

RIGHTS OF INDIGENOUS PEOPLES INTEREST GROUP NEWSLETTER

Interest Group Highlights

- On April 3, George Foster of Lewis & Clark Law School was elected Co-Chair of the Rights of Indigenous Peoples Interest Group (RIPIG), as the term of Stefan Kirchner of the University of Lapland came to an end. Thanks are due to Stefan for his diligent stewardship of the Group for the past three years.
- On April 11, RIPIG held its inaugural works-in-progress conference at George Washington University Law School in Washington, D.C. It featured presentations on current projects by Dwight Newman and Ibironke Odumosu-Ayanu of the University of Saskatchewan, as well as by George Foster. Several RIPIG members attended and offered valuable feedback to the presenters.
- On April 21, the Interest Group held its first-ever webinar, on the topic of *Realizing International Indigenous Rights in Domestic Law*. It featured presentations by Walter Echo-Hawk, a prominent Native American attorney, jurist and author; Brett Kenney, the General Counsel for the Coquille Indian Tribe of Oregon; and Nicholas Fromherz of Lewis & Clark Law School. Numerous ASIL members watched the event live, and several posed questions to the panelists via e-mail. The event can be viewed on ASIL's You Tube page at https://www.youtube.com/watch?v=B_UOaLt9U_E. A second webinar is in the planning stages for fall 2015 (date to be confirmed), tentatively featuring Valentina Heggstad and Bas Rombouts discussing their new books on indigenous rights. Details will be circulated on the RIPIG email list over the summer.
- The Interest Group needs a new Newsletter Editor now that George Foster has taken over as Co-Chair. In addition, we are considering establishing new leadership positions for the Group, including one responsible for managing and enhancing the RIPIG webpage, and another to help with planning and coordinating RIPIG events. Please contact one of the Co-Chairs if you are interested in any of these positions or if you have other ideas about how you could contribute (foster@lclark.edu; dwright.newman@usask.ca).

The Newsletter

The Newsletter is a place to share information concerning recent developments, scholarship, and other matters of interest to the Group relating to the rights of indigenous peoples. Your contributions are essential to the quality and success of this publication. Many thanks to Jolande Goldberg, Dwight Newman, Margaret Young, and Thomas Antkowiak for proposing items to highlight in this issue, and to Stefan Kirchner for drafting several book reviews (featured on pp.4-6). Unless otherwise indicated, all updates and summaries are by George Foster.

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Rights of Indigenous Peoples Interest Group

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Views contained in this publication are those of the authors in their personal capacity. The American Society of International Law and this Interest Group do not generally take positions on substantive issues, including those addressed in this periodical.



