

NYU Law School

Professor Benedict Kingsbury

*Indigenous Peoples in International Law*

*Spring 2015, Course LW 10902-001*

**COURSE DETAILS and OUTLINE SYLLABUS** [as at Jan 23, 2015]

**COURSE DESCRIPTION:** Issues concerning indigenous peoples (including descendants of pre-colonial inhabitants in the Americas and Australasia, and groups in Asia and elsewhere) are increasingly significant in many countries and in the UN, the World Bank, the OAS, and other international institutions. The course will discuss challenges to standard liberal concepts and to democratic theory posed by such issues as: the meaning and problems of the concept of indigenous rights; the nature and meaning of the right to self-determination and of claims based on historic sovereignty; reparations; important debates and developments regarding indigenous peoples' rights in Latin America, Asia, and Africa; tensions between individual rights and group rights e.g. in discriminatory membership rules; minority rights regimes in international law; the activities of multinational corporations; prior informed consent; tensions between indigenous peoples' rights and environmental law; and indigenous peoples' rights under international trade and intellectual property regimes.

**CLASS MEETS:** Mondays and Wednesdays, 9am-10.50am, Furman Hall 326, in **SELECTED WEEKS ONLY**. Meeting dates are:

Mon Jan 26, Wed Jan 28; Mon Feb 2, Wed Feb 4; Mon Feb 9, Wed Feb 11; Mon Mar 2, Wed Mar 4; Mon Mar 9, Wed Mar 11; Mon Apr 13, Wed April 15; Mon Apr 20, Wed Apr 22.

[Please hold Mon Apr 27, Wed Apr 29 as reserve dates in case of snow etc.]

**INSTRUCTOR:** Professor Benedict Kingsbury, Vanderbilt Hall, Room 314D.

[Benedict.Kingsbury@nyu.edu](mailto:Benedict.Kingsbury@nyu.edu)

**ASSISTANT:** Rachel Jones, Wilf Hall 419G, Tel (212) 992-8969,

[jonesr@exchange.law.nyu.edu](mailto:jonesr@exchange.law.nyu.edu)

**OFFICE HOURS:** Tuesdays 2pm-3.30pm (during class weeks), or arrange to meet right after any class, or make an appointment.

**ASSESSMENT:** This is a two-credit course. Students are expected to attend class regularly (please email the Instructor if unable to attend a particular class), to prepare for class and to present some materials in class on a pre-assigned basis, and to participate in class discussions. Students may choose between:

- a) taking an in-class **exam**, on a date fixed by the Law School in the exam period – the exam will be four hours, students may bring (only) the course textbook and all course materials from this class and notes prepared by any students in this class (all materials must be brought along in hard copy); OR
- b) writing a **paper**, details below.

PAPER OPTION DETAILS: for students choosing to write a research paper rather than the exam, details are as follows for two-credit papers. (Students wishing to write a longer research paper should discuss with the Instructor arrangements and add the Writing Credit; due dates etc will be the same.) Length: the norm for a paper is a minimum of 25 pages. (If for three credits, the norm is 35-40 pages.) (Double-spaced text, single-spaced footnotes.) The schedule is as follows:

Monday Feb 9: Submit paper topic (several paragraphs) by email, having earlier discussed ideas for possible with the Instructor.

Monday March 2: Submit outline of paper. The outline should state the puzzle or problem or research question, provide an extended statement of the argument as currently envisaged (this is important!), and a set of headings envisaged for the different parts and sub-parts of the paper. Excerpts of interesting points, lists of research materials, etc can be included under the headings. Meet with Instructor Tues or Wed to discuss.

Mon April 6: Submit 10-15 pages of draft paper (can be more), for comments. The draft need not summarize the entire paper but instead focus on one or more key aspects.

Tuesday May 19, 2015: Deadline for submission of Final papers for grading. No extensions of time (other than in relation to serious medical situations, genuine family emergencies and the like.) This is the last day of the Law School's exam period. It is hoped that a considerable proportion of students will go on to develop papers for prospective publication, and the Instructor will be very glad to provide suggestions for those with this aim.

TEXTBOOK AND MATRERIALS: Please purchase (should be available at the Law bookstore): International Human Rights and Indigenous Peoples, by S. James Anaya (List Price: \$57. Published: 9/30/2009. ISBN: 9780735562486. Paperback: 400 pages.) For those who do not yet have the textbook, readings for the first two class sessions will be provided via NYU Classes. Most materials will be found online, via links from the Outline/Syllabus (below).

