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The Ongoing Indigenous Political Enterprise: What's Law Got to Do with It?

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Indigenous peoples are entitled to the full affirmation and recognition of the right to self-determination in the context of the UN Declaration on the Rights of Indigenous Peoples and in international law generally. UN member states must uphold their legally binding international obligations in regard to self-determination and its diverse elements. Furthermore, states must recognize and respect a range of other rights that are of a customary international law nature. These matters are highly significant in the context of Arctic Indigenous peoples, who presently face extraordinary pressures from political and economic forces far from their homelands and territories.

My initial engagement in the political enterprise of safeguarding the rights and interests of Indigenous peoples began with the Inupiat of the circumpolar region. I began my political involvement when I was just 14 years old. In middle school, I read the Alaska Native Claims Settlement

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http://www.alps.syr.edu/journal/2016/11/JLPS-2016-11-Dorough.pdf.

Act of 1971[1] and knew that there was something terribly wrong with this so-called "settlement." At age 16, I became involved in the political campaign of the late Eben Hopson, who sought a seat in the US Congress by running against Don Young, on the single issue platform of the need for a comprehensive Arctic Policy. Eben Hopson had extraordinary foresight. He not only advocated for the Inuit of Alaska to have a rightful seat at the table, but he also united the Inuit across our distinct Arctic homelands. As an Inuit, my reference point for this ongoing Indigenous political enterprise, is a quote from the late Eben Hopson, who recognized the artificial and imposed boundaries of the Russian Federation, the United States, Canada, and Denmark. He succeeded in uniting us as a people through the Inuit Circumpolar Council [ICC].[2] On June 13, 1977, at the founding meeting of the ICC, in his opening address he stated: "Our language contains the memory of four thousand years of human survival through the conservation and good managing of our Arctic wealth. . . . Our

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[1] Public Law 92-203, December 18, 1971, 85 Stat. 688

[2] The author was a direct participant in this work. In addition, see generally http://www.inuitcircumpolar.com/icc-international.html. The Inuit of the Arctic circumpolar region organised themselves internationally through the Inuit Circumpolar Conference (ICC) founded in 1977 in Barrow, Alaska. The goals of the ICC are: To strengthen unity among Inuit of the Circumpolar region; To promote Inuit rights and interests on the international level; To ensure and further develop Inuit culture and society for both the present and future generations; To seek full and active participation in the political, economic, and social development in our homelands; To develop and encourage long-term policies which safeguard the Arctic environment; and To work for international recognition of the human rights of all Indigenous Peoples. The organisation has an internationally elected President and an Executive Council with two elected Inuit from each of the four regions. The ICC gained United Nations Non-Governmental Organization (NGO) status in 1983 and has been active in the UN's work as a leading and well-respected indigenous NGO. See generally D. Sambo, "Inuit Assert Control Over Arctic," Arctic Policy Review, July/August 1977, Arctic Coastal Zone Management Newsletter, August 1983; and Aqqaluk Lynge, *Inuit* (Attuakkiorfik, 1992).

language contains the intricate knowledge of the ice *that we have seen no others demonstrate*."[3] His opening remarks addressed the pressures being experienced by Inuit, especially from off-shore oil and gas development. However, through even these few words, Hopson was speaking volumes about the inter-related and inter-connected nature of our human rights, from intellectual property to territorial rights to cultural rights to safeguarding our Arctic environment.

This panel has been asked to respond to the following questions: How has the UN influenced indigenous politics? What connections, if any, exist between cultural heritage and economics? What mechanisms and strategies are proving more successful in claiming rights over contested resources, both tangible and intangible? In response, I would like to highlight the existing and emerging international human rights law specifically attached to Indigenous peoples and in particular, the international legal obligations of UN member states that are in the "neighborhood" of general principles of international law and customary international law.

