rights of Indigenous Peoples. International Work Group for Indigenous Affairs, Copenhagen, pp 96–107

Clavero B (2016) La Declaración Americana sobre Derechos de Los Pueblos Indígenas: El Reto de la Interpretación de Una Norma Contradictoria, Peru

Crawford J (2012) Brownlie's principles of public international law, 8th edn. Oxford University Press, Oxford

Descola P (2000) In the society of nature: a native ecology in Amazonia. Cambridge studies in social and cultural anthropology, vol 93. Cambridge University Press, Cambridge

Engle K (2011) On fragile architecture: the UN Declaration on the Rights of Indigenous Peoples in the context of human rights. Eur J Int Law 22(1):141–163

Errico S (2007) The draft UN Declaration on the Rights of Indigenous Peoples: an overview. Hum Rights Law Rev 7:741–755

Errico S (2011) The controversial issue of natural resources: balancing states' sovereignty with indigenous peoples' rights. In: Allen S, Xanthaki A (eds) Reflections on the UN Declaration on the Rights of Indigenous Peoples. Hart Publishing, Oxford, pp 329–366
Garner BA (ed) (2014) Black's law dictionary, 10th edn. Thomson Reuters, St. Paul
Gilbert J (2007) Indigenous rights in the making: the United Nations Declaration on the Rights of Indigenous Peoples. Int J Minor Group Rights 14:207–230
Gilbert J, Doyle C (2011) A new dawn over the land: shedding light on collective ownership and consent. In: Allen S, Xanthaki A (eds) Reflections on the UN Declaration on the Rights of Indigenous Peoples. Hart Publishing, Oxford, pp 289–328
Kingsbury B (2017) Indigenous peoples. In: Wolfrum R (ed) Max Planck encyclopedia of public international law. Oxford University Press, Oxford, pp 1–16
Kymlicka W (2010) Minority rights in political and philosophy and international law. In: Besson S, Tasioulas J (eds) The philosophy of international law. Oxford University Press, Oxford, pp 377–396
Lenzerini F (2010a) Rights of indigenous peoples under customary international law. In: International Law Association (ed) Rights of indigenous peoples, pp 43–52
Lenzerini F (2010b) The United Nations Declaration on the Rights of Indigenous Peoples: amending five centuries of wrongs. In: Te Rito JS, Healy SM (eds) Kei Muri i te Awe Kāpara he Tangata Kē: Recognising, engaging, understanding difference: 4th International Traditional Knowledge Conference 2010. Knowledge Exchange Programme of Ngā Pae o te Māramatanga New Zealand's Māori Centre of Research Excellence, Auckland, pp 19–28
Ludescher M (2004) Menschenrechte und indigene Völker. Peter Lang, Frankfurt a.M.
Nowak M (ed) (2005) U.N. Covenant on Civil and Political Rights: CCPR commentary, 2nd revised edition. N.P. Engel, Kehl
Oeter S (2012) The protection of indigenous peoples in international law revisited: from non-discrimination to self-determination. In: Hestermeyer HP, König D, Matz-Lück N, Röben V, Seibert-Fohr A, Stoll P-T, Vöneky S (eds) Coexistence, cooperation and solidarity: Liber Amicorum Ruediger Wolfrum. Martinus Nijhoff Publishers, Leiden, pp 477–502
Pentassuglia G (2011) Towards a jurisprudential articulation of indigenous land rights. Eur J Int Law 22(1):165–202
Pogge T (1997) Group rights and ethnicity. Am Soc Polit Leg Philos 39:187–221
Scheinin M (2005) Indigenous Peoples' Rights under the International Covenant on Civil and Political Rights. In: Castellino J, Walsh N (eds) International law and indigenous peoples. Martinus Nijhoff, Leiden, pp 3–15
Schrijver N (1997) Sovereignty over natural resources: balancing rights and duties. Cambridge University Press, Cambridge
Thornberry P (2002) Indigenous peoples and human rights. Manchester University Press, Juris Publishing, Manchester
Tyagi Y (2011) The UN Human Rights Committee: practice and procedure. Cambridge University Press, Cambridge
United Nations Division for Social Policy and Development (2017) United Nations Declaration on the Rights of Indigenous Peoples. https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html. Accessed 31 May 2017
Viveiros de Castro E (2013) A inconstancia da alma selvagem: e outros ensaios de antropologia, 5th edn. Cosacnaify, Sao Paulo
Wenzel N (2008) Das Spannungsverhältnis zwischen Gruppenschutz und Individualschutz im Völkerrecht: The protection of groups in international law in tension with the protection of the individual. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, vol 191. Springer, Berlin
Wiessner S (2008) Indigenous sovereignty: a reassessment in the light of the UN Declaration on the Rights of Indigenous Peoples. Vanderbilt J Transnat Law 41:1141–1176
Xanthaki A (2007) Indigenous rights and United Nations standards: self-determination, culture and land. Cambridge University Press, Cambridge