CHAPTER 13

Challenges for the Coming Years: Learning Regional Lessons on Environmental Protection and Achieving the Participation of Indigenous Peoples in the United Nations System

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Abstract

The chapter will explore two specific challenges that the UN must face in this new era of environmental degradation and climate crisis, which depart from the issues it was prepared to face when it was founded. Nowadays, after 75 years of work by universal and regional bodies, regional human rights courts such as the Inter-American Court of Human Rights have taken important steps toward the protection of the environment, with new regional treaties or with creative connections between regional human rights charters and the protection of the environment. These developments need to be observed, appraised and included in the universal efforts led by the UN, and a closer universal – regional dialogue is needed.

Regarding a second issue, the underrepresentation of indigenous peoples, their rights and their environmental agendas is still a challenge both at the UN and the local level. Securing active, permanent and effective representation of indigenous peoples in international bodies is vital for understanding different perspectives and solutions for particular environmental issues and climate change.

Keywords

international law – regional courts – biological diversity – human rights

Introduction

In commemoration of the 75th anniversary of the inaugural session of the United Nations General Assembly (UNGA), this chapter aims to assess specific challenges that the organization must face to contribute to the full realization of the provisions enshrined in the UN Charter: (i) the regional dialogue regarding environmental protection and (ii) the participation of indigenous peoples in the UN system.

These challenges represent some of the most complex agendas faced by both states and international organizations, and they have been a recurrent topic in recent meetings of specialized organs. A resolution adopted by the Human Rights Council on March 23, 2021, regarding its agenda item 3, "Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development," illustrates the link between the two challenges, namely, the fundamental relationship between human rights and the environment, the latter being essential for both biodiversity and regional environmental protection, as well as for indigenous peoples:

> Requests the Special Rapporteur, in fulfilling the mandate:
>
> (a) To continue to study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, in consultation with Governments, relevant international organizations and intergovernmental bodies, including the World Health Organization, the United Nations Environment Programme and the United Nations Development Programme, and relevant multilateral environmental agreements, human rights mechanisms, local authorities, national human rights institutions, indigenous peoples and civil society organizations, including those representing local communities and other persons in vulnerable situations, women, children and youth, the private sector and academic institutions ….
>
> HUMAN RIGHTS COUNCIL 2021, PARA. 6

Furthermore, Advisory Opinion No. 23 of the Inter-American Court of Human Rights (IACTHR), issued on November 15, 2017, following Colombia's request in March 2016, is one of the most significant advances regarding the protection of the right to a healthy environment within international tribunals at the regional level aimed at promoting good practices relating to human rights and commitments regarding the environment (Republic of Colombia 2016). Indeed, it exemplifies the need for regional developments to be acknowledged

in the universal dialogue, the UN bodies and the UNGA, in their urgence to become the proper forum to disseminate such developments. In the Opinion, the IACTHR developed an international legal framework for substantive and procedural issues in environmental law, in order to ensure the protection of the environment and its connection with the fundamental substantive and jurisdictional duties of states. In doing so, the Court recognized the right to a healthy environment as a right in itself, not only as a circumstance relating to the enjoyment of more traditional human rights such as the right to life, and it set the first precedent for its recognition as an autonomous right. The main contribution of the Opinion is that it specified the scope of the environmental obligations that derive from the general duties to respect and guarantee the rights to life and personal integrity.

The IACTHR achieved this development through a systematic interpretation of different international instruments for the protection of the marine environment, such as the Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region (1983) and the Convention on Biological Diversity (CBD) (1992) in relation to the American Convention on Human Rights. The following section analyzes the evolution of the concepts of environmental rights and biological diversity in the context of the IACTHR and their role in the Advisory Opinion. The latter constitutes a regional development that needs to be enshrined by the UN as a contribution to its goals in the coming years, as it has done in the past with topics such as the protection of the environment in wartime (Morris 1993).

Regional Lessons for the UN: Linking Biological Diversity and Human Rights

The history of the request for an advisory opinion regarding environmental rights in Latin America is characterized by great challenges. Colombia faced a difficult legal scenario in its 2016 request in which it sought to enact preventive measures to protect the fragile Caribbean Sea ecosystem from the increase in large infrastructure projects that could cause large-scale environmental damage (Jaimurzina and Sánchez 2017), for the American Convention does not include a provision that explicitly recognizes the right to a healthy environment or the protection of biological diversity.

