

Past International Normative  
Developments Related to Intellectual  
Property: Lessons Learned – the UN  
Declaration on the Rights of  
Indigenous Peoples

AROHA TE PAREAKE MEAD, 9<sup>TH</sup> JUNE 2017

# Mataatua Declaration on the Cultural and Intellectual Property Rights of Indigenous Peoples 1993





# UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

United Nations Document A/61.19  
Adopted by the General Assembly on 28 September 2007

Section 8, Article 35(1) of the  
The American Indian Law Review - www.aalr.org

The Declaration is a landmark document in the history of the international human rights system. It is the first international instrument to affirm the rights of indigenous peoples as a whole, and to set out a comprehensive framework for their protection and promotion. It is also the first international instrument to affirm the right of indigenous peoples to self-determination, and to set out a comprehensive framework for their protection and promotion.

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## PART I FOUNDATIONAL RIGHTS

**ARTICLE 1  
UNIVERSAL RIGHTS**  
Indigenous peoples have the right to the full enjoyment of a collective or individual rights as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights, and international human rights law.

**ARTICLE 2  
EQUALITY**  
Indigenous peoples and individuals are free and equal in rights without distinction on the basis of race, ethnicity or origin of identity.

**ARTICLE 3  
SELF-DETERMINATION**  
Indigenous peoples have the right to self-determination. By virtue of this right they freely determine their political status and freely pursue their economic, social and cultural development.

**ARTICLE 4  
A COMPONENT OF SELF-DETERMINATION**  
Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as to local and major forms of their traditional authority.

**ARTICLE 5  
DISTINCT INSTITUTIONS**  
Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully if they so choose, in the political, economic, social and cultural life of the State.

**ARTICLE 6  
LEGAL PERSONALITY**  
Every indigenous individual has the right to recognition.

## PART II LIFE & SECURITY

**ARTICLE 7  
INTEGRITY OF PERSONS & PEOPLES**  
1. Indigenous peoples have the right to the integrity of their persons, their families, their communities and their cultures, and shall not be subjected to any act of physical violence or to sexual violence, including harmful practices, such as the practice of female genital mutilation.

**ARTICLE 8  
INTEGRITY OF IDENTITY**  
1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

**ARTICLE 9  
RIGHT TO COMMUNITY OR NATIONHOOD**  
Indigenous peoples and individuals have the right to belong to an indigenous community or nation, to join them if they so wish, and to leave them at any time without any loss of rights.

**ARTICLE 10  
RIGHT TO TRADITIONAL SPACE**  
Indigenous peoples have the right to maintain and strengthen their institutions, practices, customs and traditional knowledge relevant to their cultural, spiritual, social and economic life, and to have control over and to be consulted on the management and protection of these spaces.

## PART III CULTURE, RELIGION & LANGUAGE

**ARTICLE 11  
CULTURE**  
1. Indigenous peoples have the right to practice and develop their cultural traditions and customs. This includes the right to maintain, protect and develop the distinct spiritual and religious beliefs, practices and rituals, and knowledge relating to the universe, nature and their ancestors, as well as their traditional intellectual property.

**ARTICLE 12  
LANGUAGE**  
1. Indigenous peoples have the right to their languages and to use them in the private and public life of their communities, including in judicial proceedings, where necessary, with interpretation or translation services if they so wish.

**ARTICLE 13  
SPIRITUAL & RELIGIOUS TRADITIONS**  
1. Indigenous peoples have the right to maintain, protect and develop their religious and spiritual values and practices and to have control over and to be consulted on the management and protection of these spaces.

## PART IV EDUCATION, KNOWLEDGE, MEDIA & EMPLOYMENT

**ARTICLE 14  
EDUCATION**  
1. Indigenous peoples have the right to education, and to have access to the same opportunities to receive education as are available to other members of society. Indigenous individuals have the right to be educated in their own languages and to have access to their own cultures and traditions.

**ARTICLE 15  
KNOWLEDGE**  
1. Indigenous peoples have the right to maintain, control, protect and develop their knowledge, technologies, innovations and practices, and to have control over and to be consulted on the management and protection of these spaces.

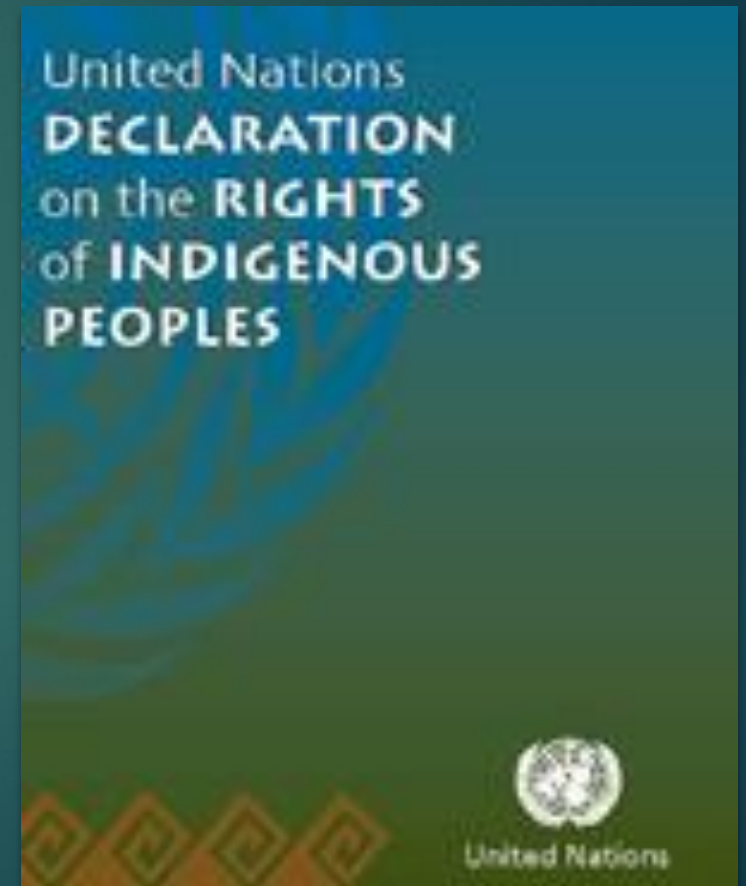
**ARTICLE 16  
MEDIA**  
1. Indigenous peoples have the right to be consulted on and to have access to mass media, to be included in the media, and to have control over and to be consulted on the management and protection of these spaces.