OUTLINE (as at Jan 23, 2015, revisions, and specifications of readings, will be notified)

*Note: this Outline includes many more readings than will be required for the class sessions, in order to provide a resource for those writing research papers. Required and Optional readings are shown for the first few classes, and will be indicated for later classes.*

**Mon 26 January: 1. ‘Indigenous Peoples’ as an International Legal Concept: Norms and Mechanisms**

**READ:**

- International Labour Organization (ILO), *Indigenous and Tribal Populations Convention, C107*, (June 26, 1957), available at <http://www.ilo.org/indigenous/Conventions/lang--en/index.htm>
- International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention, C169*, (June 27, 1989), available at <http://www.ilo.org/indigenous/Conventions/lang--en/index.htm>
- UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples resolution / adopted by the General Assembly*, 2 October 2007, A/RES/61/295, available at [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)
- World Bank, Operational Policy 4.10, available at <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTSAFEPOL/0,,contentMDK:20543990~menuPK:1286666~pagePK:64168445~piPK:64168309~theSitePK:584435,00.html> [Note: The World Bank in 2014 launched a still on-going review of its social safeguard policies, including the indigenous peoples policy.]
- Benedict Kingsbury, *Indigenous Peoples*, MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (July 2011), available at <http://iilj.org/aboutus/documents/IndigenousPeoplesKingsburyMPEPIL.pdf>
- UN General Assembly Session Known as World Conference on Indigenous Peoples, 22-23 Sept 2014, Outcome Document (GA Res 69/2), available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/69/2](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/69/2)

**OPTIONAL** (not needed for class):

- Yousef T. Jabareen, *Redefining Minority Rights: Successes and Shortcomings of the U.N. Declaration on the Rights of Indigenous Peoples*, 18 U.C. Davis J. Int'l L. & Policy 119, 2012.
- Rene Kuppe, *The Three Dimensions of the Rights of Indigenous Peoples*, 11(1) Int'l Comm. L. Rev. 103 (2009).

**Wed 28 Jan: 2. Controversies about Defining ‘Indigenous Peoples’: Asian and African Contexts**

**READ:**

- S. James Anaya, INTERNATIONAL HUMAN RIGHTS AND INDIGENOUS PEOPLES, (2009), at 27-37.
- Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya, 27 art. 6/2003, African Commission on Human and Peoples' Rights, para. 144-162 (February 4, 2010), available

at

[http://www.hrw.org/sites/default/files/related\\_material/ACHPR%20Communication%20276%20of%202003.pdf](http://www.hrw.org/sites/default/files/related_material/ACHPR%20Communication%20276%20of%202003.pdf) and recommendations of the African Commission on Human and Peoples' Rights available at

[http://www.achpr.org/files/sessions/46th/communications/276.03/achpr46\\_276\\_03\\_eng.pdf](http://www.achpr.org/files/sessions/46th/communications/276.03/achpr46_276_03_eng.pdf)

**OPTIONAL** (not needed for class):

- *Excerpts*, Tashi Phuntsok, Indigenous Peoples under International Law: An Asian Perspective (2012) (unpublished L.L.M. thesis, University of Western Ontario) available at <http://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=2219&context=etd>.
- S Wiessner, *Rights and Status of Indigenous Peoples: A Global Comparative and International Legal Analysis*, 12 Harv. Hum. Rts. J. 57 (1999). General overview of Countries available at <https://a.next.westlaw.com/Document/I4d66d8514a0111dba16d88fb847e95e5/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad7051d00000142e397e9714e30e6a0%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI4d66d8514a0111dba16d88fb847e95e5%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=f9d0cba8538e6e91e2e2ba1a9018e326&list=ANALYTICAL&rank=1&grading=na&sessionScopeId=3662cf8ba6925a16faa56c393fe5e09e&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29>

### **Mon 2 Feb: 3. Collective Rights, Self Determination, Membership and Participation of Indigenous Peoples**

#### **READ:**

- S. James Anaya, INTERNATIONAL HUMAN RIGHTS AND INDIGENOUS PEOPLES, (2009) at 58-76.
- *Lubicon Lake Band v. Canada*, Communication No. 167/1984 (26 March 1990), see S. James Anaya, INTERNATIONAL HUMAN RIGHTS AND INDIGENOUS PEOPLES, (2009) at 225-234.
- *Apirana Mahuika et al. v. New Zealand*, Communication No. 547/1993, see S. James Anaya, INTERNATIONAL HUMAN RIGHTS AND INDIGENOUS PEOPLES, (2009) at 234-242.
- *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples*, (Claire Charters and Rodolfo Stavenhagen (eds), 2009) at 187-189 (the section entitled 'The essential meaning of self-determination').
- Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights* ("Banjul Charter") art. 19-24, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at <http://www.achpr.org/instruments/achpr/>.
- Fons Coomans, *The Ogoni Case Before the African Commission on Human and Peoples' Rights*, 52 INT'L & COMP. L.Q. 749 (2003).
- *Lemiguran & others v. Attorney General & others, Kenya* (2006), available at [http://www.kenyalaw.org/CaseSearch/view\\_preview.php?link=72899636242187183273149&words=](http://www.kenyalaw.org/CaseSearch/view_preview.php?link=72899636242187183273149&words=)

