

EDUCATION, MEDIA, AND
THE U.N. DECLARATION
ON THE RIGHTS OF
INDIGENOUS PEOPLES

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Preface

This book is a compilation of studies that have their origins in work done with the International Law Association's Committee on the Rights of Indigenous Peoples. The Committee's charge was to undertake a detailed analysis of the U.N. Declaration on the Rights of Indigenous Peoples (UNDRIP), exploring the scope and meaning of UNDRIP and its linkages to international law. (The Committee's reports can be found at <http://www.ila-hq.org/en/committees/index.cfm/cid/1024>.)

Our original research focused specifically on questions of education, media, and public discourse; and whether the UNDRIP provisions relating to those issues (Articles 14, 15, and 16) reflect existing international obligations or emerging norms. Summaries of what we found, as a matter of customary and conventional law, can be found in the ILA reports. This book includes a more comprehensive analysis of the history, meaning, and scope of the rights articulated in those provisions, and their current status under international law. Thus the aim of the book is to offer further clarification on the normative status of these UNDRIP provisions. It also advances a framework from which the legal obligations of countries can be evaluated and implemented.

Carolina Academic Press has agreed to print these materials so that it might be readily available for human rights advocates, governments, NGOs, and practitioners working on UNDRIP implementation and compliance. We encourage individuals working in these areas to freely use the information. Individuals from education, media, or other related areas of study may find the materials contained in these pages useful as well, both for classroom and research purposes. Many of the endnotes have web links to facilitate additional research, and we have posted two appendices with the book. These appendices include a country-by-country analysis of some of the policies, laws, programs, and practices surrounding indigenous rights to education and media. This research has been done over the course of a number of years and we have done our best to keep it up to date. However, there are initiatives that we were not able to include or may well have missed. These are areas of rapid growth and change, particularly post-UNDRIP, and thus some of these changes may not be reflected in the appendices.

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all their hard work (Bridget Villarreal, Matthew Sirigu, Jeanie Fallon, Emily Pijanowski, Megan English Braga, Brian Badgley, Casandra Medeiros, Jordan Meehan, and all those who worked with us during the ILA process). Thanks to our families as well for supporting us through the research and writing process.

Introduction

RIGHTS AS TOOLS

Education and media are powerful societal tools. Education is the primary means by which societies advance the political, economic, and social wellbeing of their citizenry. Yet its aims go beyond just ensuring the cohesiveness and wellbeing of the polity. According to the United Nations International Covenant on Economic, Social, and Cultural Rights, education should be directed at “the full development of the human personality and the sense of its dignity,” enable “all persons to participate effectively in a free society,” and promote “understanding, tolerance and friendship among all nations and all racial, ethnic, or religious groups.”¹ Mass media too has the ability to empower and enlighten. Whether through digital media, television, film, radio, newspaper, books, or music, mass media is one of the primary means by which we communicate ideas and transfer knowledge. According to the United Nations International Covenant on Civil and Political Rights, media is inextricably woven into the fulfillment of certain core rights: “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”² Under international law then, education, media, and other related forms of public-knowledge building are intrinsically valued and worthy of some form of rights protection.

However, when harnessed as tools of a polity to advance certain political ends, such as forced assimilation, education and media can also become vehicles of disempowerment. The history of Indigenous Peoples vis-à-vis States³ starkly demonstrates this reality. This book highlights some of the many ways in which settler societies and contemporary states attempted to use education and media to undermine or extinguish indigenous cultures. Although Indigenous Peoples⁴ are made up of thousands of distinct peoples, this is one of several experiences that bind them together. Another is the fact that their cultures and traditions are embedded in the lands, resources, and territorial histories of their ancestors. The forcible separation of indigenous children from their communities and families, ostensibly for purposes of “education,” was one of the ways in which these cultures were undermined. Different forms of mass media and public information were used as well to perpetuate the myth that Indigenous Peoples, as so-called “lawless, uncivilized savages,” were not morally or legally entitled to have their cultures, lands, or ways of life protected.⁵ The legacies of these and other related practices create ongoing challenges for Indigenous Peoples throughout the world.⁶

Much of this book is devoted to exploring an international legal framework that can be used to address these historical and contemporary challenges. The focus is on education and media because of the intrinsic *and* instrumental value each of these rights hold for twenty-first century indigenous polities. Throughout this book we explore the ways in which education and media, when re-imagined as human rights, can positively shape the collective aims and goals of a society. This book then is not just about rights violations. Empirically, it examines how education, media, and other forms of public-knowledge building are being used to restore, define, and strengthen indigenous cultures, communities, and nations.

