

THE CONTINUING STRUGGLE: EXPLORING THE EXTENT OF INDIGENOUS RIGHTS IN THE MODERN AGE

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Since the colonization of the “New World,” indigenous people have struggled with establishing and maintaining their rights as citizens while still keeping to their cultural heritage. There is a continuing struggle even in today’s modern age, regarding the extent of indigenous peoples’ rights, particularly with regard to the maintenance of their cultural traditions and land. However, in recent years, there have been serious movements as well as legislation passed to help secure the rights of indigenous people across the globe. The International Labour Organization (ILO) helped start the trend by passing such legislation in 1989. Many South American countries ratified the ILO’s “Indigenous and Tribal Peoples Convention, 1989,” and since ratification, many of those countries have endeavored to secure and enforce the rights of indigenous peoples, Peru being the prime example. Peru, in particular, has been a model to follow when it comes to passing and enforcing legislation securing the rights of the indigenous in culture and land. But even in Peru, there are still enforcement and recognition issues when it comes to the indigenous people.

It is the purpose of this Note to expound on the development and extent of indigenous cultural rights on the international and domestic plane, focusing on Peru. This Note will also note the shortcomings of law and policy in Peru, regarding the indigenous people. While the ILO and United Nations (UN) have made conscious international efforts to secure change for the indigenous, it is not quite enough because there is still a struggle for recognition and enforcement of indigenous rights on the domestic level. Unless there is a significant change of attitude on the domestic level, the struggle for the indigenous will continue. Passing new domestic legislation or ratifying international conventions will not likely be enough. To really make an impact, continuing positive policies and attitudes towards this issue will have to be adopted, circulated, and accepted.

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I. INTRODUCTION

Indigenous people are a culturally unique class of people.¹ “Indigenous identity, though evidently fluid and constantly changing, is linked to a prevailing sense of cultural difference and to discrimination by dominant society.”² In other words, the commonality that defines indigenous peoples all across the globe is the desire to adhere to their distinct cultural roots, even if it means being different from and discriminated against by modern society. Being a unique class of people, indigenous people need unique considerations by international conventions and domestic legislation. Unlike most groups or classifications of people, recognition of their individual human rights is not sufficient.³ Indigenous people need their collective human rights to be recognized and enforced to help them continue to exist as they do and have for centuries. The extent of indigenous rights has been at issue for centuries, and it is still at issue even today.⁴ This is the continuing struggle.

Every now and again something is seen on TV or read in a newspaper that brings indigenous people and the question of the extent of their rights to center stage. In fact, this was recently a hot topic in United States’ news. When this Note was written in 2016, a pipeline was about to be built in North Dakota near the Standing Rock Sioux Tribe reservation.⁵ The indigenous people, who lived on the reservation, and many others, were protesting the pipeline’s construction because it was set to be built over sacred Native American burial grounds.⁶ Further, there was a concern that the pipeline may leak or break and cause environmental damage to the reservation and area surrounding it.⁷ Despite the dissent from the indigenous people, the President of the United States gave his stamp of approval to continue construction of the pipeline, believing it would “serve the national interest.”⁸ Protests of the pipeline escalated to violence.⁹ This is a classic example of the dominant culture trying to subvert indigenous culture in the name of the “common

¹ See MATTIAS ÅHRÉN, *INDIGENOUS PEOPLES’ STATUS IN THE INTERNATIONAL LEGAL SYSTEM* 83–84 (2016).

² Rachel Sieder, *Introduction* to *MULTICULTURALISM IN LATIN AMERICA: INDIGENOUS RIGHTS, DIVERSITY AND DEMOCRACY 2* (Rachel Sieder ed., Palgrave MacMillan 2002).

³ Razida Torres, *The Rights of Indigenous Populations: The Emerging International Norm*, 16 *Yale J. Int’l L.* 127, 133 (1991).

⁴ See discussion *infra* Section III.

⁵ *Dakota Pipeline: What’s Behind the Controversy?* BBC (Feb. 7, 2017), <http://www.bbc.com/news/world-us-canada-37863955>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

good,” and it is not just the United States that has had these issues.¹⁰ Even Peru, one of the current national leaders in indigenous rights,¹¹ has recently had some troubles with its oil pipeline contaminating and infringing on indigenous lands.¹² Two of the most recent spills in 2016 caused the leaders of the indigenous community affected by the spills to meet with Peruvian government officials to discuss fixing the problem.¹³ The meeting ended at an impasse, which led to protests by the indigenous community a little while later.¹⁴ Both this and the United States’ example demonstrate why the extent of indigenous rights needs to be explored. Either indigenous people have the right to live in adherence with their cultural traditions, which include the necessary accompanying land and resource rights, or they do not. If the indigenous do have these rights, then their domestic government needs to honor and enforce those rights.

For the most part, the international and domestic communities are coming to understand and accept that “Indigenous Peoples should remain, nonetheless, . . . interpreters of their own situations and masters of their fates.”¹⁵ The indigenous people have as much a right to this as any other human being does. The fact that their culture is different from the majority of the modern world does not negate this. Despite opposition, assimilation attempts, suffering, poverty, and many more atrocities, the indigenous, for the most part, have remained true to their culture and heritage.¹⁶ How can anyone deny indigenous people their right to live as they do and have lived for hundreds of years when they have clung to it with such steadfast faithfulness? It is possible for two cultures to occupy the same space without clashing or trying to assimilate each other, and Peru has become one of the best, albeit not perfect, examples of this being possible.

¹⁰See Press Release, U.N. General Assembly, *Indigenous Peoples Distinct Cultures Erode Without Respect for Rights Over Lands, Territories, Natural Resources*, Forum Told, U.N. Press Release HR/4917 (May 14, 2007) [hereinafter Press Release, *Indigenous Peoples Distinct Cultures*].

¹¹ANDINA, *Peru, Model for Protection of Indigenous Peoples in Isolation*, ANDINA – PERU NEWS AGENCY (June 2, 2016) [hereinafter ANDINA] <http://www.andina.com.pe/ingles/noticia-peru-model-for-protection-of-indigenous-peoples-in-isolation-615303.aspx>.

¹²Barbara Fraser, *Negotiations and Protests Ongoing in Wake of Oil Spills in Peruvian Amazon*, MONGABAY (Sept. 5, 2016), <https://news.mongabay.com/2016/09/negotiations-and-protests-ongoing-in-wake-of-oil-spills-in-peruvian-amazon/>.

