

IWC/S15/ASW/7

The relevance of international law 'outside' the ICRW for the IWC

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INTERNATIONAL
WHALING COMMISSION



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Indigenous Peoples Rights and IWC: 1946/1979 → 2015

- ILO Convention concerning Indigenous and Tribal Peoples, no. 169, **1989**
- First International Decade of the World's Indigenous Peoples, **1995-2004**
- UN Permanent Forum on Indigenous Issues, **2000/2002**
- UN Special Rapporteur on Indigenous Rights, **2001**
- UN Expert Mechanism on the Rights of Indigenous Peoples, **2007**
- UN Declaration on the Rights of Indigenous Peoples, **2007**



outline

- **the interpretation of the International Convention on the Regulation of Whaling (ICRW) as an international treaty**
- the role of indigenous peoples rights in the interpretation of the ICRW
- the role of the IWC in regard to indigenous peoples rights



“interpretation” of international treaties

- standard method of legal methodology: analytical effort to shed light on ambivalent language within a statute/treaty
- for international treaties regulated in Vienna Convention on the Law of Treaties (1969) = widely ratified + seen as customary international law

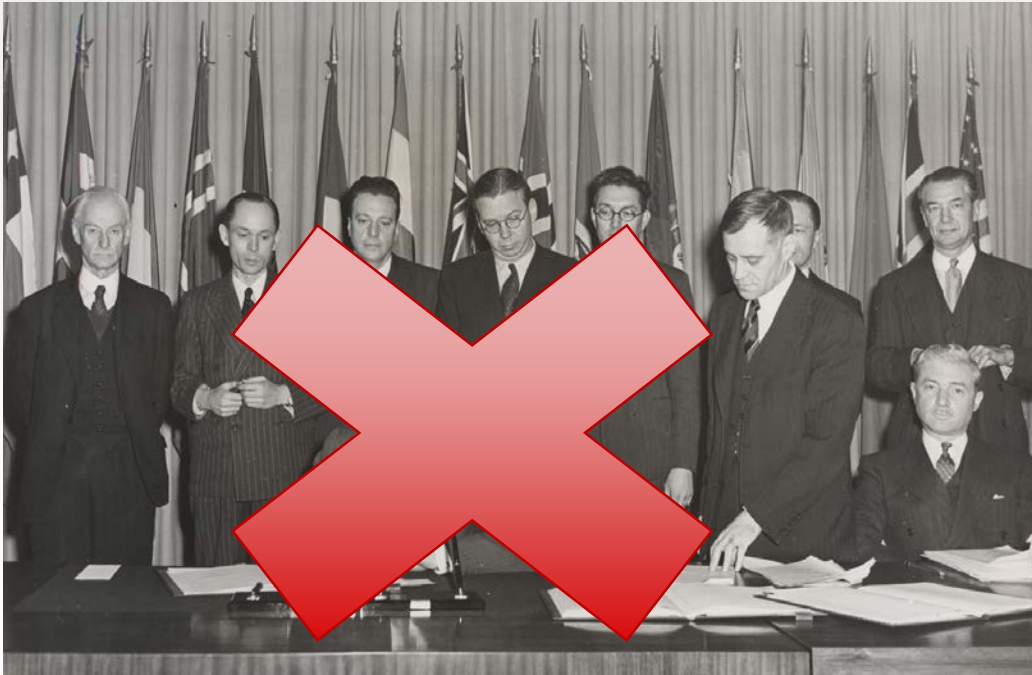


“interpretation” of ASW elements within the ICRW

- “local consumption”
- “subsistence”
- “commercialism”



limits of history within the “interpretation” of international treaties





basics of “interpretation” of international treaties

- wording of the relevant provision
- **context → otherwise danger of fragmentation of international law (not specific to ICRW + goes both directions)**
- object and purpose
- **practice of member states**



“interpretation” of the ICRW according to the ICJ

- Judgment of the International Court of Justice, Whaling in the Antarctic, 31 March 2014
 - ICRW = “evolving instrument”
 - role of resolutions adopted in consensus for the understanding of the ICRW