INTERNATIONAL INDIGENOUS MOVEMENT

Part of the success of Indigenous Peoples in working toward these ends stems from an international movement of their own making, in which the rights to education and media have been identified, (re)defined, and embedded into law. Central to this international movement was the eventual adoption of the U.N. Declaration on the Rights of Indigenous Peoples (UNDRIP or Declaration) by the United Nations General Assembly.⁷ Indigenous Peoples have resisted attempts to have their rights as distinct, self-determining peoples denied for as long as international law has existed. Some relied on treaties to negotiate land and sovereignty agreements, and when those treaties were not honored, they sought relief in various international forums.⁸ In order to perpetuate State control over the peoples found within their borders, those claims, and therefore Indigenous Peoples' recognition as self-determining nations, were often rejected. However, the atrocities of World War II would have a profound impact on this unilateral claim to state supremacy. The Holocaust brought about a realization that governments could not always be relied upon to protect even the most basic rights of individuals and groups. It was through this realization that human rights came to be internationalized. The postwar human rights agenda was the platform from which Indigenous Peoples launched their international movement.

While the international "decolonization" process of the 1950s would have been the logical place to advance these rights, this avenue was politically and legally foreclosed to Indigenous Peoples.⁹ In the 1960s, however, two movements converged that created a space in the international arena for serious rights discussion by and for Indigenous Peoples. The United Nations turned its attention to questions of racial discrimination, particularly in apartheid South Africa. At the same time, Indigenous Peoples took advantage of improved communications to reach across borders and create a pan-indigenous movement.¹⁰ These efforts led to the 1971 appointment of a U.N. special rapporteur to study the issue of discrimination against indigenous populations. The special rapporteur's 1983 "Study of the Problem of Discrimination against Indigenous Populations" was the first United Nations report to offer a comprehensive look at the patterns of discrimination that were prevalent in a multitude of political, economic, social, and cultural spaces, including education and media.¹¹ This report led to the establishment of a U.N. Working Group on Indigenous

Populations with a mandate to develop international standards. What was unique about this process was that it was the first international forum to rely on the testimony and experiences of Indigenous Peoples to formulate international standards.¹² In 1993, the working group promulgated a draft declaration, which, after much discussion and many revisions, was adopted by the U.N. General Assembly in 2007. The United Nations Declaration on the Rights of Indigenous Peoples¹³ had overwhelming support in the General Assembly, with only four countries (the United States, Canada, Australia, and New Zealand) voting against it; all of which have, since that time, withdrawn their opposition. As a declaration, it is not legally binding in the same way a treaty would be, but, as we demonstrate throughout this book and as others have demonstrated elsewhere, it embodies many rights that are firmly established under international law.¹⁴ As such, it creates legally binding obligations. In fact, various U.N. human rights bodies have used the UNDRIP as a “yardstick” for measuring the conduct of States vis-à-vis Indigenous Peoples.¹⁵ However, as an instrument of articulated rights, both individual and group, it should not be read to reinforce the dominance that States exercised over Indigenous Peoples throughout modern history, even as it expresses obligations of States. It shifts the focus of international law and policy from a State-centered only paradigm to one that officially acknowledges Indigenous Peoples as “peoples,” that is self-determining societies that are able to control and shape their own political, economic, social, and cultural development. While there are ongoing concerns with effective domestic implementation of the UNDRIP by States, there are positive steps in that direction as well.¹⁶ Later in this book we will explore some of the many ways that the UNDRIP rights are being advanced in different parts of the world, and how Indigenous Peoples are using these international legal standards to further their own aspirations and goals. The Declaration covers seven broad categories of rights: self-determination, autonomy, and self-government; cultural rights and identity; land and resource rights; education and media; social and economic improvements; and treaty rights.¹⁷ This book focuses on education and media, primary areas of research for the authors over the past several years.¹⁸

EDUCATION, MEDIA, AND OTHER RELATED RIGHTS

One of the many aims of the 2007 Declaration is the countering of injustices against Indigenous Peoples in the educational process, in the media, and in the wider society generally. Along with the taking of land, these were some of the most pernicious tools used to silence indigenous voices, whether it was through the forcible removal of indigenous children to boarding schools or stereotypic portrayals of Indigenous Peoples in the media and other public forums. This book is a product of research conducted on the three articles of the UNDRIP that most explicitly address these injustices: Article 14 on the right to education, Article 15 on the right to non-discrimination and accuracy in public information, and Article 16 on the right to media. Our research shows that the rights reflected in these three articles are essential to Indigenous Peoples’ struggles to strengthen and maintain their societies and cultures. Though education, media, and

public information are closely linked to one another, each has its own purpose, history, and meaning and thus are dealt with in separate parts of the book.