¹³See *id.*

¹⁴*Id.*

¹⁵Dr. Erica-Irene A. Daes, *Equality of Indigenous Peoples Under the Auspices of the United Nations – Draft Declaration on the Rights of Indigenous Peoples*, 7 ST. THOMAS L. REV. 493, 499 (1995).

¹⁶See Elvira Pulitano, *Introduction to INDIGENOUS RIGHTS IN THE AGE OF THE UN DECLARATION 5–6* (Elvira Pulitano ed., Cambridge Univ. Press 2012).

II. THE GENERAL HISTORY AND IMPACT OF THE COLONIZATION OF PERU

To understand this continuing struggle of clashing cultures and fighting for recognition and enforcement of indigenous rights, it is best to start with the history of Spanish exploration and subsequent colonization of Peru. It really began with Christopher Colon's, more popularly known as Columbus, desire "to exceed the bounds which had limited the most daring and successful navigators."¹⁷ By the late 1400's, the East Indies had become, by way of trade, very profitable to Europe.¹⁸ For this reason, the nations of Europe greatly desired a direct route to the East Indies because it would afford the nation who found it "the richest commerce in the world."¹⁹ Using his knowledge, Columbus conceived of a way to get to the East Indies by sailing west,²⁰ and by doing this, whether he knew it or not, Columbus would become "the initiating agent of a vast and historic transformation."²¹

Even though Columbus was unsuccessful in finding support for his venture for many years, the Queen of Spain, Isabella, eventually gave Columbus the chance and support he needed.²² Thus, Spain historically, has received the credit of having discovered the "new world."²³ Due to Spain's pioneering efforts, Spanish influence is plainly seen in most of the Western Hemisphere, as most of the Caribbean and Central and South Americas are now part of the modern Hispanic/Latino global community.²⁴

The exploration and colonization of the Western Hemisphere did not end with the single efforts of Columbus.²⁵ Many other explorers and conquerors came out to help stake their perspective nation's claim in the new world.²⁶ "The discoveries and conquests which had been made, and the settlements that had been established, served both as incentives and facilities to new and bolder enterprises."²⁷ Exploration for the sake of discovery became exploration for the sake of greed and Christian conversion.²⁸ The more the explorers saw, the more they wanted to take,

¹⁷ HON. JOHN M. NILES, HISTORY OF SOUTH AMERICA AND MEXICO: COMPRISING THEIR DISCOVERY, GEOGRAPHY, POLITICS, COMMERCE AND REVOLUTIONS 7 (1838).

¹⁸ *See id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ STEVE J. STERN, PERU'S INDIAN PEOPLES AND THE CHALLENGE OF SPANISH CONQUEST: HUAMANGA TO 1640, at xxii–xxiv (Univ. Wis. Press, 2nd ed. 1993).

²² NILES, *supra* note 17, at 7–8.

²³ *Id.*

²⁴ *Spanish Empire*, NEW WORLD ENCYCLOPEDIA, <https://www.nps.gov/articles/significance-of-missions.htm> (last modified Jan. 15, 2016).

²⁵ *See NILES, supra* note 17, at 43.

²⁶ *See id.*

²⁷ *Id.*

²⁸ STERN, *supra* note 17, at xxvii–xxviii.

giving little thought or consideration to those from whom they were taking.²⁹

By the time Spain conquered Mexico, around 1524, Spanish explorers set their eyes toward “discovering and conquering the rich countries to the eastward of that colony, which had long attracted the attention of adventurers.”³⁰ Peru, in particular, became of interest to an explorer named, Francisco Pizarro.³¹ Pizarro and two associates set out to explore the coast of what is now known as South America.³² After some fruitless endeavors, Pizarro and his crew had the “good fortune to discover the coast of Peru.”³³ They touched base in several places along the Peruvian coast before finally landing at Tumbez, Peru.³⁴ Pizarro saw first hand the wonders of Peru and the Incan People, the original inhabitants of Peru.³⁵ “The fertility of the country, the improvements, civilization, and wealth of the inhabitants, was now, for the first time, fully unfolded to the view of the Spaniards.”³⁶ Pizarro and his crew came to believe their wildest dreams had been realized and that they had found “the land of Ophir,” (“the country of gold”).³⁷ From the temples to everyday utensils, the Incan civilizations seemed to be covered with gold and silver.³⁸ Even the Incas themselves were clothed in silver and gold.³⁹

Having seen the massive wealth and fertility of Peru, Pizarro and his crew coveted it and desired to claim it as their own.⁴⁰ However, realizing that the inhabitants vastly outnumbered him and his crew, Pizarro at first only sailed up and down the coast and traded with the inhabitants, all the while making plans to take advantage of this wealthy land he had discovered.⁴¹ Pizarro sailed for Spain in hopes of getting the support he needed to conquer the country.⁴² Pizarro’s persistence and ambition gained him the Spanish Crown’s appointment and the support

²⁹ See FREDERICK P. BOWSER, *THE AFRICAN SLAVE IN COLONIAL PERU 1524-1650* 1 (1974).

³⁰ NILES, *supra* note 17, at 43.

³¹ See *id.* at 43–45.

³² See *id.* at 43–44.

³³ *Id.* at 44–45.

³⁴ *Id.* at 45.

³⁵ See Pedro Pizarro, *Relation of the Discovery and Conquest of the Kingdoms of Peru*, in *DOCUMENTS AND NARRATIVES CONCERNING THE DISCOVERY AND CONQUEST OF LATIN AMERICA* 39 (Philip Ainsworth Means trans., 1921).

³⁶ NILES, *supra* note 17, at 45.