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indigenous peoples rights, international law and the IWC

- indigenous peoples rights *today* widely recognized in international law: ILO 169 → UNDRIP → WCIPPOD 2014 etc.
- *dynamic* area of law
- depend on implementation by governments *across* the board
- no definition of indigenous peoples under international law; *emphasis on self-identification* to avoid misuse/capture all (while also drawing on objective criteria)



indigenous peoples rights and the IWC: 2 *examples*

- right to cultural and economic *self-determination*
- right to *self-determined development*





indigenous peoples rights and the IWC

- Article 3 UN Declaration on the Rights of Indigenous Peoples (UN General Assembly 2007 → partly customary law)

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



indigenous peoples rights and the IWC

- Article 20 UN Declaration on the Rights of Indigenous Peoples
Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
- cf. also Articles 25, 26, 32 of the UN Declaration



indigenous peoples rights and the IWC

- Article 7 (1), ILO Convention no. 169 (1989/22 = IWC members)

The peoples concerned shall have **the right to decide their own priorities for the process of development** as it effects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, **and to exercise control, to the extent possible, over their own economic, social and cultural development.**



indigenous peoples rights and the IWC

- Article 23 (1), ILO Convention no. 169

Handicrafts, rural and community-based industries, and **subsistence economy and traditional activities of the peoples** concerned, such as hunting, fishing, trapping and gathering, **shall be recognized as important factors in the maintenance of their culture and in their economic self-reliance and development.**

Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted.



indigenous peoples rights and the IWC

- Article 2 (1) and (2) lit. b, ILO Convention no. 169

Governments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action **to protect the rights of these peoples** and to guarantee respect for their integrity.

2 (b): Such action shall **include measures for promoting the full realisation of the social, economic and cultural rights of these peoples** with respect for their social and cultural identity, their customs and traditions.



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- the interpretation of the International Convention on the Regulation of Whaling (ICRW) as an international treaty
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- **the role of the IWC in regard to indigenous peoples rights – some recommendations on how to reflect the “outside”**



the IWC and indigenous peoples rights: **take note**

IWC resolution on ASW 2014-1 adopted at IWC65, 2014

- speaks inter alia of “**importance of accommodating the needs**” of aboriginal peoples – not of respecting and ensuring the “**rights**” of indigenous peoples



the IWC and indigenous peoples rights: **do it**

- Article 41 UN Declaration on the Rights of Indigenous Peoples (UN General Assembly 2007)

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.



the IWC and indigenous peoples rights: **align**

- WCIPOD 2014: UN Secretary General to develop system-wide action plan to ensure a coherent approach to achieving the ends of the UN Declaration on the Rights of Indigenous Peoples
 - in consultation and cooperation with indigenous peoples, member states and the *Inter-Agency Support Group on Indigenous Peoples' Issues*
 - **role for ASW WG? → learn and share good practices**



the IWC and indigenous peoples rights: **do no harm**

- Article 35, ILO Convention no. 169

The application of the provisions of **this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions** and Recommendations, international instruments treaties, or national laws, awards, custom or agreements.



selection of key readings

- International Labour Organisation, Indigenous and Tribal Peoples' Rights in Practice, A Guide to ILO Convention No. 169, 2009 (http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_106474.pdf)
- Report of the UN Special Rapporteur on the Rights of Indigenous Peoples, UN Doc. A/69/267, 6 August 2014 (<http://unsr.vtaulicorpuz.org/site/index.php/en/documents/annual-reports/35-report-ga-2014>)
- Report of the UN Secretary General, Progress Made in the Implementation of the Outcome Document of the World Conference on Indigenous Peoples, UN Doc. A/70/84, 18 May 2015
- IWGIA, The Indigenous World 2015 (http://www.iwgia.org/iwgia_files_publications_files/0716_THE_INDIGENOUS_ORLD_2015_eb.pdf)