At the outset, it is clear that there is an ongoing need for distinct or peculiar attention to be paid to the conditions facing Indigenous peoples. Indeed, the entire Indigenous-specific political and legal initiatives at the UN underscore this often urgent and ongoing need. In fact, the entire process to establish international human rights standards concerning Indigenous peoples in the form of the UN Declaration on the Rights of Indigenous Peoples [UN Declaration][4] was

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[3] Opening Statement of Eben Hopson, 13 June 1977, Barrow, AK at the founding meeting of the then Inuit Circumpolar Conference. See background and history of Eben Hopson, first Mayor of the North Slope Borough, memorialized by Jon Buchholdt, an early advisor to Hopson, at http://www.ebenhopson.com/SecondOpeningPage.htm, last accessed on November 1, 2015.

[4] United Nations Declaration on the Rights of Indigenous Peoples, adopted by General Assembly Resolution 61/295 on 13 September 2007.

undertaken to ultimately safeguard their distinct cultures and cultural heritage. And, we know from history as well as present day calamities that there are particular and devastating repercussions when the cultures and cultural heritage of Indigenous peoples are not safeguarded – the overall matter essentially pivots on the "survival and flourishing of the cultures of Indigenous peoples" as distinct members of humankind. As affirmed in the *Universal Declaration of Human Rights* and the two international human rights Covenants: "[R]ecognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

The UN Declaration is the most comprehensive international human rights instrument addressing the rights of Indigenous peoples. This consensus universal instrument provides an essential human rights framework for the protection and fulfillment of the rights of Indigenous peoples. The rights affirmed in the UN Declaration constitute the minimum standards for the survival, dignity, security and well-being of the Indigenous peoples of the world.[5] The Declaration is the result of decades of extraordinary diplomacy, advocacy and political organizing by diverse Indigenous representatives from the different regions of the world, galvanized against all odds to achieve these minimum human rights standards.[6]

In addition, one must also recognize the work devoted to the revision of International Labor Organization Convention 107 [of 1957]. Like Hobbes' characterization of the natural state of humankind, the two-year revision process of 1988 and 1989 was "nasty, brutish, and

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[5] Article 43, UN Declaration states "The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world."

[6] *Supra*.

short." Yet, by virtue of the advocacy of Indigenous peoples representatives and the influence of the emerging draft standards under discussion within the UN Working Group on Indigenous Populations, the revised outcome, ILO Convention 169, was an improvement over the "assimilationist" and outdated 1957 ILO C107.[7] I want to come back to ILO C169 and its importance after making several points about the UN Declaration in response to the panel questions set.

Normative Standards – How Has the UN Influenced Indigenous Politics?

I actually think that the reverse is true: Indigenous peoples have influenced UN politics!

Indigenous peoples effectively employed their right to self-determination internationally, to persuade member states to ensure explicit recognition of the primordial right to self-determination, which is regarded as a pre-requisite to the exercise and enjoyment of all other human rights. This effort was ultimately "a quest for equality."[8] Article 3 of the UN Declaration mirrors identical Article 1(1) of the *International Covenant of Civil and Political Rights* and *International Covenant of Economic, Social and Cultural Rights*.

> All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

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[7] S. Venne, "The New Language of Assimilation", Without Prejudice, EAFORD International Review of Racial Discrimination, Special Issue: Indigenous Peoples and the Law, Volume II, Number 2, 1989, pp 53-67.

[8] D.S. Dorough, doctoral thesis entitled The Status and Rights of Indigenous Peoples in International Law: The Quest for Equality at https://open.library.ubc.ca/cIRcle/collections/ubctheses/831/items/1.0077501, last accessed on August 12, 2016.

UN Declaration, Article 3 affirms:

> *Indigenous peoples* have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

There was extraordinary resistance by member states to inclusion of the explicit recognition of the right to self-determination in the UN Declaration text.[9] And, member states were intellectually dishonest in their arguments to articulate their opposition to the final text. The case of *Edwards v Canada*,[10] commonly referred to as the "Persons Case,"[11] illustrates this point very well. The case concerns the eligibility of any person to run for public office and the denial of the status of women as "persons" in order to deny them eligibility for appointment to the Senate. In this same way, states attempted to deny the status of indigenous peoples as "peoples" in order to deny them the right to self-determination. Other states made arguments on the basis of the false dichotomy of "external" and "internal" self-determination or essentially that only nation-states could exercise the right of self-determination and that Indigenous peoples may

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[9] Consistent opposition to the right to self-determination and its attachment to Indigenous peoples was expressed by the United States, Canada, Australia, New Zealand, Colombia, United Kingdom, Brazil and others, throughout the UN Working Group on Indigenous Populations, then later in the UN Commission on Human Rights. Some of the regressive member state views arose on September 13, 2007 on the floor of the General Assembly following the vote on the adoption of the UN Declaration on the Rights of Indigenous Peoples and namely from the United States, Australia, Canada and New Zealand.