Part I focuses on the right to education under Article 14 of the UNDRIP, which has individual and collective elements. It includes, for instance, the right of Indigenous Peoples to develop and control educational systems that are consistent with their linguistic and cultural methods of teaching and learning. It also includes the right of indigenous individuals to have access to these or other similarly situated educational systems or programs. In addition to promoting and protecting indigenous ways of learning and teaching, the UNDRIP articulates a more general right of non-discriminatory access to all levels and forms of education, thereby ensuring that indigenous students are placed on an equal footing with non-indigenous students. Finally, it ensures that any action that a State may take with respect to the education of indigenous individuals is done in partnership with Indigenous nations and communities. Part II of the book focuses on the right to media under Article 16 of the UNDRIP, which we contend includes such rights as freedom of expression, access to information, and non-discrimination. Within these well-established norms, Indigenous Peoples have the right to have their cultural diversity accurately reflected in non-indigenous media. Since media is one primary way in which information concerning Indigenous Peoples is conveyed to other sectors of society, it also serves as an important link to a State's duty of non-discrimination and the promotion of cultural pluralism. Consistent with principles of self-determination, Indigenous Peoples have the right to establish their own media in their own language and the corollary right of non-discriminatory access to all forms of media. These aspects of the right to media are consistent with the right to education in that they ensure access to culturally relevant information and help to promote and protect indigenous languages and cultures. The final part of this book deals with Article 15 of the UNDRIP, which overlaps with the right to education and media in that it focuses on the elimination of inaccurate, prejudicial, and distorted information. States are required to work with Indigenous Peoples to not only combat prejudice and discrimination in education, but to actively develop educational tools that "promote tolerance, understanding, and good relations among Indigenous Peoples and all other segments of society."¹⁹ Moreover, this duty of non-discrimination and promotion of cultural pluralism is extended to all public information, which includes certain forms of public media, as well as official government documents and communications.

All three articles reflect themes prevalent throughout the UNDRIP, such as the understanding that universal human rights extend to the individual and collectivity. They also suggest an important interpretation of "rights" in which the ideas of equality and access are consistent with Indigenous Peoples' rights to different ways of knowing and learning and speaking. States are duty bound not only to respect these differences, but to actively promote tolerance and understanding of these differences throughout their societies. In light of the historical silencing and rights violations that Indigenous Peoples have faced, these three articles take on a special meaning in terms of redressing past and current wrongs (such as forced assimilation, prejudice, and discrimination). However, this book and the articles themselves are not just about past or ongoing harms, but rather about how the recognition and robust implementation of various

human rights precepts can aid in the prevention of future harms and in the restoration and strengthening of indigenous societies and cultures.

Each part of the book is structured in a similar fashion to allow for comparisons across rights. At the beginning of each part, there is a brief discussion of the history and meaning of the right in question. Understanding the origins and histories of the rights subsumed within the relevant articles of the UNDRIP helps us to understand some of the purposes and principles articulated in its Preamble. They include, among other things, countering “doctrines, policies and practices” that promote “superiority of peoples or individuals;” respecting and promoting cultural “diversity and richness;” ensuring that “indigenous families and communities retain shared responsibility for the upbringing, training, education and well-being of their children,” and reaffirming “the fundamental importance of the right to self-determination of all peoples.”²⁰ History similarly provides context from which relevant parties can interpret and apply the various provisions of the UNDRIP. Next the book identifies the applicable international legal framework, which is its primary focus—to explore whether and where these rights are positioned within existing legal structures. As a complement to this examination, the book surveys some regional and domestic practices. Each part ends with some thoughts about implementation, larger normative trends, and future challenges. The book is designed to provide some theoretical insight on the rights to education and media, but can also be used as a practical resource by those working to articulate and implement meaningful reforms in these areas.

ENDNOTES FOR INTRODUCTION

1. International Covenant on Economic, Social and Cultural Rights, art. 13(1), opened for signature Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR]; Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [hereinafter UDHR].

2. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, art. 19(1), S. Exec. Doc. E. 95-2, at 31 (1978), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR]. In Part II of this book, we explore the meaning of the “right to media,” as encompassing a core set of rights, including freedom of expression and the right to information. We will also discuss how media both facilitates as well as limits other core human rights, such as the right to non-discrimination. *See* Part II, pages 80–93.

