

RIGHTS OF INDIGENOUS PEOPLES INTEREST GROUP NEWSLETTER

Interest Group Highlights

Due to the postponement of the 2020 ASIL General Meeting, there will be no in-person Interest Group Business meeting this year. We remain open to the possibility of holding a virtual meeting or webinar later in the year. Please contact Kirsty Gover or Brenda Gunn (kgover@unimelb.edu.au, brenda_gunn@umanitoba.ca) with Interest Group matters, or to propose future work or events. The co-chairs and newsletter editor extend their sympathy and good wishes to all affected by the COVID-19 pandemic, and remain especially cognisant of impacts on vulnerable and remote Indigenous communities, and on our elders. Please look after one another.

Congratulations to our newsletter editor Dr. Harry Hobbs (University of Technology Sydney, Australia) on his election as Interest Group co-chair. Harry is a legal scholar whose work focusses on the rights of Indigenous people in comparative and international law. He will take up his position as co-chair at the end of this month.

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. To contribute to an upcoming issue, please contact Harry Hobbs at Hobbs.Harry@uts.edu.au.

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Rights of Indigenous Peoples Interest Group

CO-CHAIRS

Kirsty Gover
Brenda Gunn

EDITORS

Kirsty Gover
Harry Hobbs

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

- Hereditary chiefs of Wet'suwet'en Nation have launched a legal challenge over the climate impact of fossil fuel projects on Indigenous territories (February 12, 2020). The hereditary chiefs have asked the Canadian Federal Court to declare that 'Canada has a constitutional duty to keep the country's greenhouse gas emissions within the Paris Agreement limit'. This is in conflict with the Wet'suwet'en Nation's elected officials who have supported the development of the pipeline in British Columbia, setting up a dispute over who holds authority over the First Nation's traditional lands. At the time of writing a draft agreement had been concluded between the hereditary chiefs and federal officials (March 3, 2020). More information available here: <https://www.theguardian.com/world/2020/mar/02/canada-wetsu-weten-indigenous-land-dispute-deal-agreement>
- The Australian High Court rules that Aboriginal people who are non-citizens are not 'aliens' for the purpose of the Australian Constitution and cannot be deported (February 11, 2020). Daniel Love and Brendan Thoms are Indigenous Australians who are citizens of Papua New Guinea and New Zealand respectively. They reside in Australia but are not Australian citizens. In 2018, both were convicted of offences under the Queensland Criminal Code and sentenced to 12 and 18 months imprisonment respectively. The Minister of Home Affairs cancelled their visas and initiated the process of deportation. The applicants argued that as Aboriginal persons, they could not be 'aliens', and thus fall outside the Australian parliament's constitutional power to make laws 'with respect to naturalization and aliens', so that they could not be deported.

By 4:3, the High Court accepted this proposition. Of the four majority judges, three considered that the essential meaning of an alien was someone who belonged to another place. Because of the deep metaphysical and spiritual connection to country that Aboriginal people hold, an Aboriginal person 'cannot be said to belong to another place', even if they were born outside of Australia and were not an Australian citizen (at para 74, per Bell J). One of the majority judges, Justice Gordon, explained that Indigenous peoples' connection to land and waters 'is older and deeper than the Constitution' (para 363):

European settlement did not abolish traditional laws and customs, which establish and regulate

the connection between Indigenous peoples and land and waters. Assertion of sovereignty did not sever that connection. Nor did Federation, or any event after Federation, render Aboriginal Australians aliens. As later events confirmed, at Federation many Indigenous peoples retained their connection with land and waters; they retained rights in respect of the land and waters and they remained subject to obligations under traditional laws and customs with respect to the land and waters. Failure to recognise that Aboriginal Australians retain their connection with land and waters would distort the concept of alienage by ignoring the content, nature and depth of that connection. It would fail to recognise the first peoples of this country. It would fly in the face of decisions of this Court that recognise that connection and give it legal consequences befitting its significance (at paras 297-8).