Indigenous Rights Developments

- Dispute Over Proposed Coal Mine on Lands Subject to Aboriginal Title Claim: In October 2014, a body of the Wangan and Jagalingou people of Queensland rejected an Indigenous Land Use Agreement (ILUA) proposed by Adani, a mining company from India that seeks to develop a coal mine on land subject to the people's native title claim. The rejection was reportedly based on concerns about the mine's potential impacts on the people's ancestral lands, totemic animals and plants, and cultural heritage. Adani then filed a claim before the National Native Title Tribunal (NNTT), in which it questioned the body's authority to represent the Wangan and Jagalingou, and asked the Tribunal to override the objections to the project. In April 2015, the NNTT ruled in Adani's favor, concluding that there was no evidence that the project would affect the way of life, culture or traditions of the Wangan and Jagalingou or any sites of cultural heritage significance. Meanwhile, separate lawsuits aiming to block the mine on environmental grounds are pending, and Adani continues negotiate with members of the Wangan and Jagalingou over a possible ILUA. <http://www.theguardian.com/australia-news/2015/mar/26/aboriginal-group-fights-to-stop-16bn-carmichael-coalmine>; <http://www.smh.com.au/federal-politics/political-news/native-title-battle-shaping-up-over-adani-coal-mine-20150326-1m8esn.html>; http://www.adaniaustralia.com.au/media_detail.php?mid=26; <http://envlaw.com.au/carmichael-coal-mine-case/>.
- ILA Committee Launches Study on Implementation of Indigenous Rights: In February 2015, the International Law Association (ILA) Committee on the Implementation of the Rights of Indigenous Peoples began its work cycle with a meeting in The Hague. That Committee will work over the coming years on studying cases concerning domestic implementation of international indigenous rights and will work toward the ILA adopting a resolution on the matter at a full ILA meeting in a few years' time. <http://www.ila-hq.org/en/committees/index.cfm/cid/1048>
- Canadian First Nation Alleges Breaches of Its Treaty Rights Based on the Cumulative Effect of Industrial Activities on Its Traditional Lands: On March 3, 2015, the Blueberry River First Nations (BRFN) filed a lawsuit against the Province of British Columbia, contending that the Province has breached its treaty obligations toward the BRFN through the cumulative impacts of provincially-authorized industrial development in its traditional territory. The BRFN contends that, in many parts of that territory, its members are no longer able to engage in activities protected by the relevant treaty, including hunting, trapping, fishing, and gathering plants and other resources. This is one of several lawsuits filed by indigenous groups in Canada following 2014's landmark *Tsilhqot'in* decision by the Supreme Court of Canada, which enhanced indigenous groups' prospects for exerting influence over development activities on their traditional lands. If the BRFN receives the injunction sought, it could preclude a planned hydroelectric dam and limit further extractive activities in northeastern British Columbia. <http://www.theprovince.com/technology/First+Nation+lawsuit+could+impact+plans+Site/10861219/story.html>; <http://www.theglobeandmail.com/news/british-columbia/sweeping-aboriginal-lawsuit-threatens-to-strangle-resource-development-in-northeastern-bc/article23282084/>
- Peruvian Forestry Law Takes Effect, Addressing Land Titling and Consultation with Indigenous Peoples: On March 16, 2015, the Peruvian Minister of Agriculture and Irrigation held a ceremony attended by representatives of 52 indigenous organizations in order to mark the enactment of a new forestry law. Although the law was adopted in 2011, it could not take effect until its implementing regulations were adopted—a process that has now been completed. Among other things, the law provides funding to facilitate the granting of land titles to indigenous peoples, and outlines mandatory consultation procedures to be used by the state before approving any new legislation or activities that may impact the lives, territories or resources of indigenous communities. <http://www.perusupport-group.org.uk/news-article-823.html>; <http://theredddesk.org/countries/laws/forestry-and-wildlife-law-29763-peru>.
- U.S. Federal Court Finds Systemic Failure to Provide Due Process to Native American Parents in Proceedings to Remove Children From Their Homes: On March 30, 2015, a federal judge granted summary judgment in favor of the plaintiffs in a class action lawsuit brought by members of the Oglala and

Indigenous Rights Developments

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Rosebud Sioux Tribes challenging procedures employed by the State of South Dakota when considering petitions to remove Native American children from their homes and place them in foster care. The judge ruled that these procedures violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution, as well as mandates of the Indian Child Welfare Act (ICWA), federal legislation adopted in the 1970s to curb abusive child welfare practices that had resulted in the separation of large numbers of Native American children from their families and tribes through adoption or foster care placement. The judge found that in many instances Native American parents in South Dakota have been denied the right to speak in their own defense, have court-appointed counsel, cross-examine witnesses, present evidence at the hearings, or review evidence presented against them. *Oglala Sioux Tribe & Rosebud Sioux Tribe v. Van Hunnik*, 2015 U.S. Dist. LEXIS 40260 (D.S.D. Mar. 30, 2015); <http://indiancountrytodaymedianetwork.com/2015/04/01/great-triumph-our-indian-children-tribes-win-landmark-child-welfare-case-159841>

- **New Indigenous Law Portal Established:** The U.S. Library of Congress recently opened to the public an online Indigenous Law Portal, which brings together materials from the Library's own collection—including current and historical constitutions, codes and bylaws of Native American tribes—as well as links to tribal websites and other external sources that may benefit indigenous rights researchers. Among the external sources accessible from the Portal are a multitude of domestic and international NGO websites, university research guides, and case law databases. <http://www.loc.gov/law/help/indigenous-law-guide/americas/north-america/united-states/>.

