

Custodians of the Land: Indigenous Peoples, Human Rights and Cultural Integrity

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‘We, the Indigenous Peoples, walk to the future in the footprints of our ancestors.’
Kari-Oca Declaration, Brazil, 30 May 1992

‘Without the land and the knowledge that comes mainly from use of the land, we as Indigenous peoples cannot survive.’ (Baer 2002: 17) This statement from Lars Anders Baer, a well renowned Indigenous activist,¹ highlights how land is central to Indigenous peoples’ cultures. For Indigenous peoples, territories and lands are the basis not only of economic livelihood but also are the source of spiritual, cultural and social identity. While Indigenous communities certainly represent the world’s most diverse population,² most Indigenous cultures worldwide share a similar deep-rooted relationship between cultural identity and land. As highlighted by the United Nations Permanent Forum on Indigenous Issues:

Land is the foundation of the lives and cultures of Indigenous peoples all over the world. (...) Without access to and respect for their rights over their lands, territories and natural resources, the survival of Indigenous peoples’ particular distinct culture is threatened. (UNPFII 2007: 2)

Land rights assume special importance for Indigenous peoples, as without access to their land Indigenous cultures are in danger of extinguishment. As highlighted by Suagee: ‘because tribal cultures are rooted in the natural world, protecting the land and its biological communities tends to be a prerequisite for cultural survival.’ (Suagee 1999: 50) Hence, there is a strong relationship between cultural rights, cultural heritage and land rights for Indigenous peoples. However, throughout the world Indigenous peoples are facing land dispossession (IWGIA Indigenous Affairs 2004). Present day economic imperatives arising from globalisation are putting new strains on Indigenous peoples’ rights over their traditional territories (Stewart-Harawira 2005). Driven by the needs of an increasingly globalized economy, activities such as mining and logging are becoming synonymous with violations of

Indigenous peoples' land rights. Consequently, Indigenous peoples have approached international legal institutions to protect their rights over their traditional territories.³ This has resulted in the emergence of a significant body of international human rights law regarding Indigenous peoples' land rights (Gilbert 2006). An important aspect of this emerging body of law is based on the recognition of the cultural value of land rights for Indigenous peoples.

The present chapter examines to what extent human rights law has developed a specific legal approach to the interaction between cultural rights and land rights for Indigenous peoples. The notions of 'cultural diversity' and 'cultural heritage' have been key factors in the development of such a body of laws. The first part of the chapter will examine how the issue of definition itself (i.e. who are Indigenous peoples) has played an important role in acknowledging Indigenous peoples' specific cultural attachment to land (Part 1). The second part of the chapter will explore how, under the banner of 'cultural diversity', human rights law has developed a legal connection between cultural rights for minorities and land rights in the case of Indigenous peoples (Part 2). The third part of the chapter will analyse how the human rights legal discourse on 'cultural heritage' relates to the rights of Indigenous peoples to maintain their cultural territorial connections (Part 3). Finally, in its concluding remark the chapter will examine to what extent these two approaches (cultural diversity and cultural heritage) participate to the emergence of a right to cultural integrity.

Indigenous Peoples and Land Rights: The Holistic Approach

'Ladies and Gentlemen, our land is our identity and history... It is our heritage ... our life. Our survival as Indigenous peoples depends on our gaining of land rights over what is justly and rightfully ours.' (Magdagasang 1999: 71) This statement from Likid Magdagasang, Chief of the Mandaya Indigenous group in the Davao Provinces of Mindanao in the Philippines highlights Indigenous peoples' 'holistic' approach to land rights. Indigenous peoples' relationship to their ancestral territories could be referred to as 'holistic' as it includes social, cultural, spiritual and environmental connections. In this holistic approach to land rights, land is seen as a living tradition over which the collectivity holds a communal responsibility and exercises custodianship. From this

perspective, the idea of inter-generational transfer by reference to specific lands is extremely important for Indigenous cultures. This idea of the trans-generational importance of land rights has been reflected in a recent landmark decision involving the Tsilhqot'in Indigenous community in Canada in which one of the judges of the Supreme Court of British Columbia stated: 'A tract of land is not just a hunting blind or a favourite fishing hole . . . [these sites are] but a part of the land that has provided 'cultural security and continuity' to Tsilhqot'in people for better than two centuries' (Justice Vickers, 2007, para.1376).⁴ This notion of 'cultural security and continuity' is a central aspect of Indigenous peoples' relationship with their territories. As summarised by members of the former Australian Aboriginal and Torres Strait Islander Commission (ATSIC)⁵: 'the land is the basis for the creation stories, for religion, spirituality, art and culture. It is also the basis for the relationship between people and with earlier and future generations. The loss of land, or damage to land, can cause immense hardship to Indigenous people.' (ATSIC 1997: 5)