A fourth majority judge, Justice Nettle, went further than his peers, noting that in *Mabo v Queensland (No 2)* 1992, the High Court held that the common law recognised Aboriginal societies themselves, as well as the rights and interests they hold by virtue of their traditional law and customs (at para 269). Because of this recognition, Justice Nettle held, the common law 'must be taken always to have comprehended the unique obligation of protection owed by the Crown to those societies and to each member in his or her capacity' (at para 272). He continued:

Underlying the Crown's unique obligation of protection to Australian Aboriginal societies and their members as such is the undoubted historical connection between Aboriginal societies and the territory of Australia which they occupied at the time of the Crown's acquisition of sovereignty (at para 276).

Importantly:

Being a matter of history and continuing social fact, an Aboriginal society's connection to country is not dependent on the identification of any legal title in respect of particular land or waters within the territory (at para 277).

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In other words, Justice Nettle found that the Australian government owes a special duty of protection to Indigenous people, an approach that comes tantalizingly close to characterising the relationship as one involving trusts or fiduciary duties on the part of Australian governments. Further, Nettle J observes that the recognised 'connection' is not confined to Indigenous groups that hold common law property rights in the form of native title.

The four judges differed in their characterisation of the 'connection to land' that is the basis for their decision, and also differed in the extent to which they found that this connection is expressed in, or proved by, particular traditional laws and customs. All agreed that not all persons who meet Australia's legal Indigeneity test could claim a connection sufficient to take them out of the constitutional category of 'aliens'. To have the requisite connection, the person in question must be a member of an Indigenous community 'continuously united in its observation of traditional laws and customs'. In accordance with the High Court's jurisprudence on native title, the traditional laws and customs that show requisite connection must be those that have their basis in pre-sovereignty law and custom. This continuity test appears to extend to the laws and customs that determine who is or is not a member of the group in question. It is clear that this case extends common law recognition to the 'connection' of Indigenous communities to their traditional lands, but the extent to which it also extends recognition to the 'traditional laws and customs' of such groups, and the extent to which particular laws and customs will be deemed to have meet continuity tests, remains to be seen. The membership of native title groups is set out in determinations only in very broad terms, and most determinations do not characterise the authority to determine membership of the group as a 'native title right or interest'. Whether or not native title methodologies will be deployed to validate the authority of groups to determine their own membership is not clear from the reasoning of the majority.

One practical effect of the decision may be to invite contestation of Indigenous membership laws, and interrogation of the form of those laws, in Australian courts. The decision offers a case in point, while Thoms is a native title holder and so recognised by an Australian court as a person who is member of his community in accordance with traditional laws and customs, Love

is not a native title holder. Love's membership status will be determined by a lower court, which will decide whether the fact that he is recognised by at least one elder in his community suffices to establish him as a member in accordance with traditional laws and customs. The traditional authority of elders may fall to be examined by courts if and when this authority is contested by other members of the group or by a person purporting to be a member. The number of persons in the position of Love and Thoms is small, but the consequences of this decision may be large, because of the scrutiny it invites into matters of Indigenous internal governance, and because all judges sitting in the case reaffirmed the non-justiciability of state sovereignty in Australia, and so also affirmed the Court's longstanding denial of Indigenous sovereignty.

The three judges in the minority reached a different conclusion. Each held that an alien was simply someone who was not a citizen of Australia. As Chief Justice Kiefel explained, even though an Aboriginal person may 'belong' to the land and be perceived by others to 'belong' to that country:

In the constitutional context ['belonging'] refers to a characteristic which a citizen has with respect to the sovereign State of which they are a citizen and which an alien does not. A citizen may be said to belong to their country. A non-citizen or alien does not belong. An alien belongs to the sovereign State of which they are a citizen (at para 32).

The federal government has criticised the decision. Attorney-General Christian Porter declared that the High Court had created 'an entirely new category of people', while the Home Affairs Minister, Peter Dutton, announced that the government would seek legal advice to allow them to 'rectify' the decision and deport the men—as well as other Aboriginal non-citizens—in a different way.