Selected Publications & Reports

Articles

- Thomas Antiowak, A Dark Side of Virtue: The Inter-American Court and Reparations for Indigenous Peoples, 25 *Duke J. Comp. & Int'l L.* 1 (2014)
- Stuart R. Butzier & Sarah M. Stevenson, Indigenous Peoples' Rights to Sacred Sites and Traditional Cultural Properties and the Role of Consultation and Free, Prior and Informed Consent, 32 *J. Energy & Nat. Resources L.* 297 (2015)
- Evan J. Criddle, Standing for Human Rights Abroad, 100 *Cornell L. Rev.* 269 (2015)
- Nicholas Dorf, Making an Offer They Can't Refuse: Corporate Investment in Africa and the Divestment of Indigenous Land Rights, 38 *B.C. Int'l & Comp. L. Rev.* 65 (2015)
- Jamie Kay Ford & Erick Giles, Climate Change Adaptation in Indian Country: Tribal Regulation of Reservation Lands and Natural Resources, 41 *Wm. Mitchell L. Rev.* 519 (2015)
- Felipe Gómez Isa, Cultural Diversity, Legal Pluralism, and Human Rights from an Indigenous Perspective: The Approach by the Colombian Constitutional Court and the Inter-American Court of Human Rights, 36 *Hum. Rts. Q.* 722 (2014)
- Hans Haugen, How Are Indigenous and Local Communities' Rights Over Their Traditional Knowledge and Genetic Resources Protected in Current Free Trade Negotiations?, 17 *J. World Intell. Prop.* 81 (2014)
- Philomena Kebec, REDD+: Climate Justice or a New Face of Manifest Destiny? Lessons Drawn from the Indigenous Struggle to Resist Colonization of Ojibwe Forests in the Nineteenth and Twentieth Centuries, 41 *Wm. Mitchell L. Rev.* 552 (2015)
- Timo Koivurova & Anna Petréttei, Enacting a New Mining Act in Finland: How Were Sami Rights and Interests Taken into Account?, *Nordic J. Envtl. L.* 119 (2014)
- Ibironke T. Odumosu-Ayanu, Governments, Investors and Local Communities: Analysis of a Multi-Actor Investment Contract Framework, 15 *Melbourne J. Int'l Law* 1 (2014)

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- Chidi Oguamanam, Indigenous Peoples' Rights at the Intersection of Human Rights and Intellectual Property Rights, *Marquette Intell. Prop. L. Rev.* (2014)
- Anne Twomey, A Revised Proposal for Indigenous Constitutional Recognition, 36 *Sydney L. Rev.* 381 (2014)
- Margaret A. Young, Trade Measures to Address Environmental Concerns in Faraway Places: Jurisdictional Issues, 23 *Rev. Eur. Community & Int'l Env'tl. L.* 302 (2014)

Books

- Cathal M. Doyle, *Indigenous Peoples, Title to Territory, Rights and Resources: The Transformative Role of Free Prior and Informed Consent* (Routledge, 2015)
- Emma Gilberthorpe, *Natural Resource Extraction and Indigenous Livelihoods: Development Challenges in an Era of Globalization* (Ashgate, 2014)
- Climate Change and Indigenous Peoples in the United States: Impacts, Experiences and Actions (Julie Koppel Maldonado et al, eds., Springer, 2014)
- Valentina Restrepo Heggstad, *Derecho Internacional de Cambio Climático y retos para Colombia* (Universidad Externado de Colombia, 2014)
- Ulla Secher, *Aboriginal Customary Law: A Source of Common Law Title to Land* (Hart, 2014)
- Irene Watson, *Aboriginal Peoples, Colonialism and International Law* (Routledge, 2014)
- Valentina Vadi, *Cultural Heritage in International Investment Law and Arbitration* (Cambridge University Press, 2014)