The recently adopted UN Declaration on the Rights of Indigenous Peoples does recognise Indigenous peoples' holistic approach to land rights. Article 25 of the UN Declaration affirms that: 'Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.' Hence, based on Indigenous peoples' holistic approach to land rights, the UN Declaration recognises the cultural inter-generational approach to land rights. The holistic nature of Indigenous peoples' attachment to land is also reflected in the different legal attempts to define who Indigenous peoples are. While there are no agreed international legal definitions on who Indigenous peoples are, the different existing definitions agree on the specific territorial attachment of Indigenous peoples to their lands. The definition proposed by Cobo in his Study of Discrimination against Indigenous Populations is usually accepted as authoritative in UN circles.⁶ The definition proposed by Cobo states:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of

them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems (Cobo, 1983)

This definition clearly highlights how land is at the centre of Indigenous cultural systems. In this definition one of the central factors is the territorial connection of Indigenous peoples to their territories. There are three temporal levels to this territorial attachment:

- (a) *Past*: Indigenous peoples have a historical continuity with ‘pre-invasion’ and ‘pre-colonial societies’ that developed on their territories;
- (b) *Present*: Indigenous peoples live on these territories (or part of them);
- (c) *Future*: Indigenous peoples are determined to transmit to future generations their ancestral territories.

This holistic and trans-generational aspect of land rights for Indigenous peoples is also reflected in the International Labour Organisation (ILO) approach to Indigenous peoples’ rights. The ILO Convention No. 169 affirms that in applying the convention ‘governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.’ (ILO Convention 169, Article 13) Likewise, the World Bank, which has adopted special procedures for projects impacting on Indigenous peoples, also ‘recognizes that the identities and cultures of Indigenous Peoples are inextricably linked to the lands on which they live and the natural resources on which they depend.’ (World Bank OP 4.10, 2005) The World Bank policy draws attention to the fact that Indigenous peoples’ rights over their traditional territories are linked to their identities and cultures. More recently, the African Commission on Human and Peoples’ Rights (ACHPR) has also insisted on the need to acknowledge Indigenous peoples’ specific attachment to a territory as an essential marker of identification. One of three criteria used by the ACHPR is ‘a special attachment to and use of their traditional land, whereby their ancestral land and territory have a fundamental importance for their collective physical and cultural survival as peoples.’ (ACHPR,

Advisory Opinion, 2007) It is interesting to note that in this definition the ACHPR insists on the importance of recognising such fundamental attachment to a territory for the survival of Indigenous peoples' cultures.

Overall, while there are no formal internationally accepted legal definitions on who Indigenous peoples are, there is a broad agreement from different international institutions that one of the main parameters in the identification of Indigenous peoples is the acknowledgment of a specific cultural attachment to a territory. This recognition of Indigenous peoples' specific attachment to land recognises that, for Indigenous peoples, land is not seen as a simple commodity but a space of socio-economic, spiritual and cultural anchorage. As Malezer, an Aboriginal leader from Australia affirmed: 'Our claim to a global identity is based upon our ancient cultures and viable relationships with our territories, in contrast to the modern political identities of nation states and consumer cultures.' (Malezer 2005: 67) As this statement highlights, because of Indigenous peoples' specific cultural attachment to their lands, rights over land represents much more than the usual commercial value attached to title to land. While traditionally, rights to property and rights regarding land laws are concerned with deeds, titles, and other form of individual titles, for Indigenous peoples their claims to land rights are much more deeply engrained with cultural values. From this perspective, Indigenous peoples' claim to land rights challenges the traditional individualistic approach to property rights. Property laws are concerned with individualistic title to ownership, a claim which is foreign to Indigenous peoples' communal cultural claim to their land. Accordingly, the protection of Indigenous peoples' land rights fits more into the category of cultural rights rather than the right to property, and human rights law has provided Indigenous peoples with legal avenues for the recognition of their specific cultural attachment to their traditional territories.