[10] *Edwards v. Canada (A.G.),* [1930] A.C. 124 (P.C.).

[11] C. L'Heureux-Dubé, "The Legacy of the 'Persons Case': Cultivating the Living Tree's Equality Leaves," 63 Sask. L.R. 389 (2000) at 390: "As you know the Persons Case established that women were 'persons' for the purposes of the Canadian Constitution and its provision on appointments to the Senate. It is important to underline, however, that Lord Sankey's reasons made virtually no mention of what was really at issue: discrimination against women."

have the right to "internal" self-determination but nothing more. Furthermore, some states held the view that the right of self-determination attached solely to the "whole people" of a state and therefore, favored limitation to "internal self-determination." States went so far as to suggest that some form of an Explanatory Note was necessary in order to maintain their narrow view of the right to self-determination, which would have been wholly inconsistent with the very rules that they themselves established through the evolution of the UN Charter, declarations, covenants, and legally binding resolutions of the United Nations system.

However, fortunately, Indigenous peoples, relying upon international law and in particular, the peremptory norms of international law, succeeded in their efforts. Indigenous representatives laid out compelling arguments concerning the fact that states were engaging in a process that would undermine the status of Indigenous peoples as "peoples."[12] Their arguments, in particular, affirmed their status as peoples[13] and the fact that this pre-existing status cannot be diminished or denied by U.N. bodies or Member States and that such action would violate the principles of democracy, equality and non-discrimination. The latter is highly significant because of the peremptory norm of international law absolutely prohibiting racial discrimination. So, in this way, Indigenous peoples, I believe, ultimately changed the politics of the UN. The entire exercise, to some small extent, has brought member states closer to upholding the principles of democracy, equality and non-discrimination as well as the equal

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[12] Statement by D.S. Dorough, 1999 Session of the Commission Working Group, addressing peremptory norms of international law.

[13] See generally C. Tomuschat, "Self-Determination in a Post-Colonial World" in C. Tomuschat, ed., *Modern Law of Self-Determination* at 16. Tomuschat states that "almost all proponents of rights of indigenous peoples insist on the fact that these populations are peoples, hence enjoying self-determination according to the wording of Article 1 of the two International Covenants on human rights."

application of the rule of law. However, it is clear that we still have a long way to go to fully secure, exercise and enjoy these rights.

In hindsight, the more crucial debate over the content of the UN Declaration centered on lands, territories and resources. Though Indigenous peoples were insistent on the right to self-determination, member state interests were strategically focused on undermining Indigenous peoples rights to lands, territories and resources. And, unfortunately, after more than 522 years of contact in the Americas, it is still about the gold. The question set by our hosts concerning what connections, if any, exist between "cultural heritage and economics" may be best answered by briefly referencing the UN Declaration standards explicitly affirming Indigenous peoples rights to lands, territories and resources.

As reflected in Articles 25-30, the Declaration affirms the right of indigenous people to own, develop, control, and use the lands and territories which they have traditionally owned, occupied and otherwise used, including the right to restitution of lands confiscated, occupied or otherwise taken without their free, prior and informed consent, with the option of providing just and fair compensation wherever such return is not possible. However, I must underscore the interrelated, indivisible, and interdependent nature of human rights and the content of Article 31, which illustrates the diverse manifestations of Indigenous culture. And, more significantly, as Hopson was stating in 1977, are directly related to the profound relationship that Indigenous peoples have to their lands, territories and resources:

> Article 31
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> 1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural

> expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
>
> 2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

In addition, Articles 11 and 12 address cultural rights, including traditions and customs as well as other manifestations of their cultures. As Hopson recognized, culture and cultural heritage are directly linked to lands, territories and resources as they form the basis of Indigenous traditional economies. In this way, if and when the integrity of Indigenous lands, territories and resources is adversely impacted so, too, are their distinct cultures and cultural heritage.