Book Reviews

Neil Kent, *The Sámi Peoples of the North—A Social and Cultural History*, 1st ed., C. Hurst & Co. (Publishers) Ltd., London (2014), Hardcover, ix+331 pp., ISBN: 978-1-84904-257-4

The Sámi are an indigenous people who live in Sápmi, a territory which is governed by Norway, Sweden, Finland and Russia. Neil Kent of the University of Cambridge has written a book that is a "must read" for anyone interested in the Sámi people. His book "The Sámi Peoples of the

North - A Social and Cultural History" delivers what the title promises—and more. A work which "is intended for both an academic as well as a more general audience" (p. ix), it gives the reader a wide overview over the history of the indigenous people who live in the North of Europe. The book contains seven chapters, plus an introduction and a concluding part and extensive notes. It provides an excellent overview of the subject, together with a foundation of historical information that makes it easier to understand the continued struggles of the Sámi people for their rights.

This is already made clear in the first chapter after the introduction, when the author connects key issues and places them into proper context. This chapter, entitled "Ethnicities, the Law, Repressions and War," itself makes the book worth having. After that, Kent deals with issues such as families, education, religion, homes, art (from traditional crafts to literature, music and film), as well as traditional livelihoods. It is noteworthy that the author has understood the often overlooked importance of fishing for the Sámi people. While reindeer herding is the iconographic livelihood and of great importance to the Sámi people, fishing remains a very important livelihood and is particularly under threat from modern developments. By understanding the contemporary reality of Sámi life, in particular in the area in which North Sámi is spoken, the author has been able to bring history alive.

There are, however, three shortcomings, which might appear minor on the outset but which contrast sharply with the overall quality of this otherwise excellent book. The first is the term "peoples" in the title. Despite great differences between different parts of Sámi society across the Sámi homeland (which is hardly surprising given that Sápmi covers about 400,000 sq km), the Sámi usually consider themselves to be one people. The second is the reference to the different Sámi languages as "dialects" (p. ix). As is explained correctly later in the text, the Sámi people speak different languages some of which are not mutually intelligible (which might lead to the assumption that they form several peoples). That said, both issues are also not without controversy within Sápmi and there has been considerable debate about Sámi identity and intra-Sámi minorities among the Sámi themselves. Finally, the cover of the book is dominated by a century old picture which is often used in the Sámi context and which

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can be found on the covers of other titles, on Wikipedia, etc. On this book's back cover the picture is described as "probably taken in 1896 around the Kanstadfjord near Lødingen, Norway." Like the use of indigenous artefacts for commercial / informative purposes, the use of this picture, which, given the age, likely will be in the public domain (it is described as having been taken from Wikimedia Commons), raises concerns about how we approach indigenous peoples. It is a good example of how old research, which happened prior to the establishment of modern standards of research ethics, can become problematic today. While modern researchers cannot undo the damage done in the past, at least one might have wished for a more sensitive treatment of old research material—although it is not clear what input, if any, the author had into the design of the cover (for which copyright is claimed by someone else). The overall quality of this otherwise excellent book, though, does not suffer significantly and everybody interested in the history and contemporary life of indigenous peoples will benefit from reading it.

— Stefan Kirchner

Noel D. Broadbent, *Lapps and Labyrinths: Saami Prehistory, Colonization, and Cultural Resilience*, 1st ed., Smithsonian Institution Scholarly Press, Washington D.C. (2010, Paperback 2014), Hardcover, 304 pp., ISBN: 978-0978846060; Paperback, 269 pp., ISBN: 978-1935623649

Noel D. Broadbent is one of the leading experts on Sámi history in Sweden. His 2010 book "*Lapps and Labyrinths: Saami Prehistory, Colonization, and Cultural Resilience*" is now also available in paperback. It presents the reader with in depth information about the interaction of Sámi and settler societies in Sweden, especially in coastal areas.