3. Throughout the book the authors have chosen to capitalize both Indigenous Peoples and States to express a level of political parity between these self-determining entities. This issue of the status of Indigenous Peoples within the United Nations framework, post-U.N. Declaration on the Rights of Indigenous Peoples, and in particular the question of “enhanced participation” within this State-centered structure, is a matter currently being debated by the U.N. General Assembly. *See, e.g.*, Press Release, ECOSOC, Representatives of Indigenous Peoples Call for Greater Participation in United Nations Bodies, as Permanent Forum Concludes Week One, U.N. Press Release Hr/5302 (May 13, 2016) <http://www.un.org/press/en/2016/hr5302.doc.htm>.

4. United Nations Permanent Forum on Indigenous Issues, Indigenous Peoples, Indigenous Voices, Who Are Indigenous Peoples?, http://www.un.org/esa/socdev/unpfi/documents/5session_factsheet1.pdf. There is no single definition of “Indigenous Peoples.” In response to the question “Who are Indigenous Peoples?,” the U.N. Permanent Forum on Indigenous Issues has posited the following response:

It is estimated that there are more than 370 million indigenous people spread across 70 countries worldwide. Practicing unique traditions, they retain social, cultural, economic and political characteristics that are distinct from those of the dominant societies in which they live. Spread across the world from the Arctic to the South Pacific, they are the descendants — according to a common definition — of those who inhabited a country or a geographical region at the time when people of different cultures or ethnic origins arrived. The new arrivals later became dominant through conquest, occupation, settlement or other means. Among the indigenous peoples are those of the Americas (for example, the Lakota in the USA, the Mayas in Guatemala or the Aymaras in Bolivia), the Inuit and Aleutians of the circumpolar region, the Saami of northern Europe, the Aborigines and Torres Strait Islanders of Australia and the Maori of New Zealand. These and most other indigenous peoples have retained distinct characteristics which are clearly different from those of other segments of the national populations.

Id.

5. ROBERT A. WILLIAMS, JR., *LIKE A LOADED WEAPON: THE REHNQUIST COURT, INDIAN RIGHTS, AND THE LEGAL HISTORY OF RACISM IN AMERICA* xxviii (intro), 33–45 (University of Minnesota Press, Robert Warrior and Jace Weaver, eds. 2005) [hereinafter *Like a Loaded Weapon*].

6. Special Rapporteur on the Rights of Indigenous Peoples, United Nations Human Rights Office of the High Commissioner (by Victoria Tauli Corpuz), <http://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/SRIPeoplesIndex.aspx>. The U.N. Special Rapporteur on the Rights of Indigenous Peoples has noted that “Indigenous peoples across the world experience the consequences of historical colonization and invasion of their territories, and face discrimination because of their distinct cultures, identities and ways of life.” *Id.*

7. U.N. Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007) [hereinafter UNDRIP]. There are many scholarly books and articles that explore the evolution of this movement, from historical times to the present. *See* WALTER R. ECHO-HAWK, *IN THE LIGHT OF JUSTICE: THE RISE OF HUMAN RIGHTS IN NATIVE AMERICA AND THE U.N. DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES* (Fulcrum Publ’g 2013); S. JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* 56–58 (Oxford Univ. Press, 2nd ed. 2004) [hereinafter *Anaya*]; RONALD NIEZEN, *THE ORIGINS OF INDIGENISM: HUMAN RIGHTS AND THE POLITICS OF IDENTITY* PG. 29–52 (University of California Press 2003).

8. For instance, both the Iroquois Confederacy and the Maori sought hearings before the League of Nations concerning their long-standing dispute with Canada and New Zealand over land and autonomy. *See, e.g.*, Ronald Niezen, *Recognizing Indigenism: Canadian Unity and the International Movement of Indigenous Peoples in 42.1 COMPARATIVE STUDIES IN SOCIETY AND HISTORY* 119–48 (Paul Christopher Johnson and Geneviève Zubrzycki eds. 2000); *see also* GORD HILL, *500 YEARS OF INDIGENOUS RESISTANCE* 58–65 (Oakland: PM Press 2009).

9. *See* Anaya, *supra* note 7, at 54 (discussing the “Blue Water Thesis”). The first attempt by the international community to address indigenous rights led to the adoption of an ILO Convention 107, which was problematic both in terms of its assimilative character and lack of input from Indigenous Peoples. *Id.*

10. *See* Henry Minde, *The International Movement of Indigenous Peoples: An Historical Perspective*, in *BECOMING VISIBLE: INDIGENOUS POLITICS AND SELF-GOVERNMENT* (Terje Brantenberg, et al eds., Ctr. For Sami Studies, Pub. No. 2, 1995) available at <http://www.sami.uit.no/girji/n02/en/003minde.html>.