We know that Indigenous peoples are being overrun by the forces of the market economy, from the Panan in Malaysia to the 4 different Indigenous communities being impacted by the Belo Monte dam in Brazil to the Australian Aboriginal sacrifices to mining interests to the Inuit in Greenland and China's thirst for rare earth elements as well as uranium. Yet, in my view, one of the most important set of tools available to Indigenous peoples are the international human rights standards, knowledge about them, and the pressure that can be generated on the basis of knowing that binding international legal obligations of states exist.

So, in order to be responsive to my own title: What's law got to do with it? It is crucial to underscore both the customary international law nature as well as principles of general international law embraced by the UN Declaration and more significantly, the positive and continuing international legal obligations of UN member states. Norms and standards that member states cannot and should not shirk.

A number of scholars, including those associated with the International Law Association Committee on Rights of Indigenous Peoples as well as former UN Special Rapporteur James Anaya,[14] have carefully reviewed the question of the status of the UN Declaration.[15] Though they have concluded that the whole of the UN Declaration cannot be considered binding, they assert that some of its fundamental provisions correspond to "established principles of general international law"[16] and as such create legally binding international obligations that states are bound to uphold.

In the learned view of the Committee, the rights that fall within the "discourse on customary international law" include self-determination; culture and identity; land rights; and reparation, redress and remedies.[17] More significant for our discussions today is the fact that the ILA Committee has affirmed that the cluster of provisions

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[14] S. James Anaya and S. Wiessner, "The UN Declaration on the Rights of Indigenous Peoples: Towards Re-empowerment", FORUM, Op-eds on legal news by law professors and JURIST special guests, October 3, 2007 at http://www.jurist.org/forum/2007/10/un-declaration-on-rights-of-indigenous.php, last accessed on August 12, 2016.

[15] UN Document A/HRC/9/9, 11 August 2008, S. James Anaya, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, pp 34-43.

[16] International Law Association, The Hague Conference (2010), Interim Report of the Committee on Rights of Indigenous Peoples, p. 43. Available at http://www.ila-hq.org/en/committees/index.cfm/cid/1024, last accessed on August 12, 2016.

[17] Supra.

embraced by the UN Declaration related to cultural rights and identity are in the neighborhood of customary international law. And, the distinct cultures of Indigenous peoples are really at the heart of the global Indigenous peoples movement.

In the view of the International Law Association Committee on Rights of Indigenous Peoples, "a specific rule of customary international law has developed recognizing the right of Indigenous peoples to recognition and preservation of their cultural identity, which presupposes that all the prerogatives that are essential to preserve their cultural identity must be preserved; their rights to protect and use their own cultural heritage according to their needs and traditions is included among these prerogatives."[18]

Again, consistent with the interrelated, indivisible and interdependent nature of human rights, this cluster of Indigenous human rights to cultural heritage must be read in context with all other rights enunciated in a wide range of international human rights instruments, including the UN Declaration. For example, this cluster of rights must be interpreted and affirmed in relation to the right to self-determination; the rights to free, prior and informed consent; and the rights to lands, territories, and resources, all of which are affirmed by the UN Declaration. In fact, the jurisprudence of various human rights treaty bodies has made such linkages and they have drawn similar conclusions, all of which are aimed at safeguarding Indigenous peoples and ultimately, their societies as distinct cultures.

Again, these "established principles of general international law"[19] create legally binding international obligations that states are bound to uphold. And, I would submit, that this includes all of the

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[18] ILA Committee on Rights of Indigenous Peoples report, *supra* note 16.
[19] ILA Committee on Rights of Indigenous Peoples report, *supra* note 16, at p 43.

drafting and dialogue related to the various texts being discussed within all other intergovernmental processes, ranging from the WIPO and the CBD to the IMO, Arctic Council to UNESCO and their World Heritage Convention, just to name a few. In my view, these solemn obligations are cross cutting issues, they transcend all of the political machinations of states and should serve as the solid, immovable core needed to genuinely safeguard the future of Indigenous peoples, nations, and communities.