#### **READ IF POSSIBLE (useful background):**

- Kirsty Gover, *Comparative Tribal Constitutionalism: Membership Governance in Australia, Canada, New Zealand, and the United States*, 35 Law & Soc. Inquiry 689

(2010), available on NYU Classes or at  
<http://onlinelibrary.wiley.com/doi/10.1111/j.1747-4469.2010.01200.x/abstract>

### **Wed 4 Feb: 4. Indigenous Rights: Ethnopolitics, Ethnodevelopment, Constitutionalism and Political Theory**

#### **READ:**

- Jeremy Waldron, *Who Was Here First: Two Essays on Indigeneity and First Settlement* (2003), available at <http://www2.law.columbia.edu/faculty/franke/Thursday%20Lunch/Waldron.facultylunch.indigeneity.pdf>
- Jimmy Klausen, *Jeremy Waldron's Partial Kant: Indigenous Proximity, Colonial Injustice, Cultural Particularism*, Polity (2013), available at <http://www.palgrave-journals.com/polity/journal/vaop/ncurrent/pdf/pol201338a.pdf>
- Obehi S. Okojie, *Between Secession and Federalism: The Independence of South Sudan and the Need for a Reconsidered Nigeria*, G. Bus. & Dev. L. J. (2013) available at [http://www.mcgeorge.edu/Documents/Publications/262\\_2Obehi.pdf](http://www.mcgeorge.edu/Documents/Publications/262_2Obehi.pdf)
- Report on the Situation of Indigenous Peoples in Nepal, A/HRC/12/34/Add.3, pgs 16-21 (20 July 2009) [http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-34-Add3\\_E.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-34-Add3_E.pdf), see also S. James Anaya, INTERNATIONAL HUMAN RIGHTS AND INDIGENOUS PEOPLES, (2009), at 31-32.
- English version of 2009 Nepali Draft Constitution available at [http://southasiarev.files.wordpress.com/2011/01/new\\_draft\\_nepal\\_consitution.pdf](http://southasiarev.files.wordpress.com/2011/01/new_draft_nepal_consitution.pdf)
  - Nepal Constitution Foundation Website (<http://www.ncf.org.np/>).

#### **OPTIONAL** (not needed for class):

- Robert B. Porter, *Pursuing the Path of Indigenization in the Era of Emergent International Law Governing the Rights of Indigenous Peoples*, Yale Hum. Rts. & Dev. L.J. 123 (2002), pgs 128 onwards
- Jeremy Waldron, *Superseding Historic Injustice* Vol. 103, No. 1, 4-28 (Oct., 1992) available at <http://www.polthought.cam.ac.uk/seminars/intros2008-2009/Waldron-Superseding-Historic-Injustice.pdf>

### **Mon 9 Feb: 5. Indigenous Peoples, Minority Rights, Non-Discrimination and Equality**

#### **READ:**

- S. James Anaya, INTERNATIONAL HUMAN RIGHTS AND INDIGENOUS PEOPLES, (2009), at 35-36, 185-193, and 194-195.
- UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, art. 17, 27 available at: <http://www.refworld.org/docid/3ae6b3aa0.html>.
- *Convention on the Elimination of All Forms of Racial Discrimination*, Dec 21, 1965, 660 U.N.T.S. 195, available at <http://www.refworld.org/docid/3ae6b3940.html>
- *Sandra Lovelace v. Canada (Communication No. 24/1977)*, see also S. James Anaya, INTERNATIONAL HUMAN RIGHTS AND INDIGENOUS PEOPLES, (2009), at 216-225.
- *Santa Clara Pueblo v Martinez*, 436 U.S. 49 (1978).
- *Ivan Kitok v. Sweden (Communication No. 197/1985)*.

