

RESOLUTION No.3/2016

COMMITTEE ON CULTURAL HERITAGE LAW

The 77th Conference of the International Law Association, held in Johannesburg, South Africa, 7 – 11 August 2016:

HAVING CONSIDERED the Report on the Law Pertaining to Cultural Landscapes Significant to Indigenous Peoples;

RECOGNISING both the challenge and the importance of further developing the disparate authority and commentary from numerous disciplines bearing on the protection of a multifaceted and vulnerable range of cultural heritage closely identified with the interests of indigenous peoples and bearing both tangible and intangible characteristics;

CONVINCED that the Report effectively responds to this challenge and will assist such stakeholders as intergovernmental and non-governmental organisations, regional organisations, organisations of tribal and other indigenous peoples, business interests, environmentalists, planners and others;

ADOPTS the Recommendations annexed to this Resolution;

REQUESTS the Secretary-General of the International Law Association to forward a copy of this Resolution and its annex to the Secretary-General of the United Nations, the Director-General of the United Nations Educational, Scientific and Cultural Organisation, and other appropriate international and regional organisations, especially indigenous organisations, and to circulate the Resolution and annexed Recommendations widely among the community of international lawyers, in particular experts and expert bodies addressing issues of cultural heritage law;

THANKS the Chair, the Special Rapporteurs, and Members of the Committee for the valuable work done;

RECOMMENDS to the Executive Council that the Committee on the Law of Cultural Heritage be dissolved, having accomplished many mandates, including two draft treaties, a book, three sets of guidelines and declarations as well as numerous studies over a period of 28 years.

ANNEX

RECOMMENDATIONS

In light of and by reference to the Report on the Law Pertaining to Cultural Landscapes Significant to Indigenous Peoples by the Committee on Cultural Heritage Law, the International Law Association makes the following recommendations:

A. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), though not hard law, establishes a commendable procedure of intercultural collaboration and a set of expectations concerning the protection of indigenous culture as well as land, and hence landscapes and even seascapes, of patrimonial importance to indigenous peoples. But it cannot be the last word because Article 31 of UNDRIP does not explicitly include in its extensive list of cultural heritage phenomena the concept of cultural landscapes discussed in the Report on the Law Pertaining to Cultural Landscapes Significant to Indigenous Peoples. More specific and perhaps divergent initiatives at international, regional, national and local levels may eventually be helpful. For the time being, however, it may be wise to rely primarily on UNDRIP as a chosen instrument to shape general practices. Even in an age of legal pluralism and overlapping normative ordering, the interests of indigenous peoples may be best served by universalising and refining a single regime (UNDRIP) to provide an authoritative common language for protecting cultural landscapes and seascapes of significance to indigenous peoples. An obvious model for such an approach has been the Universal Declaration of Human Rights as a foundation for the progressive development of human rights law in all of its complexity today. Then, as empirical evidence accumulates about both the efficacy and limitations of an UNDRIP-based regime, modifications to it and entirely new initiatives will likely be in order.

B. The established principle of sustainability must guide the formulation of rules to protect cultural landscapes of significance to indigenous peoples and to resolve disputes among diverse stakeholders. Representatives of indigenous peoples must be allowed to participate in global initiatives, such as the preparation of the United Nations Sustainable Development Goals (SDGs 2030) and local efforts so as to take fully into account and apply the experience and contributions of these peoples in promoting harmony with the Earth. By the same token, the United Nations organs and agencies should integrate the emerging regime associated with the Report for protecting cultural landscapes of significance to indigenous peoples. Economic development that encroaches on or impacts such cultural landscapes necessitates careful risk management or assessment.

C. The five distinct categories of cultural landscapes that the Report's typology proposes should inform the development of an effective international regime. Each category can be expected to generate its own normative variations.

D. The Aarhus Convention should be adopted as a model in requests to governing authorities for critical information that will encourage participation by indigenous peoples in decision-making and enable them and other interested parties to undertake good practices and collaborate effectively in making appropriate choices concerning cultural landscapes based on risk assessment and sound policy. The limitations to access of information in the Aarhus model should be modified to improve that access.

E. The UNESCO Operational Guidelines for the Implementation of the World Heritage Convention should be modified to require that all States Parties to the Convention obtain (as opposed to merely being encouraged to obtain) the free, prior and informed consent of indigenous peoples as a condition for seeking inscription on the World Heritage List of a site traditionally belonging to an indigenous community.