Though states and the corresponding interests of pharmaceuticals, multi-national corporations, extractive industries, and others have been primarily focused upon their interests, the political, moral, and legal imperative for all should be acutely focused upon upholding international obligations related to the human rights of Indigenous peoples, including their rights to culture and cultural heritage.

Indeed, a current focus of the international community is to ensure that transnational corporations and other business enterprises respect "internationally recognized human rights."[20] The pressure by civil society, placed upon governments, is focused upon compliance with human rights standards and human rights treaties. The recent Human Rights Council decision to establish an open-ended inter-governmental working group on a legally binding instrument on transnational corporations and other business enterprises[21] with

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[20] See, e.g., "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework," endorsed by Human Rights Council, *Human rights and transnational corporations and other business enterprises*, UN Doc. A/HRC/RES/17/4/ (16 June 2011) (without a vote), Principle 12: "The responsibility of business enterprises to respect human rights refers to internationally recognized human rights."

[21] See UN Document A/HRC/RES/26/9, Human Rights Council 26th Session, wherein they decided to "establish an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect

respect to human rights is a recent example of this trend. Therefore, any continuing or emerging dialogue, negotiations and policy development aimed at the implementation of the UN Declaration norms must uphold the entrenched standards and the fact that Indigenous peoples hold distinct human rights as collective entities.

As such, the task before the world community and in particular, at the domestic or national level is to arrive at language that does in fact uphold the rights of Indigenous peoples and maintains the solemn obligations of states in relation to the distinct status and human rights of Indigenous peoples. In the context of the customary international law nature of Indigenous peoples rights to culture and identity AND all of its various prerogatives and manifestations, there is a duty of states to refrain from, to abstain from, creating a rule or standard contrary to OR incompatible with such obligations.

I want to briefly return to the ILO C169 because it is crucial to point out that with the adoption of the UN Declaration, a number of outstanding, troublesome matters stemming from the ILO revision process have been more fully clarified, consistent with international law and the aspirations of Indigenous peoples. Recall the matter of the right of self-determination, at the time of drafting of both the UN Declaration and the revision of ILO C169, was indigestible to member states, which led the ILO Office to extend a view that essentially safeguarded all points of view.[22] Fortunately and more significant,

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to human rights, whose mandate shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises."

[22] See International Labour Organization, *Report of the Committee on Convention No. 107*, International Labour Conference, Provisional Record, 76th Session, Geneva, 1989, No. 25, para. 42:

> The Chairman considered that the text was distancing itself to a certain extent from a subject which was *outside the competence of the ILO*. In his

since 1989, the UN Declaration has affirmed that we are "peoples" despite the early efforts of some States to deny this fact and those who went even further in their attempts to deny the equal application of the right of self-determination to Indigenous peoples. I should note that like the UN standard setting process, within the ILO revision process, a number of States attempted to create a distinction between Indigenous peoples and all other peoples through racially discriminatory and intellectually dishonest means.[23]

> opinion, *no position for or against self-determination* was or could be expressed in the Convention, *nor could any restrictions be expressed in the context of international law*. [emphasis added]

[23] The following examples demonstrate how Canada and the U.S. misleadingly sought to deny Indigenous peoples the right to self-determination at the ILO – and therefore also undermine access to justice as "peoples." See International Labour Office, Partial Revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), Report IV (2A), ILO, 76th Sess., (1989) p. 9, (position of government of Canada):

> [S]elf-determination under international law can imply the *absolute* right to determine political, economic and social [and] cultural programmes and structures without *any involvement whatsoever* from States. Consequently, any use of the term "peoples" would be unacceptable without a qualifying clause which would indicate clearly that the right of self-determination is not implied or conferred by its use. [emphasis in original]

And at p. 11 (position of the government of the United States):

> Adoption of the term "peoples" could be used to argue for an interpretation of international law to include an *absolute* right of indigenous groups not only to self-determination in the political sense of separation from the State but also to absolute independence in determining economic, social and cultural programmes and structures, which would also be unacceptable to many States.
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> ILO Convention 169, article 1(3), which provides: "The use of the term *peoples* in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law." Though this provision alone does not affirm that Indigenous peoples are "peoples" in international law, the use of the term in the context of a Convention correctly acknowledges the status and rights of Indigenous peoples as "peoples."