The title is unfortunate as the term "Lapp" by now is not only considered outdated but also seen as insulting by many Sámi. The term Lapland is not used in the local names of different parts of Sápmi with the exception of the Finnish administrative area of Lappi, which uses the English term Lapland, but which only makes up a small part of the overall home area of the Sámi people, Sápmi. The book, however, also deals with the displacement of the Sámi people and their treatment by the majority society, and the overall title makes it sufficiently clear that the author is not lacking in respect for the indigenous culture.

The book is archeological in nature but the explanation of the archeological research provides also readers from other disciplines with background information and the book is written in a very accessible style. Importantly, the author puts the archeological work into a context which allows the reader to understand the deep history and the culture of the Sámi people and their interaction with the natural environment.

While it might not be the obvious reading choice for lawyers, if you enjoyed Jared Diamond's "*The World Until Yesterday*" and are open to learning about scientific approaches in other fields, you might want to have a look at this book, too. Of course there is a danger when we try to understand contemporary indigenous realities by placing a lot of emphasis on history. This danger is that we no longer see indigenous cultures as current, living, evolving, cultures, but as remnants of the past which are destined to disappear. Among the many images and drawings in the book, figure 202 stands out by showing the displacement of the Sámi people within Finland and from the coast of North-East Sweden, complete with movement directions and years when displacement took place. This displacement is still reflected in modern definitions of Sápmi, which do not include most of Finland, nor the coastline in Sweden. Broadbent's work provides a scientific reminder of a much greater original homeland and forced migrations which form an important part of the background to the continuing situation of the Sámi people today.

— Stefan Kirchner

Jari Uimonen, *From Unitary State to Plural, Asymmetric State—Indigenous Quest in France, New Zealand and Canada*, 1st ed., Lapland University Press, Rovaniemi, Finland (2014), Paperback, 421 pp., ISBN: 978-952-484-717-9.

Last year, Jari Uimonen defended his doctoral thesis in which he looked at the development of indigenous rights in national law in three different legal systems (in the interest of full disclosure, that author is a contributor to a forthcoming volume edited by this reviewer and his doctoral thesis has been defended at my university a few months after I started working there, although I was not involved in this process). Canada and New Zealand are already well researched when it comes to indigenous rights and the book provides great overviews over the

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legal situation there. That alone would make the book worth reading. The addition of France, which includes French Guiana as well as islands in the Pacific Ocean, is what makes this book special. In particular, against the background of France's predominant self-image as a unitary state in both a political as well as a cultural sense, the development shown by the author is remarkable.

The comparison is undertaken in several subject areas, such as law, administration, culture, community, land and environmental considerations. In each field the author provides a look at a legal situation in the three different countries—a structure that contributes to the book's value.

But this work is more than a comparative thesis: it amounts to a reference work as well. The depth of the research is impressive and the work can easily serve as the starting point for more research and to get a good overview of issues in different legal systems. It is practically encyclopedic and a great tool for researchers. Anyone who is interested in indigenous rights will be well served with this book and, after reading it, will wish for similar works covering other jurisdictions as well.

— Stefan Kirchner

Statements & Reports

- Victoria Tauli-Corpuz, U.N. Special Rapporteur on the Rights of Indigenous Peoples, has offered a number of formal statements in recent months. Among the issues she has addressed are indigenous peoples in the Post-2015 Development Agenda; the relevance of indigenous rights to conservation and biodiversity initiatives, such as the creation of national parks; and the prospect of addressing indigenous rights in any agreement that may result from the upcoming U.N. Climate Change Conference in Paris, France. All of these statements may be found at <http://unsr.vtaulicorpuz.org/site/>.