The decision is available here: <http://eresources.hcourt.gov.au/showCase/2020/HCA/3> files can be found here: https://www.hcourt.gov.au/cases/case_b43-2018

More information available here: <https://www.abc.net.au/news/2020-02-12/high-court-love-and-thoms-aboriginal-connection-to-land/11954662>

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- Brazilian President Jair Bolsonaro unveils bill to open Indigenous lands to mining, oil and gas exploration and cattle ranching (February 10, 2020). The bill would allow projects blocked under the Constitution to go ahead. The legislation would allow impacted Indigenous communities to be consulted, but they would not have a right to veto projects, except in cases of wildcat (unauthorised) mining. It is not clear whether the bill will be brought to a vote.

More information available here:

<https://www.ecowatch.com/brazil-bolsonaro-bill-open-indigenous-land-2645088985.html?rebelltitem=2#rebelltitem2?rebelltitem=2>

- Canada's Federal Court of Appeal has unanimously dismissed a challenge to the controversial Trans Mountain pipeline expansion project (February 4, 2020). The Tsleil-Waututh Nation, Squamish Nation, Coldwater Indian Band and a coalition of small First Nations from the Fraser Valley argued that the government entered consultations with a predetermined outcome. The Court disagreed, holding that 'the evidentiary record shows a genuine effort in ascertaining and taking into account the key concerns of the applicants, considering them, engaging in two-way communication, and considering and sometimes agreeing to accommodations, all very much consistent with the concepts of reconciliation and the honour of the Crown' (at [76]). The Court reiterated that the honour of the Crown and the duty to advance reconciliation does not require a specific outcome, because Indigenous peoples do not have a veto over infrastructure projects. The decision means that construction can continue. First Nations have 60 days to appeal to the Supreme Court.

The decision is available here: <https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/460815/1/document.do>

More information is available here:

<https://vancouver.sun.com/news/local-news/federal-court-dismisses-challenge-to-trans-mountain-pipeline-expansion>

- Swedish court recognises Sami land rights (January 23, 2020). The Supreme Court of Sweden has for the first time recognised that Sámi reindeer herders possess the exclusive right to manage hunting and fishing within their territory. Under Swedish law, the right to keep and herd reindeer is a collective right that belongs to all Sámi in Sweden. To exercise the right, however, an indi-

vidual must be a member of a reindeer herding community (a sameby), which is a state administrative unit created to manage the industry. Sámi reindeer herders have a constitutionally protected usufructuary right to their traditional lands based on use and prescription from time immemorial, but legal title to those lands is held by the Crown or private parties. In this decision, the Supreme Court held that the Girjas sameby has an exclusive right to manage hunting and fishing within its territory. In reaching this decision, the Court relied on Sámi customary law, the fact that Sámi people had used the land since time immemorial, and customary international law, within which it included ILO Convention No 169 and the UN Declaration on the Rights of Indigenous Peoples.

The decision (in Swedish) can be found here: <https://www.domstol.se/hogsta-domstolen/avgoranden/2020/47294/>

More information available here: https://www.theguardian.com/world/2020/jan/23/indigenous-reindeer-herders-sami-win-hunting-rights-battle-sweden?CMP=share_btn_tw

- Chilean environmental court upholds water usage rights claim from Indigenous communities against lithium mining company (December 27, 2019). Chile's environmental regulator found that the lithium mining company had overdrawn water at its mine in the Atacama desert. In this decision, the Antofagasta Environmental Court found that the company's compliance plan was inadequate. Applying the precautionary principle, the court ruled that the 'particular fragility' of the Atacama's ecosystem and the 'high level of scientific uncertainty' surrounding the behavior of its water table meant that the mining company could not prove that its proposed measures could contain and reduce or eliminate the negative effects its breaches had caused. The complaint was brought by Indigenous people living in surrounding communities of Peine and Camar, and the Indigenous Advisory Council of Atacamenos People. In a statement, the President of the Court, Mauricio Oviedo, said: 'We must protect sensitive ecosystems even more when they constitute the ancestral habitat of our native peoples whom the State of Chile is obliged to protect'. More information available here: <https://www.mining.com/web/chilean-lithium-miner-sqm-dealt-blow-by-environmental-court-ruling/>