- *Francis Hopu and Tepoaitu Bessert v. France*, Communication No. 549/1993, U.N. Doc. CCPR/C/60/D/549/1993/Rev.1. (1997), *available at* <http://www1.umn.edu/humanrts/undocs/549-1993.html>, *see also* S. James Anaya, INTERNATIONAL HUMAN RIGHTS AND INDIGENOUS PEOPLES, (2009), at 247-250.
- Appendix B, report on the Northern Territory 'Intervention' - Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, The Situation of Indigenous Peoples in Australia, U.N. Doc A/HRC/15/37/Add.4 (Mar 4 2010) [and OPTIONAL: *see generally* for commentary on intervention, Sarah Keenan, *Property as Governance: Time, Space and Belonging in Australia's Northern Territory Intervention*, Modern Law Review (2013), and Anna Cowen, *UNDRIP and the Intervention: Indigenous Self-Determination, Participation, and Racial Discrimination in the Northern Territory of Australia* 22 Pac. Rim. L. & Pol'y J. 247 (2013).  
**OPTIONAL:**
- Alessandro Fodella, *International Law and the Diversity of Indigenous Peoples*, 30 Vermont L. Rev. 565, at 565 -578.
- Yousef T. Jabareen, *Redefining Minority Rights: Successes and Shortcomings of the U.N. Declaration on the Rights of Indigenous Peoples*, 18 U.C. Davis J. Int'l L. & Policy 119 (2012).
- Mary and Carrie Dann v. United States, Case 11.140, Report No. 75/02, Inter-Am. C.H.R., Doc. 5 rev. 1 at 860 (2002) and U.N. Comm. For the Elimination of Racial Discrimination (CERD), Early Warning and Urgent Action Procedure Decision 1(68) *available at* [http://www.law.arizona.edu/iplp/outreach/shoshone/documents/WS\\_CERD\\_Decision\\_2006-03.pdf](http://www.law.arizona.edu/iplp/outreach/shoshone/documents/WS_CERD_Decision_2006-03.pdf)
- Chan Wah v. Hang Hau Rural Committee & Others, Hong Kong Special Administrative Region Court of Appeal (On Appeal From HCAL 28 of 1999), *available at* [http://www.lawyee.net/Case/Case\\_Other\\_HK\\_Display.asp?lang=2&RID=35536](http://www.lawyee.net/Case/Case_Other_HK_Display.asp?lang=2&RID=35536)

### Wed 11 Feb: 6. Individual and Collective Rights (Women's Rights)

#### READ:

- S. James Anaya, INTERNATIONAL HUMAN RIGHTS AND INDIGENOUS PEOPLES, (2009), at 194-215.
- UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, Dec 16 1966, United Nations, Treaty Series, vol. 993, 3, art. 3, *available at* <http://www.refworld.org/docid/3ae6b36c0.html>. *See also* ICCPR art. 3.
- *Convention on the Elimination of All Forms of Discrimination against Women*, Dec. 18, 1979, 1249 U.N.T.S. 13, art. 1-2, *available at* <http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf> (note reference to 'culture')
- Declaration at the World Conference of Indigenous Women: Progress and Challenges Regarding the Future We Want, Lima, 28-30 October 2013, *available at* [http://www.un.org/en/ga/president/68/pdf/6132014Lima-Declaration\\_web.pdf](http://www.un.org/en/ga/president/68/pdf/6132014Lima-Declaration_web.pdf)
- International Working Group for Indigenous Affairs (IWGIA), *Position Paper and Strategy: Gender and Indigenous Women* (1999).

- Documents on Violence Against Indigenous Women (US-focused), available in NYU Classes (under Resources, Seminar 6):
  - UN Committee [CERD] Calls for Intensified Efforts to Combat Violence Against Native Women -- Indian Law Resource Center Note (Sept 9, 2014) (2 pages)
  - Indigenous NGO Shadow Report to CERD re US, Violence Against American Indian and Alaska Native Women (6 pages)
  - UN Committee on the Elimination of Racial Discrimination, Concluding Observations re US, Aug 29, 2014 (excerpt: one para)
  - US, Violence Against Women Reauthorization Act 2013 (excerpts, 3 pages)

Read One of the Following:

- Maria Noel Leoni Zardo, [\*Gender Equality and Indigenous Peoples' Right to Self-Determination and Culture\*](#), 28 Am. U. Int'l L. Rev. 1053, 1053-1090 (2013).
- Rebecca Gross, *The "I" In Indigenous: Enforcing Individual Rights Guarantees in an Indigenous Group Rights Context*, 23 N.Y. Int'l L. Rev. 65 (2010).
- Carmen Diana Deere & Magdalena León, *Individual Versus Collective Land Rights: Tensions Between Women's and Indigenous Rights Under Neoliberalism*, 53, 53-79 (Jacquelyn Chase ed. 2002) available at [http://books.google.com/books?hl=en&lr=&id=Bx1PzBtCtt4C&oi=fnd&pg=PA53&dq=women%27s+indigenous+rights&ots=6y-PEzrxto&sig=Kime\\_w0m3Ebc8K4mVBXk3z3eWPE#v=onepage&q=women's%20indigenous%20rights&f=false](http://books.google.com/books?hl=en&lr=&id=Bx1PzBtCtt4C&oi=fnd&pg=PA53&dq=women%27s+indigenous+rights&ots=6y-PEzrxto&sig=Kime_w0m3Ebc8K4mVBXk3z3eWPE#v=onepage&q=women's%20indigenous%20rights&f=false)

#### **OPTIONAL:**

- R. Aida Hernandez Castillo, *National Law and Indigenous Customary Law: The struggle for justice of indigenous women in Chiapas Mexico*, Gender Justice, Development and Rights (Maxine Molyneux and Shahra Razavi, eds, Oxford Scholarship Online, 2005).
- Bernard Duhaime & Josee-Anne Riverin, *Double Discrimination and Equality Rights of Indigenous Women in Quebec*, 65 U. Miami L. Rev. 903 (2011) pp. 7-13
- Laura A. Foster, *Situating Feminism, Patent Law and the Public Domain*, 20 Colum. J. Gender & L. 261 (2011).
- Gloria Valencia-Weber and Christine P. Zuni, *Women's Rights as International Human Rights: Domestic Violence and Tribal Protection of Indigenous Women in the United States*, 69 St. John's L. Rev. 69 (1995).
- Robin Perry, *Balancing Rights or Building Rights? Reconciling the Right to Use Customary Systems of Law with Competing Human Rights in Pursuit of Indigenous Sovereignty*, 24 Harv. Hum. Rts J. 71, 21-31 (Summer, 2011).