³⁷ *Id.*

³⁸ See *id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See *id.*

⁴² See *id.* at 45–46; RAFAEL VARÓN GABAI, *FRANCISCO PIZARRO AND HIS BROTHERS: THE ILLUSION OF POWER IN SIXTEENTH-CENTURY PERU* 3 (1997).

sufficient to accomplish his goal of taking Peru.⁴³

Pizarro's initial attempts at conquest were successful.⁴⁴ Little resistance came from the indigenous people.⁴⁵ Many chose to flee their homes, and others chose to appeal to their attackers "for peace and favor."⁴⁶ Pizarro then planted the first Spanish colony near the mouth of the river Piura.⁴⁷ Shortly thereafter, the indigenous people rose up and tried to rid Peru of the Spanish colonists, but it was all for nothing, as many of the indigenous were slaughtered, and Peru still fell to the Spanish.⁴⁸ Lima, Peru became one of the seats of government from which Spain ruled its new empire emerging in the Americas, and the inhabitants of Peru became "gratifying objects for the rapacity" of the colonists.⁴⁹

"Peru, at the time it was invaded by Pizarro, was a powerful and extensive empire, being six hundred leagues in length on the coast of the Pacific Ocean, and extending east to the ridge of the Andes, stretching from one extremity of that vast chain to the other."⁵⁰ This was around 1524.⁵¹ In 1952, Ernesto "Che" Guevara, went on his own "exploratory" trip through South America.⁵² When he stopped in Peru, the indigenous people he saw there profoundly affected him.⁵³ In Guevara's own words, "[t]hese people who watch us walk through the streets of the town are a defeated race. Their stares are tame, almost fearful, and completely indifferent to the outside world. Some give the impression they go on living only because it's a habit they cannot shake."⁵⁴ These are grave

⁴³ NILES, *supra* note 17, at 45–46; *see also* GABAI, *supra* note 42, at 3.

⁴⁴ *See* Pizarro, *supra* note 35, at 66–68.

⁴⁵ NILES, *supra* note 17, at 46.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *See id.* at 52, 60–61.

⁴⁹ *Id.* at 60–61.

⁵⁰ *Id.* at 46.

⁵¹ *Id.* at 43.

⁵² Cintio Vinter, *Introduction to Ernesto THE MOTORCYCLE DIARIES: NOTES ON A LATIN AMERICAN JOURNEY* 16, 24 (Ocean Press 2003). Ernesto "Che" Guevara was an Argentinian "revolutionary" during the 1950's and 1960's. *See id.* at 5, 8–9. He was instrumental in helping Fidel Castro overthrow the Baptista Dictatorship and take over Cuba, which is where he first got his infamous "Che" moniker, "a popular form of address in Argentina." *See id.* at 5–6, 8. Guevara became a revolutionary after he saw firsthand the harsh reality of life for indigenous people in South America. *See id.* at 2, 24–26. He would often speak "about the complex indigenous world of Latin America, the poverty of its people and the exploitation to which they are submitted." *Id.* at 2. In fact, Guevara "earned a reputation as a passionate and articulate spokesperson for Third World peoples . . .," even speaking at United Nations a time or two. *See id.* at 6. It should be noted, however, that this is only being used to illustrate the poor condition of public and legal policy toward the indigenous and their rights in Peru as recently as sixty years ago. This explanation should not be taken as the author's support for Guevara's ideals or actions.

⁵³ *See id.* at 16, 24.

⁵⁴ *Id.* at 24.

words, and it is easy to be skeptical of their sincerity. However, the general spirit of the words was a reality, in the sense that the indigenous peoples of South America were a widely ignored and oppressed people for many years.⁵⁵ In 1995, as little as twenty-three years ago, Dr. Erica-Irene A. Daes noted that four threats still existed to the survival of indigenous people: “forced relocation, forced assimilation, militarization of their territories, and official denial of their indigenous identity.”⁵⁶ Despite the fact that over four hundred years had passed since Spain first began exploring and colonizing Latin America, little progress had been made to secure or even establish the rights of indigenous peoples as human beings and citizens of their native land.

As stated previously, discovery became a means for greed and Christian conversion.⁵⁷ The Spanish decided to conquer the indigenous with “the sword and the cross,” and they were largely successful.⁵⁸ “The inhabitants of the New World would become Spaniards and Christians, whether through suasion or force, and a new Spain would take shape in America.”⁵⁹ When the Spanish explorers saw something, they took it, with little to no consideration given to people from whom they were taking.⁶⁰ In this way, the struggle can already be seen, the struggle of clashing cultures and the beginning of the fight for recognition and enforcement of indigenous rights. There seems to be a common misperception, as seen in the history above, that two different cultures cannot exist in the same space. Either one culture must defend itself and thwart the other culture that threatens to invade, or the other culture must attack and root out the one culture before it can occupy its space, almost like one plant or species of animal trying to dominate the other in the name of survival.

Humanity should be capable of more than this. People should be able to work together to reach mutual understandings and goals, but, for some reason, people are not often willing to do this. This continuing struggle has lasted for hundreds of years in South America, particularly in Peru. The struggle started when Spain first conquered the country⁶¹, has lasted through the International Labour Organization passing the “Convention Concerning Indigenous and Tribal Peoples in Independent

⁵⁵ See *id.* at 2, 24–26; see also Daes, *supra* note 15, at 495. Dr. Daes, as “Chairperson/Rapporteur of the Working Group on Indigenous Populations,” helped draft “the United Nations Draft Declaration on the Rights of Indigenous Peoples.” *Id.* at 493–94.

⁵⁶ *Id.* at 495.

⁵⁷ See STERN, *supra* note 21, at xxviii–xxix.

⁵⁸ *Id.*; see also BOWSER, *supra* note 29, at 1.

⁵⁹ BOWSER, *supra* note 29, at 1.

⁶⁰ See STERN, *supra* note 21, at xxvii, xxix; see also BOWSER, *supra* note 29, at 1. Please note that this is not intended to focus full blameworthiness or be a slight on Spain. The general focus on Spanish conquest and indigenous culture in Peru is to illustrate what has happened to indigenous peoples all across the globe, using Peru as the case example.

⁶¹ See NILES, *supra* note 17, at 44–46.

Countries”⁶² and the United Nations adopting the Declaration on Rights of Indigenous Peoples,⁶³ and still exists today, in 2018.⁶⁴ This is not to imply, however, that no progress has been or is being made. The world is moving in the right direction by at least making a public policy and legal note of the indigenous collective right to their culture and their property. Some countries, like Peru, are leading the way by actively trying to acknowledge and enforce those rights.

III. THE INTERNATIONAL MOVEMENT TOWARDS ESTABLISHING THE RIGHTS OF INDIGENOUS PEOPLES

The movement towards establishing indigenous rights really began and grew in momentum on the international level, rather than the domestic level.⁶⁵ Of course, some countries have indigenous law reflected in their national law just by nature of the two cultures clashing and trying to exist in the same space.⁶⁶ One example of this is Peru.⁶⁷ “On the local level in the Peruvian Andes, the two legal spheres - indigenous and state - have each had their own dynamic since the Conquest but have also constantly affected each other.”⁶⁸ In certain localities, Peruvian law borrowed from the customary law.⁶⁹ However, even though the state law borrowed from their customary law, indigenous peoples still had tremendous difficulty trying to resolve anything through the state’s legal system.⁷⁰ For example, the indigenous often ran into problems with the judicial system when they sought its interference against an elite or something in which an elite might have an interest.⁷¹ The community handled most of its own conflicts, but going against an elite required a court, an arbitrator of justice. Unfortunately, up until the latter half of the

⁶² See generally Convention Concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989, 28 ILM 1382 [hereinafter Convention 1989].