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- Indian parliament passes law enabling the government to grant citizenship to certain religious minorities from neighboring countries (December 11, 2019). The Citizenship (Amendment) Act 2019 provides a path to Indian citizenship for immigrants of Hindu, Sikh, Buddhist, Jain, Parsi, and Christian religious minorities, who had fled persecution from Pakistan, Bangladesh and Afghanistan before December 2014, but discriminates against Muslims. The law also has the potential to negatively affect the rights of Indigenous peoples, particularly in the north-eastern state of Assam. Ken Timung Arleng an Indigenous rights activist at Diphu Assam notes that the government 'introduced the Bill without any proper consultations with concerned representatives and without a study of the impact', and it is likely to 'curtail the continuity of languages, cultures including economic well-being of the Indigenous Peoples of Assam and the northeast'. The law is available here: <http://egazette.nic.in/WriteReadData/2019/214646.pdf>
More information available here: <https://www.cultural-survival.org/news/citizenship-amendment-bill-negatively-impacts-indigenous-peoples-northeast-india>
- The Canadian Province of British Columbia passed legislation to implement the United Nations Declaration on the Rights of Indigenous Peoples (December 6, 2019). The *Declaration on the Rights of Indigenous Peoples Act* [SBC 2019, c. 44] requires government to consult and cooperate with the Indigenous peoples in British Columbia in taking all measures necessary to ensure the laws of British Columbia are consistent with the Declaration. It also requires government to develop and implement an action plan to achieve the objectives of the Declaration and provide an annual report detailing the government's progress. The Act is available at: <http://www.bclaws.ca/civix/document/id/complete/statreg/19044>
More information available here: <http://www.cba.org/Sections/Business-Law/Articles/2019/UNDRIP>
- Aboriginal groups in Australia have initiated claims for compensation for loss of land (November 30, 2019). In the groundbreaking decision of *Northern Territory v Griffiths* [2019] HCA 7 (13 March 2019) the High Court of Australia set out a formula for assessing compensation for loss of land (see the case note written by Dr Stephen Young in the last newsletter). Following this decision, two Aboriginal groups have initiated multi-billion dollar claims in Australian courts. The Bigambul and Kooma Aboriginal peoples are each seeking A\$25 billion compensation from Queensland for economic and cultural loss, while the Noongar people of Western Australia have lodged a claim for A\$290 billion. More information is available here: <https://www.ft.com/content/826a1a46-2dc1-11ea-bc77-65e4aa615551>; and here: [https://www.abc.net.au/news/2019-11-29/\\$290-billion-wa-native-title-claim-launched/11749206](https://www.abc.net.au/news/2019-11-29/$290-billion-wa-native-title-claim-launched/11749206)
- Human rights groups in Brazil have submitted a written recommendation to ICC Chief Prosecutor Fatou Bensouda urging her to open a preliminary examination into whether actions taken by President Jair Bolsonaro's government against Indigenous people are crimes against humanity or acts of genocide (November 29, 2019). The human rights groups argue that the dismantling of environmental protections of the Amazon Rainforest, an upsurge of deforestation and increased outbreak of forest fires has had a severe and disproportionate impact on Indigenous peoples who are dependent on the maintenance of this fragile ecosystem. The letter alleges that 'under the pretext of developing the Amazon Region, the Bolsonaro Administration is turning government policy into encouragement for attacks on Brazil's indigenous peoples and their lands'. The letter is available here: <https://apublica.org/wp-content/uploads/2019/11/e-muito-triste-levar-um-brasileiro-para-o-tribunal-penal-internacional-diz-co-autora-da-peticao.pdf>
- Indigenous peoples in Colombia have led protests against government austerity and impunity for massacres since November 21 2019. The National Indigenous Organization of Colombia reports that since President Iván Duque Márquez assumed power in August 2018, 123 Indigenous people have been murdered. The protests are sporadic but ongoing today. More information available here: <https://www.france24.com/en/20191030-colombia-s-main-indigenous-group-calls-demo-over-murders>