Again, fortunately, the UN Declaration explicitly affirms that Indigenous peoples are free and equal to all other peoples[24] and ILO C169 expressly uses the term Indigenous "peoples." And, more significant, the ILO C169 must now be read together with the UN Declaration, as confirmed by the ILO itself (as well as others).[25] Through these specific provisions (and all other provisions of the Declaration), the group or collective human rights of Indigenous Peoples are affirmed and as such, the legal personality of Indigenous peoples is affirmed. Indigenous peoples are rights' holders as groups and also holders of responsibilities (or duties) as such. Furthermore, it is important to underscore that the ILO C169 is the only legally binding international treaty specifically concerning Indigenous peoples.

With regard to the question of "what mechanisms and strategies are proving more successful in claiming rights over contested resources"[26] it is imperative to highlight the use of the international human rights norms, largely crafted by Indigenous peoples at the UN, the ILO, and hopefully elsewhere. The use of these norms is increasing at both the international and national or domestic level. The

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[24] UN Declaration, Article 2 Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

[25] See UN-Indigenous Peoples' Partnership (UNIPP), "For democratic governance, human rights and equality," Multi-Donor Trust Fund, Terms of Reference ILO, OHCHR, UNDP, Framework Document, (Geneva: UNIPP, 2010) p. 4:

> With the adoption of the UN Declaration, the international normative framework regulating the protection of the rights of indigenous peoples has been firmly strengthened. The ILO Convention No. 169 on the rights of indigenous and tribal peoples, adopted by the ILO in 1989, is fully compatible with the UN Declaration on the Rights of Indigenous Peoples and *the two instruments are mutually reinforcing*. The two instruments provide the solid framework for promoting indigenous peoples' rights and addressing the existing implementation gaps at all levels. [emphasis added]

[26] Note that this was a Question set by the conference organizers.

human rights treaty body members have and continue to lend their expert opinions to the jurisprudence by specifically invoking the UN Declaration standards, backed up by state behavior, all of which helps to crystalize our understanding of customary international law.

The sources of Indigenous legal personality, possessing rights and duties (or responsibilities) and increasingly, Indigenous capacity to bring claims concerning such rights have been recognized by the UN human rights regime and other regional inter-governmental human rights regimes. In addition, nation-States have recognized the legal personality of Indigenous Peoples as peoples through their constitutions, national legislation, agreements, Treaties, policy, and other instruments.

Recognizing the important linkage between "peoples" and the right to self-determination within international human rights law, increasingly scholars and State government representatives have moved away from a purely State-centered conception of the term "peoples." In this regard, Indigenous Peoples have affirmed and repeatedly asserted that they are the "self" or the subjects, as peoples, who are free to determine their political status and pursue their economic, social and cultural development. The UN Declaration language, together with the ILO Convention 169 Article 7[27] affirming the right of Indigenous peoples to determine their own priorities for

[27] Article 7(1) of the ILO C169 provides that "The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly."

development, makes clear that the right to self-determination attaches to Indigenous peoples, consistent with equality and international law. Though much remains to be done, especially throughout Asia and Africa, even African states are beginning to recognize that there is an important distinction to be made as to who is and who is not an Indigenous people.

With the adoption of the Declaration, as the normative framework for the protection and promotion of our fundamental human rights, the international community and not least of which, treaty bodies, have taken note of these crucial human rights norms.[28] The treaty bodies have begun to interpret their respective instruments against the backdrop of the Declaration, taking into consideration the distinct cultural context of Indigenous Peoples when faced with issues and communications that directly impact them. Despite the painful revision process of the ILO, these are all extraordinary and positive developments, complemented by the number of mechanisms and UN activity concerning Indigenous Peoples now, which is in marked contrast to 1988 and 1989. The existence of the UN Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples, the Special Rapporteur and the October 23, 2014 appointment by the Secretary General of Mr. Wu Hongbo as the senior UN representative to advance Indigenous issues are all indicative of gradual but important change.