Cultural Diversity and Land Rights: The Minority Rights Approach

Generally speaking, the word 'culture' carries many meanings, including: a style of social and artistic expression; the totality of social transmitted behaviour patterns, arts, beliefs, characteristic of a community or population; and the customary beliefs, social forms, and material trait of a racial, religious, or social group. The flexibility

and richness of the notion of culture usually makes lawyers uncomfortable when it comes to discussing rights relating to cultural rights. Nonetheless, the universal system of human rights offers some protection for cultural rights. Under the heading of cultural rights, the Universal Declaration on Human Rights (UDHR) focuses on education and the right to participate in 'cultural life'. The International Covenant on Economic, Social and Cultural Rights (ICESCR) expressly refers to 'cultural rights' and its article 15 recognises 'the right of everyone ... to take part in cultural life.' In this context 'cultural rights' refer to the arts and sciences. Whereas the accent in the UDHR and ICESCR is put on a right to culture in the sense of arts and sciences, the emphasis in the International Covenant on Civil and Political Rights (ICCPR) is on the rights of minorities to enjoy their own culture. Hence, in terms of international law it is generally admitted that there is a dual nature to cultural rights. Cultural rights are considered in the sense of arts and sciences but also in the sense of respect for cultural differences through the rights of minorities to enjoy their own traditional culture. This right of individual members of minority groups to enjoy their own culture comes from Article 27 of the ICCPR, which reads:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

This article has been interpreted as involving rights of minorities including the recognition of some of their cultural practices as well as the symbolic recognition and material support for the expression and preservation of their cultural distinctiveness. Based on States' obligation to respect the cultural practices of persons belonging to minority groups, the Human Rights Committee (HRC) has developed a specific protection for Indigenous peoples' land rights. This protection is based on the idea that for Indigenous communities a particular way of life is associated with the use of their lands. In an important statement, the HRC stated:

With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of Indigenous peoples. That right may include such

traditional activities as fishing or hunting and the right to live in reserves protected by law. (Human Rights Committee, 1994)

From this perspective, the HRC has clearly established a link between cultural protection and land rights for Indigenous peoples. The approach is that where land is of central significance to the sustenance of a culture, the right to enjoy one's culture requires the protection of land. In this context the right to territory is understood as requiring sufficient habitat and space to reproduce culturally as a people.

This affirmation by the HRC of the cultural importance of land rights for Indigenous peoples has been a crucial starting point in terms of access to human rights law for Indigenous peoples. In several cases involving individual complaints from members of Indigenous communities the HRC has established a link between culture and traditional forms of livelihood. Based on this link the HRC has developed a strong jurisprudence regarding Indigenous peoples' land rights. For example, in a case against Canada, the HRC has highlighted that by allowing leases for oil and gas exploration and timber development within the ancestral territory of the Lubicon lake Band Indigenous community without consulting them, the government had threatened the way of life and culture of the Indigenous community. (Human Rights Committee, 1990) In other cases involving Sami communities from Sweden and Finland the HRC has re-affirmed this connection between land rights and Indigenous peoples' cultural rights protected under Article 27 of the ICCPR. In these cases the HRC has pointed out that because reindeer husbandry is an essential element of the Sami culture, States have an obligation to protect access for Sami herders to their traditional territories to allow the practice of reindeer husbandry. (Human Rights Committee, 1988, 1992 and 2005) Hence, while Article 27 of the ICCPR does not *per se* provide protection for Indigenous peoples' rights to land, the HRC has developed a jurisprudence which protects activities that form an essential part of an Indigenous culture, and activities relating to the use of the land have often been recognised as constituting such essential cultural elements.