⁶³ See generally Press Release, United Nations, General Assembly Adopts Declaration on Rights of Indigenous Peoples; ‘Major Step Forward’ Towards Human Rights for All, Says President GA/10612 (Sept. 13, 2007) [hereinafter Press Release, Major Step Forward], <http://www.un.org/press/en/2007/ga10612.doc.html>.

⁶⁴ See Rachael Hocking, *2017 a ‘Dismal Year for Indigenous Rights’: Human Rights Watch*, NITV (Jan 19, 2018, 4:09 PM), <https://www.sbs.com.au/nitv/nitv-news/article/2018/01/19/2017-dismal-year-indigenous-rights-human-rights-watch> (illustrating examples of issues still present, culturally and legally, with indigenous people’s cultural rights).

⁶⁵ See Joanna Drzewieniecki, Prepared for Meeting of Latin American Studies Association: Indigenous People, Law, and Politics in Peru (Sept. 28–30, 1995), available at <http://lanic.utexas.edu/project/lasa95/drz.html>.

⁶⁶ See *id.*

⁶⁷ See *id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

1900's, indigenous complaints against elites in court were either unsuccessful or ignored.⁷² There just were not a lot of options, domestically, that indigenous people could pursue to get justice in many situations.⁷³

Fortunately, international organizations, such as the International Labour Organization (ILO) and the United Nations, recognized these incidences in the indigenous communities and realized that there needed to be some kind of change in international law.⁷⁴

*A. The First Step Towards Changing International Law for
Indigenous Peoples: the ILO and the Convention Concerning
Indigenous and Tribal Peoples in Independent Countries*

The International Labour Organization (ILO) is an agency of the United Nations dedicated to unifying workers, employers, and representatives and to promoting decency in work standards all across the globe.⁷⁵ It was created as part of the Treaty of Versailles out of “security, humanitarian, political and economic considerations.”⁷⁶ Towards that end, “[t]he ILO has been engaged with indigenous and tribal peoples’ issues since the 1920’s.”⁷⁷ In 1989, the ILO introduced the Indigenous and Tribal Peoples Convention, 1989 (No. 169), which to this day is the “only international treaty open for ratification that deals exclusively with the rights of these peoples.”⁷⁸

In the Convention, the ILO recognized the recent developments with human rights on the international plane.⁷⁹ However, these rights did not seem to extend equally to everyone, because indigenous peoples did not seem to “to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded.”⁸⁰ This was seen earlier in the case example of Peru.⁸¹ As late as the 1980’s,

⁷² *Id.*

⁷³ *See id.*

⁷⁴ *See generally* Convention 1989, *supra* note 62; Press Release, Major Step Forward, *supra* note 63.

⁷⁵ Int’l Labour Org. [ILO], *About the ILO*, <http://ilo.org/global/about-the-ilo/lang-en/index.htm> (last visited Jan. 26, 2018).

⁷⁶ Int’l Labour Org. [ILO], *Origins and History*, Subheading to *About the ILO*, <http://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm> (last visited Jan. 26, 2018).

⁷⁷ Int’l Labour Org. [ILO], *Indigenous and Tribal Peoples*, Subheading to *Topics*, <http://ilo.org/global/topics/indigenous-tribal/lang--eng/index.htm> (last visited Jan. 26, 2018).

⁷⁸ *Id.*

⁷⁹ *See* Convention 1989, *supra* note 62, at 1384; *see also* Lee Sweptson, *A New Step in the International Law on Indigenous and Tribal Peoples: ILO Convention No. 169 of 1989*, 15 OKLA. CITY U. L. REV. 677, 687–688 (1990).

⁸⁰ Convention 1989, *supra* note 62, at 1384.

⁸¹ *See supra* Part III(A).

when the Peruvian indigenous would make a complaint within the legal system, they would be at risk of some kind of punishment or abuse.⁸² “Those who filed protests were likely to be labeled as rebels and dangerous and were often sought out and punished.”⁸³ And even if the complaint went through and a ruling was made in favor of the indigenous person, it was hardly ever enforced.⁸⁴ This just goes to show that a law, or even a judicial ruling, is not worth the paper it is printed on if the general public opinion is not behind it. However, the ILO passing this type of convention, after so many years,⁸⁵ was a sign that at least the international community was ready to start taking seriously the recognition and enforcement of indigenous rights. This is all in connection to how the community had started taking human rights as a whole seriously.⁸⁶

The ILO accomplished quite a bit by passing the Convention. The Convention itself adopted “an attitude of respect for the cultures and ways of life of indigenous and tribal peoples.”⁸⁷ Perhaps one of the most significant contributions the ILO made by passing the Convention was to define “indigenous and tribal peoples.”⁸⁸ This may seem superfluous, but “[t]here is no universal definition of indigenous and tribal peoples,” but the ILO Convention No. 169 “provides a set a criteria for identifying [them in a given country].”⁸⁹ The Convention states in Article 1 that it applies to:

[P]eoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.⁹⁰

⁸² Drzewieniecki, *supra* note 65.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ The last convention was in 1957, and the ILO saw that changes needed to be made. See Sweptston, *supra* note 79, at 688–689. See generally Convention 1989, *supra* note 62.

⁸⁶ See Catherine Turner, *Human Rights and the Empire of (International) Law*, 29 L. & INEQ. 313, 313–15 (2011).

⁸⁷ Sweptston, *supra* note 79, at 690.

⁸⁸ Int'l Labour Org. [ILO], *Who are Indigenous and Tribal Peoples*, Subheading to *Indigenous and Tribal Peoples*, http://www.ilo.org/global/topics/indigenous-tribal/WCMS_503321/lang-en/index.htm (last visited Feb. 5, 2018).

⁸⁹ *Id.*

⁹⁰ See Convention 1989, *supra* note 62, at 1384.