Even in the absence of such specific provisions, Colombia was able to establish a link between human rights and the environment by inferring a relationship between two apparently unrelated treaties: the Convention for the Protection and Development of the Marine Environment in the Wider

Caribbean Region (WCR) and the American Convention on Human Rights – Pacto de San José. This strategy is not unfamiliar to the UNGA when it exercises its legislative powers and, for this reason, constitutes an example that it should embrace. This linkage was also possible thanks to the previous innovative case law by the IACTHR related to indigenous peoples, in which a connection between the right to life and the right to a healthy environment was recognized in light of a systematic interpretation of several regional instruments (IACTHR 2005).

Colombia included in the request the argument of "functional jurisdiction," which considers that states are responsible for activities that affect human rights even beyond their borders, if they are bound by environmental obligations in broader protection zones. This argument referred to a broader understanding of "jurisdiction" as enshrined in article 1.1 of the American Convention to include areas where the state exercises functions in an environmental protection zone. As an evolving concept, this new definition was difficult for an international court to accept, and its acknowledgment would have marked a progressive development of international human rights law. Thus, although this argument was partially rejected by the Court, the strategy was transcendental to opening the door to the study of the questions formulated by the state of Colombia.

As a consequence of Colombia's litigation strategy, the Court incorporated obligations from the Cartagena Convention in the Advisory Opinion in order to protect the rights of the population against serious environmental transboundary damage. In other words, the IACTHR carried out an exercise

> of observation and subsequent implementation of the codification made by the states in their treaties, raising the standards enshrined in a treaty, into principles and customary law that is now part of the *corpus juris* of the Inter-American System.
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> ABELLO-GALVIS AND ARÉVALO-RAMIREZ 2020, 410

This is the kind of exercise that bodies with treaty-drafting (Peterson 2005) powers, such as the UNGA, should aim to implement in the coming years to collectively tackle global issues, such as the environment or pandemics, not only with resolutions but also with binding instruments (Asamoah 2012).

The questions presented by Colombia in the Opinion pertain to several issues faced by the international community today: The first aimed to determine whether, under functional or extraterritorial jurisdiction such as transboundary harm, the international responsibility of a state can be declared for breaches to environmental treaties that harm human rights. The second sought

to clarify if the actions or omissions of a state that may cause serious damage to the marine environment are compatible with the American Convention obligations. Finally, the third question intended to determine the obligations derived from the American Convention regarding the prevention of environmental damage (IACTHR 2017a).

As stated in the request, breaches to the CBD lead to damages in the WCR that are often serious and irreparable. This premise is based on the fragility of the Caribbean Sea ecosystems, which are composed mostly of coral reefs, mangroves and seaweed, all of which are fundamental to sustain the necessary resources of coastal communities (Republic of Colombia 2016).

The marine environment of the WCR was presented as an example of biological diversity as it became a reserve of a variety of organisms and ecosystems. Colombia expressly stated that

> the Wider Caribbean Region and, specifically, the Caribbean Sea, is considered the heart of Atlantic biodiversity and the source of resources that sustain the way of life of the coastal populations and contribute to the region's economic growth.
>
> REPUBLIC OF COLOMBIA 2016, PARA. 12

Consequently, for the state of Colombia, serious damage caused to the marine environment in the WCR would affect not only its ecosystems but also the possibilities of survival of coastal communities in the economic and social fields.

Colombia's request constituted an opportunity for the IACTHR to rule on the obligations of states concerning the construction of large infrastructure projects when these may cause serious transboundary damage to the environment (Feria-Tinta and Milnes 2019, 50).

Even though the request was clearly delimited by a geographical area (the Caribbean Sea Region) and a specific environment to protect (the marine environment), the IACTHR decided to rule on the relevance of the environment for the protection of human rights in every region that is under the jurisdiction of the American Convention (IACTHR 2017a, para. 35). This is the paramount reason for the United Nations to take note of this development, since it now binds a broader global region and, being based on general international law and environmental law, the Opinion is a good basis for cross-fertilization in a global dialogue between regional and universal dispute settlement mechanisms and forums (Sands 1998, 85).