Indigenous Rights Developments —continued from page 5

- U.S. Circuit Court of Appeals for the Fifth Circuit granted rehearing en banc in *Brackeen v Bernhardt*, a case concerning the constitutionality of the US federal Indian Child Welfare Act 1978 (ICWA) (November 7, 2019). All sixteen judges of the Fifth Circuit heard oral arguments on 22 January 2020. This decision will replace the three-judge Court of Appeals judgment issued August 19, 2019, upholding the constitutionality of the ICWA. Please see the interest group newsletter Volume 6(2) Summer 2019 for more details about this case.
More information available here: <https://www.narf.org/cases/brackeen-v-bernhardt/>
- The United States state of Maine celebrates its first Indigenous peoples day (October 12, 2019). In 2018, Main Governor Janet Mills signed into law a bill that renamed 'Columbus Day' to 'Indigenous Peoples Day'. The move was aimed at acknowledging the history of Native American tribes. Maine has joined South Dakota, Alaska, Minnesota, Louisiana, North Carolina, Iowa, New Mexico, Vermont, Wisconsin, and the District of Columbia in celebrating Indigenous Peoples Day.
More information available here: <https://www.mainepublic.org/post/maine-celebrates-its-first-indigenous-peoples-day>
- The Premier of Quebec, Canada has publicly apologised to First Nations and Inuit people for discrimination they suffered in dealing with state agencies and services (October 2, 2019). The Premier also acknowledged that the province had 'failed in its duty' to them. The apology came after the release of the Final Report of a *Public Inquiry Commission on relations between Indigenous Peoples and certain public services*, which found that 'members of First Nations and Inuit are victims of systemic discrimination in their relations with the public services', including the police (at page 203). Commissioner Jacques Viens, a retired Superior Court of Quebec judge issued 142 recommendations for change.
The report is available here: https://www.cerp.gouv.qc.ca/fileadmin/Fichiers_clients/Rapport/Final_report.pdf
- Human Rights Watch has released a report into the Indonesian government's failure to protect the rights of Indigenous peoples in West Kalimantan and Jambi provinces (September 22, 2019). Based on interviews with over 100 people, the report documents how 'a patchwork of weak laws, exacerbated by poor govern-
ment oversight, and the failure of oil palm plantation companies to fulfill their human rights responsibilities have adversely affected Indigenous peoples' rights to their forests, livelihood, food, water, and culture'.
The report is available here: <https://www.hrw.org/report/2019/09/22/when-we-lost-forest-we-lost-everything/oil-palm-plantations-and-rights-violations>
- The Inter-American Commission on Human Rights (IACHR) released a report on the situation of human rights in Honduras (August 27, 2019). The report includes specific consideration of the rights and interests of Indigenous peoples in the country.
The report (in Spanish) is available here: <https://reliefweb.int/sites/reliefweb.int/files/resources/Honduras2019%20%281%29.pdf>
More information in English is available here: <https://reliefweb.int/report/honduras/iachr-releases-new-report-situation-human-rights-honduras>
- The United States Supreme Court has held by 5 votes to 4 that Wyoming's statehood did not abrogate the Crow Tribe's 1868 federal treaty right to hunt on the "unoccupied lands of the United States" (May 20, 2019). An 1868 federal treaty guaranteed members of the Crow Tribe the right to hunt on "unoccupied" lands. Clayvin Herrera, a Crow tribal member had been prosecuted for violating state hunting laws by hunting in Bighorn National Forest. The Supreme Court held that the territory did not become 'occupied' when the National Forest was established nor when Wyoming became a state. In reaching this decision, the majority emphasized that treaty terms must be interpreted 'in the sense in which they would naturally be understood by the Indians'.
The decision is available here: https://www.supremecourt.gov/opinions/18pdf/17-532_q86b.pdf
More information is available here: <https://harvardlawreview.org/2019/11/herrera-v-wyoming/> ■



Book Reviews

- *Indigenous Peoples, Consent and Rights: Troubling Subjects*, by Stephen Young (Routledge, 2019), review by Harry Hobbs.