The ILO is one of the first international organizations to include a definition of these “peoples” within one of its documents⁹¹ With a definition like this, it arguably makes the document more effective. It is more effective because it specifically targets the “people” meant to receive these rights and protections as a collective, instead of the entitlement of general individual rights seen in other documents.

The Convention as a whole encourages indigenous peoples “to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live.”⁹² Article 3 of the Convention specifically addresses the use of force or coercion to deprive an indigenous person of their human rights.⁹³ Even further, Article 14 grants that “[t]he rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recogni[z]ed.”⁹⁴ This is a big issue in indigenous rights and will be addressed later. Article 33 sets up a means to help administer the Convention.⁹⁵ Additionally, each part of the Convention is made to comply and work together with the United Nations, World Health Organization, and other such organizations to secure their application.⁹⁶ However, the Convention is binding only on those who ratify it.⁹⁷ Fortunately, it was ratified by most of South America, including Peru, and it is still in force.⁹⁸

Unfortunately, what is meant here by “in force” is relative. Many places have laws that are “in force,” but that does not mean that they are *enforced*.⁹⁹ One critique of the ILO 1989 Convention is that it does not seem to give any sort of warning or punishment (i.e. sanctions) to those countries that ratify it but then later fail to enforce it.¹⁰⁰ It does not seem to be enough to just hope that countries will follow this out of good will. It

⁹¹ Laurie Sargent, *The Indigenous Peoples of Bolivia’s Amazon Basin Region and ILO Convention No. 169: Real Rights or Rhetoric?* 29 U. MIAMI INTER-AM. L. REV. 451, 471 (1998).

⁹² Convention 1989, *supra* note 62, at 1384.

⁹³ *Id.* at 1385.

⁹⁴ *Id.* at 1387.

⁹⁵ *Id.* at 1391.

⁹⁶ *See generally* Convention 1989, *supra* note 62.

⁹⁷ *Id.* art. 38.

⁹⁸ Int’l Labour Org. [ILO], *Ratifications of C169*, Subheading to *Ratification by Conventions*, http://www.ilo.org/dyn/normlex/en/f?p-NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314:NO (last visited Feb. 6, 2018); *see also* Christian Curtis, *Notes on the Implementation by Latin American Courts of the ILO Convention 169 on Indigenous Peoples*, 18 INT’L J. MINORITY & GRP. RTS. 433, 433 (2011).

⁹⁹ NANCY H. CHAU & RAVI KANBUR, *THE ADOPTION OF INTERNATIONAL LABOR STANDARDS CONVENTIONS: WHO, WHEN, AND WHY?* 113, 114–115, (Brookings Institution Press, 2001).

¹⁰⁰ *Id.* at 115; Convention 1989, *supra* note 62, at 1386–87.

could be that many signed only to “save face” but had no real intention of adhering to the Convention. For example, many countries ratified this document in the 1990’s, yet in 1995, Dr. Daes noted that four threats still existed to the survival of indigenous people: “forced relocation, forced assimilation, militarization of their territories, and official denial of their indigenous identity.”¹⁰¹ It most likely became a great concern on the international plane that these people were still being ignored. At the time Dr. Daes noted those threats to indigenous culture, she was helping the United Nations draft the Declaration on Rights of Indigenous Peoples.¹⁰²

In the end, while the ILO 1989 Convention may not have brought about world change, it did start the momentum in getting active recognition of indigenous peoples’ rights on the international and national levels.¹⁰³ The United Nations was the next to take this movement even further.

*B. The Next Step Towards Changing International Law for
Indigenous Peoples: the UN and the Declaration on Rights of
Indigenous Peoples*

During the 1970’s and 1980’s, the United Nations (UN) started the process of addressing indigenous rights, recognizing that this is a concern that has yet to be fully addressed.¹⁰⁴ In addressing and researching this issue, the UN made some interesting assessments.¹⁰⁵ Those assessments are as follows:

[First,] the situation of indigenous peoples differs from that of ethnic and cultural minorities. [Second,] [i]t was recognized that despite colonization, assimilation, and similar policies, indigenous peoples had largely managed to preserve their distinct societies, cultures, and ways of life, which are deeply rooted in their ancestral lands. [Third,] [t]his characteristic . . . warranted the formulation of an indigenous rights discourse that specifically targets indigenous peoples, and not minorities.¹⁰⁶

The UN decided, from that point on, that any laws passed had to single

¹⁰¹ Daes, *supra* note 15, at 495.

¹⁰² *Id.* at 494.

¹⁰³ Athanasios Yupsanis, *ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries 1989-2009: An Overview*, 79 *NORDIC J. INT’L L.* 433, 452–53 (2010).

¹⁰⁴ ÅHRÉN, *supra* note 1, at 83–84.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

out indigenous peoples specifically, rather than just list them along with minorities.¹⁰⁷ Each group has different needs, so it makes sense to treat each group different legislatively. This was an important conclusion to make if any progress were to be made in addressing indigenous rights. As illustrated above, indigenous people are so fundamentally different than other groups of people that to make any sort of legislation to protect their rights, one would have to understand what indigenous people stand for culturally.¹⁰⁸ Indigenous people cling to their culture and their heritage, which is probably why many live in seclusion from the modern world. It is not enough, as it is for some other groups, to simply have guidelines to protect their life. Indigenous people also need protection for their way of living. It takes great valor to cling to one's culture, even despite hardship and the pressure to assimilate.

In recognition of that valor and of the vast number of reported wrongs done to the indigenous, the UN established a commission to help outline indigenous rights.¹⁰⁹ These people, who had been widely ignored for so long, were really starting to get the attention they deserved. The UN found that every people, regardless of cultural background, ought to have their needs and interests addressed, even if they are not the majority culture.¹¹⁰ To support that end, the UN limited itself to two premises on which to build the Declaration on Rights of Indigenous Peoples: (1) “[t]he right to self-determination” and (2) the right to land and resources, “viewed through the prism of the right to equality.”¹¹¹

Addressing the first premise, by “self-determination,” it means that the indigenous should have the freedom to maintain their own societies.¹¹² In other words, indigenous people have a right to their culture. While this can come off as an anarchist concept, it is actually more reasonable than it first appears. The very purpose of drafting this legislation was to help the indigenous protect their way of life. Who better to determine how to maintain their way of life than the indigenous people themselves? It would not make any good sense to have outsiders trying to regulate and maintain the indigenous peoples' way of life, and there would be a good possibility of the outsiders trying to assimilate the indigenous culture again, even if just subconsciously. “Unifying” cultures was already tried in this area, and it ended with the majority culture trying to subvert and assimilate the other culture.¹¹³ Based on these previous results, self-determination seems to be an essential premise to indigenous rights.