Despite all of the gains, state practice of rights ritualism persists. The numerous bracketed words and phrases in the draft Outcome

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[28] See generally F. MacKay, Indigenous Peoples and United Nations Human Rights Bodies A Compilation of UN Treaty Body Jurisprudence, Reports of the Special Procedures of the Human Rights Council, and the Advice of the Expert Mechanism on the Rights of Indigenous Peoples, Forest Peoples Programme, at http://www.forestpeoples.org/sites/fpp/files/publication/2015/06/cos-2013-14.pdf, last accessed on August 12, 2016.

Document leading up to the high level plenary meeting at the so-called World Conference on Indigenous Peoples,[29] revealed that member states are attempting to maintain their "conventional" view of the world and were not properly cognizant of their obligations nor equipped to address the specific features of Indigenous peoples human rights and their unique cultural context. Therefore, the direct, meaningful, full and effective participation of Indigenous peoples, as rights holders and beneficiaries, must be guaranteed and accommodated at every inter-governmental forum.

On this note, I was pleased by the reaction and response of member states to the various Permanent Forum recommendations, which called for increasing and enhancing the direct participation of Indigenous peoples in the ongoing dialogue, especially those recommendations adopted at our tenth and eleventh session. However, I was displeased about how narrow, limited and carefully controlled Indigenous political participation was managed by not only the UN system but also by Indigenous representatives themselves. Hopefully such elitism and exclusivity doesn't persist or become institutionalized by those keen to serve their own interests rather than to have a real impact in this crucial global political arena.

The Permanent Forum itself hosted an Expert Group Meeting to discuss a voluntary "optional protocol" to the UN Declaration in January 2015.[30] This dialogue revealed diverse and conflicting views on

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[29] See generally organizing and preparatory documents listed at http://www.un.org/en/ga/69/meetings/indigenous/#&panel1-1, as well as the final Outcome Document adopted by the General Assembly, September 25, 2014 at and http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/69/2.

[30] UN Document E/C.19/2015/8, 17 February 2015, Expert group meeting on the theme "Dialogue on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples."

the matter from both Indigenous and member state camps. However, the final Outcome Document of the high level plenary meeting[31] should remain to be seen as an important first step by UN member states as a road map to increased implementation at the national and domestic level.

In the same way that the United Nations, through its member states, and with the full, meaningful and direct participation of Indigenous peoples, managed to arrive at the UN Declaration, I would suggest that all other inter-governmental processes establish regimes that comprehensively respond to the unique status, conditions and rights of Indigenous peoples. For example, rather than attempting to fit Indigenous peoples into the copyright, patent, trademark, trade, and industrial design rules, policies, and laws, the WIPO, in collaboration with Indigenous peoples and informed by the minimum standards of the UN Declaration on the Rights of Indigenous peoples, develop an innovative regime that properly safeguards their cultural heritage, cultural rights and identity. The same approach should apply to all other inter-governmental policy and standard setting.[32]

For the Inuit of the circumpolar Arctic these standards are critical, especially in face of what some refer to as the "rush for resources." Turning to Arctic specific regimes, this past July, US Secretary of State John Kerry said "The Arctic region is the last *global frontier* and a region with enormous and growing geostrategic, economic, climate, environment and national security implications for

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[31] *Supra* note 28.

[32] D.S. Dorough, presentation to WIPO, Document Code: WIPO/GRTKF/IC/28/INDIGENOUS PANEL/MS. DALEE SAMBO DOROUGH, July 7, 2014 at http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=280756, last accessed on August 12, 2016.

the United States and the world. . . . [W]e will make sure that the United States is in the strongest possible position to meet these challenges and seize these opportunities."[33]

Surely each of the other four littoral Arctic states and many others outside of the Arctic region [such as the well-endowed merchant marine nation of Singapore, China, India and others], view our homelands in the same fashion. Consistent with our right to full, meaningful and direct participation in matters that impact us AND because of the perspectives of such powerful nation state forces, we will face an increased need for prepared, substantive responses to their actions.