In this detailed and philosophically rich book, Dr Stephen Young (University of Otago, New Zealand) enriches our understanding of the right to free, prior and informed consent (FPIC) as well as the rights of Indigenous peoples at international law more broadly. Young does so by adopting a distinctive focus. Rather than explore the content or meaning of the right to FPIC, Young draws on the work of Judith Butler and Michel Foucault to ask what it means to claim FPIC. As Young explains, in order to seek the benefits of the protection promised by the right to FPIC, Indigenous peoples and communities must transform themselves into subjects of international law. What is at stake for Indigenous communities who make take this step? In answering this question, Young explores three distinct case studies from across the globe. The case studies are carefully chosen, each revealing important advantages and limitations from differently constructed legal frameworks. In the first, Young examines the B'laan peoples' opposition to a Gold-Copper mine in the Philippines, a state that explicitly enshrines Indigenous peoples right to FPIC. In the second, Young examines the Wangan and Jagalingou Family Council's opposition to Adani's Carmichael coal mine in Australia, a country that has not adopted FPIC. In the final case study, Young explores how the Inter-American Court of Human Rights has approached FPIC. Drawing on these case studies, Young concludes by arguing that international law scholars overestimate the benefits of FPIC and underestimate the demands it places on Indigenous peoples; though as long as Indigenous peoples agitate, insurrectionary potential remains latent.

Recommendations from UN and Treaty Bodies

Human Rights Committee (HRC)

The Human Rights Committee made recommendations relating to indigenous peoples' rights in its Concluding Observation on state periodic reports at its 125th Session (4–29 March 2019), including with respect to Viet Nam (CCPR/C/VNM/CO/3, paras 41, 43 and 55–6); and at its 126th session (1–26 July 2019), including with respect to Nigeria (CCPR/C/NGA/CO/2, paras 26 and 50) and Paraguay (CCPR/C/PRY/CO/4, paras 15, 19, 32, 41 and 44–6).

Committee on the Elimination of Discrimination against Women (CEDAW)

The Committee on the Convention on the Elimination of Discrimination Against Women made recommendations relating to indigenous women's rights in its Concluding Observations on state periodic reports at its 74th session (21 October–8 November 2019), including with respect to Cambodia (CEDAW/C/KHM/CO/6, paras 11, 21, 31 and 49).

Committee on the Elimination of Racial Discrimination (CERD)

The Committee on the Elimination of Racial Discrimination made recommendations relating to indigenous peoples' rights in its Concluding Observations on state periodic reports at its 99th session (5–29 August 2019), including with respect to El Salvador (CERD/C/SLV/CO/18-19, paras 7, 13, 19, 21, 23, 25, 27 and 35), Mexico (CERD/C/MEX/CO/18-21, paras 15, 19, 21, 23, 25, 27, 29, 31 and 33) and Mongolia (CERD/C/MNG/CO/23-24, paras 20, 23 and 28–9); and at its 100th session (25 November–13 December 2019), including with respect to Israel (CERD/C/ISR/CO/17-19, para 48), Cambodia (CERD/C/KHM/CO/14-17, paras 6, 28, 30, 37–8 and 50), and Ireland (CERD/C/IRL/CO/5-9, paras 47–8).

Committee on Economic, Social and Cultural Rights (CESCR)

The Committee on Economic, Social and Cultural Rights made recommendations relating to indigenous peoples' rights in its Concluding Observations on state periodic reports at its 66th session (30 September–18 October 2019), including with respect to Denmark (E/C.12/DNK/CO/6, para 71) and Ecuador (E/C.12/ECU/CO/4, paras 14, 16, 18, 20, 26, 42, 44, 54, 56, 58, 60, 62 and 64).