¹⁰⁷ *See id.*

¹⁰⁸ *See id.*

¹⁰⁹ *Id.* at 85–86.

¹¹⁰ *See id.* at 87.

¹¹¹ *Id.* at 86.

¹¹² *Id.*

¹¹³ *Id.* at 87–88.

The second premise addresses reparations.¹¹⁴ The UN wanted amends to be made for the injustices the indigenous have suffered, and were suffering, due to the colonization of their land.¹¹⁵ This also addresses a valid concern. According to the ILO website, “Indigenous peoples care for an estimated 22 percent of the Earth’s surface and protect nearly 80 percent of remaining biodiversity on the planet.”¹¹⁶ There is a “special relationship between indigenous peoples and their territory”¹¹⁷ Indigenous people live off of, and are connected, by heritage and tradition, to the land around them, so they have a vested interest in protecting it.¹¹⁸ Because the indigenous live off of the land and protect the land, the UN should find a way to make some reparations on behalf the indigenous. Further, indigenous peoples need certain resources to survive and maintain their way of life.¹¹⁹ So, in addition to self-determination, the right to land and resources, all things being equal, also seems to be an important premise of indigenous rights.

These same premises can be found in spirit of the ILO’s 1989 Convention, No. 169.¹²⁰ For example, the UN’s Declaration determined that “self-determination” is the key premise in the establishment and maintenance of indigenous rights.¹²¹ Likewise, the ILO’s Convention encourages indigenous peoples “to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live”¹²² The UN Declaration also addresses indigenous rights to land and resources as a second key premise to maintaining indigenous rights.¹²³ Similarly, Article 14 of the ILO’s Convention grants that “[t]he rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized.”¹²⁴ In both documents, the two international organizations seem to come to a mutual conclusion. There seems to have been a consensus, if not by design then by mutual observation, of what the indigenous people need to have addressed in order to maintain their

¹¹⁴ *Id.* at 86.

¹¹⁵ *Id.*

¹¹⁶ Int’l Labour Org. [ILO], *Indigenous and Tribal Peoples*, Subheading to *Topics*, <http://www.ilo.org/global/topics/indigenous-tribal/lang--en/index.htm> (last visited Feb. 10, 2018).

¹¹⁷ Sargent, *supra* note 91, at 472.

¹¹⁸ See Lindsey L. Wiersma, *Indigenous Lands as Cultural Property: A New Approach to Indigenous Land Claims*, 54 DUKE L. J. 1061, 1061 (2005).

¹¹⁹ *Id.*

¹²⁰ Convention 1989, *supra* note 62, art. 13–19.

¹²¹ ÅHRÉN, *supra* note 1, at 86.

¹²² Convention 1989, *supra* note 62, pmb1.

¹²³ ÅHRÉN, *supra* note 1, at 86.

¹²⁴ Convention 1989, *supra* note 62, art. 14.

rights.

However, even though the ILO and UN documents have similarities, the UN, in crafting its Declaration, seemingly made even more conscious efforts to maintain indigenous rights than the ILO. For example, when the Economic and Social Council (ECOSOC) and the Commission on Human Rights (CHR) supported the Declaration on Rights of Indigenous Peoples, it allowed “for the first time in the fifty-year history of the United Nations, indigenous communities, non-governmental organizations and even indigenous persons, to participate actively” in a collaborative effort to draft a UN document.¹²⁵

At face value, it would seem that the Declaration was well drafted. However, the Declaration has the same major flaw in it as the ILO’s 1989 Convention, because it gives no means of punishment for those who refuse to adhere to its principles.¹²⁶ It “does not provide a proper basis for legal actions, complaints, or other claims in any international, domestic, or other proceedings.”¹²⁷ Although this convention had the popular vote (143 states out of 158), it is unknown how long the Declaration will maintain its popular position.¹²⁸ The Declaration would probably be better enforced if there were some consequences (i.e. sanctions) and/or methods to pursue legal action for violations. For example, if a governor of some country were to suddenly allow a tree company to take a good portion of indigenous land, with no compensation, in the name of “economic development,” what would be the indigenous peoples’ course of legal action? Could they make a claim to get their land back or to get compensation? It seems like it would have been easy and prudent to allow them to address these claims in some way before the International Court of Justice, the UN’s court. Of course, it could be that the UN avoided this because the Declaration is not a formally binding treaty.¹²⁹

However, in certain circumstances, indigenous people have been allowed and are allowed to bring their complaint before the Inter-American Court of Human Rights.¹³⁰ There are also several UN affiliated councils that are allowed to hear and help solve conflicts with indigenous rights, such as the Permanent Forum, the Human Rights Council, and the Expert Mechanism on the Rights of Indigenous Peoples (this council in particular is comprised of “five experts on the rights of indigenous peoples,

¹²⁵ Daes, *supra* note 15, at 493–94.

¹²⁶ See generally Convention 1989, *supra* note 62; Press Release, United States Mission to the United Nations, Observations of the United States with Respect to the Declaration of Rights of Indigenous Peoples (Sept. 13, 2007) (on file with University of Lafayette) [hereinafter Press Release, United States Mission].

¹²⁷ Press Release, United States Mission, *supra* note 126.

¹²⁸ Press Release, Major Step Forward, *supra* note 63.

¹²⁹ U.N. HUMAN RIGHTS OFFICE OF THE HIGH COMM’R, INDIGENOUS PEOPLES AND THE UNITED NATIONS HUMAN RIGHTS SYSTEM, at 8, FACT SHEET NO. 9/REV. 2 (2013).

¹³⁰ *Id.* at 9–10.

usually one from each of the world's five geopolitical regions, with indigenous origin a relevant factor in their appointment").¹³¹ Indigenous peoples can also bring their complaint before a National Human Rights Institution (NHRI).¹³² While all of these are good options, and certainly better than nothing, it would be more prudent to have a direct legal option with the UN's International Court of Justice, so that the court could make a definitive ruling on how certain terms of the Declaration are to be carried out, provide appropriate penalties for failing to adhere to the terms, and give remedies to the victims. It would give the Declaration more force in its operation.

Fortunately, some countries, like Peru, seem to be taking well to the task of acknowledging and enforcing indigenous rights.¹³³ This may indicate that public policy carries more weight than the law at times.