The reference to the notion of "environment" of the IACTHR in its Advisory Opinion made its interpretation applicable to any environmental context, including the conservation of the marine environment as an expression of biological diversity, and to any geographical region. This, since it delimited

a framework on the environmental obligations of states that derive from the general duties of respect and guarantee of rights to life and personal integrity under the American Convention, removed any limitation to environmental treaties in the Caribbean.

Accordingly, perhaps one of the most important conclusions of the Advisory Opinion refers to the fact that environmental damage should be interpreted not only as an impairment of the enjoyment of the rights to life and personal integrity, but also as a violation of the right to a healthy environment (Bratspies 2015, 31), understood as an autonomous right, with mootness before international courts.

Turning the Right to a Healthy Environment into a Regional then a Universal Right

One of the greatest challenges of the Inter-American human rights system has been finding legal mechanisms to justify the direct or indirect protection of the right to a healthy environment, considering that it is not expressly mentioned in the American Convention or the American Declaration of the Rights and Duties of Man (Feria-Tinta and Milnes 2019; Ordoñez 2020). This is a challenge seen in several other regional human rights jurisdictions, and an issue found also in the United Nations human rights system (Collins 2015).

In previous cases, the IACTHR had studied the environment as a right related to others, mainly in relation to cases concerning indigenous communities, and had adjudicated only on rights on which it had express competence (right to liberty and property) (IACTHR 2005, para. 137; 2006, para. 118; 2007, paras. 121–122), or to declare violations of the obligation of non-regression derived from article 26 of the American Convention (IACTHR 2009; 2017b).

The Court eventually developed the principle of interdependence and indivisibility of human rights, recognizing that the different categories of rights constitute an indissoluble unity that is based on the recognition of human dignity (IACTHR Advisory Opinion 2017a, para. 46). Following this principle, the IACTHR builds an environmental legal framework in AO-23 (Vega-Barbosa and Aboagye 2018), under which the Court resolved the challenge posed by the absence of the right to a healthy environment in the American Convention and recognized an intertwined relationship between the environment, sustainable development and human rights.

Article 26 of the American Convention does not expressly include a reference to the right to a healthy environment, but this provision makes direct reference to the economic, social, cultural, scientific and educational standards contained in the Charter of the Organization of American States (OAS).

Following this interpretation, the Court recognized the environment as one of the three pillars (economic, social and environmental) necessary for the comprehensive development of the human being, a principle enshrined in the OAS Charter (Cerqueira 2020, 27). This formulation followed the same approach provided in several international instruments:[1] the notion that a healthy environment is a prerequisite (Rodriguez-Rivera 2001, 1) for the enjoyment and exercise of all other rights.

The Court concluded that the right to a healthy environment, recognized in Article 11 of the Protocol of San Salvador, must be included among the economic, social and cultural rights protected by article 26 of the American Convention. It also reiterated "the interdependence and indivisibility of the civil and political rights, and the economic, social and cultural rights, as they should be understood integrally and comprehensively as human rights, with no order of precedence, and as enforceable in all cases before the competent authorities" (IACTHR Advisory Opinion 2017a, para. 57). Thanks to this development, after the Advisory Opinion, it is possible to infer that the right to a healthy environment is justifiable and autonomous before the institutions of the Inter-American human rights system, by virtue of article 26 of the American Convention.[2]

The Opinion of the Court was not limited to the recognition of a healthy environment as an autonomous and justifiable right; it also established the general scope of its content. First, the IACHR referred to the collective and individual dimensions of this right. The Court indicated that a healthy environment is a principle independent of circumstances, a universal value and a global interest (Abello-Galvis and Arévalo-Ramirez 2019, 220) since it must be guaranteed for present and future generations (IACTHR Advisory Opinion 2017a, para. 59).

On an individual level, the Court noted that damage caused to the environment has a direct and an indirect impact on people. In other words, it reiterated the connection between the environment and the enjoyment of other human rights, such as life and personal integrity.