We are fortunate to have the capacity and modest resources to have a favorable impact upon the work of the Arctic Council and to engage in diplomatic dialogues with the Arctic Five nations. The latter stems from our well respected role within the Arctic Council as Permanent Participants. However, in my view and consistent with the UN trend to recognize Indigenous governments, I believe that our role should be expanded beyond simply permanent participant status, especially as we take on more responsibility in the context of finalized land claims agreements, self-government, autonomy and possible independence. And, here again, I believe that the international human rights norms will advance us to the next stage of engagement.

In relation to territorial and resource issues, the UN Convention on the Law of the Sea, through its Commission on Limits of the Continental Shelf, all five Arctic coastal states have transmitted extended continental shelf claims OR reserved areas for claim and are

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[33] Secretary Kerry Announces Department Will Establish a Special Representative for the Arctic Region Press Statement John Kerry, Secretary of State, Washington, DC, February 14, 2014 at http://www.state.gov/secretary/remarks/2014/02/221678.htm, last accessed on August 12, 2016.

in the process of collecting the necessary data to support their claims. The government of Canada recently submitted its claims. The US is collecting data in a preparatory stage despite not being a signatory to the UNCLOS. Consideration of claims or reservation of claims by Iceland, Denmark [in relation to the Faroe Islands], Norway, and the Russian Federation [2001 claim and asked to provide additional data February 2014] have been ongoing. Needless to say, there is much interest in non-renewable and renewable resource extraction as well as transiting the Arctic Ocean.

All of these nation state driven issues have the attention of the ICC and our people, on both the national and international fronts. The risks are high and potentially devastating to Inuit life ways. In other ways, balancing development and the integrity of and dependence upon our unique environment as well as equitable development are debates that we are working to encounter, in an informed and intellectually honest fashion. In regard to nation state interests, we remain vigilant about our rights to our lands, territories and resources as well as our right to culture. And, in addition to other tools at our disposal, we have relied upon international law and international human rights standards and norms to safeguard our status, rights and interests.

In conclusion, I know that much of what I have said, in all likelihood, conflicts with national and other economic interests and it is often times difficult to set aside the economic interests of national governments and especially, third parties. However, the combined elements of the international legal obligations of member states to promote and protect human rights and respect for and recognition of the right of Indigenous peoples to meaningful participation in all matters that affect their rights and lives are critical to achieving just, fair, and equitable outcomes.

However, the real test OR the real measure will be in the actual implementation of the standards adopted by the UN and other intergovernmental fora. Will the final language of the UN Declaration truly safeguard Indigenous peoples cultural rights and all their manifestations from misappropriation? Will Indigenous peoples rights to exercise self-determination, secure their land rights, and to maintain their cultural heritage be upheld? Will Indigenous peoples, be able to fully control, protect and develop their communities and potentially their lands and resources consistent with their own conception of the right to development? Due to the urgency of threats to the cultural integrity of Indigenous peoples in many parts of the world, will states, take effective measures to recognize and protect the exercise of these rights?

I hope that I've shown that cultural heritage is related to economics – not only the traditional economies of Indigenous peoples, but also the economic forces that may lead to imbalances, inequities and insecurity. In my view, one of the strategies to respond to such dynamics is to employ the international human rights norms that have emerged in favor of Indigenous peoples in the Arctic and elsewhere. Both Indigenous peoples and states must have the courage to invoke a human rights framework and to engage in a political enterprise on the basis of their respective obligations as well as the equal application of the rule of law.

In order to safeguard, protect and promote the rights of Indigenous peoples, international law must have substantive relevance at the national, regional and local levels. Indigenous peoples must also have confidence in the standards that they have crafted within the UN system. They must also have the confidence to invoke the international legal obligations that member states are bound to uphold. In this way, the influence and pressure that Indigenous peoples

brought to bear on UN politics can be revitalized to achieve comprehensive and meaningful implementation of the UN Declaration and all of its provisions. Maybe then, the Inuit and all other Indigenous peoples across the globe, will be able to secure an equal, just and fair place within the family of humankind. That's what law has to do with it. Quyanaq.