IV. PERU: THE DOMESTIC CASE EXAMPLE AND THE LEADING FRONT FOR INDIGENOUS RIGHTS IN SOUTH AMERICA

As stated earlier, Peru was forever changed after Pizarro conquered it in the early 1500's and so were the indigenous people of Peru. Before Pizarro, the Incan empire was vast and very wealthy.¹³⁴ Everything was covered with silver and gold, as the Spanish explorers described it.¹³⁵ After Pizarro, many of the indigenous were forced to flee their homes, and others were slaughtered.¹³⁶ When Che Guevara happened upon the Peruvian indigenous in 1952, around four hundred years later, he described them as a "defeated race."¹³⁷

A. *Legal and Cultural Rights for the Peruvian Indigenous*

This is not to say, however, that the indigenous people did not have some means of settling disputes or filing claims, under the law.¹³⁸ The indigenous were provided with some legal means, although they were mostly insufficient and arguably meaningless, particularly when it came to "elite abuses."¹³⁹ "One of the greatest causes of the daily suffering of indigenous people were [sic] elite abuses, which could include demands for personal services, violation of informal and formal labor arrangements, personal humiliation, blackmail, beatings and other physical abuse, and

¹³¹ See *id.* at 12–15.

¹³² See U.N. Office of High Comm'r Human Rights, *OHCHR and NHRIs*, OHCHR, <http://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx> (last visited on Feb. 14, 2018).

¹³³ ANDINA, *supra* note 11.

¹³⁴ See NILES, *supra* note 17, at 45–46.

¹³⁵ *Id.*

¹³⁶ *Id.* at 46, 52.

¹³⁷ Vinter, *supra* note 52, at 24.

¹³⁸ See Drzewieniecki, *supra* note 65.

¹³⁹ *Id.*

rape.”¹⁴⁰ Even in the late 1800’s and early 1900’s, complaints by indigenous people to the proper authorities based on these “elite abuses” were almost never successful.¹⁴¹ Sometimes an indigenous person would be labeled as dangerous or rebellious for even daring to file a complaint, and they would often be punished.¹⁴² Even if a complaint was to go through and a ruling was delivered on behalf of the indigenous, the local authorities rarely upheld it.¹⁴³ However, as it got later into the 1900’s, Peru began to change its stance towards the indigenous people, and the indigenous people started to become more successful when filing a complaint.¹⁴⁴

“One crucial source of change [in 1989] was the international environment and the striking advances that indigenous people had made in placing indigenous concerns on the agendas of bodies such as the United Nations and in the programs of national and multicultural development agencies.”¹⁴⁵ From here, the Peruvian government slowly began to change its stance towards indigenous issues and rights.¹⁴⁶ The progress was slow, but thanks to international pressure, there began a “local and national development of . . . intercultural policies.”¹⁴⁷

Since then, Peru has come a long way in acknowledging and enforcing indigenous legal and cultural rights. The Human Rights Council of the UN conducted a special report on Peru and their progress with their indigenous people.¹⁴⁸ Despite some deficiencies, the report came out well. The report noted that Peru’s 1993 Constitution “recognizes the legal personality of peasant and native communities and guarantees their autonomy in respect of their organization, community work, the use and free disposal of their land and with regard to economic and administrative matters.”¹⁴⁹ Essentially, Peru, with limitations, recognizes its indigenous peoples’ right to self-determination. Peru also now makes considerable effort to communicate and maintain dialogue with its indigenous people.¹⁵⁰ In 2013, Peru established the “National Dialogue and Sustainability Bureau of the Office of the Council of Ministers” to assist

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ MARÍA ELENA GARCÍA, MAKING INDIGENOUS CITIZENS: IDENTITIES, EDUCATION, AND MULTICULTURAL DEVELOPMENT IN PERU 51 (Stanford Univ. Press, 2005).

¹⁴⁶ *Id.* at 51–52.

¹⁴⁷ *Id.* at 52.

¹⁴⁸ Rep. of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, Human Rights Council, U.N. Doc. A/HRC/27/52/Add.3 (July 3, 2014).

¹⁴⁹ *Id.* ¶ 4.

¹⁵⁰ *Id.* ¶¶ 31–32.

with this very purpose in mind.¹⁵¹ Peru also passed the “Prior Consultation Act,” which contained “positive components that reflect current international standards, including those according to which consultations must take place before the event, in good faith, in the language of the indigenous peoples affected, offering timely information, over a reasonable time frame and through a process of intercultural dialogue.”¹⁵²

In summary, Peru has made remarkable advancements in recognizing indigenous legal and cultural rights, from it being dangerous for an indigenous person to file a complaint with the court to Peru’s 1993 Constitution essentially recognizing, with limits, the indigenous peoples’ right to self-determination. Peru has also made progress in establishing and protecting land and resource rights for its indigenous people.

B. Land and Resource Rights for the Peruvian Indigenous

After Peru ratified the ILO 1989 Convention in 1993, it made the adjustments necessary to its laws and its practices to comply with the Convention and satisfy indigenous rights.¹⁵³ This is particularly true in regards to indigenous land and resource rights. For example, in 2011, the Peruvian government decided “to overhaul the country’s environmental impact assessment system, strengthening the role of the Environment Ministry (MINAM) and giving citizens a much greater say in the approval of extractive projects [i.e. removal of natural resources from the land].”¹⁵⁴ Before any extractive project can be approved, Peruvian “Law 29785” requires prior consultation of the communities, which is in full compliance with the ILO’s 1989 Convention.¹⁵⁵ While this may seem small, it is a big step in the right direction of acknowledging and enforcing indigenous rights. This law gives the indigenous community a say, at least for extractions, before the government allows tampering with the land.¹⁵⁶

However, it is not just Peru’s ratification of the ILO 1989 Convention that is motivating them. Peru has had problems in the past with “social conflict[s]” slowing or halting progress.¹⁵⁷ When a government lets the people have a say, there is less tendency to have “social conflict.”¹⁵⁸ It is argued that Peru saw that their old way of doing things was making

¹⁵¹ *Id.*

¹⁵² *Id.* (footnotes omitted).