The Court concluded that some rights are more susceptible to being violated in the face of environmental damage. Those could be classified in two groups: substantive rights and procedural rights. Certain substantive rights, such as the right to life, personal integrity, not to be forcibly displaced (IACTHR Advisory Opinion 2017, paras. 67–69), health, property, privacy (IACTHR Advisory Opinion

1 That is, the Paris Agreement, which includes the express recognition of climate change and human rights (Márquez 2020).

2 See Separate Opinions of Judges Vio Grossi y Sierra Porto.

2017, paras. 53–55) and the right to access to water and food, can be directly affected by any degradation of the environment.

At the same time, procedural rights contribute to the protection of the environment by acting as necessary tools to identify, implement and monitor environmental policies and practices. In that sense, those rights include the right to freedom of expression, association, information, participation in decision-making and effective remedy (IACTHR Advisory Opinion 2017, para. 64).

The Court recognized the right to a healthy environment as an autonomous right, without the need to determine a definite harm to a connected right or individually considered victims. This implies that the right protects legal interests that can be claimed without the need for another right to be violated, for example the protection of different components of the environment such as forests, rivers and seas. Furthermore, the Court seems to formulate a preliminary approach regarding nature as the holder of rights (Giannino 2018) and nature as a legal subject (Tigre 2020), since it states that

> [i]t is intended to protect the nature and the environment, not only because of the benefits they provide to humanity or the effects that their degradation may have on other human rights, such as health, life or personal integrity, but because of their importance to the other living organisms with which we share the planet that also merit protection in their own right. In this regard, the Court notes a tendency, not only in court judgments, but also in Constitutions, to recognize legal personality and, consequently, rights to nature.
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> IACTHR ADVISORY OPINION 2017, PARA. 62

Thus, it could be interpreted that biological diversity is one of the elements protected by the right to a healthy environment, a fundamental argument that should be considered by the United Nations in the coming years. The fight to protect biodiversity is not separated from the effective protection and enjoyment of human rights. Damage to biological diversity would constitute a mechanism of proof to demonstrate the violation of the right to a healthy environment when it generates a risk to individuals. However, under this interpretation, it could eventually lead to a violation of the right to the environment autonomously and without the need to affect the rights of people (Abello-Galvis and Arévalo-Ramirez, 2022).

Although this interpretation seems to be preliminary and an important first step for the recognition of new subjects of law, the Court focused more on developing a systematic interpretation based on various international instruments

in order to establish the scope of state obligations related to the duty to respect and guarantee the rights to life and the integrity of persons relating to damage to the environment. This emphasis shows the scope of the advisory function of the Court and the importance of the request made by Colombia. The IACTHR not only accepted its competence to analyze the request made by Colombia but also responded favorably to it. The Court provided clarity in the establishment of substantive content of state obligations concerning the protection of the marine environment.

Furthermore, Colombia, through its litigation strategy, led the IACTHR to a systematic interpretation of the instruments that comprise the Inter-American human rights system, by providing context for its obligations concerning environmental treaties. In this regard, the Court considered that one of the main purposes of the advisory function is to provide tools for states to effectively comply with human rights obligations. The Court indicated that

> the task of interpretation it performs in the exercise of its advisory function not only clarifies the meaning, and purpose of international human rights norms, but also, above all, assists OAS Member States and organs to comply fully and effectively with their relevant international obligations, and to define and implement public policies to protect human rights. Thus, its interpretations help strengthen the system for the protection of human rights.
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> IACTHR ADVISORY OPINION 2017, PARA. 24

Another reason to promote dialogue between the UN and regional experiences regarding international law and the environment is the fact that these regional opinions, practices and decisions embrace and develop universal principles (Abello-Galvis and Arévalo-Ramirez 2016, 15), multilateral treaties and universal customary law. In the Advisory Opinion, the Inter-American Court, in order to determine the scope of the obligation to respect and guarantee the rights to life and personal integrity,[3] turned its attention to the standards of international environmental law (IACTHR Advisory Opinion 2017, para. 55). The Court used the obligations of states vis-à-vis different international instruments to incorporate them into the obligations derived from the American Convention (Abello-Galvis and Arévalo-Ramirez 2019, 218).