### **Mon 2 Mar: 7. Institutions and Mechanisms: Indigenous peoples as international lawmakers**

#### **READ:**

- Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), *see generally* <http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/EMRIPIndex.aspx>
- UN Special Rapporteur on Indigenous Rights, *see generally* <http://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/SRIPeoplesIndex.aspx> and latest report available at [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/27/52](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/27/52) (see also links to reports by previous Special Rapporteur S James Anaya available at

<http://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/AnnualReports.aspx>)

- Permanent Forum on Indigenous Issues (PFII), *see generally* <http://undesadspd.org/IndigenousPeoples.aspx>, and *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples*, (Claire Charters and Rodolfo Stavenhagen (eds), 2009) at 335-336 (section entitled 'Permanent Forum on Indigenous Issues')
- Lillian Aponte Miranda, *Indigenous Peoples As International Lawmakers*, 32 U. Pa. J. Int'l L. 203, (2010), *available at* [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1782854](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1782854)

**OPTIONAL:**

- United Nations Development Group, *Guidelines on Indigenous Peoples' Issues*, February 2008
- Declaration on the Establishment of the Arctic Council, Canada, Denmark, Finland, Iceland, Norway, Russian Federation, Sweden and United States, 19 September 1996, *available at* <http://www.arctic-council.org/index.php/en/document-archive/category/5-declarations>. Indigenous groups gained status as permanent participants in an intergovernmental forum for addressing environmental concerns affecting them and their ancestral lands. The Council is a unique forum for cooperation between states and indigenous peoples.

**Wed 4 Mar: 8. Rights to Land and Natural Resources: session I**

**READ:**

- Universal Declaration of Human Rights art. 17, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948), *available at* <http://www.un.org/en/documents/udhr/>.
- *American Convention on Human Rights* art. 21, opened for signature Nov. 22, 1969, 36 O.A.S.T.S. (entered into force July 18, 1978).
- Draft *American Declaration on the Rights of Indigenous Peoples* art X, XII, XIII, XVIII.
- *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of August 31, 2001, Inter-Am. Ct. H.R., (Ser. C) No. 79 (2001), *see* S. James Anaya, *INTERNATIONAL HUMAN RIGHTS AND INDIGENOUS PEOPLES*, (2009), at 265-280, 284-289.
- *Saramaka People v. Suriname*, Inter-Am. Ct. H.R. (Ser. C) No. 172, Judgment of November 28, 2007, *see* S. James Anaya, *INTERNATIONAL HUMAN RIGHTS AND INDIGENOUS PEOPLES*, (2009), at 290-319
- *Yanomami Indigenous Community v Brazil* (Res 12/85, Case No. 7615), Inter-Am. Comm'n H.R., Judgment 5 March 1985, *available at* <http://www.cidh.org/annualrep/84.85eng/Brazil7615.htm>
- *See excerpt* Jon Inge Sirum et al. (*Advocate Ola Brekken*) v. *Essand Reindeer Pasturing District and Riast/Hylling Reindeer pasturing district (Advocate Erik Keiserud)* ("Selbu Case") 21 June 2001 (Norway), *full text available at* <http://www.galdu.org/govat/doc/selbudommen.pdf> (discusses time period and use necessary to acquire right to resources, defining "time in memorial")
- *Xakmok Kasek Indigenous Community v Paraguay*, Inter-Am. Ct. H.R. Judgment of August 24 2010, *available at* [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_214\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_214_ing.pdf).



- *Sesana and Others v. Attorney-General*, AHRLR 183 (BsHC 2006), available at <http://www1.chr.up.ac.za/index.php/browse-by-country/botswana/1118.html>.
- OPTIONAL:**
- Thomas T. Ankerson and Thomas K. Ruppert, *Defending the Polygon: The Emerging Human Right to Communal Property*, 59 Okla. L. Rev. 681 (2006).
  - Ariel E. Dulitzky, *When Afro-Descendants Became 'Tribal Peoples': The Inter-American Human Rights System and Rural Black Communities*, 15 UCLA J. Int'l L. & For. Aff. 29 (2010).