Selected Publications & Reports

Books

- Jakob R. Avgustin (ed), *The United Nations: Friend or Foe of Self-Determination* (E-International Relations Publishing, 2020)
- Irene Bellier and Jennifer Hays (eds), *Scales of Governance and Indigenous Peoples* (Routledge, 2019)
- Centre for International Governance Innovation, *UNDRIP Implementation: Comparative Approaches, Indigenous Voices from CANZUS* (2020). Available at: <https://www.cigionline.org/sites/default/files/documents/UNDRIP3-web.pdf>
- Itzchak Kornfeld, *Mega-Dams and Indigenous Human Rights* (Edward Elgar, 2020)
- Giulia Parola and Margherita Paola Poto, *Inclusion, Coexistence and Resilience: Key Lessons Learned from Indigenous Law and Methodology* (Agora, 2019)

- Valmaine Toki, *Indigenous Courts, Self-Determination and Criminal Justice* (Routledge, 2019)
- Claire Wright, Alexandra Tomaselli (eds), *The Prior Consultation of Indigenous Peoples in Latin America: Inside the Implementation Gap* (Routledge, 2019)
- Stephen Young, *Indigenous Peoples, Consent and Rights: Troubling Subjects* (Routledge, 2019)

Articles and chapters

- Gregory Ablavsky, 'Empire States: The Coming of Dual Federalism' 128 *Yale Law Journal* 1792 (2019)
- Robert T. Anderson, 'The *Katie John* Litigation: A Continuing Search for Alaska Native Fishing Rights after ANCSA' 51(3) *Arizona State Law Journal* 845 (2019)

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Recommendations from UN and Treaty Bodies —continued from page 7

The Committee's 67th session is currently underway (17 February–6 March 2020).

Committee on Migrant Workers (CMW)

The Committee on Migrant Workers made recommendations relating to indigenous peoples' rights in its Concluding Observations on state periodic reports at its 31st session (2–11 September 2019), including with respect to Argentina (CMW/C/ARG/CO/2, paras 28–9).

Committee on the Rights of the Child (CRC)

The Committee on the Rights of the Child made recommendations relating to indigenous peoples' rights in its Concluding Observations on state periodic reports at its 82nd session (9–27 September 2019), including with respect to Australia (CRC/C/AUS/CO/5-6, paras 30, 46 and 48) and the Republic of Korea (CRC/C/KOR/CO/5-6, para 42).

Committee on the Rights of Persons with Disabilities (CRPD)

The Committee on the Rights of Persons with Disabilities made recommendations relating to indigenous peoples' rights in its Concluding Observations on state periodic reports at its 22nd session (26 August–20 September

2019), including with respect to Ecuador (CRPD/C/ECU/CO/2-3, paras 10, 12, 14, 18, 32 and 50), El Salvador (CRPD/C/SLV/CO/2-3, paras 9, 15 and 53) and India (CRPD/C/IND/CO/1, paras 12–13 and 43).

Human Rights Council

Human Rights and Indigenous Peoples — 42nd Session (9–27 September 2019) A/HRC/42/L.24, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Australia, Austria, Bolivia (Plurinational State of), Chile, Colombia, Denmark, Finland, Germany, Guatemala, Iceland, Mexico, Norway, Paraguay and Sweden: Draft Resolution* Available through OHCHR

Human Rights and Indigenous Peoples: Mandate of the Special Rapporteur on the Rights of Indigenous Peoples — 42nd Session (9–27 September 2019) A/HRC/42/L.25, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Armenia, Australia, Bolivia (Plurinational State of), Canada, Chile, Denmark, Finland, Germany, Greece, Guatemala, Haiti, Iceland, Italy, Luxembourg, Mexico, New Zealand, Norway, Paraguay, Spain, Sweden and Ukraine: Draft Resolution*. Available through OHCHR ■