3 Nonetheless, as indicated by the Court, these obligations also announce the protection of all substantive and procedural rights related to the environment.

For instance, the Court used systematic interpretation based on the United Nations Convention on the Law of the Sea (UNCLOS) (1982) and the CBD to determine the correlative obligations to the substantive and procedural rights regarding the protection of the environment (Jimenez Moran Sotomayor 2020) and the right to life and personal integrity. The Court, throughout its analysis, pointed out that one of the reasons why it repeatedly refers to the CBD is that it has been ratified by 34 of the 35 OAS member states (IACTHR Advisory Opinion 2017, para. 176), and it reflects most of the environmental obligations that define the scope of the duties under the American Convention. Within this framework, the Court established, first, that the environmental obligations under the American Convention are determined by the principle of due diligence (which corresponds to the guaranteed obligation enshrined in its article 1.1) and indicated that the principle of prevention acts as a general obligation in both human rights and environmental matters.

To fully understand the scope of the concepts of "damage" and "prevention" in environmental law, the Court analyzed UNCLOS, which includes a general obligation to protect and preserve the marine environment within national jurisdiction and outside of it (IACTHR Advisory Opinion 2017, para. 57). Likewise, to qualify the type of damage to be prevented, the IACTHR referred to article 14.1 of the CBD, which established a duty to prevent significant adverse effects on biological diversity. Consequently, this body recognized the obligation of states to prevent significant environmental damage, inside and outside their territory.

The Court, bearing in mind those instruments, accepted a protective interpretation of the term "significant" and concluded that any damage that directly or indirectly causes negative effects on substantive rights provided in the American Convention must be prevented (Abello-Galvis and Arévalo-Ramirez 2019, 221). Taking into account that the obligation of prevention is a performance obligation, the Court emphasized that all measures in the power of a state must be taken to prevent the activities carried out under its jurisdiction from causing significant environmental damage. Consequently, it affirms that some specific obligations arise from this principle, such as the duty to regulate, supervise and control, to require and approve environmental impact assessments and to mitigate environmental damage.

Regarding the duty to mitigate environmental damage, the Court turned to UNCLOS and the CBD, articles 198 and 14, respectively. It recognized that one of the measures that states can adopt in order to mitigate significant environmental damage is to notify the state that could be affected, without delay and as quickly as possible. This reframing of the principle of prevention generates

considerable effects, since it widens the scope of application of the principle, previously recognized exclusively in cases concerning territories of indigenous peoples (IACTHR Advisory Opinion 2017, para. 161).

The second general obligation identified by the Court was the duty of prevention, widely recognized in the Rio Declaration and the CBD. It must be noted that the IACHR broadened the scope set by the International Court of Justice (2010)[4] by assuming that, in cases concerning the protection of the right to life and personal integrity, states must adopt effective measures to prevent serious or irreversible damage, even in the absence of scientific certainty.

Regarding the obligation to cooperate, the Court expressly recognized it as part of article 26 of the American Convention and noted that it derives from the principle of good faith, constituting a fundamental principle in the prevention of the pollution of the marine environment (ICJ 2010, para 184). The Court emphasized the importance of the obligation of notification, contained in several international treaties such as the CBD, articles 5 and 14, along with the obligation to consult and negotiate in good faith, including the obligation to exchange information contained in article 17.2 of the CBD.

The Participation of Indigenous Peoples in the UN System: a Challenge for the Coming Years

The UN has faced several difficulties since its creation; an old challenge that has gained greater relevance in the days of postcolonialism is the lack of indigenous peoples' participation within the organization, mainly due to the difficulties associated with the non-recognition and exclusion of some of these groups in local and regional settings. The UN Human Rights Council has requested several documents to shed light on the issue in order to find novel ways to solve it. One of the most recent set of efforts revolves around the report prepared by the Secretary-General, in cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Office of Legal Affairs, entitled "Ways and Means of Promoting Participation at the United Nations of Indigenous Peoples' Representatives on Issues Affecting Them" (Human Rights Council 2012). In this sense, the objective of the present section is to make a comprehensive review of the most relevant issues covered by the report, highlighting the fundamental issues that need to be understood as challenges for the UN in the coming years.