One of the difficulties for the HRC was to establish what constituted an activity forming an essential element of Indigenous peoples' culture. For example in the case of reindeer herding for the Sami populations, one of the arguments developed by the

government of Sweden was that reindeer herding was more an economic, rather than a purely cultural, activity. On this point the HRC concluded that: ‘the regulation of an economic activity is normally a matter for the State alone. However, where that activity is an essential element in the culture of an ethnic community, its application to an individual may fall under article 27 of the Covenant.’(Human Rights Committee, 1988) This was later confirmed in other cases in which the HRC re-affirmed that economic activities may come within the ambit of article 27, if they are an essential element of the culture of an ethnic community. However, in another case involving members of the Rehoboth Baster Community who are descendants of Indigenous Khoi and Afrikaans settlers, the HRC made a distinction between economic activities that are culturally embedded and purely economic activities which are not protected under Article 27. The members of the Rehoboth Baster Community were claiming their right to land based on their traditions of cattle herding. In this case the HRC stated that ‘although the link of the Rehoboth community to the lands in question dates back some 125 years, it is not the result of a relationship that would have given rise to a distinctive culture.’(Human Rights Committee, 2000) Hence, while an activity which has an economical component (such as reindeer herding, fishing or hunting) can be regarded as a cultural activity protected under article 27, there are some limitations and the HRC will examine in detail to what extent such activity forms part of a cultural way of life.

Regarding the HRC jurisprudence on cultural activities, another difficulty for the HRC was to appreciate to what extent modern technology could form part of such traditional activities. For example, can the use of a helicopter to practice traditional reindeer herding, or the use of modern technology fishing nets, be regarded as activities constituting an essential element of Indigenous peoples’ culture? These questions could be extremely important, for if they do not constitute a culturally traditional activity, the protection of Article 27 would not be granted. On this issue, in a case concerning Sami communities in Finland, the HRC highlighted: ‘that the authors may have adapted their methods of reindeer herding over the years and practice it with the help of modern technology does not prevent them from invoking article 27 of the Covenant.’(Human Rights Committee, 1992) Likewise in a case concerning fisheries in New Zealand, the HRC re-affirmed ‘that article 27 does not only protect traditional means of livelihood of minorities, but allows also for

adaptation of those means to the modern way of life and ensuing technology.’(Human Rights Committee, 2000) Hence, the HRC has clearly stated that the notion of culture in article 27 is not static. It views Article 27 as being invoked in support of the Indigenous way of life, with historical links to traditional life which may have nevertheless changed over the centuries. The view is that this provision can be invoked to support Indigenous traditional cultural way of life while having evolved over the centuries. Human rights law is not advocating keeping Indigenous cultures ‘frozen in time’, but allows Indigenous peoples to develop in their own way and offers protection for their right to enjoy their own traditional culture. As described by the Australian Aboriginal and Torres Strait Islanders Social Justice Commissioner: ‘[T]he right to enjoy a culture is not ‘frozen’ at some point in time when culture was supposedly ‘pure’ or ‘traditional’. The enjoyment of culture should not be falsely restricted as a result of anachronistic notions of the ‘authenticity’ of the culture.’(Aboriginal and Torres Strait Islander Social Justice Commissioner, 2000)

Overall, under the minority regime, human rights law promotes and protects the rights of specific groups based on their right to maintain and practice their own different cultural practices and traditions. In the case of Indigenous peoples this right to maintain cultural differences has been connected with the protection of cultural traditions linked with a territory. The rationale for such protection is based on the idea that since Indigenous peoples’ land rights are essential to the maintenance of their specific way of life, human rights law ought to provide particular protection for Indigenous peoples. In many ways such rationale is based on a human rights law approach to cultural diversity. It is the recognition that cultural distinctiveness, in this case a specific cultural attachment to a territory, is a contribution to the overall cultural heritage of mankind.

