

RESOLUTION No. 5/2012

RIGHTS OF INDIGENOUS PEOPLES

The 75th Conference of the International Law Association held in Sofia, Bulgaria, 26 to 30 August 2012:

HAVING CONSIDERED The Hague Conference Report and the Sofia Conference Report of the Committee on the Rights of Indigenous Peoples;

RECOGNISING the need for guidance for States, competent international bodies, civil society and indigenous peoples to ascertain the contents of international law applicable to indigenous peoples as well as further to enhance the safeguarding of indigenous peoples' human rights;

THANKS the Chair, the Rapporteur and the members of the Committee on the Rights of Indigenous Peoples for their work;

ADOPTS the Conclusions and Recommendations annexed to this Resolution;

REQUESTS the Secretary-General of the International Law Association to forward a copy of the Hague Conference Report and the Sofia Conference Report of the Committee on the Rights of Indigenous Peoples, as well as a copy of the present Resolution, to the Secretary-General of the United Nations, appropriate international and regional organisations, the United Nations Human Rights Council, the United Nations Permanent Forum on Indigenous Issues, the United Nations Expert Mechanism on the Rights of Indigenous Peoples, the United Nations Special Rapporteur on the Rights of Indigenous Peoples and the President of the International Court of Justice;

RECOMMENDS to the Executive Council that the Committee on the Rights of Indigenous Peoples, having accomplished its mandate, be dissolved.

CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE ON THE RIGHTS OF INDIGENOUS PEOPLES

I. Conclusions

1. Indigenous peoples are holders of collective human rights aimed at ensuring the preservation and transmission to future generations of their cultural identity and distinctiveness. Members of indigenous peoples are entitled to the enjoyment of all internationally recognised human rights – including those specific to their indigenous identity – in a condition of full equality with all other human beings.
2. The 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as a whole cannot yet be considered as a statement of existing customary international law. However it includes several key provisions which correspond to existing State obligations under customary international law.
3. The provisions included in UNDRIP which do not yet correspond to customary international law nevertheless express the aspirations of the world's indigenous peoples, as well as of States, in their move to improve existing standards for the safeguarding of indigenous peoples' human rights. States recognised them in a

“declaration” subsumed “within the framework of the obligations established by the Charter of the United Nations to promote and protect human rights on a non-discriminatory basis” and passed with overwhelming support by the United Nations General Assembly. This genesis leads to an expectation of maximum compliance by States and the other relevant actors. The provisions included in UNDRIP represent the parameters of reference for States to define the scope and content of their existing obligations – pursuant to customary and conventional international law – towards indigenous peoples.

4. States must comply with the obligation – consistently with customary and applicable conventional international law – to recognise, respect, protect, fulfil and promote the right of indigenous peoples to self-determination, conceived as the right to decide their political status and to determine what their future will be, in compliance with relevant rules of international law and the principles of equality and non-discrimination.
5. States must also comply – according to customary and applicable conventional international law – with the obligation to recognise and promote the right of indigenous peoples to autonomy or self-government, which translates into a number of prerogatives necessary in order to secure the preservation and transmission to future generations of their cultural identity and distinctiveness. These prerogatives include, *inter alia*, the right to participate in national decision-making with respect to decisions that may affect them, the right to be consulted with respect to any project that may affect them and the related right that projects significantly impacting their rights and ways of life are not carried out without their prior, free and informed consent, as well as the right to regulate autonomously their internal affairs according to their own customary laws and to establish, maintain and develop their own legal and political institutions.
6. States are bound to recognise, respect, protect and fulfil indigenous peoples’ cultural identity (in all its elements, including cultural heritage) and to cooperate with them in good faith – through all possible means – in order to ensure its preservation and transmission to future generations. Cultural rights are the core of indigenous cosmology, ways of life and identity, and must therefore be safeguarded in a way that is consistent with the perspectives, needs and expectations of the specific indigenous peoples.
7. States must comply – pursuant to customary and applicable conventional international law – with the obligation to recognise, respect, safeguard, promote and fulfil the rights of indigenous peoples to their traditional lands, territories and resources, which include the right to restitution of the ancestral lands, territories and resources of which they have been deprived in the past. Indigenous peoples’ land rights must be secured in order to preserve the spiritual relationship of the community concerned with its ancestral lands, which is an essential prerequisite to allow such a community to retain its cultural identity, practices, customs and institutions.
8. States must recognise the right of indigenous peoples to establish their own educational institutions and media, as well as to provide education to indigenous children in their traditional languages and according to their own traditions. States have the obligation not to interfere with the exercise of these rights.

9. States must cooperate in good faith with indigenous peoples in order to give full recognition and execution to treaties and agreements concluded with indigenous peoples in a manner respecting the spirit and intent of the understanding of the indigenous negotiators as well as the living nature of the solemn undertakings made by all parties.
10. States must comply with their obligations – under customary and applicable conventional international law – to recognise and fulfil the rights of indigenous peoples to reparation and redress for wrongs they have suffered, including rights relating to lands taken or damaged without their free, prior and informed consent. Effective mechanisms for redress – established in conjunction with the peoples concerned – must be available and accessible in favour of indigenous peoples. Reparation must be adequate and effective, and, according to the perspective of the indigenous communities concerned, actually capable of repairing the wrongs they have suffered.

II. Recommendations

11. States ought to restructure their domestic law with a view to adopting all necessary measures – including constitutional amendments, institutional and legislative reforms, judicial action, administrative rules, special policies, reparations procedures and awareness-raising activities – in order to make the full realization of indigenous peoples' human rights possible within their territories, consistently with the rules and standards established by UNDRIP.
12. Indigenous peoples are encouraged to cooperate actively and in good faith with States, to facilitate the implementation of States' international obligations related to indigenous peoples' rights, consistently with the rules and standards established by UNDRIP. Indigenous peoples are obligated to respect the fundamental human rights of others and the individual rights of their members, consistently with internationally recognised human rights standards.
13. Civil society, in all its components, ought to promote a favourable environment for the affirmation of indigenous peoples' rights, especially by nurturing a positive understanding within society as a whole of the value of indigenous cultures as well as of the positive role which may be played by indigenous peoples to further sustainable life in the world.
14. The competent bodies, specialized agencies and mechanisms of the United Nations system – including the Human Rights Council, the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the Rights of Indigenous Peoples – are encouraged to continue and strengthen their activity, in cooperation with States and indigenous peoples, in order to ensure further protection, promotion and improvement of indigenous peoples' rights throughout the world, consistently with the rules and minimum standards of human rights established by the UNDRIP.