4 Case Concerning Pulp Mills on the River Uruguay, Argentina vs Uruguay, Judgment on the Merits, International Court of Justice, 2010.

First Challenge: Recognition

State Recognition

By their very nature, indigenous peoples' governing structures work differently from nongovernmental organizations and state agencies. It is well known that the traditions of various indigenous communities in relation to their organization depend to a great extent on family ties. Therefore, their organizational structure must be understood based on ancestral legal and cultural norms (Human Rights Council 2012, para. 7).

It is true that several states recognize constitutionally, legally and, in some circumstances, politically the different forms of organization of indigenous peoples that reside within their territory. Nevertheless, there are other states that still do not contemplate the possibility of recognizing them, particularly when the peoples and their institutions themselves are not recognized within the state by traditional communities or political actors. Full recognition of the diverse means of organization implemented by indigenous peoples is urgently needed for them to achieve legal rights and political participation within the state (Human Rights Council 2012, para. 8).

Recognition by the Economic and Social Council as a Nongovernmental Organization

Within the United Nations, the recognition issue is different. In principle, for an indigenous peoples' organization to participate in sessions of the Economic and Social Council, it must meet certain criteria to acquire consultative status (Human Rights Council 2012, para. 10). By virtue of ECOSOC resolution 1996/31, the Council established a series of principles for establishing consultative relations with NGOs. Among them, principle ten provides, inter alia, that the organizations must have established headquarters, with an executive officer and a democratically adopted constitution, that shall be deposited with the Secretary-General of the United Nations (ECOSOC 1996, para. 10). The issue with the requirements lies in the fact that some indigenous peoples' organizations may not have any headquarters, and even less a written constitution, bearing in mind that many of these communities are managed through oral traditions.

These demands make it more difficult for indigenous peoples to participate in the Economic and Social Council sessions, as meeting all the criteria established in Resolution 1996/31 is almost impossible. Unfortunately, due to this inconvenience, these organizations have been unable to become actively involved in meetings and events where issues of direct relevance to them are discussed. It is well known that in the past, due to the absence of accreditation,

these organizations were unable to enter the United Nations building in New York even as the draft Declaration on the Rights of Indigenous Peoples was being considered (Human Rights Council 2012, para. 11).

Procedural Rules for Indigenous Peoples' Participation in United Nations Main Bodies, Agencies and Committees

General Assembly

Only member states are able to participate at the UNGA, the sole exception to this being entities and intergovernmental organizations that have received standing to join the meeting as observers (Human Rights Council 2012, para. 33). Regarding NGOs, the UNGA can also invite them as observers for special meetings (Human Rights Council 2012, para. 34). This means that if any committee of the Assembly is going to deal with relevant indigenous issues, there is the possibility of indigenous peoples' organizations being invited. The promotion and endorsement of this type of invitation are challenges to tackle in the coming years, as many more topics discussed at the UNGA directly touch on the rights of indigenous peoples.

Economic and Social Council

Participation by NGOs in the Economic and Social Council is regulated by the Rules of Procedure and Resolution 1996/31. The resolution contains a list of principles that must be followed in order to establish consultative relations with NGOs (ECOSOC 1996), most of them being hard to fulfill by indigenous peoples' organizations, as mentioned above. The consultative status within ECOSOC is accessible through an online application form, but the granting of this status is a prerogative of member states.

Human Rights Council

The participation of NGOs within the Human Rights Council is regulated by General Assembly Resolution 60/251. Paragraph 11 of the aforementioned resolution provides that participation is governed by the rules of procedure established for the General Assembly committees. Hence, only NGOs in consultative status with the Economic and Social Council can be accredited to participate in the meeting of the Human Rights Council (2012, para. 49). This directly impacts and impairs the chances for indigenous peoples to be an active, permanent interlocutor in fundamental human rights debates.