Cultural Heritage and Indigenous Peoples

In general terms, the notion of cultural heritage is often associated with physical artifacts such as museums, libraries and other institutional aspects of culture.(Convention Concerning the Protection of the World Cultural and Natural Heritage , 1972, Article 1) However, more recently the concept has been broadened to refer also to intangible and ethnographic heritage. In the case of Indigenous peoples the notion

has to be appreciated in this wider sense. While the notion of heritage encompasses traditional practices in a broad sense, including for example language, art, music, dance, song, sacred sites and ancestral human remains, for Indigenous peoples the preservation of heritage is deeply embedded and linked to the protection of traditional territories. As highlighted earlier, because Indigenous peoples' cultures are deeply rooted in the natural world, the notion of cultural heritage for Indigenous peoples is connected to the notion of territoriality. This has been highlighted by the Inter-American Court of Human Rights in the *Awes Tingni* case, in which the court stated:

For Indigenous communities, the relationship with the land is not merely one of possession and production, but also a material and spiritual element that they should fully enjoy, as well as means through which to preserve their cultural heritage and pass it on to future generations. (Inter-American Court of Human Rights, 2001: 149)

This legal approach based on the recognition that cultural heritage is associated with protection of land rights has also been highlighted in a study undertaken by the former UN Sub-Commission on Prevention of Discrimination and Protection of Minorities on the protection of the heritage of Indigenous peoples. The Sub-Commission Special Rapporteur on the protection of the heritage of Indigenous people, Mrs. Erica-Irene Daes, highlighted that:

the protection of cultural and intellectual property is connected fundamentally with the realization of the territorial rights and self-determination of Indigenous peoples. Traditional knowledge of values, autonomy or self-government, social organization, managing ecosystems, maintaining harmony among peoples and respecting the land is embedded in the arts, songs, poetry and literature which must be learned and renewed by each succeeding generation of Indigenous children.' (Daes, 1993: 4)

Moreover, as noted by the UN Special Rapporteur, while:

Industrialized societies tend to distinguish between art and science, or between creative inspiration and logical analysis, Indigenous peoples regard all products of the human mind and heart as interrelated, and as flowing from the same source: the relationships between the people and their land, their kinship with the other living creatures that share the land, and with the spirit world.' (Daes 1993: 21)

Based on such recognition, the study highlights how the traditional division of heritage between 'cultural', 'artistic', or 'intellectual' is inappropriate in the case of

Indigenous peoples as it implies a categorisation of elements such as songs, stories, sciences or sacred sites, and this would imply giving different levels of protection to different elements of heritage. Recognising the holistic cultural approach to land rights, the study raises issues regarding the inadequacy of the watertight legal regime of protection for cultural heritage. It states: 'it is clear that existing forms of legal protection of cultural and intellectual property, such as copyright and patent, are not only inadequate for the protection of Indigenous peoples' heritage but inherently unsuitable. [...] Subjecting Indigenous peoples to such a legal scheme would have the same effect on their identities, as the individualization of land ownership, in many countries, has had on their territories - that is, fragmentation into pieces, and the sale of the pieces, until nothing remains.'(Daes 1993: 32) As the UN study insists: 'All elements of heritage should be managed and protected as a single, interrelated and integrated whole.'(Daes 1993: 31)

Crucially, the UN cultural heritage study proposes the adoption of international principles and guidelines for the protection of the heritage of Indigenous peoples. One of the principles proposed states:

The discovery, use and teaching of Indigenous peoples' knowledge, arts and cultures is inextricably connected with the traditional lands and territories of each people. Control over traditional territories and resources is essential to the continued transmission of Indigenous peoples' heritage to future generations, and its full protection.(Daes, 2000)

In the definition of what constitutes the cultural heritage of Indigenous peoples, the guidelines and principles point out that: 'The heritage of Indigenous peoples is comprised of all objects, sites and knowledge the nature or use of which has been transmitted from generation to generation, and which is regarded as pertaining to a particular people or its territory.'(Daes, 2000) While the principles and guidelines are not integrated into any internationally binding instruments, they serve as an indication of the potential evolution of international law in this area. Moreover, as highlighted in 2006 by the former UN Working Group on Indigenous Populations, it is possible 'that the guidelines might at a later stage be transformed into an international legally binding instrument, for example, a convention on the protection of Indigenous peoples' heritage.'(Yokota 2005: 5) While the notion of cultural heritage does not appear as such in the international bill of human rights, the principles and guidelines

developed by the UN clearly establish a link between human rights law and cultural heritage for Indigenous peoples.