11. *See* U.N. Econ. & Soc. Council [ECOSOC], Sub-Comm’n on Prevention of Discrimination and Prot. of Minorities, *Study of the Problem of Discrimination against Indigenous Populations*, 93–100 U.N. Doc. E/CN.4/Sub.2/1983/21/Add.2 and E/CN.4/Sub.2/1986/7/Add.4 (June 28, 1983 and March 11, 1986) (prepared by Jose Martinez Cobo) [hereinafter *Martinez Cobo Report*].

12. *See* *Like a Loaded Weapon*, *supra* note 5, at 174, 257.

13. To view the various iterations of this document, *see* Draft U.N. Declaration on the Rights of Indigenous Peoples, Report of the Working Group on Indigenous Populations on its Eleventh Session, Comm’n on Human Rights, Sub-Comm’n. on Prevention of Discrimination and

Protection of Minorities, U.N. Doc. E/CN.4/ Sub.2/1993/29 (Aug. 23, 1993); Human Rights Council, Establishment of a Working Group of the Commission on Human Rights to Elaborate a Draft Declaration in Accordance with Paragraph 5 of the General Assembly Resolution 49/214 of 23 December 1994, U.N. Doc. A/HRC/ RES/1/2 (2006); see UNDRIP, *supra* note 7.

14. See S. JAMES ANAYA AND SIEGFRIED WIESSNER, THE U.N. DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: TOWARDS REEMPOWERMENT,” Jurist Forum, October 3, 2007, www.jurist.org/forum/2007/10/un-declaration-on-rights-of-indigenous.php. As one of the authors has discussed elsewhere, “[a]nalyzes of state practice and *opinio juris* suggest, for example, that Indigenous peoples are entitled to maintain and develop their distinct cultural, linguistic, and spiritual identities; to hold the right to wide-ranging autonomy; and to have certain rights to traditional lands and resources.” Lorie Graham and Siegfried Wiessner, INDIGENOUS SOVEREIGNTY, CULTURE AND INTERNATIONAL HUMAN RIGHTS, 110 S. ATLANTIC Q. 405 (2011). See also Conference Reports of the *International Law Association’s Committee on the Rights of Indigenous Peoples*, at <http://www.ila-hq.org/en/committees/index.cfm/cid/1024>.

15. See, e.g., Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, ¶¶ 85, 88, Human Rights Council, U.N. Doc. A/HRC/9/9 (Aug. 11, 2008) (by S. James Anaya), available at <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/149/40/pdf/G0814940.pdf> (last visited Nov. 4, 2010); U.N. Educational, Scientific and Cultural Organization (UNESCO), Message from Mr. Koïchiro Matsuura, Director-General of UNESCO on the Occasion of the International Day of the World’s Indigenous People: 9 August 2008 by Koïchiro Matsuura (Aug. 10, 2008) available at http://portal.unesco.org/culture/en/ev.php-URL_ID=37756&URL_DO=DO_TOPIC&URL_SECTION=201.html (discussing UNESCO’s effort to mainstream the principles of the UNDRIP in development programs).

16. See, e.g., Aurelio Cal et al. v. Attorney General of Belize, October 18, 2007, Supreme Court of Belize, available at <https://www.elaw.org/content/belize-aurelio-cal-et-al-v-attorney-general-belize-supreme-court-belize-claims-no-171-and-17> (last visited May 1, 2017).

17. For a further analysis of these rights and their place under international law, see Conference Reports of the *International Law Association’s Committee on the Rights of Indigenous Peoples*, at <http://www.ila-hq.org/en/committees/index.cfm/cid/1024>.

18. See Graham and Chavarro, *A Human Rights Perspective on Education and Indigenous Peoples: Unpacking the Meaning of Articles 14 and 15 of the U.N. Declaration on the Rights of Indigenous Peoples*, 8 NORTHEASTERN LAW J. 135 (2016); Graham, *A Right to Media*, 41 COLUMBIA HUMAN RIGHTS J. 229 (2010). See also Graham and Chavarro, *Education*, in THE U.N. DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: A COMMENTARY, Weller and Hohmann eds. (Oxford University Press, forthcoming 2018).

19. See UNDRIP, *supra* note 7, at Art. 15(2).

20. See UNDRIP, *supra* note 7, at Preamble.

