

The State of International Indigenous Human Rights



Dalee Sambo Dorough, PhD
INUIT CIRCUMPOLAR COUNCIL 2018

NATURE OF HUMAN RIGHTS

- universal
- interrelated, indivisible and interdependent
- inalienable, cannot be destroyed or extinguished
- inherent

The fundamental objective of each of the Indigenous human rights standard setting exercises has been the need to respond to the unique cultural context of Indigenous peoples and thereby ensure their survival as distinct peoples and distinct members of the family of nations.

CHRONOLOGY OF MAJOR EVENTS

- ◇ 1923 Deskaheh and Ratana visit League of Nations
- ◇ 1973 Arctic peoples conference
- ◇ 1977 Inuit Circumpolar Conference and fall of 1977 Geneva conference
- ◇ Eben Hopson, Welcoming Address, June 13, 1977

“...in Denmark, Canada and the United States, it is generally agreed that we enjoy certain aboriginal legal rights as indigenous people of the Arctic. It is important that our governments agree about the status of these rights if they are to be uniformly respected.”

- ◇ September 13, 2007 UN General Assembly adopts Declaration on the Rights of Indigenous Peoples – 30 years later

ILO C169 - 1989

Convention on Indigenous & Tribal Peoples

- Ratified by 22 states, including Denmark
- Indigenous specific human rights norms are legally binding obligations under international law
- Must now be read together with the *UN Declaration*

“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 [*Indigenous and Tribal Peoples Convention, 1989*], is fully compatible with the *UN Declaration on the Rights of Indigenous Peoples* and the two instruments are mutually reinforcing.”

Extraordinary recourse mechanism



UN Declaration on the Rights of Indigenous Peoples

- affirming the right to self-determination
- affirming rights to lands, *territories* and resources
- affirming the right to free, prior and informed consent
- affirming the right to participation in decision-making
 - protection from destruction of our culture
 - right to security, including food security, cultural security

American Declaration on the Rights of Indigenous Peoples



- ◆ Work began in 1989 and the Declaration was finalized on June 16, 2016
- ◆ Must be read in context of other international human rights standards, including the *UN Declaration* and *ILO C169*

Article XLI

The rights recognized in this Declaration and the United Nations Declaration on the Rights of Indigenous Peoples constitute the minimum standards for the survival, dignity, and well-being of the indigenous peoples of the Americas.

International Covenant on Civil and Political Rights International Covenant on Economic, Social and Cultural Rights

Article 1

1. 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.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. ...

Article 3

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.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, *to be secure in the enjoyment of their own means of subsistence and development*, and to engage freely in all their *traditional and other economic activities*.

Article 25

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.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and *the productive capacity* of their lands or *territories and resources*. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Numerous other standards have been developed or are emerging