## **Mon 9 Mar: 9. Rights to Land and Resources: session II**

### **READ:**

- Articles 25 to 32, Art 26 in particular United Nations Declaration on the Rights of Indigenous Peoples [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)
- *Calder v. Attorney-General of British Columbia*, [1973] S.C.R. 313.
- *Delgamuukw v. British Columbia* [1997] 3 S.C.R. 1010, 153 D.L.R. (4th) 193.
- *Mabo v Queensland (No. 2)* [1992] HCA 23
- *Te Weehi v. Regional Fisheries Officer*, High Court of New Zealand, [1986] 1 NZLR 682, 687
- *Cal v. Attorney General*, (Belize 2007) 46 I.L.M. 1008 (2007). Failure of the Govt to protect customary land rights. Application of UNDRIP.
- The Marshall Trilogy - *Johnson v McIntosh* 21 U.S. (8 Wheat) 543, 5 L.Ed.681 (1823), *Cherokee Nation v Georgia* 30 U.S. 1 (1831) and *Worcester v Georgia* 31 U.S. 15 (1832)

### **OPTIONAL:**

- Katja Göcke, *Protection and Realization of Indigenous Peoples' Land Rights at the National and International Level*, Goettingen Journal of International Law 5 (2013) 1, 87-154.
- Andrew Eruet, *The Demarcation of Indigenous Peoples' Traditional Lands: Comparing Domestic Principles of Demarcation within Emerging Principles of International Law*, 544 Arizona J. of Int'l & Comparative L. Vol. 23, No. 3 (2006)
- Yvette Trahan, *Richtersveld Community & Others v. Alexkor Ltd: Declaration of a Right in Land through a Customary Law Interest Sets Stage for Introduction of Aboriginal Title into South African Legal System* (2004) 12 Tulane Journal of International & Comparative Law 565.

## **Mon 13 Apr: 10. Prior Informed Consent/Right to Consultation**

### **READ:**

- Arts 10, 11, 19, 20, 29 and 32 UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples resolution / adopted by the General Assembly*, 2 October 2007, A/RES/61/295, available at [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)
- Dams and Development, A New Framework for Decision-Making, The Report of the World Commission on Dams, 110-12 and 216 (2000) available at [http://www.internationalrivers.org/files/attached-files/world\\_commission\\_on\\_dams\\_final\\_report.pdf](http://www.internationalrivers.org/files/attached-files/world_commission_on_dams_final_report.pdf). (see also 215-220)

- IFC, Performance Standard 7, Indigenous Peoples (January 1, 2012) *available at* [http://www.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7\\_English\\_2012.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7_English_2012.pdf?MOD=AJPERES)
- Hydropower Sustainability Assessment Protocol, O-11 Indigenous Peoples, pp191-192, *available at* <http://www.hydrosustainability.org/Protocol/Documents.aspx>
- *The Kichwa Peoples of the Sarayaku community and its members v. Ecuador*, Inter-American Court of Human Rights Judgment of 27 June 2012, *available at*: [http://corteidh.or.cr/docs/casos/articulos/seriec\\_245\\_ing.pdf](http://corteidh.or.cr/docs/casos/articulos/seriec_245_ing.pdf)
- *Orissa Mining Corporation Ltd. v Ministry Of Environment & Forest & Others* (18 April 2013). Related: *Social Activism, Overseas Funding: India's Campaigners Fear Modi Crackdown*, Financial Times 17 Jan 2015, p. 5 [NYU CLASSES, Resources, Seminar 10]

**OPTIONAL:**

- UN-REDD Programme Guidelines on Free, Prior and Informed Consent, *available at* [http://www.un-redd.org/Launch\\_of\\_FPIC\\_Guidelines/tabid/105976/Default.aspx](http://www.un-redd.org/Launch_of_FPIC_Guidelines/tabid/105976/Default.aspx)
- Dwight Newman, *Norms of Consultation with Indigenous Peoples: Decentralization of International Law Formation or Reinforcement of States' Roles?* International Law in the New Age of Globalization", (Andrew Byrnes, Mika Hayashi & Christopher Michaelsen eds., 2013), 267-86, *available at* [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2289525](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2289525)
- Cesar Rodriguez-Garavito, *Ethnicity.gov: Global Governance, Indigenous Peoples, and the Right to Prior Consultation in Social Minefields*, Indiana Journal of Global Legal Studies (2011), *available at* <http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=62959707&site=ehost-live>