¹⁵³ Lucien O. Chauvin, *Impact Assessment: Peru to Overhaul Assessment Process, Boost Transparency to Quell Social Conflicts*, 34 INT’L ENV’T REP. (BNA) (Oct. 26, 2011).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ Elizabeth Salmón G., *The Struggle for Laws of Free, Prior, and Informed Consultation in Peru: Lessons and Ambiguities in the Recognition of Indigenous Peoples*, 22 PAC. RIM. L. & POL’Y J. 353, 355 (2013).

everything harder than it had to be. “In Peru, public opinion holds that the rules governing free, prior, and informed consultation are usually sufficient measures to remedy social conflict and to disrupt cyclical episodes of violence.”¹⁵⁹ It is simpler to let the indigenous people have a say and move on from there.

Perhaps, Peru understood how successful these new approaches were and so became a fore front supporter of the cause. Peru has repeatedly demonstrated its support for the Declaration on the Rights of Indigenous Peoples.¹⁶⁰ Peru voted in favor of the document, and Peru’s representative even introduced the Declaration after it was passed.¹⁶¹ Even further, in June 2016, Peru was called a model for the “protection of indigenous peoples in isolation.”¹⁶² At some point, it became less about passing laws, *per se*, and more about circulating public policy.¹⁶³ What is written on paper or stone does not mean anything if the people do not see the good in following it. It could be for this reason that:

Peruvian law is in line with the International Labour Organization (ILO) Convention 169 on Indigenous and Tribal Peoples; the United Nations Declaration on the Rights of Indigenous Peoples and; Guidelines for the Protection of Indigenous Peoples in Voluntary Isolation and Initial Contact of the Amazon Region, prepared by the United Nations Human Rights Office of the High Commissioner.¹⁶⁴

Taking an even greater step, Peru has been policing those who would illegally log on indigenous lands.¹⁶⁵ Mahogany has become a lucrative resource due to its scarcity and slow growth rate, earning it the nickname, “red gold.”¹⁶⁶ Due to its value and scarcity, illegal loggers often trespass onto indigenous land to find and take the trees.¹⁶⁷ In doing so, the illegal loggers “destroyed the forest, decimated wildlife populations, and threatened the survival of the last few hundred families of Mascho Piro, Yora, Matsigenka, and Amahuaca, nomadic indigenous groups living in voluntary isolation.”¹⁶⁸ To stop this from continuing, Peru entered into

¹⁵⁹ *Id.*

¹⁶⁰ Press Release, Major Step Forward, *supra* note 63.

¹⁶¹ *Id.*

¹⁶² *ANDINA*, *supra* note 11.

¹⁶³ *See id.*

¹⁶⁴ *Id.*

¹⁶⁵ Ani Youatt & Thomas Cmar, *The Fight for Red Gold: Ending Illegal Mahogany Trade from Peru*, 23 NAT. RES. & ENV’T 19, 23 (2009).

¹⁶⁶ *Id.* at 19.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

a trade agreement with the United States that would allow them to track down illegal loggers and eliminate the practice completely.¹⁶⁹ As evidenced by this example, Peru has come a long way in recognizing indigenous land and resource rights.

However, even in spite of all of Peru's progress acknowledging and enforcing the rights of its indigenous people, there is still work yet to be done. Peru just recently ran into the old issue of acknowledging and enforcing indigenous rights.¹⁷⁰ For over forty years, a northern Peru oil pipeline has plagued the indigenous population in the Amazon.¹⁷¹ From January to August of 2016 alone, the pipeline has had six spills.¹⁷² For the two most recent spills, the leaders of the indigenous community affected by the spill went to government officials to discuss cleanup. Unfortunately, the meeting ended at an impasse, which led to protests a little while later.¹⁷³ The sad fact of the matter is, Peru's state-run oil company has been, and is, contaminating indigenous lands with its pipeline.¹⁷⁴ And even further, the state oil company is giving the indigenous people a hard time about fixing both the deteriorated pipes and the actual oil spill.¹⁷⁵ It just goes to show that no system is perfect. There will always be some type of "social conflict," just as there will always be room for improvement. All together though, Peru has had admirable success protecting indigenous land and resource rights.

V. CONCLUSION

"Indigenous peoples in Peru (and elsewhere) have been and continue to be associated with underdevelopment . . . and presented as 'archaic obstacles' to the development of 'modern' nations."¹⁷⁶ This mentality and the lack of state interest in the extent of Indigenous rights is what leads to conflicts like the United States' conflict over the North Dakota oil pipeline.¹⁷⁷ Some may initially view it as acceptable to ignore any possible indigenous rights because they get in the way of progress and what will "serve the national interest."¹⁷⁸ But, these culturally unique

¹⁶⁹ *Id.* at 23.

¹⁷⁰ Rep. of the Special Rapporteur of the Hum. Rts., Council Report of the Special Rapporteur on the Rights of Indigenous Peoples, Human Rights Council, U.N. Doc. A/HRC/33/42 (Aug. 11, 2016).

¹⁷¹ Fraser, *supra* note 12.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *See id.*

¹⁷⁶ GARCÍA, *supra* note 145, at 4 (citations omitted).

¹⁷⁷ Press Release, United Nations Office of High Comm'r Human Rights, UN Experts Urge Consistent Policies for US on Indigenous Peoples' Rights for Projects Like Dakota Access Pipeline (Mar. 3, 2017).

¹⁷⁸ *Dakota Pipeline*, *supra* note 5.

people have lived this way for hundreds of years, despite suffering, poverty, opposition, and assimilation attempts. This is who these people are as a cultural identity. It is unethical to deny indigenous people their collective right to live as they do, and have lived for centuries, when it is part of their identity and they have clung to it with such steadfast faithfulness, especially when their domestic governments try to profit off of the land and resources that the indigenous people have protected by living the way that they have.

In relatively recent years, international law finally acknowledged this and discovered the two premises needed to help maintain indigenous peoples' collective rights. Indigenous people need a level of self-determination (a right to their culture). They also need resources and land to express that culture (right to land and resource, all things being equal). Domestic governments need to recognize these premises as well and establish them to help put an end to the social conflict caused by a lack of clarity as to the extent of indigenous rights. No system is perfect, even Peru has had its issues, as recent as 2016. However, Peru has had admirable success in trying to find a balance between indigenous rights and state sovereignty. There should be, and there is, a balance to be found between indigenous peoples' right to self-determination and their nation's right to sovereignty. Both internationally and domestically, serious steps have been taken to try to establish a balance. If both internationally and domestically, positive policies and attitudes towards indigenous rights are adopted, circulated, and accepted, perhaps one day there will be an end to social conflict between the indigenous people and the State.