**ARTICLE 17  
EMPLOYMENT**  
1. Indigenous peoples have the right to the recognition, protection and promotion of their economic activities, traditional occupations and forms of subsistence economies, practices, customs and spiritual rituals.

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# UN-DRIP Article 31

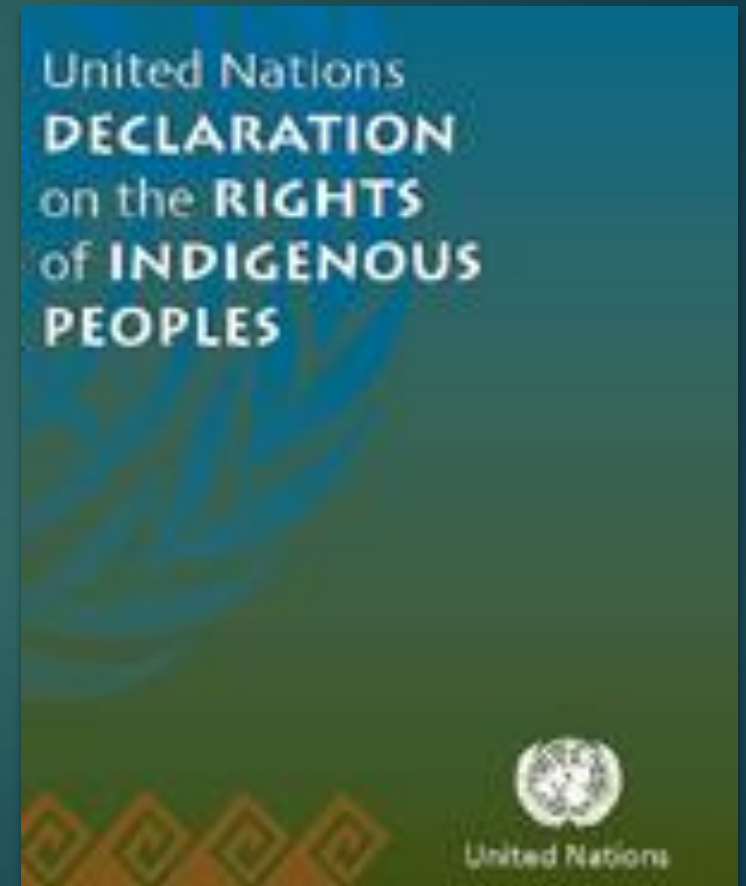
- ▶ Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. **They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.**





# UN-DRIP Articles regarding the UN system

- ▶ **Article 41** - The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. **Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.**
- ▶ **Article 42** - The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States **shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.**



# The 'Dodson principles'

- ▶ Emphasised that any textual amendment of the draft Declaration must be founded on the basis of a very high presumption of the integrity of the existing text.
- ▶ in order to 'rebut that presumption, any proposed change must be shown to be':
  - ▶ 1 Reasonable;
  - ▶ 2 Necessary; and
  - ▶ 3 Improve and strengthen the existing text.
- ▶ In addition, any proposal must be consistent with the fundamental principles of: Equality; Non-discrimination; and The absolute prohibition of racial discrimination.

# 2006 – 2007 – UNDRIP PROCESS

- ▶ From WGDD to the HUMAN RIGHTS COMMISSION
- ▶ 30 in favour,
- ▶ 2 against,
- ▶ 12 abstentions,
- ▶ 3 absent
- ▶ Sent to UNGA indigenous expected adoption in 2006
- ▶ UNGA 3rd COMMITTEE (Social, Humanitarian and Cultural)
- ▶ Draft Resolution requesting the GA to defer consideration and action on the Declaration **with the aim of concluding consideration** before the end of its 61<sup>st</sup> session. (Peru)
- ▶ A revised resolution lead by Namibia on behalf of African countries .... **allow time for further consultations thereon...**
- ▶ African amendments adopted by vote, **82 in favour, 67 against, 25 abstentions**
- ▶ New amended draft adopted **83 in favour, 91 abstentions** (countries that had been co-sponsors of the original motion)
- ▶ Amended draft resolution to the UNGA **83 in favour, 91 abstentions**

# Lessons learned

- ▶ The sky did not fall down – drama – delays caused by opinions not supported with evidence
- ▶ Timeframe - commitment to successfully complete – no brackets around the entire DRIP
- ▶ Indigenous participation is essential – inclusive registration process, multiple voices



# Lessons learned

- ▶ **Good faith -and strategies for dealing with lack of good faith**
- ▶ **Leadership – by session Chair, like-minded pro-governments, and indigenous groups**
- ▶ **Vision and consensus**
- ▶ **The IGC instrument(s) (like the UN-DRIP) are just the beginning – the real work will be in the implementation**