- The 14th Session of the U.N. Permanent Forum on Indigenous Issues was held in New York from April 20 to May 1, 2015. Topics covered included outcomes of the 2014 World Conference on Indigenous Peoples; youth, self-harm and suicide in indigenous communities; developments in the Pacific region; the possibility of an optional protocol to the U.N. Declaration on the Rights of Indigenous Peoples; and the economic, social and cultural rights of indigenous peoples. Draft reports and other documents from the session may be found at <http://undesadspd.org/IndigenousPeoples/UNPFIIISessions/Fourteenth.aspx>.
- Report on Inquiry by the Committee of the Elimination of Discrimination against Women (CEDAW) Concerning Canada (Mar. 6, 2015): Following an inquiry that was prompted by a number of recent unsolved disappearances and murders of aboriginal women in Canada, CEDAW concluded that Canada has committed a "grave violation" of the rights of aboriginal women by failing to protect them adequately from high levels of violence, hold offenders to account, and ensure that victims obtain redress. Canada has disagreed with the finding that there have been grave violations of rights, but has accepted several of the Committee's recommendations. <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.spx?NewsID=15656&LangID=E> ■





Upcoming Conferences & Events

- Canadian Bar Association's **2015 National Aboriginal Law Conference**, June 11-12, 2015, Membertou, Nova Scotia, Canada. This year's conference will be on the theme of *Building Indigenous Economies: Aboriginal Economic Development in Canada*, and will explore practical challenges associated with aboriginal economic development. Among the issues to be addressed are land management, natural resource development, impact and benefit agreements, energy projects, fisheries, and taxation. http://www.cbapd.org/details_en.aspx?id=na_abl15
- **2015 National Native Title Conference**, June 16-18, 2015, Port Douglas, Australia. Co-convened by the Australian Institute of Aboriginal and Torres Strait Islander Studies and Cape York Land Council, this conference will feature keynote addresses, as well as topical and technical workshops with papers presented by native title holders and claimants, practitioners, staff from Native Title Representative Bodies and Service Providers, researchers, government representatives, academics and others. <http://aiatsis.gov.au/news-and-events/events/national-native-title-conference-2015>
- **The Next Frontier in Federal Indian Law: Building on the Foundational Work of Carole E. Goldberg**, Feb. 5, 2016, UCLA School of Law, Los Angeles, California, USA. This Symposium will celebrate the career of Professor Carole E. Goldberg while exploring a wide range of cutting-edge topics relating to federal Indian law, tribal law and self-determination. Among the topics to be covered are federalism, sovereignty, gaming, taxation, protection of natural resources, and international human rights law. <https://turtletalk.wordpress.com/2015/05/01/ucla-school-of-law-symposium-the-next-frontier-in-federal-indian-law-building-on-the-foundational-work-of-carole-e-goldberg/>
- **Indigenous Peoples & Saltwater/Freshwater Governance for a Sustainable Future**, February 11-12, 2016, University of Tasmania, Hobart, Australia. Convened by the University of Tasmania (Institute for Marine and Antarctic Studies) and the Australian National University College of Law, this workshop will bring together scholars and community practitioners to discuss the environmental governance of marine and freshwater areas by and from the perspective of indigenous peoples. The organizers have issued a call for participants, and the deadline for submitting presentation proposals is July 1, 2015. Resulting papers may ultimately be published in the *Indigenous Law Bulletin*. <http://www.nintione.com.au/events/indigenous-peoples-and-saltwaterfreshwater-governance-sustainable-future>.

YOUR SUBMISSION COULD BE HERE: THIS NEWSLETTER DEPENDS ON MEMBER CONTRIBUTIONS.

Consider submitting a news item, an update, a short comment piece, information about a recent publication, etc., for a forthcoming issue. To do so, contact the Newsletter Editor, George Foster, at foster@lcark.edu.