Permanent Forum on Indigenous Issues

The United Nations Permanent Forum on Indigenous Issues is an advisory body to the Economic and Social Council. Its mandate, according to Resolution 2000/22, is to deal with indigenous issues relating to economic and social development, culture, environment, education, health and human rights (ECOSOC 2000). Likewise, the Forum has contributed to raising awareness and promoting the integration and coordination of activities related to indigenous issues. Besides states, civil society can also attend the Permanent Forum annual sessions (Human Rights Council 2012, para. 16). However, only five categories of participants can pre-register for these sessions: (i) indigenous peoples' organizations, (ii) indigenous parliamentarians, (iii) NGOs in consultative status with the Economic and Social Council, (iv) national human rights institutions and (v) academic institutions (Human Rights Council 2012, para. 17).

Expert Mechanism on the Rights of Indigenous Peoples

The Expert Mechanism on the Rights of Indigenous Peoples, the Permanent Forum on Indigenous Issues and the Special Rapporteur on the rights of indigenous peoples are the three United Nations bodies with the mandate to deal specifically with indigenous peoples' issues (UN Department of Economic and Social Affairs n.d.). In particular, the Expert Mechanism has the duty, under Resolution 6/36, to assist member states in achieving the goals of the United Nations Declaration on the Rights of Indigenous Peoples (OHCHR 2007). Moreover, Resolution 6/36, under paragraph 9, provides that the annual meeting of the Expert Mechanism shall also be open to indigenous peoples' organizations (OHCHR 2007, para. 9).

Nonetheless, participation in these sessions is not as easy as it would seem. An organization seeking accreditation to the annual sessions of the Expert Mechanism must submit a letter to OHCHR and complete an online questionnaire indicating details about the organization, its work regarding indigenous peoples' issues and, finally, the organization must explain how it wants to contribute to the meeting (Human Rights Council 2012, para. 20).

United Nations Voluntary Fund for Indigenous Populations

The United Nations Voluntary Fund for Indigenous Populations was established in virtue of Resolution 40/131, with the purpose to assist representatives of indigenous communities and organizations to participate in the deliberations of the Working Group on Indigenous Populations by providing financial assistance (UN General Assembly 1985), yet its scope has been expanded over

the years in various resolutions. Any member of an indigenous community can apply for a grant, but in order to be a beneficiary the person must fulfill certain criteria set by the Board of Trustees (OHCHR n.d.).

Conclusion: Facilitating Participation – Promoting Recognition and the Advantages of Indigenous Peoples' Participation in the United Nations

Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples affirms that indigenous peoples have the right, through a representative chosen by themselves in accordance with their own procedures, to participate in decision-making in matters that affect their rights and to maintain and develop their own decision-making institutions (UN General Assembly 2007, art. 18).

For the United Nations to contribute to the full realization of the provisions contained in the Declaration, in particular article 18, it must undertake initiatives to promote indigenous peoples' participation through new ways and means. In fact, this is an obligation contemplated in article 41 of the same Declaration (UN General Assembly 2007, art. 41). Consequently, the Expert Mechanism on the Rights of Indigenous Peoples, in its fourth session held from July 11–15, 2011, adopted a final report (A/HRC/18/43) with proposals to be submitted to the Human Rights Council at its eighteenth session (Human Rights Council 2011).

The most relevant proposal was the one encouraging the UNGA to adopt permanent measures to ensure effective participation at all levels of indigenous peoples' organizations, bodies, assemblies and councils at the United Nations, with similar participatory rights as NGOs in consultative status with the Economic and Social Council (Human Rights Council 2012, para. 3).

Furthermore, in Resolution A/HRC/21/24, the Secretary-General set forth possible steps to promote the participation of recognized indigenous peoples' representatives at the United Nations, in bodies such as the General Assembly committees, the Economic and Social Council and the Human Rights Council. The establishment of a preliminary process to determine new and more adequate criteria for eligibility and accreditation of indigenous peoples' representatives with their direct involvement was suggested, because it is their right to take part in discussions regarding matters that affect them (Human Rights Council 2012, para. 56).

Indigenous peoples' participation in the United Nations meetings could contribute to improving the resolution of issues that directly affect these communities. Indeed, as stated in the report of the Secretary-General, "indigenous

peoples are best placed to produce authoritative advice on their situation and select the most appropriate methods to tackle the challenges they face" (Human Rights Council 2012, para. 13). Additionally, their active participation in the various spaces offered by the United Nations will facilitate and strengthen the rapprochement and cooperation between indigenous peoples and governments.

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