Selected Publications & Reports —continued from page 8

- Maggie Blackhawk, 'Federal Indian Law as Paradigm within Public Law' 132(7) *Harvard Law Review* 1787 (2019)
- Margherita Brunori, 'Protecting Access to Land for Indigenous and Non-Indigenous Communities: A New Page for the World Bank' 32(3) *Leiden Journal of International Law* 501 (2019).
- Zachary Browning, 'A Comparative Analysis: Legal and Historical Analysis of Protecting Indigenous Cultural Rights Involving Land Disputes in Japan, New Zealand, and Hawai'i' 28(1) *Washington International Law Journal* (2019)
- Kristen A. Carpenter & Angela R. Riley, 'Privatizing the Reservation?' 71(4) *Stanford Law Review* 791 (2019)
- Grant Christensen, 'What Does It Mean to be Sustainable? Regulating the Relationship between Corporations and Indigenous Peoples' in Beate Sjøfjell and Christopher M. Bruner (eds), *Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability* (Cambridge University Press, 2020) 416
- Toni Collins and Shea Esterling, 'Fluid Personality: Indigenous Rights and the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 in Aotearoa New Zealand' 20 *Melbourne Journal of International Law* 1 (2019)
- Assis da Costa Oliveira, 'Indigenous Youth and a Generational Perspective on Indigenous Rights: The Case of Monitoring the United Nations Declaration on the Rights of Indigenous Peoples' 45(1) *Canadian Journal of Latin American and Caribbean Studies* 45 (2020)
- Isabel M. Madariaga Cuneo, 'ILO Convention 169 in the inter-American human rights system: consultation and consent' 24(2-3) *International Journal of Human Rights* 257 (2019)
- Anthony Diala, 'A Butterfly that thinks itself a Bird: The Identity of Customary Courts in Nigeria' 51(3) *Journal of Legal Pluralism and Unofficial Law* 381 (2019)
- Michael Doran, 'Redefining Tribal Sovereignty for the Era of Fundamental Rights' 95(1) *Indiana Law Journal* 87 (2019)
- Dalee Sambo Dorough, 'Perspective on Convention 169, its significance to Inuit and some troubling developments' 24(2-3) *International Journal of Human Rights* 293 (2019)
- Cathal Doyle, 'The Philippines Indigenous Peoples Rights Act and ILO Convention 169 on tribal and indigenous peoples: exploring synergies for rights realisation' 24(2-3) *International Journal of Human Rights* 170 (2019)
- Stefania Errico, 'ILO Convention No. 169 in Asia: progress and challenges' 24(2-3) *International Journal of Human Rights* 156 (2019)
- Hiroshi Fukurai, 'Original Nation Approaches to "International" Law (ONAIL): Decoupling of the Nation and the State and the Search for New Legal Orders' 26(1) *Indiana Journal of Global Legal Studies* 199 (2019)
- Andrew Geddis and Jacinta Ruru, 'Places as Persons: Creating a New Framework for Māori-Crown Relations' in Jason Varuhas and Shona Wilson Stark (eds), *The Frontiers of Public Law* (Hart, 2020) 255
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- United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz provided an *End of Mission Statement* following her visit to the Republic of Congo (October 25, 2019). The Statement is available here: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25196&LangID=E>
- United Nations Special Rapporteur on the rights of indigenous peoples calls on the Republic of Congo to undertake concrete action to protect the rights of Indigenous peoples (October 25, 2019). Media release available here: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25210&LangID=E>
- The United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) held an expert-seminar hosted by the Centre for Human Rights, Faculty of Law, Pretoria University, South Africa, from 30 September to 1 October, and an inter-sessional meeting, from 2 to 4 October, Pretoria, South Africa. Short statement available here: <https://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Call/Statementwebpageafterseminar.docx>
- United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz presented a thematic report on implementing the right of indigenous peoples to self-determination through autonomy and self-government (September 18, 2019). The report is available here: <https://undocs.org/A/74/149>
- United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz addressed the Human Rights Council at its 42nd session (September 18, 2019). The Statement is available here: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25063&LangID=E>
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