**Wed 15 Apr: 11. Apologies, Reparations and Remediation**

**READ:**

- Art. 34-36, ILC Articles on Responsibility of States for Internationally Wrongful Acts with commentaries (2001) *available at* [http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf)
- Theo van Boven, *The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (the Boven Principles), *available at* [http://legal.un.org/avl/pdf/ha/ga\\_60-147/ga\\_60-147\\_e.pdf](http://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_e.pdf)
- Age of Apology *available at* <https://books.google.com/books?id=pPXpiXQ45osC&printsec=frontcover#v=onepage&q&f=false>
  - Apology as a formal remedy of international law, pp. 17-19
  - Apology Justice and Respect pp. 31-32
- Bodo People v Shell, Claim in UK courts and Jan 2015 settlement, documents in NYU Classes, Resources, Seminar 11
- NZ Herald report on Tuwharetoa Settlement trust funds wasted, Jan 21, 2015 (NYU Classes)
- Marenas Renovables (Dutch Company) Wind Farm in Oaxaca, Mexico – documents in NYU Classes, Resources, seminar 11

### OPTIONAL:

- Jeff Corntassel and Cindy Holder, *Who's Sorry Now? Government Apologies, Truth Commissions, and Indigenous Self Determination in Australia, Canada, Guatemala and Peru*, 9 Hum. Rights. Rev. (2008), 465-489, available at <http://www.corntassel.net/CorntasselHolder.pdf>
- Apology to Australia's Indigenous People, available at <http://www.australia.gov.au/about-australia/our-country/our-people/apology-to-australias-indigenous-peoples>
- Apology on behalf of Canadians for the Indian Residential School system, available at <http://www.aadnc-aandc.gc.ca/eng/1100100015644/1100100015649>

### Mon 20 Apr: 12. Indigenous Peoples and (International) Environmental Law and Policy

#### READ:

- Art 22 of the Rio Declaration on Environment and Development, U.N. Doc. A/Conf.151/26 (Vol. I), Annex I (1992)
- Chapter 26, Agenda 21, United Nations Conference on Environment and Development, Annex, Resolution 1, UN Doc. A/conf.151/26/Rev.1(vol. 1) (1993) at 9
- Art 25 of the Johannesburg Declaration on Sustainable Development (2002)
- Rio +20 Outcome Document: The Future We Want (2012)

SELECT FROM AMONG THE FOLLOWING based on areas of interest:

- Overarching commentaries:
  - Peter Manus, Sovereignty, Self-Determination, and Environment-Based Cultures: The Emerging Voice of Indigenous Peoples in International Law, 553 Wisconsin Int'l L.J. vol 23 (2006)
  - Jeremy Firestone, Jonathon Lilley and Isabel Torres de Noronha, Cultural Diversity, Human Rights, and the Emergence of Indigenous Peoples in International and Comparative Environmental Law, 20 Am. U. Int'l L. Rev. 219 (2005) – Part 4, pages 23 onwards for case studies
  - Cherie Metcalf, Indigenous Rights and the Environment: Evolving International Law, 35(1) Ottawa Law Review 101 (2003), available at [http://www.rdo-olr.uottawa.ca/index2.php?option=com\\_sobi2&sobi2Task=dd\\_download&fid=753&Itemid=842](http://www.rdo-olr.uottawa.ca/index2.php?option=com_sobi2&sobi2Task=dd_download&fid=753&Itemid=842)
- Whaling
  - International Convention for the Regulation of Whaling, 161 UNTS 72 (1946) and ICRW Schedule As amended by the Commission at the 64th Annual Meeting in Panama City, Panama, July 2012, available at <https://iwc.int/convention>
  - Robert J. Miller, Exercising Cultural Self-Determination: The Makah Indian Tribe Goes Whaling, 25 Am. Indian L. Rev. 165
- Protected Areas/Co-management
  - World Commission on Protected Areas, Indigenous and Traditional Peoples and Protected Areas: Principles, Guidelines and Case Studies, Case studies 5, 8 and 11 representing three different levels of co-management.
  - Lawrence Watters, Indigenous Peoples and the Environment: Convergence from a Nordic Perspective, 20 UCLA J. Envtl. L. & Pol'y 237 (2002).

- World Trade Organization, European Communities – Measures Prohibiting the Importation and Marketing of Seal Products, Appellate Body decision 2014, text of full decision is *available at* [http://www.wto.org/english/tratop\\_e/dispu\\_e/400\\_401abr\\_e.pdf](http://www.wto.org/english/tratop_e/dispu_e/400_401abr_e.pdf) [shorter edited text will be made available on NYU CLASSES, Resources, Seminar 12] (not necessary to read, but for those interested in the first instance decision by the WTO Panel decision, dated 25 November 2013, it is *available at* [http://www.wto.org/english/tratop\\_e/dispu\\_e/400\\_401r\\_e.pdf](http://www.wto.org/english/tratop_e/dispu_e/400_401r_e.pdf) and [http://www.wto.org/english/tratop\\_e/dispu\\_e/400\\_401r\\_a\\_e.pdf](http://www.wto.org/english/tratop_e/dispu_e/400_401r_a_e.pdf))
  - Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by the United States
- Relationship between indigenous peoples/MNC and the Environment
  - Lillian Aponte Miranda, The Hybrid State-Corporate Enterprise and Violations of Indigenous Land Rights: Theorizing Corporate Responsibility and Accountability under International Law, 11 Lewis & Clark L. Rev. 135 (2007).
  - Aerial Herbicide Spraying case (Ecuador v. Columbia) Application of Ecuador (2008). Invocation by Ecuador of indigenous peoples health and reliance on natural resources to bolster claim. Subsequently settled out of court.
  - Texaco/Chevron Lawsuits (re Ecuador) *available at* <http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/TexacoChevronlawsuitsreEcuador>; as well as commentary/analysis Judith Kimerling, Indigenous Peoples and the Oil Frontier in Amazonia: The Case of Ecuador, ChevronTexaco and Aguinda v Texaco, 38 N.Y.U. J. Int'l L. & Pol. 413 (2006).