More generally, regarding the connection between human rights law and cultural heritage, it is worth noting that while at the international level international institutions such as the UNESCO World Heritage Centre or the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) are specifically working on issues relating to cultural heritage, international human rights institutions are coming to the debate only in a derivative way based on the notion of cultural rights. However, the contribution of human rights to the notion of cultural heritage is significant as it insists on the need to take into consideration the view of minorities. As illustrated by the recognition of the specificity of Indigenous peoples' cultural heritage, human rights law advocates an understanding of cultural heritage based on a way of life. This is an important step towards the recognition of Indigenous peoples' cultural heritage, as in the words of Xanthaki: 'problems arise from the discrepancy between the Indigenous understanding of culture as a way of life and the non-Indigenous perception of culture as capital.' (Xanthaki, 2007: 8) From this perspective, the contribution of human rights law to the broadening of the notion of cultural heritage is crucial to preserving mankind's cultural diversity. One of the central points in such a development is the recognition of Indigenous peoples as principal actors in the development of policies relating to cultural heritage. In the past Indigenous peoples have usually been the victims of cultural heritage protection acts which did not take their own perspective into consideration. As affirmed by the draft UN principles: 'Indigenous peoples should be the source, the guardians and the interpreters of their heritage, whether created in the past, or developed by them in the future.' (Daes, 2000: 3) This principle highlights not only the importance of recognising the connection between cultural heritage and land rights, but also the need to recognise that Indigenous peoples themselves are the custodians of their lands.

Conclusion

While Indigenous land tenure systems vary significantly across the world, human rights law has begun to recognize that landholding systems constitute a central aspect of Indigenous peoples' cultures, and thus represent crucial criteria of Indigenous

identity. Building on such recognition, human rights law has developed a specific body of law which recognises the need to provide protection for Indigenous peoples' rights to land. As highlighted, the notions of cultural diversity and cultural heritage have been pivotal to this development. Based on the notion of cultural diversity (protection of minorities) and cultural heritage, human rights law has recognised that Indigenous peoples' relationship with their lands underpins their cultural identity and ensures their survival. From this perspective, human rights law contributes to highlighting the inter-connection between the notions of cultural diversity and cultural heritage. Human rights law has drawn attention not only to the need to have a more diverse approach to cultural heritage, but also how a more diverse cultural heritage policy contributes to a more culturally diverse society. Human rights law's contribution shows that in order to protect cultural diversity it is necessary to reform the way cultural heritage has been approached in the past by integrating a more universal and culturally diverse approach to the meaning of heritage. This broadening of the notion of cultural heritage is not only essential for Indigenous peoples, but also for mankind. As summarised by Daes: 'The effective protection of the heritage of the Indigenous peoples of the world benefits all humanity. Cultural diversity is essential to the adaptability and creativity of the human species as a whole.' (Daes, 2000) Overall, the development of a human rights-based approach to cultural heritage for Indigenous peoples is contributing to the emergence and the development of a 'right to cultural integrity' which includes rights to subsistence, livelihood, cultural diversity and heritage.

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² Estimates for the worldwide Indigenous population range from 300 million to 400 million, this would equate to just under 6% of the total world population. This includes at least 5000 distinct peoples in over 72 countries. See: Office of the High Commissioner for Human Rights, 'Indigenous Peoples and the United Nations System': Office of the High Commissioner for Human Rights, United Nations Office at Geneva, 2001; *Indigenous Peoples; A Global Quest for Justice*: Zed Books, 1987; *The Indigenous World 2008* (IWGIA, 2008)

³ The UN declared the decade 1994-2004 as the first World Decade on the Rights of Indigenous Peoples and 2005-2015 as the second decade, see: General Assembly

Reso. A/RES/48/163 (1994) and Reso. A/RES/59/174 (2005). J. Anaya *Indigenous Peoples in International Law*: OUP 2004.

⁴ Supreme Court of British Columbia, *Tsilhqot'in Nation v. British Columbia*, 2007 BCSC 1700, para. 1376

⁵ On 16 March 2005 the Australian Parliament passed the ATSIC Amendment Bill repealing provisions of the ATSIC Act, and in particular abolishing ATSIC.

⁶ The Sub-Commission called it 'a reference work of definitive usefulness' and invited the Working Group to rely on it, *see*: Sub-Commission Res. 1985/22, § 4 (a).