UN Guiding Principles on Business & Human Rights

World Intellectual Property Organization

World Bank Operational Directives

Convention on Biological Diversity

2030 Sustainable Development Goals

International Fund for Agricultural Development

Food and Agricultural Organization of the UN

International Maritime Organization

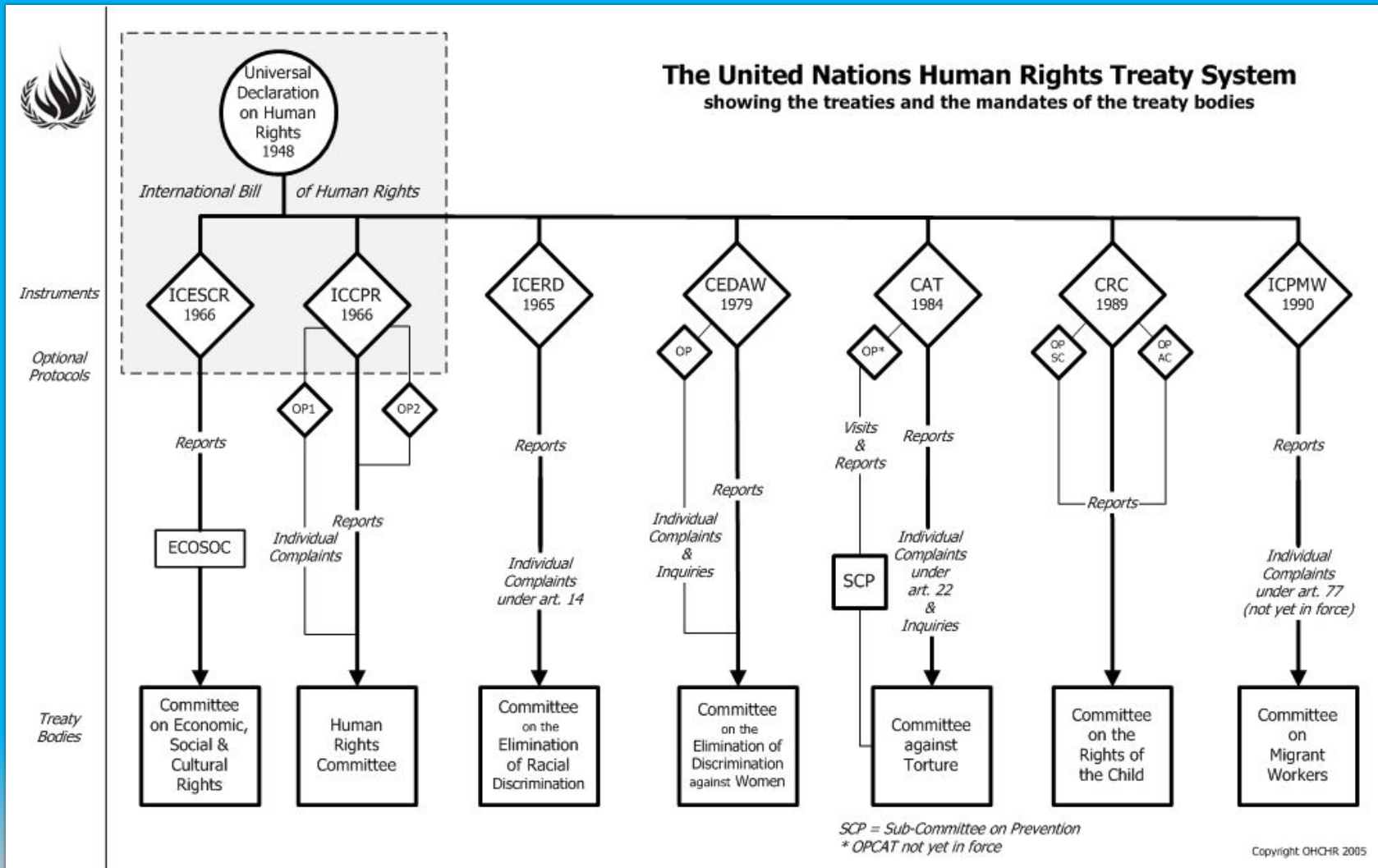
International Whaling Commission

General Assembly Resolutions

UNESCO International Year of Indigenous Languages



In addition, jurisprudence at the local, national and international level is also contributing to greater understanding of the content of Indigenous human rights



Treaty Body Jurisprudence

United Nations treaty body jurisprudence pertaining to indigenous peoples, including

- ◆ Treaty body observations, recommendations and General Comments
- ◆ Advice of the Expert Mechanism on the Rights of Indigenous Peoples and the UN Permanent Forum on Indigenous Issues
- ◆ Observations and recommendations of ‘Special Procedures’ of the Human Rights Council, such as Special Rapporteurs and Independent Experts
- ◆ Domestic court decisions

Positive Examples

- ◆ International Whaling Commission
- ◆ Handbooks by the Inter-Parliamentary Union, UNICEF
- ◆ UN Global Compact Business Reference Guide to the UN Declaration on the Rights of Indigenous Peoples
- ◆ UN Guiding Principles on Business and Human Rights
- ◆ Paris Agreement
- ◆ 2030 Sustainable Development Goals

In 2012, in *The future we want*, the Rio+20 UN Commission on Sustainable Development recognized “the importance of the United Nations Declaration ... in the context of *global, regional, national and subnational implementation of sustainable development strategies.*”

September 2015, the UN General Assembly adopted by consensus *Transforming Our World: The 2030 Agenda for Sustainable Development*. States resolved:

...between now and 2030, to *end poverty and hunger everywhere*; to combat inequalities ...; to *protect human rights and promote gender equality and the empowerment of women and girls*; and to *ensure the lasting protection of the planet and its natural resources*.

CONCLUSION

The UN Declaration is not legally binding in the same manner as treaties, but it has diverse legal effects. It reflects rights already found in human rights treaties, and some of its provisions reflect customary international law.

Since US endorsement in 2010, the UN Declaration is a consensus international human rights instrument. It has been reaffirmed eight times by consensus decisions of the General Assembly. The Declaration is regarded as an authoritative source of guidance for diverse institutions, including parliaments, governments, courts, national human rights institutions, and human rights treaty bodies.

UN Permanent Forum on Indigenous Issues

Study on how States exploit weak procedural rules in international organizations to devalue the UN Declaration and other international human rights law

Expert Members:
Dalee Sambo Dorough
Chief Edward John

-IMPLEMENTATION at national level

-PARTICIPATION inclusive of all four Inuit regions Alaska, Canada, Greenland and Chukotka

-UNITED and not fragmented; responsive to Hopson's call for uniform respect

-STRATEGIC PLAN to maximize our resources



QUYAANAQ