### **Wed 22 Apr: 13. International Peoples and International Trade and Investment**

#### **READ:**

- Grand River Enterprises Six Nations, Ltd., et al. v. United States, Int'l Ctr. For the Settlement of Inv. Disputes (January 12, 2011), (Tobacco tribes unsuccessfully challenge anti-smoking laws in a NAFTA case) *available at* <http://italaw.com/sites/default/files/case-documents/ita0384.pdf>
- Glamis Gold, Ltd. V. United States, Int'l Ctr. For the Settlement of Inv. Disputes, 271-92 (June 8, 2009) (on indigenous historic uses in proposed mining area) *available at* <http://www.italaw.com/sites/default/files/case-documents/ita0378.pdf>
- United States – Final Countervailing Duty Determination with respect to certain Softwood Lumber from Canada, WT/DS257/R (October 12, 2006) – Canadian Indian bands seeking access for their lumber to US markets [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds257\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds257_e.htm)
- Hupacasath First Nation v. Min of Foreign Affairs, (Canada) – challenging Canada-China BIT – Canadian Federal Court of Appeal decision 9 Jan 2015 *available at* <http://www.italaw.com/sites/default/files/treaty-interpretations/italaw4104.pdf>

#### **OPTIONAL:**

- Margaret A. Young, 'Trade Measures to Address Environmental Concerns in Faraway Places: Jurisdictional Issues' (2014) 23:3 *RECIEL* 302, *available at* [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2538245](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2538245)

- Judith Levine, The Interaction of International Investment Arbitration and the Rights of Indigenous Peoples, in Freya Baetens (ed), *Investment Law Within International Law* (CUP, 2013), pp 106-128, available at <http://ezproxy.library.nyu.edu:2054/lib/nyulibrary/detail.action?docID=10752990>.

**Mon 27 Apr, Wed 29 April: Reserve dates.**

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**Module Currently Not Covered in Class: Indigenous Peoples and Development (including intellectual property, biodiversity)**

**READ:**

- Art. 12 UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples resolution / adopted by the General Assembly*, 2 October 2007, A/RES/61/295, available at [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)
- Art 8(j), [Convention on Biological Diversity](#), 31 ILM 822 (1992).
- Universal Declaration on Cultural Diversity, UNESCO, 31st Sess., 20th plen. mtg. (Nov. 2, 2001) <http://digbig.com/4qbwf> and Convention for the Safeguarding of the Intangible Cultural Heritage, UNESCO, 32d Sess (Oct. 17, 2003) available at <http://digbig.com/4qbwg>
- Karen Engle, *The Elusive Promise of Indigenous Development*, ch. 8 (2010), available at <http://ezproxy.library.nyu.edu:2054/lib/nyulibrary/detail.action?docID=10410340>
- Konstantia Koutouki & Katharina Rogalla von Bieberstein, [\*The Nagoya Protocol: Sustainable Access and Benefits-Sharing for Indigenous and Local Communities\*](#), 13 Vt. J. Int'l L. 513 (2012).
- CBD/TK Secretariat, "Indigenous peoples and the international and domestic protection of traditional knowledge" (13 July 2005) E/CN.4/Sub.2/AC.4/2005/CRP.2, available at: <http://www.ohchr.org/Documents/Issues/IPeoples/WG/E-CN4-Sub2-AC4-2005-CRP2.doc>
- World Intellectual Property Organization (WIPO) Intergovernmental Comm. On Intellectual Prop. & Genetic Res., *Traditional Knowledge & Folklore, The Protection of Traditional Knowledge: Revised Objectives and Principles*. 16<sup>th</sup> Session, WIPO Doc. [WIPO/GRTKF/IC/16/5](#) (Jan, 22 2010).

**OPTIONAL:**

- Kristen A. Carpenter, Sonia K. Katyal, and Angela R. Riley, [In Defense of Property](#), 118 Yale L.J. 1022 (2009).
- Ruchira Goswami and Karubakee Nandi, [Naming the Unnamed: Intellectual Property Rights of Women Artists From India](#), 16 Am. U.J. Gender Soc. Pol'y & L. 257 (2008).